

Texas Historical Statutes Project

1979 SUPPLEMENT
VOLUME 2

Corporations
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Revised Civil Statutes



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West's Texas Statutes and Codes

1979 Supplement

to

Compact Edition

Volume 2

Codes and Indexes

Revised Civil Statutes

Topical Index

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PREFACE

This 1979 Supplement to West's Texas Statutes and Codes, Compact Edition, includes the text of all the general and permanent laws of the State of Texas enacted at the Regular Session of the 64th Legislature (1975), the Regular and First Called Sessions of the 65th Legislature (1977), the Second Called Session of the 65th Legislature (1978), the Regular Session of the 66th Legislature (1979) and the text of changes in the Texas Constitution as adopted by the people at the Elections held on April 22, 1975, November 8, 1977, November 7, 1978, and November 6, 1979.

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

New Codes

Included are the complete texts, as amended, of four new Codes adopted during the period covered by this Supplement under the Texas Legislative Council's statutory revision program, authorized by Civil Statutes, Art. 5429b-1:

Alcoholic Beverage Code, enacted by Acts 1977, 65th Leg.,
ch. 194;

Human Resources Code, enacted by Acts 1979, 66th Leg.,
ch. 842;

Natural Resources Code, enacted by Acts 1977, 65th Leg.,
ch. 871;

Parks and Wildlife Code, enacted by Acts 1975, 64th Leg.,
ch. 545.

Disposition Tables, providing a means of tracing repealed subject matter into the new Codes, and detailed descriptive word Indexes, facilitating the search for specific provisions therein, are included following the text of each of the above new Codes.

PREFACE

In addition, included is the complete text of Title 1 of the Tax Code, enacted by Acts 1979, 66th Leg., ch. 841. Title 1, known as the Property Tax Code, was also adopted as part of the Legislative Council's statutory revision program. In order that the user might have all of the statutes relating to taxation in one convenient location, the material supplementing Title 122, Taxation, and Title 122A, Taxation—General, which appear following the Probate Code in the Compact Edition, are to be found immediately following the Tax Code in Volume 1 of this Supplement.

Special Law Tables

Special laws pertaining to education and water, enacted or amended in 1975, 1977, and 1979, are tabulated following the Education and Water Codes.

Indexes

The index references following each Code and the Civil Statutes cover both new and amendatory laws. With respect to new laws the coverage is complete. For amendatory laws, references are added only when the existing Compact Edition references are inadequate to cover the changed provisions.

THE PUBLISHER

January, 1980

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EFFECTIVE DATES

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

Year	Session	Adjournment Date	Effective Date
1945	Regular	June 5, 1945	September 4, 1945
1947	Regular	June 6, 1947	September 5, 1947
1949	Regular	June 6, 1949	September 5, 1949
1951	Regular	June 8, 1951	September 7, 1951
1953	Regular	May 27, 1953	August 26, 1953
1954	1st C.S.	May 13, 1954	August 12, 1954
1955	Regular	June 7, 1955	September 6, 1955
1957	Regular	May 23, 1957	August 22, 1957
1957	1st C.S.	November 12, 1957	February 11, 1958
1957	2nd C.S.	December 3, 1957	March 4, 1958
1959	Regular	May 12, 1959	August 11, 1959
1959	1st C.S.	June 16, 1959	September 15, 1959
1959	2nd C.S.	July 16, 1959	October 15, 1959
1959	3rd C.S.	August 6, 1959	November 5, 1959
1961	Regular	May 29, 1961	August 28, 1961
1961	1st C.S.	August 8, 1961	November 7, 1961
1961	2nd C.S.	August 14, 1961	November 13, 1961
1962	3rd C.S.	February 1, 1962	May 3, 1962
1963	Regular	May 24, 1963	August 23, 1963
1965	Regular	May 31, 1965	August 30, 1965
1966	1st C.S.	February 23, 1966	*
1967	Regular	May 29, 1967	August 28, 1967
1968	1st C.S.	July 3, 1968	*
1969	Regular	June 2, 1969	September 1, 1969
1969	1st C.S.	August 26, 1969	*
1969	2nd C.S.	September 9, 1969	December 9, 1969
1971	Regular	May 31, 1971	August 30, 1971
1971	1st C.S.	June 4, 1971	September 3, 1971
1972	2nd C.S.	March 30, 1972	June 29, 1972
1972	3rd C.S.	July 7, 1972	*
1972	4th C.S.	October 17, 1972	January 16, 1973
1973	Regular	May 28, 1973	August 27, 1973
1973	1st C.S.	December 20, 1973	*
1975	Regular	June 2, 1975	September 1, 1975
1977	Regular	May 30, 1977	August 29, 1977
1977	1st C.S.	July 21, 1977	*
1978	2nd C.S.	August 8, 1978	November 7, 1978
1979	Regular	May 28, 1979	August 27, 1979

* The laws enacted at this session were all emergency acts.

*

CITE THIS BOOK

Thus:

- West's Texas Const. Art. —, § —
- West's Texas Alcoholic Beverage Code, § —
- West's Texas Business and Commerce Code, § —
- West's Texas Education Code, § —
- West's Texas Family Code, § —
- West's Texas Human Resources Code, § —
- West's Texas Natural Resources Code, § —
- West's Texas Parks and Wildlife Code, § —
- West's Texas Penal Code, § —
- West's Texas Code of Criminal Procedure, Art. —
- West's Texas Tax Code, § —
- West's Texas Taxation—General, Art. —
- West's Texas Water Code, § —
- West's Texas Business Corporation Act, Art. —
- West's Texas Election Code, Art. —
- West's Texas Insurance Code, Art. —
- West's Texas Probate Code, § —
- West's Texas Civil Statutes, Art. —

TEXAS BUSINESS CORPORATION ACT

PART ONE

Art. 1.02. Definitions

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

[See Compact Edition, Volume 2 for text of 1 to 18]

(19) "Conspicuous" or "conspicuously", when prescribed for information appearing on a certificate for shares or other securities, means the location of such information or use of type of sufficient size, color, or character that a reasonable person against whom such information may operate should notice it. For example, a printed or typed statement in capitals, or boldface or underlined type, or in type that is larger than or that contrasts in color with that used for other statements on the same certificate, is "conspicuous."

[Amended by Acts 1975, 64th Leg., p. 305, ch. 184, § 1, eff. Sept. 1, 1975.]

PART TWO

Art. 2.01. Purposes

[See Compact Edition, Volume 2 for text of A]

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

[See Compact Edition, Volume 2 for text of B(1) and (2)]

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

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

(b) The business of engaging in the petroleum oil producing business in this State and the business of engaging directly in the oil pipe line business in this State: provided, however, that a corporation engaged in the oil producing business in this State which owns or operates private pipe lines in and about its refineries, fields or stations or which owns stock of corporations engaged in the oil pipe line business shall not be

deemed to be engaging directly in the oil pipe line business in this State; and provided that any corporation engaged as a common carrier in the pipe line business for transporting oil, oil products, gas, salt brine, fuller's earth, sand, clay, liquefied minerals or other mineral solutions, shall have all of the rights and powers conferred by Sections 111.019 through 111.022, Natural Resources Code.

[See Compact Edition, Volume 1 for text of (4)]
[Amended by Acts 1977, 65th Leg., p. 2690, ch. 871, art. II, § 3, eff. Sept. 1, 1977.]

Art. 2.02. General Powers

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

(1) To have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation. Notwithstanding the articles of incorporation, the period of duration for any corporation incorporated before September 6, 1955, is perpetual if all fees and franchise taxes have been paid as provided by law.

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

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

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

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

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

(7) To purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, mortgage, lend, pledge, sell or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, associations, partnerships, or individuals, or direct or indirect obligations of the United States or of any other government, state, territory, government district, or municipality, or of any instrumentality thereof.

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

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

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

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

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

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

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

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

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

A corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint

venture, trust, or other enterprise against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liability under the provisions of this Article.

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

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

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

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

[See Compact Edition, Volume 2 for text of B and C]

[Amended by Acts 1979, 66th Leg., p. 175, ch. 96, § 2, eff. May 2, 1979.]

Art. 2.10. Change of Registered Office or Registered Agent

[See Compact Edition, Volume 2 for text of A]

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

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

(2) File the original in his office.

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

[See Compact Edition, Volume 2 for text of C]

D. Any registered agent of a corporation may resign

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

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

written notice of resignation has been given to the corporation and the date thereof. Upon compliance with the requirements as to written notice, the appointment of such agent shall terminate upon the expiration of thirty (30) days after receipt of such notice by the Secretary of State.

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

- (1) Endorse on the original and both copies the word "filed" and the month, day and year of the filing thereof.
- (2) File the original in his office.
- (3) Return one copy to such resigning registered agent.
- (4) Return one copy to the corporation at the last known address of the corporation as shown in such written notice.

[Amended by Acts 1979, 66th Leg., p. 222, ch. 120, § 23, eff. May 9, 1979.]

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

[See Compact Edition, Volume 2 for text of A]

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

- (1) Endorse on the original and both copies the word "Filed," and the month, day and year of the filing thereof.
- (2) File the original in his office.
- (3) Return one copy to such registered agent.
- (4) Return one copy to the corporation at the last known address of the principal place of business of the corporation as shown in such statement.

[See Compact Edition, Volume 2 for text of C]

[Amended by Acts 1979, 66th Leg., p. 223, ch. 120, § 24, eff. May 9, 1979.]

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

[See Compact Edition, Volume 2 for text of A to D]

E. Such statement shall be executed by the corporation by its president or a vice president and by its secretary or an assistant secretary and verified by one of the officers signing such statement. The original and a copy of the statement shall be delivered to the Secretary of State. If the Secretary of

State finds that such statement conforms to law, he shall, when all franchise taxes and fees have been paid as prescribed by law:

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

[See Compact Edition, Volume 2 for text of F]

[Amended by Acts 1979, 66th Leg., p. 223, ch. 120, § 25, eff. May 9, 1979.]

Art. 2.19. Certificates Representing Shares

[See Compact Edition, Volume 2 for text of A]

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

[See Compact Edition, Volume 2 for text of C to E]

F. Repealed by Acts 1975, 64th Leg., p. 322, ch. 134, § 22, eff. Sept. 1, 1975.

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

H. Repealed by Acts 1975, 64th Leg., p. 322, ch. 134, § 22, eff. Sept. 1, 1975.

[Amended by Acts 1975, 64th Leg., p. 305, ch. 134, §§ 2, 3 and 22, Sept. 1, 1975.]

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

[See Compact Edition, Volume 2 for text of A and B]

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

[See Compact Edition, Volume 2 for text of D]

E. A corporation that has adopted a bylaw, or is a party to an agreement, restricting the transfer of its shares or other securities may file such bylaw or agreement as a matter of public record with the Secretary of State, as follows:

(1) The corporation shall file a copy of the bylaw or agreement in the office of the Secretary of

State together with an attached statement setting forth:

- (a) the name of the corporation;
- (b) that the copy of the bylaw or agreement is a true and correct copy of the same; and
- (c) that such filing has been duly authorized by the board of directors or, in the case of a close corporation managed by its shareholders pursuant to Article 2.30-1, by its shareholders.

(2) Such statement shall be executed by the corporation by its president or a vice-president and verified by the officer signing such statement. The original and a copy of the statement shall be delivered to the Secretary of State with copies of such bylaw or agreement restricting the transfer of shares or other securities attached thereto. If the Secretary of State finds that such statement conforms to law and all franchise taxes and fees have been paid as prescribed by law, he shall:

- (a) endorse on the original and the copy the word "Filed", and the month, day, and year of the filing thereof;
- (b) file the original in his office; and
- (c) return the copy to the corporation or its representative.

(3) After the filing of such statement by the Secretary of State, the bylaw or agreement restricting the transfer of shares or other securities shall become a matter of public record and the fact of such filing shall be stated on any certificate representing the shares or other securities so restricted if required by Section G, Article 2.19, of this Act.

F. A corporation that is a party to an agreement restricting the transfer of its shares or other securities may make such agreement part of its articles of incorporation without restating the provisions of such agreement therein by complying with the provisions of Part Four of this Act for amendment of the articles of incorporation. If such agreement shall alter any provision of the original or amended articles of incorporation, the articles of amendment shall identify by reference or description the altered provision. If such agreement is to be an addition to the original or amended articles of incorporation, the articles of amendment shall state that fact. The articles of amendment shall have attached thereto a copy of the agreement restricting the transfer of shares or other securities, and shall state that the attached copy of such agreement is a true and correct copy of the same and that its inclusion as part of the articles of incorporation has been duly authorized in the manner required by this Act to amend the articles of incorporation.

[Amended by Acts 1975, 64th Leg., p. 306, ch. 134, §§ 4 and 5, Sept. 1, 1975; Acts 1979, 66th Leg., p. 223, ch. 120, § 26, eff. May 9, 1979.]

Art. 2.30-1. The Close Corporation: Definition; Formation; Election to Become; Termination of the Election; Management by Shareholders

A. As used in this Act, a "close corporation" means a domestic corporation which (i) is organized under or is subject to this Act and (ii) has elected to be a close corporation by including in its articles of incorporation (whether original or amended or restated), in addition to the provisions required by Article 3.02 of this Act, the following:

- (1) a statement that it is a close corporation;
- (2) a statement that no shares of any class and no securities evidencing the right to acquire shares of the close corporation shall be issued by means of any public offering, solicitation, or advertisement;
- (3) a statement that all of the issued shares of each class and all of the issued securities evidencing the right to acquire shares of the close corporation shall be subject to one or more of the restrictions on transfer permitted by Articles 2.22 or 2.30-2 of this Act, and if such restrictions on transfer are being imposed on the articles of incorporation or in an agreement permitted by this Act to be set forth in full in or made a part of the articles of incorporation, the statement shall be followed either by (i) the provisions of the articles of incorporation or amendment thereto that impose such restrictions, (ii) the agreement if it is being set forth in full in the articles of incorporation, or (iii) a reference to such agreement if it is being made a part of the articles of incorporation; and
- (4) a statement that all of the issued shares of all classes, excluding treasury shares, and all of the issued securities evidencing the right to acquire shares of the close corporation shall be held of record by no more than a specified number of persons, not exceeding thirty-five (35) in the aggregate. To determine the number of holders of record for purposes of this definition, shares and securities evidencing rights to acquire shares which are held (1) by husband and wife as (a) community property, (b) joint tenants (with or without right of survivorship), or (c) tenants by the entirety, or (2) by an estate of a decedent or an incompetent, or (3) by an express trust, partnership, association, or corporation created or organized and existing other than for the primary purpose of holding shares or securities evidencing rights to acquire shares in a close corporation, shall be treated as held by one person. Nothing in this definition shall be deemed to affect the right of any corporation which has not elected to be a close corporation as provided in this Article, or its shareholders, directors, or officers to exercise any power or right, granted or permitted by any provi-

sion of this Act. To the extent not inconsistent with any provision of this Act dealing specifically with a close corporation, all other provisions of this Act shall apply to a close corporation.

B. The articles of incorporation also may set forth the qualifications of shareholders and/or security-holders, either by specifying classes of persons who shall be entitled to be holders of record of any class of shares or securities, or by specifying classes of persons who shall not be entitled to be holders of record of any class of shares or securities, or both.

C. Nothing contained in this Article shall be deemed to prohibit or preclude the inclusion of any other matters required or permitted to be set forth in articles of incorporation by this Act, to the extent they are not inconsistent with the matters actually set forth in articles of incorporation of a close corporation pursuant to Sections A and B of this Article.

D. To form a close corporation, all of the initial subscribers to the corporation's shares and securities evidencing the right to acquire its shares shall serve as incorporators and the articles of incorporation, in addition to the matters required or permitted to be set forth therein by this Act, also shall include a statement that the incorporators include all such subscribers. The filing of the articles of incorporation by the Secretary of State shall constitute acceptance by the close corporation of the subscriptions of all such subscribers.

E. If an existing corporation desires to become a close corporation, it shall adopt articles of amendment in the manner provided by this Act which state that it has elected to become a close corporation and which make such other amendments to its articles of incorporation as may be required in order that the articles of incorporation, as so amended, shall set forth the matters required of a close corporation by this Act. The articles of amendment may include any other matter permitted to be set forth in the articles of incorporation of a close corporation by this Act and, to the extent not inconsistent with its status as a close corporation, any other matter that may be set forth in articles of incorporation. The election to become a close corporation and any amendments in connection therewith shall be approved by the affirmative vote of the holders of all of the outstanding shares of each class, whether or not entitled to vote thereon by the articles of incorporation.

F. If a close corporation desires to terminate its status as a close corporation, it shall adopt articles of amendment in the manner provided by this Act which state that it has elected to terminate its status as a close corporation and which delete the provisions required or permitted to be set forth in the articles of incorporation of a close corporation under this Act that are not permitted for corporations generally. Such election to terminate its status as a

close corporation and amendments required in connection therewith shall be approved by the affirmative vote of the holders of at least two-thirds of the outstanding shares of each class, whether or not entitled to vote thereon by the articles of incorporation, unless a greater or lesser vote is required or permitted by the articles of incorporation for such termination. Any provision of the articles of incorporation requiring a greater vote for such termination shall not be amended, repealed, or modified by any vote less than that required to terminate the corporation's status as a close corporation. Any provision restricting the transfer of the shares or other securities evidencing the right to acquire shares contained in or made part of the articles of incorporation pursuant to Article 2.30-2 of this Act, shall remain in effect to the extent not prohibited by other provisions of this Act whether or not thereafter contained in or made a part of the articles of incorporation or bylaws unless, in connection with the adoption of articles of amendment to terminate the corporation's status as a close corporation, a resolution is adopted or an agreement is entered into terminating or amending such restrictions on transfer by the number or percentage of shareholders and/or security-holders (whether or not entitled to vote in the case of a resolution) required by the articles of incorporation, bylaws or agreement for termination or amendment of such restrictions on transfer.

G. If the articles of incorporation of a close corporation expressly so state and if each certificate representing its issued and outstanding shares so conspicuously states, the business and affairs of such close corporation shall be managed by the shareholders of the close corporation rather than by a board of directors, and the following provisions shall apply:

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

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

(3) Any action required or permitted by this Act to be taken by the board of directors of a corporation shall or may be taken by action of the shareholders of such close corporation at a meeting thereof or in the manner permitted by this Act without a meeting. Any such action taken shall be on the basis of the vote, cast in person or by proxy, by the holders of shares having a majority of the total voting power of all outstanding shares entitled to vote with respect to such action, unless the articles of incorporation either in general or on specified matters provide (a) for a greater vote or (b) for a vote on the basis of one or some other

specified number of votes per such shareholder. In addition, any action consented to by all the shareholders shall be binding upon the corporation. Such consent may be evidenced (a) by the full knowledge of such action by all the shareholders and their failure to object thereto in a timely manner or (b) a consent in writing to such action in accordance with Article 9.10 of this Act or any other writing executed by or on behalf of all the shareholders reasonably evidencing such consent or (c) by any other means reasonably evidencing such consent.

H. A close corporation that is managed by its shareholders in accordance with this Act may elect to have its business and affairs managed by a board of directors by amending its articles of incorporation in the manner provided in this Act. At the meeting of shareholders to approve such amendment, there shall be elected such number of directors specified in the articles of amendment or provided for in the bylaws. The name and post office address of each person who is to serve as a director on the amendment becoming effective shall be set forth in the articles of amendment.

I. If any event occurs as a result of which one or more of the provisions or conditions included in a close corporation's articles of incorporation pursuant to Section A of this Article to qualify it as a close corporation has been breached:

(1) The corporation's status as a close corporation shall terminate unless:

(a) within thirty (30) days after the occurrence of the event, or within thirty (30) days after the event has been discovered, whichever is later, the corporation (i) files with the Secretary of State a certificate, executed by the corporation by its president or a vice-president and verified by the officer signing such statement, setting forth (A) the name of such corporation, and (B) a statement that a specified provision or condition included in its articles of incorporation pursuant to Section A of this Article to qualify it as a close corporation has been breached, and (ii) delivers to each shareholder of record, either personally or by mail (if mailed, in accordance with the requirements of the second sentence of Article 2.25), a copy of such certificate; and

(b) the corporation, within sixty (60) days after the filing of such certificate, takes such steps as are necessary to correct the situation which threatens its status as a close corporation, including, without limitation, the refusal to register the transfer of any shares which have been wrongfully transferred, or commencement in a court of competent jurisdiction of a proceeding to prevent the corporation from losing its status as a close corporation or to restore its status as such, as permitted by Article 2.30-3 of this Act.

(2) When the situation which threatens the status of the corporation as a close corporation has been remedied, and if the corporation has not amended its articles of incorporation in accordance with Section F of this Article, the corporation shall file with the Secretary of State a certificate, executed by the corporation's president or a vice-president and verified by the officer signing such statement, setting forth (a) the name of such corporation, (b) a reference to the statement previously filed with the Secretary of State by such corporation pursuant to paragraph (a) of Subsection (1) of this Section, and (c) a statement that no breach of any of the provisions or conditions included in its articles of incorporation pursuant to Section A of this Article exists.

(3) If within the sixty (60) day period provided in Subsection (1)(b) of this Section, the situation which threatened the status of such corporation as a close corporation is not remedied, the corporation's status as a close corporation shall thereafter be terminated, unless its status as a close corporation has been stayed by a court of competent jurisdiction pending final adjudication in a proceeding under Article 2.30-3 or in any other proceeding that will result in the corporation being unable to maintain or being restored to its status as a close corporation. If pursuant to Section G of this Article the business and affairs of such corporation are being managed by its shareholders rather than by a board of directors, the president shall call a meeting of the shareholders entitled to vote thereon to elect a board of directors; and if he fails to call such a meeting within thirty (30) days from the date when the corporation's status as a close corporation so terminated, any shareholder, whether or not entitled to vote, may call such meeting with the same rights and powers as are provided in this Act with respect to the call of an annual meeting of shareholders by a shareholder. At such meeting there shall be elected such number of directors as have been specified in the articles of incorporation or the bylaws of such corporation or, if no such number is specified, one (1) director shall be elected. During the period until such director(s) is elected, the person or persons to whom management of the corporation has been delegated by the shareholders shall act as a board of directors and the business and affairs of the corporation shall be conducted in the manner provided for corporations generally under this Act.

J. A corporation which met the definition of a close corporation immediately prior to the effective date of the 1975 amendment to this Article 2.30-1 shall retain its status as a close corporation for a period of one year after such effective date, provided it continues during such one-year period to meet all the requirements of a close corporation set forth

in Section A of this Article, as amended, other than the inclusion of the required statements in its articles of incorporation. After such one-year period, a corporation no longer shall have the status of a close corporation unless during such year it shall have amended its articles of incorporation to set out the matters required to be stated therein by Section A of this Article; provided, however, that nothing in this Article shall require a close corporation to so amend its articles of incorporation if, before the effective date of the 1975 amendment to this Article, the articles of incorporation of such corporation provided that its business and affairs were to be managed by its shareholders or granted any shareholder or other holders of any specified number or percentage of shares of any class of shares an option to dissolve the close corporation. Should any such corporation subsequently amend its articles of incorporation, the matters required to be stated by Section A shall be set forth in the articles of amendment and approved in the manner required by that Section. No agreement among the shareholders of a close corporation as heretofore permitted to be entered into by Article 2.30-2, or any other act performed by or in behalf of such corporation, before the effective date of the 1975 amendment to this Article 2.30-1, shall be invalidated or otherwise affected by such corporation electing to become a close corporation in the manner provided by this Article.

[Amended by Acts 1975, 64th Leg., p. 308, ch. 134, § 6, eff. Sept. 1, 1975.]

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

A. The shareholders of a close corporation or the subscribers to its shares, if no shares have been issued, may enter into a written agreement executed by all the holders of and subscribers to shares of the corporation to regulate any phase of the business and affairs of the corporation or the relations of the holders of or subscribers to shares of the corporation, including, but not limited to, the following:

- (1) Management of the business and affairs of the corporation whether by the board of directors in a manner otherwise than provided in this Act or by one or more of the shareholders or one or more other parties to be selected by the shareholders;
- (2) Restrictions on the transfer of shares or other securities more restrictive than otherwise would be permitted to be imposed by Article 2.22, if not manifestly unreasonable;
- (3) Exercise or division of voting requirements or power beyond those that would otherwise be permitted by this Act;
- (4) Terms and conditions of employment of any shareholder, director, officer, or employee regardless of the length of time of such employment;
- (5) Persons who shall or may be directors and officers of the corporation;

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

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

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

B. Such shareholders' agreement shall either (1) be set forth in or made part of the original or amended articles of incorporation; or (2) be set forth in or made part of the bylaws of the corporation, provided such bylaws and a counterpart of the agreement be placed on file by the corporation at its principal place of business and its registered office and shall be subject to the same right of examination by a shareholder of the corporation, in person, or by agent, attorney, or accountant, as are the books and records of the corporation. If the agreement is set forth in or made part of the original articles of incorporation, all of the parties to the agreement at the time of incorporation who shall have subscribed to shares of the corporation shall serve as incorporators of the close corporation. If set forth in or made part of an amendment to the articles of incorporation, the provisions of this Act for amendment of the articles of incorporation shall be complied with. In addition, such amendment shall have been adopted by an affirmative vote of all of the subscribers to shares if no shares have been issued, or of the holders of all outstanding shares, whether or not entitled to vote by the articles of incorporation. If set forth in or made part of the bylaws of the corporation either when originally adopted or later amended, such provision of the bylaws shall have been adopted, amended, or ratified by an affirmative vote of all the subscribers to shares, if no shares have been issued, or of the holders of all outstanding shares, whether or not entitled to vote by the articles of incorporation. Once such agreement has been set forth in or made part of the articles of incorporation or bylaws as provided herein, it may not be amended or removed therefrom, unless otherwise provided by the articles of incorporation or the bylaws, as the case may be, except by the affirmative vote or consent of all of the subscribers to shares, if no shares have been issued, or of the holders of all outstanding shares, whether or not entitled to vote by the articles of incorporation. If these provisions are not complied with, such agreement, even though otherwise enforceable among the parties thereto, shall not be enforceable by any party thereto who is knowingly

responsible for such noncompliance nor against any transferee of shares except one who has actual knowledge of the existence of the agreement or who has acquired his shares by gift, bequest, or inheritance from a party to the agreement.

C. Each certificate representing shares issued by a close corporation whose shareholders have entered into an agreement permitted by this Article shall (1) set forth conspicuously a full or summary statement of such agreement on the face of the certificate; or (2) set forth such statement on the back of the certificate and conspicuously refer to the same on the face of the certificate; or (3) if the agreement has been set forth in or made part of the articles of incorporation, conspicuously state on the face or back of the certificate that such shares are subject to an agreement among all the shareholders of the close corporation and that the corporation will furnish to the record holder of the certificate without charge upon written request to the corporation at its principal place of business or registered office a copy of such agreement and that such agreement either is set forth in the articles of incorporation or it is made a part thereof and is on file in the office of the Secretary of State; or (4) if the agreement has been set forth in or made part of the bylaws and a counterpart of the agreement placed on file by the corporation at its principal place of business and its registered office, conspicuously state on the face or back of the certificate that such shares are subject to an agreement among all the shareholders of the close corporation and that the corporation will furnish to the record holder of the certificate without charge upon written request to the corporation at its principal place of business or registered office a copy of such bylaw or agreement. An agreement permitted by this Article, which is noted conspicuously on the certificates representing shares of a close corporation in the manner prescribed in the preceding paragraph, shall be binding on and enforceable against a holder of such a certificate or any successor or transferee of such holder, including an executor, administrator, trustee, guardian, or other fiduciary entrusted with like responsibility for the person or estate of such holder. Unless noted conspicuously on the certificates representing shares of the close corporation in the manner prescribed in the preceding paragraph, an agreement permitted by this Article, even though otherwise enforceable, shall be ineffective except against a person with actual knowledge of such agreement.

D. If an agreement authorized by this Article contains any provisions which would not be valid under other provisions of the Act, such provisions shall be valid only so long as the corporation maintains its status as a close corporation under this Act. No other provision of the agreement shall be affected unless the parties thereto otherwise provide.

E. In the event a close corporation shall have a board of directors, the effect of an agreement authorized by this Article shall be to relieve the director or directors of, and to impose upon the shareholders who are parties to or are bound by the agreement and who voted for or assented to the transaction in question, the liabilities imposed by this Act or by law for action taken or neglected to be taken by directors to the extent that and so long as the discretion or powers of the directors in their management of corporate affairs is controlled by any such provision.

F. The provisions of this Article shall not be construed to prohibit any other agreements among two or more shareholders or security-holders permitted by other provisions of this Act.

[Amended by Acts 1975, 64th Leg., p. 312, ch. 134, § 7, eff. Sept. 1, 1975.]

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

[See Compact Edition, Volume 2 for text of A and B]

C. Any court of competent jurisdiction in which a proceeding provided for in Section A of this Article may be brought may enjoin or set aside any transfer or threatened transfer of shares or any securities of a close corporation which will adversely affect its status as a close corporation, or which is contrary to restrictions on the transfer of such shares permitted by Article 2.22 or 2.30-2 of this Act, and may enjoin any public offering, solicitation, or advertisement of shares or securities evidencing the right to acquire shares of the close corporation.

D. Nothing contained in this Article shall be construed to prevent or impair the ability of the close corporation or its shareholders or security-holders from properly terminating its status as a close corporation and from terminating or amending any restrictions on the transfer of shares or securities evidencing the right to acquire shares of the corporation in accordance with Article 2.30-1 of this Act, or shall impair the power of any court of competent jurisdiction in any proceeding properly brought before it to enforce any restriction on the transfer of shares or other securities permitted by Article 2.22 or 2.30-2 of this Act or any agreement among any number of holders of the shares or securities of a corporation or any number of the holders of such shares or securities and the corporation not provided for in Article 2.30-2 of this Act and to grant whatever remedies may be properly available in such proceedings.

[Amended by Acts 1975, 64th Leg., p. 314, ch. 134, §§ 8, 9, eff. Sept. 1, 1975.]

Art. 2.36. Executive and Other Committees

A. If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the full board of directors, may designate from among its members an executive committee and one or more other committees, each of which, to the extent provided in such resolution or in the articles of incorporation or in the bylaws of the corporation, shall have and may exercise all of the authority of the board of directors, except that no such committee shall have the authority of the board of directors in reference to amending the articles of incorporation, approving a plan of merger or consolidation, recommending to the shareholders the sale, lease, or exchange of all or substantially all of the property and assets of the corporation otherwise than in the usual and regular course of its business, recommending to the shareholders a voluntary dissolution of the corporation or a revocation thereof, amending, altering, or repealing the bylaws of the corporation or adopting new bylaws for the corporation, filling vacancies in the board of directors or any such committee, electing or removing officers or members of any such committee, fixing the compensation of any member of such committee, or altering or repealing any resolution of the board of directors which by its terms provides that it shall not be so amendable or repealable; and, unless such resolution, the articles of incorporation, or the bylaws of the corporation expressly so provide, no such committee shall have the power or authority to declare a dividend or to authorize the issuance of shares of the corporation. The designation of such committee and the delegation thereto of authority shall not operate to relieve the board of directors, or any member thereof, of any responsibility imposed by law.

[Amended by Acts 1975, 64th Leg., p. 316, ch. 134, § 13, eff. Sept. 1, 1975.]

Art. 2.43. Removal of Officers

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

[Amended by Acts 1975, 64th Leg., p. 314, ch. 134, § 10, eff. Sept. 1, 1975.]

PART THREE

Art. 3.01. Incorporators

A. Any natural person of the age of eighteen (18) years or more, or any partnership, corporation,

association, trust, or estate (without regard to place of residence, domicile, or organization) may act as an incorporator of a corporation by signing and verifying the articles of incorporation for such corporation and by delivering the original and a copy of the articles of incorporation to the Secretary of State. [Amended by Acts 1975, 64th Leg., p. 315, ch. 134, § 11, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 224, ch. 120, § 27, eff. May 9, 1979.]

Art. 3.02. Articles of Incorporation

A. The articles of incorporation shall set forth:

- (1) The name of the corporation;
- (2) The period of duration, which may be perpetual;
- (3) The purpose or purposes for which the corporation is organized which may be stated to be, or to include, the transaction of any or all lawful business for which corporations may be incorporated under this Act;
- (4) The aggregate number of shares which the corporation shall have authority to issue; if such shares are to consist of one class only, the par value of each of such shares, or a statement that all of such shares are without par value; or, if such shares are to be divided into classes, the number of shares of each class, and a statement of the par value of the shares of each class or that such shares are to be without par value;
- (5) If the shares are to be divided into classes, the designation of each class and statement of the preferences, limitations, and relative rights in respect of the shares of each class;
- (6) If the corporation is to issue the shares of any preferred or special class in series, then the designation of each series and a statement of the variations in the relative rights and preferences as between series insofar as the same are to be fixed in the articles of incorporation, and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series;
- (7) A statement that the corporation will not commence business until it has received for the issuance of shares consideration of the value of a stated sum which shall be at least One Thousand Dollars (\$1,000.00), consisting of money, labor done, or property actually received;
- (8) Any provision limiting or denying to shareholders the preemptive right to acquire additional or treasury shares of the corporation;
- (9) If a corporation elects to become a close corporation as defined and governed by this Act any provision required or permitted by this Act to be stated in articles of incorporation of a close corporation, or setting out in full or making a part

of the articles of incorporation an agreement among subscribers permitted by Article 2.30-2, but any such provision shall be preceded by a statement that the provision shall be subject to the corporation remaining a close corporation as defined by this Act;

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

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

(12) The number of directors constituting the initial board of directors and the names and addresses of the person or persons who are to serve as directors until the first annual meeting of shareholders or until their successors be elected and qualify, or, in the case of a close corporation whose business and affairs are to be managed by its shareholders, the names and addresses of the person or persons who have subscribed for shares to be issued by the close corporation and who will perform the functions of the initial board of directors provided for by this Act;

(13) The name and address of each incorporator.

[See Compact Edition, Volume 2 for text of B]

[Amended by Acts 1975, 64th Leg., p. 315, ch. 134, § 12, eff. Sept. 1, 1975.]

Art. 3.03. Filing of Articles of Incorporation

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

- (1) Endorse on the original and the copy the word "Filed," and the month, day, and year of the filing thereof.
- (2) File the original in his office.
- (3) Issue a certificate of incorporation to which he shall affix the copy.

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

[Amended by Acts 1979, 66th Leg., p. 224, ch. 120, § 28, eff. May 9, 1979.]

PART FOUR

Art. 4.01. Right to Amend Articles of Incorporation

[See Compact Edition, Volume 2 for text of A]

B. In particular, and without limitation upon such general power of amendment, a corporation

may amend its articles of incorporation, from time to time so as:

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

fixed and determined or the relative rights and preferences theretofore fixed and determined are to be changed.

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

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

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

(18) To include any provisions required or permitted by this Act to be included in original articles of incorporation of a close corporation in connection with an election to become a close corporation, or to delete any such provisions in connection with a termination of a corporation's status as a close corporation.

(19) To restrict the transfer of its shares of any class or series, or the transfer of any other securities.

C. Repealed by Acts 1975, 64th Leg., p. 322, ch. 134, § 22, eff. Sept. 1, 1975.

[Amended by Acts 1975, 64th Leg., p. 316, ch. 134, §§ 14, 22, eff. Sept. 1, 1975.]

Art. 4.03. Class Voting on Amendments

[See *Compact Edition, Volume 2 for text of A*]

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

- (1) Increase or decrease the aggregate number of authorized shares of such class.
- (2) Increase or decrease the par value of the shares of such class.
- (3) Effect an exchange, reclassification, or cancellation of all or part of the shares of such class.
- (4) Effect an exchange, or create a right of exchange, of all or any part of the shares of another class into the shares of such class.
- (5) Change the designations, preferences, limitations, or relative rights of the shares of such class.
- (6) Change the shares of such class, whether with or without par value, into the same or a different number of shares, either with or without par value, of the same class or another class or classes.
- (7) Create a new class of shares having rights and preferences equal, prior, or superior to the

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

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

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

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

(11) Include in or delete from the articles of incorporation any provisions required or permitted by Sections A and B of Article 2.30-1 of this Act to be included in original articles of incorporation of a close corporation.

[See Compact Edition, Volume 2 for text of C]

[Amended by Acts 1975, 64th Leg., p. 318, ch. 134, § 15, eff. Sept. 1, 1975.]

Art. 4.04. Articles of Amendment

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

(1) The name of the corporation.

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

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

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

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

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

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

[Amended by Acts 1979, 66th Leg., p. 224, ch. 120, § 29, eff. May 9, 1979.]

Art. 4.05. Filing of Articles of Amendment

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

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

(2) File the original in his office.

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

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

[Amended by Acts 1979, 66th Leg., p. 225, ch. 120, § 30, eff. May 9, 1979.]

Art. 4.07. Restated Articles of Incorporation

[See Compact Edition, Volume 2 for text of A to C]

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

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

(2) File the original in his office.

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

E. The restated certificate of incorporation, together with the copy of the restated articles of incorporation affixed thereto by the Secretary of

State, shall be delivered to the corporation or its representative.

[See *Compact Edition, Volume 2 for text of F*]
[Amended by Acts 1979, 66th Leg., p. 225, ch. 120, § 31, eff. May 9, 1979.]

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

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

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

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

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

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

[Amended by Acts 1975, 64th Leg., p. 318, ch. 134, § 16, eff. Sept. 1, 1975.]

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

[See *Compact Edition, Volume 2 for text of A*]

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

(1) The name of the corporation.

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

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

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

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

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

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

(2) File the original in his office.

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

[See *Compact Edition, Volume 2 for text of D and E*]

[Amended by Acts 1979, 66th Leg., p. 226, ch. 120, § 32, eff. May 9, 1979.]

Art. 4.11. Cancellation of Treasury Shares

[See *Compact Edition, Volume 2 for text of A*]

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

(1) The name of the corporation.

(2) A statement that a resolution has been duly adopted by the board of directors authorizing the cancellation, the date of adoption of such resolution, and a summary of its contents, including a statement of the number of treasury shares to be cancelled, itemized by classes and series, and the amount of stated capital represented by the shares to be cancelled.

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

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

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

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

(2) File the original in his office.

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

[See *Compact Edition, Volume 2 for text of D and E*]

[Amended by Acts 1979, 66th Leg., p. 226, ch. 120, § 33, eff. May 9, 1979.]

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

[See Compact Edition, Volume 2 for text of A]

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

(1) The name of the corporation.

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

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

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

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

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

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

(2) File the original in his office.

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

[See Compact Edition, Volume 2 for text of D]

E. No reduction of stated capital shall be made under the provisions of this Article which would reduce the amount of the aggregate stated capital of the corporation to an amount equal to or less than the aggregate preferential amounts payable upon all issued shares having a preferential right in the assets of the corporation in the event of voluntary liquidation, plus the aggregate par value of all issued shares having a par value but no preferential right in the assets of the corporation in the event of voluntary liquidation.

[Amended by Acts 1975, 64th Leg., p. 319, ch. 134, § 17, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 227, ch. 120, § 34, eff. May 9, 1979.]

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

[See Compact Edition, Volume 2 for text of A and B]

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

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

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

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

(b) File the original in his office.

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

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

[See Compact Edition, Volume 2 for text of D]

[Amended by Acts 1979, 66th Leg., p. 227, ch. 120, § 35, eff. May 9, 1979.]

PART FIVE

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

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

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

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

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

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

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

(2) File the original in his office.

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

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

[Amended by Acts 1979, 66th Leg., p. 228, ch. 120, § 36, eff. May 9, 1979.]

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

[See *Compact Edition, Volume 2 for text of A*]

B. A disposition of all, or substantially all, of the property and assets of a corporation requiring the special authorization of the shareholders of the corporation under Section A of this article:

(1) is not considered to be a merger or consolidation pursuant to this Act or otherwise; and

(2) except as otherwise expressly provided by another statute, does not make the acquiring corporation responsible or liable for any liability or obligation of the selling corporation that the acquiring corporation did not expressly assume.

[Amended by Acts 1979, 66th Leg., p. 422, ch. 194, § 1, eff. May 17, 1979.]

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

[See *Compact Edition, Volume 2 for text of A*]

Execution of Articles; Contents

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

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

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

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

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

Delivery to secretary of state; duties

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

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

(2) File the original in his office.

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

[See *Compact Edition, Volume 2 for text of D*]

Remedy of minority shareholders

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

(1) Such shareholder shall within twenty (20) days after the mailing of the notice and copy of the articles of merger make written demand on

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

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

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

(4) If, within such period of sixty (60) days after the date on which such corporate action was effected, the shareholder and the surviving corporation do not so agree, then the dissenting shareholder or the corporation may, within sixty (60) days after the expiration of the sixty (60) day period, file a petition in any court of competent jurisdiction in the county in which the principal office of the corporation is located, asking for a finding and determination of the fair value of such shares as provided in Section B of Article 5.12 of this Act and thereupon the parties shall have the rights and duties and follow the procedure set forth in Sections B to D inclusive of Article 5.12 and set forth in Article 5.13.

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

[See Compact Edition, Volume 2 for text of F]
[Amended by Acts 1979, 66th Leg., p. 228, ch. 120, § 37, eff. May 9, 1979; Acts 1979, 66th Leg., p. 423, ch. 194, § 2, eff. May 17, 1979.]

PART SIX

Art. 6.01. Voluntary Dissolution by Incorporators or Directors

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

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

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

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

- (a) Endorse on the original and the copy the word "Filed," and the month, day, and year of the filing thereof.
- (b) File the original in his office.
- (c) Issue a certificate of dissolution, to which he shall affix the copy.

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

[Amended by Acts 1975, 64th Leg., p. 319, ch. 134, § 18, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 229, ch. 120, § 38, eff. May 9, 1979.]

Art. 6.06. Articles of Dissolution

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

(1) The name of the corporation.

(2) The names and respective addresses of its officers.

(3) The names and respective addresses of its directors.

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

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

(6) That there are no suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any

judgment, order, or decree which may be entered against it in any pending suit.

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

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

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

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

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

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

[Amended by Acts 1979, 66th Leg., p. 229, ch. 120, § 39, eff. May 9, 1979.]

Art. 6.07. Filing Articles of Dissolution

A. The original and a copy of such articles of dissolution shall be delivered to the Secretary of State, along with a certificate from the Comptroller of Public Accounts that all franchise taxes have been paid. If the Secretary of State finds that such articles of dissolution conform to law, he shall, when all fees and franchise taxes have been paid as required by law:

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

(2) File the original in his office.

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

B. The certificate of dissolution, together with the copy of the articles of dissolution affixed thereto by the Secretary of State, shall be delivered to the representative of the dissolved corporation. Upon the issuance of such certificate of dissolution the existence of the corporation shall cease, except for the purpose of suits, other proceedings and appropriate corporate action by shareholders, directors and officers as provided by the laws of this State.

[Amended by Acts 1979, 66th Leg., p. 230, ch. 120, § 40, eff. May 9, 1979.]

PART EIGHT

Art. 8.02. Powers of Foreign Corporation

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

[Amended by Acts 1975, 64th Leg., p. 320, ch. 134, § 19, eff. Sept. 1, 1975.]

Art. 8.05. Application for Certificate of Authority

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

(1) The name of the corporation and the State or country under the laws of which it is incorporated.

(2) If the name of the corporation does not contain the word "corporation," "company," "incorporated," or "limited," and does not contain an abbreviation of one (1) of such words, then the name of the corporation with the word or abbreviation which it elects to add thereto for use in this State.

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

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

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

(6) The purpose or purposes of the corporation which it proposes to pursue in the transaction of business in this State and a statement that it is authorized to pursue such purpose or purposes in the state or country under the laws of which it is incorporated.

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

(8) A statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.

(9) A statement of the aggregate number of issued shares itemized by classes, par value of shares, shares without par value, and series, if any, within a class.

(10) A statement, expressed in dollars, of the amount of stated capital of the corporation, as defined in this Act.

(11) A statement that consideration of the value of at least One Thousand Dollars (\$1,000) has been paid for the issuance of shares.

B. Such application shall be made on forms promulgated by the Secretary of State and shall be executed by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such application.

[Amended by Acts 1975, 64th Leg., p. 320, ch. 134, § 20, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 231, ch. 120, § 41, eff. May 9, 1979.]

Art. 8.06. Filing of Application for Certificate of Authority

A. The original and a copy of the application of the corporation for a certificate of authority, shall be delivered to the Secretary of State, together with a copy of its articles of incorporation and all amendments thereto, duly authenticated by the proper officer of the state or country under the laws of which it is incorporated. If the Secretary of State finds that the application conforms to law, he shall, when all fees and franchise taxes have been paid as required by law:

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

(2) File in his office the original and the copy of the articles of incorporation and amendments thereto.

(3) Issue a certificate of authority to transact business in this State to which he shall affix the copy.

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

[Amended by Acts 1979, 66th Leg., p. 231, ch. 120, § 42, eff. May 9, 1979.]

Art. 8.09. Change of Registered Office or Registered Agent of Foreign Corporation

[See Compact Edition, Volume 2 for text of A]

B. Such statement shall be executed by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement. The original and a copy of such statement shall be delivered to the Secretary of State. If the Secretary of

State finds that such statement conforms to the provisions of this Act, he shall, when all fees have been paid as required by law:

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

[See Compact Edition, Volume 2 for text of C]

D. Any registered agent of a corporation may resign

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

Upon compliance with the requirements as to written notice, the appointment of such agent shall terminate upon the expiration of thirty (30) days after receipt of such notice by the Secretary of State.

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

- (1) Endorse on the original and both copies the word "filed" and the month, day and year of the filing thereof.
- (2) File the original in his office.
- (3) Return one copy to such resigning registered agent.
- (4) Return one copy to the corporation at the last known address of the corporation as shown in such written notice.

[Amended by Acts 1979, 66th Leg., p. 231, ch. 120, § 43, eff. May 9, 1979.]

Art. 8.13. Amended Certificate of Authority

[See Compact Edition, Volume 2 for text of A]

B. The requirements in respect to the form and contents of such application, the manner of its execution, the filing of the application and a copy of it with the Secretary of State, the issuance of an amended certificate of authority and the effect thereof, shall be the same as in the case of an original application for a certificate of authority. [Amended by Acts 1979, 66th Leg., p. 232, ch. 120, § 44, eff. May 9, 1979.]

Art. 8.15. Filing of Application for Withdrawal

A. The original and a copy of such application for withdrawal shall be delivered to the Secretary of State. If the Secretary of State finds that such application conforms to the provisions of this Act, he shall, when all fees and franchise taxes have been paid as required by law:

- (1) Endorse on the original and the copy the word "Filed," and the month, day, and year of the filing thereof.
- (2) File the original in his office.
- (3) Issue a certificate of withdrawal to which he shall affix the copy.

B. The certificate of withdrawal, together with the copy of the application for withdrawal affixed thereto by the Secretary of State, shall be delivered to the corporation or its representative. Upon the issuance of such certificate of withdrawal, the authority of the corporation to transact business in this State shall cease.

[Amended by Acts 1979, 66th Leg., p. 232, ch. 120, § 45, eff. May 9, 1979.]

PART TEN

Art. 10.01. Filing and Filing Fees

A. The Secretary of State is authorized and required to collect for the use of the State the following fees:

- (1) Filing articles of incorporation of a domestic corporation and issuing a certificate of incorporation, One Hundred Dollars (\$100.00).
- (2) Filing articles of amendment of a domestic corporation and issuing a certificate of amendment, One Hundred Dollars (\$100.00).
- (3) Filing articles of merger or consolidation, whether the surviving or new corporation be a domestic or foreign corporation, Two Hundred Dollars (\$200.00).
- (4) Filing an application of a foreign corporation for a certificate of authority to transact business in this State and issuing such a certificate of authority, Five Hundred Dollars (\$500.00).
- (5) Filing an application of a foreign corporation for an amended certificate of authority to transact business in this State and issuing such an amended certificate of authority, One Hundred Dollars (\$100.00).
- (6) Filing a copy of an amendment or supplement to the articles of incorporation of a foreign corporation holding a certificate of authority to transact business in this State, One Hundred Dollars (\$100.00).
- (7) Filing restated articles of incorporation of a domestic corporation, Two Hundred Dollars (\$200.00).

(8) Filing application for reservation of corporate name and issuing certificate therefor, Ten Dollars (\$10.00).

(9) Filing notice of transfer of reserved corporate name and issuing a certificate therefor, Ten Dollars (\$10.00).

(10) Filing application for registration of corporate name and issuing a certificate therefor, Fifty Dollars (\$50.00).

(11) Filing application for renewal of registration of corporate name and issuing a certificate therefor, Fifty Dollars (\$50.00).

(12) Filing statement of change of registered office or registered agent, or both, Ten Dollars (\$10.00).

(13) Filing statement of change of address of registered agent, Ten Dollars (\$10.00).

(14) Filing statement of resolution establishing series of shares, Ten Dollars (\$10.00).

(15) Filing statement of cancellation of redeemable shares, Ten Dollars (\$10.00).

(16) Filing statement of cancellation of re-acquired shares, Ten Dollars (\$10.00).

(17) Filing statement of reduction of stated capital, Ten Dollars (\$10.00).

(18) Filing articles of dissolution and issuing certificate therefor, Ten Dollars (\$10.00).

(19) Filing application for withdrawal and issuing certificate therefor, Ten Dollars (\$10.00).

(20) Filing certificate from home state that foreign corporation is no longer in existence in said state, Ten Dollars (\$10.00).

(21) Maintaining a record of service of any process, notice or demand upon the Secretary of State as agent for foreign and domestic corporations and for any foreign association, joint stock compa-

ny, partnership, or nonresident natural person, Ten Dollars (\$10.00).

(22) Filing a bylaw or agreement restricting transfer of shares or securities other than as an amendment to the articles of incorporation, Ten Dollars (\$10.00).

(23) Filing any instrument pursuant to this Act not expressly provided for above, Ten Dollars (\$10.00).

B. Except as otherwise expressly provided in this Act, any instrument to be filed pursuant to this Act shall be executed by its president or a vice-president and by its secretary or an assistant secretary, and verified by one of the officers signing such instrument, and the original and a copy of the instrument shall be delivered to the Secretary of State with copies attached thereto of any document incorporated by reference in or otherwise made a part of such instrument, or to be filed by means of such instrument. If the Secretary of State finds that such instrument conforms to law, he shall, when all franchise taxes and fees have been paid as prescribed by law:

(a) endorse on the original and the copy the word "Filed", and the month, day, and year of the filing thereof;

(b) file the original in his office;

(c) issue any certificate required by this Act relating to the subject matter of the filed instrument; and

(d) Return the copy, affixed to any certificate required to be issued by the Secretary of State, to the corporation or its representative.

[Amended by Acts 1975, 64th Leg., p. 321, ch. 134, § 21, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 232, ch. 120, § 46, eff. May 9, 1979.]

TITLE 32

CORPORATIONS

CHAPTER ONE. TEXAS MISCELLANEOUS CORPORATION LAWS ACT

PART TWO

Article

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

PART TWO

Art. 1302-2.02. Notice by Firm

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

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

Art. 1302-2.06. Consideration for Indebtedness; Guaranties

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

B. Notwithstanding Section A of this Article, any corporation, domestic or foreign, doing business

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

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

Directors of the guarantor corporation. For the purposes of this section only:

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

- (a) by the guarantor corporation itself;
- (b) by one or more of the guarantor corporation's subsidiary corporations; or
- (c) by the guarantor corporation and one or more of its subsidiary corporations;

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

- (a) by itself;
- (b) through one or more of its subsidiary corporations; or
- (c) with one or more of its subsidiary corporations; and

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

- (a) by the parent corporation of the guarantor corporation;
- (b) by one or more of the parent corporation's subsidiary corporations; or
- (c) by the parent corporation and one or more of its subsidiary corporations.

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

[Amended by Acts 1977, 65th Leg., p. 1162, ch. 442, § 1, eff. Aug. 29, 1977.]

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

An agricultural credit corporation organized or operating under the laws of this state and discounting loans with any federal intermediate credit bank, in making loans to its borrowers or discounting notes of the borrowers of an agricultural credit corpora-

tion, may charge the borrower interest at a rate not to exceed three percent per annum plus the rate of discount established and promulgated by the Federal Intermediate Credit Banks.

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

PART FOUR

Art. 1302-4.01. Conditions of Purchase of Lands

A. No private corporation (except a corporation that is organized under the Texas Non-Profit Corporation Act and that is exempt from Federal income tax under the provisions of Section 501(c)(3), Internal Revenue Code of 1954,¹ as now or hereafter amended, or under its successor statute) shall be permitted to purchase any lands under any provision of this Part, unless the lands so purchased are necessary to enable such corporation to do business in this State, or except where such land is purchased in due course of business to secure the payment of debt. [Amended by Acts 1977, 65th Leg., p. 838, ch. 313, § 2, eff. Aug. 29, 1977.]

¹ 26 U.S.C.A. § 501(c)(3).

Art. 1302-4.02. Sale of Surplus Lands

A. All private corporations (except corporations that are organized under the Texas Non-Profit Corporation Act and that are exempt from Federal income tax under the provisions of Section 501(c)(3), Internal Revenue Code of 1954,¹ as now or hereafter amended, or under its successor statute) who are authorized by the laws of Texas to do business in this State and whose main purpose is not the acquisition or ownership of lands, which have or may acquire by lease, purchase, or otherwise, more land than is necessary to enable them to carry on their business, shall within fifteen (15) years from the date said land may be acquired, in good faith, sell and convey in fee simple all lands so acquired which are not necessary for the transaction of the business. Notwithstanding any other provisions of this Part, it shall be lawful for such surplus lands to be conveyed and acquired by another corporation which may have among its purposes the acquisition, development and sale of such surplus lands, provided, however, that any such acquiring corporation shall in good faith sell and convey any such land on or before the expiration of the aforesaid fifteen-year period just as the conveying corporation would have had to do if it had not conveyed such land to such acquiring corporation, and if such acquiring corporation does not so convey such land on or before such time, it shall thereafter hold the same subject to the same forfeiture and escheat provisions provided for in this Part as though such lands were still held by the conveying corporation.

[Amended by Acts 1977, 65th Leg., p. 838, ch. 313, § 3, eff. Aug. 29, 1977.]

¹ 26 U.S.C.A. § 501(c)(3).

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

1. TEXAS NON-PROFIT CORPORATION ACT

Article

1396-2.23A. Financial Records and Annual Reports.

1. TEXAS NON-PROFIT CORPORATION ACT

Art. 1396-2.02. General Powers

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

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

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

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

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

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

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

(7) To purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, mortgage, lend, pledge, sell or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, associations, partnerships, or individuals, or direct or indirect obligations of the United States or of any other government, state, territory, government district, or municipality, or of any instrumentality thereof.

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

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

(10) To conduct its affairs, carry on its operations, and have officers and exercise the powers

granted by this Act in any state, territory, district, or possession of the United States, or any foreign country.

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

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

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

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

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

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

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

[See *Compact Edition, Volume 2 for text of B and C*]

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

Art. 1396-2.05. Registered Office and Registered Agent

See [*Compact Edition, Volume 2 for text of A and B*]

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

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

(2) File the original in his office.

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

[See Compact Edition, Volume 2 for text of D]

[Amended by Acts 1979, 66th Leg., p. 213, ch. 120, § 1, eff. May 9, 1979.]

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

[See Compact Edition, Volume 2 for text of A]

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

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

(2) File the original in his office.

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

[See Compact Edition, Volume 2 for text of C]

D. Any registered agent of a corporation may resign

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

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

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

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

(2) File the original in his office.

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

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

[Amended by Acts 1979, 66th Leg., p. 213, ch. 120, § 2, eff. May 9, 1979.]

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

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

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

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

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

E. This article does not apply to:

(1) a corporation that solicits funds only from its members;

(2) a corporation which does not intend to solicit and receive and does not actually raise or receive contributions from sources other than its own membership in excess of \$10,000 during a fiscal year;

(3) a proprietary school that has received a certificate of approval from the State Commissioner of Education, a public institution of higher education and foundations chartered for the benefit of such institutions or any component part thereof, a private institution of higher education with a certificate of authority to grant a degree issued by the Coordinating Board, Texas College and University System, or an elementary or secondary school;

(4) religious institutions which shall be limited to churches, ecclesiastical or denominational organizations, or other established physical places for worship at which religious services are the primary activity and such activities are regularly conducted;

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

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

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

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

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

Art. 1396-3.01. Incorporators

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

[See *Compact Edition, Volume 2 for text on B*]

[Amended by Acts 1979, 66th Leg., p. 214, ch. 120, § 3, eff. May 9, 1979.]

Art. 1396-3.03. Filing of Articles of Incorporation

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

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

(2) File the original in his office.

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

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

[Amended by Acts 1979, 66th Leg., p. 214, ch. 120, § 4, eff. May 9, 1979.]

Art. 1396-4.03. Articles of Amendment

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

(1) The name of the corporation.

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

incorporation, a statement of that fact and the full text of each provision added.

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

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

[Amended by Acts 1979, 66th Leg., p. 214, ch. 120, § 5, eff. May 9, 1979.]

Art. 1396-4.04. Filing of Articles of Amendment

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

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

(2) File the original in his office.

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

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

[Amended by Acts 1979, 66th Leg., p. 215, ch. 120, § 6, eff. May 9, 1979.]

Art. 1396-4.06. Restated Articles of Incorporation

[See *Compact Edition, Volume 2 for text of A to C*]

D. Such restated articles of incorporation shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary, and shall be verified by one of the officers signing such articles. The original and a copy of the restated articles of incorporation shall be delivered to the Secretary of State. If the Secretary of State finds that the restated articles of incorporation con-

form to law, he shall, when all fees and franchise taxes have been paid as required by law:

- (1) Endorse on the original and the copy the word "Filed", and the month, day, and year of the filing thereof.
- (2) File the original in his office.
- (3) Issue a restated certificate of incorporation to which he shall affix the copy.

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

[See Compact Edition, Volume 2 for text of F]
 [Amended by Acts 1979, 66th Leg., p. 215, ch. 120, § 7, eff. May 9, 1979.]

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

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

- (1) The plan of merger or the plan of consolidation.
- (2) Where the members of any merging or consolidating corporation have voting rights, then as to each corporation (a) a statement setting forth the date of the meeting of members at which the plan was adopted, that a quorum was present at such meeting, and that such plan received at least two-thirds of the votes which members present at such meeting in person or by proxy were entitled to cast, as well as, in the case of any class entitled to vote as a class thereon by the terms of the articles of incorporation or of the by-laws, at least two-thirds of the votes which members of any such class who were present at such meeting in person or by proxy were entitled to cast, or (b) a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto.
- (3) Where any merging or consolidating corporation has no members, or no members having voting rights, then as to each such corporation a statement of such fact, the date of the meeting of the board of directors at which the plan was adopted and a statement of the fact that such plan received the vote of a majority of the directors in office.

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

- (1) Endorse on the original and the copy the word "Filed," and the month, day and year of the filing thereof.
- (2) File the original in his office.
- (3) Issue a certificate of merger or a certificate of consolidation to which he shall affix the copy.

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

[Amended by Acts 1979, 66th Leg., p. 216, ch. 120, § 8, eff. May 9, 1979.]

Art. 1396-6.05. Article of Dissolution

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

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

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

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

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

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

[Amended by Acts 1979, 66th Leg., p. 216, ch. 120, § 9, eff. May 9, 1979.]

Art. 1396-6.06. Filing of Articles of Dissolution

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

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

(2) File the original in his office.

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

B. The certificate of dissolution, together with the copy of the articles of dissolution affixed thereto by the Secretary of State, shall be returned to the representative of the dissolved corporation. Upon the issuance of such certificate of dissolution the existence of the corporation shall cease, except for the purpose of suits, other proceedings and appropriate corporate action by members, directors and officers as provided in this Act.

[Amended by Acts 1979, 66th Leg., p. 217, ch. 120, § 10, eff. May 9, 1979.]

Art. 1396-8.04. Application for Certificate of Authority

[See Compact Edition, Volume 2 for text of A]

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

[Amended by Acts 1979, 66th Leg., p. 218, ch. 120, § 11, eff. May 9, 1979.]

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

A. The original and a copy of the application of the corporation for a certificate of authority shall be delivered to the Secretary of State, together with a copy of its articles of incorporation and all amendments thereto, duly authenticated by the proper officer of the state or county under the laws of which it is incorporated. If the Secretary of State finds that such application conforms to law, he shall, when all fees have been paid as in this Act prescribed:

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

(2) File in his office the original application and the copy of the articles of incorporation and amendments thereto.

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

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

[Amended by Acts 1979, 66th Leg., p. 218, ch. 120, § 12, eff. May 9, 1979.]

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

[See Compact Edition, Volume 2 for text of A]

B. Such statement shall be executed by any authorized officer of the corporation, and verified by such officer. The verification shall include a statement that the officer executing the statement is duly authorized to do so on behalf of the corporation. The original and a copy of such statement shall be

delivered to the Secretary of State. If the Secretary of State finds that such statement conforms to the provisions of this Act, he shall, when all fees have been paid as required by law:

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

(2) File the original in his office.

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

[See Compact Edition, Volume 2 for text of C]

D. Any registered agent of a corporation may resign

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

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

Upon compliance with the requirements as to written notice, the appointment of such agent shall terminate upon the expiration of thirty (30) days after receipt of such notice by the Secretary of State.

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

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

(2) File the original in his office.

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

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

[Amended by Acts 1979, 66th Leg., p. 218, ch. 120, § 13, eff. May 9, 1979.]

Art. 1396-8.12. Amended Certificate of Authority

[See Compact Edition, Volume 2 for text of A]

B. The requirements in respect to the form and contents of such application, the manner of its execution, the filing of the original and a copy of the application with the Secretary of State, the issuance of an amended certificate of authority and the effect thereof, shall be the same as in the case of an original application for a certificate of authority. [Amended by Acts 1979, 66th Leg., p. 219, ch. 120, § 14, eff. May 9, 1979.]

Art. 8.14. Filing of Application for Withdrawal

A. The original and a copy of such application for withdrawal shall be delivered to the Secretary of State. If the Secretary of State finds that such application conforms to the provisions of this Act, he shall, when all fees have been paid as in this Act prescribed:

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

(2) File the original in his office.

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

B. The certificate of withdrawal, together with the copy of the application for withdrawal affixed thereto by the Secretary of State, shall be returned to the corporation or its representative. Upon the issuance of such certificate of withdrawal, the authority of the corporation to conduct affairs in this State shall cease.

[Amended by Acts 1979, 66th Leg., p. 219, ch. 120, § 15, eff. May 9, 1979.]

1A. COOPERATIVES

Art. 1396-50.01. Cooperative Association Act

Short Title

Sec. 1. This Act may be cited as the Cooperative Association Act.

Definitions

Sec. 2. In this Act:

(1) "Association" means a group enterprise legally incorporated under this Act.

(2) "Member" means a member of a nonshare or share association.

(3) "Net savings" means the total income of an association less the costs of operation.

(4) "Savings returns" means the amount returned to patrons in proportion to their patronage or otherwise.

(5) "Cooperative basis" means that the net savings after payment, if any, of investment dividends and after making provisions for separate funds required or specifically permitted by statute, articles, or by-laws is allocated or distributed to member patrons, or to all patrons, in proportion to their patronage or retained by the enterprise for the actual or potential expansion of its services, the reduction of its charges to the patrons, or for other purposes not inconsistent with its non-profit character.

(6) "Membership Capital" means those funds of the association derived from the members generally either as a requirement of membership or in lieu of patronage dividends. Deposits and loans

from members shall not be construed as "membership capital."

(7) "Invested Capital" means those funds invested in the association by an investor with the expectation of receiving investment dividends.

(8) "Investment Dividends" means the return on invested capital or on membership capital derived from the net savings of the association.

(9) "Patronage Dividends" means a share of net savings distributed among members on a basis of extent of patronage, as provided for in the articles of incorporation.

Applicability of Texas Non-Profit Corporation Act

Sec. 3. An association incorporated under this Act is subject to the provisions of the Texas Non-Profit Corporation Act, as amended (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), to the extent that the provisions of the Texas Non-Profit Corporation Act do not conflict with the provisions of the Act. An association incorporated under this Act may exercise the same powers and privileges and is subject to the same duties, restrictions, and liabilities as nonprofit corporations except to the extent that these are limited or enlarged by this Act.

Who May Incorporate

Sec. 4. Five or more natural persons or two or more associations may incorporate under this Act; provided, however, an association may not be incorporated or organized to serve or function as a health maintenance organization or furnish medical, or health care nor may an association employ or contract with providers of medical care in any manner which is prohibited by any licensing law of this state under which such persons are licensed.

Purposes

Sec. 5. An association may be incorporated under this Act to engage in acquiring, producing, building, operating, manufacturing, furnishing, exchanging, or distributing any type of property, commodities, goods, or services for the primary and mutual benefit of the members of the association.

Powers

Sec. 6. An association may exercise all the powers granted to a nonprofit corporation under Article 2.02, Texas Non-Profit Corporation Act and may:

- (1) own and hold membership in and share capital of other associations or corporations, and own and exercise ownership rights in bonds or other obligations;
- (2) make agreements of mutual aid or federation with other associations, other groups organized on a cooperative basis, and other nonprofit groups;
- (3) exercise all powers not inconsistent with this Act that are necessary or convenient for the ac-

complishment of its purposes, and to that end the enumeration of powers in this section is not exclusive; and

(4) not engage, either directly or indirectly, in insurance companies of every type or character as the insurance business is defined and regulated by the Insurance Code, as amended, health maintenance organizations, or prepaid legal service corporations.

Registered Office and Registered Agent

Sec. 7. An association shall maintain a registered office and registered agent in accordance with the provisions of Article 2.05, Texas Non-Profit Corporation Act. An association may change its registered office and registered agent in accordance with the provisions of Article 2.06, Texas Non-Profit Corporation Act. Process may be served on an association in accordance with the provisions of Article 2.07, Texas Non-Profit Corporation Act.

Articles of Incorporation; Contents

Sec. 8. (a) Articles of incorporation shall be signed and acknowledged by each of the incorporators if they are natural persons and by the presidents and secretaries if they are associations.

(b) Subject to the limitations of this Act, the articles must contain:

- (1) a statement of the purpose or purposes for which the association is formed;
- (2) the name of the association, which must include the word "cooperative" or an abbreviation or derivative of it;
- (3) the term of existence of the association, which may be perpetual;
- (4) the location and street address of the initial registered office of the association and the initial registered agent at that address;
- (5) the names and street addresses of the incorporators of the association;
- (6) the names and street addresses of the directors who shall manage the affairs of the association for the first year, unless sooner changed by the members;
- (7) a statement of whether the association is organized with or without shares, and the number of shares or memberships subscribed for;
- (8) if organized with shares, a statement of the amount of authorized capital, the number and types of shares and the par value, if any, of the shares, and the rights, preferences, and restrictions of each type of share;
- (9) the method by which a surplus is distributed on dissolution of the association, in conformity with the requirements of Section 38 of this Act for division of surplus.

(c) The articles may contain other provisions for the conduct of the association's affairs not inconsistent with this Act or any other law.

Filing, Certificate of Incorporation, Organization Meeting

Sec. 9. (a) The articles shall be delivered to the secretary of state in accordance with the provisions of Article 3.03, Texas Non-Profit Corporation Act. If he finds that the articles conform to law, he shall file them on payment by the association of the fee required by Article 9.03, Texas Non-Profit Corporation Act.

(b) After filing and recording the articles, the secretary of state shall issue a certificate of incorporation, in accordance with Article 3.04, Texas Non-Profit Corporation Act, at which point the corporate existence begins.

(c) After the issuance of the certificate of incorporation, an organization meeting shall be held in accordance with Article 3.05, Texas Non-Profit Corporation Act.

Amendments

Sec. 10. (a) An amendment to the articles may be proposed by a two-thirds vote of the board of directors or by petition of the association's members as provided in the by-laws. The secretary shall send notice of a meeting to consider an amendment to each member at the member's last known address, or shall post a written notice of the meeting in a conspicuous place in all principal places of activity of the association. Either type of notice shall be accompanied by the full text of the proposal and by the text of the part of the articles to be amended, at least 30 days before the meeting.

(b) Two-thirds of the members voting may adopt an amendment. When adoption of an amendment is verified by the president and secretary, it shall be filed and recorded with the secretary of state within 30 days after its adoption in accordance with Article 4.04, Texas Non-Profit Corporation Act.

Adoption of By-laws

Sec. 11. By-laws may be adopted, amended, or repealed by a simple majority vote of the members voting, unless the articles or by-laws require a greater majority.

Contents of By-laws

Sec. 12. Subject to the limitations of this Act, the by-laws may provide for:

- (1) the requirements for the admission to membership and disposal of members' interests on cessation of membership;
- (2) the time, place and manner of calling and conducting meetings;
- (3) the number or percentage of the members constituting a quorum;

(4) the number, qualifications, powers, duties, method of election, and terms of directors and officers, and the division or classification, if any, of directors to provide for rotating or overlapping terms;

(5) the compensation, if any, of the directors, and the number of directors necessary to constitute a quorum;

(6) the method of distributing the net savings;

(7) the bonding of every individual acting as officer or employee of an association handling funds or securities; and

(8) the various discretionary provisions of this Act as well as other provisions incident to the purposes and activities of the association.

Meetings

Sec. 13. (a) Regular meetings of members shall be held as prescribed in the by-laws, but shall be held at least once a year. Special meetings may be demanded by a majority vote of the directors or by written petition of at least one-tenth of the membership. When a meeting is demanded, it is the duty of the secretary to call the meeting for a date 30 days after the demand.

(b) Regular or special meetings, including meetings by units, may be held inside or outside this state as the articles may prescribe.

Notice of Meetings

Sec. 14. The secretary shall give notice of the time and place of meetings to members in the manner provided for in the by-laws. In the case of a special meeting the notice shall specify the purpose for which the meeting is called.

Meetings by Units of the Membership

Sec. 15. The articles or by-laws may provide for the holding of meetings by units of the membership and may provide for a method of transmitting the votes cast at unit meetings to the central meeting, or for a method of representation of units by the election of delegates to the central meeting, or for a combination of both methods.

One Member—One Vote

Sec. 16. (a) Each member of an association has one vote, except that if an association includes among its members any number of other associations or groups organized on a cooperative basis, the voting rights of the member associations or groups may be as prescribed in the articles or by-laws.

(b) No voting agreement or other device to evade the one-member-one-vote rule is enforceable.

Proxy

Sec. 17. No member may vote by proxy.

Voting By Mail

Sec. 18. (a) The articles or by-laws may provide for either or both of the following procedures for voting by mail:

(1) the secretary may send to the members a copy of any proposal to be offered at a meeting with the notice of the meeting, and the mail votes cast by the members shall be counted together with those cast at the meeting if the mail votes are returned to the association within a specified number of days;

(2) the secretary may send to any member absent from a meeting an exact copy of the proposal acted on at the meeting, and the mail vote of the member on the proposal, if returned within a specified number of days, is counted together with the votes cast at the meeting.

(b) The articles or by-laws may also determine whether and to what extent mail votes are counted in computing a quorum.

Application of Voting Provisions in This Act to Voting by Mail

Sec. 19. If an association has provided for voting by mail, any provision of this Act referring to votes cast by the members applies to votes cast by mail.

Application of Voting Provisions in This Act to Voting by Delegates

Sec. 20. If an association has provided for voting by delegates, any provision of this Act referring to votes cast by the members applies to votes cast by delegates, but this does not permit delegates to vote by mail.

Directors

Sec. 21. (a) An association shall be managed by a board of not less than five directors, who are elected for a term fixed in the by-laws not to exceed three years, by and from the members of the association, and who hold office until their successors are elected or until removed. Vacancies which occur in the board of directors, other than by removal or expiration of term, are filled in the manner the by-laws provide.

(b) The by-laws may provide for a method of apportioning the number of directors among the units into which the association may be divided, and for the election of directors by the respective units to which they are apportioned.

(c) An executive committee of the board of directors may be elected in the manner and with the powers and duties as prescribed by the articles or by-laws.

(d) Meetings of directors and of the executive committee may be held inside or outside this state.

Officers

Sec. 22. The officers of an association are a president, one or more vice-presidents, and a secretary and a treasurer or a secretary-treasurer. Any two or more offices may be held by the same person, except the offices of president and secretary. The officers of an association may be designated by such other titles as may be provided in the articles of incorporation or the by-laws. A committee duly designated may perform the functions of any office, and the functions of any two or more officers may be performed by a single committee, including the functions of both president and secretary. The officers are elected annually by the directors unless the by-laws provide otherwise.

Removal of Directors and Officers

Sec. 23. A director or officer may be removed with cause by a vote of a majority of the members voting at a regular or special meeting. The director or officer involved shall be given an opportunity to be heard at the meeting. A vacancy caused by removal is filled by the vote provided in the by-laws for election of directors.

Referendum

Sec. 24. The articles or by-laws may provide that within a specified period of time any action taken by the directors must be referred to the members for approval or disapproval if demanded by petition of at least 10 percent of all the members or by vote of at least a majority of the directors. Rights of third parties which have vested between the time of the action and the referendum are not impaired by the results of the referendum.

Limitations on the Return on Capital

Sec. 25. (a) Investment dividends will not exceed eight percent on investment capital unless otherwise provided for in the by-laws and the investment dividend will not be cumulative unless otherwise provided for in the by-laws.

(b) Total investment dividends distributed for a fiscal year may not exceed 50 percent of the net savings for the period.

Eligibility and Admission to Membership

Sec. 26. A natural person, association, incorporated or unincorporated group organized on a cooperative basis, or a nonprofit group, may be admitted to membership in an association if it meets the qualifications for eligibility stated in the articles or by-laws.

Subscribers

Sec. 27. A natural person or group eligible for membership and legally obligated to purchase a share or shares of, or membership in, an association shall be deemed a subscriber. The articles or by-laws may determine whether and the conditions

under which voting rights or other rights of membership are granted to subscribers.

Share and Membership Certificates: Issuance and Contents

Sec. 28. (a) No certificates for membership capital may be issued until its par value, if any, has been paid in full. Each certificate issued by an association shall bear a full or condensed statement of the requirements of Sections 16, 17, and 29(a) of this Act.

(b) No certificate for invested capital may be issued until its par value, if any, has been paid in full. Each certificate for invested capital issued by an association shall bear a full or condensed statement of restrictions on transferability if specifically provided for in the by-laws of the association.

Transfer of Shares and Membership: Withdrawal

Sec. 29. (a) If a member decides to withdraw from the association, the member shall offer his membership certificates to the directors in writing and the directors may purchase such holdings within a 90-day period following receipt of notice by paying the member the par value. The directors shall then reissue or cancel those shares. A vote of the majority of the members voting at a regular or special meeting may order the directors to exercise this power to purchase.

(b) If an investor owning investor certificates desires to sell, assign, or convey his certificates, he must do so in accordance with the by-laws of the association; otherwise such investment certificates shall be repurchased by the association upon written notice to the directors within a 90-day period following receipt of notice by paying the investor the par value of the certificate, together with any investment dividend accrued.

Share and Membership Certificates: Recall

Sec. 30. (a) The by-laws may give the directors the power to use the reserve funds to recall, at par value, the membership certificates of any member in excess of the amount requisite for membership, and may also provide that if any member has failed to patronize the association during a time specified and in accordance with the by-laws, the directors may recall the member's membership certificates, thereby terminating his membership in the association. When membership certificates are recalled, they shall be either reissued or cancelled. No recall may be made if the solvency of the association would be jeopardized.

(b) The directors shall have the power to use the reserve funds to recall and repurchase at par value, together with any investment dividends due on the investment certificates of any investor. The by-laws may establish specific procedures, terms and conditions for such recall and repurchase.

Certificates: Attachment

Sec. 31. The holdings of any member of an association, to the extent of the minimum amount necessary for membership, but not to exceed \$50, are exempt from attachment, execution, or garnishment for the debts of the owner. If any holdings in excess of this amount are subjected to attachment, execution, or garnishment, the directors of the association may either admit the purchaser to membership, or may purchase the holdings at par value.

Liability of Members

Sec. 32. Members are not jointly or severally liable for debts of the association, nor is a subscriber liable, except to the extent of the unpaid amount on the membership certificates or on the invested capital certificates subscribed by him. No subscriber may be released from liability by assignment of his interest in the membership capital certificates or the invested capital certificates, but he is jointly and severally liable with the assignee until the membership certificates or investor certificates are fully paid up.

Expulsion

Sec. 33. A member may be expelled by the vote of a majority of the members voting at a regular or special meeting. The member against whom the charges are to be preferred shall be informed of the charges in writing at least 10 days in advance of the meeting, and shall be given an opportunity to be heard in person or by counsel at the meeting. If the association votes to expel a member, the board of directors shall purchase the member's capital holdings at par value if and when such purchases may be made without jeopardizing the solvency of the association.

Allocation and Distribution of Net Savings

Sec. 34. (a) At least once each year the members or the directors, as the articles or by-laws may provide, shall apportion the net savings of the association in the following order:

(1) investment dividends, within the limitations of Section 25 may be paid on invested capital, or if the by-laws so provide, on the membership certificates, but the investment dividends may be paid only out of the surplus of the aggregate of the assets over the aggregate of the liabilities;

(2) a portion of the remainder, as determined by the articles or by-laws, may be allocated to an educational fund to be used in teaching cooperation, and a portion may also be allocated to funds for the general welfare of the members of the association;

(3) a portion of the remainder may be allocated to retained earnings;

(4) the remainder shall be allocated at the same uniform rate to all patrons of the association in

proportion to their individual patronage as follows:

(A) in the case of a member patron, the proportionate amount of savings return distributed to the member may be in the form of cash, property, membership certificates, investment certificates or in any combination of these;

(B) in the case of a subscriber patron, his proportionate amount of savings returns as the articles or by-laws provide, may be distributed to him or credited to his account until the amount of capital subscribed for has been fully paid.

(b) This section does not prevent an association engaged in rendering services from disposing of the net savings from the rendering of services in a manner calculated to lower the fees charged for services or otherwise to further the common benefit of the members.

(c) This section does not prevent an association from adopting a system in which the payment of savings returns which would otherwise be distributed are deferred for a fixed period of time, nor from adopting a system in which the savings returns distributed are partly in cash, partly in shares, with the shares to be retired at a fixed future date, in the order of their serial number or date of issue.

Recordkeeping

Sec. 35. (a) To record its business operation, every association shall keep a set of books according to standard accounting practices.

(b) A written report shall be submitted to the annual meeting of the association which shall include the following:

(1) a balance sheet, and income and expense statement;

(2) the amount and nature of the association's authorized, subscribed, and paid-in capital, the number of its shareholders, and the number of shareholders who were admitted or withdrew during the year, the par value of its shares, and the rate at which any return on capital has been paid; and

(3) for nonshare associations, the total number of members, the number of members who were admitted or withdrew during the year, and the amount of membership fees received.

(c) The directors shall appoint a review committee, composed of members who are not principal bookkeepers, accountants, or employees of the association.

(d) The committee shall report on the quality of the annual report and the bookkeeping system at the annual meeting.

Annual Report

Sec. 36. (a) Every association having 100 or more members or an annual business amounting to \$20,000 or more shall prepare, within 120 days of the close of its operations each year, a report of its condition, sworn to by the president and secretary, which shall be filed in its registered office. The report shall state:

(1) the name and principal address of the association;

(2) the names, addresses, occupations, and date of expiration of the terms of the officers and directors, and their compensation, if any;

(3) the amount and nature of the association's authorized, subscribed, and paid-in capital, the number of its shareholders and the number of shareholders who were admitted or withdrew during the year, the par value of its shares, and the rate at which any investment dividends have been paid;

(4) for nonshare associations, the total number of members, the number of members who were admitted or withdrew during the year, and the amount of membership fees received; and

(5) the receipts, expenditures, assets, and liabilities of the association.

(b) Every association having 3,000 or more members or an annual business amounting to \$750,000 or more shall file a copy of the report with the secretary of state.

(c) A person who subscribes or verifies a report containing a materially false statement, known to the person to be false, commits a misdemeanor punishable by a fine of not less than \$25 nor more than \$200, or by confinement in the county jail for not less than 30 days nor more than one year, or by both.

Notice of Delinquent Reports

Sec. 37. (a) If an association required by Section 36 of this Act to file a report with the secretary of state fails to do so in the prescribed time, the secretary of state shall notify the association of the delinquency by registered letter mailed to its principal office within 60 days after the report becomes delinquent. If an association required by Section 36 of this Act to file a report at its registered office but not required to file a copy with the secretary of state fails to do so in the prescribed time, the secretary of state or any member may notify the association of the delinquency by registered letter mailed to its principal office.

(b) If the association fails to file the report within 60 days from the date of notice under Subsection (a) of this section, a member of the association or the attorney general may seek a writ of mandamus against the association and the appropriate officer or officers to compel the filing to be made, and in the

court shall require the association or the officers at fault to pay all the expenses of the proceeding including attorney fees.

Dissolution

Sec. 38. (a) An association may, at a regular or special meeting legally called, be directed to dissolve by a vote of two-thirds of the entire membership. If it is directed to dissolve, by a vote of a majority of the members voting, three of their number shall be designated as trustees, who shall liquidate, on behalf of the association and within a time fixed in their designation or within any extension of time, its assets, and shall distribute them in the manner set forth in this section.

(b) A suit for involuntary dissolution of an association organized under this Act may be instituted for the causes and prosecuted in the manner set forth in Articles 7.01 to 7.12, Texas Non-Profit Corporation Act (Articles 1396-7.01 through 1396-7.12, Vernon's Texas Civil Statutes), except that any distribution of assets shall be in the manner set forth in this section.

(c) When an association is dissolved, its assets shall be distributed in the following manner and order:

- (1) by paying its debts and expenses;
- (2) by returning to the investors the par value of their capital;
- (3) by returning to the subscribers to invested capital the amounts paid on their subscriptions;
- (4) by returning to patrons the amount of patronage dividends credited to their accounts;
- (5) by returning to members their membership capital; and
- (6) by distributing any surplus in either or both of the following ways, as the articles may provide: either among those patrons who have been members or subscribers at anytime during the six years preceding dissolution, on the basis of patronage during that period, or as a gift to any cooperative association or other non-profit enterprise which may be designated in the articles.

Use of Name "Cooperative"

Sec. 39. (a) Only an association organized under this Act, a group organized on a cooperative basis under any other law of this state, or a foreign corporation operating on a cooperative basis and authorized to do business in this state under this or any other law of this state may use the term "cooperative," or any abbreviation or derivation of the term "cooperative," as part of its business name, or represent itself, in advertising or otherwise, as conducting business on a cooperative basis.

(b) A person, firm, or corporation that violates Subsection (a) of this section commits a misdemeanor punishable by a fine of not less than \$25 nor more than \$200, with an additional fine of not more than \$200 for each month during which a violation occurs after the first month, or by confinement in the county jail for not less than 30 days nor more than one year, or by any combination of those punishments.

(c) The attorney general may sue to enjoin a violation of this section.

(d) If a court of competent jurisdiction renders judgment that a person, firm, or corporation which employed the name "cooperative" prior to this Act, is not organized on a cooperative basis, but may nonetheless continue to use the word "cooperative," the business shall always place immediately after its name the words "does not comply with the cooperative association law of Texas" in the same kind of type, and in letters not less than two-thirds as large, as those used in the word "cooperative."

Sec. 39A. [Expired]

Promotion Expenses

Sec. 40. (a) No association may use its funds, directly or indirectly, issue shares, or incur indebtedness for the payment of compensation for the organization of the association, except necessary legal fees, or for the payment of promotion expenses, in excess of five percent of the amount paid for the shares or membership certificates involved in the promotion transaction.

(b) An officer, director, or agent of an association who gives, or any person, firm, corporation or association who receives a promotion commission in violation of this section commits a misdemeanor and may be punished by a fine of not less than \$25, nor more than \$200, or by confinement in the county jail for not less than 30 days nor more than one year, or by both.

False Reports

Sec. 41. A person, firm, corporation, or association that maliciously and knowingly spreads false reports about the management or finances of any association commits a misdemeanor punishable by a fine of not less than \$25 and not more than \$200, or by confinement in the county jail for not less than 30 days nor more than one year, or by both.

Existing Cooperative Groups

Sec. 42. Any group operating on a cooperative basis on the effective date of this Act may elect by a vote of two-thirds of the members voting to secure the benefits of and be bound by this Act. If it elects to secure the benefits of this Act, it shall amend its articles and by-laws to conform with this Act. A certified copy of the amended articles shall be filed

and recorded with the secretary of state and a fee of \$5 shall be paid.

Foreign Corporations and Associations

Sec. 43. A foreign corporation or association operating on a cooperative basis and complying with the applicable laws of the state in which it is organized may transact business in this state as a foreign cooperative corporation or association.

Exemption From Taxes

Sec. 44. Each association organized under this Act is exempt from the franchise tax and from license fees imposed by the state or a political subdivision of the state.

Exemption

Sec. 45. This Act does not apply to any corporation or association organized and now existing or in the future organized under the Cooperative Marketing Act, as amended (Articles 5737 through 5764, Revised Civil Statutes of Texas, 1925).

Effect of Invalidity of Part of This Act

Sec. 46. If a court of competent jurisdiction shall adjudge to be invalid or unconstitutional any clause, sentence, subsection or section of this Act, such judgment or decree shall not affect, impair, invalidate, or nullify the remainder of this Act, but the effect thereof shall be confined to the clause, sentence, subsection or section of this Act so adjudged to be invalid or unconstitutional.

[Acts 1975, 64th Leg., p. 814, ch. 318, §§ 1 to 46, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 279, ch. 134, § 1, eff. May 11, 1977.]

Section 39A of this article expired of its own terms on September 1, 1978.

CHAPTER TEN. PUBLIC UTILITIES

4. GAS AND LIGHT

Article

1435b. Joint Acquisition, Construction, and Operation of Electric Utility Facilities.

8. MISCELLANEOUS PROVISIONS

1446c. Public Utility Regulatory Act.
1446d. Electric Metering in Apartments and Condominiums.

9. TRADE ZONES

1446.5. Amarillo Trade Zone Corporation.
1446.6. Galveston Port of Entry Trade Zone.
1446.7. Houston Port of Entry Foreign Trade Zone.
1446.8. Joint Airport Boards Foreign Trade Zone.
1446.9. El Paso Trade Zone Corporation.
1446.10. San Antonio Foreign Trade Zone.
1446.11. Brownsville Navigation District Foreign Trade Zone.

2. TELEPHONE AND TELEGRAPH

Arts. 1423 to 1425. Repealed by Acts 1975, 64th Leg., p. 2352, ch. 721, § 90, eff. Sept. 1, 1976

See, now, the Public Utility Regulatory Act, classified as art. 1446c.

4. GAS AND LIGHT

Art. 1435a. Cooperation by Entities in Electric Facilities Construction, Financing, etc.

[See Compact Edition, Volume 2 for text of 1]

Definitions

Sec. 2. As used in this Act:

[See Compact Edition, Volume 2 for text of 2(1) to (3)]

(4) "Electric facilities" means any facilities necessary or incidental to the generation of electric power and energy or the transmission thereof, including electric generating units, electric generating plants, electric transmission lines, plant sites, rights-of-way, and real and personal property and equipment and rights of every kind in connection therewith.

[See Compact Edition, Volume 2 for text of 3]

Rights and Powers of Participating Entities

Sec. 4. Without limiting the general scope and application of Section 3 of this Act:

[See Compact Edition, Volume 2 for text of 4(1)]

(2) Each participating public entity and each participating private entity shall have the right and power to acquire, for the use and benefit of all participating entities, by purchase or through the exercise of the power of eminent domain, lands, easements, and properties for the purpose of jointly owned electric facilities, and shall have the power to transfer or convey such lands, easements, and properties, or interests therein, or otherwise to cause such lands, easements, and properties, or interests therein, to become vested in other participating entities to the extent and in the manner agreed between the participating entities. In all cases in which a participating entity exercises the right and power of eminent domain conferred hereby, it shall be controlled by the law governing the condemnation of property by incorporated cities and towns in this state, and the right and power of eminent domain hereby conferred shall include the right and power to take the fee title in land so condemned, except that no participating entity has the right or power to take by the exercise of the power of eminent domain any electric facilities, or interest therein, belonging to any other entity, or the power to take land or any interest therein, by exercise of the power of eminent domain, for the purpose of drilling for, mining, or producing from said land, any oil, gas, geothermal, geothermal/geopressured, lignite, coal, sulphur, uranium, plutonium, or other minerals belonging to another, whether the same be in place, or in the process of being mined and produc-

ed, or mined or produced. Provided, however, this provision shall not impair the right of any such entity to acquire full title to real property for plant sites, including cooling reservoirs and related surface installations and equipment.

[See Compact Edition, Volume 2 for text of 4(3), (4)]

Joint Powers Agency

Sec. 4a. (a) In order to more readily accomplish the purposes of this Act, two or more public entities by concurrent ordinances may create a joint powers agency to be known as a municipal power agency, without taxing power, as a separate municipal corporation, a political subdivision of the state, and body politic and corporate, to have and exercise all of the powers which are by Chapter 10 of Title 28, Revised Civil Statutes of Texas, 1925, as amended,¹ and this Act, conferred upon a public entity or entities, provided that such agency shall not be authorized to engage in any utility business other than generation, transmission, and sale or exchange of electric energy to the participating public entities and to private entities who are joint owners with the agency of an electric generating facility located within the state. A public entity, at the time of the passage of such concurrent ordinance, must be one which has the authority to and is engaged in the generation of electric energy for sale to the public upon the effective date of this Act, but such entity may thereafter dispose of its electric generating capabilities. Prior to the passage of a concurrent ordinance to create a joint powers agency, the governing body of each public entity shall cause notice of its intention to adopt such ordinance to be published once a week for two consecutive weeks, the date of the first publication to be at least 14 days prior to the date set for the passage of the concurrent ordinance. The notice shall state the date, time, and place such governing body proposes to pass such ordinance, and that upon the effective date of the concurrent ordinances, the public entities so adopting them shall have created a public powers agency. If, prior to the day set for the passage of a concurrent ordinance, 10 percent of the qualified electors of the particular public entity shall present a petition to such governing body requesting a referendum election be called, then such ordinance shall not become effective until the qualified electors of such entity have approved such ordinance. The election shall be called and held in conformity with the Texas Election Code, the provisions of Chapter 1 of Title 22, Revised Civil Statutes of Texas, 1925, as amended,² and this Act. Except as herein provided, a concurrent ordinance shall not be subject to a referendum election.

(b) Public entities which establish a joint powers agency may, by concurrent ordinances, provide for

the re-creation of such agency by the addition and deletion, either or both, of a public entity so long as there is no impairment of obligation of any existing obligation of the agency, provided that no agency may be re-created by the addition of a public entity from and after April 1, 1976, unless a majority of the participating qualified electors of the entity seeking to be added to the agency approve the same by a majority vote in an election called for that purpose, and provided further that no agency may be created from and after January 1, 1977, unless a majority of the participating qualified electors of each entity seeking to create such agency approve such creation by a majority vote in an election called for that purpose. Notice of such election shall be given as provided by Article 704, Revised Civil Statutes of Texas, 1925, as amended.

(c) Concurrent ordinances are ordinances or orders adopted by the governing bodies of more than one public entity which contain identical provisions with respect to the creation or re-creation of a public powers agency.

(d) The public entities which create, or provide for re-creation by addition or deletion of a public entity, a joint powers agency shall by concurrent ordinances (1) define the boundaries of the agency, to include the territory within the limits of such public entities, (2) designate the name of the Municipal Power Agency, (3) designate the number of directors (not less than four) that will constitute the board of directors of the agency and the initial term (so as to initially provide staggered terms) as may be agreed upon by the said public entities as evidenced by such concurrent ordinances, and (4) specify the manner in which such directors shall be appointed, but in any event each public entity shall be entitled to appoint at least one director.

(e) Directors shall serve by places and the concurrent ordinances shall specify the director for which place (and his successors) the governing body of the particular public entity may appoint. A director shall be a qualified elector and reside within the boundary of the agency at the time of execution of his constitutional oath of office. Directors shall serve without compensation, and an employee, officer, or member of the governing body of a public entity may serve as a director of the agency, but shall have no personal interest, other than as may exist as an employee or officer or member of the governing body of a public entity, in any contract executed by the agency.

(f) The agency is empowered to make contracts, leases, and agreements with, and accept grants and loans from, the United States of America, its departments and agencies, the State of Texas, its agencies, counties, municipalities, and political subdivisions, and public or private corporations and persons, and may generally perform all acts necessary for the full

exercise of the powers vested in it; to participate through appropriate contracts in power pooling and power exchange arrangements with other entities either through direct or indirect system interconnections and each entity is given full authority to purchase electric energy from the agency or to sell, dispose of, or exchange electric energy to the agency. The agency may sell, lease, convey, or otherwise dispose of any of its rights, interests, or properties which are, in its judgment, not needed for the efficient operation and maintenance of its electric facilities. The responsibility of the management, operation, and control of the properties belonging to the agency shall be vested in the board of directors.

(g) Contracts for the sale or exchange of energy by the agency may be entered whereby the purchaser is obligated to pay for the same irrespective of whether such energy is produced or delivered to the purchaser. The agency is likewise empowered to establish and maintain rates and charges for energy delivered, transmitted, or exchanged, which shall be reasonable and in accordance with prudent utility practices. In the absence of a contract whereby a purchaser of energy waives such right, the rates and charges for power and energy sold or exchanged by the agency shall be based upon periodic "cost of service studies" and be subject to modification. The rates and charges schedule or contract payments shall be developed with regard to the recovery of the cost of producing and transmitting, if such service is performed, such electric power and energy, including the amortization of the capital investment.

(h) The State of Texas reserves its power to regulate and control such rates and charges for electric energy supplied by the electric facilities, but does hereby pledge to and agree with the purchasers and successive holders of the obligations issued hereunder that the state will not limit or alter the powers hereby vested in the agency to establish and collect such rates and charges as will produce revenues sufficient to pay for (1) all necessary operational and maintenance expenses, (2) all interest and principal on obligations issued by the agency, (3) all sinking funds and reserve fund payments, and (4) for any other charges necessary to fulfill the terms of any agreements theretofore made or in any way to impair the rights or remedies of the holders of the obligations, until the obligations, together with the interest thereon, with interest on unpaid installments of interest, and any other obligations of the agency in connection therewith, are fully met and discharged.

(i) To the payment of obligations issued by it, the agency may pledge the revenues of all or part of its electric facilities, including or not including those thereafter acquired, as the agency may determine, but the expense of operation and maintenance, including salaries, labor, materials, and repairs neces-

sary to render efficient service, of the facilities whose revenues are so encumbered and pledged shall be a first lien on and charge against such revenues.

(j) The agency shall have the full power to issue revenue bonds or notes, herein sometimes referred to as obligations, from time to time for the accomplishment of its purposes within the interest rate limitations of Chapter 3, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 717k-2, Vernon's Texas Civil Statutes).

(k) From the proceeds from the sale of obligations of the agency, the agency may set aside amounts for payments into the interest and sinking fund and reserve funds, and for interest and operating expenses during construction and development, as may be specified in the authorizing proceedings. Bond proceeds may be invested pending their use for the purpose for which issued, in such securities or interest bearing certificates or in time deposits as may be specified in such authorizing proceedings.

(l) Prior to delivery thereof, all obligations authorized to be issued hereunder and the records relating to their issuance shall be submitted to the Attorney General of Texas for examination, and if he finds that they have been issued in accordance with the constitution and this Act, and that they will be binding special obligations of the agency issuing same, he shall approve them, and thereupon they shall be registered by the Comptroller of Public Accounts of the State of Texas, and after such approval and registration and the sale and delivery of the bonds or notes to the purchaser, they shall be incontestable.

(m) Refunding bonds or notes may be issued for the purposes and in the manner now or hereafter provided by general law, including, without limitation, Chapter 503, Acts of the 54th Legislature, Regular Session, 1955, as amended (Article 717k, Vernon's Texas Civil Statutes), and Chapter 784, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-3, Vernon's Texas Civil Statutes), as presently enacted or hereafter amended.

(n) All obligations issued by an agency pursuant to this Act shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, savings and loan associations, and insurance companies and shall be eligible to secure the deposit of any and all public funds of the State of Texas and any and all public funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas, and such obligations shall be lawful and sufficient security for said deposits to the extent of the principal amount thereof, or their value on the market, whichever is the lesser, when accompanied by all unmatured coupons, if any, appurtenant thereto.

(o) The agency may adopt, and from time to time amend, rules and regulations to govern the operation of the agency, its employees, facilities, and service, but contracts for the construction of improvements which involve the expenditure of more than \$20,000 shall be awarded by the agency only after notice of intent to receive competitive bids has been published once a week for two consecutive weeks in a newspaper of general circulation in the state, the date of the first publication being at least 14 days prior to the date set for the receipt of bids, but contracts awarded by another entity, which is a joint owner of the facilities to be constructed or an agent of any of the joint owners shall be let under its contracting procedures. An entity may negotiate and enter into contract for the purchase of electric energy from the agency and payments for such energy purchased shall be an operating expense of the electric system of the purchaser.

(p) The agency may elect to utilize the Uniform System of Accounts Prescribed For Utilities and Licenses prescribed by the Federal Power Commission.

(q) The bonds or notes shall be signed by the presiding officer or the assistant presiding officer of the agency, shall be attested by its secretary, and shall bear the seal of the agency. It is provided, however, that such signatures may be printed or lithographed on the bonds and notes if authorized by the agency, and such may be impressed on the bonds or notes or may be printed or lithographed thereon. The agency may adopt or use for any purpose the signature of any person who shall have been an officer, notwithstanding the fact that he may have ceased to be such officer at the time when bonds or notes shall be delivered to a purchaser or purchasers. The bonds or notes shall mature serially or otherwise in not to exceed 50 years, from their respective dates of issuance, may be sold, within interest rate limitations herein provided, at a public or private sale at a price or under terms determined by the agency to be the most advantageous reasonably obtainable, within the discretion of the agency, may be made callable prior to maturity at such times and prices as approved by the agency, and may be in coupon form with or without provisions for registration as to principal or may be registrable as to both principal and interest.

(r) Bonds and notes issued under the provisions of this Act, and coupons, if any, representing interest thereon, when made payable from (i) revenues of the agency, or (ii) anticipated bond proceeds shall when delivered be deemed and construed to be a "security" within the meaning of Chapter 8, Investment Securities, of the Uniform Commercial Code (Chapter 785, Acts of the 60th Legislature, Regular Session, 1967),³ and shall constitute obligations which must be submitted to the attorney general under the

provisions of Subsection (l) of this section. Nonnegotiable purchase money notes, payable in installments, issued by the agency for the acquisition of land or fuel resources shall not be a security or obligation within the aforesaid provisions; such notes shall be secured by the properties being acquired, with the right in the agency to substitute collateral, and may be further secured by a pledge and undertaking to thereafter issue bonds or bond anticipation notes for their ultimate payment. Bond anticipation notes may be issued, with the same limitations and conditions prescribed herein for bonds, for any purpose for which the agency may issue bonds or for the purpose of refunding or paying off previously issued bond anticipation notes or nonnegotiable purchase money notes, and the agency may covenant with the purchaser of bond anticipation notes that the proceeds of one or more particular series of bonds will be used to provide for the ultimate payment or refunding of such notes.

(s) This Act shall be liberally construed to carry out the purpose of its adoption and shall be in full and complete authority for the creation and operation of public powers agencies and the performance of the public duties imposed upon them. Insofar as this Act is inconsistent with any other laws, including Chapter 10 of Title 28, Revised Civil Statutes of Texas, 1925, as amended, or others regulating the affairs of municipal corporations, or with any home-rule charter provisions, then the provisions of this Act shall control.

Public Entities Within 100 Miles of Sabine River and South of Sam Rayburn Reservoir

Sec. 4b. Notwithstanding any term, condition, or provision of Section 4a of this Act to the contrary, any public entity located within 100 miles of the Sabine River and south of Sam Rayburn Reservoir which is engaged in the distribution and sale of electric energy to the public may pass a concurrent ordinance as provided in and with the effect specified in Section 4a of this Act. Any municipal power agency created by two or more public entities located within 100 miles of the Sabine River and south of Sam Rayburn Reservoir may engage in the generation and transmission of electric power and energy within or outside the State of Texas and may engage in the sale, purchase, or exchange of electric power and energy with entities within or outside the State of Texas; provided, that nothing in this section authorizes an agency to engage in the distribution and retail sale of electric power and energy. The election required by Subsection (b) of Section 4a of this Act need not be held in connection with the creation of any such agency unless the concurrent ordinances are passed after December 31, 1981.

[See Compact Edition, Volume 2 for text of 5 and 6]

[Amended by Acts 1975, 64th Leg., p. 337, ch. 143, § 1, May 8, 1975; Acts 1977, 65th Leg., p. 174, ch. 85, §§ 1 to 3, eff. April 29, 1977; Acts 1979, 66th Leg., p. 885, ch. 405, § 1, eff. June 6, 1979.]

¹ Article 1106 et seq.² Article 701 et seq.³ Business and Commerce Code, § 8.101 et seq.

Section 2 of the 1975 amendatory act provided:

"Nothing in this Act shall be construed to violate any provision of the federal or state constitutions, and all acts done under this Act shall be in such manner as will conform thereto, whether expressly provided or not. Where any procedure hereunder may be held by any court to be violative of either of such constitutions, the agency shall have the power by resolution to provide an alternative procedure conformable with such constitutions. If any provision of this Act should be invalid, such fact shall not affect the validity of any other provisions of this Act, and the legislature hereby declares that it would have enacted the valid provisions of this Act notwithstanding the invalidity of any other provision or provisions hereof."

Art. 1435b. Joint Acquisition, Construction, and Operation of Electric Utility Facilities

Sec. 1. Two or more political subdivisions heretofore or hereafter created are authorized to join together to finance, construct, complete, acquire, or operate electric utility facilities so that the same (or an undivided interest therein) will be jointly owned as cotenants or coowners with such ownership shares in such facilities as may be approved by their governing bodies and set forth in an agreement authorized by said governing bodies. Such agreement may provide for any political subdivision to increase its present or future ownership share of the facilities by installment purchase payments and for any other political subdivision party to such agreement to transfer, in consideration of such installment purchase payments, all or any portion of its present or future ownership share of such facilities to the political subdivision, so increasing its present or future ownership share as aforesaid. Payments made to acquire an ownership interest shall not be treated as a maintenance and operating expense but shall be treated as a capital cost in the same manner as if such political subdivision had issued bonds to construct or acquire such ownership interest, unless otherwise set forth in the agreement of the parties. All agreements by and between political subdivisions establishing an ownership interest in facilities (or undivided interest therein) executed pursuant to this Act shall be submitted to the Attorney General of Texas (in connection with any proceedings to finance said contractual obligation by the issuance of bonds) and when approved as to legality by such officer shall be incontestable.

Sec. 2. In the event the facilities financed, acquired, constructed, or completed constitute a part of a utility system or a combined utility system of a political subdivision, the obligation to make the said contract payments to acquire an ownership interest shall constitute a lien on the revenues of such system or combined system on a parity with outstanding bonds of such system or combined system to the extent permitted in the ordinance, resolution, deed of trust, or indenture authorizing or securing the payment of such outstanding bonds. In instances in which the ordinance, resolution, or deed of trust or trust indenture authorizing or securing such revenue bonds (whether such bonds have been issued prior to

the passage of this Act or may be hereafter issued) provides for the subsequent issuance of additional bonds or incurring of such contractual obligation and that the payments to be made for the security or payment thereof are to be on a parity with or of equal dignity to the previously issued revenue bonds (whether an original issue or a refunding issue) or bonds then to be issued, such entity shall have the power to authorize, issue, and sell additional bonds or incur such contractual obligation from time to time and in different series payable from the entire revenues of such system or combined systems on a parity with bonds previously issued or then to be issued and secured by a lien on the revenues of such system or combined systems on a parity with and of equal dignity with the lien securing the bonds previously issued or then to be issued, subject to such conditions as may be contained in the ordinance, resolution, deed of trust, or trust indenture providing for or securing such issue of original bonds or refunding bonds.

The pledge of revenues of a utility system or a combined utility system for the payment of such contract payments to acquire an ownership interest is hereby approved and authorized.

Sec. 3. The powers and authority granted by this Act shall be in addition to and in substitution for any powers and authority granted to political subdivisions under the laws of this state, and the exercise by any political subdivision of the powers and authority granted hereby and the performance or effectuation of any agreements entered into pursuant to the provisions hereof shall be deemed to constitute additional public purposes of such political subdivision (including the power to issue bonds, notes, or other obligations for the accomplishment of such purposes), notwithstanding the existence of any express or implied limitations of the powers, authority, or purposes under any other general or special laws or charter provisions.

As to municipal corporations, this law shall be given effect as though originally contained in Chapter 10 of Title 28, Revised Civil Statutes of Texas, 1925, as amended, so as to provide full authority for the execution of agreements contemplated by the provisions hereof, and this law shall prevail over any charter provisions or general or special law.

Sec. 4. All agreements heretofore executed by and between political subdivisions whereby the parties will jointly own electric utility facilities or whereby one political subdivision agrees to pay the other as a maintenance and operating expense of all or part of its utility systems for services supplied or to be supplied from facilities owned by the other are hereby validated, ratified, and confirmed provided that such agreements have been heretofore sub-

mitted to the Attorney General of Texas in connection with the issuance of bonds and are on file in the office of the comptroller of public accounts and provided further that such agreements are not in litigation upon the effective date of this Act.

Sec. 5. If any word, phrase, clause, paragraph, sentence, part, portion, or provision of this Act or the application thereof to any person or circumstances shall be held to be invalid or unconstitutional, the remainder of the Act shall nevertheless be valid, and the legislature hereby declares that this Act would have been enacted without such invalid or unconstitutional word, phrase, clause, paragraph, sentence, part, portion, or provision.

[Acts 1977, 65th Leg., p. 1287, ch. 506, §§ 1 to 5, eff. Aug. 29, 1977.]

8. MISCELLANEOUS PROVISIONS

Art. 1446c. Public Utility Regulatory Act

ARTICLE I. SHORT TITLE, LEGISLATIVE POLICY, AND DEFINITIONS

Short Title

Sec. 1. This Act may be referred to as the "Public Utility Regulatory Act."

Legislative Policy and Purpose

Sec. 2. This Act is enacted to protect the public interest inherent in the rates and services of public utilities. The legislature finds that public utilities are by definition monopolies in the areas they serve; that therefore the normal forces of competition which operate to regulate prices in a free enterprise society do not operate; and that therefore utility rates, operations and services are regulated by public agencies, with the objective that such regulation shall operate as a substitute for such competition. The purpose of this Act is to establish a comprehensive regulatory system which is adequate to the task of regulating public utilities as defined by this Act, to assure rates, operations, and services which are just and reasonable to the consumers and to the utilities.

Definitions

Sec. 3. (a) The term "person," when used in this Act, includes natural persons, partnerships of two or more persons having a joint or common interest, mutual or cooperative associations, water supply or sewer service corporations, and corporations, as herein defined.

(b) The term "municipality," when used in this Act, includes cities and incorporated villages or towns existing, created, or organized under the general, home-rule, or special laws of the state.

(c) The term "public utility" or "utility," when used in this Act, includes any person, corporation,

river authority, cooperative corporation, or any combination thereof, other than a municipal corporation or a water supply or sewer service corporation, or their lessees, trustees, and receivers, now or hereafter owning or operating for compensation in this state equipment or facilities for:

(1) producing, generating, transmitting, distributing, selling, or furnishing electricity ("electric utilities" hereinafter);

(2)(a) the conveyance, transmission, or reception or communications over a telephone system; provided that no person or corporation not otherwise a public utility within the meaning of this Act shall be deemed such solely because of the furnishing or furnishing and maintenance of a private system; and provided further that nothing in this Act shall be construed to apply to telegraph services, services of specialized communications common carriers not providing local exchange telephone service, television stations, or radio stations, or community antenna television services;

(b) providing radio-telephone services that may be authorized under the Domestic Public Land Mobile Radio Service or Rural Radio Service rules of the Federal Communications Commission; provided, however, that radio-telephone service provided by wire-line telephone companies regulated by the Commission are excluded from the definition of radio-telephone utilities;

(3) transmitting or distributing combustible hydrocarbon natural or synthetic natural gas for sale or resale in a manner which is not subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act (15 U.S.C.A., Section 717, et seq.) ("gas utilities" hereinafter) provided that the production and gathering of natural gas, the sale of natural gas in or within the vicinity of the field where produced, the distribution or sale of liquified petroleum gas, and the transportation, delivery, or sale of natural gas for fuel for irrigation wells or any other direct use in agricultural activities is not included.

(4) the transmitting, storing, distributing, selling, or furnishing of potable water to the public or for resale to the public for any use, or the collection, transportation, treatment, or disposal of sewage, or other operation of a sewage disposal service for the public, other than equipment or facilities owned and operated for either purpose by a city, town or other political subdivision of this state or a water supply or sewer service corporation. The term "public utility" or "utility" includes any municipally owned gas or electric utility, whether owned separately or in conjunction with other municipalities operated by a board of trustees which as of May 1, 1975, was not directly appointed by the governing body of the municipality, and does not include any other municipally

owned utility unless otherwise provided in this Act. The term "public utility" or "utility" shall not include any person or corporation not otherwise a public utility that furnishes the services or commodity described in any paragraph of this subsection only to itself, its employees, or tenants as an incident of such employee service or tenancy, when such service or commodity is not resold to or used by others.

(d) The term "rate," when used in this Act, means and includes every compensation, tariff, charge, fare, toll, rental, and classification, or any of them demanded, observed, charged, or collected whether directly or indirectly by any public utility for any service, product, or commodity described in Subdivision (c) of this section, and any rules, regulations, practices, or contracts affecting any such compensation, tariff, charge, fare, toll, rental, or classification.

(e) The word "commission," when used in this Act, means the Public Utility Commission of Texas, as hereinafter constituted.

(f) The term "railroad commission," when used in this Act, means the Railroad Commission of Texas.

(g) The term "regulatory authority," when used in this Act, means, in accordance with the context where it is found, either the commission, the railroad commission, or the governing body of any municipality.

(h) "Affected person" means any public utility affected by any action of the regulatory authority, any person or corporation whose utility service or rates are affected by any proceeding before the regulatory authority, or any person or corporation that is a competitor of a public utility with respect to any service performed by the utility or that desires to enter into competition.

(i) "Affiliated interest" or "affiliate" means:

(1) any person or corporation owning or holding, directly or indirectly, five percent or more of the voting securities of a public utility;

(2) any person or corporation in any chain of successive ownership of five percent or more of the voting securities of a public utility;

(3) any corporation five percent or more of the voting securities of which is owned or controlled, directly or indirectly, by a public utility;

(4) any corporation five percent or more of the voting securities of which is owned or controlled, directly or indirectly, by any person or corporation that owns or controls, directly or indirectly, five percent or more of the voting securities of any public utility or by any person or corporation in any chain of successive ownership of five percent of such securities;

(5) any person who is an officer or director of a public utility or of any corporation in any chain of successive ownership of five percent or more of voting securities of a public utility;

(6) any person or corporation that the commission or railroad commission, after notice and hearing, determines actually exercises any substantial influence or control over the policies and actions of a public utility, or over which a public utility exercises such control, or that is under common control with a public utility, such control being the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of another, whether such power is established through ownership or voting of securities or by any other direct or indirect means; or

(7) any person or corporation that the commission or railroad commission, after notice and hearing determines is actually exercising such substantial influence over the policies and action of the public utility in conjunction with one or more persons or corporations with which they are related by ownership or blood relationship, or by action in concert, that together they are affiliated with such public utility within the meaning of this section, even though no one of them alone is so affiliated.

(j) "Allocations" means, for all utilities, the division of plant, revenues, expenses, taxes, and reserves between municipalities or between municipalities and unincorporated areas, where such items are used for providing public utility service in a municipality, or for a municipality and unincorporated areas.

(k) "Commissioner" means a member of the Public Utility Commission of Texas.

(l) "Cooperative corporation" means any telephone or electric cooperative corporation organized and operating under the Telephone Cooperative Act (Article 1528c, Vernon's Texas Civil Statutes) or the Electric Cooperative Corporation Act (Article 1528b, Vernon's Texas Civil Statutes).

(m) "Corporation" means any corporation, joint-stock company, or association, domestic or foreign, and its lessees, assignees, trustees, receivers, or other successors in interest, having any of the powers or privileges of corporations not possessed by individuals or partnerships, but shall not include municipal corporations unless expressly provided otherwise in this Act.

(n) "Facilities" means all the plant and equipment of a public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any public utility.

(o) "Municipally-owned utility" means any utility owned, operated, and controlled by a municipality or by a nonprofit corporation whose directors are appointed by one or more municipalities.

(p) "Order" means the whole or a part of the final disposition, whether affirmative, negative, injunctive, or declaratory in form, of the regulatory authority in a matter other than rulemaking, but including issuance of certificates of convenience and necessity and ratesetting.

(q) "Proceeding" means any hearing, investigation, inquiry, or other fact-finding or decision-making procedure under this Act and includes the denial of relief or the dismissal of a complaint.

(r) "Separation" means, for communications utilities only, the division of plant, revenues, expenses, taxes, and reserves, applicable to exchange or local service where such items are used in common for providing public utility service to both local exchange service and other service, such as interstate or intrastate toll service.

(s) "Service" is used in this Act in its broadest and most inclusive sense, and includes any and all acts done, rendered, or performed and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities in the performance of their duties under this Act to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them. Service shall not include the printing, distribution, or sale of advertising in telephone directories.

(t) "Test year" means the most recent 12 months for which operating data for a public utility are available and shall commence with a calendar quarter or a fiscal year quarter.

(u) "Water supply or sewer service corporation" means a nonprofit, member-owned corporation organized and operating under Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933, as amended (Article 1434a, Vernon's Texas Civil Statutes).

Applicability of Administrative Procedure and Texas Register Act

Sec. 4. The Administrative Procedure and Texas Register Act¹ applies to all proceedings under this Act except to the extent inconsistent with this Act.

¹ Article 6252-13a.

ARTICLE II. ORGANIZATION OF COMMISSION

Creation of Commission; Appointment and Terms; Chairman

Sec. 5. A commission, to be known as the "Public Utility Commission of Texas" is hereby created. It shall consist of three commissioners, who shall be appointed by the governor, with the advice and consent of two-thirds of the members of the senate present, and who shall have and exercise the jurisdiction and powers herein conferred upon the commission. Immediately after this Act takes effect, the governor shall, with the advice and consent of the senate, appoint one commissioner whose term shall expire two years after appointment; one com-

missioner whose term shall expire four years after appointment; and one commissioner whose term shall expire six years after appointment. At the expiration of each of the above named terms, there shall be appointed, in the same manner, one commissioner to hold office for a term of six years. Each commissioner shall hold office until his successor is appointed and qualified. At its first meeting following the biennial appointment and qualification of a commissioner, the commission shall elect one of the commissioners chairman.

Application of Sunset Act

Sec. 5a. The Public Utility Commission of Texas is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1983.

¹ Article 5429k.

Qualifications; Oath and Bond; Prohibited Activities

Sec. 6. (a) To be eligible for appointment as a commissioner, a person must be a qualified voter, not less than 30 years of age, a citizen of the United States, and a resident of the State of Texas. No person is eligible for appointment as a commissioner if at any time during the two-year period immediately preceding his appointment he personally served as an officer, director, owner, employee, partner, or legal representative of any public utility or any affiliated interest, or he owned or controlled, directly or indirectly, stocks or bonds of any class with a value of \$10,000, or more in a public utility or any affiliated interest. Each commissioner shall qualify for office by taking the oath prescribed for other state officers and shall execute a bond for \$5,000 payable to the state and conditioned on the faithful performance of his duties.

(b) No commissioner or employee of the commission may do any of the following during his period of service with the commission and for two years thereafter:

(1) have any pecuniary interest, either as an officer, director, partner, owner, employee, attorney, consultant, or otherwise, in any public utility or affiliated interest, or in any person or corporation or other business entity a significant portion of whose business consists of furnishing goods or services to public utilities or affiliated interests, but not including a nonprofit group or association solely supported by gratuitous contributions of money, property or services;

(2) own or control any securities in a public utility or affiliated interest, either directly or indirectly;

(3) accept any gift, gratuity, or entertainment whatsoever from any public utility or affiliated interest, or from any person, corporation, agent, representative, employee, or other business entity

a significant portion of whose business consists of furnishing goods or services to public utilities or affiliated interests, or from any agent, representative, attorney, employee, officer, owner, director, or partner of any such business entity or of any public utility or affiliated interest; provided, however, that the receipt and acceptance of any gifts, gratuities, or entertainment after termination of service with the commission whose cumulative value in any one-year period is less than \$100 shall not constitute a violation of this Act.

(c) The prohibited activities of this section do not include contracts for public utility products and services or equipment for use of public utility products when a member or employee of the commission is acting as a consumer.

(d) No commissioner or employee of the commission may directly or indirectly solicit or request from or suggest or recommend to, any public utility, or to any agent, representative, attorney, employee, officer, owner, director, or partner thereof, the appointment to any position or the employment in any capacity of any person by such public utility or affiliated interest.

(e) No public utility or affiliated interest or any person, corporation, firm, association, or business that furnishes goods or services to any public utility or affiliated interest, nor any agent, representative, attorney, employee, officer, owner, director, or partner of any public utility or affiliated interest, or any person, corporation, firm, association, or business furnishing goods or services to any public utility or affiliated interest may give, or offer to give, any gift, gratuity, employment, or entertainment whatsoever to any member or employee of the commission except as allowed by Subdivision (3) of Subsection (b) of this section, nor may any such public utility or affiliated interest or any such person, corporation, firm, association, or business aid, abet, or participate with any member, employee, or former employee of the commission in any activity or conduct that would constitute a violation of this subsection or Subdivision (3) of Subsection (b) of this section.

(f) It shall not be a violation of this section if a member of the commission or a person employed by the commission, upon becoming the owner of any stocks or bonds or other pecuniary interest in a public utility or affiliated interest under the jurisdiction of the commission otherwise than voluntarily, informs the commission and the attorney general of such ownership and divests himself of the ownership or interest within a reasonable time. In this section, a "pecuniary interest" includes income, compensation and payment of any kind, in addition to ownership interests. It is not a violation of this section if such a pecuniary interest is held indirectly by ownership of an interest in a retirement system, institu-

tion, or fund which in the normal course of business invests in diverse securities independently of the control of the commissioner or employee.

(g) Unless specifically authorized by this Act for disposition of ex parte matters, no member or employee of the commission assigned to render a decision or to make findings of fact and conclusions of law in a proceeding may communicate, directly or indirectly, in connection with any issue of fact or law with any party or his representative, except on notice and opportunity for all parties to participate.

(h) No member of the commission may seek nomination or election to any other civil office of the State of Texas or of the United States while he is a commissioner. If any member of the commission files for nomination for or election to any civil office of the State of Texas or of the United States, his office as commissioner immediately becomes vacant, and the governor shall appoint a successor.

Vacancies

Sec. 7. Whenever a vacancy in the office of commissioner occurs, it shall be filled in the manner provided herein with respect to the original appointment, except that the governor may make interim appointments to continue until the vacancy can be filled in the manner provided. Any person appointed with the advice and consent of the senate to fill a vacancy shall hold office during the unexpired portion of the term.

Employees

Sec. 8. (a) The commission shall employ such officers, hearing examiners, investigators, lawyers, engineers, economists, consultants, statisticians, accountants, inspectors, clerical staff, and other employees as it deems necessary to carry out the provisions of this Act. All employees receive such compensation as is fixed by the legislature. Pending legislative determination, commission employees shall be paid the same salary as employees of the Railroad Commission holding comparable positions.

(b) The commission shall employ:

(1) a director of public utilities who has wide experience in utility regulation and rate determination;

(2) a chief engineer who is a registered engineer and an expert in public utility engineering and rate matters;

(3) a chief accountant who is a certified public accountant, experienced in public utility accounting;

(4) a director of research who is experienced in the conduct of analyses of industry, economics, energy, fuel, and other related matters that the commission may want to undertake; and

(5) a general counsel.

(c) The general counsel and his staff are responsible for the gathering of information relating to all matters within the authority of the commission.

The duties of the general counsel include:

(1) accumulation of evidence and other information from public utilities and from the accounting and technical and other staffs of the commission and from other sources for the purposes specified herein;

(2) preparation and presentation of such evidence before the commission or its appointed examiner in proceedings;

(3) conduct of investigations of public utilities under the jurisdiction of the commission;

(4) preparation of proposed changes in the rules of the commission;

(5) preparation of recommendations that the commission undertake investigation of any matter within its authority;

(6) preparation of recommendations and a report of such staff for inclusion in the annual report of the commission;

(7) protection and representation of the public interest before the commission; and

(8) such other activities as are reasonably necessary to enable him to perform his duties.

Salary

Sec. 9. The annual salary of the commissioners shall be determined by the legislature. Pending legislative determination, the commissioners shall be paid the same salary as members of the Railroad Commission.

Office; Meetings

Sec. 10. The principal office of the commission shall be located in the City of Austin, Texas, and shall be open daily during the usual business hours, Saturdays, Sundays, and legal holidays excepted. The commission shall hold meetings at its office and at such other convenient places in the state as shall be expedient and necessary for the proper performance of its duties.

Seal

Sec. 11. The commission shall have a seal bearing the following inscription: "Public Utility Commission of Texas." The seal shall be affixed to all records and authentications of copies of records and to such other instruments as the commission shall direct. All courts of this state shall take judicial notice of said seal.

Quorum

Sec. 12. A majority of the commissioners shall constitute a quorum for the transaction of any business, for the performance of any duty, or for the exercise of any power of the commission. No vacan-

cy or disqualification shall prevent the remaining commissioner or commissioners from exercising all the powers of the commission.

Orders; Transcript and Exhibits; Public Records

Sec. 13. All orders of the commission shall be in writing and shall contain detailed findings of the facts upon which they are passed. The commission shall retain a copy of the transcript and the exhibits in any matter in which the commission issues an order. All files pertaining to matters which were at any time pending before the commission and to records, reports, and inspections required by Article V hereof shall be public records, subject to the terms of the Texas Open Records Act, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

Annual Report

Sec. 14. (a) The commission shall publish an annual report to the governor, summarizing its proceedings, listing its receipts and the sources of its receipts, listing its expenditures and the nature of such expenditures, and setting forth such other information concerning the operations of the commission and the public utility industry as it considers of general interest.

(b) In the annual report issued in the year preceding the convening of each regular session of the legislature, the commission shall make such suggestions regarding modification and improvement of the commission's statutory authority and for the improvement of utility regulation in general as it may deem appropriate for protecting and furthering the interest of the public.

Attorney General to Represent Commission

Sec. 15. The Attorney General of the State of Texas shall represent the commission in all matters before the state courts, and any court of the United States, and before any federal public utility regulatory commission.

ARTICLE III. JURISDICTION

General Power; Rules; Hearings

Sec. 16. The commission has the general power to regulate and supervise the business of every public utility within its jurisdiction and to do all things, whether specifically designated in this Act or implied herein, necessary and convenient to the exercise of this power and jurisdiction. The commission shall make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules governing practice and procedure before the commission. The commission may call and hold hearings, administer oaths, receive evidence at hearings, issue subpoenas to compel the attendance of witnesses and the production of papers and documents, and make findings of fact and decisions with

respect to administering the provisions of this Act or the rules, orders, or other actions of the commission.

Jurisdiction of Municipality; Surrender; Original and Appellate Jurisdiction of Commission

Sec. 17. (a) Subject to the limitations imposed in this Act, and for the purpose of regulating rates and services so that such rates may be fair, just, and reasonable, and the services adequate and efficient, the governing body of each municipality shall have exclusive original jurisdiction over all electric, water, and sewer utility rates, operations, and services provided by an electric, water, and sewer utility within its city or town limits.

(b) At any time after two years have passed from the date this Act becomes effective, a municipality may elect to have the commission exercise exclusive original jurisdiction over electric, water, or sewer utility rates, operations, and services within the incorporated limits of the municipality. The governing body of a municipality may by ordinance elect to surrender its original jurisdiction to the commission, or the governing body may submit the question of the surrender to the qualified voters at a municipal election. Upon receipt of a petition signed by the lesser of 20,000 or ten percent of the number of qualified voters voting in the last preceding general election in that municipality, the governing body shall submit the question of the surrender of the municipality's original jurisdiction to the commission at a municipal election.

(c) A municipality that surrenders its jurisdiction to the commission may at any time, by vote of the electorate, reinstate the jurisdiction of the governing body; provided, however, that any municipality which reinstates its jurisdiction shall be unable to surrender that jurisdiction for five years after the date of the election at which the municipality elected to reinstate its jurisdiction. No municipality may, by vote of the electorate, reinstate the jurisdiction of the governing body during the pendency of any case before the commission involving the municipality.

(d) The commission shall have exclusive appellate jurisdiction to review orders or ordinances of such municipalities as provided in this Act.

(e) The commission shall have exclusive original jurisdiction over electric, water, and sewer utility rates, operations, and services not within the incorporated limits of a municipality exercising exclusive original jurisdiction over those rates, operations, and services as provided in this Act.

Telecommunications Utilities

Sec. 18. Subject to the limitations imposed in this Act, and for the purpose of regulating rates, operations, and services so that such rates may be just, fair, and reasonable, and the services adequate and efficient, the commission shall have exclusive

original jurisdiction over the business and property of all telecommunications utilities in this state. In the exercise of its jurisdiction to regulate the rates, operations, and services of a telecommunications utility providing service in a municipality on the state line adjacent to a municipality in an adjoining state, the commission may cooperate with the utility regulatory commission of the adjoining state or the federal government and may hold joint hearings and make joint investigations with any of those commissions.

Gas Utilities

Sec. 19. (a) Subject to the limitations imposed in this Act, and for the purpose of regulating rates and services so that such rates may be fair, just, and reasonable, and the services adequate and efficient, the governing body of each municipality shall have exclusive original jurisdiction over all gas utility rates, operations, and services provided by any gas utility within its city or town limits.

(b) The railroad commission shall have exclusive appellate jurisdiction to review all orders or ordinances of municipalities as provided in this Act. The railroad commission shall have exclusive original jurisdiction over the rates and services of gas utilities distributing natural gas or synthetic natural gas in areas outside the limits of municipalities, and it shall also have exclusive original jurisdiction over the rates and services of pipelines transmitting, transporting, delivering, or selling natural gas or synthetic natural gas to gas utilities engaged in distributing such gas to the public.

(c) The provisions of this Act shall be deemed to be in addition to all existing laws relating to the jurisdiction, power, or authority of the railroad commission over gas utilities and, except as specifically in conflict with this Act, such laws shall not be deemed to be limited hereby. Provisions of this Act applicable to gas utilities within the jurisdiction of the railroad commission shall apply to all such gas utilities, including those that are within the jurisdiction, power, or authority of the railroad commission by virtue of laws other than this Act.

Municipally Owned Utilities

Sec. 20. Nothing in this article shall be construed to confer on the commission or railroad commission power or jurisdiction to regulate or supervise the rates or service of any utility owned and operated by any municipality within its boundaries either directly or through a municipally owned corporation, or to affect or limit the power, jurisdiction, or duties of the municipalities that have elected to regulate and supervise public utilities within their boundaries, except as provided in this Act.

ARTICLE IV. MUNICIPALITIES

Franchises

Sec. 21. Nothing in this Act shall be construed as in any way limiting the rights and powers of a municipality to grant or refuse franchises to use the streets and alleys within its limits and to make the statutory charges for the use thereof, but no provision of any franchise agreement shall limit or interfere with any power conferred on the commission or railroad commission by this Act. If a municipality performs regulatory functions under this Act, it may make such other charges as may be provided in the applicable franchise agreement, together with any other charges permitted by this Act.

Local Utility Service; Exempt and Nonexempt Areas

Sec. 22. Notwithstanding any other provision of this section, municipalities shall continue to regulate each kind of local utility service inside their boundaries until the commission has assumed jurisdiction over the respective utility pursuant to this Act. If a municipality does not surrender its jurisdiction, local utility service within the boundaries of the municipality shall be exempt from regulation by the commission under the provisions of this Act to the extent that this Act applies to local service, and the municipality shall have, regarding service within its boundaries, the right to exercise the same regulatory powers under the same standards and rules as the commission, or other standards and rules not inconsistent therewith. Notwithstanding any such election, the commission may consider a public utility's revenues and return on investment in exempt areas in fixing rates and charges in nonexempt areas, and may also exercise the powers conferred necessary to give effect to orders under this Act, for the benefit of nonexempt areas. Likewise, in fixing rates and charges in the exempt area, the governing body may consider a public utility's revenues and return on investment in nonexempt areas. Utilities serving exempt areas shall be subject to the reporting requirements of this Act. Such reports shall be filed with the governing body of the municipality as well as with the commission. Nothing in this section shall limit the duty and power of the commission to regulate service and rates of municipally regulated utilities for service provided to other areas in Texas.

Rate Determination

Sec. 23. Any municipality regulating its public utilities pursuant to this Act shall require from those utilities all necessary data to make a reasonable determination of rate base, expenses, investment, and rate of return within the municipal boundaries. The standards for such determination shall be based on the procedures and requirements of this Act and said municipality shall retain any and all personnel necessary to make the determination of reasonable rates required under this Act.

Authority of Governing Body; Cost Reimbursement

Sec. 24. The governing body of any municipality shall have the right to select and engage rate consultants, accountants, auditors, attorneys, engineers, or any combination thereof, to conduct investigations, present evidence, advise and represent the governing body, and assist with litigation on public utility ratemaking proceedings; and the public utility engaged in such proceedings shall be required to reimburse the governing body for the reasonable costs of such services.

Assistance by Commission or Railroad Commission

Sec. 25. The commission or the railroad commission may advise and assist municipalities upon request in connection with questions and proceedings arising under this Act. Such assistance may include aid to municipalities in connection with matters pending before the commission, the railroad commission, or the courts, or before the governing body of any municipality, including making members of the staff available as witnesses and otherwise providing evidence to them.

Appeal

Sec. 26. (a) Any party to a rate proceeding before the governing body of a municipality may appeal the decision of the governing body to the commission or railroad commission.

(b) Citizens of a municipality may appeal the decision of the governing body in any rate proceeding to the commission or railroad commission through the filing of a petition for review signed by the lesser of 20,000 or 10 percent of the number of qualified voters of such municipality.

(c) Ratepayers of a municipally owned gas or electric utility outside the municipal limits may appeal any action of the governing body affecting the rates of the municipally owned gas or electric utility through filing with the commission or railroad commission, as appropriate, petition for review signed by the lesser of 10,000 or 5 percent of the ratepayers served by such utility outside the municipal limits. For purposes of this subsection each person receiving a separate bill shall be considered as a ratepayer. But no person shall be considered as being more than one ratepayer notwithstanding the number of bills received. Such petition for review shall be considered properly signed if signed by any person, or spouse of any such person, in whose name residential utility service is carried.

(d) The appeal process shall be instituted within 30 days of the final decision by the governing body with the filing of a petition for review with the commission or railroad commission and copies served on all parties to the original rate proceeding.

(e) The commission or railroad commission shall hear such appeal de novo and by its final order shall

fix such rates as the municipality should have fixed in the ordinance from which the appeal was taken.

ARTICLE V. RECORDS, REPORTS, INSPECTIONS, RATES AND SERVICES

Records of Public Utility; Rates, Methods and Accounts

Sec. 27. (a) Every public utility shall keep and render to the regulatory authority in the manner and form prescribed by the commission or railroad commission uniform accounts of all business transacted. The commission or railroad commission may also prescribe forms of books, accounts, records, and memoranda to be kept by such public utilities, including the books, accounts, records, and memoranda of the rendition of and capacity for service as well as the receipts and expenditures of moneys, and any other forms, records, and memoranda which in the judgment of the commission or railroad commission may be necessary to carry out any of the provisions of this Act. In the case of any public utility subject to regulations by a federal regulatory agency, compliance with the system of accounts prescribed for the particular class of utilities by such agency may be deemed a sufficient compliance with the system prescribed by the commission or railroad commission; provided, however, that the commission or railroad commission may prescribe forms of books, accounts, records, and memoranda covering information in addition to that required by the federal agency. The system of accounts and the forms of books, accounts, records, and memoranda prescribed by the commission or railroad commission for a public utility or class of utilities shall not conflict nor be inconsistent with the systems and forms established by a federal agency for that public utility or class of utilities.

(b) The commission or railroad commission shall fix proper and adequate rates and methods of depreciation, amortization, or depletion of the several classes of property of each public utility, and shall require every public utility to carry a proper and adequate depreciation account in accordance with such rates and methods and with such other rules and regulations as the commission or railroad commission prescribes. Such rates, methods, and accounts shall be utilized uniformly and consistently throughout the ratesetting and appeal proceedings.

(c) Every public utility shall keep separate accounts to show all profits or losses resulting from the sale or lease of appliances, fixtures, equipment, or other merchandise. No such profit or loss shall be taken into consideration by the regulatory authority in arriving at any rate to be charged for service by any such public utility, to the extent that such merchandise is not integral to the provision of utility service.

(d) Every public utility is required to keep and render its books, accounts, records, and memoranda

accurately and faithfully in the manner and form prescribed by the commission or railroad commission, and to comply with all directions of the regulatory authority relating to such books, accounts, records, and memoranda. The regulatory authority may require the examination and audit of all accounts.

(e) In determining the allocation of tax savings derived from application of such methods as liberalized depreciation and amortization and the investment tax credit, the regulatory authority shall equitably balance the interests of present and future customers and shall apportion such benefits between consumers and the public utilities accordingly. Where any portion of the investment tax credit has been retained by a public utility, that same amount shall be deducted from the original cost of the facilities or other addition to the rate base to which the credit applied, to the extent allowed by the Internal Revenue Code.

(f) For the purposes of this section, "public utility" includes "municipally owned utility."

Powers of Commission and Railroad Commission

Sec. 28. (a) The commission and the railroad commission shall have the power to:

(1) require that public utilities report to it such information relating to themselves and affiliated interests both within and without the State of Texas as it may consider useful in the administration of this Act;

(2) establish forms for all reports;

(3) determine the time for reports and the frequency with which any reports are to be made;

(4) require that any reports be made under oath;

(5) require that a copy of any contract or arrangement between any public utility and any affiliated interest be filed with it. It may require any such contract or arrangement not in writing to be reduced to writing and filed with it;

(6) require that a copy of any report filed with any federal agency or any governmental agency or body of any other state be filed with it; and

(7) require that a copy of annual reports showing all payments of compensation (other than salary or wages subject to the withholding of federal income tax) to residents of Texas, or with respect to legal, administrative, or legislative matters in Texas, or for representation before the Texas Legislature or any governmental agency or body.

(b) On the request of the governing body of any municipality, the commission or railroad commission may provide sufficient staff members to advise and consult with such municipality on any pending matter.

Inspections; Examination Under Oath; Compelling Production of Records; Inquiry Into Management and Affairs

Sec. 29. (a) Any regulatory authority, and when authorized by the regulatory authority, its counsel, agents, and employees, shall have the right, at reasonable times and for reasonable purposes, to inspect and obtain copies of the papers, books, accounts, documents, and other business records, and to inspect the plant, equipment, and other property of any public utility within its jurisdiction. The regulatory authority may examine under oath, or it may authorize the person conducting such investigation to examine under oath, any officer, agent, or employee of any public utility in connection with such investigation. The regulatory authority may require, by order or subpoena served on any public utility, the production within this state at the time and place it may designate, of any books, accounts, papers, or records kept by that public utility outside the state, or verified copies in lieu thereof if the commission or railroad commission so orders. Any public utility failing or refusing to comply with any such order or subpoena is in violation of this Act.

(b)(1) A member, agent, or employee of the regulatory authority may enter the premises occupied by a public utility to make inspections, examinations, and tests and to exercise any authority provided by this Act.

(2) A member, agent, or employee of the regulatory authority may act under this section only during reasonable hours and after giving reasonable notice to the utility.

(3) The public utility is entitled to be represented when inspections, examinations, and tests are made on its premises. Reasonable time for the utility to secure a representative shall be allowed before commencing an inspection, examination, or test.

(c) The regulatory authority may inquire into the management and affairs of all public utilities, and shall keep itself informed as to the manner and method in which the same are conducted.

Reporting of Advertising or Public Relations Expenses

Sec. 30. The regulatory authority may require an annual reporting from each utility company of all its expenditures for business gifts and entertainment, and institutional, consumption-inducing and other advertising or public relations expenses. The regulatory authority shall not allow as costs or expenses for rate-making purposes any of these expenditures which the regulatory authority determines not to be in the public interest. The cost of legislative-advocacy expenses shall not in any case be allowed as costs or expenses for rate-making purposes. Reasonable charitable or civic contributions may be allowed not to exceed the amount approved by the regulatory authority.

Unlawful Rates, Rules and Regulations

Sec. 31. It shall be unlawful for any utility to charge, collect, or receive any rate for public utility service or to impose any rule or regulation other than as herein provided.

Filing Schedule of Rates, Rules and Regulations

Sec. 32. Every public utility shall file with each regulatory authority schedules showing all rates which are subject to the original or appellate jurisdiction of the regulatory authority and which are in force at the time for any public utility service, product, or commodity offered by the utility. Every public utility shall file with, and as a part of such schedules, all rules and regulations relating to or affecting the rates, public utility service, product, or commodity furnished by such utility.

Office of Public Utility; Records; Removal From State

Sec. 33. Every public utility shall have an office in a county of this state in which its property or some part thereof is located in which it shall keep all books, accounts, records, and memoranda required by the commission or railroad commission to be kept in the state. No books, accounts, records, or memoranda required by the regulatory authority to be kept in the state shall be removed from the state, except on conditions prescribed by the commission or railroad commission.

Communications by Public Utilities With Regulatory Authority; Regulations and Records

Sec. 34. (a) The regulatory authority shall prescribe regulations governing communications by public utilities, their affiliates and their representatives, with the regulatory authority or any member or employee of the regulatory authority.

(b) Such records shall contain the name of the person contacting the regulatory authority or member or employee of the regulatory authority, the name of the business entities represented, a brief description of the subject matter of the communication, and the action, if any, requested by the public utility, affiliate, or representative. These records shall be available to the public on a monthly basis.

Standards of Service

Sec. 35. (a) Every public utility shall furnish such service, instrumentalities, and facilities as shall be safe, adequate, efficient, and reasonable.

(b) The regulatory authority after reasonable notice and hearing had on its own motion or on complaint, may ascertain and fix just and reasonable standards, classifications, regulations, or practices to be observed and followed by any or all public utilities with respect to the service to be furnished; ascertain and fix adequate and reasonable standards for the measurement of the quantity, quality, pressure, initial voltage, or other condition pertaining to

the supply of the service; prescribe reasonable regulations for the examination and testing of the service and for the measurement thereof; and establish or approve reasonable rules, regulations, specifications, and standards to secure the accuracy of all meters, instruments and equipment used for the measurement of any service of any public utility. Any standards, classifications, regulations, or practices now or hereafter observed or followed by any public utility may be filed by it with the regulatory authority, and the same shall continue in force until amended by the public utility or until changed by the regulatory authority as herein provided.

Examination and Test of Equipment

Sec. 36. (a) The regulatory authority may examine and test any meter, instrument, or equipment used for the measurement of any service of any public utility and may enter any premises occupied by any public utility for the purpose of making such examinations and tests and exercising any power provided for in this Act and may set up and use on such premises any apparatus and appliances necessary therefor. The public utility shall have the right to be represented at the making of the examinations, tests, and inspections. The public utility and its officers and employees shall facilitate the examinations, tests, and inspections by giving every reasonable aid to the regulatory authority and any person or persons designated by the regulatory authority for the duties aforesaid.

(b) Any consumer or user may have any meter or measuring device tested by the utility once without charge, after a reasonable period to be fixed by the regulatory authority by rule, and at shorter intervals on payment of reasonable fees fixed by the regulatory authority. The regulatory authority shall declare and establish reasonable fees to be paid for other examining and testing such meters and other measuring devices on the request of the consumer. If the test is requested to be made within the period of presumed accuracy as fixed by the regulatory authority since the last such test of the same meter or other measuring device, the fee to be paid by the consumer or user at the time of his request shall be refunded to the consumer or user if the meter or measuring device is found unreasonably defective or incorrect to the substantial disadvantage of the consumer or user. If the consumer's request is made at a time beyond the period of presumed accuracy fixed by the regulatory authority since the last such test of the same meter or measuring device, the utility shall make the test without charge to the consumer or user.

ARTICLE VI. PROCEEDINGS BEFORE THE REGULATORY AUTHORITY

Power to Insure Compliance; Rate Regulation

Sec. 37. Subject to the provisions of this Act, the commission or railroad commission is hereby vested

with all authority and power of the State of Texas to insure compliance with the obligations of public utilities in this Act. For this purpose the regulatory authority is empowered to fix and regulate rates of public utilities, including rules and regulations for determining the classification of customers and services and for determining the applicability of rates. No rule or order of the regulatory authority shall be in conflict with the rulings of any federal regulatory body.

Just and Reasonable Rates

Sec. 38. It shall be the duty of the regulatory authority to insure that every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable. Rates shall not be unreasonably preferential, prejudicial, or discriminatory, but shall be sufficient, equitable, and consistent in application to each class of consumers. For ratemaking purposes, the commission or railroad commission may treat two or more municipalities served by a public utility as a single class wherever the commission or railroad commission deems such treatment to be appropriate. Rates charged by gas utility to an industrial customer for supplying gas under a contract and other similar large volume contract customers are just and reasonable and shall be approved by the regulatory authority if the regulatory authority finds that:

- (1) neither the gas utility nor the industrial customer had an unfair advantage during the contract negotiations; or
- (2) the rates in the contract are substantially the same as rates contained in contracts between the gas utility and two or more other industrial customers contracting under the same or similar conditions of service; or
- (3) competition exists either with another gas utility, another supplier of natural gas, or with a supplier of an alternative form of energy.

Fixing Overall Revenues

Sec. 39. In fixing the rates of a public utility the regulatory authority shall fix its overall revenues at a level which will permit such utility to recover its operating expenses together with a reasonable return on its invested capital.

Fair Return; Burden of Proof

Sec. 40. (a) The regulatory authority shall not prescribe any rate which will yield more than a fair return upon the adjusted value of the invested capital used and useful in rendering service to the public.

(b) In any proceeding involving any proposed change of rates, the burden of proof to show that the proposed change, if proposed by the utility, or that the existing rate, if it is proposed to reduce the

rate, is just and reasonable shall be on the public utility.

Components of Adjusted Value of Invested Capital and
Net Income

Sec. 41. The components of adjusted value of invested capital and net income shall be determined according to the following rules:

(a) Adjusted Value of Invested Capital. Utility rates shall be based upon the adjusted value of property used by and useful to the public utility in providing service including where necessary to the financial integrity of the utility construction work in progress at cost as recorded on the books of the utility. The adjusted value of such property shall be a reasonable balance between original cost less depreciation and current cost less an adjustment for both present age and condition. The regulatory authority shall have the discretion to determine a reasonable balance that reflects not less than 60% nor more than 75% original cost, that is, the actual money cost, or the actual money value of any consideration paid other than money, of the property at the time it shall have been dedicated to public use, whether by the utility which is the present owner or by a predecessor, less depreciation, and not less than 25% nor more than 40% current cost less an adjustment for both present age and condition. The regulatory authority may consider inflation, deflation, quality of service being provided, the growth rate of the service area, and the need for the public utility to attract new capital in determining a reasonable balance.

(b) Separations and Allocations. Costs of facilities, revenues, expenses, taxes, and reserves shall be separated or allocated as prescribed by the regulatory authority.

(c) Net Income. By "net income" is meant the total revenues of the public utility less all reasonable and necessary expenses as determined by the regulatory authority. The regulatory authority shall determine expenses and revenues in a manner consistent with the following:

(1) Transactions with Affiliated Interests. Payment to affiliated interests for costs of any services, or any property, right or thing, or for interest expense shall not be allowed either as capital cost or as expense except to the extent that the regulatory authority shall find such payment to be reasonable. Any such finding of reasonableness shall include specific statements setting forth the cost to the affiliate of each item or class of items in question and a finding that the price to the utility is no higher than prices charged by the supplying affiliate to its other affiliates or divisions for the same item or items, or to unaffiliated persons or corporations.

(2) Income Taxes. If the public utility is a member of an affiliated group that is eligible to file a consolidated income tax return, and if it is advantageous to the public utility to do so, income taxes shall be computed as though a consolidated return had been so filed and the utility had realized its fair share of the savings resulting from the consolidated return, unless it is shown to the satisfaction of the regulatory authority that it was reasonable to choose not to consolidate returns. The amounts of income taxes saved by a consolidated group of which a public utility is a member by reason of the elimination in the consolidated return of the intercompany profit on purchases by the public utility from an affiliate shall be applied to reduce the cost of the property or services so purchased. The investment tax credit allowed against federal income taxes, to the extent retained by the utility, shall be applied as a reduction in the rate based contribution of the assets to which such credit applies, to the extent and at such rate as allowed by the Internal Revenue Code.

(3) Expenses Disallowed. The regulatory authority may promulgate reasonable rules and regulations with respect to the allowance or disallowance of certain expenses for ratemaking purposes.

Unreasonable or Violative Existing Rates; Investigating Costs of
Obtaining Service from Another Source

Sec. 42. Whenever the regulatory authority, after reasonable notice and hearing, on its own motion or on complaint by any affected person, finds that the existing rates of any public utility for any service are unreasonable or in any way in violation of any provision of law, the regulatory authority shall determine the just and reasonable rates, including maximum or minimum rates, to be thereafter observed and in force, and shall fix the same by order to be served on the public utility; and such rates shall constitute the legal rates of the public utility until changed as provided in this Act. Whenever a public utility does not itself produce or generate that which it distributes, transmits, or furnishes to the public for compensation, but obtains the same from another source, the regulatory authority shall have the power and authority to investigate the cost of such production or generation in any investigation of the reasonableness of the rates of such public utility.

Statement of Intent to Change Rates; Major Changes; Hearing;
Suspension of Rate Schedule; Determination of Rate Level

Sec. 43. (a) No utility may make changes in its rates except by filing a statement of intent with the regulatory authority having original jurisdiction at least 35 days prior to the effective date of the proposed change. The statement of intent shall include proposed revisions of tariffs and schedules

and a statement specifying in detail each proposed change, the effect the proposed change is expected to have on the revenues of the company, the classes and numbers of utility consumers affected, and such other information as may be required by the regulatory authority's rules and regulations. A copy of the statement of intent shall be mailed or delivered to the appropriate officer of each affected municipality, and notice shall be given by publication in conspicuous form and place of a notice to the public of such proposed change once in each week for four successive weeks in a newspaper having general circulation in each county containing territory affected by the proposed change, and to such other affected persons as may be required by the regulatory authority's rules and regulations.

(b) The regulatory authority, for good cause shown, may, except in the case of major changes, allow changes in rate to take effect prior to the end of such 35 day period under such conditions as it may prescribe, subject to suspension as provided herein. All such changes shall be indicated immediately upon its schedules by such utility. "Major changes" shall mean an increase in rates which would increase the aggregate revenues of the applicant more than the greater of \$100,000 or two and one-half percent, but shall not include changes in rates allowed to go into effect by the regulatory authority or made by the utility pursuant to an order of the regulatory authority after hearings held upon notice to the public.

(c) Whenever there is filed with the Regulatory Authority any schedule modifying or resulting in a change in any rates then in force, the Regulatory Authority shall on complaint by any affected person or may on its own motion, at any time within 30 days from the date when such change would or has become effective, and, if it so orders, without answer or other formal pleading by the utility, but on reasonable notice, including notice to the governing bodies of all affected municipalities and counties, enter on a hearing to determine the propriety of such change. The Regulatory Authority shall hold such a hearing in every case in which the change constitutes a major change in rates, provided that an informal proceeding may satisfy this requirement if no complaint has been received before the expiration of 45 days after notice of the change shall have been filed.

(d) Pending the hearing and decision, the Regulatory Authority, after delivery to the affected utility of a statement in writing of its reasons therefor, may suspend the operation of the schedule for a period not to exceed 120 days beyond the date on which the schedule of rates would otherwise go into effect. If the Regulatory Authority finds that a longer time will be required for a final determination, the Regulatory Authority may further extend

the period for an additional 30 days. If the Regulatory Authority does not make a final determination concerning any schedule of rates within a period of 150 days after the time when the schedule of rates would otherwise go into effect, the schedule shall be deemed to have been approved by the Regulatory Authority. This approval is subject to the authority of the Regulatory Authority thereafter to continue a hearing in progress. The Regulatory Authority may in its discretion fix temporary rates for any period of suspension under this section. During the suspension by the Regulatory Authority as above provided, the rates in force when the suspended schedule was filed shall continue in force unless the Regulatory Authority shall establish a temporary rate. The Regulatory Authority shall give preference to the hearing and decision of questions arising under this section over all other questions pending before it and decide the same as speedily as possible.

(e) If the regulatory authority fails to make its final determination of rates within 90 days from the date that the proposed change otherwise would have gone into effect, the utility concerned may put a changed rate, not to exceed the proposed rate, into effect upon the filing with the regulatory authority of a bond payable to the regulatory authority in an amount and with sureties approved by the regulatory authority conditioned upon refund and in a form approved by the regulatory authority. The utility concerned shall refund or credit against future bills all sums collected during the period of suspension in excess of the rate finally ordered plus interest at the current rate as finally determined by the regulatory authority.

(f) If, after hearing, the Regulatory Authority finds the rates to be unreasonable or in any way in violation of any provision of law, the Regulatory Authority shall determine the level of rates to be charged or applied by the utility for the service in question and shall fix the same by order to be served upon the utility; these rates are thereafter to be observed until changed, as provided by this Act.

Rates for Areas Not Within Municipality

Sec. 44. Public utility rates for areas not within any municipality shall not exceed without commission or railroad commission approval 115 percent of the average of all rates for similar services of all municipalities served by the same utility within the same county.

Unreasonable Preference or Prejudice as to Rates or Services

Sec. 45. No public utility may, as to rates or services, make or grant any unreasonable preference or advantage to any corporation or person within any classification, or subject any corporation or person within any classification to any unreasonable prejudice or disadvantage. No public utility may establish and maintain any unreasonable differences

as to rates of service either as between localities or as between classes of service.

Equality of Rates and Services

Sec. 46. No public utility may, directly or indirectly, by any device whatsoever or in any manner, charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered by the utility than that prescribed in the schedule of rates of the public utility applicable thereto when filed in the manner provided in this Act, nor may any person knowingly receive or accept any service from a public utility for a compensation greater or less than that prescribed in the schedules, provided that all rates being charged and collected by a public utility upon the effective date of this Act may be continued until schedules are filed. Nothing in this Act shall prevent a cooperative corporation from returning to its members the whole, or any part of, the net earnings resulting from its operations in proportion to their purchases from or through the corporation.

Discrimination; Restriction on Competition

Sec. 47. No public utility may discriminate against any person or corporation that sells or leases equipment or performs services in competition with the public utility, nor may any public utility engage in any other practice that tends to restrict or impair such competition.

Payments in Lieu of Taxes

Sec. 48. No payments made in lieu of taxes by a public utility to the municipality by which it is owned may be considered an expense of operation for the purpose of determining, fixing, or regulating the rates to be charged for the provision of utility service to a school district or hospital district. No rates received by a public utility from a school district or hospital district may be used to make or to cover the cost of making payments in lieu of taxes to the municipality by which the public utility is owned.

ARTICLE VII. CERTIFICATES OF CONVENIENCE AND NECESSITY

Definitions

Sec. 49. For the purposes of this article only: (a) "Retail public utility" means any person, corporation, water supply or sewer service corporation, municipality, political subdivision or agency, or cooperative corporation, now or hereafter operating, maintaining, or controlling in Texas facilities for providing retail utility service.

(b) "Public utility" does not include any person, corporation, municipality, political subdivision or agency, or cooperative corporation under the jurisdiction of the Railroad Commission. For the purposes of this article only, "public utility" includes a water supply or sewer service corporation.

Certificate Required

Sec. 50. Beginning one year after the effective date of this Act, unless otherwise specified:

(1) No public utility may in any way render service directly or indirectly to the public under any franchise or permit without first having obtained from the commission a certificate that the present or future public convenience and necessity require or will require such installation, operation, or extension.

(2) Except as otherwise provided in this article no retail public utility may furnish, make available, render, or extend retail public utility service to any area to which retail utility service is being lawfully furnished by another retail public utility on or after the effective date of this Act, without first having obtained a certificate of public convenience and necessity that includes the area in which the consuming facility is located.

Exceptions for Extension of Service

Sec. 51. (a) A public utility is not required to secure a certificate of public convenience and necessity for:

(1) an extension into territory contiguous to that already served by it and not receiving similar service from another public utility and not within the area of public convenience and necessity of another utility of the same kind;

(2) an extension within or to territory already served by it or to be served by it under a certificate of public convenience and necessity; or

(3) operation, extension, or service in progress on the effective date of this Act.

(b) Any extensions allowed by Subsection (a) of this section shall be limited to devices for interconnection of existing facilities or devices used solely for transmitting public utility services from existing facilities to customers of retail utility service.

Application; Maps; Evidence of Consent

Sec. 52. (a) A public utility shall submit to the commission an application to obtain a certificate of public convenience and necessity or an amendment thereof.

(b) On or before 90 days after the effective date of this Act, or at a later date on request in writing by a public utility when good cause is shown, or at such later dates as the commission may order, each public utility shall file with the commission a map or maps showing all its facilities and illustrating separately facilities for generation, transmission, and distribution of its services.

(c) Each applicant for a certificate shall file with the commission such evidence as is required by the commission to show that the applicant has received the required consent, franchise, or permit of the proper municipality or other public authority.

Prior Construction or Operation

Sec. 53. On application made to the commission within six months after the effective date of this Act, the commission shall issue a certificate of public convenience and necessity for the construction or operation then being conducted to any public utility actually providing service to any geographical area on the effective date of this Act, or to any person or corporation actively engaged on the effective date of this Act in the construction, installation, extension, or improvement of, or addition to, any facility or system used or to be used in providing public utility service.

Notice and Hearing; Issuance or Refusal; Factors Considered

Sec. 54. (a) When an application for a certificate of public convenience and necessity is filed, the commission shall give notice of such application to interested parties and, if requested, shall fix a time and place for a hearing and give notice of the hearing. Any person interested in the application may intervene at the hearing.

(b) Except for certificates for prior operations granted under Section 53, the commission may grant applications and issue certificates only if the commission finds that the certificate is necessary for the service, accommodation, convenience, or safety of the public. The commission may issue the certificate as prayed for, or refuse to issue it, or issue it for the construction of a portion only of the contemplated system or facility or extension thereof, or for the partial exercise only of the right or privilege.

(c) Certificates of convenience and necessity shall be granted on a nondiscriminatory basis after consideration by the commission of the adequacy of existing service, the need for additional service, the effect of the granting of a certificate on the recipient of the certificate and on any public utility of the same kind already serving the proximate area, and on such factors as community values, recreational and park areas, historical and aesthetic values, environmental integrity, and the probable improvement of service or lowering of cost to consumers in such area resulting from the granting of such certificate.

Area Included Within City, Town or Village

Sec. 55. (a) If an area has been or shall be included within the boundaries of a city, town, or village as the result of annexation, incorporation, or otherwise, all public utilities certified or entitled to certification under this Act to provide service or operate facilities in such area prior to the inclusion shall have the right to continue and extend service in its area of public convenience and necessity within the annexed or incorporated area, pursuant to the rights granted by its certificate and this Act.

(b) Notwithstanding any other provision of law, a public utility shall have the right to continue and

extend service within its area of public convenience and necessity and to utilize the roads, streets, highways, alleys, and public property for the purpose of furnishing such retail utility service, subject to the authority of the governing body of a municipality to require any public utility, at its own expense, to relocate its facilities to permit the widening or straightening of streets by giving to the public utility 30 days' notice and specifying the new location for the facilities along the right-of-way of the street or streets.

(c) This section may not be construed as limiting the power of cities, towns, and villages to incorporate or extend their boundaries by annexation, nor may this section be construed as prohibiting any city or town from levying taxes and other special charges for the use of the streets as are authorized by Article 11.03, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended.

Contracts Valid and Enforceable

Sec. 56. Contracts between retail public utilities designating areas to be served and customers to be served by those utilities, when approved by the commission, shall be valid and enforceable and shall be incorporated into the appropriate areas of public convenience and necessity.

Preliminary Order for Certificate

Sec. 57. If a public utility desires to exercise a right or privilege under a franchise or permit which it contemplates securing but which has not as yet been granted to it, such public utility may apply to the commission for an order preliminary to the issuance of the certificate. The commission may thereupon make an order declaring that it will, on application, under such rules as it prescribes, issue the desired certificate on such terms and conditions as it designates, after the public utility has obtained the contemplated franchise or permit. On presentation to the commission of evidence satisfactory to it that the franchise or permit has been secured by the public utility, the commission shall issue the certificate.

Continuous and Adequate Service; Discontinuance, Reduction or Impairment of Service

Sec. 58. (a) The holder of any certificate of public convenience and necessity shall serve every consumer within its certified area and shall render continuous and adequate service within the area or areas.

(b) Unless the commission issues a certificate that neither the present or future convenience and necessity will be adversely affected, the holder of a certificate shall not discontinue, reduce, or impair service to a certified service area or part thereof except for:

- (1) nonpayment of charges;
- (2) nonuse; or

(3) other similar reasons in the usual course of business.

(c) Any discontinuance, reduction, or impairment of service, whether with or without approval of the commission, shall be in conformity with and subject to such conditions, restrictions, and limitations as the commission shall prescribe.

Sale, Assignment or Lease of Certificate

Sec. 59. If the commission determines that a purchaser, assignee, or lessee is capable of rendering adequate service, a public utility may sell, assign, or lease a certificate of public convenience and necessity or any rights obtained under the certificate. The sale, assignment, or lease shall be on the conditions prescribed by the commission.

Interference with Other Public Utility

Sec. 60. If a public utility in constructing or extending its lines, plant, or system interferes or attempts to interfere with the operation of a line, plant, or system of any other public utility, the commission may issue an order prohibiting the construction or extension or prescribing terms and conditions for locating the lines, plants, or systems affected.

Improvements in Service; Interconnecting Service; Extended Area Toll-free Telephone Service

Sec. 61. After notice and hearing, the commission may:

(1) order a public utility to provide specified improvements in its service in a defined area, if service in such area is inadequate or is substantially inferior to service in a comparable area and it is reasonable to require the company to provide such improved service;

(2) order two or more public utilities to establish specified facilities for the interconnecting service; and

(3) order a telephone company or telephone companies to provide extended area toll-free service within a specified metropolitan area where there is a sufficient community of interest within the area and such service can reasonably be provided.

Revocation or Amendment of Certificate

Sec. 62. (a) The commission at any time after notice and hearing may revoke or amend any certificate of convenience and necessity if it finds that the certificate holder has never provided or is no longer providing service in the area, or part of the area, covered by the certificate.

(b) When the certificate of any public utility is revoked or amended, the commission may require one or more public utilities to provide service in the area in question.

ARTICLE VIII. SALE OF PROPERTY AND MERGERS

Report of Sale, Merger, etc.; Investigation; Disallowance of Transaction

Sec. 63. No public utility may sell, acquire, lease, or rent any plant as an operating unit or system in this state for a total consideration in excess of \$100,000 or merge or consolidate with another public utility operating in this state unless the public utility reports such transaction to the commission or railroad commission within a reasonable time. On the filing of a report with the commission or railroad commission, the commission or railroad commission shall investigate the same with or without public hearing, to determine whether the action is consistent with the public interest. In reaching its determination, the commission or railroad commission shall take into consideration the reasonable value of the property, facilities, or securities to be acquired, disposed of, merged or consolidated. If the commission or railroad commission finds that such transactions are not in the public interest, the commission or railroad commission shall take the effect of the transaction into consideration in the rate-making proceedings and disallow the effect of such transaction if it will unreasonably affect rates or service. The provisions of this section shall not be construed as being applicable to the purchase of units of property for replacement or to the addition to the facilities of the public utility by construction.

Purchase of Voting Stock in Another Public Utility; Report

Sec. 64. No public utility may purchase voting stock in another public utility doing business in Texas, unless the utility reports such purchase to the commission or railroad commission.

Loans to Stockholders; Report

Sec. 65. No public utility may loan money, stocks, bonds, notes, or other evidences of indebtedness to any corporation or person owning or holding directly or indirectly any stock of the public utility unless the public utility reports the transaction to the commission or railroad commission within a reasonable time.

Gas Reserve Rights: Approval of Sale, Conveyance, etc.

Sec. 66. No gas utility may sell, convey, bank, or assign rights to gas reserves to a utility or, where not in conflict with federal law, to an interstate pipeline without prior approval of the railroad commission.

ARTICLE IX. RELATIONS WITH AFFILIATED INTERESTS

Jurisdiction Over Affiliated Interests

Sec. 67. The commission or railroad commission shall have jurisdiction over affiliated interests having transactions with public utilities under the juris-

diction of the commission or railroad commission to the extent of access to all accounts and records of such affiliated interests relating to such transactions, including but in no way limited to accounts and records of joint or general expenses, any portion of which may be applicable to such transactions.

Disclosure of Substantial Interest in Voting Securities

Sec. 68. The commission or railroad commission may require the disclosure of the identity and respective interests of every owner of any substantial interest in the voting securities of any public utility or its affiliated interest. One percent or more is a substantial interest within the meaning of this section.

ARTICLE X. JUDICIAL REVIEW

Right to Judicial Review; Evidence

Sec. 69. Any party to a proceeding before the commission is entitled to judicial review under the substantial evidence rule. The issue of confiscation shall be determined by a preponderance of the evidence.

Costs and Attorneys' Fees

Sec. 70. Any party represented by counsel who alleges that existing rates are excessive or that those prescribed by the commission are excessive, and who is a prevailing party in proceedings for review of a commission order or decision, may in the same action recover against the regulation fund reasonable fees for attorneys and expert witnesses and other costs for its efforts before the commission and the court, the amount of such attorneys' fees to be fixed by the court. On a finding by the court that an action under this article was groundless and brought in bad faith and for the purpose of harassment, the court may award to the defendant public utility the reasonable attorneys' fees.

ARTICLE XI. VIOLATIONS AND ENFORCEMENT

Action to Enjoin or Require Compliance

Sec. 71. Whenever it appears to the commission or railroad commission that any public utility or any other person or corporation is engaged in, or is about to engage in, any act in violation of this Act or of any order, rule, or regulation of the commission or railroad commission entered or adopted under the provisions of this Act, or that any public utility or any other person or corporation is failing to comply with the provisions of this Act or with any such rule, regulation, or order, the attorney general on request of the commission or railroad commission, in addition to any other remedies provided herein, shall bring an action in a court of competent jurisdiction in the name of and on behalf of the commission or railroad commission against such public utility or other person or corporation to enjoin the commencement or

continuation of any such act, or to require compliance with such Act, rule, regulation, or order.

Penalty Against Public Utility or Affiliated Interest

Sec. 72. (a) Any public utility or affiliated interest that knowingly violates a provision of this Act, fails to perform a duty imposed on it, or fails, neglects, or refuses to obey an order, rule, regulation, direction, or requirement of the commission or railroad commission or decree or judgment of a court, shall be subject to a civil penalty of not less than \$1,000 nor more than \$5,000 for each offense.

(b) A public utility or affiliated interest commits a separate offense each day it continues to violate the provisions of Subsection (a) of this section.

(c) The attorney general shall institute suit on his own initiative or at the request of, in the name of, and on behalf of the commission, or railroad commission, in a court of competent jurisdiction to recover the penalty under this section.

Penalty for Violating Section 6 of This Act

Sec. 73. (a) Any member of the commission, or any officer or director of a public utility or affiliated interest, shall be subject to a civil penalty of \$1,000 for each and every knowing violation of Section 6 of this Act, such penalty to be recovered in a suit filed in a court of competent jurisdiction by the attorney general on his own initiative or at the request of, in the name of, and on behalf of, the commission.

(b) Any person, other than an officer or director of a public utility or affiliated interest or a member of the commission, shall be subject to a civil penalty of \$500 for each and every knowing violation of Section 6 of this Act, such penalty to be recovered in a suit filed in a court of competent jurisdiction by the attorney general on his own initiative or at the request of, in the name of, and on behalf of the commission.

(c) Any member, officer, or employee of the commission found in any action by a preponderance of the evidence to have violated any provision of Section 6 of this Act shall be removed from his office or employment.

Personal Penalty

Sec. 74. (a) Any person or persons who willfully and knowingly violate the provisions of this Act shall be guilty of a third degree felony.

(b) All penalties accruing under this Act shall be cumulative and a suit for the recovery of any penalty shall not be a bar to or affect the recovery of any other penalty, or be a bar to any criminal prosecution against any public utility or any officer, director, agent, or employee thereof or any other corporation or person.

Contempt Proceedings

Sec. 75. If any person fails to comply with any lawful order of the commission or railroad commission or with any subpoena or subpoena duces tecum or if any witness refuses to testify about any matter on which he may be lawfully interrogated, the commission or railroad commission may apply to any court of competent jurisdiction to compel obedience by proceedings for contempt.

Disposition of Fines and Penalties

Sec. 76. Fines and penalties collected under this Act in other than criminal proceedings shall be paid to the commission or railroad commission and paid by the commission or railroad commission to the state treasury to be placed in the general revenue fund.

Venue

Sec. 77. Suits for injunction or penalties under the provisions of this Act may be brought in Travis County, in any county where such violation is alleged to have occurred, or in the county or residence of any defendant.

ARTICLE XII. COMMISSION FINANCING**Assessments Upon Public Utilities**

Sec. 78. An assessment is hereby imposed upon each public utility within the commission's jurisdiction serving the ultimate consumer equal to one-sixth of one percent of its gross receipts from rates charged the ultimate consumers in Texas for the purpose of defraying the costs and expenses incurred in the administration of this Act. Hereafter the commission shall, subject to the approval of the Legislature, adjust this assessment to provide a level of income sufficient to fund commission operation.

Payment Dates; Delinquency

Sec. 79. All assessments shall be due on August 31 of each year. Any public utility may instead make quarterly payments due on August 31, November 30, February 28, and May 31 of each year. There shall be assessed as a penalty an additional fee of 10 percent of the amount due for any late payment. Fees delinquent for more than 30 days shall draw interest at the rate of six percent per annum on the assessment and penalty due.

Payment into General Revenue Fund

Sec. 80. All fees, penalties, and interest paid to the commission under the provisions of this article shall be paid into the general revenue fund.

Approval of Budget

Sec. 81. The budget of the commission shall be subject to legislative approval as part of the appropriations act.

Accounting Records; Audit

Sec. 82. The commission shall keep such accounting records as required by the state auditor and shall be subject to periodic audit.

ARTICLE XIII. MISCELLANEOUS PROVISIONS**Complaint by Any Affected Person**

Sec. 83. Any affected person may complain to the regulatory authority in writing setting forth any act or thing done or omitted to be done by any public utility in violation or claimed violation of any law which the regulatory authority has jurisdiction to administer, or of any order, ordinance, rule, or regulation of the regulatory authority.

Record of Proceedings; Right to Hearing

Sec. 84. A record shall be kept of all proceedings had before the regulatory authority, and all the parties shall be entitled to be heard in person or by attorney.

Judicial Stay or Suspension of Order, Ruling or Decision.

Sec. 85. During the pendency of an appeal, the district court, the court of civil appeals, or the supreme court, as the case may be, may stay or suspend, in whole or in part, the operation of the regulatory authority order, ruling, or decision and such courts in granting or refusing a stay or suspension shall act in accordance with the practice of courts exercising equity jurisdiction.

Amendment

Sec. 86. [Amends art. 6252-9b, § 2(5)(A)].

Assumption of Jurisdiction

Sec. 87. (a) The regulatory authority shall assume jurisdiction and all powers and duties of regulation under this Act on January 1, 1976, except as provided in Subsection (b) of this section.

(b) The regulatory authority shall assume jurisdiction over rates and service of public utilities on September 1, 1976.

Certain Water and Sewer Utility Property Included in Rate Base; Valuation Used; Depreciation Expense

Sec. 87A. (a) The provisions of this section apply notwithstanding any other provision of this Act.

(b) Water and sewer utility property in service which was acquired from an affiliate or developer prior to September 1, 1976, included by the utility in its rate base shall be included in all ratemaking formulae and at the installed cost of the property rather than the price set between the entities. Unless the funds for this property are provided by explicit customer agreements, the property shall be considered invested capital and shall not be considered contributions in aid of construction or customer-contributed capital.

(c) Depreciation expense included in cost of service shall include depreciation on all currently used, depreciable utility property owned by the utility.

Effective Date

Sec. 88. This Act shall become effective on September 1, 1975, and the commission shall thereupon begin organization and the gathering of information as provided in this Act.

Liberal Construction

Sec. 89. This Act shall be construed liberally to promote the effectiveness and efficiency of regulation of public utilities to the extent that such construction preserves the validity of this Act and its provisions. The provisions of this Act shall be construed to apply so as not to conflict with any authority of the United States.

Repealer; Prior Rules and Regulations to Remain in Effect

Sec. 90. (a) Articles 1119, 1121, 1122, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1268, 1423, 1424, and 1425, Revised Civil Statutes of Texas, 1925, as amended; Section 8a, Chapter 283, Acts of the 40th Legislature, Regular Session, 1927 (Article 1011i, Vernon's Texas Civil Statutes) and all other laws and parts of laws in conflict with this Act are repealed effective September 1, 1976.

(b) All rules and regulations promulgated by regulatory authorities in the exercise of their jurisdiction over public utilities, as defined in this Act, shall remain in effect until such time as the commission or railroad commission promulgates provisions applicable to the exercise of the commission's or railroad commission's jurisdiction over public utilities.

Severability

Sec. 91. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

[Acts 1975, 64th Leg., p. 2327, ch. 721, §§ 1 to 91, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1840, ch. 735, § 2.061, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 93, ch. 57, §§ 1 to 4, eff. April 19, 1979; Acts 1979, 66th Leg., p. 578, ch. 268, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 607, ch. 284, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1553, ch. 669, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1600, ch. 676, § 1, eff. Aug. 27, 1979.]

Art. 1446d. Electric Metering in Apartments and Condominiums

Sec. 1. In this Act:

(1) "Apartment house" means a building or buildings containing more than five dwelling units all of which are rented primarily for nontransient

use, with rental paid at intervals of one week or longer. Apartment house shall include residential condominiums, whether rented or owner occupied.

(2) "Dwelling unit" means a room or rooms suitable for occupancy as a residence containing kitchen and bathroom facilities.

Sec. 2. After January 1, 1978, no incorporated city or town, including a home-rule city or other political subdivision of the state, may issue a permit, certificate, or other authorization for the construction or occupancy of a new apartment house or conversion to a condominium unless the construction plan provides for individual metering by the utility company or submetering by the owner of each dwelling unit for the measurement of the quantity of electricity, if any, consumed by the occupants within that dwelling unit.

Sec. 3. Notwithstanding any law to the contrary, the Public Utility Commission of Texas shall promulgate rules, regulations, and standards under which any owner, operator, or manager of an apartment house which is not individually metered for electricity for each dwelling unit may install submetering equipment for each individual dwelling unit for the purpose of fairly allocating the cost of each individual dwelling unit's electrical consumption. In addition to other appropriate safeguards for the tenant, such rules and regulations shall require (a) that an apartment house owner shall not impose on the tenant any extra charges, over and above the cost per kilowatt hour which is charged by the utility company to the owner, and (b) that the apartment house owner shall maintain adequate records regarding submetering and shall make such records available for inspection by the tenant during reasonable business hours. Any rule, regulation, or standard promulgated by the commission pursuant to this section shall be deemed to have been entered or adopted under the Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes), and for purposes of enforcement, both utility companies and the owners, operators, or managers of apartment houses included in this Act are subject to enforcement pursuant to Sections 71, 72, 73, 74, 75, 76, and 77 of the Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes). All submetering equipment shall be subject to the same rules, regulations, and standards established by the commission for accuracy, testing, and record keeping of meters installed by electric utilities and shall be subject to the meter testing requirements of Section 36 of the Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes).

Sec. 4. If, during the 90-day period preceding the installation of individual meters or submeters, an owner, operator, or manager of an apartment house has increased rental rates and such increase is attrib-

utable to increased costs of utilities, then such owner, operator, or manager shall immediately reduce the rental rate by the amount of such increase and shall refund all of such increase that has previously been collected within said 90-day period.

[Acts 1977, 65th Leg., p. 942, ch. 353, §§ 1 to 4, eff. Aug. 29, 1977.]

9. TRADE ZONES

Art. 1446.2. McAllen Trade Zone Corporation

The McAllen Trade Zone, Inc., organized and incorporated under the laws of the State of Texas, with offices at McAllen, Hidalgo County, Texas, is authorized to apply for and accept a grant to establish, operate and maintain a foreign trade zone at the McAllen Port of Entry, and other sub-zones, subject to the requirements of federal law and regulations of the Foreign Trade Zones Board. One of the sub-zones may be in Starr County.

[Amended by Acts 1979, 66th Leg., p. 198, ch. 102, § 1, eff. May 9, 1979.]

Art. 1446.5. Amarillo Trade Zone Corporation

The Amarillo Trade Zone, Inc., organized and incorporated under the laws of the State of Texas, with offices at or near Amarillo, Potter, and Randall counties, is authorized to apply for and accept a grant to establish, operate, and maintain a foreign-trade zone at Amarillo, Potter, and Randall counties, and other subzones, subject to the requirements of federal law and regulations of the Foreign-Trade Zones Board.

[Acts 1975, 64th Leg., p. 1929, ch. 628, § 1, eff. Sept. 1, 1975.]

Art. 1446.6. Galveston Port of Entry Trade Zone

The city of Galveston, Galveston County, Texas, a municipal corporation organized and incorporated under the laws of the State of Texas, or its board of trustees of the Galveston Wharves, is hereby authorized to apply for and accept a grant or permit to establish, operate, and maintain a United States foreign trade zone as defined in the Foreign Trade Zones Act (19 U.S.C.A. Section 81a (1965)), at the Galveston port of entry, and any subzones thereof, and upon approval of such application and issuance of such grant or permit, to do all things necessary or appropriate to the establishment, operation, and maintenance of such foreign trade zone and any subzones thereof, subject to complying with the requirements of federal law and the regulations of the U. S. Foreign Trade Zones Board, Washington, D.C.

[Acts 1977, 65th Leg., p. 150, ch. 74, § 1, eff. April 25, 1977.]

Art. 1446.7. Houston Port of Entry Foreign Trade Zone

The Houston Foreign-Trade Zone, Incorporated, a private corporation incorporated under the laws of

this state, the city of Houston, and the Port of Houston Authority of Harris County, Texas, are each authorized to apply for and accept a grant or permit to establish, operate, and maintain a foreign-trade zone at the Houston port of entry and any subzones of it, and to do anything necessary to establish, operate, and maintain the foreign-trade zone, if the application is approved, subject to federal law and the regulations of the Foreign-Trade Zones Board.

[Acts 1977, 65th Leg., p. 226, ch. 109, § 1, eff. Aug. 29, 1977.]

Art. 1446.8. Joint Airport Boards Foreign Trade Zone

Sec. 1. This Act shall be applicable to joint airport boards (herein called "Authorized Boards") created pursuant to Chapter 114, Acts of the 50th Legislature, Regular Session, 1947 (Article 46d-14, Vernon's Texas Civil Statutes), by two or more cities having a combined population greater than 1,000,000 according to the last preceding federal decennial census.

Sec. 2. Authorized boards are hereby authorized to apply for permits, licenses, and other grants of authority, and to accept the same, to establish, operate, and maintain one or more foreign trade zones within any county or counties in which the airport of the authorized board is situated, as Texas ports of entry under federal law, and to establish, operate, and maintain other sub-zones within the same counties, subject to all requirements of federal law and to the regulations of the Foreign Trade Zones Board of the United States or successor agency.

Sec. 3. In the operation and maintenance of any foreign trade zone or sub-zone under this Act, the authorized board shall have and possess whatever additional powers and authorizations, additional to its other statutory and locally granted powers, as shall be required or necessary to establish, operate, and maintain such foreign trade zones and sub-zones under and in accordance with federal law, rules, and regulations.

[Acts 1977, 65th Leg., p. 268, ch. 129, §§ 1 to 3, eff. Aug. 29, 1977.]

Art. 1446.9. El Paso Trade Zone Corporation

The El Paso Trade Zone, Inc., organized and incorporated under the laws of the State of Texas, with offices at or near El Paso, El Paso County, Texas, is authorized to apply for and accept a grant to establish, operate, and maintain a foreign trade zone adjacent to any port of entry in El Paso County, Texas, and other subzones, subject to the requirements of federal law and regulations of the Foreign Trade Zones Board.

[Acts 1977, 65th Leg., p. 372, ch. 183, § 1, eff. May 20, 1977.]

Art. 1446.10. San Antonio Foreign Trade Zone

Sec. 1. The city of San Antonio or a nonprofit corporation organized under Texas law and designated by the city of San Antonio is authorized to apply for and accept a grant to establish, operate, and maintain a foreign trade zone at or adjacent to the San Antonio International Airport, and other subzones, subject to the requirements of federal law and regulations of the Foreign Trade Zones Board.

Sec. 2. After the nonprofit corporation has accepted a grant to establish, operate, and maintain the foreign trade zone as authorized by this Act, the city may not exercise any further control or supervision over the corporation in regard to the naming of directors and officers of the corporation or to the corporation's internal management or organization. [Acts 1977, 65th Leg., p. 706, ch. 265, §§ 1, 2, eff. Aug. 29, 1977.]

Art. 1446.11. Brownsville Navigation District Foreign Trade Zone

The Brownsville Navigation District, organized and incorporated under the laws of the State of Texas, is hereby authorized to apply for and accept a grant or permit to establish, operate, and maintain a U. S. Foreign-Trade Zone as defined in the U. S. Foreign-Trade Zone Act (19 U.S.C.A. Section 81a et seq., 1965, as amended) at the Brownsville port of entry, and subzones thereof, and upon approval of such application and issuance of such grant or permit to do all things necessary or appropriate to the establishment, operation, and maintenance of such Foreign-Trade Zone and any subzones thereof subject to compliance with the requirements of federal law and the regulations of the U.S. Foreign Trade Zones Board, Washington, D.C.

[Acts 1979, 66th Leg., p. 1637, ch. 685, § 1, eff. Aug. 27, 1979.]

CHAPTER SEVENTEEN. TRUST COMPANIES AND INVESTMENTS**Art. 1513a. Creation of Trust Company; Purposes****Creation; Purposes**

Sec. 1. Except as provided by Section 6 of this Act, trust companies may be created, and any corporation, however created, may amend its charter in compliance herewith for the following purpose: to act as trustee, executor, administrator, or guardian when designated by any person, corporation, or court to do so, and as agent for the performance of any lawful act, including the right to receive deposits made by agencies of the United States of America for the authorized account of any individual, and to act as attorney-in-fact for reciprocal or inter-insurance exchange, and to lend and accumulate money

without banking privileges, when licensed under the provisions of Subtitle II of Title 79, Revised Civil Statutes of Texas, 1925, as amended.

Supervision of Banking Commissioner; Annual Statement; Examination of Trust Companies; Penalties

Sec. 2. (a) Such corporations shall be subject to supervision by the Banking Commissioner of Texas and shall file with the Banking Commissioner of Texas on or before February 1 of each year a statement of its condition on the previous December 31, in such form as may be required by the Banking Commissioner, showing under oath its assets and liabilities, together with a fee of \$50 for filing; which statement when so filed shall not be open to the public but shall be for the information of the Banking Commissioner and his employees. The Banking Commissioner may, for good cause shown, extend the time for filing such statement for not more than 60 days. The Banking Commissioner, or his authorized assistants or representative, shall not make public the contents of said statement, or any information derived therefrom, except in the course of some judicial proceeding in this state.

(b) The Banking Commissioner of Texas shall have authority to examine or cause to be examined each such corporation annually or more often if he deems it necessary. Such corporation shall pay the actual traveling expenses, hotel bills, and all other actual expenses incident to such examination and a fee not exceeding \$50 per day per person engaged in such examination. If such corporation has not sold in Texas, and does not offer for sale or sell in Texas, any of its securities which have been registered or with respect to which a permit authorizing their sale has been issued under the Securities Act, as presently in force or hereafter amended, the Banking Commissioner of Texas, in lieu of an examination, shall accept the financial statement filed by such corporation pursuant to the first paragraph of this Section. Such fees, together with all other fees, penalties and revenues collected by the Banking Department, shall be retained by the department and shall be expended only for the expenses of the department.

[See Compact Edition, Volume 2 for text of 2(c) to 5]

Registered Bank Holding Companies, Banks, or Trust Companies Whose Operations are Principally Outside State; Foreign Corporations

Sec. 6. (a) The provisions of this Act shall apply to any registered bank holding company, bank, or trust company whose operations are principally conducted outside this state, and any foreign corporations which were authorized to transact business in this state under a certificate of authority issued before September 1, 1979, which authorizes such corporation to exercise in this state all or any of the purposes, powers or authorities referred to in Section 1 hereof. Provided, however, nothing in this

Act shall be construed as precluding any resident of the State of Texas from establishing a trust relationship with any state or national bank or trust company whether such state or national bank or trust company is or is not domiciled in the State of Texas.

(b) A registered bank holding company, bank, or trust company whose operations are principally conducted outside this state or a foreign corporation, the operations of which are principally conducted outside this state, either directly, indirectly, or through a foreign or domestic subsidiary or affiliate, may not:

- (1) do business as a trust company in this state;
- (2) acquire or control any trust company in this state that is chartered under the laws of this state; or
- (3) exercise in this state any of the powers referred to in Section 1 of this Act except as provided by Section 105A, Texas Probate Code, as amended.

(c) Every such registered bank holding company or foreign corporation that before September 1, 1979, was authorized to transact business in the state shall be subject to the examination of the Banking Commissioner of Texas in the same manner and under the same terms and conditions as are domestic corporations. In lieu of such examinations, the Banking Commissioner of Texas may, in his discretion, accept reports of examination made by the supervising authority of the state in which the home office of such foreign corporation is domiciled. Failure to comply with this Act shall constitute grounds for revocation of the certificate of authority of such foreign corporation to transact business in this state in an action filed by the Attorney General upon the request of the Banking Commissioner of Texas.

Registered Bank Holding Companies, Banks, Trust Companies, or Foreign Corporations; Control over Trust Company

Sec. 6A. (a) A registered bank holding company, bank, trust company, or foreign corporation has control over a trust company if:

- (1) it directly or indirectly, such as by acting through one or more persons, corporations, partnerships, business trusts, associations, or similar organizations, owns, controls, or has power to vote 25 percent or more of the shares of any class of voting securities of the trust company;
- (2) it controls in any manner the election of a majority of the directors of the trust company; or
- (3) the Banking Commissioner of Texas determines that the registered bank holding company, bank, or trust company or foreign corporation directly or indirectly exercises a controlling influence over the management or policies of the trust company.

(b) The operations of a registered bank holding company, bank, or trust company are principally conducted outside this state if:

- (1) in the case of a registered bank holding company:
 - (A) the largest amount of the total deposits of all banks controlled by the registered bank holding company is held outside this state; or
 - (B) the largest amount of the total trust assets held by all banks or trust companies controlled by the registered bank holding company is held or administered outside this state;
- (2) in the case of a bank, the largest amount of its total deposits is held outside this state; and
- (3) in the case of a trust company, the largest amount of its total trust assets is held or administered outside this state.

[See Compact Edition, Volume 2 for text of 7] [Amended Acts 1975, 64th Leg., p. 1368, ch. 523, §§ 1, 2, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1504, ch. 649, §§ 1 to 3, eff. Sept. 1, 1979.]

CHAPTER EIGHTEEN. MISCELLANEOUS

Article 1528i. Texas Mutual Trust Investment Company Act.

Art. 1528c. Telephone Cooperative Act

[See Compact Edition, Volume 2 for text of 1 to 3]

Powers of Corporation

Sec. 4. Each corporation shall have power:

- (1) To sue and be sued, complain and defend, in its corporate name;
- (2) To have perpetual succession unless a limited period of duration is stated in its articles of incorporation;
- (3) To adopt a corporate seal which may be altered at pleasure, and to use it, or a facsimile thereof, as required by law;
- (4) To furnish, improve and expand telephone service to its members, to governmental agencies and political subdivisions, and to other persons not in excess of ten per centum (10%) of the number of its members, provided, however, that, without regard to said ten per centum (10%) limitation, telephone service may be made available by a corporation through interconnection of facilities to any number of subscribers of other telephone systems, and through pay stations to any number of users; and provided, further, that a corporation which acquires existing telephone facilities may continue service to persons, not in excess of forty per centum (40%) of the number of its members, who are already receiving service from such facili-

ties without requiring such persons to become members but such persons may become members upon such terms as may be prescribed in the by-laws; provided there shall be no duplication of services where reasonably adequate telephone services are available.

(5) To construct, purchase, lease as lessee, or otherwise acquire, and to improve, expand, install, equip, maintain, and operate, and to sell, assign, convey, lease as lessor, mortgage, pledge, or otherwise dispose of or encumber, telephone lines, facilities or systems, lands, buildings, structures, plants and equipment, exchanges, and any other real or personal property, tangible or intangible, which shall be deemed necessary, convenient or appropriate to accomplish the purpose for which the corporation is organized; provided that no cooperative shall furnish local telephone exchange service within the boundaries of any incorporated or unincorporated city, town or village within this State having a population in excess of one thousand five hundred (1,500) inhabitants according to the last preceding Federal Census, except where the governing body (the City Council of an incorporated area and Commissioners Court in an unincorporated area) after published notice and public hearing determines the population of such incorporated or unincorporated city, town or village has decreased below one thousand five hundred (1,500) inhabitants since taking and publishing the last preceding Federal Census, which order shall be entered of record in the official minutes of said governing body and shall be accepted as a true and correct determination of such population for all purposes hereunder unless contest thereof be filed within sixty (60) days from date of such order, or the official entry thereof, by any company or person at interest or living in the affected area, in a court of competent jurisdiction, in which event the question shall abide the result of such contest; and provided further that the corporation may continue to furnish telephone exchange service within the boundaries of any incorporated or unincorporated city, town, or village within this State having a population in excess of one thousand five hundred (1,500) inhabitants according to the latest Federal Census, if the area was previously receiving local telephone exchange service from the corporation prior to the time that the area increased in population to more than one thousand five hundred (1,500) inhabitants or the area became annexed to an incorporated city, town, or village having a population in excess of one thousand five hundred (1,500) inhabitants; and provided further that this Subsection shall not be considered as a limitation or expansion of the provisions of Subsection (4) of Section 4.

(6) To connect and interconnect its telephone lines, facilities or systems with other telephone lines, facilities or systems;

(7) To make its facilities available to persons furnishing telephone service within or without this State;

(8) To purchase, lease as lessee, or otherwise acquire, and to use, and exercise and to sell, assign, convey, mortgage, pledge or otherwise dispose of or encumber, franchises, rights, privileges, licenses and easements;

(9) To issue membership certificates as hereinafter provided;

(10) To borrow money and otherwise contract indebtedness, and to issue or guarantee notes, bonds, and other evidences of indebtedness, and to secure the payment thereof by mortgage, pledge, or deed of trust of, or any other encumbrance upon, any or all of its real or personal property, assets, franchises, or revenues;

(11) To construct, maintain and operate telephone lines along, upon, under and across publicly owned lands and public thoroughfares, including all roads, highways, streets, alleys, bridges and causeways, subject, however, to the same restrictions and obligations required of electric transmission cooperatives in House Bill No. 393, Acts of the Fifty-first Legislature, Regular Session.¹

(12) To exercise the power of eminent domain in the manner provided by the laws of this State for the exercise of such power by other corporations constructing or operating telephone lines, facilities or systems.

(13) To conduct its business and exercise its powers within or without this State;

(14) To adopt, amend and repeal by-laws;

(15) To make any and all contracts necessary, convenient or appropriate for the full exercise of the powers herein granted; and

(16) To do and perform any other acts and things, and to have and exercise any other powers which may be necessary, convenient or appropriate to accomplish the purpose for which the corporation is organized.

¹ Article 1436a.

[See Compact Edition, Volume 2 for text of 5 to 13]

Board of Directors

Sec. 14.

[See Compact Edition, Volume 2 for text of 14(a) and (b)]

(c) Instead of electing all the directors annually, the by-laws may provide that the directors, other than those named in the articles of incorporation to serve until the first annual meeting of the members, shall be elected by the members for a term not to exceed three (3) years. If a term other than one (1) year is provided by the by-laws, then a staggered term will be provided with one-half (½) of the di-

rectors (or the number nearest thereto) being elected annually when a two (2) year term is provided, and one-third (1/3) of the directors (or the number nearest thereto) being elected annually when a three (3) year term is provided. Thereafter, as directors' terms expire, the members shall elect their successors to serve until the second or third succeeding annual meeting after their election.

[See Compact Edition, Volume 2 for text of 14(d) to 34.]

[Amended by Acts 1975, 64th Leg., p. 343, ch. 145, § 1, eff. May 8, 1975; Acts 1975, 64th Leg., p. 344, ch. 146, § 1, eff. May 8, 1975.]

Art. 1528e. Professional Corporations Act

[See Compact Edition, Volume 2 for text of 1 to 3]

Articles of Incorporation

Sec. 4. One or more individuals, each of whom is licensed or otherwise legally authorized to render the same kind of professional service within this state, may incorporate a professional corporation by filing the original and a copy of Articles of Incorporation with the Secretary of State. No professional corporation organized under this Act shall render more than one kind of professional service. The Articles of Incorporation shall set forth:

(a) The purpose for which the corporation is organized, including a statement of the one specific kind of professional service to be rendered by the corporation.

(b) The name of the corporation.

(c) The names and addresses of the individuals who are to be the shareholders of the corporation.

(d) The number of directors constituting the initial Board of Directors and the names and addresses of the persons who are to serve as the initial directors.

(e) The address of the principal office of the corporation.

(f) If the duration of the corporation is not to be perpetual, the period of its duration.

(g) The names and addresses of the Incorporators, each of whom must be duly licensed or otherwise legally authorized to render in this state the specific kind of professional service to be rendered by the corporation.

(h) Such other provisions, not inconsistent with law, which the shareholders may elect to set forth for the regulation of the internal affairs of the corporation.

[See Compact Edition, Volume 2 for text of 5 to 7]

Name

Sec. 8. A professional corporation may adopt any name that is not contrary to the law or ethics regulating the practice of the professional service rendered through the professional corporation. A professional corporation may use the initials "P.C." in its corporate name in lieu of the word, or in lieu of the abbreviation of the word, "corporation," "company," or "incorporated."

Board of Directors

Sec. 9. A professional corporation shall be governed by a Board of one or more Directors, which shall have the power to manage the business and affairs of the corporation, and the continuing authority to make management decision on its behalf. No person not duly licensed or otherwise duly authorized to render the professional service of the corporation shall be a member of the Board of Directors. The number of directors shall be fixed by the bylaws of the professional corporation or by the Articles of Incorporation if such articles specifically prescribe the number of directors.

Officers

Sec. 10. The Board of Directors shall elect a President and a Secretary and such other officers as it may deem desirable to have to conduct the affairs of the professional corporation. One person may serve as both President and Secretary. No person not duly licensed or otherwise duly authorized to render the professional service of the professional corporation may hold an office.

[See Compact Edition, Volume 2 for text of 11 to 17]

Dissolution

Sec. 18. A professional corporation may be dissolved at any time by the affirmative vote of the holders of at least two-thirds of the outstanding shares of the corporation by a meeting called and held in accordance with the bylaws or by unanimous written consent of all shareholders without the necessity of a meeting. The resolution (noting the shares voting for and against such resolution) or written consent, certified by the President or a Vice-President, or the Secretary of the corporation, and a copy of the resolution or consent shall be filed in the office of the Secretary of State and the dissolution shall be effective from the time of such filing. In the event of a dissolution of a professional corporation, the Board of Directors, as Trustees of the property and assets of the corporation, shall apply the assets first to the payment of debts of the corporation and second, to or among the shareholders, as the Articles of Incorporation shall provide.

[See Compact Edition, Volume 2 for text of 19 and 20]

[Amended by Acts 1975, 64th Leg., p. 243, ch. 92, § 1, eff. April 30, 1975; Acts 1977, 65th Leg., p. 1613, ch. 630, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 219, ch. 120, §§ 16, 17, eff. May 19, 1979.]

Art. 1528f. Professional Associations Act

[See Compact Edition, Volume 2 for text of 1 to 11]

Filing of Articles of Association

Sec. 12. (A) The original and a copy of the articles of association shall be delivered to the Secretary of State. If the Secretary of State finds that the articles of association conform to law, he shall, when all fees have been paid as required by law:

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

(2) File the original in his office.

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

(B) The certificate of association, together with the copy of the articles of association affixed thereto by the Secretary of State, shall be delivered to the members or their representatives.

[See Compact Edition, Volume 2 for text of 13 and 14]

Articles of Amendment

Sec. 15. The Articles of amendment shall be executed by the association by its president or a vice-president and by its secretary or an assistant secretary, and certified by one of the officers signing such articles, and shall set forth:

(1) The name and address of the association

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

(3) The date of the adoption of the amendment

(4) A statement that the amendment was adopted in accordance with the procedure for amendment stated in the articles of association, or, if none is stated therein, a statement that the amendment was adopted by two-thirds vote of its members.

Filing of Articles of Amendment

Sec. 16. (A) The original and a copy of the articles of amendment shall be delivered to the Secretary of State. If the Secretary of State finds that the articles of amendment conform to law, he shall, when all fees have been paid as required by law:

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

(2) File the original in his office.

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

(B) The certificate of amendment, together with the copy of the articles of amendment affixed thereto by the Secretary of State, shall be delivered to the association or its representatives.

[See Compact Edition, Volume 2 for text of 17]

Articles of Dissolution

Sec. 18. The articles of dissolution shall be executed by the association by its president or a vice-president and by its secretary or an assistant secretary, and verified by one of the officers signing such articles. If there are no living officers of the association, the articles shall be executed by the legal representative of the last surviving officer. The articles of dissolution shall set forth:

(1) The name and address of the association

(2) The names and respective addresses of its officers

(3) The names and respective addresses of the members of its Board of Directors or Executive Committee

(4) A statement that the association is dissolving in accordance with its articles of association or, if there is no dissolution provision in the articles, by two-thirds vote of its members.

Filing of Articles of Dissolution

Sec. 19. (A) The original and a copy of the articles of dissolution shall be delivered to the Secretary of State. If the Secretary of State finds that the articles of dissolution conform to law, he shall, when all fees have been paid as required by law:

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

(2) File the original in his office.

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

(B) The certificate of dissolution, together with the copy of the articles of dissolution affixed thereto by the Secretary of State, shall be delivered to the association or its representatives.

[See Compact Edition, Volume 2 for text of 20 to 25]

[Amended by Acts 1979, 66th Leg., p. 220, ch. 120, §§ 18 to 22, eff. May 9, 1979.]

Art. 1528i. Texas Mutual Trust Investment Company Act

Short Title

Sec. 1. This Act may be cited as the Texas Mutual Trust Investment Company Act.

Definitions

Sec. 2. As used in this Act, the term "mutual trust investment company" means a corporation which is:

(a) an open-end investment company as defined in and subject to an Act of Congress entitled Investment Company Act of 1940, approved August 22, 1940, as amended;¹ and

(b) incorporated in compliance with the provisions of this Act to constitute a medium for the common investment of trust funds held in a fiduciary capacity and for true fiduciary purposes, either alone or with one or more cofiduciaries, by state banks with trust powers, trust companies, and national banks with trust powers.

¹ 15 U.S.C.A. § 80a-1 et seq.

Application of General Corporation Law; Articles of Incorporation

Sec. 3. Such a mutual trust investment company shall be incorporated under and be subject to the general corporation laws of this state except as herein otherwise provided. The incorporators subscribing and acknowledging the articles of incorporation shall consist of five or more persons who are officers or directors of the banks and trust companies causing such mutual trust investment company to be incorporated, and the articles of incorporation shall set forth, in addition to the facts specified in the general corporation laws, the name of each bank and trust company causing such corporation to be incorporated and the amount of stock originally subscribed for by each.

Corporate Powers; Ownership of Stock

Sec. 4. (a) The stock of a mutual trust investment company shall be owned only by state banks with trust powers, trust companies, and national banks with trust powers, acting as fiduciaries, and their cofiduciaries, if any, but may be registered in the name of their nominee or nominees.

(b) The stock of a mutual trust investment company shall not be subject to transfer or assignment except to the mutual trust investment company or to a fiduciary or cofiduciary which becomes successor to the stockholders and which is also a bank or trust

company qualified to hold such stock under the provisions of this Act.

(c) A mutual trust investment company shall have not less than five directors who need not be stockholders but shall be officers or directors of banks or trust companies, provided that officers or directors of banks and trust companies not located in this state may not be directors of a mutual trust investment company unless that officer's or director's bank or trust company owns stock in a fiduciary capacity in the mutual trust investment company.

(d) A mutual trust investment company may invest its assets only in those investments in which a trustee may invest under the laws of this state.

(e) A mutual trust investment company may acquire, purchase, or redeem its own stock and shall, by means of contract or of its bylaws, bind itself to acquire, purchase, or redeem its own stock, but it shall not vote upon shares of its own stock.

(f) A mutual trust investment company shall not be responsible for ascertaining the investment powers of any fiduciary who may purchase its stock and shall not be liable for accepting funds from a fiduciary in violation of the restrictions of the will, trust indenture, or other instrument under which such fiduciary is acting in the absence of actual knowledge of such violation, and shall be accountable only to the fiduciaries who are the owners of its stock.

Purchase of Stock by Fiduciaries; Authority and Restrictions

Sec. 5. (a) State banks with trust powers, trust companies, and national banks with trust powers, acting as a fiduciary and for true fiduciary purposes, either alone or with one or more cofiduciaries, may, if exercising the care of a prudent investor and with the consent of such cofiduciary or cofiduciaries, if any, invest and reinvest funds held in such fiduciary capacity in the shares of stock of a mutual trust investment company except where the will, trust indenture, or other instrument under which such fiduciary is acting prohibits such investment.

(b) A mutual trust investment company shall be permitted to rely on the written statement of any bank or trust company purchasing its stock that the purchase complies with the foregoing requirement.

(c) For purposes of Sections 4 and 5 of this Act, the word "stock" shall mean a unit of participation in the net asset value of one or more of the investment funds of a mutual trust investment company.

Audits and Reports

Sec. 6. (a) A mutual trust investment company shall, at least once during each period of 12 months, cause an adequate audit to be made of the company

by auditors responsible only to the board of directors of the company.

(b) A mutual trust investment company shall furnish annually a copy of the audited financial statement to each corporate fiduciary owning stock in the mutual trust investment company.

(c) The reasonable expenses of any such annual audits made by independent public accountants or certified public accountants and the cost of preparing and distributing the reports shall be borne and paid for by the mutual trust investment company. [Acts 1979, 66th Leg., p. 112, ch. 71, §§ 1 to 6, eff. Aug. 27, 1979.]

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Art. 1.01a. Definitions

[See Compact Edition, Volume 2 for text of (a) to (c)]

(d) As used in this Code, the term "ward" in reference to a geographical subdivision of a city or town includes every geographical subdivision, by whatever name it is known, from which any members of the municipal governing body are elected by only the voters residing therein.

[Amended by Acts 1977, 65th Leg., p. 1476, ch. 600, § 1, eff. Aug. 29, 1977.]

Art. 1.01-1. Expired

This article, derived from Acts 1977, 65th Leg., p. 880, ch. 331, §§ 1 to 7, and relating to the Election Code Revision Commission, expired of its own terms on May 29, 1979.

Art. 1.03. Secretary of State as Chief Election Officer

[See Compact Edition, Volume 2 for text of 1]

Subd. 2. At least 35 days before each general election for state and county officers, the Secretary of State shall prescribe forms of all blanks necessary under this code and shall furnish same to each county clerk. The Secretary of State shall at the same time certify to each county clerk a list of all the candidates who have been nominated for state and district offices and all other candidates whose names have been certified to the Secretary of State to be placed on the general election ballot.

Subd. 3. Upon petition of fifteen or more resident citizens of any one county to the Secretary of State, the Secretary of State shall, or may at any time upon his own initiative, appoint inspectors to observe all functions, activities, or procedures conducted pursuant to the election laws of this State. Any such inspectors shall be subject to the direction of and responsible to the Secretary of State and he may terminate any appointment at any time. Any such inspectors may be present at, observe, and take reasonable steps to evidence all activities, functions, and procedures (except for the marking of any ballot

by a voter, unless being assisted by an election officer) at any polling place, place of canvass, central counting station, or other place where official election or registration functions take place. The Secretary of State or any member of his staff may, upon the initiative of the Secretary of State alone, whether any violation of election laws is suspected or not, be present at, observe, and take reasonable steps to evidence any activities, functions, and procedures at any polling place, place of canvass, central counting station, or other place where official election or registration functions take place. Any inspectors appointed under this provision shall report to the Secretary of State any violations of law observed and the Secretary of State may refer the violation to the Attorney General or a prosecuting attorney for appropriate action.

[Amended by Acts 1975, 64th Leg., p. 2074, ch. 681, § 1, eff. June 20, 1975; Acts 1977, 65th Leg., p. 882, ch. 332, § 1, eff. Aug. 29, 1977.]

Art. 1.05. Ineligibility

Subd. 1. No person shall be eligible to be a candidate for, or to be elected or appointed to, any public elective office in this state unless he is a citizen of the United States eligible to hold such office under the Constitution and laws of this state, is not mentally incompetent as determined by a court, has not been convicted of a felony for which he has not been pardoned or had his full rights of citizenship restored by other official action, and will be 18 years of age or older on the commencement of the term to be filled at the election or on the date of his appointment, and unless he will have resided in this state for a period of 12 months next preceding the applicable date specified below, and for any public office which is less than statewide, shall have resided for six months next preceding such date in the district, county, precinct, municipality or other political subdivision for which the office is to be filled:

(1) For a candidate whose name is printed on the ballot for a general (first) primary election, the applicable date is the last day on which any candidate for the office involved could file his application to have his name printed on the ballot for that primary election.

(2) For an independent or nonpartisan candidate in a general or special election, the applicable date is the last day on which the candidate's application for a place on the ballot could be delivered to the appropriate officer for receiving the application.

(3) For a write-in candidate, the applicable date is the day of the election at which the candidate's name is written in.

(4) For a party nominee who is nominated by any method other than by primary election, the applicable date is the day on which the nomination is made.

(5) For an appointee to an office, the applicable date is the day on which the appointment is made.

Subd. 2. The foregoing requirements do not apply to any office for which the Constitution or statutes of the United States or of this state prescribe the exclusive qualifications for the office or prescribe qualifications in conflict herewith, and in such case the provisions of such other laws control.

Subd. 2a. In the circumstances described in this subdivision, the residence requirements stated herein supersede the six-month precinct residence requirement stated in Subdivision 1 of this section. If the date of an order changing the boundaries of county commissioners precincts or justice of the peace precincts is less than seven months before the applicable date stated in Subdivision 1 of this section, a candidate for a precinct office in a precinct whose boundaries are affected by the order (including any newly created precinct) must have been a resident of the county in which the precinct is situated for six months next preceding the applicable date stated in Subdivision 1 and must be a resident of the precinct on that date. When a precinct office of an affected precinct is to be filled by an appointment to take effect on or after the date on which the boundary changes become effective but less than seven months after the date of the order making the changes, the appointee must have been a resident of the county for six months next preceding the effective date of the appointment and must be a resident of the precinct on that date.

For the purpose of the first paragraph of this subdivision, the date of the order changing the precinct boundaries means the appropriate date defined in this paragraph, as follows:

(1) If the change is made by an order of the commissioners court which is not challenged in a judicial proceeding brought before the applicable date stated in Subdivision 1 of this section, the date of the order means the date on which the commissioners court entered its order setting out the new boundaries.

(2) If the change is made, confirmed, or modified by a judicial decree or if judicial review of an order of the commissioners court is denied before the applicable date stated in Subdivision 1, the date of the order means the date of entry of the decree (including an order denying a motion for new trial, motion for rehearing, or similar motion)

finally concluding the legal action establishing or confirming the boundary lines or denying review of the order establishing the lines.

(3) If on the applicable date stated in Subdivision 1 of this section a final decree concluding legal action has not been entered but there is an outstanding judicial decree putting a change in boundaries into effect or refusing to enjoin or to stay enforcement of an order establishing new boundary lines pending final disposition of the action, the date of the order means the date of entry of that decree.

Subd. 3. A home-rule city by charter may prescribe for its elective officers different age and residence requirements from those prescribed in Subdivision 1 of this section, but a charter may not set a minimum age greater than 21 years or a minimum length of residence in the state or city greater than 12 months next preceding the election.

Subd. 4. Except as provided in Section 104 of this code (Article 8.22, Vernon's Texas Election Code), no ineligible candidate shall ever have his name placed upon the ballot at any primary, general or special election. No ineligible candidate shall ever be voted upon nor have votes counted for him at any such primary, general or special election for the purpose of nominating or electing him, but votes cast for an ineligible candidate shall be taken into account in determining whether any other candidate received the necessary vote for nomination or election.

Subd. 5. No person who advocates the overthrow by force or violence or change by unconstitutional means of the present constitutional form of government of the United States or of this state shall be eligible to have his name printed on any official ballot in any general, special or primary election in this state.

[Amended by Acts 1975, 64th Leg., p. 2080, ch. 682, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1373, ch. 545, § 1, eff. Aug. 29, 1977.]

Art. 1.05-1. Repealed by Acts 1975, 64th Leg., p. 2098, ch. 682, § 28, eff. Sept. 1, 1975

Art. 1.08a. Bilingual Election Materials in English and Spanish

Elections and Areas in Which Bilingual Materials are Required

Subd. 1. (a) In every general, special, or primary election, by whatever authority held, which is held within a county in which five percent or more of the inhabitants are persons of Spanish origin or descent, according to the federal census specified in Paragraph (b) of this subdivision, the election materials enumerated in Subdivision 3 of this section shall be printed in both English and Spanish for use at the polling place in each election precinct that is not

exempt from this requirement under Subdivision 2. In the elections of a political subdivision that includes territory in more than one county, the bilingual materials must be used in each precinct that includes territory lying within a county to which this subdivision applies unless the precinct is exempt under Subdivision 2.

(b) The census used for determining the percentage of persons of Spanish origin or descent is the last preceding federal decennial census for which the enumeration date was more than two years before January 1 of the calendar year in which the election is held.

Election Precincts Exempt from Requirement

Subd. 2. (a) An election precinct situated in a county to which Subdivision 1 applies is exempt from the requirement for bilingual election materials if official census information or other information shows that persons of Spanish origin or descent comprise less than five percent of the inhabitants of the precinct. The authority holding the election has the burden of establishing entitlement to the exemption. Unless otherwise ordered by a court of competent jurisdiction, the officer or body responsible for obtaining the supplies for the election is relieved of the duty to furnish bilingual materials for those precincts for which there has been filed with the clerk or secretary of the political subdivision responsible for the expenses of the election, at least 30 days before the date of the election, a certificate executed by the presiding officer of the governing body of the political subdivision and approved by the governing body, identifying the precinct or precincts for which the exemption is claimed, together with an abstract of the official census information or other information relied on to support the exemption and a map or maps showing the precinct boundaries and the boundaries of the census enumeration areas referred to in the abstract. An authenticated copy of the resolution or other document evidencing the governing body's approval must be filed with the certificate.

(b) A new certificate and new supporting information must be filed following each decennial census. The supporting information must be revised following a change in election precinct boundaries, and a revised certificate must be filed if the certificate on file no longer correctly reflects the exempt precincts.

(c) In the case of a primary election held by a political party, the exempt precincts are those reflected in a certificate executed by the county judge or the secretary of state and filed in the office of the county clerk. The secretary of state is authorized to file a certificate for a county whenever the county judge has not filed a certificate by the 60th day before the date of the primary or whenever the

certificate on file does not correctly reflect the exempt precincts.

Enumeration of Required Bilingual Materials; Preparation of the Materials

Subd. 3. (a) At each polling place where election materials in English and Spanish are required, the following materials shall be provided in bilingual form:

(1) Instruction cards for the information of voters shall be printed in both English and Spanish, either on separate cards to be posted side by side or on the same card with the Spanish text alongside the English text.

(2) Where voting machines or voting devices are used, a Spanish translation of the instructions for operating the machines or devices shall be posted in the compartment or booth that the voter occupies.

(3) All ballots and ballot labels may be printed with all ballot instructions, office titles, and propositions appearing in both Spanish and English. If the bilingual listing on the face of the ballot is not utilized, then a Spanish translation of the ballot shall be posted in each compartment or booth, and a statement shall be placed on the face of the ballot in Spanish to inform the voter that the Spanish translation is posted in the compartment or booth; and where paper ballots are used and booths are not provided for all voters, copies of the Spanish translation shall also be made available at the table where the voter selects his ballot, and a sign printed in Spanish shall be displayed at the table, informing the voter that he may take a copy of the Spanish translation for his use in preparing his ballot.

(4) All affidavit forms or other forms that voters are required to sign may have a Spanish translation printed beneath the English text or on the reverse side of the printed matter appearing on the form. If this translation is not utilized, then a Spanish translation of the affidavit shall be made available, and a statement shall be placed on the affidavit in Spanish that a Spanish translation is available upon request.

(b) The secretary of state shall prepare the Spanish translation for all bilingual materials required by Subdivisions 3 and 4 of this section, except ballot forms for local elections. The secretary of state shall prepare the Spanish translation of the ballot propositions for proposed constitutional amendments and other measures submitted by the legislature if the legislature fails to provide a Spanish text. The officer having the duty to make up the ballot for a local election shall prepare the Spanish translation of ballot material if the governing body of the political subdivision fails to provide a Spanish text.

Bilingual Materials for Absentee Voting

Subd. 4. In any countywide election, or in any election held in a political subdivision other than a county, in which bilingual election materials are required at any polling place in the county or other political subdivision, the absentee voting materials shall be printed in both English and Spanish. The forms for applying for an absentee ballot, the ballot envelopes and carrier envelopes, and any other instructions or forms furnished to the voters shall be printed in English with a Spanish translation on the face of the instrument or furnished separately along with the instrument. All ballots and ballot labels used for absentee voting shall be printed in the manner described in Subdivision 3; and whenever the Spanish translation of ballot propositions is printed separately from the ballot, a copy of the translation shall be furnished to each voter who votes by mail. In the conduct of absentee voting by personal appearance, any other materials enumerated in Subdivision 3 which are used in the voting shall be in bilingual form.

Optional Use of Bilingual Materials

Subd. 5. In any election held in a county to which Subdivision 1 of this section does not apply, or at any polling place where bilingual materials are not made mandatory under Subdivision 1, the governing body of the political subdivision responsible for the costs of the election may require the use of bilingual ballots and such other items of election materials enumerated in Subdivisions 3 and 4 as the governing body specifies, for any or all of the polling places as specified by the governing body; and the election officers of the political subdivision shall furnish bilingual materials in accordance with the resolution, ordinance, or other document by which their use is required. The governing body may provide for use of the bilingual materials on a continuing basis or on an election-by-election basis, as it sees fit.

[Added by Acts 1975, 64th Leg., p. 511, ch. 213, § 1, eff. May 16, 1975.]

Art. 1.08b. Encouragement to Vote of Non-English-Speaking Citizens

Text as added by Acts 1975, 64th Leg., p. 2078, ch. 681, § 18

Sec. 8b. It is the intent of the legislature that non-English-speaking citizens, like all other citizens, should be encouraged to vote. Therefore, appropriate efforts should be made to minimize obstacles to voting by citizens who lack sufficient skill in English to vote without assistance.

The presiding judge of a voting precinct in which the election materials provided in Section 8a of this code¹ are required to be used shall make reasonable efforts to appoint election clerks who are fluent in both English and Spanish.

[Added by Acts 1975, 64th Leg., p. 2078, ch. 681, § 18, eff. June 20, 1975.]

¹ Article 1.08a.

For text as added by Acts 1975, 64th Leg., p. 2081, ch. 682, § 2, see art. 1.08b, post

Art. 1.08b. Verification of Petition Signatures

Text as added by Acts 1975, 64th Leg., p. 2081, ch. 682, § 2

Whenever an application or petition of a candidate or a political party for a place on a ballot, or any other instrument authorized or required by this code, contains more than 1,000 signatures or names which need verification, the officer with whom the instrument is filed (including officers of political parties as well as public officers) may employ any reasonable statistical sampling method in determining whether the instrument contains the required number of names meeting the prescribed qualifications for signers or for names which may be listed thereon. However, in no event may the sample be less than one percent of the total number of names appearing on the instrument.

[Added by Acts 1975, 64th Leg., p. 2081, ch. 682, § 2, eff. Sept. 1, 1975.]

For text as added by Acts 1975, 64th Leg., p. 2078, ch. 681, § 18, see art. 1.08b, ante

Art. 1.08c. Limitation on Early Filing of Application for Place on Ballot

An application to have the name of a candidate placed on the ballot for any election may not be filed earlier than 30 days before the deadline prescribed by this code for filing the application. An application filed before that day is void.

[Added by Acts 1979, 66th Leg., p. 1050, ch. 480, § 1, eff. Aug. 27, 1979.]

Art. 1.08d. Contracts for Election Services

Subd. 1. As used in this section "county officer in charge of election duties" means the county elections administrator in a county which has that office and the county clerk in a county which does not have the separate office of county elections administrator; and "contracting officer" means the county officer in charge of election duties.

Subd. 2. (a) The county officer in charge of election duties may contract with the governing body of any city, school district, water district, or other political subdivision situated wholly or partly within the county to conduct or supervise the conduct of any single election or series of elections to be held by the political subdivision and to perform or supervise the performance of any or all of the functions enumerated in Subdivision 3 of this section in connection with the holding of the election or elections.

(b) The county officer in charge of election duties may contract with the county executive committee of any political party holding primary elections in the county to conduct or supervise the conduct of the party's general primary election or runoff primary election, or both, to be held within the county in an

election year. The contract must be approved by the secretary of state before any duties may be performed or any payments may be made under the terms of the contract.

(c) When requested to do so by a political subdivision or political party, the county elections administrator shall enter into a contract to furnish the services requested in accordance with a cost schedule mutually agreed upon by the contracting parties. If a mutual agreement cannot be reached, the secretary of state shall prescribe the agreement, to which both parties are bound, or, in his discretion, the secretary of state may instruct the county elections administrator to decline to enter into a contract with the requesting party. The county clerk in counties not having the office of county elections administrator is not required to enter into a contract with a political subdivision or political party requesting services, but he may do so at his discretion.

Subd. 3. A contract with a political subdivision pursuant to Subdivision 2 of this section may include any or all of the following services, and a contract with a political party may include any or all of such services that pertain to a party primary:

(1) Recommendations on the formation of election precincts and the location of polling places and preparation of the appropriate documents for establishing the precincts and polling places.

(2) Preparation of election orders, resolutions, notices, and other pertinent documents for adoption or execution by the appropriate officer or body.

(3) Posting or publication of election notices.

(4) Preparation of lists of persons to recommend for appointment as election judge or clerk and the recruiting and training of the judges and clerks.

(5) Procurement and distribution of election supplies, including the preparation, printing, and distribution of ballots.

(6) Assembly and editing of the lists of registered voters to be used in conducting the election, in conformity with the boundaries of the political subdivision and the election precincts established for the election.

(7) Procurement, preparation, and distribution of election equipment and transportation of equipment to and from the polling places.

(8) The conduct of absentee voting, subject to the provisions of Subdivision 4 of this section.

(9) Arrangements for use of polling places on election day.

(10) In an election using electronic voting equipment, arrangements for use of a central counting

station and for the personnel and equipment needed at the counting station and assistance in preparation of programs and test materials for tabulation of the ballots.

(11) Supervision of the handling and disposition of election returns, voted ballots, etc., and tabulation of unofficial returns and assistance in preparing the tabulation for the official canvass.

(12) Information services for voters and election officers.

(13) General overall supervision of the elections and advisory services in connection with decisions to be made and actions to be taken by officers of the political subdivision or political party holding the election.

(14) Preparation of submissions on voting changes to be made to the United States Department of Justice under the federal Voting Rights Act of 1965, as amended.¹

(15) Preparation of data to support exemptions from the requirements for bilingual materials under Section 8a (Article 1.08a) of this code.

Subd. 4. (a) Notwithstanding any other provision of law, the contracting officer or any regular or temporary employee of the contracting officer may be designated as the absentee voting clerk for any political subdivision other than a municipality. The contracting officer may not replace the city secretary or clerk as the absentee voting clerk for a city election, but a contract may provide that the contracting officer is to supervise the conduct of the absentee voting and/or is to supply personnel to serve as deputy absentee voting clerks for the election.

(b) Notwithstanding any other provision of law, where a contract provides that the contracting officer is to serve as absentee voting clerk or that the contracting officer is to supply personnel to serve as deputy absentee voting clerks, residence within the county of the contracting officer satisfies the residence requirements for the positions filled under the contract.

Subd. 5. Nothing in this section authorizes or permits a change in the officer with whom or the place at which any document or record relating to an election is to be filed, or the place at which any function is to be carried out, or the officers to make the official canvass of the election returns, or the officer to serve as custodian of voted ballots or other election records, except that in elections held by a political subdivision other than a municipality, the contract may provide that the contracting officer will be custodian of the voted ballots as is permitted under Section 111a (Article 8.29a) of this code.

Subd. 6. A contract may provide that the contracting officer will pay the expenses payable to third persons which are incurred for an election or that the authority holding the election will make the payments directly to the claimants. If the contract provides that the authority holding the election is to pay the claimants, the contracting officer becomes the agent of the authority holding the election and he may contract with third persons in the name of the authority with respect to expenses within the scope of his duties. The contracting officer is not liable for the default of the authority holding the election. If the contract provides that the contracting officer is to pay the expenses, the authority holding the election is not liable for defaults of the contracting officer.

Subd. 7. (a) The contracting officer shall file with the county treasurer a copy of each contract for services to be performed under this section and shall file another copy with the county auditor or, in a county not having an auditor, with the county judge as presiding officer of the commissioners court.

(b) Contracts executed pursuant to this section need not be submitted to the commissioners court for approval. All moneys received by the contracting officer under such contracts shall be deposited in the county treasury in a special fund separate from any other funds, and shall be subject to expenditure by the contracting officer to defray the costs of carrying out the contracts without prior budgeting or appropriation by the commissioners court. However, all claims against the fund shall be audited and approved in the same manner as other claims against the county before they are paid. Salaries of personnel regularly employed by the contracting officer shall be paid from funds regularly budgeted and appropriated for that purpose, but salaries and wages paid to persons especially employed to perform duties under a contract and all other expenses directly attributable to the contract which are charged to the contracting officer shall be paid out of the special fund. From time to time, as surplus amounts accumulate in the special fund, the contracting officer may direct the treasurer to transfer the surplus, in specified amounts, to the special fund created by Section 51b (Article 5.19b) of this code.

Subd. 8. Any of the services to be performed by the contracting officer may be performed by deputies or other employees assigned by him to perform the services. In a county which does not have the separate office of county elections administrator, the county clerk may establish an elections division in his office and assign a deputy clerk to oversee the operation of the division and may delegate to the deputy the power to enter into contracts under this section.

[Added by Acts 1977, 65th Leg., p. 1505, ch. 609, § 5, eff. Aug. 29, 1977.]

¹ 42 U.S.C.A. § 1973 et seq.

CHAPTER TWO. TIME AND PLACE

Article

- 2.01b. Dates for Holding General and Special Elections.
- 2.01c. Joint Elections of Political Subdivisions.
- 2.06a. Municipal and School District Election Dates.

Art. 2.01. Time and Place

A general election shall be held on the first Tuesday after the first Monday in November, A.D. 1964, and every two years thereafter, at such places as may be prescribed by law after notice as prescribed by law. Special elections shall be held at such times and places as may be fixed by law providing therefor. In all elections, general, special, or primary, the polls shall be open from seven o'clock a. m. to seven o'clock p. m.; provided, that in any county having a population of one million or more, according to the last preceding federal census, the polls may be opened one hour earlier at six o'clock a. m. on order of the commissioners court of such county entered in the minutes thereof. The foregoing authority of the commissioners court shall extend to all elections held within the county, by whatever authority the election may be ordered, but the court may exercise this authority with respect to such elections as it deems necessary or desirable without advancing the opening hour for other elections, subject to the requirement that the court's order must apply uniformly to comparable types of elections held on the same day; and the order shall specify the elections to which it applies. The election shall be held for one day only.

All persons who are within the polling place and all persons who are waiting to enter the polling place at seven o'clock p. m. shall be allowed an opportunity to present themselves for voting in the same manner as if they had appeared and offered themselves for voting during regular voting hours. The presiding judge shall take necessary precautions to prevent voting by any person not present and waiting to vote at the time for official closing of the polls. If feasible, all persons waiting to vote at the time for official closing of the polls shall be required to enter the polling place, and the door to the polling place shall be closed and locked, and each such person shall remain inside the polling place until he has voted. If such procedure is not feasible, numbered identification cards or tokens shall be distributed to identify those persons waiting to vote at the time for official closing of the polls.

[Amended by Acts 1975, 64th Leg., p. 2075, ch. 681, § 2, eff. June 20, 1975.]

Art. 2.01b. Dates for Holding General and Special Elections

(a) Except as provided in Subsections (b) and (e) of this section, every general (regular) or special election held by the state or by any county, city, school district, water district, or any other political

subdivision or agency of this state must be held on one of the following dates: the third Saturday in January, the first Saturday in April, the second Saturday in August, or the first Tuesday after the first Monday in November. Provided, however, that in even-numbered years the only issues which may be submitted to the voters in an election held on the first Tuesday after the first Monday in November shall be the election of state and county officers, the election of officers of a general-law city or town wherein the governing body of said city finds that the religious tenets of more than 50 percent of the registered voters of said city prohibit the adherents from voting in an election held on Saturday, the election of officers of a home-rule city with a population of less than 30,000, according to the last preceding federal census, where such city or town used, prior to 1975, the first Tuesday after the first Monday in November of even-numbered years as the date for the election of its officers, and amendments to the constitution of this state submitted to the voters by the legislature. This requirement does not apply to runoff elections, political subdivisions using the convention method of election, elections held under Chapter 467, Acts of the 44th Legislature, 2nd Called Session, 1935, as amended,¹ elections for bonds and school maintenance taxes, or to the biennial party primary elections held to nominate candidates for public office. An election held on an unauthorized date is void.

(b) When a vacancy in office is to be filled at a special election, the election must be called for a date specified in Subsection (a) unless the governor finds the existence of an emergency that warrants calling the election for an earlier date. When the governing body of a political subdivision wishes to call an emergency special election to fill a vacancy, the governing body shall submit a request to the governor for permission to call the election, and the governor may grant permission if he finds that an emergency exists.

(c) In even-numbered years the only issues which may be included on the ballot of the election held on the first Tuesday after the first Monday in November shall be the election of state and county officers, the election of officers of a general-law city wherein the governing body of said city finds that the religious tenets of more than 50 percent of the registered voters of said city prohibit the adherents from voting in an election held on Saturday, the election of officers of a home-rule city with a population of less than 30,000, according to the last preceding federal census, where such city or town used, prior to 1975, the first Tuesday after the first Monday in November of even-numbered years as the date for the election of its officers, and constitutional amendments submitted to the people by the legislature. The governing body of local political subdivisions shall be allowed to choose for their permanent elec-

tion day any of the above four election dates. The filing deadline for candidates, the dates for canvassing the returns of the election, the date for commencement of terms of office filled at the election, and any other date incidental to the election shall fall on the date that has the same relationship to the date of the election as provided under the preexisting law. Where by preexisting law the terms of office are set to commence on a specified calendar date and the date of the election is changed by this section, the governing board of the political subdivision shall set the date on which the terms begin until otherwise provided by law. A runoff election, when required, shall be held on a date that provides the same time interval with relation to the main election as provided under the preexisting law.

(d) When under the provisions of Subsection (c) the beginning date for a term of office is changed to fall on an earlier date, the current term on the effective date of this section is shortened accordingly, and the holder of the current term shall surrender the office to his successor on the beginning date of the succeeding term or as soon thereafter as the successor has qualified. When the beginning date is changed to fall on a later date, the incumbent in office at the expiration of the current term as set by preexisting law shall continue to perform the duties of the office, as required by Section 17 of Article XVI of the Texas Constitution, until the successor has qualified for the succeeding term.

(e) When a preexisting law requires that a special election be called within a specified time period after the occurrence of a certain event, the election shall be called for a date authorized in Subsection (a) of this section that falls within that time period; or if there is no authorized date within the period that allows sufficient time to comply with other requirements of law, the election shall be called for the first authorized date after its expiration, except that the election shall be called for some other date within the time period where the constitution requires it.

[Added by Acts 1975, 64th Leg., p. 2295, ch. 715, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 2032, ch. 811, § 2, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 503, ch. 234, § 1, eff. Aug. 27, 1979.]

¹ V.A.T.S. Penal Auxiliary Laws, art. 666-1 et seq. (repealed; see, now, Alcoholic Beverage Code).

Section 2 of the 1975 Act added art. 2.01c; § 3(a) provided that the Act shall take effect on January 1, 1976; § 3(b) thereof, providing that the Act shall no longer be in effect after the first Monday after the third Saturday in January, 1978, was repealed by Acts 1977, 65th Leg., p. 2032, ch. 811, § 1.

Section 3 of the 1977 Act provided:

"The provisions of Sections 9b and 9c, Texas Election Code (Articles 2.01b and 2.01c, Vernon's Texas Election Code), enacted by Chapter 715, Acts of the 64th Legislature, 1975, supersede any inconsistent or conflicting provision of any other statute enacted before the regular session of the 65th Legislature, provided, that nothing contained herein shall be construed as superseding the provisions of Subsection (i), Section 130.082, Texas Education Code, as amended. They also supersede any inconsistent or conflicting provision of any other statute enacted at the regular session of the 65th Legislature, regardless of the relative order of passage with respect to this Act, unless the other statute expressly states that its provisions prevail over the provisions of Sections 9b and 9c."

Art. 2.01c. Joint Elections of Political Subdivisions

(a) When two or more political subdivisions of this state are holding elections on the same day in all or part of the same territory, the governing bodies of any two or more of the political subdivisions may agree to hold their elections jointly in the election precincts that can be served by common polling places. When any other statute makes a joint election mandatory, a joint election must be held in accordance with the terms of the statute; and if any other political subdivisions are holding elections in any part of the same territory, any or all of them may also join in the agreement for a joint election.

(b) When a joint election is to be held, a resolution reciting the terms of the agreement, including the method for allocating the expenses for the election, shall be adopted by the governing body of each of the participating political subdivisions. The agreement may provide for use of a single ballot form at each polling place, to contain all the offices or propositions to be voted on at that polling place, or for separate ballot forms; provided, however, that no voter shall be given a ballot containing any office or proposition on which the voter is ineligible to vote. One set of election officers may be appointed to conduct the joint election, and any person who is qualified to serve as an election officer in the election of any one of the participating political subdivisions may be appointed to serve in the joint election. Poll lists, tally lists, return forms, and other records for the various elections may be combined in any manner convenient and adequate to record and report the results of each election. Where paper ballots or punchcard ballots are used, one set of ballot boxes and one stub box may be used for receiving all ballots and ballot stubs for the joint election. Returns on joint or separate forms may be made to, and the canvass made by, each officer, board, or body designated by law to receive and canvass the returns for each election, or one of such officers, boards, or bodies may be designated to receive and canvass the returns for the joint election and to report the results of each election to the proper authority. Where other records are combined, the officer designated by law to be the custodian of the records for any participating subdivision may be designated in the agreement to be the custodian of the combined records. Where the counted ballots for more than one subdivision are deposited in a single ballot box, the officer designated by law to be the custodian of the voted ballots for any one of the subdivisions may be designated in the agreement to be the custodian.

[Added by Acts 1975, 64th Leg., p. 2297, ch. 715, § 2, eff. Sept. 1, 1975.]

Art. 2.02. Formation of Election Precincts; Consolidation for Certain Elections

Unless a specific statute provides otherwise, the following rules shall govern the establishment of election precincts and the designation of polling places for the conduct of the various kinds of elections held within this state.

(a) County-wide elections held at the expense of the county. In general elections for state and county officers, special elections called by the Governor (including both county-wide elections and elections to fill vacancies in offices elected by districts which are less than county-wide), and in all other county-wide elections held at the expense of the county other than elections coming within Subsection (d) of this section, the election precincts shall be the regular election precincts established by the commissioners court pursuant to Section 12 of this code (Article 2.04, Vernon's Texas Election Code). The commissioners court shall designate the polling place for each regular precinct, in accordance with the following procedure. The county officer in charge of election duties (the county elections administrator in a county which has that office and the county clerk in a county which does not have the separate office of county elections administrator) shall recommend to the commissioners court the location of the polling place for each precinct, and the commissioners court shall designate as the polling place the location so recommended unless good cause exists for rejecting the recommendation. [See Compact Edition, Volume 2 for text of (b) to (h)]

[Amended by Acts 1977, 65th Leg., p. 1508, ch. 609, § 6, eff. Aug. 29, 1977.]

Art. 2.04. County Election Precincts Formed by Commissioners Court

Subd. 1. Each county shall be divided into convenient election precincts by the Commissioners Court of the county, each of which precincts shall be differently numbered and described by natural or artificial boundaries or survey lines by an order entered upon the minutes of the Court. At any July or August term, the Court may make such changes in the election precincts as they deem proper, by such order entered upon the minutes of the Court. When such an order is entered, they shall immediately thereafter publish in some newspaper in the county for three consecutive weeks a notice of the entry of such order, giving a brief description in general terms of the changes made, without the necessity of including in such notice the field notes or other detailed description of the precinct boundaries. If there be no newspaper in the county, then a copy of such order shall be posted in some public place in each election precinct in the county which is affected by the order.

Subd. 2. No election precinct shall be formed out of two or more justice precincts or commissioners precincts, nor out of the parts of two or more justice precincts or commissioners precincts; and no election precinct shall be formed out of two or more congressional districts or state senatorial districts or state representative districts, nor out of the parts of two or more such districts. If in September of any year there exists any election precinct in the county which does not comply with the foregoing requirements, the commissioners court shall make the necessary changes before the first day of October, either at a regular meeting or at a special meeting called for that purpose; and the order shall be published as provided in Subdivision 1 of this section. Subject to the provisions of the first sentence of this paragraph, no election precinct shall have resident therein less than 100 nor more than 2000 voters as ascertained by the number of registered voters for the last preceding presidential general election year; provided, however, that in counties of less than 100,000 population according to the last preceding federal census, the commissioners court may establish precincts of less than 100 but not less than 50 voters; and provided further, that in counties of less than 50,000 population according to the last preceding federal census, the commissioners court may establish precincts of less than 50 voters upon the petition of 25 or more registered voters within the county. In precincts in which voting machines or devices have been adopted for use in accordance with Section 79 or Section 80 of this Code,¹ the maximum number of voters shall be 3000. There shall be a minimum of one election precinct wholly contained within each commissioners precinct.

Subd. 3. In cities and towns having ten thousand or more inhabitants, each ward shall constitute an election precinct unless there are more than two thousand registered voters residing in the ward. In such cities and towns, no precinct shall be made out of parts of two wards; and no precinct shall include territory outside the corporate limits of the city or town unless the Commissioners Court finds that adjacent unincorporated territory is so situated that it cannot be formed into or included within an election precinct wholly outside the city, of suitable size and shape and containing a suitable number of voters. If the Commissioners Court finds this condition to exist, it may include such territory in a precinct or precincts formed within the city or town, and the finding of the Commissioners Court shall be conclusive. If on September 15 of any year there exists any election precinct in the county which does not comply with the requirements of this paragraph, the Commissioners Court shall make the necessary changes before the first day of October, either at a regular meeting or at a special meeting called for that purpose; and the order shall be published as provided in Subdivision 1 of this Section.

Subd. 4. In cities, towns and villages of less than ten thousand inhabitants, election precincts may be formed without regard to the wards or the corporate limits of the city, town or village.

Subd. 5. Changes in election precincts shall not become operative in the holding of elections until the beginning of the following voting year. The Commissioners Court shall cause to be made out and delivered to the County Tax Collector before the first day of each September a certified copy of such last order for the year following; provided, however, that any order entered during the month of September, as provided in Subdivisions 2 and 3 of this Section, shall be delivered to the Tax Collector forthwith.

Subd. 6. (a) This subdivision applies only to counties having a population of 500,000 or more, according to the last preceding federal census.

(b) If a change in the boundary of one or more county election precincts will be considered at a meeting of the Commissioners Court, not later than seven days before the day of the meeting, the Commissioners Court shall give written notice to each county chairman of a political party and to the affected precinct chairmen and presiding precinct election judges of the proposed change, identifying the precincts to be considered and the date, place, and hour of the meeting.

(c) Not later than seven days after entry of an order changing the boundary of one or more county election precincts, the Commissioners Court shall give written notice to the persons specified in Subsection (b) of this subdivision that the change has been made.

(d) Notice required by this subdivision may be delivered by regular first-class mail or by any other method. Notice delivered by mail is considered delivered when deposited in the mail. Notice delivered by mail must be addressed to the most recent address appearing on the records of the county clerk or Commissioners Court.

(e) The Commissioners Court shall maintain a record containing a copy of each notice given under this subdivision and the date of its delivery. The record may be destroyed or discarded at any time after one year following the date of delivery of the notice.

(f) Failure to deliver notice as required by this subdivision nullifies the boundary change as to which notice was required.

[Amended by Acts 1975, 64th Leg., p. 265, ch. 112, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1476, ch. 600, § 2, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1138, ch. 545, § 1, eff. Aug. 27, 1979.]

¹ Articles 7.14, 7.15.

Art. 2.06a. Municipal and School District Election Dates

In counties where voting machines or electronic voting systems are used, all municipal and school district elections in which candidates are running for office, including without limitation, elections in home-rule cities and independent, municipal, and county school districts, otherwise scheduled to be held within 14 days of the date on which a proposed amendment or amendments to the Constitution of Texas are to be submitted to a vote of the electorate, may be held on the same date as the constitutional amendment election if the governing body of the municipality or the school district so provides. If the governing body changes the date of the elections as authorized by this Act, it may set the date of any second or runoff primary which may be necessary for any date not earlier than the 14th day after the first election and not later than the latest date which would have been permissible if the date of the first election had not been changed. This Act shall make no change in the term of office or commencement thereof in any election affected hereby. [Added by Acts 1975, 64th Leg., p. 2108, ch. 688, § 1, eff. Sept. 1, 1975.]

Art. 2.06-1. Expired**CHAPTER THREE. OFFICERS OF ELECTION**

Article

3.09b. Training of Election Officers.

Art. 3.01. Appointment of Election Officers

(a) For county elections. The commissioners court at its July term shall appoint from among the citizens of each election precinct one qualified voter as presiding judge of elections held at the expense of the county in that precinct and one qualified voter as alternate presiding judge, each of whom shall continue to act until his successor is appointed. Whenever a vacancy arises in either of such offices, the commissioners court may fill the vacancy at any regular or special term of court. All orders appointing judges and alternates shall be entered of record. Each presiding judge shall appoint two voters, who are eligible for appointment, to serve as election clerks, and shall appoint for each election as many additional clerks as he deems necessary for the proper conduct of the election, not to exceed the maximum number authorized by the commissioners court. The commissioners court shall fix the maximum number of clerks that may be appointed for each precinct, and may fix different maximums depending on the type of election. The clerks shall be selected from different political parties, when practicable. The chairman of the county executive committee of each of the two parties whose candidate for Governor received the most votes statewide in

the last prior gubernatorial general election may submit a list of not less than two eligible nominees who are members of that party to each election judge at least 30 days prior to the date of a general election or 10 days prior to the date of a special election. If any such list is submitted to him, the election judge shall appoint at least one clerk from each list submitted. For the purpose of this section, the term "members of that party" means persons who affiliated with the party in the manner prescribed in Section 179a of this code. (Article 13.01a, Vernon's Texas Election Code) during the last preceding set of primary elections and conventions.

(a-1) List of recommended appointees for judges of county precincts. Prior to the time at which the commissioners court makes its appointment of election judges pursuant to Subsection (a) of this section, the county officer in charge of election duties as defined by Section 8d of this code¹ shall select a presiding judge and an alternate presiding judge for each county election precinct to recommend for appointment to those offices and shall present a list of his selections to the commissioners court. The court shall give due consideration to these recommendations in making its appointments. This procedure shall also be followed whenever a vacancy is to be filled in the office of presiding judge or alternate presiding judge.

[See Compact Edition, Volume 2 for text of (b) to (f)]

[Amended by Acts 1977, 65th Leg., p. 1508, ch. 609, § 7, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1653, ch. 649, § 2, eff. Aug. 29, 1977.]

¹ Article 1.08d.

Art. 3.02. Duties and Working Hours of Clerks

(a) In all elections, general, special, or primary, the presiding judge shall be in charge of the management of the polling place and the conduct of the election. He shall designate the working hours and assign the duties to be performed by the clerks. Clerks may be assigned to work for different lengths of time and to begin work at different hours during the day while the polls are open or during the time necessary for counting the ballots after the polls are closed. Clerks who begin work at any time before closing of the polls shall remain on duty without leaving the polling place while the polls are open, except for such periods of absence for meals and other necessary reasons as may be permitted by the presiding judge.

(b) One or more clerks shall be assigned to assist in checking the names of voters on the list of registered voters and performing such other duties as are necessary in receiving the voters and supervising the deposit of the voted ballots. At every election there shall be kept a poll list in the number of copies required by law on which an election officer shall

enter the name of each voter at the time he votes. In lieu of a poll list, the signature roster, together with any other forms, may be combined with the list of registered voters in the format prescribed by the secretary of state.

(c) In elections where paper ballots are used, the ballots shall be counted by one or more sets of counting officers, each set to consist of one judge or clerk who shall read the ballots, and one or more clerks who shall enter the votes on tally lists prepared for the election. As a safeguard in the accuracy of the tallying, the votes shall be entered on three original tally lists, and during the progress of the counting the lists shall be compared and errors and discrepancies shall be corrected, and at the close of the counting the tally clerks shall certify officially to the correctness of the lists.

(d) The clerks may be assigned to perform such other duties as the presiding judge directs.

[Amended by Acts 1977, 65th Leg., p. 590, ch. 209, § 1, eff. Aug. 29, 1977.]

Art. 3.03. Qualifications of Judges, Clerks and Watchers

(a) All judges of any general, special, or primary election shall be qualified voters of the election precinct in which they are named to serve. Unless otherwise provided in a statute pertaining to the specific type of election being held, in any general, special, or primary election all clerks and watchers shall be qualified voters of the county if the election is countywide, and shall be qualified voters of the city or other political subdivision in which the election is held if less than countywide, but it shall not be necessary that they reside within the election precinct in which they are named to serve.

(b) No person shall serve as a judge or a clerk in any general, special, or primary election who is employed by any candidate whose name appears on the ballot in that election either for a public office or for the party office of county chairman, or who is related to such candidate within the second degree either by affinity or consanguinity. Within the meaning of this section, a governmental employee is employed by the officer or officers who head the department or agency in which he is employed.

(c) No watcher shall be an employee or employer of any election judge or clerk in the election precinct in which he is named to serve or related to any such election officer within the second degree either by affinity or consanguinity.

[Amended by Acts 1977, 65th Leg., p. 966, ch. 363, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1652, ch. 649, § 1, eff. Aug. 29, 1977.]

Art. 3.04. Disqualifications

[See Compact Edition, Volume 2 for text of 1 and 2]

Subd. 3. No one shall act as chairman or as member of any district, county, or city executive committee of a political party who is not a qualified voter, or who is an officeholder or a candidate for nomination to or election to any office that would appear on a general election ballot.

[Amended by Acts 1977, 65th Leg., p. 966, ch. 363, § 2, eff. Aug. 29, 1977.]

Art. 3.07. Service, Duties, and Privileges of Watchers

[See Compact Edition, Volume 2 for text of (a) to (c)]

(d) Each watcher appointed in accordance with this code shall be permitted, but not required, to sit conveniently near the judges or clerks so that he can observe the conduct of the election, including but not limited to the reading of the ballots, the tallying and counting of the votes, the making out of the returns, the locking of the ballot boxes, their custody and safe return. He shall also be permitted to be present when assistance is given by any election judge in the marking of the ballot of any voter not able to mark his own ballot, to see that the ballot is marked in accordance with the wishes of the voter, but he must remain silent except in cases of irregularity or violation of the law. He shall not be permitted to enter into any conversation with the judges or clerks regarding the election while it is progressing, except to call the attention of the judges or clerks to any irregularity or violation of the law that he may observe. The watcher shall call the attention of officers holding the election to any fraud, irregularity or mistake, illegal voting attempted, or other failure to comply with the laws governing such election at the time it occurs, if practicable and if he has knowledge thereof at the time, and such complaint shall be reduced to writing and a copy delivered to the election judge. Preventing a poll watcher from observing any activity including, but not limited to, the tallying of ballots at any polling place, place of canvass, or central counting station shall constitute a Class A misdemeanor.

[See Compact Edition, Volume 2 for text of (e) to (h)]

[Amended by Acts 1975, 64th Leg., p. 2076, ch. 681, § 3, eff. June 20, 1975.]

Art. 3.08. Pay of Judges and Clerks

(a) In all elections, general, special, or primary, by whatever authority conducted, the rate of pay for judges and clerks of the election shall be determined by the appropriate authority, but shall not exceed \$3 per hour for each judge or clerk. No judge or clerk

shall be paid for more than one hour of work before the polls open. In precincts where voting machines are used, no judge or clerk shall be paid for any period of time subsequent to two hours after the official time for closing the polls or subsequent to two hours after voting is concluded by all voters offering themselves for voting during regular voting hours, whichever is the later. The judge who delivers the returns of election may be paid an amount not to exceed \$20 for that service; provided, also, he shall make returns of ballots, ballot boxes, and election supplies not used when he makes returns of the election.

[See Compact Edition, Volume 2 for text of (b) to (d)]

[Amended by Acts 1977, 65th Leg., p. 1374, ch. 546, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1137, ch. 544, § 1, eff. Aug. 27, 1979.]

Art. 3.09. Precinct Judges Notified

Precinct judges for all general elections shall be delivered copies of the order of the Commissioners Court properly certified to by the clerk of the said court, designating the number, name and bounds of the election precinct and of their appointment as judges. Such delivery shall be made by the clerk of said court by United States mail or by personal delivery not later than 20 days after the date of entry of the order.

[Amended by Acts 1979, 66th Leg., p. 494, ch. 225, § 1, eff. Aug. 27, 1979.]

Art. 3.09b. Training of Election Officers

Subd. 1. The governing body of each county, city, or other political subdivision which holds elections and the county executive committee of a political party which holds primary elections may require that persons appointed to serve as judge or alternate judge in its elections be trained in election law and procedure prior to their appointment or prior to their service and may adopt minimum standards for the amount of training that the person must receive to be eligible for service. The governing body of a political subdivision may appropriate funds to pay its judges and alternate judges for attending training schools at an hourly rate not to exceed the maximum amount that may be paid for their service as judge or clerk and to pay the costs for conducting the schools, including payment for the services of instructors. With the approval of the secretary of state, the county executive committee of a political party may make like payments for the training of judges and alternate judges to serve in its primary elections, to be allowed as authorized expenditures for the conduct of the elections.

Subd. 2. A political party or a political subdivision may conduct its own schools of instruction or other training programs, either independently or in

conjunction with other entities. Beginning on March 1, 1979, the county executive committee of a political party or the governing body of a political subdivision other than a county may also contract with the county officer in charge of election duties for the training of its election officers, as authorized in Section 8d of this code.¹

[Added by Acts 1977, 65th Leg., p. 1509, ch. 609, § 8, eff. Aug. 29, 1977.]

¹ Article 1.08d.

CHAPTER FOUR. ORDERING ELECTIONS

Art. 4.10. Vacancy: Application to Get on Ballot

Subd. 1. (a) Any person desiring his name to appear upon the official ballot at any special election held for the purpose of filling a vacancy, when no party primary has been held, may do so by presenting his application to the proper authority. Such application shall set forth:

- (1) The name of the office sought;
- (2) His occupation, his postoffice address, and the county of his residence;
- (3) His age, place of birth, kind of citizenship, and length of residence in the county and state.

(b) In any special election for a statewide or district office which is regularly filled at the general election for state and county officers, the application shall also set forth the candidate's political party affiliation or shall state that the candidate is not affiliated with any political party.

Subd. 2. Such application must be filed not later than 5 p. m. of the 31st day before any such special election, and shall not be considered filed unless it has actually been received by the officer with whom it is to be filed.

Subd. 3. (a) The application must be filed with the Secretary of State in the case of a statewide or district special election. It must be accompanied with a fee of \$1,000 for a statewide office, including without limitation the office of United States Senator, a fee of \$500 for the district office of United States Representative, a fee of \$400 for the district office of State Senator, and a fee of \$200 for the district office of State Representative; or, in lieu of the filing fee, the application must be accompanied with a petition signed by at least 5,000 registered voters of the state in the case of a statewide office, and by at least 500 registered voters of the district in the case of a district office. A petition must show the address, voter registration number, and date of signing for each signer. No person may sign the petition of more than one candidate for the same office, and if a person signs the petition of more than one candidate, the signature is void as to all such petitions. A petition may be in multiple parts.

To each part, which may consist of one or more sheets, there must be attached the affidavit of some registered voter, giving his address and voter registration number, and stating that each signature appearing in that part of the petition was affixed in the presence of the affiant and that to the best knowledge and belief of the affiant each signature is genuine and each person signing was a registered voter at the time of signing. A petition so verified is prima facie evidence that the signatures thereon are genuine and that the persons signing it are registered voters. Fees received under this subdivision shall be deposited in the general revenue fund of the state.

(b) Upon receipt of an application which conforms to the above requirements, the Secretary of State shall issue his instruction to the county clerks of the state, or of the district in the case of a district vacancy, directing that the name of the applicant be printed on the official ballot.

(c) The party affiliation of the candidate shall be printed on the official ballot following the name of the candidate. If the candidate has stated in his application that he is not affiliated with any political party, the word "Independent" shall be printed on the ballot following the candidate's name. In other respects, the ballot shall be printed as indicated in Section 61 of this code (Article 6.05, Vernon's Texas Election Code) for a special election in which no party nomination has been made.

Subd. 4. The application must be filed with the city secretary or clerk in the case of a municipal special election. A home-rule city by charter may require that the application be accompanied with a reasonable filing fee or a petition of voters in lieu of the filing fee.

[Amended by Acts 1975, 64th Leg., p. 356, ch. 151, § 1, eff. Sept. 1, 1975.]

CHAPTER FIVE. SUFFRAGE

Article

- 5.09c. Office Hours of County Clerk and Tax Assessor on Election Day.
- 5.13c. Voter Registration Forms in Spanish.
- 5.15b. Service Program of Secretary of State; Copies of Master State Voter File.
- 5.24a. County Elections Administrator.
- 5.24b. Election Duties of County Clerk Transferred to County Elections Administrator.

5.01. Classes of Persons Not Qualified to Vote

The following classes of persons shall not be allowed to vote in this state:

1. Persons under 18 years of age.
2. Idiots and lunatics.
3. All paupers supported by the county.

4. All persons convicted of any felony except those restored to full citizenship and right of suffrage or pardoned."

[Amended by Acts 1975, 64th Leg., p. 2082, ch. 682, § 3, eff. Sept. 1, 1975.]

Art. 5.02. Qualifications and Requirements for Voting

(a) Every person subject to none of the foregoing disqualifications who is a citizen of the United States and a resident of this state and is eighteen years of age or older, and who has complied with the registration requirements of this code, is a qualified voter. No person may vote in an election held by a county, municipality, or other political subdivision unless he is a resident of the subdivision on the day of the election; and, except, as expressly permitted by some other provision of this code or another statute of this state, no person may vote in an election precinct other than the one in which he resides. The provisions of this section, as modified by Section 35 of this code (Article 5.03, Vernon's Texas Election Code), apply to all elections, including general, special, and primary elections, whether held by the state, by a county, municipality, or other political subdivision of the state, or by a political party.

(b) All citizens of this state who are otherwise qualified by law to vote at any election of this state or any district, county, municipality, or other political subdivision, shall be entitled and allowed to vote at all such elections. The Secretary of State shall, by directive, implement the policies stated herein throughout the elective procedures and policies by or under authority of this state. Enforcement of any directive of the Secretary of State pursuant to this section may be by injunction obtained by the Attorney General.

[Amended by Acts 1975, 64th Leg., p. 2076, ch. 681, § 4, eff. June 20, 1975; Acts 1975, 64th Leg., p. 2082, ch. 682, § 4, eff. Sept. 1, 1975.]

Art. 5.05. Absentee Voting

Who May Vote Absentee

Subd. 1. (a) Any qualified voter of this state who expects to be absent from the county of his residence on the day of the election, or who will be 65 years of age or older on the day of the election, or who because of sickness, physical disability, confinement in jail, or religious belief cannot appear at the polling place in the election precinct of his residence on the day of the election, or who expects to serve as an election clerk or as a poll watcher on election day in an election precinct other than the precinct of his residence, or who participates in the administration of the election by reason of his or her employment,

may nevertheless cause his vote to be cast at any election held in this state by compliance with the applicable method herein provided for absentee voting. If a voter's religious belief prohibits him from voting during any part of the time during which the polls are open on the day of the election, he shall nevertheless be entitled to vote absentee even though the prohibition does not operate throughout the entire time that the polls are open. A voter who is confined in jail is entitled to vote absentee if at the time of applying for an absentee ballot he is: (1) serving a misdemeanor sentence which extends through election day; (2) being held for trial after a denial of bail; (3) being held without bail pending the appeal of a felony conviction; or (4) being held for trial or pending an appeal on a bailable charge but he expects not to have been released on bail by the date of the election.

(b) Absentee voting shall be conducted by two methods: (1) voting by personal appearance at the clerk's office, and (2) voting by mail. All voters coming within the foregoing provisions of this subdivision may vote by personal appearance at the clerk's office if they are able to make such appearance within the period for absentee voting. Where the ground for voting absentee is confinement in jail, it is not mandatory that the voter be allowed to make a personal appearance, but the officer in charge of the jail, in his discretion is authorized to make the necessary arrangements to permit the voter to vote by personal appearance.

(c) The following persons, and no other, may vote by mail:

(i) Qualified voters who will be 65 years of age or older on the day of the election, or who because of sickness or physical disability, or because of religious beliefs, cannot appear at the polling place on the day of the election. The application for an absentee ballot shall be made not more than sixty days before the day of the election. It must be mailed to the clerk, and the clerk shall preserve the envelope in which it is received. If the application is delivered to the clerk by any method other than by mailing it to him, the ballot shall be void and shall not be counted. The voter shall state in his application the address to which the ballot is to be mailed to him, which must be either his permanent residence address or the address at which he is temporarily living. If the ballot is furnished to the voter by any method other than by mailing it to him, or if it is mailed to any address other than one of the foregoing, it shall be void and shall not be counted. The marked ballot must be mailed to the clerk, and if returned in any other manner it shall be void and shall not be counted.

(ii) Qualified voters who, before the beginning of the period for absentee voting, make application for an absentee ballot on the ground of expected absence from the county of their residence on election day, and who expect to be absent from the county during the clerk's regular office hours for the entire period of absentee voting. The voter must state in his application that he expects to be absent from the county of his residence on election day and during the clerk's regular office hours for the entire period for absentee voting. The application shall be made not more than sixty days before the day of the election, and may be mailed to the clerk or delivered to him by the voter in person, but the clerk shall not furnish a ballot to the voter by any method other than by mailing it to him. Applications made under this paragraph may be mailed either from within or without the county of the voter's residence, but in every case the ballot must be mailed to the voter at an address outside the county. The ballot shall not be counted unless the carrier envelope in which the ballot is returned to the clerk is postmarked from a point outside the county and the affidavit on the carrier envelope is certified by an officer other than an officer of the county of the voter's residence.

(iii) Qualified voters who, after the beginning of the period for absentee voting, apply for an absentee ballot on the ground of expected absence from the county and who are absent from such county at the time of applying for an absentee ballot and expect to be absent from such county during the clerk's regular office hours for the remainder of the period for absentee voting. The voter must state in his application that he is absent from the county at the time of making the application and expects to be absent on election day and during the clerk's regular office hours for the remainder of the period for absentee voting. The clerk shall not mail a ballot to any such voter unless the envelope in which the application is received is postmarked from a point outside the county, and the ballot must be mailed to the voter at an address outside the county. The ballot shall not be counted unless the envelope in which the application is received and the carrier envelope in which the ballot is returned to the clerk are each postmarked from a point outside the county and the affidavit on the carrier envelope is certified by an officer other than an officer of the county of the voter's residence.

(iv) Qualified voters who are confined in jail under one of the circumstances listed in the first paragraph of this subdivision. The application for an absentee ballot shall be made not more than twenty days before the day of the election. It must be enclosed in an envelope and either mailed to the clerk or delivered to him by the jailer or one

of his deputies or assistants, who shall place his signature on the envelope at the time of its delivery. The clerk shall preserve the envelope in which the application is received. If the application is delivered to the clerk by any method other than as expressly authorized herein, the ballot shall be void and shall not be counted. The clerk shall mail the ballot to the voter in care of the jail where he is confined; and if the ballot is furnished to the voter by any method other than by mailing it to him, or if it is mailed to any other address, it shall be void and shall not be counted. The marked ballot must be mailed to the clerk, and if returned in any other manner it shall be void and shall not be counted.

(d) An application for an absentee ballot to be voted by mail shall state the applicant's permanent address and the address to which the absentee ballot is to be mailed to the applicant, and shall also state the address to which his voter registration certificate is to be mailed back to him.

Application for Ballot

Subd. 2. (a) The secretary of state shall prescribe the official form or forms for an application for an absentee ballot to be voted by personal appearance and of an application for a ballot to be voted by mail. The application for a ballot to be voted by mail shall be in the form of a postcard. Each clerk for absentee voting shall obtain and keep on hand a supply of the official application forms to furnish to voters who request them. The secretary of state shall keep on hand a supply of the official application forms for voting by mail and shall furnish the forms in reasonable quantities to individuals and organizations requesting them for use in furnishing the forms to voters who wish to vote absentee by mail. A voter desiring to vote absentee shall make written application for an official ballot to the absentee voting clerk for the election in which the voter wishes to vote, which application shall be signed by the applicant or by a witness in the manner provided by Subdivision 2, Section 45a, of this code (Article 5.13a, Vernon's Texas Election Code), for signing an application for voter registration except that the application may not be signed by an agent for the applicant. The application shall state the ground on which the applicant is entitled to vote absentee, and in case of an application by mail, it shall also state the additional information required by Subdivision 1 of this section. An applicant is not required to use the official application form to apply for an absentee ballot. An application not made on the official form is referred to in this section as an "informal application."

(b) The application shall state the voter's voter registration certificate number or, in case the voter does not have his certificate in his possession at the

time of making the application, to indicate whether the certificate has been lost or mislaid, has been left at the voter's home (where he is applying from a temporary address), or has been used for applying for an absentee ballot in another election (stating the nature and date of the election) and has not been returned to him. Before furnishing a ballot to a voter, the clerk shall verify the voter's registration certificate number, or in case the number is not stated on the application, the clerk shall enter it from the list of registered voters. If the ground of application is sickness or physical disability by reason of which the voter cannot appear at the polling place on election day, a certificate of a duly licensed physician or chiropractor or accredited Christian Science practitioner certifying to such sickness or physical disability shall accompany the application, which certificate shall be in substantially the following form:

This is to certify that I have personal knowledge of the physical condition of _____, and that because of sickness or physical disability he (she) will be unable to appear at the polling place for an election to be held on the ____ day of ____, 19__.

Witness my hand at _____, Texas, this ____ day of ____, 19__.

(Signature of Practitioner)

(c) Expected or likely confinement for childbirth on election day shall be sufficient to entitle a voter to vote absentee on the ground of sickness or physical disability, and a physician executing a certificate for a pregnant woman may state in the certificate that because of pregnancy and possible delivery she will be or may be unable to appear at the polling place on election day.

Any person who requests a physician, chiropractor, or Christian Science practitioner to execute a certificate for another person without having been directed by such other person to do so, and any physician, chiropractor, or Christian Science practitioner who knowingly executes a certificate except upon the request of the voter named therein or upon request of someone at the voter's direction, or who knowingly delivers a certificate except by delivering it to the voter in person or by mailing it to the voter at his permanent residence address or the address at which he is temporarily living, or who knowingly falsifies a certificate, is guilty of a misdemeanor and upon conviction shall be fined not more than Five Hundred Dollars or imprisoned in the county jail for not more than thirty days, or both so fined and imprisoned.

(d) A voter who gives false information in his application for an absentee ballot is guilty of a misdemeanor and upon conviction shall be punished as provided in Section 347 of this code (Article 15.47,

Vernon's Texas Election Code). Printed application forms furnished to voters by the county clerk shall contain the following statement immediately preceding the space for the voter's signature: "I certify that the information given in this application is true, and I understand that the giving of false information in the application is a crime." An informal application need not contain the statement, but a voter who gives false information is subject to the criminal penalty regardless of whether the statement appears on the application.

(e) In any single election, a person, other than the absentee voting clerk or a deputy absentee voting clerk, may not sign applications as a witness for more than one applicant. However, a person may sign more than one application as a witness if the second and subsequent applicants are related to the witness as parent, grandparent, spouse, child, brother, or sister. An application signed by a witness must contain, in addition to the witness' signature, the witness' full name in printed form, residence address, and relationship to the applicant, if any. The validity of an application is not affected by a violation of this paragraph.

(f) A person, other than the absentee voting clerk or a deputy absentee voting clerk, who witnesses an application in violation of Paragraph (e) of this subdivision commits a Class B misdemeanor. The official application form shall contain a statement informing persons attesting applications as witnesses of this offense.

Absentee Voting by Members of the Armed Forces, Etc.

Subd. 2a.

[See Compact Edition, Volume 2 for text of (a) to (c)]

(d) If the applicant is not currently registered through the registrar of voters, the clerk shall examine the information on the federal post card application, and if it shows that the applicant possesses the qualifications for voting at that election in the precinct of his residence, the clerk shall enter his name on a list headed "Absentee voters registering by FPCA for the _____ election held on _____" and shall also enter thereon the voter's local permanent address and election precinct number, the address to which the ballot is mailed, and the date on which it is mailed. The list shall be made up in duplicate and shall be kept up from day to day. After the election is held, one copy shall be filed as a record of the clerk's office if the clerk conducting the absentee voting is a county clerk or a city secretary or city clerk, and as a record of the authority which appointed the clerk for absentee voting in other instances, to be preserved for a period of two years, after which it may be destroyed. The other copy shall be placed with the records of

the election which are delivered into the custody of the officer designated in Paragraph (a)(2) of Section 111b of this code (Article 8.29b, Vernon's Texas Election Code), to be subject to the same regulations as those records.

Comparison of Signatures

[See Compact Edition, Volume 2 for text of 2a(g) and (h) and 2b]

Subd. 2c. Repealed by Acts 1977, 65th Leg., p. 1688, ch. 668, § 4, eff. Aug. 29, 1977.

[See Compact Edition, Volume 2 for text of 3]

Voting by Personal Appearance in County-wide Elections

Subd. 3a. (a) In a county-wide election, or in an election less than county-wide where the authority holding the election has provided that absentee voting by personal appearance shall be conducted on a voting machine or that absentee paper ballots shall be counted by a special canvassing board, upon receipt of an application for an absentee ballot to be voted by personal appearance, if the clerk is satisfied as to the right of the applicant to vote, the clerk shall place a notation on the list of registered voters showing that the particular person has voted absentee and shall enter the voter's name on a poll list of absentee voters. The application shall be preserved in the clerk's office for the length of time provided by law for preservation of voted ballots.

(b) In the conduct of absentee voting under this subdivision, the clerk shall possess the same power as a presiding judge with respect to examination and acceptance of a voter. If the right of an applicant to vote is challenged, the procedure prescribed in Section 91 of this Code (Article 8.09, Vernon's Texas Election Code) shall be followed.

(c) Where paper ballots are used for absentee voting, after a voter has been accepted, the clerk shall furnish the voter with an official ballot which has been prepared in accordance with law for use in such election. The voter shall then and there, in the office of the clerk, mark his ballot and detach and sign the ballot stub, and shall deposit the ballot in a ballot box and the stub in a stub box in the manner provided in Section 97 of this Code (Article 8.15, Vernon's Texas Election Code). The ballots shall be deposited in a ballot box locked with two locks, the keys of one of which shall be kept during the period for absentee voting by the sheriff and the keys of the other by the county clerk. The stubs shall be deposited in a stub box prepared in accordance with Section 97 of this Code (Article 8.15, Vernon's Texas Election Code).

(d) Where a voting machine is used for absentee voting by personal appearance, after a voter has been accepted, he shall then be permitted to cast his ballot on the voting machine. Returns of absentee

votes cast on a voting machine shall be made under the appropriate provision of Section 79 of this Code (Article 7.14, Vernon's Texas Election Code).

Voting by Personal Appearance in Election Less
Than County-wide

Subd. 3b. (a) In an election less than county-wide in which absentee paper ballots are to be sent to the regular polling places for counting, upon receipt of an application for an absentee ballot to be voted by personal appearance, the clerk shall thereupon furnish to the voter the following absentee voting supplies:

(1) One official ballot which has been prepared in accordance with law for use in such election.

(2) One ballot envelope, which shall be a plain envelope, without any markings except the words "Ballot Envelope" printed on the face thereof, followed by the instructions contained in this subdivision and Subdivision 4 for marking the ballot, for placing it in the carrier envelope, and for returning a ballot to be voted by mail, together with a statement of the deadline for delivery of the marked ballot to the clerk's office in that election and a statement of the substance of Subdivision 15 of this section and of Sections 330 and 330a of this code (Articles 15.30 and 15.30a, Vernon's Texas Election Code) relating to assistance to a voter in preparing his ballot. The textual material may be continued onto the reverse side of the envelope if necessary. The secretary of state shall prescribe the wording of the textual material.

(3) One carrier envelope, upon the face of which there shall appear the words "Carrier Envelope for Absentee Ballot" and the name, official title, and post-office address of the absentee voting clerk, upon the other side there shall appear spaces for showing the nature and date of the election and the number or name of the election precinct in which the voter resides (which the clerk shall fill in before he furnishes the supplies to the voter), and a certificate in substantially the following form:

"I certify that the enclosed ballot expresses my wishes, independent of any dictation or undue persuasion of any person and that I did not use any memorandum or device to aid me in the marking of the ballot.

(Signature of voter)

By:

(Signature of person who assisted voter. See Ballot Envelope for restrictions and penalties.)

(Residence address of person rendering the assistance)

Kinship to voter, if related: _____

If the voter has received assistance in marking the ballot, the person rendering the assistance shall print the name of the voter in the space for the voter's signature and shall fill in the remaining spaces in the certificate.

(b) The voter shall then and there, in the office of the clerk, mark the ballot, sign his name on the back of the ballot stub, detach the stub from the ballot, fold the ballot and place it in the envelope marked "Ballot Envelope" and seal the same. The voter shall then place the stub and the ballot envelope in the carrier envelope, seal the same and sign the certificate on the carrier envelope, and deliver the carrier envelope to the clerk.

*[See Compact Edition, Volume 2 for text of
3c and 3d]*

Absentee Voting by Sick or Disabled Voter after Close
of Regular Period

Subd. 3e. (a) The provisions of this subdivision apply only to county-wide elections and to elections less than county-wide where the authority holding the election has provided that absentee ballots shall be counted by a special canvassing board. In such an election, a voter who because of sickness or physical disability originating on or after the fifth day preceding election day will be unable to attend the polling place on election day may vote absentee under the procedure outlined in this subdivision. The voter shall make a written request signed by him, or signed by a witness at the voter's direction if the voter is unable to sign his name, and presented to the absentee voting clerk at his office, that the clerk send him a ballot by the person who presents the request to the clerk. The voter may select any person 18 years of age or older who shall not be employed by nor related within the third degree of consanguinity or affinity to any person whose name appears on the ballot, to act as his representative in presenting the request or delivering the marked ballot back to the clerk. No person may serve as the representative to present the request for a ballot or to deliver the marked ballot back to the clerk for more than one absentee voter in any election held under the provision of the Texas Election Code as amended. The voter's request must state in effect that sickness or physical disability will prevent the voter from appearing at the polling place on election day, giving the date of the election or otherwise identifying the election for which the ballot is requested, and that the inability to attend the polling place originated after the fifth day preceding the day of the election. The request must be accompanied by a certificate of a duly licensed physician or

chiropractor or accredited Christian Science practitioner in substantially the following form:

"This is to certify that I have personal knowledge of the physical condition of _____; that because of sickness or physical disability he (she) will be unable to appear at the polling place for an election to be held on the _____ day of _____, 19____; and that the inability to attend the polling place originated after the fifth day preceding the day of the election.

Witness my hand at _____, Texas, this _____ day of _____, 19____.

(Signature of practitioner)"

The request must state in effect that sickness or physical disability will prevent the voter from appearing at the polling place on election day, giving the date of the election or otherwise identifying the election for which the ballot is requested, and that the inability to attend the polling place arose on or after the fifth day preceding the day of the election. The request must be accompanied by the voter's voter registration certificate or his signed statement (either separately or included in the signed request) that the certificate has been lost or mislaid, has been left at the voter's home (when he is applying from a hospital or other temporary address), or has been used for applying for an absentee ballot in another election (stating the nature and date of the election) and has not been returned to him. Upon receiving a request that complies with the foregoing conditions at any time after the close of business on the fourth day preceding election day and before 12 noon on election day, the clerk shall deliver to the voter's representative the balloting materials used for voting absentee by mail, but before doing so he shall record the representative's name and address on the request and shall require the representative to place his signature alongside his name.

(b) The clerk shall add to the list of absentee voters described in Subdivision 11 of this section the name of each voter to whom an absentee ballot is sent under this subdivision, with a notation that the ballot was sent to the voter through a representative, but the clerk is not required to include the names of these voters on the precinct lists of absentee voters sent to the presiding election judges.

(c) After receiving the balloting materials, the voter shall follow the procedure prescribed in Subdivision 4 of this section for voting absentee by mail, except that the marked ballot shall be hand-delivered to the clerk by the voter's representative instead of being mailed to the clerk. The ballot must be delivered to the clerk by the deadline for receiving ballots voted by mail. It must be delivered by the person who delivered the request to the clerk. Upon receiving the marked ballot, the clerk shall make a notation on the carrier envelope of the name and address of the person who delivered it and shall

require the person to place his signature alongside his name on the envelope. The clerk shall then follow the same procedure as for a ballot received by mail. He shall return the voter's registration certificate to him by mailing it to his permanent address.

(d) A voter who gives false information in his request for an absentee ballot is guilty of a misdemeanor and upon conviction shall be punished as provided in Section 347 of this code (Article 15.47, Vernon's Texas Election Code).

Voting by Mail

Subd. 4. (a) The period for absentee voting by mail shall begin on the twentieth day preceding the date of the election. An application for an absentee ballot to be voted by mail must be received in the clerk's office not later than the close of business on the fourth day preceding election day. In county-wide elections and in elections less than county-wide where the authority holding the election has provided that absentee ballots shall be counted by a special canvassing board, the marked ballot must be received in the clerk's office before one o'clock p. m. on election day, except that in an election in which the offices of president and vice president of the United States appear on the ballot, the deadline for receipt of the ballot in the clerk's office is the official time of closing of the polls on the day of the election. In all other elections which are less than county-wide, the marked ballot must be received in the clerk's office before ten o'clock a. m. on the second day preceding election day. The ballot may be marked by the voter at any time after he receives it.

(b) On the twentieth day preceding election day, or as soon thereafter as possible, the clerk shall mail an official ballot, ballot envelope, and carrier envelope, as described in Subdivision 3b of this section, to each voter who has theretofore made application for a ballot in compliance with this section. On applications which are received between the twentieth day and the fourth day preceding election day, the clerk shall forthwith mail the absentee voting supplies to the voter.

(c) The voter shall mark the ballot, sign his name on the back of the ballot stub, detach the stub from the ballot, fold the ballot, and place it in the envelope marked "Ballot Envelope" and seal the same. The voter shall then place the stub and the ballot envelope in the carrier envelope, seal the same and sign the certificate on the carrier envelope. The carrier envelope shall then be mailed, postage prepaid, to the county clerk.

(d) Repealed by Acts 1977, 65th Leg., p. 1688, ch. 668, § 4, eff. Aug. 29, 1977.

[See Compact Edition, Volume 2 for text of 4a to 4e]

Defective, Mutilated, and Unused Ballots

Subd. 4f. The absentee voting clerk shall handle and account for defectively printed, defaced, and

mutilated ballots and other unused ballots in the same manner as prescribed by this code for unused ballots in regular voting on election day.

[See Compact Edition, Volume 1 for text of 5]

Counting of Ballots in County-wide Elections

Subd. 6. (a) In all countywide elections, and in elections less than countywide where the authority holding the election has provided that absentee paper ballots shall be counted by a special canvassing board, on the day of the election the ballot box and stub box used for absentee voting by personal appearance, the keys to the ballot box, the jacket envelopes containing the ballots voted by mail and accompanying papers, the poll list for absentee voting on which the clerk has entered the names of persons voting by personal appearance, and the list of registered voters used by the county clerk, shall be delivered to a special canvassing board consisting of a presiding judge and two or more election clerks appointed in the same manner as provided for appointment of the election officers for regular polling places at that election. The county clerk shall deliver the ballots to the canvassing board at such hour as the presiding judge shall direct, but not earlier than the hour at which the polls are opened and not later than the hour specified in Subdivision 4 of this section as the deadline for returning the marked ballots to the clerk's office. If delivered before the deadline, the clerk shall deliver in like manner to the board, immediately following the deadline, all ballots received by mail before the deadline which have not previously been delivered to the board.

(b) This special canvassing board shall open the jacket envelopes, announce the voter's name, and ascertain in each case if he is qualified to vote at that election and if he has complied with all applicable provisions of this section to entitle his ballot to be cast. On ballots voted by mail, the board shall compare the signatures on the application and the carrier envelope, and in case the board finds that the signatures correspond, that the application and the certificate on the carrier envelope are duly executed, that the voter is a qualified elector, and that he has voted in a manner authorized in this section, they shall enter his name on the official poll list (on which voters voting by mail shall be listed separately from those who have voted by personal appearance) and shall open the carrier envelope so as not to deface the certificate thereon, and shall place the sealed ballot envelope in the ballot box and the stub in the stub box. The carrier envelope, application, and accompanying papers shall be replaced in the jacket envelope and returned to the county clerk at the same time the voted ballots are returned, and shall be preserved for the length of time provided by law for the preservation of the voted ballots.

[See Compact Edition, Volume 2 for text of 6(c) to 6(f)]

(g) After the absentee ballots are counted, the ballot box containing the voted ballots and the returns and other records of the election shall be delivered to the proper officers as provided by law for regular polling places.

[See Compact Edition, Volume 2 for text of 7 to 10]

Records of Absentee Voters; Inspection of Applications, etc.

Subd. 11. (a) The county clerk and each other clerk for absentee voting designated in accordance with Subdivision 1a of this section shall maintain in his main office a complete record, in card-index or list form, of persons who have voted absentee by personal appearance and of persons to whom absentee ballots have been sent by mail (or, if authorized by some provision of law, have been sent by some other method of transmission). The record shall contain the voter's name, address, precinct of residence, voter registration number, a notation of whether the voter voted by personal appearance or was furnished a ballot to be returned by mail (or by other means of transmission, if authorized), and the date on which the voter voted, if by personal appearance, or on which the ballot was transmitted to the voter. The record shall be kept up from day to day.

(b) On or before the day preceding election day, the clerk for absentee voting shall deliver to each presiding election judge, in person or by mail, a list containing the name, address, and voter registration number of each resident of the precinct in which the judge serves, who has voted absentee by personal appearance or has been furnished an absentee ballot to be returned by mail. Before the hour for opening the polls on election day, the presiding judge shall cause the notation "absentee voter" to be placed by the name of each such voter on the list of registered voters to be used in accepting voters for voting at the polling place.

(c) The clerk's records of absentee voters and the applications for absentee ballots and accompanying papers shall be open to public inspection during the clerk's regular office hours, but under such reasonable rules and regulations as the clerk may adopt to safeguard the records and papers and to economize his own time. The clerk may require a person to present proof of identity before permitting him to inspect the records. The clerk must accept a current Texas voter registration certificate, Texas driver's license, or Department of Public Safety personal identification certificate as sufficient proof of identity.

[See Compact Edition, Volume 2 for text of 12 and 13]

Branch Offices for Absentee Voting by Personal Appearances
Subd. 14.

[See Compact Edition, Volume 2 for text of (a) and (b)]

(c) Any voter eligible to vote absentee by personal appearance in the main office of the clerk may vote in any branch office. The deputy clerk in charge of absentee voting at each branch office shall transmit to the clerk at the close of each day of absentee voting the names of all persons who have voted absentee in the branch office on that day, together with other necessary information as provided in Subdivision 11, for inclusion in the record of absentee voters maintained in the main office. During the period for absentee voting by personal appearance, the applications and ballots of persons who have voted absentee may be retained in the branch office or may be delivered to the main office from time to time, but all applications and ballots shall be delivered to the main office not later than one o'clock p. m. on the third day prior to election day. Except as otherwise provided in this subdivision, the voting in a branch office shall be subject to the same regulations as the voting in the main office.

Branch Offices for Absentee Voting by Personal Appearance in Counties Having a Population of More Than 1,500,000

Subd. 14a. (a) Upon authorization of the Commissioners Court of a county having a population of more than 1,500,000, the county clerk of such county shall conduct absentee voting by personal appearance at one or more suitable locations in each justice precinct in the county in elections in which the county clerk is the officer for conducting the absentee voting. The number of locations in each justice precinct may not exceed the number of justices of the peace elected in that precinct. This subdivision does not apply to elections in which the absentee voting is conducted by any officer other than the county clerk. Notwithstanding the provisions of Subdivision 14 of this section, if suboffices are established under this Subdivision 14-a, the county clerk shall not conduct absentee voting at any location other than his main office and the suboffices authorized by this subdivision. Such voting in each election suboffice shall be for the full period of time, and for the same hours, for which absentee voting is conducted at the main office.

[See Compact Edition, Volume 2 for text of (b)]

(c) The list of voters who vote absentee in each election suboffice each day shall be available for inspection the next day both in the election suboffice in which the voter voted and in the main office, with the list of each election suboffice being maintained in the main office separate and apart from the lists

of the other election suboffices. Each such list of voters shall be compiled in accordance with statutory requirements.

[See Compact Edition, Volume 2 for text of (d) and (e)]

Assistance to Voter; Use of English Language

Subd. 15. (a) No assistance shall be given a voter in marking his absentee ballot except where the voter is unable to prepare the same himself because of his inability to read the language in which the ballot is printed or because of some bodily infirmity which renders him physically unable to write or to see or to operate the voting equipment. If a voter who is voting by personal appearance is entitled to assistance, he may be assisted by the clerk or a deputy clerk or by any qualified voter of the political subdivision in which the election is held, selected by the voter, subject to the restriction stated in Section 330a of this code.¹ When a person other than the clerk or a deputy clerk assists a voter who is voting by personal appearance, the clerk or a deputy shall make a notation on the voter's ballot application of the name and address of the person rendering the assistance and also of the person's kinship to the voter if related as parent, grandparent, spouse, child, brother, or sister. Subdivision 4 of Section 95 of this code (Article 8.13, Vernon's Texas Election Code) applies to absentee voting by personal appearance. If a voter who is voting by mail is entitled to assistance, he may be assisted by any person 18 years of age or older, selected by the voter, subject to the restriction stated in Section 330a of this code. A person assisting a voter shall not suggest, by word or sign or gesture, how the voter shall vote, and shall confine the assistance to answering the voter's questions, to stating the propositions to be voted on, and to naming the candidates and the political parties to which they belong, and the person shall prepare the ballot as the voter directs. Where any assistance is rendered in marking an absentee ballot other than as allowed in this subdivision, the ballot shall not be counted but shall be void for all purposes.

(b) In absentee voting by personal appearance at the clerk's office, any voter unable to speak or understand the English language may communicate with the clerk in some other language, and if the clerk is unable to speak or understand the language used by the voter or if he requests that the voter communicate through an interpreter, the voter shall be entitled to communicate through an interpreter of his choice, who shall be a qualified voter in the county. Before acting as interpreter, the person chosen by the voter shall take the following oath, to be administered by the clerk: "I solemnly swear that I will correctly interpret and translate each question, answer, or statement addressed to the voter by the clerk and each question, answer, or state-

ment addressed to the clerk by the voter." When any language other than the English language is used either by the voter or by the clerk, any watcher present shall be entitled to request and receive a translation into the English language of anything spoken in some other language.

¹ Article 15.30a.

[See Compact Edition, Volume 2 for text of 16 to 18]

[Amended by Acts 1975, 64th Leg., p. 2084, ch. 682, §§ 6 to 11, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 86, ch. 43, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 376, ch. 186, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 660, ch. 247, § 9, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1653, ch. 649, § 3, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1682, ch. 665, §§ 1 to 4, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1687, ch. 668, §§ 1 to 4, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 109, ch. 68, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 167, ch. 91, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 602, ch. 278, § 2, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 867, ch. 392, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1169, ch. 568, § 2, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 2059, ch. 806, §§ 1, 2, eff. Aug. 27, 1979.]

Addition of subd. 4f to this article by Acts 1979, 66th Leg., p. 173, ch. 95, § 1, eff. Aug. 27, 1979, was repealed by Acts 1979, 66th Leg., p. 602, ch. 278, § 3, eff. Aug. 27, 1979.

Art. 5.05a. Repealed by Acts 1975, 64th Leg. p. 2098, ch. 682, § 28, eff. Sept. 1, 1975

Art. 5.05b. Voting by Former Residents of State in Presidential Elections

Former Residents Eligible to Vote

Subd. 1. A former resident of this state who has become a legal resident of another state of the United States or of the District of Columbia may vote for presidential and vice presidential electors in the county of his former residence if:

(1) on the day of the election he will not have resided in the state of his present residence for a period of 30 days and will not be eligible to vote in that state, and

(2) he otherwise possesses the substantive qualifications of an elector in this state, as defined in Section 34 of this code (Article 5.02, Vernon's Texas Election Code), except the requirement of residence, and

(3) at the time of his removal he was registered as a voter in this state, and

(4) he complies with the provisions of this section.

Application for Presidential Ballot

Subd. 2. (a) A person eligible to vote under the provisions of this section may vote either by personal appearance or by mail. The voter shall make a written, signed application to the county clerk of the county of his former residence for a ballot permitting him to vote for president and vice president

only, on a form to be prescribed by the secretary of state and furnished by the county clerk.

Procedure for Voting by Mail

Subd. 3. When a voter desires to vote a ballot by mail, the procedure for absentee voting by mail in a countywide election shall be followed insofar as it can be made applicable and is not inconsistent with this section. The clerk shall mail the voter a ballot from which the clerk has stricken all offices and propositions other than the offices of president and vice president, together with a ballot envelope and a carrier envelope containing such markings and instructions as the secretary of state prescribes. When the election officer checks the voter's name on the list of registered voters and enters his name on the poll list, the officer shall add a notation that the voter is voting under this section, in the presidential race only. The ballots cast under this section shall be counted and return made thereof along with and on the same forms as the other absentee ballots.

Procedure for Voting by Personal Appearance

Subd. 4. A voter may vote by personal appearance at the clerk's office at any time that the office is open to the public, beginning on the 20th day preceding the election and ending on the day of the election. When the voter appears in person, the clerk shall furnish him with a ballot, ballot envelope, and carrier envelope prepared in accordance with Subdivision 3 of this section, and the ballot shall be processed and counted along with the absentee ballots voted by mail.

Cancellation of Registration

Subd. 5. When the registrar receives a list of registered voters containing a notation that a voter has voted under this section, he shall cancel the registration if it is still in the active file in his records.

[Amended by Acts 1975, 64th Leg., p. 2089, ch. 682, § 12, eff. Sept. 1, 1975.]

Art. 5.05c. Voting Limited Ballot After Removal to Another County

Definition of Limited Ballot

Subd. 1. The term "limited ballot" is used to mean a ballot listing only the offices and propositions on which a voter is entitled to vote under the procedure outlined in this section during a period not exceeding 90 days after his removal from one county to another county within the state. The term includes the ballot for any election at which the voter is entitled to vote, even though at some special or runoff elections the ballot may be identical with the full ballot for that election. For the purposes of this section, the day of arrival in the county of new residence is counted as the first day after removal.

Who is Eligible to Vote a Limited Ballot

Subd. 2. (a) Where a registered voter moves from one county to another county in the state, during the first 90 days after the removal he is entitled to vote, under the procedure outlined in this section, on all offices, questions, or propositions to be voted on by the electors throughout the state, if on the day of the election (1) he would have been eligible to vote in the county of his former residence except for the removal, and (2) a registration in the county of new residence has not become effective. He may also vote on all district offices for any district of which he was a resident before the removal and continues to be a resident after the removal. The term "district office" refers to the district offices which are regularly filled at the general election provided for in Section 9 of this code (Article 2.01, Vernon's Texas Election Code). After a new registration in the county of new residence becomes effective, he must thereafter vote under the normal procedures for voters registered in that county. In no event may he vote under the procedure outlined in this section after 90 days following the removal.

(b) Voting rights and registration requirements in other elections after removal from one county to another are governed by Subdivision 3 of Section 50a of this code (Article 5.18a, Vernon's Texas Election Code).

Application for Limited Ballot; Procedure for Voting

Subd. 3. A person who is entitled to vote a limited ballot, as described in Subdivision 2 of this section, shall be permitted to vote upon making a written, signed application for a limited ballot to the county clerk of the county of his residence at the time of the election, upon an official application form to be prescribed by the Secretary of State and furnished by the county clerk. The voter shall state in his application that he was registered in the county of his former residence at the time of his removal, and he shall accompany his application with his voter registration certificate from that county or shall state in his application that the certificate has been lost or misplaced. The procedure for voting a limited ballot shall be similar to the procedure for absentee voting. If the voter meets the requirements of Section 37 of this code (Article 5.05, Vernon's Texas Election Code) for voting an absentee ballot by mail, he shall be permitted to vote the limited ballot by mail under the procedure for absentee voting by mail upon submitting both an application for a limited ballot and an application for an absentee ballot. Otherwise, he shall vote by personal appearance during the period for absentee voting by personal appearance and under the procedure for voting by personal appearance in countywide elections insofar as it can be made applicable and is not inconsistent with this section. Ballots cast under this section shall be counted and return made there-

of along with and on the same forms as the absentee ballots."

[See Compact Edition, Volume 2 for text of 4 and 5]

[Amended by Acts 1975, 64th Leg., p. 750, ch. 296, § 14, eff. Nov. 5, 1975.]

Art. 5.05d. General Provisions on Voting by Persons Lacking Full Voting Rights

Record of Applicants

Subd. 1. The county clerk shall maintain in his office, for public inspection, a complete record of persons who have applied for a ballot under Section 37b or 37c of this code (Article 5.05b or 5.05c, Vernon's Texas Election Code), stating thereon the applicant's name, address, precinct of residence, the section of this code under which the application was made, and the date on which the ballot was delivered or mailed, which record shall be kept up from day to day. The record is subject to the same regulations as the record of absentee voters under Subdivision 11 of Section 37 of this code (Article 5.05, Vernon's Texas Election Code). The names of persons voting under Section 37c shall be included on the precinct lists of absentee voters which the clerk furnishes to the presiding judges of the election, as provided in Subdivision 11 of Section 37, with a notation by each name to indicate that the voter received a limited ballot under Section 37c.

Preservation of Applications; Inspection

Subd. 2. Applications and accompanying papers received pursuant to Sections 37b and 37c of this code (Articles 5.05b and 5.05c, Vernon's Texas Election Code) shall be preserved in the clerk's office for the length of time provided by law for preservation of voted ballots and shall be open to public inspection under the same rules as apply to applications for absentee ballots.

[Amended by Acts 1975, 64th Leg., p. 2090, ch. 682, § 13, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1684, ch. 665, § 5, eff. Aug. 29, 1977.]

Art. 5.06. Repealed by Acts 1977, 65th Leg., p. 661, ch. 247, § 11, eff. Aug. 29, 1977

Art. 5.07. Repealed by Acts 1975, 64th Leg., p. 2098, ch. 682, § 28, eff. Sept. 1, 1975

Art. 5.08. Rules for Determining Residence

[See Compact Edition, Volume 2 for text of (a) to (l)]

(m) Repealed by Acts 1975, 64th Leg., p. 2098, ch. 682, § 28, eff. Sept. 1, 1975.

[Amended by Acts 1975, 64th Leg., p. 2098, ch. 682, § 28, eff. Sept. 1, 1975.]

Art. 5.09a. Register of Voters

Subd. 1. Unless the county commissioners court makes a different designation as authorized in Section 41b or Section 56a of this code, the county tax assessor-collector of each county in this State is the registrar of voters in that county.

Subd. 2. The registrar of voters shall be responsible for the registration of voters, the keeping of records, the preparation of lists of registered voters, and such other duties incident to voter registration as are placed upon him by law. Any of the duties of the registrar, except the hearing of appeals on denial of registration and the hearing of challenges of registration, may be performed through a deputy or deputies. The registrar shall not make any charge against a voter for performing any duty incident to voter registration unless expressly authorized by law to do so. The registrar is authorized to administer oaths and certify thereto under the seal of his office in every case where an oath is required in complying with any portion of this code connected with his official duties. The registration records, the applications for registration, and the duplicate registration certificates on file in the registrar's office shall be open for public inspection at all times when the office is open.

Subd. 3. The expenses of the registrar in excess of the reimbursements received from the state under Section 51b of this code (Article 5.19b, Vernon's Texas Election Code) shall be borne by the county. [Amended by Acts 1977, 65th Leg., p. 1497, ch. 609, § 1, eff. Aug. 29, 1977.]

Art. 5.09b. County Clerk as Registrar

Subd. 1. The commissioners court of any county in this state may designate the county clerk to be the registrar of voters for that county, by order recorded in its minutes. If some other officer is the registrar at the time the order is adopted, the order shall state the date on which the transfer of registration duties to the county clerk becomes effective. The commissioners court may rescind the order at any time after two years have elapsed from the date of its adoption, by a rescission order recorded in its minutes, to become effective on a date stated in the order. Thereafter, the duties of the registrar of voters shall be performed by the county tax assessor-collector unless the commissioners court establishes the office of county elections administrator and transfers the duties to that officer, as authorized in Section 56a of this code.¹ Within three days after the entry of an order transferring registration duties to the county clerk or after the entry of an order, rescinding an order of transfer, the county clerk shall send a copy of the order to the secretary of state and the comptroller of public accounts.

Subd. 2. In a county where the commissioners court has designated the county clerk to serve as the registrar of voters, all references to the county tax assessor-collector in Sections 3, 12, 64, 199, 301, 321, and 335 of this code (Articles 1.03, 2.04, 6.09, 13.21, 15.01, 15.25, and 15.35, Vernon's Texas Election Code), and in any other statutes pertaining to voter registration, mean the county clerk.

Subd. 3. Where the county clerk is the registrar of voters, the amount appropriated by the commissioners court for the registration duties of the registrar shall not be less than the amount previously appropriated to the county tax assessor-collector for the registration duties formerly performed by him, with additional appropriations, if required, to compensate for the effects of inflation and rising costs of supplies, equipment, and personnel.

Subd. 4. The secretary of state shall prepare advisory budgetary guidelines for the establishment and operation of a division of elections in the county clerk's office for administering the consolidated election duties of the clerk as provided in this section and for the establishment and operation of the separate office of county elections administrator as provided in Section 56a of this code. In preparing the guidelines the secretary of state shall consider and accommodate the differing needs of counties and their differing capabilities for financing the administration of the consolidated duties.

[Added by Acts 1977, 65th Leg., p. 1498, ch. 609, § 2, eff. Aug. 29, 1977.]

¹ Article 5.14a.

Art. 5.09c. Office Hours of County Clerk and Tax Assessor on Election Day

Notwithstanding the designation of an election day as a legal holiday on which public offices may be closed, during the hours the polls are open on the day of any general election, primary election, or runoff primary election in which a statewide office appears on the ballot:

(1) the office of the county clerk shall remain open for the purpose of performing the clerk's duties in connection with administration of the election in counties where no county elections administrator has been appointed; and

(2) the office of tax assessor-collector shall remain open for voter registration purposes in counties where the tax assessor-collector serves as registrar of voters.

[Amended by Acts 1979, 66th Leg., p. 495, ch. 226, § 1, eff. Aug. 27, 1979.]

Art. 5.10a. Persons Entitled to Register

A person is entitled to register as a voter in the precinct in which he has his legal residence (i. e., domicile), as defined in Section 40 of this code (Article 5.08, Vernon's Texas Election Code), if:

(1) on the date of applying for registration he is a citizen of the United States and is subject to

none of the disqualifications, other than nonage, stated in Section 33 of this code (Article 5.01, Vernon's Texas Election Code); and

(2) within 60 days after applying for registration he will be 18 years of age or older.

However, no person may vote at any election unless he fulfills all the qualifications of an elector for that election.

[Amended by Acts 1975, 64th Leg., p. 750, ch. 296, § 1, eff. May 27, 1975.]

Art. 5.11a. Expired

This article, as amended by Acts 1971, 62nd Leg., p. 2509, ch. 827, § 3 and Acts 1975, 64th Leg., p. 751, ch. 296, § 2, provided for an initial registration period for permanent registration to begin on November 5, 1975 and continue through January 31, 1976. Subdivision 2 of this article provided: "This section expires on March 2, 1976."

See, now, art. 5.13a.

Art. 5.13a. Mode of Applying for Registration; Period for Which Registration is Effective

Subd. 1. Registration shall be conducted at all times the registrar's office is open for business. A person may apply for registration in person or by mail. Each applicant shall submit to the registrar of the county in which he resides a written application which supplies all the information required by Section 45b of this code (Article 5.13b, Vernon's Texas Election Code). The Secretary of State shall prescribe the application form. The application for registration by mail shall be in the form of a business reply postcard, or other suitable form, with postage to be paid by the state. The Secretary of State shall make necessary arrangements with the United States Postal Service for obtaining a permit for use of the business reply mail form, or other suitable form, and for payment of the postal charges through warrants issued by the comptroller of public accounts. The Secretary of State shall be authorized to use any form or system made available by the United States Postal Service if such other form or system will be less costly than business reply, and he shall be authorized to implement any procedures necessary to accommodate such other form or system. The application shall be available to individuals, organizations, businesses, and political subdivisions in reasonable quantities. No fee shall ever be charged for voter registration applications. The Secretary of State may prescribe one or more forms for use in counties using electronic data processing methods for issuing voter registration certificates and a different form for use in counties not using those methods, but the registrar in each county shall accept any application made upon any form prescribed by the Secretary of State which supplies all the necessary information for registration. In addition to other requirements, the application form shall contain the following statement: "I understand that the giving of false information to procure the registration of a voter is a felony." It shall also

contain a space for recording the number of the voter's registration certificate.

Subd. 2. The application shall be signed by the applicant or his agent. However, if the person making the application is unable to sign his name either because of physical disability or illiteracy, he shall affix his mark, if able to do so, which shall be attested by a witness, whose signature and address shall be shown on the application. If a person making the application is physically unable to make a mark, the witness shall so state on the application.

Subd. 3. The husband, wife, father, mother, son, or daughter of a person entitled to register may act as agent for such person in applying for registration, without the necessity of written authorization therefor, may sign for the applicant, and may receive the registration certificate. However, none of these persons may act as agent unless he is a qualified elector of the county. No person other than those mentioned in this subdivision may act as agent for a person in applying for registration. Except as permitted in this subdivision, a person who wilfully acts as agent for another in applying for registration or in obtaining a registration certificate is guilty of a Class B misdemeanor.

Subd. 4. A registration becomes effective on the 30th day after the date on which the registrar receives the application or on the day that the registrant attains the age of 18 years (the day before his 18th birthday), whichever is later. An application by mail is deemed to have been received by the registrar when it is actually placed into the possession of the registrar or his agent by a post-office employee, or is deposited in the registrar's mail box, or is left at the usual place of delivery for the registrar's official mail. If the registrar is unable to determine the exact date on which the application is deposited in his mail box, he shall treat it as having been deposited on the date of the last previous removal of mail from the box. Every registration of a voter which becomes effective on or after March 1, 1976, shall continue in effect until cancelled under some provision of this code.

Subd. 5. Any person who applies for registration of any person, or who signs an application purporting to be the application for registration of any person, either real or fictitious, other than the person making the application or affixing the signature, or someone for whom he may lawfully act as agent, or someone who is unable to sign and who requests him to sign for such other person, is guilty of a felony of the third degree.

[Amended by Acts 1975, 64th Leg., p. 751, ch. 296, § 3, eff. Nov. 5, 1975; Acts 1977, 65th Leg., p. 1215, ch. 468, § 3, eff. Aug. 29, 1977.]

Art. 5.13b. Information on Application**Required Information**

Subd. 1. An application form for voter registration shall provide that the following required information be furnished by the applicant:

(1) The applicant's first name, middle name (if any), and surname. If the applicant is a married woman using her husband's surname, she shall furnish her first name, maiden name, and husband's surname.

(2) The applicant's sex.

(3) The month, day, and year of the applicant's birth, and city or county and state, or foreign country, where the applicant was born.

(4) A statement that the applicant is a citizen of the United States.

(5) If a naturalized citizen, the court of naturalization, or its location.

(6) A statement that the applicant is a resident of the county.

(7) If the applicant is currently registered in another county or if the applicant was registered in the previous two-year certificate period in any county in the state and has not received a registration certificate for the current two-year certificate period, the name of that county and the applicant's residence address as shown on such registration certificate.

(8) The registrant's complete current permanent residence address (including apartment number, if any); or, if none, a concise description of the location of the registrant's residence.

(9) The address to which the registration certificate is to be mailed, but only if mail cannot be delivered to the registrant's permanent residence.

(10) If the application is made by an agent, a statement of the agent's relationship to the applicant.

Optional Information

Subd. 2. The application form shall contain a space for showing the election precinct in which the applicant resides, but an application is not deficient for failure to list the number or name of the precinct or for listing an incorrect number or name where the applicant's correct permanent residence address is given. It shall also contain a space for the applicant's social security number and telephone number, but an application is not deficient for failure to list these numbers. However, should it be made possible for the state to require that a registrant provide his social security number when applying for a registration certificate, the providing of such a number by all those applicants who possess such a number may be made mandatory by directive of the Secretary of State in the exercise of his authority pursuant to the

provisions of Section 3, Texas Election Code (Article 1.03, Vernon's Texas Election Code). The registrar shall not transcribe, copy, or record any telephone number furnished on an application for registration. [Amended by Acts 1975, 64th Leg., p. 752, ch. 296, § 4, eff. Nov. 5, 1975; Acts 1977, 65th Leg., p. 1217, ch. 468, § 8, eff. Aug. 29, 1977.]

Art. 5.13c. Voter Registration Forms in Spanish

The secretary of state shall prescribe a voter registration application form that is printed in Spanish. In each county in which five percent or more of the inhabitants are persons of Spanish origin or descent, according to the last preceding federal decennial census, the registrar shall keep a supply of these, and shall keep a notice in Spanish posted at the place in his office where voter registration is conducted, stating that application forms in Spanish are available. Registrars in other counties may also use this form if they wish to do so. Every registrar in the state is required to accept and process applications that are tendered to him on the bilingual form, in the same manner as other applications.

[Added by Acts 1975, 64th Leg., p. 513, ch. 213, § 2, eff. May 16, 1975.]

Art. 5.14a. Registration Certificate Forms; Issuance of Certificates; Information Required on Certificate**Registration Certificate Forms**

Subd. 1. (a) The form for a voter registration certificate shall be prescribed by the Secretary of State. He may prescribe one or more forms for use in counties using electronic data processing methods for issuing certificates and a different form for use in counties not using those methods. A certificate form prescribed by the Secretary of State shall be valid for use only during a two-year period, such two-year period to begin on March 1 of even-numbered years, unless rescinded by the Secretary of State.

(b) The registration certificates for each county may be numbered or labeled in any manner which will enable the registrar to efficiently and accurately maintain the voter registration rolls. However, the Secretary of State may establish a standardized numbering or labeling system and require its adoption by the various counties.

Issuance of Certificates

Subd. 2. (a) When a properly executed application is received by the registrar, he shall make out an initial registration certificate in duplicate and shall mail the original copy to the voter at his regular mailing address, or if none, at his permanent residence address, in time for him to receive it before his registration becomes effective. The registrar may also deliver the original copy to the voter

personally, or to an agent making the application under Section 45a of this code (Article 5.13a, Vernon's Texas Election Code). The duplicate copy shall be retained by the registrar. At the time he prepares the initial registration certificate, the registrar shall enter the certificate number in an appropriate space on the voter's application for registration.

(b) Between November 1 and November 15 of each year in which no general election is held, beginning in 1977, the registrar shall prepare and mail to each registered voter in the county as of the preceding October 31 a registration certificate for use during the succeeding two voting years. The certificate shall be mailed to the permanent residence address shown on the voter's registration application; or, if provided, the mailing address. It shall not be sent in the same envelope as the voter's tax statement. Attached to or made a part of the registration certificate shall be adequate space for the voter to insert any change of information other than that printed on the certificate. If the voter has noted such changes, the notice shall be signed and affirmed by the voter and returned to the registrar for correction of the records and issuance of a corrected certificate to the voter.

The registration certificate or envelope containing the certificate shall be marked with a direction to the postal authorities not to forward it to any other address and to return it to the registrar if the addressee is no longer at that address. In the event the certificate is returned, the registrar shall cancel the voter's registration. The registrar shall maintain a list of all returned and cancelled registration certificates showing the name, address, birth date, and registration number of the person to whom the certificate was issued. The list shall be kept in the registrar's office and shall be open to public inspection at all times during regular office hours of the registrar, subject to reasonable regulations and to proper safeguards against alterations, mutilation, or removal. The registrar shall furnish a copy of such list to any person requesting it and shall be permitted to charge One Dollar (\$1) for each 10,000 names contained on the list, to be paid by the person so ordering such list. Any money collected pursuant to this subdivision shall be accounted for as official fees of office.

In the event that a person believes that his registration has been cancelled under Section 46a of this code¹ solely because of postal service error, address reclassification, or clerical error on the part of the registrar of voters, he may present to the registrar of voters a sworn statement challenging such cancellation. Upon receiving such statement, the registrar shall give notice to the person whose registration has been cancelled of a hearing to be held on the third

working day after receipt of such statement. At the hearing, the registrar may consider such information relating to the challenge as may be presented. If no information controverting the sworn statement of the person claiming to have an erroneously cancelled registration is introduced, such person's name shall be reinstated on the list of registered voters. If controverting information is introduced, the registrar of voters shall consider the information, including the sworn statement of the person whose name was allegedly erroneously placed on the list of cancelled voter registration certificates, and if satisfied that the sworn statement of the person whose registration has been cancelled is true, he shall reinstate the person's name on the list of registered voters. If the registrar refuses to reinstate such person, the person may appeal from the decision of the registrar to a district court of the county within 30 days after the registrar's decision, and the decision of the district court shall be final.

Prior to the succeeding January 15, the registrar shall send to the Secretary of State a list of all the persons, along with all corresponding information available and required by the Secretary of State, whose registration certificates were cancelled as a result of the provisions of this section. Such list shall be in computer readable form. The Secretary of State shall furnish a copy of such list to any person requesting it and shall be permitted to charge One Dollar (\$1) for each 10,000 names contained on the list, to be paid by the person so ordering such list. Funds collected by the Secretary of State pursuant to this subdivision shall be used by the Secretary of State to defray any expenses incurred in the preparation of such list.

Any person who uses information obtained under this subdivision for any purpose other than informing voters about candidates for public offices or public issues or for voter registration purposes is guilty of a Class A misdemeanor.

(c) Each voter whose registration becomes effective after October 31 of an odd-numbered year, beginning with 1977, but before the following March 1 shall be issued an initial certificate valid for the remainder of that voting year and a certificate valid for use during the two-year period beginning the following March 1.

(d) A registrar of voters who knowingly issues, mails, or delivers a registration certificate to a person other than the applicant therefor or his lawful agent as provided in Section 45a of this code (Article 5.13a, Vernon's Texas Election Code), is guilty of a felony of the third degree.

(e) Any person whose registration is cancelled under the provision of this section shall be required to reregister in the same manner as an initial registrant. The secretary of state shall prescribe forms for the various documents required by this section.

Information Required on Certificate

Subd. 3. (a) Each certificate shall show the voter's name, permanent residence address, mailing address if any, sex, election precinct number, and if an initial certificate, the effective date of the registration. It shall contain a blank space for political party affiliation of the voter, to be completed as provided in Section 179a, of this code (Article 13.01a, Vernon's Texas Election Code). It shall not show the voter's telephone number or social security number. The certificate shall have a place for the voter's signature, and shall contain or be accompanied by a written instruction to the voter that the certificate is to be signed by the voter personally immediately upon receipt, if the voter is able to sign his name. Each certificate shall clearly indicate the two-year period for which it is issued, and shall contain a statement that the voter shall receive a new certificate every two years so long as such voter does not become disqualified under some provision of the election laws. Each certificate shall contain a statement giving notice that voting by use of the certificate by any person other than the person in whose name the certificate is issued is a felony. Voting by use of certificate which has been issued to another is hereby expressly made a felony of the third degree.

(b) Each certificate may contain a notice to the voter to correct and return the certificate to the registrar in case any of the information thereon changes or is incorrect. It may be accompanied by a more detailed explanation of the registrant's rights and duties under this code, including, but not limited to: a statement that his registration is permanent unless cancelled under some provision of the election laws; the procedure by which he will receive a new certificate every two years; the need to reregister if he moves to another county; the period during which he may vote a limited ballot after removal from the county; the need to notify the registrar to transfer his registration if he moves to a new precinct within the county; the period during which he may vote in his old precinct after removal to another precinct within the county; his right to vote without a certificate; and the procedure for obtaining a replacement for a lost certificate.

[Amended by Acts 1975, 64th Leg., p. 750, ch. 296, § 1, eff. Nov. 5, 1975; Acts 1977, 65th Leg., p. 1213, ch. 463, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1671, ch. 698, § 2, eff. Aug. 27, 1979.]

¹ This article.

Art. 5.15a. Registration Files

Subd. 1. (a) The applications on which registration certificates are issued shall be filed in an active application file and shall remain in that file as long as the registration continues in effect. The active application file shall be maintained in alphabetical order by voter name for the entire county, except

that if the registrar regularly obtains a list of registrants in that order through use of electronic data processing equipment, he may keep the file in numerical order by certificate number.

(b) The registrar shall also maintain an inactive application file. The registrar shall place in alphabetical order into this file all applications which are rejected. He shall also transfer to a separate inactive file the application of each voter whose registration is cancelled. The registrar shall enter on the application form the date on which the registration is rejected or the date on which the registration is cancelled before filing an application in the inactive file. The application shall be kept in the inactive file for a period of two years from the date of rejection or cancellation, after which it may be destroyed.

Subd. 2. (a) After the registrar adds a voter's name to the list of registered voters from the duplicate registration certificate, he shall file the duplicate in an active duplicate registration certificate file. An active file shall be maintained in numerical order for the entire county.

(b) When a registration is cancelled, the registrar shall enter the date of and reason for cancellation on the duplicate certificate and shall transfer it to an inactive file arranged numerically for each voting year. The duplicate shall be kept in the inactive file for a period of two years from the date of cancellation, after which it may be destroyed.

Subd. 3. Applications and duplicate registration certificates may be removed from the registrar's office temporarily, under proper safeguards, for use in preparing registration certificates, lists of registered voters, and other registration papers by electronic data processing methods, but they may not be removed for any other purpose. Except as permitted in the preceding sentence, the applications, and the duplicate registration certificates shall be kept in the registrar's office at all times in a place and in such a manner as to be properly safeguarded. The files shall be open to public inspection at all times during regular office hours of the registrar, subject to reasonable regulations and to proper safeguards against alteration, mutilation, or removal.

[Amended by Acts 1975, 64th Leg., p. 750, ch. 296, § 6, eff. Nov. 5, 1975.]

Art. 5.15b. Service Program of Secretary of State; Copies of Master State Voter File

Subd. 1. The secretary of state is hereby authorized to provide a service program to assist registrars in efficiently maintaining accurate and current lists of registered voters. Such service program shall provide for, but is not limited to:

(a) obtaining initial lists of registered voters and other necessary information from the registrars of voters in order to create master files of such information;

(b) obtaining periodic information from registrars and from any other available sources for the following purposes:

(1) to maintain the master files,

(2) to aid in the determination of the proper status of persons on the lists of registered voters,

(3) to aid in the determination of the proper registration information to be associated with each registrant;

(c) conducting the various procedures necessary or proper for the implementation of the service program by utilization of automatic data processing equipment or by other means;

(d) furnishing information which may be useful to the registrars in the performance of their duties;

(e) contracting with political subdivisions of this state to provide such other services as are necessary to the performance of the duties of election officials. Fees collected through such contracts shall be retained by the secretary of state to defray expenses of the service program.

Subd. 2. Implementation of this program shall be by directive of the secretary of state. The secretary of state shall make a full report to the legislature which convenes in January of 1977 of all steps taken to implement this program. He shall include in his report a description of any difficulties encountered and his recommendations, if any, for corrective legislation.

Subd. 3. Each March 1 and September 1 the secretary of state shall prepare a copy of the master state voter file on magnetic tape, which shall include each voter's county, voting precinct number, name, permanent residence address, mailing address if any, sex, year of birth, and registration number. It shall not include any voter's social security number or telephone number. The secretary of state shall furnish a copy of this tape to any person requesting it. Each person requesting a copy shall submit an affidavit that the information obtained will be used only for the purpose of informing voters about candidates for public office or about public issues, and will not be used to advertise or promote commercial products or services. The secretary of state shall provide the copy within 15 days of the date on which he receives the request. He shall exact a uniform charge against each person to whom he furnishes a copy of the tape. The charge shall not be greater than an amount deemed sufficient to reasonably reimburse the secretary of state for his actual expense in

furnishing the copy, and in any event shall not exceed five cents per hundred names furnished.

Subd. 4. Any person who uses information obtained under Subdivision 3 of this section for any purpose other than informing voters about candidates for public office or about public issues is guilty of a Class A misdemeanor.

[Added by Acts 1975, 64th Leg., p. 750, ch. 296, § 7, eff. May 27, 1975.]

Sections 17 and 18 of the 1975 Act provided:

"Sec. 17. The secretary of state is hereby authorized to utilize any funds previously appropriated for the biennium ending August 31, 1975, for the purpose of publication of constitutional amendment explanatory statements, but which have not and will not be expended for that purpose, in connection with the implementation of the service program described in Section 7 of this Act.

"Sec. 18. Sections 1, 7, and 17 of this Act take effect immediately upon passage or as soon thereafter as permitted by law. All other sections preceding this section take effect on November 5, 1975."

Art. 5.16a. Correction of Errors on Certificates; Lost Certificates

Correction of Error

Subd. 1. When after issuance of a registration certificate it is discovered that an error has been made in filling out the blanks on the certificate through mistake of the registrar or through mistake of the voter in supplying the information, the voter may present the certificate to the registrar for correction and the registrar shall issue a corrected certificate and correct the information on the registration records on file in his office.

Error in Election Precinct

Subd. 2. Except as permitted in Section 50a of this code,¹ no person is entitled to vote in a precinct of which he is not a resident and an election officer shall not knowingly permit a voter to do so. However, where a voter is erroneously registered in a precinct in which he does not reside and the election officer permits him to vote without knowing of the erroneous registration, in an election contest a ballot cast in that precinct shall be given effect as to any offices or propositions on which the voter would have been entitled to vote in the precinct in which he resides unless it is proved that the voter intentionally gave false information to procure his registration in the wrong precinct, in which event the ballot is void for all purposes.

If an error in the election precinct has not been corrected at the time the voter offers to vote, he may vote in the precinct of his residence, if otherwise qualified, by making and leaving with the presiding judge an affidavit, in any form authorized by the secretary of state, that he is or has been during the previous 90 days a resident of the precinct and is voting only one ballot in this election and that the error was not intentional.

[See Compact Edition, Volume 2 for text of 3]

Cancelled Voter Registration Certificate

Subd. 3a. For elections held between March 1 and no later than June 30 in even-numbered years, where a voter's name is not shown on the precinct list of registered voters but does appear on the precinct list of cancelled voter registration certificates, the election officer shall permit such voter to cast a ballot, provided such voter submits a completed voter registration application to the election officer and an affidavit that he still resides within the county for county administered and primary elections or within the municipality or other political subdivision if administered by such authority. In the event the runoff primary election occurs within 29 days after the date of the general primary, the voter may vote at the election under the procedure outlined in this subdivision, except that the voter shall inform the presiding judge that he voted under this procedure at a previous election, and the presiding judge shall note that fact on the application. When the registrar receives such an application, he shall attach it to the application previously received.

All affidavits required by this subdivision shall contain the content and be in the form prescribed by the Secretary of State. The date on which the election officer accepts an application is considered to be the date on which the registrar receives it, and the registration becomes effective for voting in other elections on the 30th day after that date.

A ballot of a voter cast in willful disregard of this subdivision is invalid.

[See Compact Edition, Volume 2 for text of 4 and 5]

Replacement of Lost Certificate

Subd. 6. (a) If a voter to whom a registration certificate has been issued presents to the registrar his signed statement that the certificate has been lost or destroyed, the registrar shall issue to the voter a replacement certificate as a single-copy document, showing the same registration number and the same information as shown on the original certificate. The registrar shall make a notation on the face of the certificate showing it to be a replacement. He shall attach the statement to the voter's application.

A person who states in a request for a replacement certificate that his registration certificate has been lost or destroyed, knowing the statement to be false, is guilty of a Class A misdemeanor.

(b) A replacement certificate issued after October 31 in an odd-numbered year shall be valid for use during the two-year period beginning on the following March 1. But it shall bear a notation that it may be used beginning on the date of issuance,

except that a corrected replacement certificate shall be dated for use beginning on the 30th day following receipt by the registrar of the voter's old certificate or statement of loss.

[See Compact Edition, Volume 2 for text of 7]

[Amended by Acts 1975, 64th Leg., p. 750, ch. 296, § 8, eff. Nov. 5, 1975; Acts 1977, 65th Leg., p. 591, ch. 209, § 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1216, ch. 468, § 5, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1672, ch. 698, § 3, eff. Aug. 27, 1979.]

¹ Article 5.18a.

Art. 5.18a. Change of Residence; Cancellation or Transfer of Registration

Change of Residence Within Precinct

Subd. 1. A registered voter who changes his place of residence within the election precinct shall give written notice to the registrar of the change of address and obtain a corrected certificate as provided in Subdivision 1 of Section 48a of this code (Article 5.16a, Vernon's Texas Election Code).

Change of Residence to Another Precinct Within County

Subd. 2. A registered voter who changes his residence to another election precinct within the county may vote a full ballot in the precinct of his former residence, if otherwise qualified, during the first 90 days after the removal, but not thereafter, in any election in which there is listed on the ballot any office or proposition on which he is eligible to vote at his new residence.

If he obtains a transfer of his registration to the precinct of his new residence during the 90-day period, he may vote only in the precinct of his new residence after the 29th day following the transfer. He may not vote in the precinct of his new residence before the 30th day following the transfer.

To obtain a transfer of his registration, the voter shall present the registrar with a written, signed request that his registration be transferred to the precinct of his new residence. Upon receiving a request for transfer, the registrar shall make the necessary changes on the registration records in his office and shall issue a new corrected registration certificate to the voter. He shall attach the request to the registrant's original application.

Change of Residence to Another County

Subd. 3. (a) A registered voter who moves from one county to another within the State must reregister in the county of his new residence in the same manner as an initial registrant. However, during the first 90 days after removal the voter may vote a limited ballot, as provided in Section 37c of this code (Article 5.05c, Vernon's Texas Election Code), if a reregistration in the county of new residence has not become effective.

(b) Where a registered voter who resides in a municipality or other political subdivision which is situated in more than one county moves from one county to another within the political subdivision, if the election precincts of the political subdivision are so constituted that the voter lives in the same precinct, he may continue to vote on the registration in the county of former residence at elections held by that political subdivision so long as that registration continues in effect. If he resides in a different precinct, during the first 90 days after the removal he may continue to vote in the precinct of his former residence at elections held by the political subdivision, on the registration in the county of former residence, if a reregistration in the county of new residence has not become effective.

Notification to Registrar in County of Former Residence

Subd. 4. When the registrar receives an application for registration of a voter who is registered in some other county, he shall notify the registrar of that county, giving him the voter's name, former registration certificate number if known, and former residence address. Upon receipt of notice, the registrar of the county wherein the voter was formerly registered shall cancel the registration in that county. When the registrar receives an application for registration of a voter who was registered in the previous two-year certificate period in any county and has not received a current registration certificate, he shall notify the registrar of that county, if different from the registrar's county, giving him the voter's name, former residence address, birth date, and social security number if available, and may also include a copy of the voter's signature. Upon receipt of such notice, the registrar of the county wherein the voter was formerly registered shall remove the voter from the list of cancelled voter registration certificates of the appropriate election precinct. If the voter's name is on a list of cancelled voter registration certificates in the county wherein he is attempting to register, the registrar of such county shall cause the voter's name to be removed from the appropriate precinct list. The name of any person shall not be removed from the list of cancelled voter registration certificates until such registration is effective.

Subd. 5. (a) The registrar may utilize any means available to determine whether a registered voter's current legal residence may be other than that indicated as the voter's legal residence on the registration records.

(b) Upon receiving information indicating that a registrant has a residence other than that shown on the registrant's registration records, or that indicates the existence of any grounds of disqualification other than death, the registrar shall send a notice to such person by forwardable mail at the

permanent residence address or, if provided, the mailing address on the registrant's registration application and any new address of the registrant, if known, requesting a verification of the registrant's current residence address, or other relevant information which would be determinative of the registrant's right to retain his current registered status, and providing information of the necessity for the registrant to amend the registration records subsequent to a change in legal residence or to provide information establishing his right to retain his current registered status. The notice shall state that the registrant's registration will be cancelled if the registrar does not receive an appropriate reply within 60 days from the date on which the notice is mailed. If the registrant replies to the notice, the registrar shall take the appropriate action indicated by the reply. If no reply is timely received, the registrar shall cancel the registration. Notice of such cancellation shall be sent to the registrant at the new address, if it is known; otherwise it shall be sent to the residence or mailing address on the registration records. If the notice mailed to the permanent residence address on the registrant's application is returned to the registrar with no forwarding address information available, the registrar shall cancel the registration.

(c) In the event the registrar cancels a voter's registration pursuant to Paragraph (b) of this subdivision, such voter may, within 10 days after the date of cancellation by the registrar, request, in writing, a hearing before the registrar. The registrar, upon notice to the voter, shall conduct a hearing within five days of receipt of the request from the voter, or at any later time upon the consent of the voter. The registrar shall then determine whether to cancel the registration. The voter may appeal from a decision to cancel his registration to a district court of the county of registration within 29 days after the registrar's decision, and the decision of the district court shall be final. A voter who appeals a cancellation of his registration under the provisions of this paragraph may continue to vote until a final decision is made cancelling his registration.

Subd. 6. The Secretary of State shall prescribe forms for the various documents required by this section. However, the registrar may also accept and use forms other than those prescribed by the Secretary of State.

[Amended by Acts 1975, 64th Leg., p. 750, ch. 296, § 10, Nov. 5, 1975; Acts 1977, 65th Leg., p. 1217, ch. 468, § 9, eff. Aug. 29, 1977.]

Art. 5.18b. Repealed by Arts. 1975, 64th Leg., p. 750, ch. 296, § 16, eff. Nov. 5, 1975

Art. 5.18d. Change of Name

Subd. 1. A registered voter who changes his name through marriage or judgment of a court shall present his registration certificate to the registrar, with a signed request that his name be changed on the registration records. The registrar shall make the necessary changes on his records and issue a corrected certificate to the voter under his new name. The registrar shall attach the request to the registrant's original application.

Subd. 2. If otherwise qualified, a voter whose name is changed is eligible to vote under the new name at any election held more than 29 days after the request for change of name was received by the registrar. He may vote under the former name at any election held within 29 days after the day the request was received by the registrar, upon making an affidavit that his certificate of registration under the former name has been surrendered to the registrar. The voter shall sign the form for the affidavit of a lost certificate, and the election officer shall add a notation in explanation of the circumstances. [Amended by Acts 1975, 64th Leg., p. 750, ch. 296, § 11, eff. Nov. 5, 1975; Acts 1979, 66th Leg., p. 581, ch. 270, § 1, eff. Aug. 27, 1979.]

Art. 5.19a. List of Registered Voters

(1) The registrar shall prepare for each election precinct of the county a certified list of registered voters who are registered as of the 30th day prior to the first election in each voting year. Each precinct list shall be arranged alphabetically by the names of the voters and showing each voter's name, residence address, sex, date of birth and registration number. The Secretary of State may prescribe the content and format of the precinct list. The registrar shall deliver to each board, executive committee, or other authority having the duty of furnishing supplies for any general, special, or primary election to be held within the county during the voting year for which the list is prepared, one set of such lists for all precincts in the county if any election which may be held by such authority is countywide, and one set of such lists for all precincts wholly or partially within the boundaries of the particular political subdivision if all elections which may be held by such authority are less than countywide. The registrar shall also furnish to each such authority an updated supplemental list of the voters in each precinct who will have been registered for 29 days on the day of the election and whose names do not appear on the original list. In the event the prescribed combination form in accordance with Section 16 of this code¹ has been furnished, before the first day of absentee voting in any subsequent election held by the authority during that voting year, the registrar shall furnish to the authority in either the prescribed combination form or simple list form, another copy

of the original list and an updated supplemental list of the voters in each precinct who will have been registered for 29 days on the day of the election and whose names do not appear on the original list, except that in the case of a runoff election the registrar may furnish a copy of the supplemental list prepared for the preceding election and a supplemental list of the voters who will have been registered for 29 days on the day of the runoff election and whose names do not appear on the original list or the supplemental list prepared for the preceding election instead of preparing a single updated supplemental list for that election. In every instance, instead of preparing a supplemental list or lists, the registrar may prepare a revised original list consolidating into it the names of the voters that would have been included on the supplemental list or lists. With each supplemental list or revised original list the registrar shall also furnish a list of persons whose registration information has been changed or corrected or whose registration has been cancelled or transferred to another precinct since preparation of the last set of lists. The authority shall furnish to the presiding judge in each precinct the original and supplemental lists of voters in his precinct at the time it furnishes other election supplies. Prior to the opening of the polls, the presiding judge shall strike from the registration list the names of persons whose registration has been cancelled or transferred to another precinct, and shall correct the list for persons whose registration information has been changed or corrected.

Before the first day of March in each even-numbered year and whenever appropriate thereafter, the registrar shall attach to each list herein required an alphabetical corresponding certified list of all the persons whose registration certificates were cancelled, pursuant to the provisions of Section 46a of this code,² and such list shall remain attached to the election precinct list for four months thereafter. The precinct lists may be combined with the corresponding lists of cancelled registrations in accordance with the form and content prescribed by the Secretary of State.

(2) In addition to the lists to be furnished under Subsection (1) of this section, the registrar shall furnish without charge to each clerk having the duty of conducting absentee voting in any election the appropriate lists for use in the conduct of absentee voting for the election. He shall also maintain in his office for a period of three years one set of the original lists and one set of the supplemental lists prepared for each county-wide election, which shall be public records available for public inspection at all times that his office is open.

[See Compact Edition, Volume 2 for text of (3) to (5)]

[Amended by Acts 1975, 64th Leg., p. 750, ch. 296, § 12, eff. Nov. 5, 1975; Acts 1977, 65th Leg., p. 591, ch. 209, § 3, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1214, ch. 468, §§ 2, 12, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1509, ch. 609, § 9, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1672, ch. 698, § 4, eff. Aug. 27, 1979.]

¹ Article 3.02.

² Article 5.14a.

Section 12 of Acts 1977, 65th Leg., p. 1218, ch. 468, repealed § 3 of House Bill No. 1788 [ch. 209] of the 65th Legislature, Regular Session, 1977, which amended subsec. (1) of this article.

Art. 5.19b. Reimbursement of County by State

Subd. 1. Before April 1 of each year, the registrar shall submit to the Comptroller of Public Accounts a certified statement of the total number of new registrants, together with the total number of registration certificates which were cancelled under the provisions of Section 50a of this code (Article 5.18a, Vernon's Texas Election Code), during the 12-month period ending February 1 of the year in which the statement is submitted. Before April 1 of each even-numbered year, the registrar shall include, in addition to the above statement, a certified statement of the total number of registered voters shown on the precinct registration lists as of March 1 of that year.

Subd. 2. Before June 1 of the year in which the statement is submitted, the Comptroller shall issue a warrant to each county in the aggregate of the following amounts:

(1) 40 cents multiplied by the total number of new registrants, and

(2) 40 cents multiplied by the number of voter registration certificates cancelled under the provisions of Section 50a of this code (Article 5.18a, Vernon's Texas Election Code), as shown by the certified statement required by Subdivision 1 of this section, and

(3) when the total number of registered voters is supplied in accordance with Subdivision 1 of this section, 40 cents multiplied by the difference between the total number of registered voters and the total number of new registrants under this Act during the two 12-month periods prior to the statement in each county. However, before issuing a warrant the Comptroller may require additional proof to substantiate the certified statement.

Subd. 3. The Secretary of State shall determine whether the registrar has complied with the provisions of Section 46a of this code¹ and he shall notify the comptroller. The comptroller shall not issue the warrant provided for in Subdivision 2 of this section until notified by the Secretary of State that the registrar is in compliance.

Subd. 4. The disbursements prescribed by this section shall be made from the general revenue fund as provided by legislative appropriations. All money received by a county under this section shall be deposited in the county treasury in a special fund to be used for defraying expenses of the registrar's office in the registration of voters. None of the money shall be deemed to be fees of office or be retained by the registrar as fees in counties where the registrar is compensated on a fee basis.

[Amended by Acts 1975, 64th Leg., p. 750, ch. 296, § 13, eff. Nov. 5, 1975; Acts 1977, 65th Leg., p. 1218, ch. 468, § 10, eff. Aug. 29, 1977.]

¹ Article 5.14a.

Art. 5.20a. Deputy Registrars

[See Compact Edition, Volume 2 for text of 1 to 4]

Subd. 5. No voter registrar shall refuse to deputize any person to register voters because of sex, race, creed, color, or national origin or ancestry. No bona fide resident of the county shall be excluded from serving as deputy by the registrar.

[Amended by Acts 1975, 64th Leg., p. 2079, ch. 681, § 79, eff. June 20, 1975.]

Art. 5.21a. Statement of Registrations

On or before March 5 of each year, the registrar shall make a statement to the secretary of state of the number of registered voters in each precinct as shown by the list of registered voters on March 1, and the secretary of state shall file the statement as a record of his office. The registrar shall also file a copy of the statement as a record of his office. [Amended by Acts 1977, 65th Leg., p. 1509, ch. 609, § 10, eff. Aug. 29, 1977.]

Art. 5.22b. Repealed by Arts. 1975, 64th Leg., p. 750, ch. 296, § 16, eff. Nov. 5, 1975

Art. 5.22c. Repealed by Arts. 1975, 64th Leg., p. 750, ch. 296, § 16, eff. Nov. 5, 1975

Art. 5.24a. County Elections Administrator

Creation of Office

Subd. 1. In any county in this state, the commissioners court by order recorded in its minutes may establish the appointive office of county elections administrator of the county, who shall perform the duties and functions specified in Subdivision 3 of this section. The order of the commissioners court shall state the date on which the creation of the office of administrator becomes effective, but the date may not be earlier than March 1, 1979. The order may provide for placing the administrator-designate on the county payroll at a date not more than 90 days before the effective date for creation of the office so that he may make suitable plans for assuming his duties on the effective date. Within three days

after the entry of the order, the county clerk shall send a copy of the order to each member of the county elections commission and to the secretary of state and the comptroller of public accounts.

Appointment of Administrator; County Elections Commission

Subd. 2. (a) Composition of the commission. Where the office of county elections administrator is created in a county, the office shall be filled by appointment of the county elections commission of the county, which shall consist of the following members: the county judge of the county as chairman of the commission; the county clerk of the county as vice-chairman of the commission; the tax assessor-collector of the county as clerk of the commission; and the chairman of the county executive committee of each political party whose nominees at the last general election for state and county officers were nominated by primary election. In any county in which the offices of sheriff and tax assessor-collector are combined, the sheriff shall hold the position specified for the tax assessor-collector. In any county in which a party which nominates by primary election does not have a county organization, the membership of the commission is reduced accordingly. A majority of the total membership of the commission constitutes a quorum. The affirmative vote of a majority of the total membership of the commission is necessary for the selection of an administrator. Each member of the commission who is present at a meeting, including the presiding officer, is entitled to vote. Each appointment made by the commission shall be evidenced by a written resolution or order signed by the number of members necessary to make the appointment, and the resolution or order shall be filed as a public record in the office of the county clerk. Within three days after the filing, the county clerk shall forward a copy of the resolution or order to the secretary of state.

(b) Meetings of the commission. Meetings of the commission shall be called by the chairman. If the chairman fails to call a meeting within 10 days after the entry of the order creating the office of county elections administrator or within 10 days after a vacancy arises in the office, or if he fails to call a meeting by January 15 of an odd-numbered year, preceding the expiration of the administrator's term of office, the vice-chairman shall call the meeting. The person who calls a meeting shall set the time and place for the meeting and shall give written notice of the time and place to each other member at least three days in advance of the meeting date.

(c) Qualifications for administrator. (1) The person appointed as administrator must be a resident of this state but need not be a resident of the county at the time of his appointment; but after he assumes the office, he must maintain his residence in the county during his tenure in office.

(2) He must be a registered voter at his place of residence.

(3) He may not be a candidate for public office, as defined by Chapter 14 of this code, while holding the office of county elections administrator. Filing for candidacy constitutes an automatic resignation from the position of county elections administrator effective at the time of filing.

(4) He may not actively support or contribute to any candidate for public office, any officeholder, or any political party while holding the office of county elections administrator. Violation of this provision is a Class A misdemeanor and conviction produces automatic removal from office. A person so convicted is ineligible for appointment as county elections administrator in any county in the state.

(d) Time of appointment; rescission. The county elections commission may make the initial appointment of an administrator at any time after the entry of the commissioners court's order creating the office, regardless of the length of time remaining between the date of the appointment and the effective date of the creation of the office, and it may make an appointment to fill an anticipated vacancy arising from a resignation to take effect at a future date at any time after the resignation is accepted. After an appointment is made and accepted, it may not be rescinded without the consent of the appointee, regardless of any changes that may occur in the membership of the commission before the appointee assumes his duties.

Duties of the Administrator

Subd. 3. (a) Registration of voters. On the effective date of an order entered pursuant to Subdivision 1 of this section, or as soon thereafter as an administrator has been appointed and has qualified, the county elections administrator shall assume and thereafter perform all the duties and functions to be performed by the registrar of voters, pursuant to Section 41a of this code (Article 5.09a, Vernon's Texas Election Code).

(b) Conduct of elections. In addition to the duties and functions specified in paragraph (a) of this subdivision, the administrator shall perform all the duties and functions which are placed upon the county clerk by any provision of this code or any other statute of this state in connection with the conduct of elections, as more fully defined in Section 56b of this code.¹

Salary of Administrator; Office Staff; Operating Expenses

Subd. 4. Where the office of county elections administrator is created, the commissioners court shall fix his salary, and shall also fix the number, grade, and salaries of paid deputies, assistants, and other persons that he may employ. However, the administrator may appoint unpaid deputies to assist

in voter registration, as authorized in Section 52a of this code (Article 5.20a, Vernon's Texas Election Code), without the approval of the commissioners court. The salary of the administrator shall not exceed the salary paid to the county clerk of that county, and the salaries paid to his employees shall not exceed the salaries paid to the employees of the county clerk in comparable positions. The commissioners court may allow such automobile expense as it deems necessary to the administrator and to any of his employees in the performance of their official duties. The commissioners court shall make provision for furnishing the administrator with suitable office space and with the necessary equipment and operating expenses for the proper conduct of his office. The amount appropriated by the commissioners court for the administrator's office shall not be less than the amounts previously appropriated to the county clerk and the county tax assessor-collector for the duties formerly required of them but now assigned to the administrator, with additional appropriations, if required, to compensate for the effects of inflation and rising costs of supplies, equipment, and personnel.

Term of Office

Subd. 5. The initial appointment of the county elections administrator shall be until the beginning of the first regular term thereafter. The regular term of office for the administrator is for a period of two years beginning on March 1 in each odd-numbered year. Between January 1 and January 15 preceding the expiration of the term, the chairman of the county elections commission shall call a meeting of the commission for the purpose of making an appointment for the succeeding term. Any vacancy in the office shall be filled by the commission for the remainder of the unexpired term. The administrator may be removed from office in the same manner and on the same grounds as provided by general law for removal of county officers or as provided for under paragraph (c) of Subdivision 2 of this section.

Bond of Administrator and Deputies

Subd. 6. Before entering into the duties of his office, the county elections administrator shall take and subscribe to the official oath and shall give an official bond in an amount to be fixed by the commissioners court, made payable to the county judge and approved by the commissioners court, conditioned for the faithful performance of the duties of his office. Either the commissioners court or the administrator may require his deputies to give a similar bond in an amount not exceeding the amount of the administrator's bond.

Seal of Administrator

Subd. 7. The administrator shall provide himself with an official seal, on which shall be inscribed a star with five points surrounded by the words

"County Elections Administrator, _____ County, Texas" (the blank to be filled in with the name of the county), for use in certifying documents which are required to be impressed with the seal of the certifying officer.

Transfer of Records

Subd. 8. As soon as practicable after the effective date of the order creating the office of county elections administrator, the officer formerly serving as the registrar of voters shall transfer to the administrator all records and papers pertaining to voter registration, and the county clerk shall transfer to him all voting equipment and supplies of which the clerk has custody and all records and papers in his possession which pertain to an uncompleted election. The commissioners court shall determine which records of prior elections are to be transferred to the administrator and which are to remain in the county clerk's office.

Abolishment of Office

Subd. 9. The commissioners court may abolish the office of county elections administrator at any time after two years have elapsed from the date of the order creating it by having an order entered into the minutes of the court to become effective at the expiration of the current term of the administrator. If the office is abolished, voter registration duties thereafter shall be performed by the county tax assessor-collector and the other duties shall be performed by the county clerk, except that the commissioners court may designate the county clerk to be the registrar of voters and to perform the duties assigned to the registrar, as authorized in Section 41b of this code.² Within three days after the entry of an order abolishing the office of county elections administrator, the county clerk shall send a copy of the order to the secretary of state and the comptroller of public accounts.

Office Hours on Election Day

Subd. 10. The office of the county elections administrator shall remain open during the hours the polls are open on the day of any general election, primary election, or runoff primary election in which a statewide office appears on the ballot.

[Added by Acts 1977, 65th Leg., p. 1499, ch. 609, § 3, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 495, ch. 226, § 2, eff. Aug. 27, 1979.]

¹ Article 5.24b.

² Article 5.09b.

Section 11 of the 1977 Act provided: "Sections 3 and 4 of this Act take effect 90 days after the adjournment of the regular session of the 65th Legislature for the purpose of authorizing the creation of the office of county elections administrator and the promulgation of rules with respect to the duties transferred to the administrator, but an appointment to that office or a transfer of duties to the administrator may not become effective before March 1, 1979."

Art. 5.24b. Election Duties of County Clerk Transferred to County Elections Administrator

Subd. 1. (a) Where the office of county elections administrator is created, in addition to performing

the duties of the registrar of voters, the administrator shall perform all duties and functions which are placed upon the county clerk by any provision of this code or any other statute of this state in connection with the calling or holding of elections, the preparation of ballots, the preparation and furnishing of election equipment and supplies, the conduct of voting, the canvass of election returns, the custody of voted ballots and other election records, the filing of instruments relating to primary elections, conventions, or other affairs of political parties, and the filing of instruments under Chapter 14 of this code (the Political Funds Reporting and Disclosure Act of 1975).

(b) The enumeration in paragraph (a) of this subdivision states the general guidelines for determining what duties and functions are to be transferred from the county clerk to the administrator. In order to eliminate possible uncertainties in several types of situations, the rules stated in Subdivision 2 of this section establish the division of duties in the specific areas covered by those rules.

(c) The guidelines and rules stated in this section apply in the construction of statutes enacted or amended after the enactment of this section as well as to those previously enacted, unless the statute expressly states that the county clerk is to perform the function in counties having the office of administrator as well as in other counties.

Subd. 2. (a) This subdivision states rules for the division of duties between the county clerk and the county elections administrator in a county which has the office of administrator.

(b) With respect to every meeting of the commissioners court, including meetings at which the only business to be conducted pertains to election matters, the county clerk shall continue to perform all duties regularly performed by that officer in giving notice of meetings of the commissioners court and making up the agenda for the meetings, in attending the meetings and making a record of the proceedings and preparing and maintaining the minutes of the court, and in filing and preserving copies of the court's orders. The administrator shall cooperate with the county clerk in supplying the information on election matters which are to be brought before the court, and he shall attend or be represented at the meetings of the court at which such matters are to be considered. The county clerk shall furnish to the administrator a copy of each order of the court which pertains to or affects any election, and the administrator shall maintain in his office a file of all such orders, in addition to the record maintained by the county clerk.

(c) Every reference in this code to the county clerk or the clerk of the commissioners court which

relates to the performance of any function or the receipt or filing of any instrument by that officer is to be construed as referring to the administrator, except for Subsection (3) of Section 208 of this code (Article 13.30), relating to service of process on the county clerk in a contest of a primary election under certain circumstances. References to the clerk of the county court are not to be construed as referring to the administrator.

(d) Certificates and supporting documents filed under Subdivision 2, Section 8a (Article 1.08a) of this code for the exemption of election precincts from requirements for bilingual materials in primary elections and in elections held at the expense of the county are to be filed in the office of the administrator.

(e) When any statute, including Section 28 (Article 4.05) of this code, provides for the filing or posting of an election notice in the office of the county clerk, the notice shall be filed or posted in the office of the administrator. When a statute provides for the filing of proof of posting, publication, or issuance of an election notice in the office of the county clerk, it shall be filed in the office of the administrator.

(f) Under the supervision of the county election board, the administrator shall make the record of blank ballots furnished for an election which is required by Section 64 (Article 6.09) of this code and shall file the record in his office, in lieu of recordation in the minutes of the commissioners court.

(g) The administrator shall have custody of and be responsible for maintaining the book for recording in detail the results of elections, as provided in Section 116 (Article 8.34) of this code.

(h) When a statute provides that the return of an election notice is to be recorded in the minutes of the commissioners court, in lieu of that procedure the return shall be filed in the office of the administrator.

(i) When a statute provides that an order declaring the outcome of an election on a question or proposition is to be filed in the office of the county clerk, the order shall be filed both in the office of the county clerk and in the office of the administrator.

(j) When a statute provides for the calling of an election on a question or proposition by the commissioners court or the county judge upon the presentation or filing of a petition therefor, the administrator shall perform, in addition to the duties and functions directly relating to the holding of the election, all duties and functions which the statute places on the county clerk or the clerk of the commissioners court, either expressly or by implication, in connection with the filing of the petition and the determination of its sufficiency, and any other preliminary matters which precede the entry of the order calling the election.

(k) The application for issuance of a petition seeking a local option election on the sale of alcoholic beverages and the signed petition for the election shall be filed with the administrator; and the administrator shall perform all duties relating to the election which are placed upon the county clerk or the clerk of the commissioners court through and including the canvass of the returns, the posting of the order declaring the result of the election where required, and certification of the results to the proper authorities. A copy of the order declaring the result of the election shall be entered of record in the office of the county clerk and a copy shall also be filed in the office of the administrator.

(l) When a statute prescribing the procedure for creation of a special district provides for the calling of an election as a step in completing the creation, in addition to performing the duties directly related to the holding of such an election after it is called, the administrator shall also perform all acts which otherwise would be performed by the county clerk in connection with all preliminary matters leading up to the entry of the order on whether the election will be called, including but not limited to the presentation or filing of the petition for creation of the district, the holding of any hearing on the proposal, the filing of any report or other document that is a step in the procedure, and the taking of an appeal from the order on whether the election is to be called. When the holding of an election is not one of the steps in the creation, the county clerk shall continue to perform all duties placed by statute upon that officer in connection with the creation of a district, including duties relating to a petition for its creation.

(m) The county clerk is the proper officer to receive and post copies of proposed constitutional amendments under Article XVII, Section 1, of the Texas Constitution. However, the secretary of state shall send an information copy of each proposed amendment to the administrator also.

Subd. 3. (a) In keeping with the general guidelines and the specific statutory rules stated in Subdivisions 1 and 2 of this section, the secretary of state shall promulgate rules, as necessary, classifying the various statutes according to which of the two offices of county clerk or county elections administrator is to perform the duties and functions prescribed therein. The secretary of state's classification has the force of law unless or until the legislature enacts a statute expressly providing for a different assignment of that specific function.

(b) The secretary of state may initiate the promulgation of a rule on his own motion, and he may promulgate rules at any time after this section becomes law, regardless of whether the office of administrator has yet been created in any county.

Whenever the county clerk or the administrator in any county in which the office of administrator has been created is uncertain as to which officer should perform a function under a statute for which the secretary of state has not made a classification, the officer shall request the secretary of state to promulgate a rule classifying that function, and the secretary of state shall comply with the request as expeditiously as possible.

(c) In addition to other notice of a proposed rule or of an adopted rule which is required by law, the secretary of state shall mail a copy of each rule proposed under this section to the county clerk and the county elections administrator in each county having the office of administrator within five days after notice of the proposal is published in the Texas Register and shall mail a copy of each adopted rule to those officers within five days after the certified copy of the rule is filed in the secretary of state's office. However, failure to mail the notice to these officers does not invalidate any actions taken or rules adopted.

(d) Upon receiving notification of the creation of the office of administrator in a county, the secretary of state shall mail to the county clerk a complete set of the rules previously promulgated under this section; and upon receiving notification of the appointment of the administrator, the secretary of state shall mail a complete set of rules to the administrator.

(e) Notwithstanding any other provision of law, the secretary of state may adopt an emergency rule under the emergency provisions of the Administrative Procedure and Texas Register Act¹ whenever a determination of the classification of a function is needed in a shorter time than that provided by normal procedures. The prior notice requirements prescribed in paragraph (c) of this subdivision do not apply to the promulgation of an emergency rule; however, notification of the adoption of an emergency rule is to be given in accordance with those provisions.

Subd. 4. (a) When an instrument which should be filed with the county elections administrator is mailed to the county clerk, or vice versa, the officer receiving the instrument shall make a notation thereon of the time of its receipt and shall promptly deliver it to the proper officer. If the statute does not specify that the instrument is to be filed with the administrator in a county which has that office, the misdirection does not prejudice the timeliness of the filing where time of mailing or time of receipt is material, and timeliness is determined by the time of mailing or the time of receipt by the officer to whom the instrument is addressed.

(b) When an instrument which should be filed with the county elections administrator is tendered

in person to the county clerk, or vice versa, the officer to whom the instrument is tendered shall direct the person making the tender to take it to the proper office.

(c) Notwithstanding paragraphs (a) and (b) of this subdivision, where a statute specifies that an instrument is to be filed with the county clerk, without specifying that it is to be filed with a county elections administrator in a county which has that office, but the place of filing is changed to the office of the administrator by virtue of this section, if the county clerk accepts and files the instrument, the filing has the same legal effect as if the instrument had been filed with the administrator.

(d) Where a statute specifies that an action is to be taken by the county clerk, without specifying that it is to be taken by the county elections administrator in a county which has that office, but the officer to act is changed to the administrator by virtue of this section, action taken by the county clerk without objection from the administrator has the same legal effect as action taken by the administrator.

Subd. 5. Statutes prescribing criminal penalties against the county clerk or his deputies or other employees for acts or omissions relating to duties which are transferred to the county elections administrator are to be construed as applying to the administrator or his deputies or employees, as the case may be.

[Added by Acts 1977, 65th Leg., p. 1502, ch. 609, § 4, eff. Aug. 29, 1977.]

¹ Civil Statutes, art. 6252-13a.

CHAPTER SIX. OFFICIAL BALLOT

Art. 6.01. Official Ballot

In all elections by the people, the vote shall be by official ballot, which shall be numbered and elections so guarded and conducted as to detect fraud and preserve the purity of the ballot. No ballot shall be used in voting at any general, primary or special election held to elect public officers, select candidates for office or determine questions submitted to a vote of the people, except the official ballot, unless otherwise authorized by law. At the top of the official ballot shall be printed in large letters the words "Official Ballot." It shall contain the printed names of all candidates whose nominations for an elective office have been duly made and properly certified. The names shall appear on the ballot under the head of the party that nominates them, except as otherwise provided by this Code. No name shall appear on the official ballot except that of a candidate who was actually nominated (either as a party nominee or as a non-partisan or independent candidate) in accordance with the provisions of this Code. The name of no candidate shall appear

more than once upon the official ballot, except (a) as a candidate for two or more offices permitted by the Constitution to be held by the same person; or (b) when a candidate has been duly nominated for the office of President or Vice-President of the United States and also for an office requiring a state-wide vote for election. The name of no candidate of any political party that cast 20 percent or more of the votes for governor at the last preceding general election for that office shall be printed on any official ballot for a general election, unless nominated by primary election, on primary election day, except as otherwise provided in this code.

[Amended by Acts 1975, 64th Leg., p. 2091, ch. 682, § 14, eff. Sept. 1, 1975.]

Art. 6.04. Removing or Substituting Names on Printed Ballots

Subd. 1. If the ballots for an election have already been printed when notice of a substitute nomination for an office is received, instead of having new ballots printed, the official board charged with the duty of furnishing the supplies for the election may make the necessary change in either of the following methods: (1) by having the ballots overprinted to blot or line out the name of the former nominee and to print above, below, or alongside it the name of the new nominee, if space on the ballot permits use of this method, or (2) by printing pasters or stickers bearing the name of the new nominee, to be pasted over the name of the former nominee.

Subd. 2. If after the ballots are printed it becomes necessary to remove the name of a nominee for whom a substitute nomination has not been made or to remove the name of an independent candidate in order to comply with Section 233 of this code, instead of having new ballots printed, the officer or board charged with the duty of furnishing the supplies for the election may make the change either by having the ballots overprinted to blot out the name of the candidate (and also the square beside the name in the case of paper ballots) or by furnishing blank pasters or stickers to be pasted over the name and square.

Subd. 3. When pasters are used, a paster shall be affixed to each ballot before the presiding judge of the precinct, or the absentee voting clerk, endorses his name on the ballot for identification, or before the opening of the polls where the voting is by use of a voting machine or a voting device to which ballot labels are attached. As used in this section, the term "ballots" includes ballot labels.

[Amended by Acts 1975, 64th Leg., p. 2103, ch. 685, § 1, eff. Sept. 1, 1975.]

Art. 6.05. Form of the Ballot

[See Compact Edition, Volume 2 for text of 1]

Subd. 2. The designation of the election (e. g., "General Election, Travis County, Texas") and the date on which the election is held shall be printed at the top of the ballot, above the words "Official Ballot." All ballots prepared for the election shall be numbered consecutively beginning with No. 1 in each county if the election is to be held in a single county or part thereof, or is to be held in more than one county or part thereof and the result in each county is to be canvassed separately prior to the final canvass. In elections held by a city or other political subdivision of the State, all ballots for the election shall be numbered consecutively beginning with No. 1. The numbers shall be printed or stamped in consecutive order on all the ballots prepared for any election, with a separate number for each ballot, at the time of printing and before they are divided up and delivered to the election judges.

[See Compact Edition, Volume 2 for text of 3]

Subd. 4. When presidential electors are to be voted upon, their names shall not appear on the official ballot, but the names of the candidates for president and vice-president, respectively, of the political parties shall appear at the head of their respective tickets, printed as one race, and the names of each set of independent candidates for president and vice-president, printed as one race, shall be printed at the head of the independent column in the order determined under Subdivision 3 of Section 61c of this Code (Article 6.05c, Vernon's Texas Election Code). The votes for presidential candidates shall be canvassed, counted, and returns made in accordance with Section 171 and Section 172 of this Code (Articles 11.02 and 11.03, Vernon's Texas Election Code).

[See Compact Edition, Volume 2 for text of 5 to 7]

Subd. 8. When constitutional amendments or other propositions are to be voted on, they shall appear once on each ballot in uniform style and type. Each proposition shall be submitted by printing the word "FOR" and beneath it the word "AGAINST" on the left-hand side of a single statement of the proposition, with a brace or parallel horizontal lines or other suitable device to show clearly to which proposition each "FOR" and "AGAINST" belongs. A square shall be printed on the left-hand side of the word "FOR" and of the word "AGAINST" in the statements submitting each proposition, and the following instruction note shall be printed immediately above the propositions: "Place an 'X' in the square beside the statement indicating the way you wish to vote." The provisions of this subdivision shall supersede all existing statutes on the form in which propositions are to be submitted in all elections

where paper ballots are used and shall also supersede any conflicting enactment passed by the 60th Legislature at its regular session unless such enactment expressly excepts it from the operation of this subdivision.

[Amended by Acts 1977, 65th Leg., p. 557, ch. 194, § 3, eff. Sept. 1, 1977; Acts 1977, 65th Leg., p. 649, ch. 240, § 6, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 657, ch. 247, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1159, ch. 560, § 5, eff. Sept. 1, 1979.]

Art. 6.05b. Order of Party Columns on the Ballot

In any election held at the expense of the county, in which party columns appear on the official ballot, the columns shall be arranged in the following order, beginning on the left-hand side of the ballot:

(1) columns of parties with state organization which have nominated candidates to be voted on at the election, arranged in the order of the number of votes cast throughout the state for each party's candidate for Governor at the last preceding general election for that office, with the party whose candidate for Governor received the highest vote being placed in the first column;

(2) columns of parties without state organization which have nominated candidates to be voted on at the election;

(3) a column for independent candidates;

(4) a column for write-in candidates.

If there is no independent or nonpartisan candidate whose name is to be printed on the ballot, the column for independent candidates shall be omitted.

Where voting machines are used in the election and the columns on the ballot are arranged horizontally, the columns shall appear on the ballot in the order herein provided, beginning at the top of the ballot instead of on the left-hand side.

[Amended by Acts 1975, 64th Leg., p. 2091, ch. 682, § 15, eff. Sept. 1, 1975.]

Art. 6.05c. Order of Offices and Names of Candidates

[See Compact Edition, Volume 2 for text of 1 and 2]

Order of Names of Candidates

Subd. 3.

[See Compact Edition, Volume 2 for text of 3(a) and 3(b)]

(c) The provisions of paragraph (a) of this subdivision apply to every runoff election following a general or special election, except runoff elections which are governed by Section 81 of this code (Article 7.16, Vernon's Texas Election Code) and runoff elections in home-rule cities which have charter provisions specifying a different method for determining the order of the names on the ballot in a runoff election.

[Amended by Acts 1977, 65th Leg., p. 1682, ch. 664, § 2, eff. Aug. 29, 1977.]

Art. 6.06. How to Mark Ballot

In all elections, general, special, or primary, the voter shall place an "X" in the square beside the name of each candidate for whom he wishes to vote; provided, however, that if the voter places a plus sign (+) or a check mark (✓) or any other mark that clearly shows his intention, in such space, it shall be counted as a vote for that candidate, provided that no more names are thus marked than there are places to be filled. When party columns appear on the ballot, a voter desiring to vote a straight ticket may do so by placing an "X" or other clear mark in the square at the head of the column of the party for which he wishes to vote. If the name of the person for whom the voter wishes to vote is not printed on the ballot, the voter shall write in the name of the candidate for whom he wishes to vote, in the write-in column under the appropriate office title in elections where party columns appear on the ballot, and in an appropriate space under the title of the office in other elections; provided, however, that a voter shall not be entitled to vote for any candidate whose name is not printed on the ballot in any runoff election for nominating candidates or electing officers, and a space for write-in votes shall not be provided on the ballot for such elections. A voter shall also not be entitled to vote for any candidate whose name is not printed on the ballot in any other type of election where the law expressly prohibits votes for write-in candidates. In all elections where questions or propositions are to be voted on, the voter shall place an "X" or other clear mark in the square beside the statement indicating the way he wishes to vote on each proposition. The failure of a voter to mark his ballot in strict conformity with these directions or failure to vote a full ballot shall not invalidate the ballot, and a ballot shall be counted on all races and propositions wherein the intention of the voter is clearly ascertainable, except where the law expressly prohibits the counting of the ballot. It is specifically provided that the election officers shall not refuse to count a ballot because of the voter's having marked his ballot by scratching out the names of candidates for whom or the statement of propositions for which he does not wish to vote.

[Amended by Acts 1977, 65th Leg., p. 557, ch. 194, § 4, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 1159, ch. 560, § 6, eff. Sept. 1, 1979.]

Art. 6.06b. Write-in Candidate for Public Office; Declaration of Candidacy

Elections to Which Applicable; Procedure for Filing Declaration

Subd. 1. In the general election for state and county officers held on the first Tuesday after the first Monday in November of even-numbered years, no write-in vote may be counted for a person unless that person files a declaration of write-in candidacy

within the time specified in Subdivision 2 or Subdivision 3 of this section, whichever is applicable. The declaration shall be filed with the same person with whom an independent candidate for the same office files his application to have his name printed on the ballot. It shall contain the same information as that required on the application of a candidate whose name is to be printed on the ballot, but shall state that the person is running as a write-in candidate instead of requesting that his name be printed on the ballot.

Filing Deadline

Subd. 2. Except as provided in Subdivision 3 of this section, the declaration of write-in candidacy must be filed not later than 5 p. m. of the last day which is not a Saturday, a Sunday, or an official state holiday, preceding the beginning of the period for absentee voting in the election. The declaration must reach the office of the appropriate officer by that deadline, and a mailing without a delivery by the deadline is not sufficient.

Extended Deadline

Subd. 3. Where a candidate whose name is to be printed on the ballot dies or is declared ineligible to hold this office on or after the second day preceding the filing deadline stated in Subdivision 2 of this section, a write-in candidate may file his declaration at any time before 12 noon of the day preceding election day. Absentee ballots voted before the death or ineligibility or before the filing of the declaration of write-in candidacy shall be counted in the same manner as if the write-in candidate had filed under Subdivision 2.

Certification of Filing

Subd. 4. On a declaration which is filed under Subdivision 2 of this section, the officer with whom it is filed shall certify the name of the write-in candidate to the clerk for absentee voting in the election (or to each clerk, if there is more than one), before the absentee voting begins. On a declaration which is filed under Subdivision 3, he shall notify the clerk for absentee voting immediately if the period for applying for an absentee ballot has not expired. He shall also certify the name of each write-in candidate to the officer who is in charge of distribution of ballots to the presiding judges of the election.

Notification to Presiding Election Judges

Subd. 5. (a) Before election day, the officer having charge of distribution of the ballots for the election shall furnish to each presiding judge a sufficient number of copies of a list of the names of write-in candidates who have qualified under this section so that the presiding judge shall be able to comply with the requirements of Subsection (b) of this subdivision.

(b) Each presiding judge shall post a copy of the list of write-in candidates in the same locations where instruction cards are posted in accordance with Section 80, Texas Election Code (Article 7.15, Vernon's Texas Election Code) and Section 85, Texas Election Code (Article 8.03, Vernon's Texas Election Code), or in the same location where sample ballots are posted in accordance with Section 80, Texas Election Code (Article 7.15, Vernon's Texas Election Code) and Section 79, Texas Election Code (Article 7.14, Vernon's Texas Election Code).

[Added by Acts 1977, 65th Leg., p. 1282, ch. 503, § 1, eff. Aug. 29, 1977.]

Art. 6.07. Constitutional Amendments and Other Questions

[See Compact Edition, Volume 2 for text of 1]

Subd. 1a. A proposed constitutional amendment submitted to the voters by the legislature in the Called Special Session of the 65th Legislature shall be designated "Tax Relief Amendment," and the place of the amendment on the ballot shall be determined by the legislature in the resolution proposing the amendment.

Subd. 2. A notice of each proposed constitutional amendment shall be published, under the authority of the Secretary of State, as required by Section 1, Article XVII, Constitution of Texas. The Secretary of State shall contract with the eligible newspapers for the publication of the notices; shall furnish affidavit forms, in duplicate, to be executed by the owner, editor or publisher of the newspaper, when two publications have been made; shall furnish one approved copy of each executed affidavit to the Comptroller, who shall then authorize the Treasurer to issue a warrant in the amount specified. Executed affidavits must be returned from the owner, editor, or publisher of the newspaper to the Secretary of State within 30 days from the date of the last publication; unless this time limit is observed, the Secretary of State shall refrain from approving affidavits for payment. Provided, however, if the Secretary of State deems it more expeditious or economical, he may make a written contract with any state-wide association of daily and weekly newspapers in Texas for the publication of the notices of such constitutional amendments in newspapers eligible to publish them. Such association shall cause such notices to be published in the eligible newspapers in the manner required by the Constitution; shall furnish such materials as are necessary for a correct and uniform publication of such notices; shall furnish affidavit forms, in duplicate, to such newspapers, to be executed by the owner, editor, or publisher thereof, when two publications have been made; shall make an itemized report to the Secretary of State showing the names of all the newspapers in which such notices were published, the num-

ber of column inches submitted to each publication, the cost of publication in each newspaper, together with a clipping for such newspaper, and any other information desired by the Secretary of State pertaining to such task; shall return within 30 days from the date of the last publication all affidavits executed by the owner, editor, or publisher of such newspapers, together with an affidavit executed in duplicate by the general manager of such association that the notices have been published by said newspapers as required by the Constitution, to the Secretary of State, who shall, after satisfying himself as to the proper publication of such notices, furnish one approved copy of the executed affidavit of the general manager of the association to the Comptroller, who shall authorize the Treasurer to issue a warrant in the amount specified to the association. The Comptroller and Treasurer shall forthwith perform their duties in this connection, so that undue length of time shall not elapse between publication and payment therefor. The Legislature shall appropriate a sufficient fund for such publication, such fund to be estimated by the Secretary of State.

Subd. 2a. (a) Where the Secretary of State contracts directly with the newspapers for publication of notices of proposed constitutional amendments, each newspaper which publishes a notice is entitled to be paid for the publication an amount computed at the rate of 85 percent of the newspaper's published national rate for advertising per column inch if the Secretary of State furnishes to the newspaper a copy of the notice in the form of a camera-ready paste-up proof, a matrix, or a printing plate, and an amount computed at the full rate of the newspaper's published national rate for advertising per column inch if the Secretary of State does not furnish a copy of the notice in that form.

(b) Where the Secretary of State contracts with a state-wide association of newspapers for the publication of the notices, the association is entitled to be paid an amount equal to the sum of the cost of publication in each newspaper, computed at the full rate of each newspaper's national rate for advertising per column inch. The commission retained by the association shall be on a percentage basis uniformly applied to all newspapers, and the percentage shall be stipulated in the contract between the Secretary of State and the association.

[See Compact Edition, Volume 2 for text of 3]

Subd. 4. [Expired]

[Amended by Acts 1975, 64th Leg., p. 445, ch. 189, § 1, eff. May 13, 1975; Acts 1975, 64th Leg., p. 2091, ch. 682, § 16, eff. Sept. 1, 1975; Acts 1978, 65th Leg., 2nd C.S., p. 12, ch. 6, § 1, eff. Aug. 14, 1978.]

Former subd. 4 of this article, added by Acts 1975, 64th Leg., p. 445, ch. 189, § 1, providing that the amendments to the Constitution proposed by S.J.R.No. 11 of the 64th Legislature were to be printed and numbered on the ballot in the order in which numbered by that resolution, expired by its own terms on December 31, 1975.

Acts 1975, 64th Leg., p. 1181, ch. 440, related to the methods of publicizing proposed amendments to the Constitution contained in S.J.R.No. 11 of the 64th Legislature and made an appropriation for that purpose.

Art. 6.09. Ballots Furnished

(a) The authority responsible for furnishing the ballots in an election shall furnish each election precinct a number of ballots sufficient to conduct the election. The official ballots to be counted before delivery and sealed up and together with the instruction cards, with poll lists, tally sheets, distance markers, returning blanks and stationery, shall be delivered to the precinct judges, and the number of each endorsed on the package, and entered of record by the clerk in the minutes of the Commissioners Court or, in an election ordered by an authority of a political subdivision other than a county, on the minutes of the governing body of that subdivision. In like manner, shall be sent the list of qualified voters for the precinct certified to by the collector.

(b) The number of ballots delivered for use in absentee voting and the range of serial numbers on those ballots and on the ballots delivered for use in regular voting on election day shall also be entered of record in the minutes.

[Amended by Acts 1979, 66th Leg., p. 602, ch. 278, § 1, eff. Aug. 27, 1979.]

Amendment of this article by Acts 1979, 66th Leg., p. 173, ch. 95, § 2, eff. Aug. 27, 1979, was repealed by Acts 1979, 66th Leg., p. 602, ch. 278, § 3, eff. Aug. 27, 1979.

CHAPTER SEVEN. ARRANGEMENT AND EXPENSES OF ELECTION

Article

7.17a. Secretary of State to Certify Voting Devices.

Art. 7.14. Providing for Voting Machines

[See Compact Edition, Volume 2 for text of 1 to 14]

Manner of Voting

Sec. 15. But one voter shall be admitted at a time, and no voter shall be permitted to keep the curtain of the machine closed longer than two minutes. However, if a voter is unable to read the language in which the ballot is printed or if because of some bodily infirmity he is physically unable to operate the machine or to see, he may be assisted by two election officials, or by a person selected by the voter, who shall operate the machine so as to vote the ballot in accordance with the voter's wishes, and he shall be permitted to keep the curtain of the machine closed no longer than five minutes. The provisions of Section 95 of this Code shall govern the assistance rendered under this section insofar as they can be made applicable.

[See Compact Edition, Volume 3 for text of 16]

Arrangement of Ballot and Write-in Vote in Certain Counties Sec. 16a.

[See Compact Edition, Volume 2 for text of (a)]

(b) In any election in which, pursuant to the authorization in paragraph (a) hereof, the ballot is so arranged that the write-in slot on the voting machine cannot be utilized, and the election is one in which write-in voting is permitted, a sufficient supply of write-in ballots as described herein shall be provided at each polling place. The ballots shall bear the heading prescribed in Subdivision 2 of Section 61 of this code, as amended (Article 6.05, Vernon's Texas Election Code), with the substitution of the words "Official Write-in Ballot" for "Official Ballot," and shall bear the following instruction note: "Do not cast a vote on the voting machine for the office for which you cast a ballot herewith by way of a write-in." The instruction note for the write-in ballot for a general election for state and county officers shall contain the following additional sentence: "If you pull the straight-party lever of a political party that has a nominee for the office for which you are casting a write-in vote, be sure to turn up the selector key by the name of the nominee before you pull the voting lever." Beneath the instruction note there shall appear the following:

FOR _____

(Name of write-in candidate)

For the office of:

(Title of office)

If an open write-in campaign is being conducted for more than one office, the ballots shall provide as many spaces as there are offices for which write-in campaigns are being conducted.

Each voter is entitled, but is not required, to receive one official write-in ballot. The procedure outlined in Section 93 of this code, as amended (Article 8.11, Vernon's Texas Election Code), shall be observed in the authentication and delivery of the ballot to the voter. After filling in the write-in ballot, the voter shall deposit the ballot in a ballot box prepared for that purpose in the manner provided for elections conducted by use of paper ballots. No write-in ballot shall be cast or counted for any person whose name appears on the ballot on the voting machine.

Provided however, that the following affidavit shall be signed by any voter who receives an official write-in ballot.

STATE OF TEXAS

COUNTY OF _____

Before me, the undersigned authority, on this day personally appeared _____, who, having been by me first duly sworn, upon his oath, did depose and say:

That I have not and will not cast a vote on the voting machine for the office of _____

_____ for which I have cast a ballot herewith by way of a write-in.

Subscribed and sworn to before me this the _____ day of _____ A.D. 19__

Presiding officer, Precinct _____, _____ County, Texas.

Making Out the Returns and Proclamation of the Result
[See Compact Edition, Volume 2 for text of (a) and (b)]

(c) If the machine is provided with a device which produces a printed record of the numbers registered on the counters, the procedure outlined herein shall be followed in lieu of the procedure set out above for preparation of the statements of canvass. The presiding judge, in the presence of at least two clerks and two watchers of opposed interest (if such there be) and of any other person lawfully present who wishes to observe, shall take the necessary steps to secure a printed record from each machine. Ample opportunity shall be given to all persons lawfully entitled to be present at the polling place to examine the printed record. The printed record shall then be signed by the presiding judge and two clerks and by two watchers of opposed interest (if such there be), certifying that the printed record was obtained from the machine designated thereon, and the certified printed record shall constitute the official statement of canvass for that machine.

[See Compact Edition, Volume 2 for text of 18(d), 19 to 25]

[Amended by Acts 1975, 64th Leg., p. 2093, ch. 682, §§ 17, 18, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 658, ch. 247, § 2, eff. Aug. 29, 1977.]

Art. 7.15. Providing for Electronic Voting Systems

[See Compact Edition, Volume 2 for text of 1]

Definitions

Subd. 2. As used in this section, unless otherwise specified:

[See Compact Edition, Volume 2 for text of 2(a)]

(b) "Automatic tabulating equipment" or "tabulating equipment" means any apparatus which automatically examines and counts voted ballots and tabulates the results.

[See Compact Edition, Volume 2 for text of 2(c)]

(d) "Ballot card" means a card which is used in conjunction with ballot labels and which is marked or pierced by the voter in the process of voting an official ballot.

(e) "Ballot labels" means a booklet or one or more pages or sheets of paper or other material containing the names of offices, candidates and parties, and statements of measures to be voted on, and which is used in conjunction with ballot cards.

(f) "Ballot" may refer to paper ballots which are counted by automatic tabulating equipment and which contain the matters to be voted on and the voter marks, stamps, or otherwise indicates his choices directly on the ballot itself, or it may refer to ballot cards, ballot labels, or combinations of ballot cards and ballot labels, or it may refer to ordinary manually-counted paper ballots, depending on the context.

[See Compact Edition, Volume 2 for text of 2(g)]

Examination and Approval of Electronic Voting Systems

Subd. 3.

[See Compact Edition, Volume 2 for text of 3(a)]

(b) Before making and filing his report, the Secretary of State shall require the system to be examined by three examiners to be appointed by the Secretary of State for such purpose, one of whom shall be expert in patent law, one of whom shall be expert in electronic data processing, and one of whom shall be expert in election law and procedure, and shall require from them a written report on their examination, which shall be attached to the Secretary of State's report and kept on file. Each examiner shall receive one hundred and fifty dollars as his compensation and expenses in making the examination and report. Neither the Secretary of State nor any examiner shall have any pecuniary interest in any electronic voting system. When a system has been approved, every improvement or change must be filed with the Secretary of State. The Secretary of State may, at any time, in his discretion, reexamine an electronic voting system. Any electronic voting system not approved as herein provided cannot be used at any election in this state.

[See Compact Edition, Volume 2 for text of 4]

Adoption by Commissioners Court

Subd. 5. (a) The commissioners court of any county in the state may adopt one or more kinds of approved electronic voting systems for use in elections in part or all of the election precincts in the county or in part or all of the conduct of absentee voting, or both. If a particular system is not adopted for use throughout the county, the commissioners court shall designate the precincts in which such system is to be used, and any other authorized

method of voting may be used in the remaining precincts. In any precinct designated for use of a particular electronic voting system, the voting in that precinct may be supplemented by use of some other authorized method of voting when in any election it appears that the number of available units of the system designated for use in that precinct is inadequate for that election; and the officer or board charged with the duty of furnishing supplies of the election may make such supplementation under those conditions.

(b) The commissioners court at any time may rescind or modify its previous order or orders adopting any electronic voting system and may discontinue use of the system altogether.

(c) The electronic voting system adopted by the commissioners court shall be used at the biennial general elections for state and county officers in precincts and for absentee voting as designated by the court for use of such system. In all other elections, general, special, or primary, the authority holding the election shall determine within its discretion whether the voting for the particular election shall be by use of such system or by some other authorized method of voting. The determination shall be made by the commissioners court in elections held at the expense of the county, by the governing body of the municipality or political subdivision in elections held by municipalities and other political subdivisions, and by the county executive committee of the party holding the election in primary elections of political parties.

[See Compact Edition, Volume 2 for text of 5(d)]

Experimental Use of Electronic Voting Systems

Subd. 6. The commissioners court of any county in the state may secure, for experimental use in elections in one or more precincts or for absentee voting, without formal adoption thereof, any kind of electronic voting system approved by the Secretary of State, and its use at any election in designated precincts or for absentee voting within the period specified by the commissioners court for experimental use of such electronic voting system shall be as valid for all purposes as if it has been formally adopted; provided, however, that the period for experimental use shall not exceed two years from the date of the order authorizing its use.

[See Compact Edition, Volume 2 for text of 7 and 8]

Absentee Voting

Subd. 9. (a) When an electronic voting system has been adopted by the commissioners court, then the system may be used in any election for absentee voting by personal appearance or by mail, or both. The authority charged with holding the election may within its discretion determine by proper resolution

or order whether or not an electronic voting system will be used for absentee voting by personal appearance or by mail, or both, at such election. If an electronic voting system is to be used for such absentee voting and more than one kind of system has been adopted by the commissioners court, the authority shall specify what kind is to be used.

(b) If the authority holding the election determines that an electronic voting system shall be used for absentee voting, the necessary ballots and voting equipment shall be provided in the clerk's office. The procedure for absentee voting where ordinary paper ballots are used shall be followed insofar as it can be made applicable. If an electronic voting system is used for voting by personal appearance and the absentee ballots voted by mail are counted manually, such ballots shall be counted by a special canvassing board as provided in Subdivision 6 of Section 37 of this code (Subdivision 6, Article 5.05, Vernon's Texas Election Code), except that the county clerk shall deliver the ballots to the canvassing board when the presiding judge so directs. The board shall also prepare the voted electronic voting system ballots for delivery to the central counting station in the manner provided in Subdivision 19 of this section, and such ballots shall be delivered to the central counting station and there tabulated, as provided in Subdivisions 19 and 20 of this section. The presiding judge of the central counting station shall add and attach the results of any manually counted ballots and attach the results of any write-in votes to the tabulation made on the automatic tabulating equipment, and shall make returns showing the totals thus obtained.

(c) When absentee ballots voted by personal appearance or by mail are to be marked with an ordinary pen or pencil in the manner that ordinary paper ballots are marked, and the absentee ballots are to be counted manually, the ballots shall be handled in the manner provided in Section 37 of this code (Subdivision 6, Article 5.05, Vernon's Texas Election Code) for the handling of absentee paper ballots, and shall be counted and tallied by a special canvassing board in the same way that ordinary paper ballots are tallied.

[See Compact Edition, Volume 2 for text of 9(d) and (e) to 10a]

Form of the Ballot

Subd. 11.

[See Compact Edition, Volume 2 for text of 11(a) to (b)(3)]

(4) Repealed by Acts 1977, 65th Leg., p. 661, ch. 247, § 11, eff. Aug. 29, 1977

(5) In elections in which party columns appear on the ordinary paper ballot, the following method of showing party affiliations may be used in lieu

of party columns. The title of each office shall be printed on the ballot followed by the names of the candidates for that office and their party affiliations, if any. Provision shall be made at the head of the ballot for voting a straight party ticket, and the candidate of the party which is printed in the first party column on ordinary paper ballots shall be printed in the first position under the office title, the candidate of the party which is printed in the second column on ordinary paper ballots shall be printed in the second position, and so on. Uncontested races may be listed separately from contested races under the heading "Uncontested Races," and may be voted on as a bloc.

(c) This paragraph (c) shall govern the form of the ballot to be used with electronic voting systems in which the names of offices, candidates and parties and statements of measures to be voted on are set forth on ballot labels and the voter records his vote by marking or punching a ballot card which is used in conjunction with the ballot labels.

(1) Ballot cards may be of such size, composition, texture and color (other than yellow, which shall be used for sample ballots only) and may be printed in any type of ink or combinations of ink that will be suitable for use in the automatic tabulating equipment in which they are intended to be placed. Ballot labels may be of such size, composition, texture and color (other than yellow) that will be suitable for the intended manner of use. Printing on the ballot label shall be of such size that it will be clearly legible when read by the voter in the manner contemplated by the voting system being used.

(2) Ballot cards may contain printed code marks or prepunched holes to assure that the card is properly positioned in the voting device, if the ballot labels are attached to a voting device, or to assure that the card is placed in correct reading position in the tabulating equipment, but the code marks or prepunched holes shall not be used in any way that will reveal the identity of the voters voting the ballots.

(3) The names of candidates, offices, parties and statements of issues to be voted on may be printed on two or more ballot labels. Where all candidates for the same office or all party columns cannot conveniently be placed on the same face of the same label, the candidates or columns may be carried on more than one page, but in such event the first page of the sequence shall contain a statement that the names of other candidates or other parties appear on the following page or pages. If the ballot is printed on more than one ballot label, different tints of paper, other than yellow, may be used for different pages of the ballot labels, and other suitable means may be adopted to facilitate the use of the ballot labels

with the ballot card. When party columns appear on the ballot, there shall be printed at the head of the ballot the names of the parties and a space for voting a straight ticket.

[See Compact Edition, Volume 2 for text of 11(c)(4)]

(5) The ballot card may have attached at the top an unnumbered detachable stub, which may contain the designation and date of the election and the instructions for marking the ballot and depositing it in the ballot box. The stub shall contain an instruction to the voter not to detach the stub; however, detachment of the stub before the ballot is deposited in the ballot box does not invalidate the ballot card. The election officers who prepare the voted ballot cards for counting shall detach and discard the stubs at the time they examine the ballots as provided in paragraph (a) of Subdivision 19 of this section.

(6) If the number of candidates and/or propositions to be voted upon in any election exceeds the capacity of one ballot card, the ballot may be divided into parts and a different ballot card used for each of the separate parts, but in all cases where more than one card is necessary to accommodate the entire ballot, the names of all candidates for any particular office shall be placed on the same part. A separate voting device shall be provided for each part at each polling place. Each ballot card shall bear the ballot number, and other appropriate provisions may be made for identifying the related ballot cards. In lieu of using separate ballot parts for listing the ballot, uncontested races may be listed separately under the heading "Uncontested Races," with the name of each candidate appearing under the title of the office for which he is a candidate, and if the election is one in which party columns appear on the ballot, the party affiliation of the candidate shall be indicated by printing the name of the party which nominated him (or the word "Independent" if he is an independent candidate) after the candidate's name; and all such uncontested races may be voted on as a bloc.

[See Compact Edition, Volume 2 for text of 11(c)(7)]

(8) A separate write-in ballot, which may be in the form of a card, ballot, or envelope which the voter places with his ballot or ballot card after voting, shall be provided to permit voters to vote for a person whose name does not appear on the ballot.

(d) This paragraph (d) shall apply to the form of the ballot for all electronic voting systems.

[See Compact Edition, Volume 2 for text of 11(d)(1)]

(2) The statement of propositions and measures submitted to the voters may be abbreviated on the ballot if necessary, provided there is displayed at the polling place the verbatim statement on each proposition or measure as it appears on paper ballots. Abbreviation of matter to be voted on throughout the state shall be done by the Secretary of State.

Preparation of Ballot and Program

Subd. 11a. (a) The ballots to be used at an election shall be prepared and procured under the same regulations as ordinary paper ballots, except that the officer responsible for making up the ballot may determine the number of ballots or ballot cards needed for the election based on the turnout for similar elections in the past and shall confer with the programmer for that election before ordering the ballots printed, to make sure that the ballot is properly prepared for counting by means of the electronic tabulating equipment which will be used.

(b) The authority charged with the duty to provide ballots shall select a competent person to prepare the program for the electronic tabulating equipment. The programmer may be one of the persons appointed or approved by the commissioners court under Paragraph (b), Subdivision 20 of this section or some other person, but if the program is prepared by anyone other than the tabulation supervisor, it must be submitted to the tabulation supervisor for his approval at least 10 days before the election.

[See Compact Edition, Volume 2 for text of 12 and 13]

Assistance to Voter

Subd. 14. If a voter is unable to read the language in which the ballot is printed or if because of some bodily infirmity he is physically unable to operate the voting equipment or to see, he may be assisted by two election officers, or by a person selected by the voter, who shall mark the ballot in accordance with the voter's wishes. The provisions of Section 95 of this code¹ govern the assistance rendered insofar as they can be made applicable.

¹ Article 8.13.

Ballot boxes

Subd. 15. For each polling place where an electronic voting system is used, there shall be supplied two ballot boxes for the deposit of voted ballots, which shall be of suitable design and with a suitable opening for placing the ballots therein in such manner that the ballots will not be damaged or rendered unfit for counting on the tabulating equipment. There shall also be supplied suitable containers for transporting the voted ballots to the central counting station.

[See Compact Edition, Volume 2 for text of 16]

Conduct of the Voting

Subd. 17. (a) The procedure at the polls where voting is by use of an electronic voting system shall be the same as at polling places where paper ballots are used, except as provided in this section. Where the portion of the ballot to be marked by the voter consists of more than one page or ballot card, the related parts may be placed in an envelope or otherwise secured so that the parts will not become separated before delivery to the voter. When a voter selects his ballot, he shall be instructed to use only the voting equipment provided for marking the ballot and that he is not to mark his ballot in any other way and is not to place any other marks thereon, except for write-ins. After a voter has marked his ballot, he shall deposit it in the ballot box provided for the deposit of voted ballots.

[See Compact Edition, Volume 2 for text of 17(b)]

Procedure while Polls are Open

Subd. 18. (a) At any time after the expiration of one hour after the voting has begun, the presiding judge may direct the receiving officers to deliver ballot box No. 1 to the clerks preparing the ballots for the central counting station, who shall immediately deliver in its place ballot box No. 2, which shall be opened and examined and securely closed and locked; and until the boxes are again interchanged, the voters shall deposit their ballots in box No. 2. In this manner, ballot boxes No. 1 and No. 2 may be interchanged periodically as directed by the presiding judge, but the box for receiving the ballots shall not be exchanged and the ballots shall not be removed from it at any time before the polls are closed unless there are more than 10 ballots in the box. Once the box for receiving the ballots is delivered to the clerks preparing the ballots for the central counting station, they shall remove the voted ballots from the ballot box and carry out the procedures prescribed in Subdivision 19 of this section preparatory to making the ballots, envelopes, and other materials ready for delivery to the central counting station.

(b) The authority holding the election may in its discretion also provide that voted ballots of designated precincts shall be delivered by authorized election officials, in the presence of watchers, to a central counting station at stated intervals during the day and that the processing of such ballots in accordance with the procedures prescribed in Subdivision 20 may begin prior to the close of the polls. Such processing may be limited by the authority holding the election to procedures preparatory to the counting and tabulating of ballots, or the authority holding the election may also permit the preliminary counting and tabulating of ballots with automatic

tabulating equipment; but in no event shall any results be disclosed prior to the close of the polls, and all persons connected with the handling and tabulating of the ballots shall be subject to the provisions of Section 105 of this code (Article 8.23, Vernon's Texas Election Code) with respect to revealing information as to the results of the election.

Procedure after Polls are Closed

Subd. 19.

[See Compact Edition, Volume 2 for text of 19(a) to (e)]

(f) After the election officers at the polling place have delivered all ballots to the central counting station, the ballot label assemblies and all other election supplies and records, including all duplicate certificates and unused seals, shall be delivered to the proper authority designated by law to receive them.

[See Compact Edition, Volume 2 for text of 20 to 24]

[Amended by Acts 1975, 64th Leg., p. 2068, ch. 680, §§ 1 to 10, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 2093, ch. 682, § 19, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 659, ch. 247, §§ 8 to 6, 11, eff. Aug. 29, 1977.]

Art. 7.16. Runoff Elections in Cities and Towns of over 200,000

Sec. 1. In all cities and towns in this State, whether incorporated under General and Special Law, (including home rule cities) having a population in excess of two hundred thousand (200,000) inhabitants, according to the last preceding or future Federal Census the election of candidates for all municipal offices shall be determined in the following manner:

[See Compact Edition, Volume 2 for text of (a)]

(b) In the event any candidate for either of said offices fails to receive a majority of all votes cast for all the candidates for such office at such election the Mayor of said city shall, on the first day following the completion of the official count of the ballots cast at said first election, issue a call for a second election to be held in said city within thirty (30) days following the issuance of such call, at which said second election the two (2) candidates receiving the highest number of votes for any such office in the first election at which no one was elected at said first election by receiving a majority of all votes cast for all candidates for such office, shall again be voted for. The official ballot to be used at said second election shall be prepared by the City Clerk or City Secretary and the name of no person shall appear thereon unless he was a candidate for the office designated at said first election, and the two (2) persons receiving at said first election the first and second

highest number of votes cast for candidates for such office at such first election shall be entitled to have their names printed on said official ballot in the order of their standing in the computation of the votes cast for such candidates at said first election as candidates at said second election for such office; provided, however, that in the event any person who was a candidate at said first election and who shall be entitled to become a candidate at such second election shall fail to request that his name shall appear on the official ballot therefor at such second election as herein provided, the candidate for such office standing next highest in the computation of votes shall succeed to the rights of such candidate who failed to request that his name appear upon the ballot at said second election; provided further, that two (2) candidates for such office at said first election shall be entitled to become candidates therefor at said second election, which two (2) candidates shall be those two (2) among such candidates as shall stand highest respectively in the computation of all votes cast for all the candidates for such office at said first election as shall file written request to be placed on the official ballot as candidates for such office at said second election. In the event of a tie in the vote for the two (2) leading candidates for any office at said first election, said office shall be filled at a second election as herein provided for, at which such candidates so tied in said first election may again become candidates. In the event such candidates who tied in said first election, or either or them, shall fail so to do, the two (2) candidates for such office who are next highest in the computation of votes therefor and who desire to become candidates therefor at said second election shall be entitled so to do in order of the number of votes they respectively received at said first election. In the event of a tie between the two (2) candidates for any office at said second election, they shall cast lots to determine who shall be elected to such office.

Sec. 2. Notwithstanding any provision in Section 1 of this statute, when in any municipal election nominations have been made by one or more political parties and the names of the candidates are listed on the ballot in party columns in conformity with the provisions of this code applicable to the method of voting used in the election, if any party nominee is a candidate in a succeeding runoff election, the ballot for the runoff election shall also be arranged in party columns in the same relative order as they appeared on the ballot for the first election, omitting any column in which no candidate's name is to be printed on the runoff ballot. If all candidates whose names appear on the runoff ballot are independent candidates, the ballot shall be made up without party columns, and the names of the two candidates

in each race shall be printed on the ballot in the order of their standing in the computation of the votes cast at the first election.

Sec. 3. Whenever any home-rule city whose charter provides for election of more than one member of its governing body from the same list of candidates attains a population in excess of 200,000 inhabitants, not later than the 90th day before the first regular election at which the provisions of this section are applicable, the governing body of the city shall assign a place number to each such position, identifying it by the name of the incumbent member at the time the designation is made; and thereafter one person to fill each such position shall be elected separately by place number until such time as the charter is amended to provide for some other method of election that is consistent with an election by majority vote.

Sec. 4. This law does not apply to any city whose charter provides for the selection of its officers by means of a preferential type of ballot or to any city whose charter requires that its officers be elected by majority vote and specifies the procedures for conducting a runoff election.

[Amended by Acts 1977, 65th Leg., p. 326, ch. 157, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1681, ch. 664, § 1, eff. Aug. 29, 1977.]

The 1977 amendatory act repealed former § 3 of this article, renumbered and amended former § 2 as § 4 and added new §§ 2 and 3.

Art. 7.17a. Secretary of State to Certify Voting Devices

(a) Any person, firm, or corporation owning or controlling any voting device or system and desiring to have the same adopted for use in this state may apply to the secretary of state to have such device or system examined under the provisions of this section if in the opinion of the secretary of state the device or system cannot be adequately examined under either Section 79 or Section 80 of this code (Article 7.14 or Article 7.15, Vernon's Texas Election Code). Before the examination the applicant shall pay to the secretary of state the sum of \$450. The secretary of state shall cause the device or system to be examined as hereinafter provided and shall make and file and keep on file in the office of the secretary of state a report of such examination, which shall show whether the kind of device or system so examined can safely be used by the voters under the conditions hereinafter provided. If the report states that the device or system can be so used, it shall be deemed approved and the device or system may be adopted for use in any election held in this state. Before making and filing such report, the secretary of state shall require the voting device or system to be examined by three examiners to be appointed by the secretary of state for such purpose, one of whom shall be an expert in patent law and the other two

shall be mechanical experts or electronics experts, as may be appropriate, and shall require each of them to make a written report on such device or system, which reports shall be attached to the secretary of state's report and kept on file. Each examiner shall receive the sum of \$150 as his compensation and expenses in making an examination and report as to each voting device or system examined by him. Neither the secretary of state nor any examiner may have any pecuniary interest in any voting device or system. When a device or system has been approved, every improvement or change must be filed with the secretary of state. The secretary of state may, at any time, in his discretion, reexamine a device or system approved under this section. Any form of voting device or system not approved under either this section or Section 79 or 80 of this code cannot be used at any election in this state.

(b) A voting device or system approved by the secretary of state must be so constituted as to provide facilities for voting for such candidates as may be legally placed on an official ballot in any election in this state. It must also permit a voter in a general election to vote for any person for any office, whether or not nominated as a candidate by any party but whose name is legally on the ballot as an independent candidate, and must permit voting in absolute secrecy. It also must be so constituted that a voter cannot vote for a candidate or on a proposition for whom or on which he is not lawfully entitled to vote. It also must be so constituted as to prevent a voter from having his vote counted for more than one person for the same office, unless permitted by law, and at the same time preventing his vote from being counted for the same person twice. It must also permit each voter to vote for a person whose name does not appear on the ballot, in any election and for any office where write-in votes are permitted by law. It must also permit the voter to vote by means of a single mark or punch or other appropriate act for all the candidates of one party or to vote a split ticket as he desires. No voting device or system shall be approved by the secretary of state unless he finds that it is suitable for the purpose for which it is intended, and that it will operate efficiently and accurately and provide adequate safeguards against fraudulent manipulation under the conditions under which it is intended to be used.

(c) In the event a voting system is approved under this section for which this code prescribes no applicable or suitable procedures concerning its use, the secretary of state shall, upon certification of such system, issue a directive prescribing the procedures, limitations, and conditions for the implementation of such system.

[Added by Acts 1977, 65th Leg., p. 572, ch. 205, § 1, eff. Aug. 29, 1977.]

CHAPTER EIGHT. CONDUCTING ELECTIONS AND RETURNS THEREOF

Article

8.19b. Tallying Votes of Write-in Candidates.

8.36a. County Chairmen to Send Lists of Elected Party Nominees to State Chairman.

Art. 8.07. Present Registration Certificate

No citizen shall be permitted to vote, except as provided in the Constitution of Texas unless he first presents to the judge of election his registration certificate unless the same has been lost or mislaid, or left at home, in which event he shall make an affidavit of that fact, to be left with the judges and sent by them with the returns of the election; provided, that, if since he obtained his certificate he removes from the precinct or county of his residence, he may vote on complying with other provisions of this Code. The affidavit may be incorporated into any combination signature roster and list of registered voters as prescribed by the secretary of state. [Amended by Acts 1977, 65th Leg., p. 592, ch. 209, § 4, eff. Aug. 29, 1977.]

Art. 8.08. Procedure for Accepting Voter; Signature Roster

Subd. 1. An election officer shall receive from the voter his registration certificate, when he presents himself to vote. If the voter has lost or mislaid his certificate or left it at home, he shall make an affidavit of that fact. For elections held on or after April 1 and no later than June 30 in even-numbered years, if any voter who is a resident of a county in a primary election or of a county, municipality, or district which is conducting any other election has failed to receive a certificate for the current two-year registration period, the election officer shall determine if the name of such voter appears on the list of cancelled voter registration certificates for the particular election precinct, and, if so, the election officer shall allow such voter to cast a ballot in the manner stated in Section 48a of this code. The election officer shall announce the voter's name in an audible voice and shall ascertain that his name appears on the list of registered voters or shall satisfy himself, in the manner stated in Section 48a of this code, that the voter is a registered voter and is entitled to vote in that precinct. He shall then require the voter to sign the signature roster provided for in Subdivision 3 of this section. If the voter has presented his registration certificate, the election officer shall compare the signature on the roster with the signature on the certificate to see that it is the same. If he finds that the signatures do not correspond, he shall not allow the voter to vote unless the voter complies with the procedure prescribed in Section 91 of this code for acceptance of a challenged voter.

Subd. 2. When a voter is accepted for voting, the election officer shall place a notation on the list of registered voters showing that he has voted and shall enter the voter's name on the poll list or shall use a combination signature roster and list of registered voters in the manner and format prescribed by the secretary of state. If a separate poll list is used, the names on the poll list shall be entered in the same order as the names on the signature roster. The officer shall return the registration certificate to the voter and shall allow him to select his ballot. The voter shall then immediately retire to a voting booth or a place prepared for voting by the election officers, and there prepare his ballot in the manner provided by law.

[See Compact Edition, Volume 2 for text of 3]

Subd. 4. Notwithstanding any other provision of this code which prescribes a criminal penalty, an election officer who knowingly violates any provision of this section shall be fined not less than one hundred dollars nor more than one thousand dollars, or be imprisoned in the county jail not more than 90 days, or be both so fined and imprisoned.

[Amended by Acts 1975, 64th Leg., p. 2079, ch. 681, § 20, eff. June 20, 1975; Acts 1977, 65th Leg., p. 593, ch. 209, § 5, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1215, ch. 468, § 4, eff. Aug. 29, 1977.]

Art. 8.09. Vote Challenged

When a person offering to vote at any general, special, or primary election shall be objected to by an election judge or clerk, a poll watcher, or any other person, the presiding judge shall examine him upon oath touching the points of such objection, and if such person establishes his right to vote to the satisfaction of the presiding judge, he shall be permitted to vote, and the word "sworn" shall be written upon the poll list or on the prescribed combination form opposite the name of the voter. If upon his own oath the person fails to establish his right to vote to the satisfaction of the presiding judge, his vote shall not be accepted unless in addition to his own oath he submits proof by the oath of one well-known resident of the precinct that he is a qualified voter at such election and in such precinct. When such proof is submitted, his vote shall be accepted, and the word "challenged" and the name and address of the person testifying under oath as to the voter's qualifications shall be written on the poll list or on the prescribed combination form opposite the name of the voter.

[Amended by Acts 1977, 65th Leg., p. 593, ch. 209, § 6, eff. Aug. 29, 1977.]

Art. 8.13. Aid to Voter

Subd. 1. Not more than one person at the same time shall be permitted to occupy any one compartment, voting booth or place prepared for a voter, nor

shall any assistance be given a voter in preparing his ballot, except when a voter is unable to prepare the same because of the voter's inability to read the language in which the ballot is printed or because of some bodily infirmity which renders the voter physically unable to write or to see, in which case two officers of such election shall assist the voter (with the aid of an interpreter, when necessary), they having first sworn that they will not suggest, by word or sign or gesture, how such voter shall vote; that they will confine their assistance to answering the voter's questions, to stating the propositions to be voted on, and to naming candidates and the political parties to which they belong; and that they will prepare the voter's ballot as such voter directs. If the election is a general election, the election officers who assist such voters shall be of different political parties, if there be such officers present. One or more watchers may be present when the assistance herein permitted is being given by election officers, but each watcher must remain silent except in cases of irregularity or violation of the law.

Subd. 2. Instead of being assisted by two election officers as provided in Subdivision 1 of this section, a voter who is entitled to assistance may select any qualified voter residing in the precinct to assist him, subject to the restriction stated in Section 330a of this code,¹ and no other person shall be permitted to be present while the ballot is being prepared. Before assisting the voter, the person selected shall take the following oath, which shall be administered by one of the election officers: "I solemnly swear that I will not suggest, by word or sign or gesture, how the voter shall vote; I will confine my assistance to answering the voter's questions, to stating propositions to be voted on and to naming candidates and the political parties to which they belong; and I will prepare the voter's ballot as the voter directs." The election officer who administers the oath shall cause a notation of the name and address of the person rendering the assistance to be entered on the poll list by the name of the voter who is assisted, together with a notation of the person's kinship to the voter if related as parent, grandparent, spouse, child, brother, or sister.

Subd. 3. Where any assistance is rendered in preparing a ballot other than as herein allowed, the ballot shall not be counted, but shall be void for all purposes.

Subd. 4. When an election officer assists a voter, the officer shall read the entire ballot to the voter unless the voter informs the officer that he wishes to vote only in certain specified races. When a voter is to be assisted by someone other than an election officer, the officer who waits on the voter shall ask the voter if he wants the entire ballot read to him,

and if the voter says that he does, the officer shall instruct the person who will render the assistance that he must read the entire ballot to the voter.

[Amended by Acts 1975, 64th Leg., p. 2093, ch. 682, § 20, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 2060, ch. 806, §§ 3, 4, eff. Aug. 27, 1979.]

¹ Article 15.30a.

Art. 8.15. Deposit of Ballot

Subd. 1. After the voter has prepared his ballot, he shall fold it so as to conceal the printing thereon and so as to expose the signature of the presiding judge on the back of the ballot (except that ballot cards and certain other types of ballots used in electronic voting systems should not be folded), and then deposit it in the proper ballot box.

Subd. 2. The ballot stub to be signed by the voter and the stub box for the deposit of the signed stub, formerly provided for in this and other sections of this code, are eliminated by amendments enacted by the 65th Legislature at its regular session in 1977. All statutory provisions relating to the use of ballot stubs and stub boxes which appear in other statutes enacted at the regular session of the 65th Legislature, regardless of whether they are enacted before or after this amendment, or enacted at any prior session, except provisions relating to stubs attached to ballot cards used in an electronic voting system, are to be treated as void.

[Amended by Acts 1977, 65th Leg., p. 660, ch. 247, § 7, eff. Aug. 29, 1977.]

Section 12 of the 1977 amendatory act provided:

"The statutory provisions relating to the preservation, examination, and destruction of ballot stubs which were in effect on the date of the election continue to apply to the ballot stubs for elections held before the effective date of this Act."

Art. 8.17. Bystanders Excluded

From the time of opening the polls until the announcement of the results of the canvass of votes cast and the signing of the official returns, the boxes and official ballots shall be kept at the polling place in the presence of one or more of the judges, and watchers, if any. No person, except those admitted to vote, shall be admitted within the room where the election is being held, except the judges, clerks, persons admitted by the presiding judge to preserve order, inspectors, watchers, and children under 10 years old who accompany a parent who is admitted to vote. Notwithstanding any other provision of this code, the child or children may also be present in the voting booth or compartment while the parent is voting.

[Amended by Acts 1975, 64th Leg., p. 2078, ch. 681, § 17, eff. June 20, 1975; Acts 1977, 65th Leg., p. 309, ch. 143, § 1, eff. Aug. 29, 1977.]

Art. 8.19b. Tallying Votes for Write-in Candidates

In the general election for state and county officers held on the first Tuesday after the first Monday in November of even-numbered years, before the counting begins the presiding judge shall furnish the counting officers with the list of write-in candidates who have qualified for the election as provided in Section 62b of this code.¹ Only the names of the candidates printed on the ballot and the names of write-in candidates appearing on the list shall be entered on the tally sheets, and a write-in vote for any other person shall not be tallied.

[Added by Acts 1977, 65th Leg., p. 1283, ch. 503, § 2, eff. Aug. 29, 1977.]

¹ Article 6.06b.

Art. 8.22. Death or Ineligibility of Candidate Before Election

(a) When the name of a deceased or ineligible candidate is printed on the ballot for a general or special election, as provided in Section 233 of this code,¹ the votes cast for him shall be counted and return made thereof; and if he receives a plurality of the votes cast for the office where a plurality is sufficient for election, or if he receives a majority of the votes cast for the office where a majority is required for election, the vacancy shall be filled as in the case of a vacancy occurring after the election. If he is one of the two highest candidates in an election where a majority is required and no one has a majority, the two candidates with the highest votes other than the deceased or ineligible candidate shall be certified as the two highest candidates for the runoff election.

(b) If after the 45th day preceding the first primary election, a candidate in that primary dies or is declared ineligible to be elected to the office, his name shall be printed on the first primary ballot and the ballots cast for him shall be counted and a return made thereof. If such a deceased or ineligible candidate receives a majority of the votes, the proper executive committee shall choose a nominee and certify such name to the proper officer, as provided in Section 233 of this code, to be printed on the general election ballot. If such a deceased or ineligible candidate is one of the two highest candidates in that race in the first primary and if no one has a majority vote, the two candidates with the highest votes, other than the deceased or ineligible candidate, shall be certified to have their names printed on the second primary ballot. If a candidate whose name is to appear on the second primary ballot dies between the dates of the first and second primaries, his name shall be printed on the second primary ballot and the votes cast for him shall be counted and returned for him; and if such a deceased candidate receives a majority of the votes in the second primary, the proper executive committee shall

choose a nominee and certify his name to the proper officer, as provided in Section 233 of this code, to be printed on the general election ballot. Withdrawal of a candidate in the second primary is regulated by Section 204a of this code.

[Amended by Acts 1975, 64th Leg., p. 2104, ch. 685, § 2, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 883, ch. 332, § 2, eff. Aug. 29, 1977.]

¹ Article 13.56.

Art. 8.29b. Copies of Returns, Poll Lists or Combination Forms, and Tally Lists; Distribution

(a) In precincts using paper ballots. In all general, special, and primary elections, the number of copies of the returns, poll list or prescribed combination form, and tally list required for each precinct in which paper ballots are used shall be as follows: four copies of the returns, three copies of the poll list or prescribed combination form, and three copies of the tally list. These records shall be distributed as follows:

(1) One copy of the returns and tally list shall be delivered to the presiding officer of the authority which canvasses the returns (the county judge in elections held by the county; the mayor in city elections; the presiding officer of the governing board in elections held by other political subdivisions; and the chairman of the county executive committee in county primary elections) and shall be preserved by the canvassing authority for sixty days from the day of the election.

(2) One copy of the returns, poll list, or prescribed combination form, and tally list shall be delivered to the proper officer (the county clerk in elections held by the county and in county primary elections; the city secretary or clerk in municipal elections; and the presiding officer of the governing board in elections held by other political subdivisions), to be kept by him in his office open to inspection by the public for sixty days from the day of the election.

(3) One copy of the returns, poll list, or prescribed combination form, and tally list shall be placed in the ballot box containing the voted ballots.

(4) The presiding judge shall retain in his custody one copy of the returns and one copy of the poll list or prescribed combination form of the election, and shall keep the same for sixty days after the day of the election, subject to the inspection of anyone interested in such election.

[See *Compact Edition, Volume 2* for text of (b) and (c)]

(d) The presiding judge shall deliver all applications for registration received pursuant to Section 48a of this code¹ to the officer who receives the election records that are open to public inspection at

the same time that he delivers those records. Within five days after the election, this latter officer shall forward the applications from all election precincts to the county registrar of voters, who shall process the applications and issue registration certificates thereon in the same manner as other applications.

[Amended by Acts 1977, 65th Leg., p. 593, ch. 209, § 7, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1217, ch. 468, § 7, eff. Aug. 29, 1977.]

¹ Article 5.16a.

Art. 8.36a. County Chairmen to Send Lists of Elected Party Nominees to State Chairman

Not later than February 1 following each general election for state and county officers, the chairman of the county executive committee of each political party with a state organization that had nominees on the general election ballot shall send to the state chairman of the party a list of the names of the party's nominees who were elected to county and precinct offices in that county at that election, and the office to which each was elected.

[Added by Acts 1975, 64th Leg., p. 2107, ch. 687, § 1, eff. Sept. 1, 1975.]

CHAPTER NINE. CONTESTING ELECTIONS

Article

9.29a. Application of Sunset Act.

9.38b. Compelling Voter to Testify How He Voted.

Art. 9.20. For Legislature

Initiation of Election Contest

Subd. 1. A candidate for State Senator or Representative who desires to contest the election must initiate election contest proceedings in the manner prescribed by this section.

Notice and Statement

Subd. 2. (a) Not later than 10 days after election day, the contestant shall give notice in writing of his intent to contest the election to the candidate who is shown by the unofficial returns to have the greatest number of votes when the returns of all counties are totaled.

(b) The contestant shall give the contestee a written statement of the grounds on which the election is contested not later than five days after the day the official results are declared.

(c) Within the period of time prescribed by Subsection (b) of this subdivision, the contestant shall mail a certified copy of the notice and statement to the President of the Senate or to the Speaker of the House of Representatives, as the case may be, in care of the Secretary of State.

Reply

Subd. 3. The candidate who receives the notice and statement shall cause a reply in writing to be delivered to the contestant, his agent or attorney, within 10 days after receiving the notice and statement; and within the same period of time he shall mail a certified copy of the reply to the President of the Senate or to the Speaker of the House of Representatives, as the case may be, in care of the Secretary of State.

Service; Use of Certified Mail

Subd. 4. (a) The notice, statement, and reply may be served as provided in Section 133 of this code (Article 9.05, Vernon's Texas Election Code) or by certified mail with return receipt requested.

(b) When certified mail is used for service or to transmit a copy of the notice, statement, or reply to the Secretary of State, the fact and date of sending and the fact and date of receipt may be proven with window receipts and return receipts for certified mail.

Duty of Secretary of State

Subd. 5. (a) The Secretary of State shall submit the papers of the case to the President of the Senate or to the Speaker of the House of Representatives, as the case may be, not later than three days after receipt of the contestee's reply or as soon thereafter as practicable.

(b) The papers of the case consist of the copies of the notice, statement, reply, and the Secretary of State's certified statement of the total votes cast for each candidate for the office as shown by the official canvass of the returns.

[Amended by Acts 1979, 66th Leg., p. 1836, ch. 748, § 1, eff. Aug. 27, 1979.]

Art. 9.21. Discovery; Master of Discovery

Discovery Procedures

Subd. 1. The parties to a contest for the office of State Senator or Representative may conduct discovery under the procedures applicable in civil actions generally, subject to any changes in those procedures or limitations imposed by the master of discovery or by rules of the House in which the contest is pending.

Master of Discovery

Subd. 2. (a) The presiding officer of the House at any time may appoint a master of discovery in the manner that a master in chancery is appointed in civil actions generally for the purpose of supervising discovery proceedings.

(b) The master must be a member of the House in which the contest is filed.

(c) The presiding officer may limit the master's authority in the same manner as a civil court in the appointment of a master in chancery.

(d) The master's rulings are subject to review by the committee to which the contest is referred unless otherwise provided by rules of the House.

Costs of Discovery

Subd. 3. Each party is responsible for the initial payment of his own costs of discovery, but discovery costs may be assessed by the House as provided by Section 151 of this code (Article 9.23, Vernon's Texas Election Code).

[Amended by Acts 1979, 66th Leg., p. 1836, ch. 748, § 1, eff. Aug. 27, 1979.]

Art. 9.22. Grounds of Contest; Scope of Inquiry

The grounds on which an election for the office of State Senator or Representative may be contested and the scope of inquiry of the contest are the same as for an election contest tried before a court. [Amended by Acts 1979, 66th Leg., p. 1836, ch. 748, § 1, eff. Aug. 27, 1979.]

Art. 9.23. Costs of Contest

The House considering an election contest for the office of State Senator or Representative may assess the costs of the contest against any one or more of the parties.

[Amended by Acts 1979, 66th Leg., p. 1836, ch. 748, § 1, eff. Aug. 27, 1979.]

Art. 9.24. Contest Referred to Committee; Hearing and Report

Referral to Committee

Subd. 1. The President of the Senate or Speaker of the House of Representatives shall refer a contest for the office of State Senator or Representative to a special committee, standing committee, or committee of the whole.

Committee Hearing and Report

Subd. 2. The committee shall proceed without delay to fix a time for the hearing of said case and, after due notice to the parties thereto, shall investigate the issues between said parties, hearing all the legal evidence that may be presented to said committee, and shall as soon thereafter as practicable report their conclusions of law and findings of fact in respect to said case to the House, accompanied by all the papers in the case and the evidence taken therein, with such recommendations as may to them seem proper.

Minority Report

Subd. 3. Any one or more of the committee dissenting from the views of the majority may present a minority report.

[Amended by Acts 1979, 66th Leg., p. 1836, ch. 748, § 1, eff. Aug. 27, 1979.]

Art. 9.25. Committee Procedure

Procedure Generally

Subd. 1. The procedure for the committee hearing of an election contest for the office of State Senator or Representative shall be as prescribed by rules of the House in which the contest is pending.

Evidence

Subd. 2. Unless otherwise provided by House rule, the rules of evidence and the laws in force respecting the admissibility of evidence in the district courts of this State shall be observed by said committee, so far as the same may be applicable.

Issuance of Process

Subd. 3. Said committee shall have the power to send for persons and papers, and the chairman of said committee shall have the power to issue all process necessary to secure the attendance of witnesses and the production of papers, ballot boxes and other documents before said committee, and such process shall be executed by the sergeant-at-arms of the House in which the contest is pending, or by such other person as the presiding officer of said House may designate.

[Amended by Acts 1979, 66th Leg., p. 1836, ch. 748, § 1, eff. Aug. 27, 1979.]

Art. 9.26. Disposition of Contest by House

House to Consider Report

Subd. 1. The House in which a contest for the office of State Senator or Representative is pending, as soon as practicable after the report of the committee has been received, shall fix a day for consideration of the report.

Action on Contest

Subd. 2. The House may seat the contestant or the contestee or may hold the election void. In the last case the Governor shall at once be notified of the vacancy.

Mileage and Fees

Subd. 3. Such fees shall be paid to the witnesses and the officers serving the process as shall be prescribed by the rules of the House in which said contest is pending, and no mileage or per diem shall be paid to either of the parties to said contest until said case is determined, and in no case shall any mileage or per diem be paid to any party against whom any contest is decided.

[Amended by Acts 1979, 66th Leg., p. 1836, ch. 748, § 1, eff. Aug. 1, 1979.]

Art. 9.29a. Application of Sunset Act

The State Board of Canvassers is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished effective September 1, 1989.

[Added by Acts 1977, 65th Leg., p. 1856, ch. 735, § 2.171, eff. Aug. 29, 1977.]

¹ Civil Statutes, art. 5429k.

Art. 9.38a. Recount of Paper Ballots**Grounds for Recount**

Subd. 1. (a) A candidate for nomination or election to any public office or to the party office of county chairman or precinct committeeman may obtain a recount of the votes cast for the office on manually counted paper ballots, in the manner outlined in this section:

(1) if the difference in the number of votes received by him and the next highest candidate above him is less than five percent of the number of votes received by such next highest candidate, as shown by the returns of the election officers, and the candidate seeking the recount would gain the election or nomination or a place on a runoff election ballot if the recount showed him to have received a greater number of votes than that opponent, or

(2) if one or more judges of the election make an uncontradicted affidavit stating that certain ballots cast for the office were counted or were not counted, as the case may be, and the Secretary of State certifies that, on the basis of the statements in the affidavit, the election officers were in error in either counting or failing to count the ballots, as the case may be, and further certifies that from the affidavit or affidavits submitted to him and on the basis of the unofficial returns it appears likely that the number of miscounted ballots were of sufficient number to change the result of the election in that race as it affects the candidate seeking the recount.

(b) In addition to recount grounds prescribed by Paragraph (a) of this subdivision, a candidate for nomination or election to an office may obtain a recount of the votes cast for the office on manually counted paper ballots in the manner outlined in this section if the candidate did not receive the greatest number of votes and if the total number of votes cast for all candidates for such office is less than 1,000, as shown by the returns.

(c) If the ground of the application for a recount is that prescribed by Paragraph (a)(1) or (b) of this subdivision, the request must be for a recount of all the ballots cast for the office in each and every election precinct, including the absentee ballots cast for the office; and the canvassing board shall order a complete recount.

(d) If the ground of the application is that prescribed by Paragraph (a)(2) of this subdivision, the candidate at his option may request a recount of all the ballots cast in the election or only the ballots cast in the election precincts in which the miscounting is alleged to have occurred; and if only a partial recount is requested, the canvassing board shall order a recount only of all the ballots cast in those precincts in which the Secretary of State certifies

that ballots were erroneously counted or not counted.

[See Compact Edition, Volume 2 for text of 2 to 12]

[Amended by Acts 1979, 66th Leg., p. 1779, ch. 722, § 1, eff. Aug. 27, 1979.]

Art. 9.38b. Compelling Voter to Testify how He Voted

In an election contest or criminal proceeding in which the issue is relevant, any voter who fraudulently or illegally casts a ballot or who casts a fraudulent or illegal ballot at any general, special, or primary election may be required and compelled, after the fraud or illegality has been established by competent evidence before a tribunal of competent jurisdiction, to disclose in testimony before the tribunal having jurisdiction of the matter the name of any candidate for whom he voted and the way he voted on any question at the election. The voter's testimony may be impeached by the testimony of other witnesses in regard to statements by the voter, either before or after the election, or by other competent evidence; and the issue of how the voter voted shall be decided on the basis of all the evidence before the tribunal. In an election contest, instead of undertaking to determine how individual voters voted, the tribunal may declare the election void and order another election if the number of illegal votes is sufficient to change the outcome of the election. This section applies to election contests and criminal proceedings instituted under any provision of this code or under any other statute of this state.

[Added by Acts 1977, 65th Leg., p. 661, ch. 247, § 10, eff. Aug. 29, 1977.]

CHAPTER ELEVEN. PRESIDENTIAL ELECTION**Article**

11.01b. Independent Candidate for President.

11.01c. Write-in Candidate for President.

Art. 11.01. Time of Election; Qualifications of Electors

Subd. 1. On the first Tuesday after the first Monday in November in the year 1980 and every four years thereafter, there shall be elected by the voters of the State as many electors for President and Vice-President of the United States as the State of Texas may at that time be entitled to elect.

Subd. 2. Each elector at the time of nomination as a presidential elector candidate, at the time of election, and at the time of the convening of the electors must be a registered, qualified voter of this state and must not hold the office of senator or representative in congress, or any office of trust or profit under the United States.

[Amended by Acts 1977, 65th Leg., p. 647, ch. 240, § 1, eff. Aug. 29, 1977.]

Art. 11.01b. Independent Candidate for President

Subd. 1. Any person eligible to hold the office of President of the United States may have his name and the name of a vice-presidential running mate printed on the ballot as independent candidates in the presidential race by complying with the provisions of this section.

Subd. 2. A person desiring to become an independent candidate for president shall file with the Secretary of State, not later than the second Monday in July before the general election at which his name will appear on the ballot:

- (1) an application to have his name and the name of an eligible vice-presidential candidate as his running mate printed on the ballot on a form prescribed by the Secretary of State;
- (2) the signed written consent of the person designated as the vice-presidential candidate to have his name printed on the ballot in that capacity;
- (3) a list of the names and addresses of persons to represent the applicant as presidential elector candidates in the number to be elected, together with the signed written consent of each such person to become a candidate; and
- (4) a petition of voters signed by qualified voters of the state in a number equal to not less than one percent of the entire vote of the state cast for president and vice-president at the last preceding presidential general election.

Subd. 3. A petition may not be circulated for signatures until after the date of the general primary election in that election year, and any signature obtained on or before that date is void. A voter who voted in the general primary of any political party that held a presidential primary that year is ineligible to sign the petition of an independent candidate for president. The following statement shall appear at the head of each page of a petition: "I certify that I did not vote this year in the general primary election of any political party that held a presidential primary."

Subd. 4. The Secretary of State shall prescribe the form for the petition of voters to be filed by an independent candidate for president. For each signer the petition shall show the signer's address, the county of issuance and number of his voter registration certificate, and the date of signing. The petition may be in multiple parts. To each part shall be attached an affidavit of the person who circulated it, stating that he witnessed the affixing of each signature, that he called the attention of each signer to the statement at the head of the page before the person signed the petition, that the correct date of signing is shown on the petition, and that to the best of his knowledge and belief each signature is the

genuine signature of the person whose name is signed. A petition so verified is prima facie evidence that the signatures thereon are genuine and that the persons signing it are registered voters. [Added by Acts 1977, 65th Leg., p. 647, ch. 240, § 2, eff. Aug. 29, 1977.]

Art. 11.01c. Write-in Candidate for President

Subd. 1. Any person eligible to hold the office of President of the United States may become a write-in candidate for the office by complying with the provisions of this section. No write-in vote cast for the office may be counted unless the person whose name is written in has complied with these requirements. The Secretary of State shall certify to the county clerks the names of write-in candidates who have complied with this section at the same time that he certifies the names of the presidential candidates to be printed on the ballot.

Subd. 2. A person desiring to become a write-in candidate for president shall file with the Secretary of State, not later than the 45th day before the general election:

- (1) a declaration that he is a write-in candidate for the office of president;
- (2) the name of an eligible vice-presidential candidate as his running mate and the signed written consent of that person to the candidacy; and
- (3) a list of the names and addressees of persons to represent the write-in presidential candidate as presidential elector candidates in the number to be elected, together with the signed written consent of each such person to become a candidate.

[Added by Acts 1977, 65th Leg., p. 648, ch. 240, § 3, eff. Aug. 29, 1977.]

Art. 11.02. Effect of Votes for Presidential Candidates

A vote for the set of candidates of any political party or for a set of independent or write-in candidates for both President and Vice-President of the United States shall be conclusively deemed to be a vote for the presidential elector candidates representing that party or that set of independent or write-in candidates, and shall be so counted and recorded for such electors as the state shall be empowered to elect. No vote shall be counted unless the voter has cast his vote for both the candidate for President and the candidate for Vice-President of the same political party or set of independent candidates. A ballot on which a voter has written in the name of a presidential candidate who has filed a declaration of write-in candidacy in accordance with this section shall be counted as a vote for the presidential elector candidates representing that write-in candidate, regardless of whether the name of the corresponding vice-presidential candidate is written in.

[Amended by Acts 1977, 65th Leg., p. 649, ch. 240, § 4, eff. Aug. 29, 1977.]

Art. 11.03. Canvass of Votes and Returns

The canvass of the votes for candidates for President and Vice-President of the United States and the returns thereof shall be a canvass and return of the votes cast for the electors of the same party or set of independent or write-in candidates, respectively, and the certificate of such election made by the Governor shall be in accord with such return.

[Amended by Acts 1977, 65th Leg., p. 649, ch. 240, § 5, eff. Aug. 29, 1977.]

Art. 11.04. Certification of Candidates

The names of the candidates for President and Vice-President and for presidential electors, respectively, of a political party as defined in the law shall be certified to the Secretary of State by the chairman and secretary of the state committee of the party not later than the 40th day prior to the election.

[Amended by Acts 1977, 65th Leg., p. 888, ch. 332, § 6, eff. Aug. 29, 1977.]

CHAPTER THIRTEEN. NOMINATIONS**Article**

13.08a-1. State Financing of Primary Expenses of State Executive Committee.

13.08c. Funding.

13.21. Repealed.

13.34b. Participation in Conventions by Persons Voting on List of Cancelled Voter Registration Certificates.

13.46. Repealed.

13.58a. Expired.

Art. 13.01a. Who Are Members of Organized Party

[See Compact Edition, Volume 2 for text of (1) to (3)]

(4) An applicant for party affiliation shall become a qualified member of a political party which is holding primary elections when he has voted within that party's primary or has taken part in a convention of that party prior to a primary. At the head of the signature roster for each primary election there shall be printed the following statement: "I swear that I have not voted at a primary election or participated in a convention of any other political party during this voting year." The presiding judge or another election officer designated by him shall place each voter under oath and require him to swear to this statement before he signs the roster. The first time a voter presents his voter registration certificate at a primary election, the election officer shall stamp the appropriate party designation within the party affiliation space on the face of the certificate. If the voter is voting on a statement of a lost registration certificate, the presiding judge shall issue to him a certificate of his having voted, in the following form:

Date _____
 _____ has voted on this date in the
 (Name of Voter)
 primary election of the _____ Party.

Presiding Judge, Precinct No. _____,
 _____ County, Texas.

When a voter votes by absentee ballot in a primary election, the county clerk shall stamp the appropriate party designation on the voter's registration certificate; of if the voter is voting on a statement of a lost or unreturned certificate, the clerk shall deliver or mail to the voter, at the time specified by law for returning a registration certificate to an absentee voter, a certificate of his having voted by absentee ballot in the primary.

(5) To become qualified to participate in any party convention of a party which does not hold a primary or to become qualified for party membership for any party convention held prior to a primary, each voter who desires to participate in the convention shall present to the precinct chairman his affidavit that he has not participated in the primary or convention of any other party during that voting year. Thereupon, the precinct chairman shall stamp the appropriate party designation on the voter's registration certificate if the voter presents it, and if the registration certificate is not presented, the chairman shall issue to the voter a certificate in the following form:

Date _____
 _____ has affiliated with
 (Name of Voter)
 the _____ Party for the current year.

Precinct Chairman, Precinct No. _____,
 _____ County, Texas.

Each precinct chairman is authorized to administer the oath required by this subsection. Within 10 days after the precinct convention, he shall arrange the affidavits in alphabetical order and deliver them to the county clerk. If he receives an affidavit after the date of the precinct convention, he shall deliver it to the county clerk within 10 days after he receives it. The county clerk shall keep the affidavits on file in alphabetical order within each precinct for a period of two years after the end of the voting year in which they are filed. The county clerk shall maintain a separate file for each political party.

(6) A voter registration certificate which has been stamped with a party designation, a certificate of having voted in a primary election, or a certificate of party affiliation issued by a precinct chairman, all as provided in this section, shall serve as evidence that the person whose name appears on the certificate is affiliated with the party designated on the certifi-

cate and is therefore eligible to participate in that party's conventions.

[See Compact Edition, Volume 2 for text of (7) and (8)]

[Amended by Acts 1975, 64th Leg., p. 750, ch. 296, § 15, eff. Nov. 5, 1975.]

Art. 13.07a. Repealed by Acts 1975, 64th Leg., p. 2054, ch. 675, § 8, eff. Sept. 1, 1975

Art. 13.08. Conduct of the Primary Elections

(a) The primary election held by a political party pursuant to Sections 180 and 181 of this code (Articles 13.02 and 13.03, Vernon's Texas Election Code) shall be conducted through the party's state executive committee and county executive committees in accordance with the procedures detailed in this code.

(b) In order for a candidate to have his name placed on the ballot for the general primary election, his application for a place on the ballot must be accompanied by a filing fee or a nominating petition in compliance with Subsection (c) or (d) of this section.

(c) The schedule of filing fees for either a full term or an unexpired term for the various offices is as follows:

(1) United States Senator	\$2,000
(2) All other statewide offices	1,500
(3) United States representative	1,500
(4) State senator	750
(5) State representative	400
(6) Member, state board of education	250
(7) Chief justice or associate justice, court of civil appeals	750
(8) District judge or judge of any court having status of a district court as classified in Section 61c ¹ of this code, as added and amended (Article 6.05c, Vernon's Texas Election Code)	700
(9) Judge of a statutory county court or judge of any court having status of a county court as classified in Section 61c of this Code, as added and amended (Article 6.05c, Vernon's Texas Election Code), other than the constitutional county court	700
(10) District attorney or criminal district attorney or a county attorney that performs the same functions as either of the above	600
(11) A county office as classified in Section 61c of this code, as added and amended (Article 6.05c, Vernon's Texas Election Code), for which a specific fee is not set by this subsection	300
(12) County surveyor or inspector of hides and animals	50
(13) Judge of the constitutional county court and county commissioner,	

County of 200,000 or more inhabitants	600
County under 200,000 inhabitants ...	300
(14) Justice of the peace or constable,	
County of 200,000 or more inhabitants	500
County under 200,000 inhabitants ...	200
(15) Public weigher	50

No fee shall be charged for any office of a political party.

(d) In lieu of the payment of a filing fee, a candidate may file a nominating petition which may be in multiple parts and must be signed by the qualified voters eligible to vote for the office for which the candidate is running as follows:

For statewide office, 5,000 signatures.

For district, county, precinct, or other political subdivisions, equal in number to at least two percent of the number of votes cast in the territory for that party's candidate for governor in the last preceding gubernatorial general election. However, in no event shall the number required be more than 500; and if two percent of the votes cast in the territory was less than 25, the number required is the lesser of 25 signatures or 10 percent of the number of votes cast.

Where a candidate is running in a district, county, or precinct which has been created or the boundaries of which have been changed since the last gubernatorial general election, he may request that the secretary of state in the case of a district or county office, or the county clerk of the county in which the precinct is situated in the case of a precinct office, make an estimate in advance of the filing deadline of the number of votes cast for that party's candidate for governor within that territory at the last gubernatorial election. Not later than the 15th day after receiving such a request, the officer shall make the estimate and notify the candidate, and also the officer with whom the candidate files his application. The estimate shall be used as the official basis for computing the number of signatures required on a petition. If an advance estimate is not requested, the officer with whom the petition is filed shall make the estimate, whenever necessary, before he acts on the sufficiency of the petition. In every instance, the candidate may challenge the accuracy of the estimate, and if he is dissatisfied with the final decision of the officer he may appeal the decision to any district court having jurisdiction in the territory involved.

The following statement shall appear at the head of each page of the petition: "I know the contents of this petition. I am a qualified voter eligible to vote in the forthcoming primary election of the (fill in name) Party for the office for which (fill in name) is a candidate. I have not signed the petition of a candidate who is running for any office² the primary of any other party. I understand that by

signing this petition I become ineligible to affiliate with any other party or to participate in the primary elections, conventions, or other party affairs of any other party, including a party which is not holding a primary election, during the voting year in which this election is held, and that I am guilty of a misdemeanor if I attempt to do so."

To each part of the petition shall be attached an affidavit of the person who circulated it, stating that he called each signer's attention to the statement and read it to him before the signer affixed his signature to the petition, and further stating that he witnessed the affixing of each signature, that the correct date of signing is shown on the petition, and that to the best of his knowledge and belief each signature is the genuine signature of the person whose name is signed. A petition so verified is prima facie evidence that the signatures thereon are genuine and the persons signing it are registered voters.

The petition must show the following information with respect to each signer: His address (including his street address if residing in a city, and his rural route address if not residing in a city), his current voter registration certificate number (also showing the county of issuance if the office includes more than one county), and the date of signing. The secretary of state shall prescribe a form for the petition before the 30th day prior to the filing deadline and provide copies of that form to the state chairman and the county chairmen of each party holding a primary election. However, a candidate may use any other form which complies with the requirements of this section. It is the specific intent of the legislature that there shall be no requirement for the administering of an oath to any person signing a petition under the provisions of this section.

A petition filed under this section shall be filed with the same officer with whom an application for a place on the ballot for the office being sought is to be filed and must be filed at the same time as such an application.

(e) The fees paid to the county chairman on applications filed with him pursuant to the provisions of Section 190 of this code, as amended (Article 13.12, Vernon's Texas Election Code), the apportionment of fees received from the state chairman pursuant to this subsection, and any contributions made to the county chairman or the county executive committee for the specific purpose of helping defray the costs of the primary elections shall be deposited to the credit of the primary fund referred to in Section 196 of this code, as amended (Article 13.18, Vernon's Texas Election Code), and shall be applied to payment of the costs of the primary elections. The county chairman and the committee may also use any other available funds toward defraying costs.

The remaining costs incurred shall be borne by the state except as otherwise provided by procedures outlined in this code. Within five days after the regular filing deadline, the chairman of the state executive committee shall forward to the secretary of state an itemized listing of all filing fees for statewide offices and for district offices collected on applications filed with him pursuant to Section 190. Within 10 days after the regular filing deadline, the state chairman shall also forward all filing fees for district offices collected by him pursuant to Section 190 to the county chairmen for the counties lying partially or wholly within such district. The amount forwarded to each county chairman shall be equal to the quotient obtained upon dividing the appropriate filing fee by the number of counties in the district of the candidate paying the fee. The state chairman shall retain all filing fees for statewide offices and all filing fees for district offices paid to him under filing deadlines falling after the regular deadline and shall apply them to the sole use of helping defray the costs incurred by the state chairman and the state executive committee in conducting the primary elections.

(f) In each county in which voting machines or an electronic voting system has been adopted, the county commissioners court shall permit the county-owned voting machines or voting equipment to be used for the primary elections, including the conduct of absentee voting for the elections, at a charge for use at each election not exceeding \$16 per unit for voting machines adopted under Section 79 (Article 7.14, Vernon's Texas Election Code), and not exceeding \$3 per unit for voting equipment adopted under Section 80 (Article 7.15, Vernon's Texas Election Code); provided, however, that the county commissioners court shall not be required to provide voting machines or equipment for use in any election precinct in which fewer than 100 votes were cast in the preceding first or general primary or runoff primary election. The maximum amount fixed in this subsection includes the lease price for the use of the unit, and also the charge for its preparation and maintenance if the county provides these services. The county is entitled to reimbursement for the cost of transporting the machines or equipment to and from the polling places if the county provides this service. Where voting is by an electronic voting system, the county may not charge for use of county-owned automatic tabulating equipment at the central counting station; but all actual expenditures incidental and necessary to operation of the central counting station in counting the ballots are payable out of the primary fund.

(g) All expenses of the county clerk in conducting absentee voting in the primary elections, including the employment of additional deputies where necessary, shall be paid by the county. A county is not entitled to reimbursement for any expenditure of

county funds in connection with absentee voting or any other services rendered by the county clerk in the primary elections, except for voting machines and/or punch card units used in conducting the absentee voting or any other services for which reimbursement is specifically authorized by law.

(h) The secretary of state is authorized to promulgate rules under which compensation is limited to polling places at which voters of more than one election precinct cast their votes, notwithstanding the provisions of Section 10(g) (Article 2.02(g), Vernon's Texas Election Code). The rules for such common polling places shall provide for adequate public notice by the county chairman to the voters in election precincts affected by the application of such rules and shall provide for an adequate number of polling places taking into account all other relevant factors including distances of polling places from parts of the precincts served, estimated voter turnout, and geographic or other boundaries. However, the secretary of state may not require that there be less than one polling place for each commissioner's precinct for reimbursement purposes.

(i) The secretary of state is authorized to promulgate rules in regard to the maximum number of election clerks who may be compensated for their services at a polling place and the maximum number of other necessary office personnel employed to assist in the performance of the duties placed upon the county chairman, taking into account the number of registered voters in the election precinct or precincts, the number of votes cast in the precinct, county, or state in previous elections, the method of voting, and any other relevant factors. The secretary of state must allow compensation for the presiding judge, alternate judge, and at least one clerk for each precinct. The secretary of state may allow compensation for clerks and other necessary office personnel employed in excess of the applicable limits set by his rules if he finds that the employment of additional clerks or other office personnel was justified by a good cause. The total compensation paid to the county chairman and the secretary of the county executive committee (where the executive committee has named a secretary) in the performance of the duties placed upon the chairman shall not exceed five percent of the amount actually spent in holding the primary elections for the year; provided, however, that in no case shall the total compensation paid be less than \$300 nor more than \$8,000.

(j) The secretary of state is authorized to promulgate any other reasonable rules which will minimize the costs of the primary elections. The secretary of state shall furnish a copy of all rules promulgated pursuant to this section to each county chairman at least 10 days before the election to which the rules apply.

(k) The county chairman shall account for the primary fund in the manner provided in Section 196 of this code.

(l) The secretary of state shall not approve any expenditure of state funds to any county organization that practices discrimination based on race, sex, age, creed, or national origin. The attorney general shall be specifically responsible for the enforcement of this section.

(m) In the event a court of competent jurisdiction declares any portion of this section or any other provision of this code relating to the financing of primary elections to be invalid, the secretary of state shall promulgate reasonable rules for the enforcement of the intent of the legislature, consistent with the court's judgment and the valid portions of the code. Such authority of the secretary of state shall include authority to promulgate a schedule of filing fees, if necessary, and that schedule shall be substituted for the statutory schedule until the legislature enacts a new schedule.

[Amended by Acts 1975, 64th Leg., p. 2046, ch. 675, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1281, ch. 502, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1398, ch. 563, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 240, ch. 127, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 455, ch. 210, § 1, eff. Aug. 27, 1979.]

¹ Article 6.05c.

² So in enrolled bill; word "in" probably omitted.

Section 2 of Acts 1977, 65th Leg., ch. 502, provided:

"If any filing fee amended by this Act is declared invalid, then the amount of such filing fee shall be the amount prescribed by prior law."

Art. 13.08a. State Financing

(a) Each county chairman of each political party in the state which is holding primary elections shall submit to the secretary of state at least 30 days before the first primary election a sworn itemized estimate of the costs for conducting the first primary election in his county, together with a sworn statement of the filing fees and contributions received by the chairman, for such primary elections to and including the date of such sworn statement. The secretary of state shall review the estimate and shall notify the chairman of any items which he has disallowed as unauthorized or excessive expenditures. Expenditures may be allowed only for those purposes which are properly payable out of the primary fund under existing law as established by the statutes, court decisions, and administrative rulings of this state. Any other provisions of this code notwithstanding, the secretary of state shall pay for expenditures which, in his discretion, are reasonably necessary for the proper conduct and supervision of the primary elections under the provisions of this code. The secretary of state is authorized to set forth guidelines to determine the necessity of expenditures in conducting primary elections. The secretary of state shall subtract from the approved estimate any balance remaining from previous primary elections in the appropriate primary fund, and

any amount of the fees and contributions received by the chairman for the conduct and financing of the primary elections for the particular year, and shall certify to the comptroller of public accounts the net estimated amount which is payable out of the state funds, together with the secretary of state's calculation of three-fourths of that amount. The comptroller shall forthwith issue a warrant to the chairman for three-fourths of the certified amount.

(b) In each county in which a second or runoff primary is necessary, within 10 days after the first primary the county chairman shall submit to the secretary of state a sworn itemized estimate of the costs of the runoff primary. As in the case of the first primary, the secretary of state shall notify the chairman of items which he disallows, and shall certify to the comptroller the approved estimated amount which is payable out of state funds, together with the secretary of state's calculation of three-fourths of that amount; and the comptroller shall issue a warrant to the chairman for three-fourths of the certified amount.

(c) Within 20 days after the date of the runoff primary, the county chairman shall submit to the secretary of state a sworn itemized report of the actual costs, filing fees collected, and contributions received for the primary election or elections (as the case may be) held by his party in his county. If the actual expenditure for an item exceeded the estimated amount, the chairman shall submit an explanation of the reason for the increased expenditure, and the secretary of state shall allow the increase if good cause is shown. The secretary of state shall certify to the comptroller the difference between the total amount payable out of state funds and the amount which has already been transmitted to the chairman. If the total amount of fees and contributions and the payments from the state exceeds the actual expenditures incurred, the chairman shall retain the difference in the primary fund referred to in Section 196 of this code (Article 13.18, Vernon's Texas Election Code). The exact amount of the balance in the primary fund shall be reported to the secretary of state in the actual expense report provided by this section and said amount shall be a beginning balance on hand for the next ensuing primary conducted by the chairman or his successor. If the primary fund is invested as authorized in Section 196, the beginning balance on hand for the next ensuing primary shall be the amount of the primary fund after termination of the investment.

(d) Each county chairman shall deposit to the credit of the primary fund all warrants received by him under this section. Expenses properly incurred by or on behalf of the county executive committee for the conduct of the primary elections shall be paid from the primary fund, in the manner authorized by the committee.

(e) The county chairman is responsible for payment of claims for primary election expenses, and the state is not liable to any claimant for failure of the county chairman to pay a claim. No county chairman shall be personally liable, nor shall a county executive committee be liable for any debts incurred in the administration of the primary but unpaid because the appropriation provided by the legislature was not sufficient to cover the actual expenditures made.

(f) A county chairman may request that the secretary of state approve an expenditure for the purposes of the auditing of the expenditures made out of the primary fund; however, the secretary of state shall not be required to approve such an expenditure. The secretary of state may require an audit of the primary fund, without such a request, when, in his discretion, he believes a valid purpose will be served by such a procedure.

(g) The secretary of state shall prescribe and shall furnish to the county chairmen the forms which they are to use in submitting statements and reports to the secretary of state.

(h) Wherever the word "county chairman" is used in this section, it shall apply to the county chairman or his successor in office, and such county chairman shall not be personally liable except for the misapplication of funds.

(i) In any case in which the secretary of state disallows an item of expenditure under Subsection (a) or (b) of this section, or refuses to allow an increase under Subsection (c) of this section, the county chairman may appeal to the district court of Travis County by filing a petition within 20 days after the date the notification is received from the secretary of state, and the district court shall allow such expenditures as are properly payable out of the primary fund under existing law. Any item not certified to the comptroller of public accounts within 15 days after its submission to the secretary of state may be considered disallowed for this purpose.

[Amended by Acts 1975, 64th Leg., p. 2050, ch. 675, § 2, eff. Sept. 1, 1975.]

Art. 13.08a-1. State Financing of Primary Expenses of State Executive Committee

(a) If the state executive committee of a political party which is holding primary elections wishes to obtain state financing of the expenses incurred by the state chairman and the committee in conducting the primary elections in addition to the filing fees retained by the state chairman under Section 186 of this code, as amended (Article 13.08, Vernon's Texas Election Code), the state chairman shall submit to the secretary of state at least 30 days before the first primary election a sworn itemized estimate of the costs for conducting the first primary, together with an itemized statement of any filing fees re-

ceived by him under filing deadlines falling after the regular deadline to and including the date of the estimate and a statement of the amount of any balance remaining from previous primary elections. The secretary of state shall review the estimate and shall notify the chairman of any items which he has disallowed as unauthorized or excessive expenditures. No expenditure in connection with a party convention or with any party activity other than the conduct of a primary election may be allowed. The secretary of state is authorized to set forth guidelines to determine the necessity of expenditures in conducting primary elections. The secretary of state shall subtract from the approved estimate the amount of the fees collected and retained by the state chairman for that election year and any balance remaining from previous primary elections and shall certify to the comptroller of public accounts the net estimated amount which is payable out of state funds, together with the secretary of state's calculation of three-fourths of that amount. The comptroller shall forthwith issue a warrant to the chairman for three-fourths of the certified amount.

(b) When a runoff for any statewide or district office is necessary, within 15 days after the first primary the state chairman shall submit to the secretary of state a sworn itemized estimate of the state executive committee's costs for the runoff primary. As in the case of the first primary, the secretary of state shall notify the chairman of items which he disallows and shall certify to the comptroller the approved estimated amount which is payable out of state funds, together with the secretary of state's calculation of three-fourths of that amount; and the comptroller shall issue a warrant to the chairman for three-fourths of the certified amount.

(c) Within 20 days after the date of the runoff primary, the state chairman shall submit to the secretary of state a sworn itemized report of the actual costs incurred by the state chairman and the state executive committee in conducting the primary election or elections (as the case may be) and of any filing fees not previously reported. If the actual expenditure for an item exceeded the estimated amount, the chairman shall submit an explanation of the reason for the increased expenditure, and the secretary of state shall allow the increase if good cause is shown. The secretary of state shall certify to the comptroller the difference between the total amount payable out of state funds and the amount which has already been transmitted to the chairman. If the total amount of fees retained and the payments from the state exceed the actual expenditures incurred, the chairman shall retain the difference, to be used as a beginning balance on hand for the next ensuing primary conducted by the party.

(d) In any case in which the secretary of state disallows an item of expenditure under Subsection

(a) or (b) of this section or refuses to allow an increase under Subsection (c), the state chairman may appeal to the district court of Travis County by filing a petition within 20 days after the date the notification is received from the secretary of state, and the district court shall allow such expenditures as are properly payable under existing law. Any item not certified to the comptroller of public accounts within 15 days after its submission to the secretary of state may be considered disallowed for this purpose.

[Added by Acts 1977, 65th Leg., p. 1398, ch. 563, § 2, eff. Aug. 29, 1977.]

Former art. 13.08a-1 was repealed by Acts 1975, 64th Leg., p. 2054, ch. 675, § 8(a).

Art. 13.08b. Refund Upon Death of Candidate

No refund of a filing fee shall be made except to a candidate who dies or is declared ineligible to be a candidate for the office before the date of the first or general primary election, in which case the fee paid by the candidate shall be refunded to the candidate or to his estate, as appropriate.

[Amended by Acts 1975, 64th Leg., p. 2052, ch. 675, § 3, eff. Sept. 1, 1975.]

Art. 13.08c. Funding

Funds for the administration of the primary financing provisions of this code shall be supplied from the General Revenue Fund or any special fund which the legislature may direct by the General Appropriations Act. Said funds shall be appropriated for the 1976 primary elections and for subsequent primary elections thereafter, and shall be an amount payable from the General Revenue Fund or any special fund which the legislature may direct to pay all necessary expenses of primary elections approved by the secretary of state under the provisions of this code. The secretary of state is authorized to expend funds appropriated in the General Appropriations Act for the administration of primary elections for seasonal and part-time help, consumable supplies and materials, travel expenses, professional fees and services, and current and recurring operating expenses in an amount not to exceed \$60,000.

[Added by Acts 1975, 64th Leg., p. 2052, ch. 675, § 4, eff. Sept. 1, 1975.]

Art. 13.08c-1 to 13.08c-4. Repealed by Acts 1975, 64th Leg., p. 2054, ch. 675, § 8, eff. Sept. 1, 1975

Art. 13.09. Balloting at Primaries: Write-in Votes Permitted for Party Offices Only

(a) The vote at all primary elections shall be by official ballot, which shall conform to the provisions of this section and other provisions of this code relating to the official ballot for a primary election that are applicable to the method of voting used in the election. The provisions of this section which

are expressed in terms applicable to paper ballots shall be construed in a manner consistent with the method of voting used in the election whenever some other method is used. The name of the party shall be printed at the head of the ballot, and under such head shall be printed the names of all candidates, those for each nomination being arranged in the order determined by the county executive committee as provided in Section 195 of this code,¹ beneath the title of the office for which the nomination is sought.

[See Compact Edition, Volume 2 for text of (b) to (d)]

[Amended by Acts 1977, 65th Leg., p. 660, ch. 247, § 8, eff. Aug. 29, 1977.]

¹ Article 13.17.

Art. 13.12. Application for Place on Ballot; Filing; Deadline; Extension; Withdrawal; Notice

(a) The application to have the name of any person affiliating with a party placed on the official ballot for a general primary as a candidate for the nomination of such party for any office for which a nomination may be made at such primary shall be governed by the rules stated in this section.

(b) Such application shall be in writing, indicating the office for which nomination is sought and whether for a full term or for an unexpired term, signed and duly acknowledged by the person desiring such nomination, or by twenty-five qualified voters. It shall state the occupation, county of residence, and post-office address of such person, and if made by him shall also state his age. If the application is made by qualified voters, there shall be endorsed on the application or filed in a separate instrument, before the deadline for filing applications, a statement signed by the candidate showing his consent to such candidacy.

(c) The application shall be filed with the state chairman in the case of all statewide offices and all district offices which are filled by the choice of voters residing in more than one county. It shall be filed with the county chairman of the particular county in the case of county and precinct offices and district offices which are filled by the choice of voters residing in only one county or less than one county. Except as provided in Subsection (d) of this section, the application shall be filed not later than 6 p. m. on the first Monday in February preceding such primary.

(d) The filing deadline stated in Subsection (c) of this section shall be extended for the particular party primary and office involved, as provided in this subsection:

(i) if between the fifth day preceding the filing deadline stated in Subsection (c) and the 45th day preceding the general primary, both dates includ-

ed, any candidate for an office dies, if the candidate had complied with all prerequisites for having his name placed on the ballot which he was required to perform by the date of his death;

(ii) if between the filing deadline stated in Subsection (c) and the 45th day preceding the general primary, both dates included, any candidate who is seeking nomination to an office which he then holds withdraws or is declared ineligible for election to that office; or

(iii) if between the filing deadline stated in Subsection (c) and the 45th day preceding the general primary, both dates included, the only candidate who has filed for a particular office in the primary of that party withdraws or is declared ineligible. In the enumerated circumstances, the name of the deceased, withdrawn, or ineligible candidate shall not be printed on the ballot, and applications for that party's nomination for that office may be filed not later than 6 p. m. on the 15th day following the death, withdrawal, or declaration of ineligibility of the candidate; provided, however, that where the death, withdrawal, or declaration of ineligibility occurs less than 15 days before the 40th day preceding the primary, the deadline for filing shall be 6 p. m. on the 40th day preceding the primary. Notwithstanding the provisions of Subsection (e) of this section, an application which is not received by the chairman until after 6 p. m. on the 40th day shall not be timely, and applications mailed but not actually received by that time shall not be accepted for filing.

(e) Except as otherwise provided in Subsection (d), an application filed under either Subsection (c) or (d) of this section shall be considered filed if sent to the proper chairman at his post-office address by registered or certified mail from any point in this state not later than the day on which the filing deadline falls, as shown by the postmark, provided, however, that if the deadline falls on a Saturday, Sunday, or holiday observed by the post office, it must be postmarked not later than the next regular business day for the post office. Any application not received by the chairman before the deadline does not comply with this law unless it has been mailed by registered or certified mail as herein provided, and it shall not be sufficient to send the application by any other type of mail unless it is delivered before the deadline.

(f) A candidate may withdraw by filing with the chairman with whom his application was filed, a signed request, duly acknowledged by him, that his name not be printed on the primary ballot. Whenever a filing period is extended by the death, withdrawal, or ineligibility of a candidate, each county chairman with whom the candidate's application was filed shall give notice of the opening of the filing and of the deadline to file by mailing or delivering a

news release within 48 hours after his first knowledge of the death, withdrawal, or ineligibility, to each newspaper, as defined in Article 28a, Vernon's Texas Civil Statutes, as amended, which is published in the county. Where the application was filed with the state chairman, he shall give notice in like manner by mailing or delivering the release to at least three daily newspapers which maintain news representatives in the State Capitol. The failure of a county chairman or state chairman to comply with this requirement shall be ground for his removal from office by the committee of which he is chairman.

(g) A candidate shall not be permitted to withdraw after the 45th day preceding the general primary. If after the 45th day preceding the general primary a candidate dies or is declared ineligible, the procedure detailed in Section 104 of this code¹ shall be followed. Except as provided in that section, the name of a deceased, withdrawn, or ineligible candidate shall not be printed on the ballot.

(h) Within ten days after the first Monday in February, the state chairman shall file with the Secretary of State, and each county chairman shall file with the county clerk of his county a list containing the names of all candidates, as the names are to appear on the primary election ballot, arranged by office for which nomination is sought, whose applications have been timely received and the candidates' addresses, as entered on the applications. In like manner each chairman shall file, within three days after any extended filing deadline under Subsection (d) of this section, a supplemental list of candidates whose applications were timely received after the original list was prepared. Each county chairman shall forward to the chairman of the state executive committee a copy of each list which he files with the county clerk.

(i) On the second Monday in March preceding each general primary, the state committee shall meet at some place to be designated by its chairman, who shall not less than three days prior to such meeting notify by mail all members of the committee and all persons whose names have been requested to be placed upon the official ballot of such designation. Such committee at this meeting by resolution shall direct their chairman to certify to each county chairman the names of such candidates as shown by the applications received by him. Copies of such certificates shall be immediately furnished to each newspaper in the state desiring to publish same, and one copy shall at once be mailed to the chairman of the executive committee of each county.

(j) The terms of this law shall apply to the county chairman and precinct committeemen, and the names of such candidates shall not be printed on the

primary ballot unless such application shall have been filed as provided herein.

[Amended by Acts 1977, 65th Leg., p. 883, ch. 332, § 3, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 583, ch. 272, § 1, eff. Aug. 27, 1979.]

¹ Article 8.22.

Art. 13.12a. Nomination and Election to Fill Unexpired Term

(a) Offices to which applicable; occurrence of vacancy. The provisions of this section shall govern nomination for and election to unexpired terms which are to be filled by election at the general election, in state, district, county and precinct offices where the vacancy occurs by reason of the creation of a new office or the death, resignation, or removal from office of the incumbent in an existing office, and the length of the unexpired term to be filled at the election extends beyond the first day of January following the election. This section does not apply to offices, vacancies which are to be filled by special election, nor does it apply to the office of United States Senator, which is governed by Section 177 of this code.¹ For the purpose of this section, where a new office is created to come into existence at a date subsequent to the effective date of the statute or date of entry of the order creating it, the vacancy shall be deemed to occur as of the effective date of the statute or date of entry of the order, and where the incumbent of an office has submitted a resignation to become effective at a future date, the vacancy shall be deemed to occur upon acceptance of the resignation.

(b) Nominations by parties holding primary elections. For any party holding primary elections for nominating candidates for the ensuing general election, nominations for unexpired terms shall be made in accordance with the following provisions.

(1) If the vacancy occurs more than five days prior to the regular deadline for filing an application for a place on the general primary ballot, as provided in Section 190 of this Code,² nomination for the unexpired term shall be made by primary election in the same manner and under the same rules applicable to nominations for full terms.

(2) If the vacancy occurs on or after the fifth day preceding the regular filing deadline and on or before the 45th day before the day of the general primary election, nomination for the unexpired term shall be made by primary election, and candidates shall have until the end of the 40th day preceding the day of the general primary in which to file applications for a place on the primary ballot. The applications must be received and filed in the office of the proper chairman before the deadline, and applications mailed but not actually received before the deadline shall not be accepted for filing. Except as otherwise provided

herein, the application shall conform to the requirements of Section 190 of this Code and shall be accompanied by the filing fee or petition provided for in Section 186 of this Code.³ Immediately following the deadline for filing applications, the state chairman shall certify to the county chairman the names of candidates, if any, who have filed applications with him and paid their filing fee or filed a petition in accordance with this paragraph. Whenever the name of more than one candidate for the same office is to be placed on the ballot pursuant to the provisions of this paragraph, the county chairman shall call a meeting of the primary committee, in time to allow printing of the ballots before commencement of absentee voting in the general primary, and the primary committee shall determine by lot, in open meeting, the order in which the names of the candidates shall be printed on the ballot. If there is not more than one candidate for the same office, the county chairman shall make any necessary changes in the ballot as previously made up by the primary committee.

(3) If the vacancy occurs after the 45th day preceding the day of the general primary and on or before the 45th day before the day of the general election, the state executive committee in the case of state offices, the appropriate district executive committee in the case of district offices, the county executive committee in the case of county offices, and the appropriate precinct committee in the case of precinct offices, shall have the power to name a nominee for such office, and a nomination shall not be made by any other method; provided, however, that in any case where a district committee empowered to name a nominee fails to do so because it is unable to agree upon a nominee by majority vote, the state executive committee of that political party may name a candidate for such office and certify the name of the nominee to the proper officer.

(c) Nominations by parties not holding primary elections. For any party which is authorized to make nominations by party conventions, as provided in this Code, a nomination for the unexpired term shall be made at the appropriate party convention having power to make nominations for the particular office if the vacancy occurs more than two days prior to the date on which the convention is held. If the vacancy occurs on or after the second day preceding the convention and on or before the 45th day before the day of the general election, the appropriate executive committee of the party shall have the power to name a nominee, and a nomination shall not be made by any other method.

(d) Nominations by executive committees. The nomination must be made and certified to the proper officer not later than the 40th day before the day of

the general election. Nominations for state offices and for district offices (including districts composed of only one county or part of one county) shall be certified to the Secretary of State, and nominations for county and precinct offices shall be certified to the county clerk. The certificate of nomination shall be signed and acknowledged by the chairman of the committee making the nomination, and shall set forth the name of the nominee, the office for which he was nominated, and when, where, by whom, and how the nomination was made.

(e) Independent and nonpartisan candidates. If the vacancy occurs on or before the date of the second primary election, applications of independent or nonpartisan candidates must be filed in accordance with the provisions of Section 227 of this Code,⁴ not later than thirty days after the second primary election day. If the vacancy occurs after the second primary election day, and on or before the 45th day before the day of the general election, independent or nonpartisan candidates may file applications in the manner provided in Section 227, except that the application shall be filed not later than the 40th day before the day of the general election. No person shall sign an application prior to the occurrence of the vacancy, and any signature before that time shall be void.

(f) Write-in candidates. If the vacancy occurs on or before the 45th day before the day of the general election, the title of the office shall be printed on the ballot for the general election regardless of whether any nominations have been made for the unexpired term, and each voter may write in the name of the candidate of his choice.

(g) When election not to be held. If a vacancy occurs after the 45th day before the day of the general election, no one shall be elected to the unexpired term at that election, and the person appointed to fill the vacancy shall continue to hold office until the next succeeding general election and until a successor has been elected and has qualified.

(h) In all nominations made by an executive committee under this section or under Section 233 of this code,⁵ or under any other provision of law, a majority of the members of the committee must participate in making the nomination, and all nominations must be made by a majority vote of those members participating in the nomination.

[Amended by Acts 1975, 64th Leg., p. 2053, ch. 675, § 6, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 885, ch. 332, § 4, eff. Aug. 29, 1977.]

¹ Article 12.02.

² Article 13.12.

³ Article 13.08.

⁴ Article 13.50.

⁵ Article 13.56.

Art. 13.14. Primary Committee.

Subject to the approval of the committee, the county chairman shall appoint a subcommittee of

five (5) members to be known as the primary committee, of which he shall be ex-officio chairman. This subcommittee shall meet at any time on or after the day of the meeting of the county executive committee held under Subsection (a), Section 195 of this code, as amended (Article 13.17, Vernon's Texas Election Code), and before the fourth Tuesday in March and make up the official ballot for such general primary in such county, in accordance with the certificates of the State and district chairman and the request filed with the county chairman, and place the names of the candidates for nomination for State, district, county and precinct offices thereon in the order determined by the county executive committee as herein provided.

[Amended by Acts 1979, 66th Leg., p. 237, ch. 124, § 1, eff. Aug. 27, 1979.]

Arts. 13.15, 13.16. Repealed by Acts 1975, 64th Leg., p. 2054, ch. 675, § 8, eff. Sept. 1, 1975

Art. 13.18. County Executive Committees

[See *Compact Edition, Volume 2 for text of 1 to 4*]

Subd. 5. The funds received by the county executive committee from contributions, fees and assessments paid by candidates, and expenses paid by the secretary of state shall constitute the primary fund, and any surplus remaining in the fund after payment of the necessary expenses for holding the primary elections for that year shall be retained in the primary fund, and the balance reported to the secretary of state as required by Section 186a of this code.¹ The county executive committee is authorized to invest the primary fund by deposit with any federally insured institution; provided, however, that the required length of time of the deposit shall not extend beyond 30 days prior to the next general primary election.

Subd. 6. In cases where there is no county party organization in a county, the state executive committee may, by a majority vote of the total membership of the committee, appoint a qualified voter of that county to serve as the acting county chairman until such time as his successor is elected and assumes office under the provisions of Subdivision 1 of this section. A temporary county chairman appointed under the provisions of this subdivision shall call a meeting of the voters of that county, at which time a temporary county executive committee may be elected by the voters participating in the meeting, with such committee to be empowered to fulfill all the duties placed upon a county executive committee by law until such time as a permanent executive committee is elected by the voters in the party's primary.

[Amended by Acts 1975, 64th Leg., p. 2052, ch. 675, § 5, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1702, ch. 677, § 1, eff. Aug. 29, 1977.]

¹ Article 13.08a.

Art. 13.18a. District and Precinct Executive Committees

(1) For a district composed of more than one county or part thereof, the county chairman of each county wholly within the district shall be ex officio a member of the district executive committee for each such district of which his county is a part. When a part of a county is joined with one or more other counties or parts of counties to form a district, at a meeting of the county executive committee on the second Monday in February preceding each general primary election the precinct chairman of the election precincts included within such part of the county shall elect one of their number to serve as district committeeman; and a district committeeman shall be selected in this manner for each type of district and for each district for which any part of the county less than the whole county is joined with territory in another county or counties. The district committee thus formed shall elect its own chairman. Whenever a vacancy occurs in a district office and the district committee is empowered to name a nominee or a substitute nominee, or whenever for any other reason it becomes necessary for the district committee to meet and organize, the chairman of the state executive committee shall call a meeting of the district committee by giving notice to each member of the time and place where such meeting will be held and of the purpose of the meeting. The state chairman shall designate one member as temporary chairman, who shall call the meeting to order and preside until the committee elects its own chairman. The chairman elected by the committee shall continue to act as chairman during the remainder of that term of office, and shall call any subsequent meetings of the committee which are held during that time.

[See *Compact Edition, Volume 2 for text of (2)*]

(3) For a district composed of only a part of one county, the precinct chairmen of the election precincts included within the district shall constitute the district executive committee. At the meeting of the county executive committee on the second Monday in February preceding each general primary election, the precinct chairman within the district shall elect one of their number to serve as chairman of the district executive committee; and a chairman shall be selected in this manner for each type of district and for each district composed of only a part of the county.

[See *Compact Edition, Volume 2 for text of (4) and (5)*]

[Amended by Acts 1975, 64th Leg., p. 2053, ch. 675, § 7, eff. Sept. 1, 1975.]

Art. 13.19. Supplies

The executive committee shall have a general supervision of the primary in such county and shall

be charged with the full responsibility for the distribution to the presiding judge of all supplies, including but not limited to the number of voter registration applications, necessary for holding same in each election precinct. If the duly appointed presiding officer shall fail to obtain from the executive committee the supplies for holding such election, such committee shall deliver the same to the precinct chairman for such precinct, and, if unable to deliver the same to such presiding officer or precinct chairman not less than twenty-four (24) hours prior to the time of opening the polls for such primary, such committee shall deliver the same to any qualified voter of the party residing in such precinct, taking his receipt therefor, and appointing him to hold such election in case such presiding officer or precinct chairman shall fail to appear at the time prescribed for opening the polls.

[Amended by Acts 1977, 65th Leg., p. 1216, ch. 468, § 6, eff. Aug. 29, 1977.]

Art. 13.21. Repealed by Acts 1977, 65th Leg., p. 594, ch. 209, § 8, eff. Aug. 29, 1977

Art. 13.27. Canvass by State Executive Committee

(a) The chairman of the executive committee for each county shall immediately prepare, within twenty-four hours after the vote in the primary election has been canvassed by the county executive committee as provided in Section 202 of this code,¹ a tabulated statement of the votes cast in his county for each candidate for each nomination for a state, district, county or precinct office, and of those cast for county chairman and precinct chairman, and within that twenty-four-hour period deliver such statement as to a state or district office, in a sealed envelope to the chairman of the state executive committee by registered or certified mail or any other method of delivery in which the sender receives a receipt from the carrier indicating the date of deposit with the carrier. The state chairman shall present the same to the state executive committee as herein provided.

(b) On the second Thursday following the day of the general primary in May, the state executive committee shall meet at a place selected at the meeting held on the second Monday in March preceding, and shall open and canvass the returns of the election as to candidates for state and district offices, as certified by the various county chairmen, and shall prepare a tabulated statement showing the number of votes received by each such candidate in each county, which statement shall be approved by the state committee and certified by its chairman. In the event any candidate for a district office received in the general primary the necessary vote to nominate, within twenty days after the canvass the chairman of the state executive committee shall

certify the name of such candidate to the Secretary of State, to be printed upon the official ballot for the general election as a candidate of the party for the office to which he was nominated. If such returns show that for any state or district office no candidate received a majority of all the votes cast for all candidates for such office, the committee shall prepare a list of the two candidates receiving the highest vote for each office for which no candidate received a majority and shall certify same to the county chairmen of the several counties to be placed upon the official ballot as candidates for office at the second primary election to be held on the first Saturday in June thereafter.

(c) Not later than the third Saturday in June of each election year, the state executive committee shall meet at the call of the chairman fixing the date of the meeting, at a place selected at the meeting held under Subsection (b) of this section, and shall open and canvass the returns of the second primary election as to candidates for state and district offices as certified by the various county chairmen to the state chairman, and shall prepare a tabulated statement showing the number of votes received by each such candidate in each county, which statement shall be approved by the state committee and certified by its chairman. Within twenty days thereafter, the chairman of the state executive committee shall certify to the Secretary of State, the names of the district candidates receiving the highest vote, to be placed on the general election ballot.

[See Compact Edition, Volume 2 for text on (d)]

[Amended by Acts 1979, 66th Leg., p. 238, ch. 125, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 239, ch. 126, § 1, eff. Aug. 27, 1979.]

¹ Article 13.24.

Art. 13.34b. Participation in Conventions by Persons Voting on List of Cancelled Voter Registration Certificates

Notwithstanding any other provision of this code, any person whose name appears on the list of cancelled voter registration certificates and who has voted in the primary election of a party may participate in any part of the convention process of such party on the same basis as any other qualified member of the party.

[Added by Acts 1979, 66th Leg., p. 1670, ch. 698, § 1, eff. Aug. 27, 1979.]

Art. 13.35. Date and Place for State Convention

At the meeting of the State Executive Committee held on the second Monday in March preceding each general primary election the said committee shall announce the date, hour, and place where the State convention of the party shall be held, said date to be any day between the first Tuesday and the last Saturday, inclusive in September, 1980, and each two (2) years thereafter; provided, however, that no

decision on the date, hour, and place of holding said convention be made prior to the state convention at which the members of said committee were elected. The chairman of the State executive committee shall file with the Secretary of State a notice of the date, hour, and place of holding the State convention and a copy of such notice shall be mailed to the county chairman of that party in each county in the State at least ten (10) days before the convention is held. [Amended by Acts 1975, 64th Leg., p. 2099, ch. 683, § 1, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 584, ch. 273, § 1, eff. Aug. 27, 1979.]

Art. 13.38. State Convention

The state convention to announce a platform of principles and to announce nominations for Governor and other state offices, held by a political party making nominations by primary election, shall meet as provided in Section 213 of this Code,¹ and shall remain in session from day to day until all nominations are announced and the work of the convention is finished. The convention shall elect a chairman and a vice-chairman of the state executive committee, one of whom shall be a man and the other a woman, and sixty-two members thereof, two from each senatorial district of the state, one of whom shall be a man and the other a woman, the members of the committee to be those who shall be recommended by the delegates representing the counties composing the senatorial districts respectively, each county voting its convention strength, each of whom shall hold office until his successor is elected; and, in case of a vacancy, a majority of the members of the committee shall fill the vacancy by electing some eligible person thereto, but such person shall be of the same sex as the vacating member and from the same senatorial district.

At any meeting of the state executive committee a person cannot hold a proxy or participate in such meeting unless he is a resident of the same senatorial district as the member giving the proxy, and no person shall be permitted to hold or vote more than one proxy.

[Amended by Acts 1975, 64th Leg., p. 2100, ch. 683, § 2, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 584, ch. 273, § 2, eff. Aug. 27, 1979.]

¹ Article 13.35.

Art. 13.45. Nominations by Parties Receiving Less Than 20 Percent of Vote for Governor

[See Compact Edition, Volume 2 for text of 1]

Parties Receiving Less Than Two Percent of Vote for Governor

Subd. 2. (a) Any political party whose nominee for governor received less than two percent of the total votes cast for governor in the last preceding general election for that office, or any new party, or any previously existing party which did not have a

nominee for governor in the last preceding general election for that office, may nominate candidates by conventions as provided in Sections 224 and 225 of this code,¹ but in order to have the names of its nominees printed on the general election ballot there must be filed with the secretary of state, within 30 days after the date for holding the party's state convention, the lists of participants in precinct conventions held by the party in accordance with Sections 222a and 224 of this code,² signed and certified by the temporary chairman of each respective precinct convention, listing the names, addresses (including street address or post-office address), and registration certificate numbers of qualified voters attending such precinct conventions in an aggregate number of at least one percent of the total votes cast for governor at the last preceding general election for that office; or if the number of qualified voters attending the precinct conventions is less than that number, there must be filed along with the precinct lists a petition requesting that the names of the party's nominees be printed on the general election ballot, signed by a sufficient number of additional qualified voters to make a combined total of at least one percent of the total votes cast for governor at the last general election for that office. The address and registration certificate number of each signer shall be shown on the petition. No person who, during that voting year, has voted at any primary election or participated in any convention of any other party shall be eligible to sign the petition.

(b) The following statement shall appear at the head of each page of the petition: "I know the contents of this petition, requesting that the names of the nominees of the _____ Party be printed on the ballot for the next general election. I am a qualified voter at the next general election under the constitution and laws in force, and during the current voting year I have not voted in any primary election or participated in any convention held by any other political party, and I will not vote in a primary election or participate in a convention of any other party during the remainder of this voting year." The petition may be in multiple parts. To each part of the petition shall be attached an affidavit of the person who circulated it, stating that he called each signer's attention to the statement and read it to him before the signer affixed his signature to the petition, and further stating that he witnessed the affixing of each signature, that the correct date of signing is shown on the petition, and that to the best of his knowledge and belief each signature is the genuine signature of the person whose name is signed. A petition so verified is prima facie evidence that the signatures thereon are genuine and the persons signing it are registered voters. The petition may not be circulated for signatures until after the date of the party's precinct conventions.

Any signatures obtained on or before that date are void.

(c) Any person who signs a petition after having voted in a primary election or participated in a convention of any other party during the same voting year, or any person who votes in a primary election or participates in a convention of any other party during the same voting year after having signed the petition, is guilty of a misdemeanor and upon conviction shall be fined not less than \$100 nor more than \$500.

(d) The chairman of the state executive committee shall be responsible for forwarding the precinct lists and petition to the secretary of state.

(e) At the time the secretary of state makes his certifications to the county clerks as provided in Section 3 of this code,³ he shall also certify to the county clerks the names of parties subject to this subdivision which have complied with its requirements, and the county clerks shall not place on the ballot the names of any nominees of such a party which have been certified directly to them unless the secretary of state certifies that the party has complied with these requirements.

[Amended by Acts 1975, 64th Leg., p. 2094, ch. 682, § 21, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1702, ch. 677, § 2, eff. Aug. 29, 1977.]

¹ Articles 13.47 and 13.48.

² Articles 13.47 and 13.48.

³ Articles 13.45a and 13.47.

Art. 13.45a. Regulation of Party Affairs and Conventions

Subd. 1. Repealed by Acts 1975, 64th Leg., p. 2098, ch. 682, § 28, eff. Sept. 1, 1975.

[See Compact Edition, Volume 2 for text of 2 to 4]

[Amended by Acts 1975, 64th Leg., p. 2098, ch. 682, § 28, eff. Sept. 1, 1975.]

Art. 13.46. Repealed by Acts 1975, 64th Leg., p. 2098, ch. 682, § 28, eff. Sept. 1, 1975

Art. 13.47a. Application for Nomination; Affidavit of Intent to Run; Filing

[See Compact Edition, Volume 2 for text of 1 and 2]

Sec. 3. Repealed by Acts 1975, 64th Leg., p. 2098, ch. 682, § 28, eff. Sept. 1, 1975.

Sec. 4. The requirements of Section 1 do not apply to candidates for unexpired terms where the vacancy in office occurs subsequent to the tenth day preceding the regular deadline for filing applications for a place on a primary election ballot as prescribed in Paragraph 2 of Section 190 of this code (Article 13.12, Vernon's Texas Election Code).

[Amended by Acts 1975, 64th Leg., p. 2095, ch. 682, §§ 22, 28, eff. Sept. 1, 1975.]

² West's Tex. Stats. & Codes '79 Supp.—40

Art. 13.50. Nonpartisan or Independent Candidate

Subd. 1. This section applies to nonpartisan or independent candidates for federal, state, district, county, and precinct offices in the general election provided for in Section 9 of this code (Article 2.01, Vernon's Texas Election Code). A person may run as a nonpartisan or independent candidate for any such office, other than the offices of president, vice president, and presidential elector, by complying with this section and other applicable provisions of this code.

Subd. 2. (a) As a condition precedent to having a candidate's name printed on the official ballot as an independent candidate under this section, in addition to the application required by Subdivision 3 of this section, the person must file, by the deadline provided in Section 190 of this code (Article 13.12, Vernon's Texas Election Code), a declaration of his intent to run as an independent candidate. The declaration shall state the person's name, occupation, county of residence, post office address, age, and the office for which he intends to run, and shall be signed and duly acknowledged by the person desiring to be a candidate. It shall be filed with the officer with whom the application required by Subdivision 3 of this section is filed.

(b) The requirements of Paragraph (a) of this subdivision do not apply to candidates for unexpired terms where the vacancy in office occurs subsequent to the tenth day preceding the regular deadline for filing application for a place on a primary election ballot as prescribed in Section 190 of this code (Article 13.12, Vernon's Texas Election Code), and do not apply to candidates for any office for which the filing deadline in a primary election is extended under the provisions of Paragraph 2a of Section 190. However, an independent candidate who is not required to file a declaration of intent under Paragraph (a) of this subdivision must file with the secretary of state or the county judge, as the case may be, his written consent to become a candidate, within 30 days after the second primary election day.

Subd. 3. The name of a nonpartisan or independent candidate may be printed on the official ballot in the column for independent candidates, after a written application signed by qualified voters addressed to the proper officer, as herein provided, and delivered to him within 30 days after the second primary election day, as follows:

If for an office to be voted for throughout the state, the application shall be signed by one per cent of the entire vote of the state cast for Governor at the last preceding gubernatorial general election, and shall be addressed to the Secretary of State.

If for a district office in a district composed of more than one county, the application shall be signed by three per cent of the entire vote cast for Governor in such district at the last preceding gubernatorial general election, and shall be addressed to the Secretary of State.

If for a district office in a district composed of only one county or part of one county, the application shall be signed by five per cent of the entire vote cast for Governor in such district at the last preceding gubernatorial general election, and shall be addressed to the Secretary of State.

If for a county office, the application shall be signed by five per cent of the entire vote cast for Governor in such county at the last preceding gubernatorial general election, and shall be addressed to the county judge.

If for a precinct office, the application shall be signed by five per cent of the entire vote cast for Governor in such precinct at the last preceding gubernatorial general election, and shall be addressed to the county judge.

Notwithstanding the foregoing provisions, the number of signatures required on an application for any district, county, or precinct office need not exceed 500.

Subd. 4. No application shall contain the name of more than one candidate. No person shall sign the application of more than one candidate for the same office; and if any person signs the application of more than one candidate for the same office, the signature shall be void as to all such applications. No person shall sign such application unless he is a qualified voter, and no person who has voted at either the general primary election or the runoff primary election of any party shall sign an application in favor of anyone for an office for which a nomination was made at either such primary election. An application may not be circulated for signatures until the day after the general primary election day, or if a runoff primary election is held for the office sought by the applicant, until the day after the runoff primary election day. A signature obtained before the day an application may be circulated is void.

Subd. 5. In addition to the person's signature, the application shall show each signer's address, the number of his voter registration certificate, and the date of signing.

Subd. 6. Any person signing the application of an independent candidate may withdraw and annul his signature by delivering to the candidate and to the officer with whom the application is filed (or is to be filed, if not then filed), his written request, signed and duly acknowledged by him, that his signature be cancelled and annulled. The request must

be delivered before the application is acted on, and not later than the day preceding the last day for filing the application. Upon such withdrawal, the person shall be free to sign the application of another candidate for the same office.

[Amended by Acts 1975, 64th Leg., p. 2095, ch. 682, § 23, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1042, ch. 472, § 1, eff. Aug. 27, 1979.]

Art. 13.51. Signer's Statement on Application; Verification

The following statement shall appear at the head of each page of the application: "I know the contents of this application; I have not participated in the general primary election or the runoff primary election of any party which has nominated, at either such election, a candidate for the office for which I desire _____ (here insert the name of the candidate) to be a candidate; I am a qualified voter at the next general election under the Constitution and laws in force and am signing this application of my own free will." The application may be in multiple parts. To each part of the application shall be attached an affidavit of the person who circulated it, stating that he called each signer's attention to the statement and read it to him before the signer affixed his signature to the application, and further stating that he witnessed the affixing of each signature, that the correct date of signing is shown on the application, and that to the best of his knowledge and belief each signature is the genuine signature of the person whose name is signed. An application so verified is prima facie evidence that the signatures thereon are genuine and the persons signing it are registered voters.

[Amended by Acts 1977, 65th Leg., p. 1703, ch. 677, § 3, eff. Aug. 29, 1977.]

Art. 13.52. Consent to Run

Upon receipt of an application which conforms to the above requirements, the Secretary of State shall issue his instruction to the county clerks of the state or of the district, as the case may require, and the county judge shall issue his instruction to the county clerk of the county, directing that the name of the candidate on whose favor the application is made shall be printed on the official ballot in the independent column under the title of the office for which he is a candidate; provided, that any candidate who is required by Subdivision 2, Section 227 of this code (Subdivision 2, Article 13.50, Vernon's Texas Election Code) to file a statement of intent to become an independent candidate must have filed such statement in compliance with the provisions of that subdivision, and any candidate not required to file such statement must file with the Secretary of State or the county judge, as the case may be, his written consent to become a candidate, within 30 days after the second primary election day.

[Amended by Acts 1975, 64th Leg., p. 2097, ch. 682, § 24, eff. Sept. 1, 1975.]

Art. 13.54. Nominations by Parties Without State Organization

Any political party without a state organization desiring to nominate candidates for county and precinct offices only may nominate such candidates therefor by a county convention held on the second Saturday in May of the election year, which convention shall be composed of delegates from the various election precincts in the county, elected therein at conventions held in such precincts on the first Saturday in May. All nominations made by any such parties shall be certified to the county clerk by the chairman of the county committee of such party, and, after taking the same course as nominations of other parties so certified, shall be printed on the official ballot in a separate column, headed by the name of the party; provided, a written application for such printing shall have been made to the county judge not later than June 30 following the conventions, signed by qualified voters of the county equal in number to at least three per cent of the entire vote cast for governor in such county at the last general election for that office. No person who is affiliated with any other political party is eligible to sign the application. The application shall contain the following information with respect to each person signing it: his address, the number of his voter registration certificate, and the date of signing. The application may not be circulated for signatures until after the date of the precinct conventions, and any signatures obtained on or before that date are void. The application may be in multiple parts. To each part there shall be attached an affidavit of the person who circulated it, who must be a registered voter in the county, stating that he witnessed the affixing of each signature, that the correct date of signing is shown on the application, and that to his best knowledge and belief each signature is the genuine signature of the person whose name is signed. An application so verified is prima facie evidence that the signatures thereon are genuine and that the persons signing it are qualified voters of the county.

[Amended by Acts 1975, 64th Leg., p. 2097, ch. 682, § 25, eff. Sept. 1, 1975.]

Art. 13.56. Death, Withdrawal, or Ineligibility of Candidate; Filling Vacancy in Nomination

(a) A nominee of a political party may decline and annul his nomination by delivering to the officer with whom the certificate of his nomination is filed and to the chairman of the executive committee having the power to fill a vacancy in such nomination, not later than the 45th day before the day of the general election, a declaration in writing, signed by him and acknowledged before some officer authorized to take acknowledgments, whereupon the officer receiving the declaration shall take the necessary

action to have the name of the nominee removed from the ballot. A nominee may not decline the nomination after the 45th day before election day.

(b) If on or before the 45th day before the day of the election, a nominee dies or declines the nomination, or is declared ineligible to be elected to or to hold the office for which he is a candidate, the executive committee of the party for the state, district, county, or precinct, as the office to be nominated may require, may nominate a candidate to supply the vacancy. A certificate of such nomination, signed and duly acknowledged by the chairman of the executive committee, must be filed with the officer with whom the certificate of the original nomination was filed and must set forth the name of the original nominee, the cause of the vacancy, the name of the new nominee, the office for which he was nominated, and when, where, by whom, and how he was nominated. The certificate must be filed not later than the 40th day before the day of the election. The officer with whom the substitute nomination is filed shall immediately take the necessary action to cause the name of the new nominee to be placed on the ballot.

(c) In any case where a district committee is empowered to name a nominee and fails to do so, the state executive committee may name a candidate for such office and certify the name to the proper officer to have the name printed on the official ballot for the general election. The certification must be filed not later than the 5th day after the deadline for certification by the district committee and in any event not later than the 40th day before election day.

(d) If a party nominee dies or declines the nomination or is declared ineligible after the 45th day preceding the day of the general election, the procedure set out in Section 104 of this code¹ shall be followed.

(e) An independent candidate may withdraw his candidacy and cause his name to be kept off the ballot by delivering to the officer with whom the application requesting his name to be placed on the ballot was filed, not later than the 40th day before election day a declaration in writing, signed and duly acknowledged by him, whereupon the officer with whom the declaration is filed shall immediately take the necessary action to cause the candidate's name to be removed from the ballot. A candidate may not withdraw after the 40th day before election day.

(f) If an independent candidate in the general election for state and county officers withdraws or is declared ineligible before the 44th day before election day, his name shall not be printed on the ballot. If he dies after completing all the procedural requirements for candidacy and before the 44th day before election day, his name shall be printed on the ballot if he was the incumbent in the office for

which he was a candidate or if no other candidate's name is to be printed on the ballot in that race; otherwise, his name shall not be printed on the ballot. If he dies or is declared ineligible after the 45th day before election day, his name shall be printed on the ballot. When a deceased or ineligible candidate's name is printed on the ballot, the procedure set out in Section 104 of this code shall be followed.

(g) If an independent candidate in any election other than the general election for state and county officers dies before the second day before the filing deadline for independent candidates in that election, or if he withdraws or is declared ineligible before the 20th day before election day, his name shall not be printed on the ballot. If he dies on or after the second day before the filing deadline or if he is declared ineligible on or after the 20th day before election day, his name shall be printed on the ballot and the procedure set out in Section 104 of this code shall be followed.

(h) When a candidate dies and his name is to be removed from the ballot under any provision of this section, the officer responsible for making up the ballot for the election shall remove the candidate's name upon receiving reliable information of the death. However, in the case of a candidate whose name is certified to the county clerk by the secretary of state, the clerk shall not remove the candidate's name from the ballot without authorization from the secretary of state.

(i) The provisions of this section in regard to independent candidates apply to all general and special elections, by whatever authority held, except that charter provisions of a home-rule city supersede the provisions of this section. The term "independent candidate" means any candidate, not the nominee of a political party in a partisan election, who is seeking ballot position in any general or special election.

[Amended by Acts 1975, 64th Leg., p. 2104, ch. 685, § 3, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 887, ch. 332, § 5, eff. Aug. 29, 1977.]

¹ Article 8.22.

Art. 13.58. National Convention

(a) Any political party holding primary elections in an election year during which it desires to elect delegates to a national convention shall hold a state convention at such hour and place and on such date as may be designated by the state executive committee of the party, such date to be any day between the second and fourth Tuesdays, inclusive, following the second primary election date. Such convention shall be composed of delegates duly elected at the county and senatorial district conventions as provided for in Section 212 of this code. The chairman of the state executive committee shall notify the Secretary of State as to the date, hour and place at which

the state convention will be held and shall also mail a copy of such notice to each county chairman and the temporary chairman of each senatorial district convention in the state at least ten days prior to the date of the state convention.

[See Compact Edition, Volume 2 for text of (b)]
 [Amended by Acts 1975, 64th Leg., p. 2100, ch. 683, § 3, eff. Sept. 1, 1975.]

Art. 13.58a. Expired

This article, enacted by Acts 1975, 64th Leg., p. 630, ch. 261, § 1, requiring certain political parties to hold presidential primary elections and prescribing the method for selecting delegates to national nominating conventions of those parties, expired by the terms of § 2 of the Act on March 1, 1977.

CHAPTER FOURTEEN. POLITICAL FUNDS REPORTING AND DISCLOSURE ACT

Article

- 14.08a. Repealed.
- 14.10. Campaign Communications.
- 14.10A. Repealed.

Art. 14.01. Definitions

As used in this chapter—

(A) "Candidate" is defined as any person who has knowingly and willingly taken affirmative action for the purpose of seeking nomination or election to any public office which is required by law to be determined by an election. Some examples of affirmative action are:

1. Filing of application for a position on a ballot.
2. Filing of application for nomination by a convention under Section 224a of this code.¹
3. Independent candidate's declaration of intent under Section 224a of this code.
4. Public announcement of a definite intent to run for office at a particular election, either with or without designating the specific office to be sought.
5. Statement of definite intent and solicitation of support through letters or other modes of communication, prior to a public announcement.
6. Solicitation of or acceptance of a contribution for use in a future election.

The filing of a designation of a campaign treasurer is not affirmative action which makes one a candidate as defined in this chapter.

(B) "Office-holder" is defined as any person serving in a public office as defined herein and any other constitutionally designated member of the Executive Department.

(C) "Corporation" is defined as every organization organized or operating under authority of the Texas Business Corporation Act or the Texas Non-Profit Corporation Act, any corporation or associa-

tion organized by authority of any law of Congress or of any other state or nation than Texas, national, state, private or unincorporated banks, trust companies, building and loan associations or companies, insurance companies, reciprocal or interinsurance exchanges, railroad companies, cemetery companies, cooperatives, abstract and title insurance companies, and stock companies. However, any political committee whose only principal purpose is to accept contributions and to make expenditures, as defined in this section, shall not be deemed to be a corporation under the provisions of this chapter if such committee is incorporated for liability purposes only. Incorporation of a political committee shall not relieve any person of any liability, duty, or obligation created pursuant to any provision of the Texas Election Code.

(D) "Contribution" is defined as:

(1) any advance, loan, deposit or transfer of funds, goods, services or any other thing of value, or any contract or obligation, whether enforceable or unenforceable, to transfer any funds, goods, services, or anything of value to any candidate, or political committee, which advance or other such item is involved in an election; providing that an individual or group of persons is involved in an election upon the receipt of a contribution or the making of an expenditure which was given or made and received with the intent that it be used or held for some election and that the receipt of or making of the contribution or expenditure may occur before, during, or after an election; or as

(2) any advance, deposit or transfer of funds, goods, services or anything of value or creation of any contract or obligation, enforceable or unenforceable, to transfer any funds, goods, services, or anything of value knowingly accepted by any office-holder for the purpose of assisting such person in the performance of duties or activities in connection with the office which are nonreimbursable by the state or political subdivision.

(E) "Expenditures" is defined as any payments made or obligations incurred

(1) by a candidate, or political committee, when such payments or obligations are involved in an election; or

(2) by an office-holder, when such payments are made in the performance of duties or activities in connection with the office which are nonreimbursable by the state or the political subdivision.

"Involved in an election" has the same meaning as in (D) above.

(F) "Election" is defined as any election held to nominate or elect a candidate to any public office.

It shall also include any election at which a measure is submitted to the people.

(G) "Public office" is defined as any office created by or under authority of the laws of the state, that is filled by the voters.

(H) "State office" is defined as any public office of the state government which is to be filled by the choice of the voters of the entire state, except presidential electors.

(I) "District office" is defined as any public office of the state government, less than statewide, which is to be filled by the choice of the voters residing in more than one county, and the offices of State Senator, State Representative, and State Board of Education.

(J) "County office" is defined as any public office of the state or county government which is to be filled by the choice of the voters residing in only one county or less than one county, except for those offices specifically enumerated as district offices above.

(K) "Municipal office" is defined as any public office of any incorporated city, town, or village which is to be filled by the choice of the voters.

(L) "Office of a political subdivision" is defined as any public office of any political subdivision of this state which is organized as a body politic and has a governing board or body, except counties, cities, towns and villages, which is to be filled by the choice of the voters residing in that subdivision.

(M) "Measure" is defined as any proposal submitted to the people for their approval or rejection at an election, including any proposed law, Act or part of an Act of the legislature, revision of or amendment to the constitution, local, special, or municipal legislation or proposition or ballot question.

(N) "Person" is defined as an individual, corporation, partnership, labor union or labor organization, or any unincorporated association, firm, committee, club, or other organization or group of persons including any group of persons associated with a political party or element thereof.

(O) "Political committee" is defined as any group of persons

(1) formed to collect contributions or make expenditures in support for or in opposition to a candidate or candidates, whether presently identifiable or not, or a measure or measures, whether presently identifiable or not, on a ballot in a public election; or

(2) formed to collect contributions or make expenditures for office holders whether presently identifiable or not.

(P) "Specific purpose political committee" is defined as:

(1) any political committee which accepts only contributions and/or makes only expenditures in support for or in opposition to candidates who are identifiable and for whom the office(s) to be sought are known and any political committee only accepting contributions and/or making expenditures in support for or in opposition to measures which are identifiable; or

(2) any political committee which accepts only contributions and/or makes only expenditures in assisting identifiable office-holders.

(Q) "General purpose political committee" is defined as:

(1) any political committee which accepts contributions and/or makes expenditures in support for or in opposition to candidates who are indefinite in identity or for whom the office(s) to be sought are unknown and any political committee which accepts contributions and/or makes expenditures in support for or in opposition to measures which are indefinite in identity; or

(2) any political committee which accepts contributions and/or makes expenditures in assisting office-holders, who are not identified.

(R) "Political advertising" is defined as anything in favor of or in opposition to any candidate for public office or office of a political party, or in favor of or in opposition to any political party, or in favor of or in opposition to the success of any public officer, or in favor of or in opposition to any measure submitted to a vote of the people, which is communicated in any of the following forms:

(1) anything published in a newspaper, magazine, or journal or broadcast over a radio or television station in consideration of money or other thing of value; or

(2) any handbill, pamphlet, circular, flier, commercial billboard sign, bumper sticker, or similar printed material.

The term does not include nonpolitical letterheads, ordinary printed invitations to and tickets for fund-raising events or other affairs, campaign pins, buttons, fingernail files, matchbooks, emblems, hats, pencils, and similar materials.

[Amended by Acts 1975, 64th Leg., p. 2257, ch. 711, § 2, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 735, ch. 276, §§ 1, 2, eff. Aug. 29, 1977.]

¹ Article 13.47a.

The 1975 Act, which by §§ 2 to 14 amended arts. 14.01 to 14.10, 14.13 and 14.15, provided in §§ 1, 15 to 17:

"Sec. 1. This Act shall be styled the Political Funds Reporting and Disclosure Act of 1975."

"Sec. 15. Nothing in this Act repeals or otherwise affects Article 5428a, Vernon's Texas Civil Statutes, as added by Chapter 48, Acts of the 63rd Legislature, Regular Session, 1973.

"Sec. 16. There is hereby appropriated to the Secretary of State out of the General Revenue Fund the amount of \$204,020 for the year ending August 31, 1976, and the amount of \$147,020 for the year ending August 31, 1977, for the purpose of implementing this Act.

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

Art. 14.02. Appointment of Campaign Treasurer

(A) Notwithstanding the following subsections of this section, no designation of a campaign treasurer shall be required in order that an office-holder accept contributions or make expenditures as defined in Section 237(D)(2), Texas Election Code, as amended (Article 14.01(D)(2), Vernon's Texas Election Code) and Section 237(E)(2), Texas Election Code, as amended (Article 14.01(E)(2), Vernon's Texas Election Code). Unexpended campaign contributions, as defined in Subsection (D)(1) of Section 237, which are lawfully accepted, may be used by an office-holder for expenditures in connection with the office pursuant to subsection (E)(2) of Section 237. Notwithstanding the requirement set forth in subsection (F)(1) of this section, any contribution as defined in Section 237(D)(2), Texas Election Code, as amended (Article 14.01(D)(2), Vernon's Texas Election Code) that has been lawfully accepted prior to the designation of a campaign treasurer may be utilized as campaign contributions after such designation.

(B) Every candidate for nomination to or election to a state or district office and every specific purpose political committee in any such election or in an election involving a statewide or district measure and every general purpose political committee shall designate a campaign treasurer by written appointment filed with the Secretary of State, and may also designate assistant campaign treasurers for each county by written appointment to be filed either with the county clerk of said county, or the Secretary of State.

(C) Every candidate for nomination to or election to a county office and every specific purpose political committee in any such election or in an election involving a county measure shall designate a campaign treasurer by written appointment to be filed with the county clerk of such county.

(D) Every candidate for nomination to or election to a municipal office or an office of a political subdivision and every specific purpose political committee in any such election or in an election involving a measure of a municipality or political subdivision shall designate a campaign treasurer by written appointment to be filed with the clerk or secretary of the municipality or political subdivision and, if the political subdivision extends beyond the boundaries of one county, may also designate assistant campaign treasurers for each county affected by such candidacy.

(E) Any campaign treasurer or assistant campaign treasurer designated as provided in this Section may be removed by the candidate or political committee at any time by the written appointment

of a successor filed in the manner provided for the original designations.

(F)(1) Except as expressly permitted in this chapter, no contribution as defined in Section 237(D)(1) shall be accepted nor any expenditure, as defined in Section 237(E)(1), including the paying of any filing fee, made by an individual until he has filed the name of his campaign treasurer with the appropriate authority. No contribution shall be accepted nor any expenditure made by a political committee until it has filed the name of its campaign treasurer with the appropriate authority. If it is not otherwise possible for a candidate or specific purpose political committee to determine which authority is appropriate for the filing of campaign treasurer designation, then a filing with the Secretary of State shall be sufficient, but only until such time as the appropriate authority may be determined in accordance with the provisions of Subsections (a), (b), and (c) of this Section.

(2) A political committee existing prior to the effective date of this Act shall file a new designation of a campaign treasurer with the appropriate authority for that committee before accepting any additional contributions or making any additional expenditures after the effective date of this Act.

(G) It shall be unlawful for any candidate, political committee, campaign treasurer, assistant campaign treasurer, or any other person to expend funds from any unlawful contributions.

(H) Nothing in this Act shall be construed to prohibit a candidate from appointing himself or herself as the campaign treasurer.

(I) An individual intending to become a candidate for public office may file a designation of campaign treasurer before taking any affirmative action for the purpose of seeking nomination or election.

(J) A designation of a campaign treasurer shall be deemed to be timely filed if it is placed in the United States Post Office or in the hands of a common or contract carrier properly addressed to the appropriate authority within the time limits applicable to such designation. The postmark or receipt mark (if received by a common or contract carrier) will be prima facie evidence of the date that such statement was deposited with the post office or carrier. The person filing the designation may show by competent evidence that the actual date of posting was to the contrary. No charge shall be made for filing designations of campaign treasurer with any authority.

[Amended by Acts 1975, 64th Leg., p. 2259, ch. 711, § 3, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 736, ch. 276, §§ 3, 4, eff. Aug. 29, 1977.]

Art. 14.03. Campaign Contributions

(A) It shall be lawful for an individual not acting in concert with any other person to expend a sum in

a campaign which shall not in the aggregate exceed \$100 per election for any lawful purpose out of his own funds to aid or defeat any candidate or measure, where the sum is not to be repaid to him. Such a sum will not be reportable to any authority unless it constitutes a contribution. If an individual not acting in concert with any person wishes to expend more than \$100 for any lawful purpose out of his own funds to aid or defeat any candidate or candidates or measures, he may do so either by making a contribution or by complying with all of the provisions of this chapter as if he were a campaign treasurer of a political committee.

(B) It shall be lawful for any individual to donate his own personal services and personal traveling expenses to aid or defeat any candidate or measure and such a donation shall not constitute a contribution or expenditure, as defined in Section 237 of this code¹ only so long as he either is not compensated or reimbursed for same.

(C) It shall be unlawful for any person to make any contribution or expenditure in the name of another or on behalf of another without revealing that fact in order that the proper disclosure may be made.

(D) Except as expressly permitted by Paragraphs (A) and (B) of this Section it shall be unlawful for any person, other than a candidate, his campaign treasurer, or assistant campaign treasurer, or the campaign treasurer of a political committee, to make or authorize any campaign expenditure. Except as provided in Paragraphs (A) and (B) of this Section, campaign expenditures must be made by the candidate, campaign treasurer, or assistant campaign treasurer, or the campaign treasurer of a political committee.

[Amended by Acts 1975, 64th Leg., p. 2261, ch. 711, § 5, eff. Sept. 1, 1975.]

¹ Article 14.01.

Former article 14.03, Purposes of Expenditures, was repealed by Acts 1975, 64th Leg., p. 2261, ch. 711, § 4. Prior to repeal the article was amended by Acts 1973, 63rd Leg., p. 1103, ch. 423, § 4.

Former article 14.04 was renumbered article 14.03 and amended by § 5 of the 1975 Act.

Art. 14.03a. Repealed by Acts 1977, 65th Leg., p. 743, ch. 276, § 16, eff. Aug. 29, 1977

Art. 14.04. Civil Remedy

(A) Any person who knowingly makes or knowingly accepts an unlawful campaign contribution or who knowingly makes an unlawful expenditure in support of a candidate shall be civilly liable to each opposing candidate whose name appeared on the ballot in the election in which the unlawful contribution or expenditure was involved for double the amount or value of such unlawful campaign contribution or expenditure and reasonable attorneys fees for collecting same.

(B) Any person who knowingly makes or knowingly accepts an unlawful campaign contribution or

expenditure not expressly supporting any candidate but opposing a particular candidate or candidates shall be civilly liable to each of such opposed candidates for double the amount or value of such unlawful campaign contribution or expenditure and reasonable attorneys fees for collecting same.

(C) Any person who knowingly makes or knowingly accepts an unlawful contribution or expenditure shall, in addition to any other penalties, be civilly liable to the State of Texas for an amount equal to triple the amount or value of such unlawful contribution or expenditure.

[Amended by Acts 1975, 64th Leg., p. 2261, ch. 711, § 6, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 787, ch. 276, § 5, eff. Aug. 29, 1977.]

This article was renumbered from article 14.05 and amended by the 1975 Act.

Art. 14.05. Criminal Penalty

Any person who knowingly makes or knowingly accepts an unlawful contribution or who knowingly makes an expenditure in violation of this Chapter shall be guilty of a Class A misdemeanor unless otherwise provided by law.

[Amended by Acts 1975, 64th Leg., p. 2262, ch. 711, § 7, eff. Sept. 1, 1975.]

This article was renumbered from article 14.06 and amended by the 1975 Act.

Art. 14.06. Corporations and Labor Organizations Not to Contribute

(A) Except to the extent permitted in Section 317, Texas Election Code,¹ it is unlawful for any corporation, as defined in this Act, to make a contribution or expenditure, as defined in Section 237 of this code,² or any labor organization to make a contribution or expenditure, or for any candidate, office-holder, political committee, or other person to knowingly accept any contribution prohibited by this Article except as herein expressly provided.

(B) For the purpose of this section, "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(C) As used in this section, the phrase "contribution or expenditure" shall also include giving, lending, or paying any money or other thing of value, directly or indirectly, to any candidate, or political committee, campaign treasurer, assistant campaign treasurer, or any other person, for the purpose of aiding or defeating the nomination or election of any candidate or of aiding or defeating the approval of any measure submitted to a vote of the people of this state or any subdivision thereof; provided, however, that nothing in this section or in Section 317, Texas Election Code, shall prevent the making of a loan or loans to any candidate, office-holder, or

political committee, for campaign or other lawful purposes by any corporation which is legally engaged in the business of lending money and which has conducted such business continuously for more than one year prior to the making of such loan, provided the loan is made in the due course of business and is not directly or indirectly a contribution. As used in this Chapter, the phrase "contribution or expenditure" shall not include expenditures for the following purposes: communications, on any subject, by a corporation to its stockholders and their families or, if the corporation is an association, to its members and their families, or by a labor organization to its members and their families; nonpartisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and their families, or, if the corporation is an association, at its members and their families, or by a labor organization aimed at its members and their families; or the establishment, administration and solicitation of contributions from the members and their families of one or more labor organizations, or from the stockholders, employees and their families of one or more corporations, or from the members and their families of one or more associations to a separate segregated fund or other general purpose political committee to be utilized for political purposes by one or more corporations or one or more labor organizations. It is provided that it shall be unlawful for such a fund to make a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, or financial reprisals, or by threats thereof, or by dues, fees, or other moneys required as a condition of membership in a labor organization or as a condition of employment, or by moneys obtained in a commercial transaction.

(D) Any corporation or labor organization making or promising a gift, loan, or payment to any candidate, political committee, campaign treasurer, assistant campaign treasurer, or other person in violation of this section shall be civilly liable for double the amount or value of such loan or gift, promised or made, to each opponent of the candidate, or political committee, opposed by such gift, loan, or payment. An opponent of the candidate is an opposing candidate whose name appeared on the ballot in the election in which the unlawful gift, loan, or payment was involved. The corporation or labor organization shall be civilly liable to the State of Texas for an amount equal to triple the amount or value of any unlawful gift, loan, or payment to any candidate, office-holder, political committee, campaign treasurer, or assistant campaign treasurer.

(E) Any corporation or labor organization that violates Subsection (A), (B), or (C) of this section shall be guilty of a felony of the third degree.

(F) Every officer or director of any corporation or labor organization who shall consent to any such

unlawful gift, loan, or payment or such unlawful promise to give, lend, or pay by the corporation or labor organization shall be guilty of a felony of the third degree.

(G) Any candidate, office-holder, political committee, campaign treasurer, or assistant campaign treasurer who knowingly accepts such unlawful gift, loan, or payment from a corporation or labor organization shall be guilty of a felony of the third degree. [Amended by Acts 1975, 64th Leg., p. 2262, ch. 711, § 8, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 737, ch. 267, § 6, eff. Aug. 29, 1977.]

¹ Article 15.17.

² Article 14.01.

This article was renumbered from article 14.07 and repealed in its entirety, substituting new provisions therefor, by the 1975 Act.

Art. 14.07. Records and Sworn Statement

(A) Each candidate, office-holder, and political committee, or a campaign treasurer representing the same, is hereby required to keep an accurate record of contributions received, and of all expenditures made. Such record shall contain all information hereinafter required to be reported by such candidate, office-holder, or political committee.

(B) Each opposed candidate whose name is printed on the ballot, each write-in candidate taking affirmative action in an election and each political committee involved in an election concerning a candidate or measure shall file a sworn statement at each time required herein. Each office-holder and political committee as defined in Subsections (O)(2), (P)(2), or (Q)(2) in Section 237 of this Code,¹ shall file a sworn statement as required herein.

(C) The statements filed by a candidate, or office-holder, shall list all contributions received and all expenditures made by the candidate, the office-holder, his campaign treasurer, and his assistant campaign treasurers during the appropriate reporting period as described in Subsection (H) of this section. The statements filed by a political committee, or a campaign treasurer representing the same, shall list all contributions received and expenditures made by the committee during the appropriate reporting period as described in Subsection (H) of this section. Each statement shall include the dates and amounts and the full name and complete address of each person from whom contributions in an aggregate amount of more than \$50 has been received or borrowed during the appropriate reporting period as described in Subsection (H) of this section. Each statement shall also include the dates and amounts and the full names and complete addresses of all persons to whom any expenditures aggregating more than \$50 were made during the appropriate reporting period, and the purpose of such expenditures. Each report shall also include a total of all contributions received and all expenditures made during the appropriate reporting period and a total of all contributions of \$50 and less received and all

expenditures of \$50 and less made during the appropriate reporting period. However, for purposes of the time and manner of reporting, no expenditure need be deemed to have been made until the amount is readily determinable or, if the character of the expenditure is such that normal business practice is not to disclose the amount until the next periodic bill is received, then such expenditure need not be deemed to have been made until the date of receipt of such bill.

(D) Each political committee receiving contributions or making expenditures on behalf of a candidate, or office-holder, shall notify the candidate, or office-holder, as to the name and address of the political committee and its campaign treasurer, if one is required. The candidate, or office-holder, shall include within each statement required by this code a list identifying the name and address of each such political committee and its campaign treasurer, if one is required. "On behalf of" means the knowing acceptance of a contribution for a candidate(s), or office-holder(s), or the making of an expenditure for a candidate(s), or office-holder(s). Any campaign treasurer, candidate, office-holder, or other person managing a political committee, who violates the provisions of this subsection shall be guilty of a Class A misdemeanor.

(E) Such statements shall be accompanied by the following affidavit verified by the person filing the statement:

"I do solemnly swear that the foregoing statement, filed herewith, is in all things true and correct, and fully shows all information required to be reported by me pursuant to the Political Funds Reporting and Disclosure Act of 1975."

(F) The statement and oath shall be filed as follows: for a county office, or a measure submitted at an election called by a county, with the county clerk of the county; for a district office or a state office, or statewide measure, or other constitutionally designated members of the Executive Department, with the secretary of state; for a municipal office, or a measure submitted at an election called by a municipality, with the city secretary or city clerk of the municipality; and for an office of a political subdivision, or a measure submitted at an election called by a political subdivision other than a county or municipality, with the secretary of the governing body of the political subdivision. General purpose political committees shall file the required sworn statements and oaths with the Secretary of State. The deadline for filing any statement required under this section is 5 p. m. of the last day designated in the pertinent subsection for filing the statement. When the last day of filing falls on a Saturday or Sunday or an official state holiday enumerated in Article 4591, Revised Civil Statutes of Texas, 1925, as amended, the deadline for filing is extended to 5 p. m. of the

next day which is not a Saturday or Sunday or enumerated holiday. A statement shall be deemed to be timely filed if it is placed in the United States Post Office or in the hands of a common or contract carrier properly addressed to the appropriate authority within the time limits applicable to the statement. The postmark or receipt mark (if received by a common or contract carrier) will be prima facie evidence of the date that such statement was deposited with the post office or carrier. The person making the report may show by competent evidence that the actual date of posting was to the contrary.

(G) In the event a political committee has elected to comply with the provisions applicable to political committees within this state, the requirements of this paragraph shall not be applicable. A candidate, office-holder, or political committee shall not accept a contribution aggregating more than \$500 in a reporting period from a political committee not in this state unless the contribution is accompanied by a written statement which sets forth the full name and complete address of each person who contributed more than \$100 to such committee during the preceding twelve months and which is certified by an officer of the contributing political committee. A correct copy of any such statement shall be included with the statement filed on which the contribution is reported. For the purpose of reporting, "political committee not in this state" shall mean any political committee expending 80 percent or more of its expenditures in any combination of elections outside of this state and federal offices not voted on in this state within the immediately preceding twelve-month period.

(H)(1)(a) Candidates and the campaign treasurers of specific purpose political committees as defined in subsection (P)(1) of Section 237, shall file sworn statements at the times required in paragraph (4) of this subsection.

(b)(i) Office-holders and specific purpose political committees assisting office-holder(s) as defined in subsection (P)(2) of Section 237 of this Code shall file sworn statements on January 15 of each year of all contributions received and all expenditures made during the previous calendar year in accordance with the provisions of subsection (C) of this section but reporting only such contributions accepted and expenditures made that have not been previously reported.

(ii) In addition to the annual statement required in subsection (H)(1)(b)(i) above, any such office-holder shall file additional statements to cover all contributions received and expenditures made by such office-holder for that period of time prior to the designation of a campaign treasurer by such office-holder, and after such designation all contributions and expenditures are to be reported pursuant to subsection (H)(1)(a). The statements required by

this subsection shall be filed not later than the 15th day following the designation of a campaign treasurer.

(2) Campaign treasurers of general purpose political committees shall file sworn statements at times required in paragraph (7) of this subsection.

(3) If the operations of a political committee necessitate a change in the applicability of paragraph (1) or (2) of this subsection, the campaign treasurer of such political committee shall make such change and declare the identity of the authorities with whom future filings are expected to be made by filing (a) notification(s) with the authority(ies) with whom such committee has previously been required to file sworn statements. Failure to file such notice(s), when such change has been properly made, before the next applicable deadline for filing sworn statements under the formerly applicable sections, shall constitute a Class B misdemeanor.

(4) Every candidate or specific purpose political committee shall file three sworn statements relating to the election in which such person is involved in addition to any statement as provided in paragraph (6) below. The three sworn statements shall be filed not later than the 30th day prior to the election, not later than the 7th day prior to the election, and not later than the 30th day after the election, respectively. A candidate who has been nominated by his party's primary or a specific purpose political committee existing for the sole purpose of supporting such candidate and having given notice of such sole purpose in lieu of filing his third statement which encompasses nine (9) days prior to the twenty-five (25) days after the election shall include in his first statement prior to the general election all previously unreported contributions and expenditures. The period reported in the first such statement shall begin on the day of campaign treasurer designation, and end on and include the 40th day prior to the election. The period reported in the second such statement shall begin on the 39th day before the election and end on and include the 10th day before the election. The period reported in the third such statement shall begin on the 9th day before the election and end on and include the 25th day after the election. In the event a candidate or specific purpose political committee becomes involved in an election after the end of any period covered by the regular reports otherwise required herein, the first applicable sworn statement shall be filed at the next regularly required deadline and its reporting period shall begin on the date of designation of campaign treasurer.

(5) In lieu of any third statement required, which falls on the 30th day after any general primary or special elections, whenever a candidate or specific purpose political committee is involved in a run-off election, not later than the 7th day before the run-off election, the candidate or specific purpose politi-

cal committee shall file a statement of all previously unreported contributions and expenditures through the 10th day before the run-off election. The next statement required shall be filed not later than the 30th day after the run-off election and shall report all contributions received and all expenditures made during a period beginning on the 9th day before the run-off election and ending on the 25th day after the run-off election.

(6) Each year after the last deadline for filing a statement of contributions and expenditures, an additional statement shall be filed, provided, however, if there have been no expenditures made or contributions knowingly accepted since the last required reporting period, or if any contributions knowingly accepted and any expenditures made have all been reported under Subsection (H)(1)(b) of this section, there shall be no filing required. The annual statement shall be filed on or before January 15 (following the last filing) and the period shall cover all previously unreported contributions and expenditures through and including the 31st day of December.

(7) All general purpose political committees shall file sworn statements as designated either in this paragraph or in Paragraph (8) of this subsection:

(a) On January 15th of each year, a statement of all contributions received and all expenditures made during the previous calendar year which have not been previously reported;

(b) Not earlier than the 40th day and not later than the 30th day before the date of an election in which the general purpose committee is involved, a statement of all contributions received and all expenditures made during the period from the date on which the general purpose political committee filed a designation of a campaign treasurer through the 40th day before the date of the election which have not been previously reported;

(c) Not earlier than the 10th day and not later than the 7th day before the date of an election in which the general purpose political committee is involved, a statement of all contributions received and all expenditures made through the 10th day before the date of the election which have not been previously reported;

(d) Not earlier than the 25th day and not later than the 30th day after the date of an election in which the general purpose political committee is involved, a statement of all contributions received and all expenditures made since the date covered by the last report filed under this subsection;

(e) Whenever a general purpose political committee is involved in a run-off election, in lieu of the statement to be filed by not later than the 30th day after the first election, the committee shall file a statement on the 7th day before the

date of the run-off election showing all contributions received and all expenditures made since the date of the last report filed under this subsection;

(f) In the event a general purpose political committee becomes involved in an election after the end of any periods covered by the regular reports otherwise required herein, the first applicable sworn statement shall be filed at the next regularly required deadline and its reporting period shall begin on the date of designation of campaign treasurer.

(8) In lieu of the sworn statements required under Paragraph (7), a general purpose political committee may elect to file sworn monthly statements of all contributions received and all expenditures made which have not been previously reported by filing the sworn statements designated herein:

(a) Between January 1 and January 15 of each year, even if there has been no activity, in addition to a statement of all contributions received and all expenditures made during the previous calendar year which have not been previously reported, a notice of intent to file monthly statements pursuant to this paragraph. However, a general purpose political committee formed after January 15 of any particular year may upon designation of its campaign treasurer file at the same time a notice of intent to file monthly statements pursuant to this paragraph;

(b) On the first day of each calendar month, even if there has been no activity, a statement of all previously unreported contributions received and all previously unreported expenditures made through the 25th day of the preceding month. Any general purpose political committee filing under the procedures of this paragraph shall include in each statement the dates and amounts and the full name and complete address of each person from whom contributions in an aggregate amount of more than \$10 has been received or borrowed during the reporting period. Each statement shall also include the dates and amounts and the full names and complete addresses of all persons to whom any expenditures aggregating more than \$10 were made during the appropriate reporting period and the purpose of such expenditures.

(c) If a general purpose political committee electing to file sworn monthly statements wishes to revert to filing the sworn statements required under Paragraph (7), such committee must file its intent to do so between January 1 and January 15 in addition to a statement of all contributions received and expenditures made which have not previously been reported.

(9) Candidates for offices created under laws of the United States are specifically exempted from the requirements of this section. It is provided, how-

ever, that they shall file copies of any reports required by federal laws with the secretary of state on the same date they file such reports with the appropriate federal authorities.

(10) Final Statement. A candidate or political committee may cease filing sworn statements regarding a campaign after a final statement has been filed and designated as such. Any of the required sworn statements may constitute a final statement if its filing results in the completion of the reporting of all contributions and expenditures involved in an election, together with the appropriate related information, required to be reported.

(11) In the event a general purpose political committee makes a contribution to either another general purpose political committee or an out of state political committee, and cannot thereby make the determination of the appropriate times to make filings of sworn statements, such contributing general purpose political committee shall be deemed to have complied with the requirements of this Section by filing a sworn statement with the Secretary of State fully reporting such contribution (as an expenditure) no later than the next succeeding filing deadline for the January 15th annual statement.

(12) In the event a campaign treasurer of a political committee is terminated, either voluntarily or by action of the political committee, he shall file a sworn statement no later than the 10th day after such termination, reporting all appropriate matters for the period from the end of the period reported in the preceding sworn statement through the day of his termination. Any subsequent sworn statement which is to be filed by a successor campaign treasurer need not report those matters included in the previous campaign treasurer's termination statement.

(I)(1) If any candidate, office-holder, or campaign treasurer of a political committee fails to file a sworn statement containing all information required by this chapter, such person shall be guilty of a Class C misdemeanor.

(2) Any candidate, office-holder, campaign treasurer, or other person managing a political committee who swears falsely in a filed statement is subject to the provisions of Section 37.02 of the Texas Penal Code.

(J) Any candidate or campaign treasurer of a political committee who fails to report in whole or in part any contribution or expenditure as provided in the foregoing provisions of this Section shall be liable for double the amount or value of such unreported contribution or expenditure or unreported portion thereof, to each opposing candidate in the election in which same should have been reported. Each of such opposing candidates shall also recover reasonable attorneys' fees for collecting the above liquidated damages.

(K) Any candidate, office-holder, or campaign treasurer, of a political committee who fails to report in whole or in part any contribution or expenditure as provided in this Section, shall be civilly liable to the State of Texas for an amount equal to triple the amount or value of such unreported contribution or unreported expenditure.

(L) Statements filed under this Section shall be open to public inspection. They shall be preserved for a period of two years, after which they may be destroyed unless a court of competent jurisdiction has ordered their further preservation.

(M) No charge shall be levied for the filing of any report required by this section.

(N) No charge greater than that authorized by the State Board of Control for copies of similar documents filed with state agencies shall be charged for copies of any reports required to be filed by this section.

[Amended by Acts 1975, 64th Leg., p. 2263, ch. 711, § 9, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 738, ch. 276, §§ 7 to 14, eff. Aug. 29, 1977.]

¹ Article 14.01.

This article was renumbered from article 14.08 and amended by the 1975 Act.

Art. 14.08. Leave Name Off Ticket

Any candidate who shall knowingly permit or assent to the violation of any provision of this Chapter by any campaign treasurer or assistant campaign treasurer, or other person, shall thereby forfeit his right to have his name placed upon the primary ballot, or if nominated in the primary election, to have his name placed on the official ballot at the general election. Provided, no candidate in the general election shall forfeit the right to have his name printed on the ballot for such election if the Constitution of this State prescribes the qualifications of the holder of the office sought by the candidate.

Proceedings by quo warranto to enforce the provisions of this Section, or to determine the right of any candidate alleged to have violated any provision of this Chapter, to have his name placed on the primary ballot, or the right of any nominee alleged to have violated any provision of this Chapter to have his name placed upon the official ballot for the general election, may be instituted on the complaint of any citizen in the district court of any county, the citizens of which are entitled to vote for or against any candidate who may be charged in such proceedings with any such violation. All such proceedings so instituted shall be advanced, and summarily heard and disposed of by both the trial and appellate courts.

[Amended by Acts 1975, 64th Leg., p. 2263, ch. 711, § 10, eff. Sept. 1, 1975.]

This article was renumbered from article 14.09 and amended by the 1975 Act.

Art. 14.09. Political Advertising

(A) It is unlawful for any person knowingly to enter into a contract or transaction to print, publish or broadcast, any political advertising which does not disclose thereon that it is political advertising and which does not state thereon the name and address either of the agent who personally entered into the contract or transaction with the printer, publisher, or broadcaster, or the person represented by such agent. A violation of this provision shall constitute a Class A misdemeanor. However, in the event the political advertisement conveys the impression that it emanates from a source other than its true source for the purpose of injuring any candidate or influencing the vote in any election, the candidate, campaign treasurer, assistant campaign treasurer or any other person purchasing or contracting for the furnishing of such political advertisement in support of or in opposition to any candidate or measure, who knowingly violates this subsection shall be guilty of a felony of the third degree.

(B) Any advertising medium or any officer or agent thereof who willfully demands or receives for any political advertising any money or other thing of value in excess of the sum due for such service, or any person who pays or offers to pay for such service any money or other thing of value in excess of the sum due, or any person who pays or offers to pay any money or other thing of value for the publication or broadcasting of political advertising except as advertising or production matter, shall be fined not more than \$100. No advertising medium may charge a rate for political advertising in excess of the following:

(1) For advertising broadcast over a radio or television station, including a community antenna or cable television system, the rate charged shall not exceed the lowest unit charge of the station for the same class, condition and amount of time for the same period;

(2) For advertising printed or published by any other medium, the rate charged shall not exceed the lowest charge made for comparable use of such space for other purposes. The rate shall take into account the amount of space used, the number of times used, the frequency of use, and the kind of space used, as well as the type of advertising copy submitted by or on behalf of a candidate, or political committee. All discount privileges otherwise offered by a newspaper or magazine to advertisers shall be available upon equal terms to all candidates, or political committees.

(C) It is unlawful for an officer or employee of any political subdivision of this state to expend or authorize the expenditure of the funds of such political subdivision for the purpose of political advertising. The provisions of this subsection shall not apply to any advertising which describes the factual

reasons for a measure and which does not advocate the passage or defeat of such measure.

(D) It is the legislative intent to impose both civil and criminal responsibility on persons, corporations, partnerships, labor unions, or labor organizations, or any unincorporated associations, firms, committees, clubs, or other organizations, or groups of persons, including any groups of persons associated with a political party or element thereof, for violations of this section.

[Amended by Acts 1975, 64th Leg., p. 2268, ch. 711, § 11, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 742, ch. 276, § 15, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2001, ch. 799, § 1, eff. Aug. 29, 1977.]

This article was renumbered from article 14.10 and amended by the 1975 Act.

Art. 14.10. Campaign Communications

(A)(1) It is unlawful for an individual to misrepresent his identity or, if acting or purporting to act as an agent for any person, to misrepresent the identity of that person in any written or oral communication relating to the campaign of a candidate for nomination or election to a public office or election to the office of a political party or relating to the success or defeat of any ballot measure with the intent to injure any candidate or to influence the vote on the measure.

(2) It is unlawful for any person to issue any communication relating to the candidacy of a person for nomination or election to a public office or election to the office of a political party or relating to the success or defeat of any ballot measure, which purports to emanate from any source other than its true source.

(B)(1) It is unlawful for any candidate for nomination or election to a public office to use the title of an office in his political advertising when the use of such title could reasonably be construed to lead the voters to believe that the candidate is the holder of an office, unless the candidate is the holder of the office at the time the representation is made.

(2) It is unlawful for any person to print, publish, or broadcast any political advertising, or to make any written or oral commercial communication, relating to the campaign of a candidate for nomination or election to a public office which states, implies, or otherwise represents that the candidate is the holder of an office, unless the candidate is the holder of the office at the time the representation is made.

(C) A violation of this section is a Class A misdemeanor.

[Added by Acts 1975, 64th Leg., p. 2269, ch. 711, § 12, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 1663, ch. 657, § 1, eff. Aug. 29, 1977.]

Art. 14.10A. Repealed by Acts 1977, 65th Leg., p. 1663, ch. 657, § 2, eff. Aug. 29, 1977

The repealed article, relating to the misleading use of office title, was added by Acts 1975, 64th Leg., p. 2098, ch. 682, § 26.

Art. 14.13. Regulation of Illegal Acts; Providing Duties for Secretary of State

(A) Filing complaint with Secretary of State. Any citizen of this state may file with the Secretary of State a complaint alleging that a person has committed one or more of the following violations of this chapter:

(1) Failure to file a statement of contributions and expenditures that is required to be filed with the Secretary of State, or late filing of a statement with the Secretary of State.

(2) Filing of a statement of contributions and expenditures with the Secretary of State that does not conform to law.

(3) Accepting a contribution or making an expenditure before the filing of a designation of a campaign treasurer in an election in which the designation is required to be filed with the Secretary of State.

(4) Making or accepting an unlawful contribution or making an unlawful expenditure.

(B) Form and contents of complaint. A complaint must:

(1) be signed and sworn to by the complainant as containing allegations that are true and correct and made on personal knowledge; and

(2) state the name of the person accused, the election involved, if any, and the alleged violation; and

(3) allege facts indicating that the person accused has committed a violation.

(C) Notice to the accused. Upon receipt of a complaint meeting the requirements of Paragraphs (A) and (B) of this section, the Secretary of State shall give notice by registered or certified mail, restricted delivery, return receipt requested, to the person who is the subject of the complaint:

(1) informing the person that the complaint has been filed;

(2) attaching a copy of the complaint;

(3) requesting the person to make a written response within 15 days after the date shown on the notice (the date of mailing); and

(4) attaching a copy of this section.

(D) Referral to prosecuting attorney and Attorney General.

(1) If the accused is a candidate or the campaign treasurer of a candidate or of a political committee supporting a candidate, the Secretary of State shall not report any alleged violations to the prosecuting attorney or to the Attorney General while the candidate is still engaged in the campaign in the specific election in which the alleged violation is said to have occurred or in a subsequent runoff or general election for the same term of office.

(2) After a lapse of 25 days from the date of a notice pursuant to Paragraph (C) or after a lapse of 25 days from an election described in (D)(1) above of this section, if it appears that the person accused in the complaint may have failed to comply with the relevant provisions of law, the Secretary of State shall forward to the appropriate prosecuting attorney the original complaint and the accused's response (if any) to the notice, together with certified copies of all pertinent records filed with the Secretary of State, in order that appropriate action may be taken.

(3) If the alleged violation is one for which a civil penalty accrues in favor of the state, the Secretary of State shall also forward to the Attorney General certified copies of the original complaint, the accused's response, and all pertinent records filed with the Secretary of State, in order that appropriate action be taken.

(E) Malicious complaints. A civil action for damages exists against the complainant in favor of any person against whom a complaint is filed maliciously and without probable cause, after the termination of any resulting prosecution. In addition, a person who makes a false allegation in a complaint is subject to the provisions of the Texas Penal Code relating to the offense of perjury.¹

(F) The procedures outlined in this section are cumulative of other available procedures for investigation and enforcement of violations of this chapter. Nothing in this section shall be taken as precluding the filing of a complaint directly with a prosecuting attorney or as precluding investigations and prosecutions by a prosecuting attorney and actions by the Attorney General for recovery of civil penalties without a referral from the Secretary of State.

(G) Duties of Secretary of State.

(1) It shall be the duty of the Secretary of State to prescribe forms for any instruments required to be filed by this code, regardless of whether the instruments are to be filed with the Secretary of State or with some other authority, and to make such forms available to persons required to file such statements and information with the Secretary of State, or any other authority.

(2) It shall be the duty of the Secretary of State to furnish such forms to the following: the State Executive Committee of any political party, the clerk of each county, the duly elected chairman of each county political subdivision or authority holding an election under this code.

(3) The State Executive Committee, county clerk, county chairman, and secretary or clerk shall make available to all candidates, office-holders, or political committees the forms provided by the Secretary of State.

(4) It shall be the duty of the Secretary of State to interpret and administer the provisions of this Act in the exercise of his authority stated in Section 3, Texas Election Code (Article 1.03, Vernon's Texas Election Code) and to make such interpretations and administrative rulings available to any person upon request.

[Added by Acts 1975, 64th Leg., p. 2270, ch. 711, § 13, eff. Sept. 1, 1975.]

¹ See Penal Code, § 37.01 et seq.
Former article 14.13, added by Acts 1973, 63rd Leg., p. 1110, ch. 423, § 11, establishing County Election Commissions and a State Election Commission, was repealed by § 13 of the 1975 Act, enacting this article.

Art. 14.15. Venue for Offenses

Venue for any offense resulting from a violation of this chapter shall lie exclusively in the county of residence of the accused, except when the accused is a nonresident of Texas, in which case venue shall lie in Travis County.

[Amended by Acts 1975, 64th Leg., p. 2272, ch. 711, § 14, eff. Sept. 1, 1975.]

CHAPTER FIFTEEN. OFFENSES RELATING TO ELECTIONS

SUBCHAPTER C. OFFENSES BY OFFICERS OF ELECTION

Article

15.80a. Restriction on Number of Voters Assisted by Same Person in an Election.

SUBCHAPTER F. MISCONDUCT AT ELECTIONS

15.78. Intimidation or Reprisal Against a Voter.

15.74. Inducing Another Person to Make False Statement on Registration Application.

SUBCHAPTER B. OFFENSES BEFORE ELECTION

Art. 15.17. Corporation Contributing

(a) In any election in this State or any district, municipality, or political subdivision thereof, wherein the question to be voted upon directly affects the granting, refusing, existence or value of any franchise granted to a corporation which has the right of eminent domain, such corporation may present facts and arguments to the voters bearing upon such question by any lawful means of publicity and pay the expense thereof; provided, however, that all such means of publicity employed shall contain a clear statement that the same are sponsored and paid for by such corporation; and the use of any such means of publicity by such corporation which do not contain such statement shall subject such corporation to the penalties hereinafter provided. Provided that nothing in this subsection shall be construed as permitting any such corporation to directly or indirectly give, pay, expend, or contribute or promise to give, pay, expend, or contribute any money or thing of value in order to aid or hinder the nomination or election of any person to any public office in this State.

(b) If any corporation authorized by Section (b)¹ hereof, or if any person, partnership or association makes any expenditure or incurs any obligation directly or indirectly for the purpose of influencing an election of the character described in Section (b) hereof, it shall be the duty of such corporation, person, partnership or association to file with the governing body of the political subdivision in which such election is held and also with the Secretary of State by mail, not more than ten (10) days nor less than five (5) days before the date of such election and also within ten (10) days after the date of such election, itemized, verified accounts correctly showing as of the date of filing, the amounts of money and description and value of all things given, paid, expended and contributed and the names of the recipients thereof and all amounts of money and description and value of all things promised or obligated to be given, paid, expended, and contributed, and the names of the promisees thereof, by such corporation, person, firm or association, in connection with such election; all such accounts to be verified under oath by an officer of such corporation, or by such person or member of the partnership or association as the case may be; provided, however, that no such corporation, person, partnership or association may give, pay, expend, contribute or promise to give, pay, expend, or contribute money and things of value of the total amount exceeding Seven Hundred and Fifty Dollars (\$750), or exceeding Twenty-five Dollars (\$25) for each one hundred population of the district, municipality or political subdivision according to the last preceding Federal Census in which such election is held, whichever amount is greater; provided further that such amounts expended may not, in fixing rates to be charged by such corporation, be charged as operating cost or capital. Any corporation, person, partnership or association failing to file the accounts as provided herein or filing an account which is false in any material respect, or violating the limitation or expenditures provided herein, shall be subject to the penalties hereinafter provided, but in no event shall any such corporation be authorized to spend more than Ten Thousand Dollars (\$10,000) in any one election.

(c) Any person who violates any provision of this article, or who, as an officer, director or employee of a corporation, or as a member of a partnership or association, authorizes or does any act in violation hereof, shall be fined not less than one hundred dollars nor more than five thousand dollars, or be imprisoned not less than one nor more than five years, or be both so fined and imprisoned.

[Amended by Acts 1977, 65th Leg., p. 743, ch. 276, § 16, eff. Aug. 29, 1977.]

¹ Now, Section (a) hereof.
The 1977 Act repealed sec. (a) and relettered former secs. (b) to (d) as (a) to (c).

SUBCHAPTER C. OFFENSES BY OFFICERS
OF ELECTION

Art. 15.28. Election Officer Divulging Vote

Any presiding officer, judge, clerk, watcher, interpreter, person assisting a voter in preparing his ballot, inspector, or any other person performing official functions, of any general, primary or special election who shall from an inspection of the ballot or other information obtained at the polling place and not in a judicial investigation divulge how any person has voted at such election is guilty of a felony of the third degree.

[Amended by Acts 1975, 64th Leg., p. 2077, ch. 681, § 5, eff. June 20, 1975.]

Art. 15.30. Aid to Voter

Any judge or clerk at an election or any other person who assists any voter to prepare his ballot except when a voter is unable to prepare the same himself because of his inability to read the language in which the ballot is printed or because of some bodily infirmity which renders him unable to write or to see or to operate the voting equipment, or who in assisting a voter in the preparation of his ballot prepares the same otherwise than as the voter directs, or who suggests by word or sign or gesture how such voter shall vote, shall be fined not less than two hundred dollars nor more than five hundred dollars or be confined in jail for not less than two nor more than twelve months, or both.

[Amended by Acts 1975, 64th Leg., p. 2098, ch. 682, § 27, eff. Sept. 1, 1975.]

Art. 15.30a. Restriction on Number of Voters Assisted by Same Person in an Election

(a) In any single election, it is unlawful for a person, other than a clerk or deputy clerk for absentee voting or an election judge or clerk at a regular polling place, to assist in preparing the ballot of more than five voters who are not related as parent, grandparent, spouse, child, brother, or sister to the person rendering the assistance. A violation of this subsection is a Class B misdemeanor. A person commits a separate offense for each voter assisted in violation of this subsection.

(b) A clerk or deputy clerk for absentee voting or an election judge or clerk at a regular polling place who knowingly permits assistance to be rendered in violation of Subsection (a) of this section commits a Class B misdemeanor.

(c) Subsection (a) of this section does not apply to a person who is called on by an absentee voting clerk or a presiding election judge to render oral assistance to Spanish-speaking voters in order to comply with the requirements of the federal Voting Rights Act,¹ regardless of whether the person rendering the assistance has been officially designated as a deputy

absentee voting clerk or as an election clerk at a regular polling place.

(d) A violation of this section does not affect the validity of the ballot of the voter who is unlawfully assisted.

[Added by Acts 1979, 66th Leg., p. 2061, ch. 806, § 5, eff. Aug. 27, 1979.]

¹ 42 U.S.C.A. § 1973 et seq.

SUBCHAPTER D. ILLEGAL VOTING

Art. 15.41. Illegal Voting

If any person knowing himself not to be a qualified voter, shall at any election vote for or against any officer to be then chosen, or for or against any proposition to be determined by said election, he shall be guilty of a third degree felony.

[Amended by Acts 1975, 64th Leg., p. 2077, ch. 681, § 6, eff. June 20, 1975.]

Art. 15.42. Instigating Illegal Voting

Whoever shall procure, aid, or advise another to give his vote at any election, knowing that the person is not qualified to vote, or shall procure, aid, or advise another to give his vote more than once at such election, shall be guilty of a felony of the third degree.

[Amended by Acts 1975, 64th Leg., p. 2077, ch. 681, § 7, eff. June 20, 1975.]

Art. 15.43. False Swearing

Whoever shall swear falsely as to his own qualifications to vote, or who shall swear falsely as to the qualifications of a person offering to vote who is challenged as unqualified, shall be guilty of a felony of the third degree.

[Amended by Acts 1975, 64th Leg., p. 2077, ch. 681, § 8, eff. June 20, 1975.]

Art. 15.44. Inducing Voter to Swear Falsely

Whoever knowingly and intentionally induces or attempts to induce another person to swear falsely as prohibited in the preceding article, shall be guilty of a felony of the third degree.

[Amended by Acts 1975, 64th Leg., p. 2077, ch. 681, § 9, eff. June 20, 1975.]

Art. 15.49. Participating in Primary Elections or Conventions of More Than One Party

Whoever votes or offers to vote at either a general primary election or a runoff primary election or participates or offers to participate in a convention of a political party, having voted at either a general primary election or a runoff primary election or participated in a convention of any other party during the same voting year, shall be guilty of a Class A misdemeanor.

[Amended by Acts 1975, 64th Leg., p. 2077, ch. 681, § 10, eff. June 20, 1975.]

Art. 15.50. Voting More Than Once

Whoever at a general, special or primary election votes or attempts to vote more than once shall be guilty of a Class A misdemeanor.

[Amended by Acts 1975, 64th Leg., p. 2077, ch. 681, § 11, eff. June 20, 1975.]

SUBCHAPTER E. OFFENSES AFTER ELECTION**Art. 15.61. Altering or Destroying Ballots, etc.**

If any person shall willfully alter, obliterate, or suppress any ballots, election returns or certificates of election, or shall willfully destroy any ballots or election returns except as permitted by law, he shall be guilty of a third degree felony.

[Amended by Acts 1975, 64th Leg., p. 2078, ch. 681, § 12, eff. June 20, 1975.]

Art. 15.62. Messenger Tampering with Ballot

Any person legally intrusted with the ballots cast at an election who shall open and read a ballot or permit it to be done before delivering the same shall be guilty of a felony of the third degree.

[Amended by Acts 1975, 64th Leg., p. 2078, ch. 681, § 13, eff. June 20, 1975.]

Art. 15.65. Failure to Keep Ballot Box

Whoever fails to keep securely any ballot box containing ballots voted at an election, when com-

mitted to his charge by one having authority over the same, shall be guilty of a felony of the third degree.

[Amended by Acts 1975, 64th Leg., p. 2078, ch. 681, § 14, eff. June 20, 1975.]

SUBCHAPTER F. MISCONDUCT AT ELECTIONS**Art. 15.73. Intimidation or Reprisal Against a Voter**

Whoever knowingly and intentionally harms or threatens to harm another person by an unlawful act or economic reprisal in retaliation for or on account of having voted for or against any candidate or measure or refusing to reveal how he voted is guilty of a felony of the third degree.

[Added by Acts 1975, 64th Leg., p. 2078, ch. 681, § 15, eff. June 20, 1975.]

Art. 15.74. Inducing Another Person to Make False Statement on Registration Application

Whoever requests, commands, or attempts to induce another person to make any false statement on any voter registration application shall be guilty of a felony of the third degree.

[Added by Acts 1975, 64th Leg., p. 2078, ch. 681, § 16, eff. June 20, 1975.]

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CHAPTER ONE. THE BOARD, ITS POWERS AND DUTIES

Article

- 1.09A. Office of the State Fire Marshal.
- 1.30. Hazardous Financial Condition.
- 1.30. Notification.
- 1.31. Refunds.

Art. 1.02. State Board of Insurance

[See Compact Edition, Volume 2 for text of (a) to (e)]

(f) The State Board of Insurance is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished effective September 1, 1983.

[Amended by Acts 1977, 65th Leg., p. 1840, ch. 735, § 2.058, eff. Aug. 29, 1977.]

¹ Civil Statutes, art. 5429k.

Art. 1.09. Commissioner of Insurance

[See Compact Edition, Volume 2 for text of (a)]

(b) Repealed by Acts 1975, 64th Leg., p. 853, ch. 326, § 3, eff. May 30, 1975.

[See Compact Edition, Volume 2 for text of (c) to (g)]

[Amended by Acts 1975, 64th Leg., p. 853, ch. 326, § 3, eff. May 30, 1975.]

Art. 1.09A. Office of the State Fire Marshal

The chairman of the board shall appoint a state fire marshal, who shall be a state commissioned officer, and who shall function as such subject to the rules and regulations of the board. He shall administer, enforce, and carry out the applicable provisions of this code relating to the duties and responsibilities of the state fire marshal under the supervision of the board. He shall hold his position at the pleasure of the board and may be discharged at any time. The state fire marshal shall be the chief investigator in charge of the investigation of arson and suspected arson within the state, and may commission arson

investigators to act under his supervision, and may revoke an investigator's commission for just cause. After consultation with the state fire marshal, the State Board of Insurance shall adopt necessary rules and regulations to guide the state fire marshal and his investigators in the investigation of arson and suspected arson.

[Added by Acts 1975, 64th Leg., p. 853, ch. 326, § 2, eff. May 30, 1975.]

Art. 1.10. Duties of the Board

In addition to the other duties required of the Board, it shall perform duties as follows:

[See Compact Edition, Volume 2 for text of 1 to 11]

Report to Governor

12. It shall report annually to the Governor the receipts and expenses of its department for the year, its official acts, the condition of companies doing business in this State, and such other information as will exhibit the affairs of said department. Upon specific request by the Governor, the Board shall report the names and compensations of its clerks.

[See Compact Edition, Volume 2 for text of 13 to 17]

[Amended by Acts 1979, 66th Leg., p. 574, ch. 264, § 1, eff. Aug. 27, 1979.]

Art. 1.11. May Change Form of Annual Statement

The Board may, from time to time, make such changes in the forms of the annual statements required of insurance companies of any kind, as shall seem to it best adapted to elicit a true exhibit of their condition and methods of transacting business. Such form shall elicit only such information as shall pertain to the business of the company.

If any annual statement, report, financial statement, tax return, or tax payment required to be filed or deposited in the offices of the State Board of Insurance, is delivered by the United States Postal Service to the offices of the State Board of Insurance after the prescribed date on which the annual statement, report, financial statement, tax return, or tax payment is to be filed, the date of the United States Postal Service postmark stamped on the cover in which the annual statement is mailed, or any

other evidence of mailing authorized by the United States Postal Service reflected on the cover in which the annual statement is mailed, shall be deemed to be the date of filing, unless otherwise specifically made an exception to this general statute.

[Amended by Acts 1979, 66th Leg., p. 390, ch. 181, § 1, eff. Aug. 27, 1979.]

Art. 1.14-2. Surplus Lines Insurance

[See Compact Edition, Volume 2 for text of (1) to (7)]

Eligibility of Surplus Lines Insurers

Sec. 8.

[See Compact Edition, Volume 2 for text of 1 to 7]

(d) No unauthorized insurer shall be eligible if the insurer or its agents have failed to submit to any fine or penalty levied pursuant to statute. No unauthorized insurer shall be eligible if the insurer is obligated to pay and has failed to pay premium taxes required under Section 11 of Article 1.14-1. The State Board of Insurance may order revocation of insurance contracts issued by insurers that do not conform with the eligibility requirements of this section.

[See Compact Edition, Volume 2 for text of 8(e) to 18]

[Amended by Acts 1979, 66th Leg., p. 625, ch. 290, § 1, eff. Aug. 27, 1979.]

Art. 1.16. Expenses of Examinations; Disposition of Sums Collected

The expenses of all examinations of domestic insurance companies made on behalf of the State of Texas by the State Board of Insurance or under its authority shall be paid by the corporations examined in such amount as the Commissioner of Insurance shall certify to be just and reasonable.

Assessments for the expenses of such domestic examination which shall be sufficient to meet all the expenses and disbursements necessary to comply with the provisions of the laws of Texas relating to the examination of insurance companies and to comply with the provisions of this Article and Articles 1.17 and 1.18 of this Code, shall be made by the Commissioner of Insurance upon the corporations or associations to be examined taking into consideration annual premium receipts, and/or admitted assets and/or insurance in force; provided such assessments shall be made and collected as follows: (1) expenses attributable directly to a specific examination including employees' salaries and expenses shall be collected at the time of examination; (2) assess-

ments calculated annually for each corporation or association which take into consideration annual premium receipts and/or admitted assets and/or insurance in force shall be assessed for periods not previously assessed through December 31, 1978; thereafter each such corporation or association shall be assessed annually. Provided further that the amount of all such assessments paid in each taxable year to or for the use of the State of Texas by any insurance corporation or association hereby affected shall be allowed as a credit on the amount of premium taxes to be paid by any such insurance corporation or association for such taxable year.

All sums collected by the State Board of Insurance, or under its authority, on account of the cost of examinations assessed as hereinabove provided for shall be paid into the State Treasury to the credit of the Insurance Examination Fund; and the salaries and expenses of the actuary of the State Board of Insurance and of the examiners and assistants, and all other expenses of such examinations, shall be paid upon the certificate of the State Board of Insurance by warrant of the Comptroller drawn upon such fund in the State Treasury.

If at any time it shall appear that additional pro rata assessments are necessary to cover all of the expenses and disbursements required by law and necessary to comply with this Article and Articles 1.17 and 1.18 of this Code, the same shall be made, and any surplus arising from any and all such assessments, over and above such expenses and disbursements, shall be applied in reduction of subsequent assessments in the proportion assessed so that there shall be so assessed and collected the funds necessary to meet such expenses and disbursements and no more.

In case of an examination of a company not organized under the laws of Texas, whether such examination is made by the Texas authorities alone, or jointly with the insurance supervisory authorities of another state or states, the expenses of such examination due to Texas' participation therein, shall be borne by the company under examination. Payment of such cost shall be made by the company upon presentation of itemized written statement by the Commissioner of Insurance and shall consist of the examiners' remuneration and expenses, and the other expenses of the State Board of Insurance properly allocable to the examination. Payment shall be made directly to the State Board of Insurance, and all money collected by assessment on foreign companies for the cost of examination shall be deposited in the State Treasury by the State Board of Insurance to the credit of the Insurance Examination Fund out of which shall be paid, by warrant of the State Comptroller of Public Accounts on voucher

of the State Board of Insurance, the examiners' remuneration and expenses in the amounts determined by the method hereinafter provided, when verified by their affidavit and approved by the Commissioner of Insurance; and said money is hereby appropriated for that purpose, the balance, if any, to remain in the Insurance Examination Fund in the State Treasury subject to be expended for the purposes as are other funds placed therein. Examiners' remuneration and expenses shall be the same as that which would be paid by the home state of a company under examination to persons conducting the examination of a Texas company admitted to do business in that State. If there be no recognized charge for such service, the Commissioner of Insurance shall fix the remuneration and expense allowance of the examiners at such reasonable figure as he may determine.

[Amended by Acts 1979, 66th Leg., p. 568, ch. 262, § 1, eff. Aug. 27, 1979.]

Art. 1.30. Notification

Text as added by Acts 1975, 64th Leg., p. 457, ch. 194, § 1

Definitions

Sec. 1. (a) "Insurer" shall include but not be limited to capital stock companies, title insurance companies, reciprocal or interinsurance exchanges, Lloyds associations, fraternal benefit societies, mutual and mutual-assessment companies of all kinds and types, statewide assessment associations, local mutual aids, burial associations, county and farm mutual associations, fidelity, guaranty and surety companies, trust companies organized under the provisions of Chapter 7 of Texas Insurance Code,¹ and all other organizations, corporations, or persons transacting an insurance business, whether or not named above, unless such insurers are by statute specifically by naming this article exempted from the operation of this article.

(b) "Board" means the State Board of Insurance of Texas.

(c) "Commissioner" means the Commissioner of Insurance of Texas.

Notice of Order or Judgment

Sec. 2. An insurer shall notify the commissioner and deliver a copy of any order or judgment to the commissioner within 30 days of the happening in another state of any one or more of the following:

- (1) suspension or revocation of his right to transact business;
- (2) receipt of an order to show cause why its license should not be suspended or revoked;
- (3) imposition of any penalty, forfeiture, or sanction on it for any violation of the insurance laws of such other state.

Penalty for Failure to Notify

Sec. 3. Any insurer who has failed to notify the commissioner and to deliver a copy of any order or judgment to him pursuant to Section 2 of this article shall forfeit to the people of the state a sum not to exceed \$500 for each such violation, which may be recovered by a civil action. The board may also suspend or revoke the license of an insurer or agent for any such wilful violation.

[Added by Acts 1975, 64th Leg., p. 457, ch. 194, § 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 862, ch. 386, § 1, eff. June 6, 1979.]

¹ Article 7.01 et seq.

For text as added by Acts 1975, 64th Leg., p. 1019, ch. 388, § 1, see art. 1.30, post

Art. 1.30. Hazardous Financial Condition

Text as added by Acts 1975, 64th Leg., p. 1019, ch. 388, § 1

Definitions

Sec. 1. (a) "Insurer" shall include but not be limited to capital stock companies, reciprocal or interinsurance exchanges, Lloyds associations, fraternal benefit societies, mutual and mutual assessment companies of all kinds and types, state-wide assessment associations, local mutual aids, burial associations, county and farm mutual associations, fidelity, guaranty, and surety companies, trust companies organized under the provisions of Chapter 7 of the Texas Insurance Code of 1951, as amended,¹ and all other organizations, corporations, or persons transacting an insurance business, whether or not named above, unless such insurers are by statute specifically, by naming this article, exempted from the operation of this article.

(b) "Board" means the State Board of Insurance of Texas.

(c) "Commissioner" means the Commissioner of Insurance of Texas.

Order to Rectify Financial Condition

Sec. 2. Whenever the financial condition of an insurer when reviewed in conjunction with the kinds and nature of risks insured, the loss experience and ownership of the insurer, the ratio of total annual premium and net investment income to commission expenses, general insurance expenses, policy benefits paid, and required policy reserve increases, its method of operation, its affiliations, its investments, any contracts which lead or may lead to contingent liability, or agreements in respect to guaranty and surety, indicate a condition such that the continued operation of the insurer might be hazardous to its policyholders, creditors, or the general public, then the commissioner may, after notice and hearing, order the insurer to take such action as may be reasonably necessary to rectify the existing condition, including but not necessarily limited to one or more of the following steps:

- (a) reduce the total amount of present and potential liability for policy benefits by reinsurance;
- (b) reduce the volume of new business being accepted;
- (c) reduce general insurance and commission expenses by specified methods;
- (d) suspend or limit the writing of new business for a period of time; or
- (e) increase the insurer's capital and surplus by contribution.

Standards and Criteria for Early Warning

Sec. 3. The board is authorized, by rule and regulations, to fix uniform standards and criteria for early warning that the continued operation of an insurer might be hazardous to its policyholders, creditors, or the general public, and to fix standards for evaluating the financial condition of an insurer, which standards shall be consistent with the purposes expressed in Section 2 of this article.

Arrangements with Other Jurisdictions

Sec. 4. The commissioner is authorized to enter into arrangements or agreements with the insurance regulatory authorities of other jurisdictions concerning the management, volume of business, type of risks to be insured, expenses of operation, plans for reinsurance, rehabilitation, or reorganization, and method of operations of an insurer that is licensed in such other jurisdictions and that is deemed to be in a hazardous financial condition or needful of specific remedies which may be imposed by the commissioner and insurance regulatory authorities of such other jurisdictions.

Additional Authority of Article

Sec. 5. Authority granted by the provisions of this article is in addition to other provisions of law and not in substitution, restriction, or diminution thereof.

[Added by Acts 1975, 64th Leg., p. 1019, ch. 388, § 1, eff. June 19, 1975.]

¹ Article 7.01 et seq.

For text as added by Acts 1975, 64th Leg., p. 457, ch. 194, § 1, see art. 1.30, ante

Art. 1.31. Refunds

This article applies to any tax, fee, or other sum of money, including any interest or penalty, collected or administered by the State Board of Insurance. When the State Board of Insurance determines that any person, firm, or corporation has through mistake of law or fact overpaid or paid erroneously any amount to the state on any tax, fee, or other sum of money, including any interest or penalty, collected or administered by the State Board of Insurance, the State Board of Insurance may refund such payment by warrant on the state treasury from any funds appropriated for such purpose. This article shall not

apply to any payment of tax made pursuant to Articles 4769, 7064, and 7064a of the Revised Civil Statutes of Texas, 1925.

[Added by Acts 1979, 66th Leg., p. 191, ch. 100, § 1, eff. May 2, 1979.]

CHAPTER TWO. INCORPORATION OF INSURANCE COMPANIES

Art. 2.10. Investment of Funds in Excess of Minimum Capital and Minimum Surplus

No company except any writing life, health and accident insurance, organized under the laws of this state, shall invest its funds over and above its minimum capital and its minimum surplus, as provided in Article 2.02, except as otherwise provided in this Code, in any other manner than as follows:

1. As provided for the investment of its minimum capital and its minimum surplus in Article 2.08;

2. In bonds or other evidences of debt which at the time of purchase are interest-bearing and are issued by authority of law and are not in default as to principal or interest, of any of the States of the United States or in the stock of any National Bank, in stock of any State Bank of Texas whose deposits are insured by the Federal Deposit Insurance Corporation; provided, however, that if said funds are invested in the stock of a State Bank of Texas that not more than thirty-five per cent (35%) of the total outstanding stock of any one (1) State Bank of Texas may be so purchased by any one (1) insurance company; and provided further, that neither the insurance company whose funds are invested in said bank stock nor any other insurance company may invest its funds in the remaining stock of any such State Bank;

3. In bonds or first liens or first mortgages upon unencumbered real estate in this state or in any other state, country or province in which such company may be duly licensed to conduct an insurance business, the title to which is valid and the market value of which is not less than forty per cent (40%) more than the amount loaned thereon. If any part of the value of such real estate is in buildings, such buildings shall be insured against loss by fire for at least sixty per cent (60%) of the value thereof provided that the insurance coverage need not exceed the outstanding balance owed to the lending company when the outstanding balance falls below sixty per cent (60%) of the value of the buildings, the loss clause shall be payable to such company. The provisions of this paragraph with respect to the value of real estate compared to the amount loaned thereon shall not apply to loans secured by real estate which are insured by the Federal Housing Administrator or successors. The valuation of such real estate

where the loan is not insured by the Federal Housing Administrator shall be by appraisal by two (2) or more competent and disinterested citizens of Texas appointed by the Board of Insurance Commissioners of Texas, the cost and expense of such appraisal to be paid by the insurance company to the Board, as amended Acts 1959, 56th Legislature, page 96, Chapter 49, Section 1.

4. In bonds or other interest-bearing evidences of debt of any county, municipality, road district, turnpike district or authority, water district, any subdivision of a county, incorporated city, town, school district, sanitary or navigation district, any municipally owned revenue water system, sewer system or electric utility company where special revenues to meet the principal and interest payments of such municipally owned revenue water system, sewer system or electric utility company bonds or other evidences of debt shall have been appropriated, pledged or otherwise provided for by such municipality. Provided, before bonds or other evidences of debt of navigation districts shall be eligible investments such navigation district shall be located in whole or in part in a county containing a population of not less than 100,000 according to the last preceding Federal Census; and provided further, that the interest due on such navigation bonds or other evidences of debt of navigation districts must never have been defaulted;

5. In the stocks, bonds, debentures, bills of exchange or other commercial notes or bills and securities of any solvent dividend paying corporation at time of purchase, incorporated under the laws of this state, or of any other State of the United States, or of the United States, which has not defaulted in the payment of any of its obligations for a period of five (5) years, immediately preceding the date of the investment; provided such funds may not be invested in the stock of any oil, manufacturing or mercantile corporation organized under the laws of this state, unless such corporation has at the time of investment a net worth of not less than \$250,000.00 nor in the stock of any oil, manufacturing or mercantile corporation, not organized under the laws of this state, unless such corporation has a combined capital, surplus and undivided profits of not less than \$2,500,000.00; provided further:

(a) Any such insurance company may invest its funds over and above its minimum capital stock, its minimum surplus, and all reserves required by law, in the stocks, bonds or debentures of any solvent corporation organized under the laws of this state, or of any other State of the United States, or of the United States.

(b) No such insurance company shall invest any of its funds in its own stock or in any stock on account of which the holders or owners

thereof may, in any event, be or become liable to any assessment, except for taxes.

(c) No such insurance company shall invest any of its funds in stocks, bonds or other securities issued by a corporation if a majority of the stock having voting powers of such issuing corporation is owned, directly or indirectly, by or for the benefit of one or more officers or directors of such insurance company; provided, however, that this Section shall not apply to any insurance company which has been in continuous operation for five (5) years.

6. In loans upon the pledge of any mortgage, stock, bonds or other evidence of indebtedness acceptable as investments under the terms of this Article, if the current value of such mortgage, stock, bonds or other evidence of indebtedness is at least twenty-five per cent (25%) more than the amount loaned thereon;

7. In interest-bearing notes or bonds of The University of Texas issued under and by virtue of Chapter 40, Acts of the 43rd Legislature, Second Called Session;¹

8. In real estate to the extent only as elsewhere authorized by this Code;

9. In equipment trust obligations or certificates that are adequately secured or in other adequately secured instruments evidencing an interest in transportation equipment in whole or in part within the United States and a right to receive determined portions of rental, purchase, or other fixed obligatory payments for the use or purchase of the transportation equipment;

10. In insured accounts and evidences of indebtedness as defined and limited by Section 1, Chapter 618, page 1356, Acts of the 47th Legislature;² in shares or share accounts as authorized in Section 1, page 76, Acts 1939, 46th Legislature;³ in insured or guaranteed obligations as authorized in Chapter 230, page 315, Acts 1945, 49th Legislature;⁴ in bonds issued under the provisions authorized by Section 9, Chapter 231, page 774, Acts 1933, 43rd Legislature;⁵ in bonds under authority of Section 1, Chapter 1, page 427, Acts 1939, 46th Legislature;⁶ in bonds and other indebtedness as authorized in Section 1, Chapter 3, page 494, Acts 1939, 46th Legislature;⁷ in "Municipal Bonds" issued under and by virtue of Chapter 280, Acts 1929, 41st Legislature;⁸ or in bonds as authorized by Section 5, Chapter 122, page 219, Acts 1949, 51st Legislature; or in bonds as authorized by Section 10, Chapter 159, page 326, Acts 1949, 51st Legislature;⁹ or in bonds as authorized by Section 19, Chapter 340, page 655, Acts 1949,¹⁰ 51st Legislature;¹¹ or in bonds as authorized by Section 10, Chapter 398, page 737, Acts 1949, 51st Legislature;¹² or in bonds as authorized by Section 18, Chapter 465, page 855, Acts 1949, 51st Legislature;¹³ or in

shares or share accounts authorized in Chapter 534, page 966, Acts 1949, 51st Legislature;¹⁴ or in bonds as authorized by Section 24, Chapter 110, page 198, Acts 1949, 51st Legislature;¹⁵ together with such other investments as are now or may hereafter be specifically authorized by law.

[Amended by Acts 1979, 66th Leg., p. 325, ch. 151, § 1, eff. May 11, 1979; Acts 1979, 66th Leg., p. 1885, ch. 762, § 1, eff. June 18, 1979.]

- ¹ Civil Statutes, art. 2603d (repealed).
- ² Civil Statutes, art. 842a.
- ³ Civil Statutes, art. 881a-24 (repealed; see, now, Civil Statutes, art. 852a, §§ 6.11, 6.12).
- ⁴ Civil Statutes, art. 842a-1.
- ⁵ Civil Statutes, art. 1187a, § 9.
- ⁶ Civil Statutes, art. 1269k-1.
- ⁷ Civil Statutes, art. 5890c (repealed; see, now, art. 5931-11).
- ⁸ Civil Statutes, art. 7880-19a (repealed; see, now, Water Code, §§ 51.038, 51.039).
- ⁹ Civil Statutes, art. 6795b-1, § 7(b).
- ¹⁰ Civil Statutes, art. 8280-134, § 10 (see, now, Water Auxiliary Laws, Table).
- ¹¹ Civil Statutes, art. 8280-137, § 19 (see, now, Water Auxiliary Laws, Table).
- ¹² Civil Statutes, art. 8280-138, § 10 (see, now, Water Auxiliary Laws, Table).
- ¹³ Civil Statutes, art. 8280-139, § 18 (see, now, Water Auxiliary Laws, Table).
- ¹⁴ Civil Statutes, art. 881a-24 (repealed; see, now, Civil Statutes, art. 852a, §§ 6.11, 6.12).
- ¹⁵ Civil Statutes, art. 8280-133, § 24 (see, now, Water Auxiliary Laws, Table).

CHAPTER THREE. LIFE, HEALTH AND ACCIDENT INSURANCE

SUBCHAPTER A. TERMS DEFINED; DOMESTIC COMPANIES

Article

- 3.10A. Reinsurance Ceded to Nonadmitted Reinsurers.
- 3.14. Repealed.

SUBCHAPTER D. POLICIES AND BENEFICIARIES

- 3.44b. Standard Non-forfeiture Law for Individual Deferred Annuities.

SUBCHAPTER E. GROUP; INDUSTRIAL AND CREDIT INSURANCE

- 3.50-2. Employees Uniform Group Insurance Benefits Act.
- 3.50-3. Texas State College and University Employees Uniform Insurance Benefits Act.
- 3.51-5. Payments of Group Life and Health Insurance Premiums for Retired Employees of the Texas Central Education Agency, the Texas Rehabilitation Commission, the Texas Department of Mental Health and Mental Retardation, the Texas Youth Council, a Texas Senior College or University, and the Coordinating Board, Texas College and University System.
- 3.51-6. Group and Blanket Accident and Health Insurance.
- 3.51-7. Payments of Additional Death Benefits for Retired Appointed Officers and Employees of the Teacher Retirement System of Texas, and the Texas Central Education Agency, and the Texas Schools for the Blind and Deaf.
- 3.51-7. Continuation of Group Life and Group Accident and Health Insurance During Labor Dispute.

SUBCHAPTER A. TERMS DEFINED; DOMESTIC COMPANIES

Art. 3.10. May Reinsure

Any domestic company may reinsure in any solvent assuming insurer, any risk or part of a risk which it may assume; provided, however, no credit

for the reserve liability on such reinsurance may be taken by the ceding insurer unless the assuming insurer is licensed to do business in this state, or such reinsurance and the ceding insurer and assuming insurer comply with the provisions of Article 3.10A of this code, and, provided further, no company operating under Section 2(a) of Article 3.02 shall reinsure any risk or part of a risk with any insurer which is not licensed to do business in this state. No such domestic company shall have the power to reinsure its entire outstanding business unless the assuming insurer is licensed in this state and until the contract therefor shall be submitted to the Commissioner of Insurance of Texas and approved by him as protecting fully the interests of all policy holders.

[Amended by Acts 1979, 66th Leg., p. 1167, ch. 567, § 1, eff. Aug. 27, 1979.]

Art. 3.10A. Reinsurance Ceded to Nonadmitted Reinsurers

(a) No credit shall be given in the accounting and financial statements, either as an asset or a deduction from liability, of any domestic ceding insurer on account of any reinsurance of insurance policies or reinsurance reserved ceded to an assuming insurer which is not licensed to do business in this state, unless:

(1) pursuant to a written agreement between the ceding insurer and the assuming insurer, assets equal to the reserves required to be established by the ceding insurer on such reinsured business are deposited by or are withheld from the assuming insurer and are in the custody of the ceding insurer as security for the payment of the assuming insurer's obligations under the reinsurance agreement, and such assets are held subject to withdrawal by and under the control of the ceding insurer; or

(2) pursuant to a written agreement between the ceding insurer and the assuming insurer, assets equal to the reserves required to be established by the ceding insurer on such reinsurance business are either placed in a trust account for such purpose with a bank domiciled in this state which is a member of the Federal Reserve System or are represented by an irrevocable letter of credit to the benefit of the ceding insurer from such a bank, and if withdrawals from such trust account or reduction in the amount of the letter of credit cannot be made without the consent of the ceding insurer except for those amounts which are in excess of the reserves required to be established by the ceding insurer.

(b) As used in this article, the term "assets" refers to any asset or investment authorized by this code to be counted for reserve fund purposes in the financial statements of domestic life, health, and accident insurance companies.

(c) The commissioner of insurance shall have the right to examine any of such reinsurance agreements, deposit arrangements, or letters of credit at any time in accordance with the authority to make examinations of insurance companies as conferred by other provisions of this code.

(d) The State Board of Insurance may promulgate and adopt such rules and regulations as may be deemed necessary to assure uniform standards for such deposit arrangements, trust agreements, letters of credit, and reinsurance agreements, consummated under the provisions of this article.

[Added by Acts 1979, 66th Leg., p. 1168, ch. 567, § 2, eff. Aug. 27, 1979.]

Art. 3.12. Compensation of Officers and Others; Including Pensions

(a) No "domestic" company shall pay any salary, compensation or emolument which, together with any salary, compensation or emolument from an affiliated "domestic" company, amounts in any year to more than Fifty Thousand Dollars (\$50,000) to any officer, trustee or director thereof, or to any person, firm or corporation, unless such payment be first authorized by a vote of the board of directors of such company, or by a committee of such board charged with the duty of authorizing such payments. The limitation as to time contained herein shall not be construed as preventing any "domestic" company from entering into contracts with its agents for the payment of renewal commissions.

[See Compact Edition, Volume 2 for text of (b) and (c)]

[Amended by Acts 1979, 66th Leg., p. 1810, ch. 737, § 1, eff. Aug. 27, 1979.]

Art. 3.14. Repealed by Acts 1975, 64th Leg., p. 464, ch. 198, § 2, eff. May 15, 1975

See, now, art. 21.39-B.

SUBCHAPTER C. RESERVES AND INVESTMENTS

Art. 3.28. Standard Valuation Law

[See Compact Edition, Volume 2 for text of 1 to 3]

Minimum Standard for Valuation of Policies and Contracts

Sec. 4. (a) This Section shall apply to only those policies and contracts issued on or after the operative date of Article 3.44a (the Standard Non-forfeiture Law), except as otherwise provided in Subsection (b) of this Section for coverages purchased on or after the operative date of such subsection under group annuity and pure endowment contracts issued prior to such operative date. Except as otherwise provided in Subsection (b) of this Section, the minimum standard for the valuation of all such policies and contracts shall be the commissioners reserve valuation method defined in Section 5, three and

one-half per cent (3½%) interest for policies and contracts issued prior to June 14, 1973, four per cent (4%) interest for policies and contracts, except annuity and pure endowment contracts, issued on or after June 14, 1973, and prior to the effective date of this amendatory Act of 1977, five and one-half per cent (5½%) interest for single premium life insurance policies, and four and one-half per cent (4½%) interest for all other such policies and contracts, except annuity and pure endowment contracts, issued on and after the effective date of this amendatory Act of 1977, and the following tables:

(1) For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies, the Commissioners 1941 Standard Ordinary Mortality Table for such policies issued prior to the operative date of Section 6 of Article 3.44a (the Standard Non-forfeiture Law) as amended, and the Commissioners 1958 Standard Ordinary Mortality Table for such policies issued on or after such operative date; provided that for any category of such policies issued on female risks all modified net premiums and present values referred to in this Article may be calculated according to an age not more than three (3) years younger than the actual age of the insured for policies issued prior to the effective date of this amendatory Act of 1977 and not more than six (6) years younger than the actual age of the insured for policies issued on and after the effective date of this amendatory Act of 1977.

[See Compact Edition, Volume 2 for text of 4(a)(2) to (7)]

(b) The minimum standard for the valuation of all individual annuity and pure endowment contracts issued on or after the operative date of this Section 4(b), as defined herein, and for all annuities and pure endowments purchased on or after such operative date under group annuity and pure endowment contracts, regardless of the issue date of such contracts, shall be the commissioners reserve valuation method defined in Section 5(A) or 5(B) and the following tables and interest rates:

(1) For individual annuity and pure endowment contracts issued prior to the effective date of this amendatory Act of 1977, excluding any disability and accidental death benefits in such contracts, the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the State Board of Insurance, and six per cent (6%) interest for single premium immediate annuity contracts, and four per cent (4%) interest for all other individual annuity and pure endowment contracts.

(2) For individual single premium immediate annuity contracts issued on or after the effective

date of this amendatory Act of 1977 and prior to January 1, 1990, excluding any disability and accidental death benefits in such contracts, the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the State Board of Insurance, and seven and one-half per cent (7½%) interest. For such contracts issued on or after January 1, 1990, excluding any disability and accidental death benefits in such contracts, the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the State Board of Insurance, and six per cent (6%) interest.

(3) For individual annuity and pure endowment contracts issued on or after the effective date of this amendatory Act of 1977, other than single premium immediate annuity contracts, excluding any disability and accidental death benefits in such contracts, the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the State Board of Insurance, and five and one-half per cent (5½%) interest for single premium deferred annuity and pure endowment contracts and four and one-half per cent (4½%) interest for all other such individual annuity and pure endowment contracts.

(4) For all annuities and pure endowments purchased prior to the effective date of this amendatory Act of 1977 under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 Group Annuity Mortality Table, or any modification of this table approved by the State Board of Insurance, and six per cent (6%) interest.

(5) For all annuities and pure endowments purchased on or after the effective date of this amendatory Act of 1977 and prior to January 1, 1990, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 Group Annuity Mortality Table, or any modification of this table approved by the State Board of Insurance, and seven and one-half per cent (7½%) interest.

For all annuities and pure endowments purchased on or after January 1, 1990, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 Group Annuity Mortality Table, or any modification of this table approved by the State Board of Insurance, and six per cent (6%) interest.

After June 14, 1973, any company may file with the State Board of Insurance a written notice of its election to comply with the provisions of this subsection after a specified date before January 1, 1979, which shall be the operative date of this subsection for such company; provided, a company may elect a

different operative date for individual annuity and pure endowment contracts from that elected for group annuity and pure endowment contracts. If a company makes no such election, the operative date of this Subsection (b) for such company shall be January 1, 1979.

Reserves for Life Insurance and Endowment Benefits of Policies Providing Uniform Amount of Insurance and Requiring Payment of Uniform Premiums

Sec. 5. (A) Except as otherwise provided in Section 5(B), reserves according to the commissioners reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the policy, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of (a) over (b), as follows:

[See Compact Edition, Volume 2 for text of 5(A)(a) and (b)]

Reserves according to the commissioners reserve valuation method for (1) life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums, (2) group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code of 1954, as amended (Title 26, United States Code, as amended), (3) disability and accidental death benefits in all policies and contracts, and (4) all other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts, shall be calculated by a method consistent with the principles of the preceding paragraph, except that any extra premiums charged because of impairments or special hazards shall be disregarded in the determination of modified net premiums. Such impairments and special hazards may also be disregarded in determining present value of benefits.

(B) This subsection shall apply to all annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation,

established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code, as now or hereafter amended.

Reserves according to the commissioners annuity reserve valuation method for benefits under annuity and pure endowment contracts, excluding any disability and accidental death benefits in such contracts, shall be the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed non-forfeiture benefits, provided by such contracts at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations, required by the terms of such contract, that become payable prior to the end of such respective contract year. The future guaranteed benefits shall be determined by using the mortality table, if any, and the interest rate or rates specified in such contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of such contracts to determine non-forfeiture values.

Aggregate Reserves for All Life Policies; Minimum Amount

Sec. 6. In no event shall a company's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, issued on or after the operative date of Article 3.44a (the Standard Non-forfeiture Law), be less than the aggregate reserves calculated in accordance with the methods set forth in Sections 5 and 8 and the mortality table or tables and rate or rates of interest used in calculating non-forfeiture benefits for such policies.

Calculation of Reserves for Policies and Contracts Issued Prior to Operative Date of Standard Non-forfeiture Law; Standards

Sec. 7. Reserves for all policies and contracts issued prior to the operative date of Article 3.44a (the Standard Non-forfeiture Law) may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by the laws in effect immediately prior to such date.

Reserves for any category of policies, contracts or benefits as established by the State Board of Insurance, issued on or after the operative date of Article 3.44a (the Standard Non-forfeiture Law), may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for such category than those calculated

according to the minimum standard herein provided, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be higher than the corresponding rate or rates of interest used in calculating any non-forfeiture benefits provided for therein.

Any such company which at any time shall have adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard herein provided may, with the approval of the State Board of Insurance, adopt any lower standard of valuation, but not lower than the minimum herein provided.

Deficiency Reserve

Sec. 8. If in any contract year the gross premium charged by any life insurance company on any policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve thereon but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for such policy or contract is the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for such policy or contract, or the reserve calculated by the method actually used for such policy or contract but using the minimum standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium.

[Amended by Acts 1977, 65th Leg., p. 2098, ch. 842, §§ 1 to 5, eff. Aug. 29, 1977.]

Art. 3.34. Texas Securities

The term "Texas Securities," as used in this Chapter, shall be held to include the following:

PART I. INVESTMENTS.

[See Compact Edition, Volume 2 for text of Part I, 1 to 6]

7. Federal Farm Loan Bonds.

Bonds issued under and by virtue of the Federal Farm Loan Act approved July 17, 1916,¹ where such bonds are issued against and secured by promissory notes or other obligations, the payment of which is secured by mortgage, deed of trust, or other valid lien upon unencumbered real estate situated in this state.

8. Corporate First Mortgage Bonds, Notes, and Debentures.

(1) First mortgage bonds or first lien notes secured by real estate or personal property:

(a) of any solvent corporation incorporated under the laws of this state and doing business in this state which has not defaulted in the

payment of any debt within five (5) years next preceding such investment; or

(b) of any solvent corporation incorporated under the laws of this state and doing business in this state which has not been in existence for five (5) consecutive years but whose first mortgage bonds or first lien notes on real estate or personal property are fully guaranteed by a solvent corporation which has not defaulted in the payment of any debt within five (5) years next preceding such investment; or

(c) of any solvent corporation incorporated under the laws of this state and doing business in this state which has not been in existence for five (5) consecutive years but whose first mortgage bonds or first lien notes on real estate or personal property are secured by leases or other contracts executed by a solvent corporation which has not defaulted in the payment of any debt within five (5) years next preceding such investment, the required rentals or other required payments under which leases or other contracts are sufficient in any and every circumstance to pay interest and principal when due on such bonds or notes; or

(d) of any solvent corporation incorporated under the laws of this state and doing business in this state which has not been in existence for five (5) consecutive years next preceding such investment, provided such corporation has succeeded to the business and assets and has assumed the liabilities of another corporation, and which corporation and the corporation so succeeded have not defaulted in the payment of any debt within five (5) years next preceding such investment; or

(2) in the notes or debentures of any such corporation incorporated under the laws of this state and doing business in this state with a net worth of not less than Five Million Dollars (\$5,000,000) where no prior lien exists in excess of 10 percent (10%) of the net worth of such corporation, and, under the provisions of the indenture providing for the issuance of such notes or debentures, no such prior lien can be created in excess of 10 percent (10%) of the net worth of such corporation, against the real or personal property of such corporation at the time the notes or debentures were issued; or

(3) in the notes or debentures of any solvent corporation incorporated under the laws of this state and doing business in this state which has not been in existence for five (5) consecutive years where no prior lien exists, and, under the provisions of the indenture providing for the issuance of such notes or debentures, no such prior lien can be created against the real or personal property of such corporation at the time the notes or debentures

were issued, but whose notes or debentures are secured by leases or other contracts executed by a solvent corporation which has not defaulted in the payment of any debt within five (5) years next preceding such investment and has a net worth of at least Five Million Dollars (\$5,000,000), the required rentals or other required payments under which leases or other contracts are sufficient in any and every circumstance to pay interest and principal when due on such bonds or notes or whose notes or debentures are fully guaranteed by any such corporation; or (4) in the bonds, bills of exchange, or other commercial notes or bills of any solvent corporation incorporated under the laws of and doing business in this state which has not defaulted in the payment of any debt within five (5) years next preceding such investment, or of any solvent corporation incorporated under the laws of and doing business in this state which has not been in existence for five (5) consecutive years next preceding such investment, provided such corporation has succeeded to the business and assets and has assumed the liabilities of another corporation, and which corporation and the corporation so succeeded have not defaulted in the payment of any debt within five (5) years next preceding such investment, and which corporation has a net worth of not less than Fifty Million Dollars (\$50,000,000) and has no long-term indebtedness in excess of its net worth, as evidenced by its latest published financial statements or other financial data available to the public; but in no event shall the amount of such investment in the bonds, notes, debentures, or other obligations or any one such corporation exceed five per cent (5%) of the admitted assets of the insurance company making such investment.

[See Compact Edition, Volume 2 for text of Part I, 9]

10. Bank and Bank Holding Company Stocks.

The stock of state banks incorporated under the laws of this state and national banks domiciled and doing business in this state that are members of the Federal Deposit Insurance Corporation and the stock of bank holding companies as defined in the Bank Holding Company Act of 1956 (12 U.S.C.A. Section 1841 et seq.), as amended by the Bank Holding Company Act Amendments of 1970 (12 U.S.C.A. Section 1841 et seq., 1971 et seq.) enacted by the United States Congress, and which are incorporated under the laws of this state and doing business in this state; provided, however, that no such investment shall exceed twenty per cent (20%) of the total outstanding shares of the stock of any such bank or bank holding company, and in no event shall the amount of investment in any such stock exceed ten per cent (10%) of the admitted assets of the insurance company making such investment.

The values of any stock owned by an insurance company in a bank holding company which is directly attributable to an original investment by the insurance company in the stock of either a state bank incorporated in Texas or a national bank domiciled and doing business in Texas, which bank subsequently became the bank holding company as previously defined, shall be treated as Texas Securities hereunder even though such bank holding company is not incorporated in Texas.

11. Debt Obligations of Corporations Not Otherwise Qualified.

In addition to those investments otherwise qualifying as Texas Security under other provisions of this Act, investments in corporate first mortgage bonds, debentures, and other debt obligations of any solvent, dividend-paying corporation, which has not defaulted in the payment of any debt within five (5) years next preceding such investment, or of any solvent dividend corporation which has not been in existence for five (5) consecutive years, but whose corporate obligations are fully guaranteed by a solvent, dividend-paying corporation which has not defaulted in the payment of any debt within five (5) years next preceding such investment, and which issuing corporation meets at least one of the following criteria, shall be considered as Texas Securities for the purposes of this Act:

- a. more than fifty per cent (50%) of the corporation's total assets are "Texas Securities" as herein defined,
- b. more than fifty per cent (50%) of the corporation's total gross receipts are from sales which accrued within the State of Texas,
- c. more than fifty per cent (50%) of the corporation's employees perform their duties and jobs within the State of Texas.

An insurer claiming as a "Texas Security" one of the foregoing defined investments shall have the burden of proving that such investment meets one of the three above-listed tests.

PART II. LOANS.

[See Compact Edition, Volume 2 for text of Part II, 1 to 5]

6. Insurance Requirements on Improvements Securing First Liens on Real Estate.

If any part of the value of buildings is required to be included in the value of such real estate to attain the minimum authorized value of the security, such buildings shall be insured against loss by fire in a company authorized to transact business in the State of Texas for at least fifty per cent (50%) of the value thereof; provided, that the insurance coverage need not exceed the outstanding balance owed to the lending company when

the outstanding balance falls below fifty per cent (50%) of the value of the buildings. The loss clause shall be payable to such company.

[See Compact Edition, Volume 2 for text of Part II, 7]

PART III. REAL ESTATE.

All real estate situated in this state now owned and held and all real estate situated in this state hereafter acquired, owned and held by such insurance company in accordance with the provisions of this Chapter.

PART IV. MISCELLANEOUS.

1. Bank Deposits.

For the purpose of this Act, "Texas Securities" shall include the average daily balance of cash on deposit, subject to check and withdrawal, in a state or national chartered bank which has qualified for Federal Deposit Insurance Corporation coverage, provided the bank and the deposits are both located within the State of Texas.

The amount to be included in the average daily balance of cash on deposit shall be the sum of the balances on the bank's books at the close of each day, including weekends and/or holidays, divided by the total days of the year.

Each tax return reflecting an amount of average daily balance as a Texas Security must be supported by a sworn certification as to the amount, which shall have been executed by an officer of the bank where the deposits were maintained.

Nonnegotiable certificates of deposit held in a state or national chartered bank, which is insured by Federal Deposit Insurance Corporation coverage, shall be defined as a "Texas Security" and not subject to the foregoing restriction if the issuing bank and the deposit is located within the State of Texas and if the funds evidenced by the certificates have been on deposit for at least one year or such funds are committed by the terms of the certificate of deposit for one or more years, or such funds represent the renewal of a certificate of deposit which previously qualified under this provision.

Negotiable certificates of deposit may be treated the same as nonnegotiable if they are held to maturity and the funds evidenced by the certificates have been on deposit for at least one year, or such funds are committed by the terms of the certificate of deposit for one or more years, or such funds represent the renewal of a certificate of deposit which previously qualified under this provision. If not held to maturity, the negotiable certificate shall be included in the average daily balance of cash on deposit and subject to the

average daily balance of cash on deposit provisions herein. The amount to be included in the numerator of the formula for the calculation of the average daily balance of cash on deposit shall be the sum of the days on deposit, including weekends and holidays, multiplied by the face amount of the certificate of deposit.

[See Compact Edition, Volume 2 for text of Part III, 2 and 3]

4. Valuation of Texas Securities and/or Similar Securities.

The value of the foregoing Texas Securities, exclusive of cash on deposit, shall be limited to the original cost of common or preferred stock, the amortized value of bonds, debentures, warrants, and other interest-bearing indebtedness, and the unpaid principal balance of mortgage loan notes and collateral loan notes. The improvements situated on Texas real estate held under Articles 3.40 and 3.40-1, Insurance Code, 1951, as amended, shall be valued at the depreciated cost less any outstanding indebtedness. The land shall be valued at the original cost less any outstanding indebtedness. No increases in value to either land or improvements by reason of appraisals will be allowed as a part of the "Texas Securities" for the purposes of this Article.

[Amended by Acts 1977, 65th Leg., p. 1982, ch. 793, § 1, eff. Jan. 1, 1978.]

¹ 12 U.S.C.A. § 641 et seq. (repealed).

Section 2 of the 1977 Act provided for a January 1, 1978 effective date.

Art. 3.39. Authorized Investments and Loans for "Domestic" Life Insurance Companies

PART I. AUTHORIZED INVESTMENTS

A life insurance company organized under the laws of this state may invest its several funds, identified as follows, in the following securities, respectively, and none other:

A. ANY OF ITS FUNDS AND ACCUMULATIONS

1. U.S. Bonds and Obligations Guaranteed by the United States.

The bonds, treasury bills, notes and certificates of indebtedness of the United States or any other obligation or security fully guaranteed as to principal and interest by the full faith and credit of the United States.

2. Canadian Bonds.

The bonds of the Dominion of Canada or any province or city of the Dominion of Canada.

3. State, County and City Bonds.

The bonds of any state, county, or city of the United States.

4. County, City and School District Bonds.

Any bonds or interest-bearing warrants issued by authority of law by any county, city, town, school district or other municipality or subdivision, which is now or hereafter may be constituted or organized under the laws of any state in the United States, and which is authorized to issue such bonds and warrants under the Constitution and laws of the state in which it is situated; provided legal provision has been made by a tax to meet said obligations.

5. Bonds of Educational Institutions.

Any bonds or interest-bearing warrants issued by authority of law by any educational institution which is now or hereafter may be constituted or organized under the laws of any state in the United States, and which is authorized to issue such bonds and warrants under the Constitution and laws of the state in which it is situated; provided legal provision has been made by a tax to meet said obligations.

6. Revenue Bonds, etc., of Educational Institutions.

The bonds and warrants, including revenue and special obligations, of any educational institution located in any state in the United States when special revenue or income to meet the principal and interest payments as they accrue upon such obligations shall have been appropriated, pledged or otherwise provided by such educational institution.

7. Bonds and Warrants of Municipally Owned Systems.

The bonds and warrants payable from designated revenues of any city, county, drainage district, road district, town, township, village or other civil administration, agency, authority, instrumentality, or subdivision which is now or hereafter may be constituted or organized under the laws of any state in the United States, and which is authorized to issue such bonds and warrants under the Constitution and laws of the state in which it is situated; provided special revenue or income to meet the principal and interest payments as they accrue upon such obligations shall have been appropriated, pledged or otherwise provided by such municipality.

8. Paving Certificates.

Any paving certificates or other certificates or evidence of indebtedness issued by any city in any state in the United States and secured by a first lien on real estate.

9. Bonds Issued Under Federal Farm Loan Act.

Bonds issued under and by virtue of the Federal Farm Loan Act approved July 17, 1916 (12 U.S. C.A. Sec. 641 et seq.), when such bonds are issued against and secured by promissory notes, or obli-

gations, the payment of which is secured by mortgage, deed of trust, or other valid lien upon unincumbered real estate situated in this state.

10. Corporate First Mortgage Bonds, Notes and Debentures.

(1) First mortgage bonds or first lien notes on real estate or personal property: (a) of any solvent corporation which has not defaulted in the payment of any debt within five (5) years next preceding such investment; or (b) of any solvent corporation which has not been in existence for five (5) consecutive years but whose first mortgage bonds or first lien notes on real estate or personal property are fully guaranteed by a solvent corporation which has not defaulted in the payment of any debt within five (5) years next preceding such investment; or (c) of any solvent corporation which has not been in existence for five (5) consecutive years but whose first mortgage bonds or first lien notes on real estate or personal property are secured by leases or other contracts executed by a solvent corporation which has not defaulted in the payment of any debt within five (5) years next preceding such investment, the required rentals or other required payments under which leases or other contracts are sufficient in any and every circumstance to pay interest and principal when due on such bonds or notes; or (d) of any solvent corporation which has not been in existence for five (5) consecutive years next preceding such investment, provided such corporation has succeeded to the business and assets and has assumed the liabilities of another corporation, and which corporation and the corporation so succeeded have not defaulted in the payment of any debt within five (5) years next preceding such investment; or (2) in the notes or debentures of any such corporation with a net worth of not less than Five Million Dollars (\$5,000,000) where no prior lien exists in excess of 10 percent of the net worth of such corporation, and, under the provisions of the indenture providing for the issuance of such notes or debentures, no such prior lien can be created in excess of 10 percent of the net worth of such corporation, against the real or personal property of such corporation at the time the notes or debentures were issued; or (3) in the notes or debentures of any solvent corporation which has not been in existence for five (5) consecutive years where no prior lien exists, and, under the provisions of the indenture providing for the issuance of such notes or debentures, no such prior lien can be created against the real or personal property of such corporation at the time the notes or debentures were issued, but whose notes or debentures are secured by leases or other contracts executed by a solvent corporation which has not defaulted in the payment of any debt within five (5) years next pre-

ceding such investment and has a net worth of at least Five Million Dollars (\$5,000,000), the required rentals or other required payments under which leases or other contracts are sufficient in any and every circumstance to pay interest and principal when due on such bonds or notes, or whose notes or debentures are fully guaranteed by any such corporation; or (4) in the bonds, bills of exchange, or other commercial notes or bills of any solvent corporation which has not defaulted in the payment of any debt within five (5) years next preceding such investment, or of any solvent corporation which has not been in existence for five (5) consecutive years next preceding such investment, provided such corporation has succeeded to the business and assets and has assumed the liabilities of another corporation, and which corporation and the corporation so succeeded have not defaulted in the payment of any debt within five (5) years next preceding such investment, and which corporation has a net worth of not less than Fifty Million Dollars (\$50,000,000) and has no long-term indebtedness in excess of its net worth, as evidenced by its latest published financial statements or other financial data available to the public; but in no event shall the amount of such investment in the bonds, notes, debentures, or other obligations of any one such corporation exceed five percent (5%) of the admitted assets of the insurance company making such investment.

11. Shares of Savings and Loan Associations.

The shares, stock, share accounts or savings accounts, and investment certificates of Savings and Loan Associations doing business in this state where such association has qualified for participation in insurance issued by the Federal Savings and Loan Insurance Corporation; no such investment shall exceed twenty per cent (20%) of the total assets of any such Individual Savings and Loan Association.

12. Bank and Bank Holding Company Stocks.

The stock of banks, either state or national, that are members of the Federal Deposit Insurance Corporation and the stock of bank holding companies as defined in the Bank Holding Company Act of 1956 (12 U.S.C.A. 1841 et seq.) as amended by the Bank Holding Company Act Amendments of 1970 (12 U.S.C.A. 1841 et seq., 1971 et seq.) enacted by the United States Congress; no such investment shall exceed twenty per cent (20%) of the total outstanding shares of the stock of any such bank or bank holding company and in no event shall the amount of investment in any such stock exceed ten per cent (10%) of the admitted assets of the insurance company making such investment.

13. Debentures of Public Utility Corporations.

The debentures of any solvent public utility corporation which has not defaulted in the pay-

ment of any debt within five (5) years next preceding such investment, or of any solvent public utility corporation which has not been in existence for five (5) consecutive years next preceding such investment provided such corporation has succeeded to the business and assets and has assumed the liabilities of another such corporation, and which public utility corporation and public utility corporation so succeeded have not defaulted in the payment of any debt within five (5) years next preceding such investment; provided further, that such public utility corporation shall not have failed in any one of the five (5) years next preceding such investment to have earned, after taxes, including income taxes, and after deducting proper charges for replacements, depreciation and obsolescence, a sum applicable to interest on its outstanding indebtedness equal at least to two times the amount of interest due for that year, or where, in the case of issuance of new debentures, such earnings applicable to interest are equal to at least two times the amount of annual interest on such public utility corporation's obligations after giving effect to such new financing; or, in the case of a public utility corporation which has not been in existence for five (5) consecutive years next preceding such investment but has succeeded to the business and assets and has assumed the liabilities of another such corporation, and which public utility corporation and the public utility corporation so succeeded have not failed in any one of the five (5) years next preceding such investment to have earned, after taxes, including income taxes, and after deducting proper charges for replacements, depreciation and obsolescence, a sum applicable to interest on the outstanding indebtedness equal to at least two times the amount of interest due for that year, to where in the case of issuance of new debentures such earnings applicable to interest are equal to at least two times the amount of annual interest on such public utility corporation's obligations after giving effect to such new financing; but in no event shall the amount of such investment in debentures under this Subdivision exceed five per cent (5%) of the admitted assets of the insurance company making the investment.

14. Preferred Stock of Public Utility Corporations.

The preferred stock of any solvent public utility corporation which has not defaulted in the payment of any debt within five (5) years next preceding such investment, or of any solvent public utility corporation which has not been in existence for five (5) consecutive years next preceding such investment provided such corporation has succeeded to the business and assets and has assumed the liabilities of another corporation, and which public utility corporation and the public utility corpora-

tion so succeeded have not defaulted in the payment of any debt within five (5) years next preceding such investment; provided further, that such public utility corporation shall not have failed in any one of the five (5) years next preceding such investment to have earned a sum applicable to dividends on such preferred stock equal to at least three times the amount of dividends due in that year, or, in the case of issuance of new preferred stock such earnings applicable to dividends are equal at least to three times the amount of the annual dividend requirements after giving effect to such new financing, and where the bonds and debentures are eligible investments for such insurance company; or, in the case of a public utility corporation which has not been in existence for five (5) consecutive years next preceding such investment, but has succeeded to the business and assets and has assumed the liabilities of another such corporation, and which public utility corporation and the public utility corporation so succeeded have not failed in any one of the five (5) years next preceding such investment to have earned a sum applicable to the dividends on such preferred stock equal to at least three times the amount of dividends due in that year, or, in the case of issuance of new preferred stock, such earnings applicable to dividends are equal at least to three times the amount of the annual dividend requirements after giving effect to such new financing, and where the bonds and debentures are eligible investments for such insurance company; provided that any preferred stock so purchased shall be of an issue which is entitled to first claim upon the net earnings of such public utility corporation after deducting such sum as may be necessary to service any outstanding bonds and debentures, but in no event shall the amount of such investment in preferred stock under this Subdivision exceed two and one-half per cent (2-1/2%) of the admitted assets of the insurance company making the investment.

15. Securities Not Otherwise Specified.

Notwithstanding any expressed or implied prohibitions, a life insurance company may, after the effective date of this amendment, invest any of its funds and accumulations in investments which do not otherwise qualify under any other provision of Chapter 3 of the Insurance Code; provided, however, that the amount of any one such investment under this Section shall not exceed one per cent (1%) of the admitted assets of any such life insurance company; and provided further, that the investments authorized by this Section shall not exceed the lesser of (a) five per cent (5%) of its admitted assets, or (b) the amount of its capital and surplus in excess of Two Hundred Thousand Dollars (\$200,000) as shown on its last annual statement preceding the date of the acquisition of

such investment as filed with the State Board of Insurance.

Nothing herein shall be construed or applied so as to authorize any life insurance company to invest any of its funds or accumulations in real property unless already authorized to do so by this Act or some other existing law of the State of Texas.

15A. Other Bonds.

A company may also invest its funds and accumulations in:

(1) bonds issued, assumed, or guaranteed by the Inter-American Development Bank, the International Bank for Reconstruction and Development (the World Bank), and the Asian Development Bank; and

(2) bonds issued, assumed, or guaranteed by the State of Israel.

16. Securities Authorized by Special Acts of the Legislature.

Securities authorized under Articles: 842a; 842a-1; 881a-24; 1187a; 5890c; 6795b-1; 7880-19a; 8247a; 8280-133; 8280-134; 8280-137; 8280-138; and 8280-139 of the Revised Civil Statutes of Texas.

17. Other Securities Specifically Authorized by Law.

(1) Equipment trust obligations or certificates that are adequately secured or other adequately secured instruments evidencing an interest in transportation equipment that is in whole or in part within the United States and a right to receive determined portions of rental, purchase, or other fixed obligatory payments for the use or purchase of the transportation equipment; and

(2) Such other securities as are now or may hereafter be specifically authorized by law.

B. POLICY RESERVES AND SURPLUS

1. Specified Municipal Bonds.

It may invest its policy reserves and surplus over and above its capital in "Municipal Bonds" issued under and by virtue of Chapter 280, Acts 1929, 41st Legislature.

C. CAPITAL, SURPLUS AND CONTINGENCY FUNDS OVER AND ABOVE POLICY RESERVES

It may invest its capital, surplus and contingency funds over and above the amount of its policy reserves in the following securities:

1. Capital Stock, Bonds, and other Obligations of Corporations.

The capital stock, bonds, bills of exchange, or other commercial notes or bills and securities of any solvent corporation which has not defaulted

in the payment of any debt within five (5) years next preceding such investment, or of any solvent corporation which has not been in existence for five (5) consecutive years next preceding such investment, provided such corporation has succeeded to the business and assets and has assumed the liabilities of another corporation, and which corporation and the corporation so succeeded have not defaulted in the payment of any debt within five (5) years next preceding such investment.

2. Bonds or Notes of Educational or Religious Corporations.

The bonds or notes of any educational or religious corporation where provision has been made for the payment of a sufficient amount of the first weekly or monthly revenues thereof to an interest and sinking fund account in a bank or trust company as an independent paying agent.

3. Limitation of Investments.

It may not invest in its own capital stock nor in the stock of any one corporation to any extent more than ten per cent (10%) of the amount of its own capital, surplus, and contingent funds, nor in the stock of any manufacturing corporation with a net worth of less than Twenty-Five Thousand Dollars (\$25,000), nor in the stock of any oil corporation with a net worth of less than Five Hundred Thousand Dollars (\$500,000); provided, however, that it may own and invest not more than twenty-five per cent (25%) of its capital, surplus and contingency funds in the capital stock of one fire and casualty insurance company, provided such investment gives it a majority of the outstanding stock of such fire and casualty insurance company; and provided further, it may additionally invest that portion of its surplus funds which is in excess of the greater amount of either (a) ten per cent (10%) of its admitted assets as determined from its latest annual statement on file with the State Board of Insurance or (b) the minimum capital and surplus requirements for incorporating a life insurance company under Chapter 3 of the Insurance Code, as amended, as it may be amended, in the capital stock, bonds and other obligations of any one or more solvent corporations.

4. Certain Life Income Interests.

(a) Life income interest in an irrevocable express testamentary trust that has as the fee simple recipient of all the corpus of the trust one or more Texas public charities, Texas churches, Texas educational institutions or Texas scientific institutions; provided each recipient is recognized by the Internal Revenue Service of the United States as exempt from pay-

ment of income taxes and provided further that (1) the corpus of any such trust is in whole or in part composed of interests in real estate, stocks, bonds, debentures and other securities of an aggregate total value of not less than \$5,000,000; and (2) the corpus of any such trust produces annual income of not less than \$100,000.

(b) No life insurance company's interest in any such trust shall exceed ten per cent (10%) of its admitted assets.

(c) Before such interest shall be acquired, satisfactory evidence shall be presented to the Commissioner of Insurance as follows:

(1) That the interest is subject to and recognized as transferable,

(2) That the interest is capable of reasonable valuation,

(3) That a market for sale of such interest exists,

(4) That the life income interest is supported by life insurance in an amount not less than its admitted value and in form approved by the Commissioner of Insurance.

(d) In valuing such interest on its books, the life insurance company shall value the interest only on the basis of the lesser of, (1) the recognized market established in accordance with Section (c)(3) above, or (2) the ratio that such fractional life income interest in the income of the trust bears to the total market value of the properties held by the trust that are of the type of property a life insurance company can lawfully acquire under the investment statutes of the State of Texas.

D. CAPITAL, SURPLUS AND CONTINGENCY FUNDS NOT TO EXCEED 10%

1. Capital Stock of Other Insurance Corporations.

It may invest not to exceed ten per cent (10%) of its capital, surplus, and contingency funds, in not more than twenty per cent (20%) of the capital stock of any other insurance company, now or hereafter organized under this Chapter, whose principal business is the reinsurance, either partially or wholly, of risks ceded to it by other life insurance companies. The investment herein authorized may be made by purchase of stock then issued and outstanding or by subscription to and payment for the increase in the capital stock of such reinsurance corporation.

E. MINIMUM CAPITAL AND SURPLUS

1. Requirement as to Investment of Minimum Capital and Surplus.

Notwithstanding other provisions of this Article 3.39 of this Code, the capital and surplus of a

company hereafter organized under Article 3.02 of this Code and the free surplus of a company hereafter organized under Article 11.01 of this Code shall, at the time of incorporation, consist only of lawful money of the United States, or bonds of the United States, or of this state, or of any county or incorporated municipality thereof, or government insured mortgage loans which are otherwise authorized by this Chapter, and shall not include any real estate; provided, however, that fifty per cent (50%) of the minimum capital may be invested in first mortgage real estate loans; and the minimum capital of a company hereafter organized under said Article 3.02 and the minimum free surplus of a company hereafter organized under said Article 11.01 at all times shall be maintained in cash or in the same classes of investments. After the granting of charter the surplus in excess of such One Hundred Thousand Dollars (\$100,000) may be invested as otherwise provided in this Code for Stock Companies.

F. GENERAL

1. Investment in Foreign Securities.

Any such company legally authorized to transact business in a foreign country may invest in the same kind of securities of said country as hereinbefore authorized in the United States of America for an aggregate amount not exceeding the reserve on the business in force in said country.

2. Investments to be Approved by Board of Directors.

No investment shall be made by any such insurance company, unless the same shall first have been authorized by the Board of Directors or by a committee charged with the duty of supervising such investments.

3. Investments of Companies Reinsured.

In any case in which a life insurance company organized under the laws of this state shall reinsure the business and take over the assets of another life insurance company, either domestic or foreign, all investments of such reinsured company that were authorized, when made, by the laws of the state in which it was organized, as proper securities for investment of the funds of a life insurance company, and which are taken over by such reinsuring company, shall be considered as valid securities of such reinsuring company under the laws of this state, provided such investments are approved by the Board of Insurance Commissioners of this state, and the same are taken over on terms satisfactory to said Board; and upon the condition that the Board of Insurance Commissioners shall have the power to require the reinsuring company to dispose of such investments upon such notice as it may deem reasonable.

4. Not to Invest in Stock Subject to Assessment.

No such insurance company shall invest any of its funds in any stock on account of which the holder or owner thereof may in any event be or become liable to any assessment except for taxes.

5. Certain Investment Privileges are Cumulative.

The investment powers conferred by Paragraphs Nos. 11 and 12, Section A, are in addition to those conferred by Paragraphs Nos. 1, 2 and 3, Section C, and are not to be construed as restricting the powers already granted by said Paragraphs Nos. 1, 2 and 3 of Section C and Paragraphs Nos. 11 and 12, Section A, and the powers conferred herein are cumulative with respect to Paragraphs Nos. 1, 2 and 3, Section C, and the powers conferred therein.

PART II. AUTHORIZED LOANS

A life insurance company organized under the laws of this state may loan its several funds identified as follows, taking as collateral security for the payment of such loans the securities named below, and none other.

A. ANY OF ITS FUNDS ACCUMULATIONS

Such company may loan any of its funds and accumulations on the following securities:

1. First Liens Upon Real Estate.

First liens upon real estate, the title to which is valid and provided the amount of the loan does not exceed: (a) seventy-five (75%) per cent of the value of such real estate; or (b) ninety (90%) per cent of the value of such real estate if it contains only a dwelling designed exclusively for occupancy by not more than four families for residential purposes; or (c) ninety-five (95%) per cent of the value of such real estate if it contains only a dwelling designed exclusively for occupancy by not more than four families for residential purposes, and the portion of the unpaid balance of such loan which is in excess of an amount equal to eighty (80%) per cent of such value is guaranteed or insured by a mortgage insurance company qualified to do business in the State of Texas; provided, however, that loans in excess of seventy-five (75%) per cent of the value of such real estate authorized under (b) or (c) hereof shall not be originated by such company; provided, however, that the aggregate amount of loans secured by first liens on real estate to any one corporation, company, partnership, individual, or any affiliated person or group may not exceed ten (10%) per cent of the admitted assets of such insurer, and provided further that the amount of any such single loan secured by a first lien on real estate may not exceed five (5%) per cent of the admitted assets of the insurer. The limitation provided by this subsection shall not apply to any first lien on real

estate where the Commissioner of Insurance finds that: (1) the making or acquiring of such lien is beneficial to and protects the interest of the insurer and (2) no substantial damage to the policyholders and creditors of such insurer appears probable from the taking or acquiring of such lien.

2. First Liens Upon Leasehold Estates.

First liens upon leasehold estates in real property and improvements situated thereon, the title to which is valid; provided that the duration of any loan upon such leasehold estates shall not exceed a period equal to four-fifths ($\frac{4}{5}$) of the then unexpired term of such leasehold estate, provided the unexpired term of the leasehold estate must extend at least ten (10) years beyond the term of the loan, and any such loan shall be payable only in equal monthly, quarterly, semi-annual or annual installments, on principal and interest during a period not exceeding four-fifths ($\frac{4}{5}$) of the then unexpired term of such leasehold estate.

3. Collateral Securities.

Upon any obligation secured collaterally by any such first liens on real estate or leasehold estates.

4. Policy Loans.

Security of its own policies. No loan on any policy shall exceed the reserve values thereof.

5. Other Securities.

It may loan any of its funds and accumulations, taking as collateral to secure the payment of such loan, any of the securities named or referred to in Part 1 of this Article 3.39 above in which it may invest any of its funds and accumulations.

6. Restrictions as to Value of Real Estate Removed Where Loans Insured by the United States.

The foregoing restrictions as to the value of the real estate security compared to the amount loaned thereon and as to the duration of such loans shall not be applied to loans if the entire amount of the indebtedness is insured or guaranteed in any manner by the United States, the Federal Housing Administration pursuant to the National Housing Act of 1934, as amended (12 U.S.C.A. Sec. 1701 et seq.), or by the State of Texas, or, if not wholly insured or guaranteed, the difference between the entire amount of the indebtedness and that portion thereof insured or guaranteed by the United States, the Federal Housing Administration pursuant to the National Housing Act of 1934, as amended, or by the State of Texas, would not exceed the amount of loan permissible under said restrictions.

7. Loans to be Authorized by Board of Directors.

No loan, except policy loans, shall be made by any such insurance company unless the same shall first have been authorized by the Board of Directors or by a committee charged with the duty of supervising such loans.

8. Insurance Requirements.

If any part of the value of buildings is required to be included in the value of such real estate to attain the minimum authorized value of the security, such buildings shall be insured against loss by fire in a company authorized to transact business in the state in which such real estate is located, or in a company recognized as acceptable for such purpose by the insurance regulatory official of the state in which such real estate is located, which insurance shall be in an amount of at least fifty per cent (50%) of the value of such buildings; provided, that the insurance coverage need not exceed the outstanding balance owed to the lending company when the outstanding balance falls below fifty per cent (50%) of the value of the buildings. The loss clause shall be payable to such company.

B. CAPITAL, SURPLUS AND CONTINGENCY FUNDS OVER AND ABOVE POLICY RESERVES

1. Capital Stock, Bonds, and Other Obligations of Solvent Corporations, and Educational or Religious Corporations.

It may loan its capital, surplus, and contingency funds, or any part thereof over and above the amount of its policy reserves, taking as security therefor the capital stock, bonds, bills of exchange, or other commercial notes or bills and the securities of any solvent corporation which has not defaulted in the payment of any debt within five (5) years next preceding such investment; or of any solvent corporation which has not been in existence for five (5) consecutive years next preceding such investment, provided such corporation has succeeded to the business and assets and has assumed the liabilities of another corporation, and which corporation and the corporation so succeeded have not defaulted in the payment of any debt within five (5) years next preceding such investment; or in the bonds or notes of any Educational or Religious Corporation where provision has been made for the payment of a sufficient amount of the first weekly or monthly revenues thereof to an interest and sinking fund account in a bank or trust company as an independent paying agent; provided, the market value of such stock, bills of exchange, or other commercial notes or bills and securities shall be at all times during the continuance of such loan at least fifty per cent (50%) more than the sum loaned thereon; provided that it shall not take as collateral security for any loan its own capital stock, nor shall it take as collateral security for any loan the stock of any one corporation to any extent more than ten per cent (10%) of the amount of its own capital, surplus, and contingency funds, nor shall it take as collateral security for any loan the stock of any manufacturing corporation with a net worth of less than Twenty-

Five Thousand Dollars (\$25,000), nor the stock of any oil corporation with a net worth of less than Five Hundred Thousand Dollars (\$500,000); and provided further, that it shall not take as collateral security for any such loan any stock on account of which the holder or owner thereof may in any event be or become liable to any assessment except for taxes.

[See Compact Edition, Volume 2 for text of Part III]

[Amended by Acts 1975, 64th Leg., p. 1109, ch. 418, § 1, eff. June 19, 1975; Acts 1977, 65th Leg., p. 202, ch. 101, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 327, ch. 151, § 2, eff. May 11, 1979; Acts 1979, 66th Leg., p. 1217, ch. 589, § 1, eff. June 13, 1979.]

Art. 3.40. May Hold Real Estate

Every such insurance company may secure, hold and convey real property only for the following purposes and in the following manner:

[See Compact Edition, Volume 2 for text of 1(a) to (c), 2 to 4]

5. All such real property specified in Subdivisions 2, 3, and 4 of this Article which shall not be necessary for its accommodation in the convenient transactions of its business, except interests in minerals and royalties reserved upon the sale of land acquired under such Subdivisions 2, 3, and 4 hereof, and further excepting interests in producing royalties and producing overriding royalties otherwise acquired, shall be sold and disposed of within five (5) years after the company shall have acquired title to the same, or within five (5) years after the same shall have ceased to be necessary for the accommodation of its business. It shall not hold such property for a longer period, unless it shall procure a certificate from the Board that its interests will suffer materially by the forced sale thereof; in which event the time for the sale may be extended to such time as the Board shall direct in such certificate.

In addition to, and without limitation on, the purposes for which real property may be acquired, secured, held or retained pursuant to other provisions of this Article, every such insurance company may secure, hold, retain and convey production payments, producing royalties and producing overriding royalties as an investment for the production of income; provided, however, that the total amount of all such investments in production payments, producing royalties and producing overriding royalties plus the total amount of investments in home office and branch office properties under Subdivision 1(a) of this Article shall not exceed the total amount permitted by and shall be subject to all of the limitations and restrictions of Subdivisions 1(b) and 1(c) of this Article and for this purpose all investments in production payments, producing royalties and pro-

ducing overriding royalties pursuant to the provisions of this paragraph shall be deemed to be "properties described in Subdivision 1(a)" of this Article; and provided further, that in valuing each such production payment, producing royalty and producing overriding royalty for the purposes of Subdivision 1(c) of this Article the State Board of Insurance may establish such value as being the maximum amount which the company purchasing such production payment, producing royalty and producing overriding royalty could loan against a first lien on such production payment, producing royalty and producing overriding royalty under the provisions of Part II, Section A, Subsection 2 of Article 3.39 of the Insurance Code; and provided further, no such company shall make any investment in such production payments, producing royalties and producing overriding royalties solely as an investment for the production of income if, after making such investment, the total investment of the company at cost in such production payments, producing royalties and producing overriding royalties is in excess of ten per cent (10%) of its admitted assets as of December 31st next preceding the date of such investment. For the purposes of this paragraph, a production payment is defined to mean a right to oil, gas or other minerals in place or as produced that entitles its owner to a specified fraction of production until a specified sum of money, or a specified number of units of oil, gas or other minerals, has been received; a royalty and an overriding royalty are each defined to mean a right to oil, gas and other minerals in place or as produced that entitles the owner to a specified fraction of production without limitation to a specified sum of money, or a specified number of units of oil, gas or other minerals; "producing" is defined to mean producing oil, gas or other minerals in paying quantities, provided that it shall be deemed that oil, gas or other minerals are being produced in paying quantities if a well has been "shut in" and "shut in royalties" are being paid. In the event production in paying quantities should cease from any such royalty interest or overriding royalty interest held by any insurance company, such royalty or overriding royalty shall be sold and disposed of within two (2) years after such production shall have ceased, unless production in paying quantities shall have been resumed, or unless such Insurance Company shall have procured a certificate from the Board that its interests will suffer materially by the forced sale thereof; in which event the sale may be extended to such time as the Board shall direct in such certificate.

[Amended by Acts 1977, 65th Leg., p. 207, ch. 102, § 1, eff. Aug. 29, 1977.]

Section 2 of the 1977 amendatory act provided:

"All laws or parts of laws in conflict with the provisions of this article are repealed to the extent of such conflict only."

SUBCHAPTER D. POLICIES AND BENEFICIARIES

Art. 3.42. Policy Form Approval

(a) No policy, contract or certificate of life, term or endowment insurance, group life or term insurance, industrial life insurance, accident or health insurance, group accident or health insurance, hospitalization insurance, group hospitalization insurance, medical or surgical insurance, group medical or surgical insurance, or fraternal benefit insurance, and no annuity or pure endowment contract or group annuity contract, shall be delivered, issued or used in this state by a life, accident, health or casualty insurance company, a mutual life insurance company, mutual insurance company other than life, mutual or natural premium life insurance company, general casualty company, Lloyds, reciprocal or interinsurance exchange, fraternal benefit society, group hospitalization service or any other insurer, unless the form of said policy, contract or certificate has been filed with the State Board of Insurance and approved by said Board as provided in Paragraph (c) of this Article. Provided, however, that this Article shall not apply to any society, company or other insurer whose activities are by statute exempt from the control of the State Board of Insurance and which is entitled by statute to an exemption certificate from said Board in evidence of its exempt status; provided, further, that this Act shall not be construed to enlarge the powers of any of the insurers subject to this Article.

(b) No application form which is required to be or is attached to the policy, contract or certificate, and no rider or endorsement to be attached to, printed upon or used in connection with any policy, contract or certificate described in Paragraph (a) of this Article shall be delivered, issued or used in this state by any insurer described in Paragraph (a) of this Article unless the form of said application, rider or endorsement has been filed with the State Board of Insurance and approved by said Board as provided in Paragraph (c) of this Article. Each individual accident and sickness insurance policy application form, which is required to be or is attached to the policy, shall comply with the rules and regulations of the Board promulgated pursuant to Subchapter G of this chapter. Provided, however, that this Article shall not apply to riders or endorsements which relate to the manner of distribution of benefits or to the reservation of rights and benefits under such policies, contracts and certificates, and which are used at the request of the holder of the policy, contract or certificate.

(c) Every such filing hereby required shall be made not less than sixty days in advance of any such issuance, delivery, or use. At the expiration of sixty days the form so filed shall be deemed approved by the State Board of Insurance unless prior thereto it has been affirmatively approved or disapproved by

the written order of said Board. The State Board of Insurance may withdraw any such approval at any time. Approval of any such form by such Board shall constitute a waiver of any unexpired portion of the waiting period, or periods, herein provided.

(d) The order of the State Board of Insurance disapproving any such form or withdrawing a previous approval shall state the grounds for such disapproval or withdrawal.

(e) The State Board of Insurance may, by written order, exempt from the requirements of this Article for so long as it deems proper, any insurance document or form specified in such order, to which in its opinion this Article may not practicably be applied, or the filing and approval of which are, in its opinion, not desirable or necessary for the protection of the public.

(f) The State Board of Insurance shall forthwith disapprove any such form, or withdraw any previous approval thereto if, and only if,

(1) It is in any respect in violation of or does not comply with this Code.

(2) It contains provisions which encourage misrepresentation or are unjust, unfair, inequitable, misleading, deceptive or contrary to law or to the public policy of this state.

(3) It has any title, heading or other indication of its provisions which is misleading.

(g)(1) The Board may, after notice and hearing, withdraw any previous approval of an individual accident and sickness insurance policy form if, after consideration of all relevant facts, the Board finds that the benefits provided under such policy form are unreasonable in relation to the premium charged. The Board shall from time to time as conditions warrant, and after notice and hearing, promulgate such reasonable rules and regulations and amendments thereto as are necessary to establish the standard or standards by which any previous approval of a policy form may be withdrawn. Any such rule or regulation shall be promulgated in accordance with Article 3.70-10 of the Texas Insurance Code. Nothing in this section shall be construed as granting the State Board of Insurance any power or authority to determine, fix, prescribe, or promulgate the rates to be charged for any individual accident and sickness insurance policy or policies.

(2) The Board shall require the filing of all rates to be charged for individual accident and sickness policies and may adopt necessary forms to be filed by insurers in conjunction with the annual statement required under Articles 3.07 and 3.20 of this code for reporting the experience on all individual accident and sickness insurance policy forms issued by the insurer so as to determine compliance with Subsection (1).

(h) Appeals from any order of the State Board of Insurance issued under this Article may be taken to the District Court of Travis County, Texas, in accordance with Article 21.44 of Sub-Chapter F of this Insurance Code, or any amendments thereof.

[Amended by Acts 1975, 64th Leg., p. 2208, ch. 703, § 4, eff. June 21, 1975; Acts 1979, 66th Leg., p. 873, ch. 398, § 1, eff. Aug. 27, 1979.]

Art. 3.44a. Standard Non-forfeiture Law

[See Compact Edition, Volume 2 for text of 1 to 4]

Adjusted Premiums

Sec. 5. Except as provided in the third paragraph of this Section, the adjusted premiums for any policy shall be calculated on an annual basis, or at the option of the company on a fully continuous basis provided such basis is consistent with actual policy provisions and the use of such basis is specified therein, and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding any extra premiums charged because of impairments or special hazards, that the present value, at the date of issue of the policy, of all such adjusted premiums shall be equal to the sum of (i) the then present value of the future guaranteed benefits provided for by the policy; (ii) two per cent (2%) of the amount of insurance, if the insurance be uniform in amount, or of the equivalent uniform amount, as hereinafter defined, if the amount of insurance varies with duration of the policy; (iii) forty per cent (40%) of the adjusted premium for the first policy year; (iv) twenty-five per cent (25%) of either the adjusted premium for the first policy year or the adjusted premium for a whole life policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less. Provided, however, that in applying the percentages specified in (iii) and (iv) above, no adjusted premium shall be deemed to exceed four per cent (4%) of the amount of insurance or uniform amount equivalent thereto. The date of issue of a policy for the purpose of this Section shall be the date as of which the rated age of the insured is determined.

In the case of a policy providing an amount of insurance varying with duration of the policy, the equivalent uniform amount thereof for the purpose of this Section shall be deemed to be the uniform amount of insurance provided by an otherwise similar policy, containing the same endowment benefit or benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the date of issue as the benefits under the policy; provided, however, that in

the case of a policy providing a varying amount of insurance issued on the life of a child under age ten, the equivalent uniform amount may be computed as though the amount of insurance provided by the policy prior to the attainment of age ten were the amount provided by such policy at age ten.

The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provision shall be equal to (a) the adjusted premiums for an otherwise similar policy issued at the same age without such term insurance benefits, increased, during the period for which premiums for such term insurance benefits are payable, by (b) the adjusted premiums for such term insurance, the foregoing items (a) and (b) being calculated separately and as specified in the first two paragraphs of this Section.

Except as otherwise provided in Sections 6 and 7, all adjusted premiums and present values referred to in this Article shall for all policies of ordinary insurance be calculated on the basis of the Commissioners 1941 Standard Ordinary Mortality Table, provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than three years younger than the actual age of the insured and such calculations for all policies of industrial insurance shall be made on the basis of the 1941 Standard Industrial Mortality Table. All calculations shall be made on the basis of the rate of interest, not exceeding three and one-half per cent (3½%) per annum, specified in the policy for calculating cash surrender values and paid-up non-forfeiture benefits. Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a non-forfeiture benefit, the rates of mortality assumed may be not more than one hundred and thirty percent (130%) of the rates of mortality according to such applicable table. Provided further, that for insurance issued on a sub-standard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the State Board of Insurance.

Calculation of Adjusted Premiums and Present Values of Ordinary Policies Issued on or After Operative Date of This Section

Sec. 6. In the case of ordinary policies issued on or after the operative date of this Section as defined herein, all adjusted premiums and present values referred to in this Article shall be calculated on the basis of the Commissioners 1958 Standard Ordinary Mortality Table and the rate of interest specified in the policy for calculating cash surrender values and paid-up non-forfeiture benefits provided that such rate of interest shall not exceed three and one-half per cent (3½%) per annum except that a rate of

interest not exceeding four per cent (4%) per annum may be used for policies issued on or after June 14, 1973, and prior to the effective date of this amendatory Act of 1977. For policies issued on and after the effective date of this amendatory Act of 1977, a rate of interest not exceeding five and one-half per cent (5½%) per annum may be used, except that for any single premium whole life or endowment insurance policy a rate of interest not exceeding six and one-half per cent (6½%) per annum may be used. For any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to age not more than three years younger than the actual age of the insured for policies issued prior to the effective date of this amendatory Act of 1977 and for policies issued on and after such effective date adjusted premiums and present values may be calculated according to an age not more than six (6) years younger than the actual age of the insured. Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a non-forfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners 1958 Extended Term Insurance Table. Provided further, that for insurance issued on a sub-standard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the State Board of Insurance.

On or after the operative date of this Article, any company may file with the State Board of Insurance a written notice of its election to comply with the provisions of this Section after a specified date before January 1, 1974. After the filing of such notice, then upon such specified date (which shall be the operative date of this Section for such company), this Section shall become operative with respect to the ordinary policies thereafter issued by such company. If a company makes no such election, the operative date of this Section for such company shall be January 1, 1974.

Industrial Policies; Adjusted Premiums and Present Values

Sec. 7. In the case of industrial policies issued on or after the operative date of this Section as defined herein, all adjusted premiums and present values referred to in this Article shall be calculated on the basis of the Commissioners 1961 Standard Industrial Mortality Table and the rate of interest specified in the policy for calculating cash surrender values and paid-up non-forfeiture benefits provided that such rate of interest shall not exceed three and one-half per cent (3½%) per annum, except that a rate of interest not exceeding four per cent (4%) per annum may be used for policies issued on or after June 14, 1973, and prior to the effective date of this amenda-

tory Act of 1977. For policies issued on and after the effective date of this amendatory Act of 1977 a rate of interest not exceeding five and one-half per cent (5½%) per annum may be used, except that for any single premium whole life or endowment insurance policy a rate of interest not exceeding six and one-half per cent (6½%) per annum may be used. Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a non-forfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners 1961 Industrial Extended Term Insurance Table. Provided further, that for insurance issued on a sub-standard basis, the calculations of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the State Board of Insurance.

On or after the operative date of this Article, any company may file with the State Board of Insurance a written notice of its election to comply with the provisions of this Section after a specified date before January 1, 1974. After the filing of such notice, then upon such specified date (which shall be the operative date of this Section for such company), this Section shall become operative with respect to the industrial policies thereafter issued by such company. If a company makes no such election, the operative date of this Section for such company shall be January 1, 1974.

[See Compact Edition, Volume 2 for text of 8 to 10]

[Amended by Acts 1977, 65th Leg., p. 2095, ch. 841, §§ 1 to 3, eff. Aug. 29, 1977.]

Art. 3.44b. Standard Non-forfeiture Law for Individual Deferred Annuities

Contracts of Annuity to Contain Certain Provisions

Sec. 1. In the case of contracts issued on or after the operative date of this Article as defined in Section 11, no contract of annuity, except as stated in Section 10, shall be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding provisions which in the opinion of the State Board of Insurance are at least as favorable to the contract holder, on cessation of payment of considerations under the contract.

(a) That on cessation of payment of considerations under a contract, the company will grant a paid-up annuity benefit on a plan stipulated in the contract of such value as is specified in Sections 3, 4, 5, 6, and 8 of this Article.

(b) If a contract provides for a lump-sum settlement at maturity, or at any other time, that on

surrender of the contract at or prior to the commencement of any annuity payments, the company will pay in lieu of any paid-up annuity benefit a cash surrender benefit of such amount as is specified in Sections 3, 4, 6, and 8 of this Article. The company shall reserve the right to defer the payment of such cash surrender benefit for a period of six (6) months after demand therefor with surrender of the contract.

(c) A statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of such benefits.

(d) A statement that any paid-up annuity, cash surrender or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered and an explanation of the manner in which such benefits are altered by the existence of any additional amounts credited by the company to the contract, any indebtedness to the company on the contract or any prior withdrawals from or partial surrenders of the contract.

Notwithstanding the requirements of this Section, any deferred annuity contract may provide that if no considerations have been received under a contract for a period of two (2) full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from considerations paid prior to such period would be less than twenty dollars (\$20.00) monthly, the company may at its option terminate such contract by payment in cash of the then present value of such portion of the paid-up annuity benefit, calculated on the basis of the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit, and by such payment shall be relieved of any further obligation under such contract.

Minimum Non-forfeiture Amounts

Sec. 2. The minimum values as specified in Sections 3, 4, 5, 6, and 8 of this Article of any paid-up annuity, cash surrender, or death benefits available under an annuity contract shall be based upon minimum non-forfeiture amounts as defined in this Section.

(a) With respect to contracts providing for flexible considerations, the minimum non-forfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to such time at a rate of interest of three per cent (3%) per annum of percentages of the net considerations (as hereinafter defined) paid prior to such time, decreased by the sum of:

(1) any prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest of three per cent (3%) per annum; and

(2) the amount of any indebtedness to the company on the contract, including interest due and accrued; and increased by any existing additional amounts credited by the company to the contract.

The net considerations for a given contract year used to define the minimum non-forfeiture amount shall be an amount not less than zero and shall be equal to the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of thirty dollars (\$30.00) and less a collection charge of one dollar and twenty-five cents (\$1.25) per consideration credited to the contract during that contract year. The percentages of net considerations shall be sixty-five per cent (65%) of the net consideration for the first contract year and eighty-seven and one-half per cent (87½%) of the net considerations for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage shall be sixty-five per cent (65%) of the portion of the total net consideration for any renewal contract year which exceeds by not more than two times the sum of those portions of the net considerations in all prior contract years for which the percentage was sixty-five per cent (65%).

(b) With respect to contracts providing for fixed scheduled considerations, minimum non-forfeiture amounts shall be calculated on the assumption that considerations are paid annually in advance and shall be defined as for contracts with flexible considerations which are paid annually with two exceptions:

(1) the portion of the net consideration for the first contract year to be accumulated shall be the sum of sixty-five per cent (65%) of the net consideration for the first contract year plus twenty-two and one-half per cent (22½%) of the excess of the net consideration for the first contract year over the lesser of the net considerations for the second and third contract years; and

(2) the annual contract charge shall be the lesser of (i) thirty dollars (\$30.00) or (ii) ten per cent (10%) of the gross annual consideration.

(c) With respect to contracts providing for a single consideration, minimum non-forfeiture amounts shall be defined as for contracts with flexible considerations except that the percentage of net consideration used to determine the minimum non-forfeiture amount shall be equal to ninety per cent (90%) and the net consideration shall be the gross consideration less a contract charge of seventy-five dollars (\$75.00).

Present Value of Paid-up Annuity

Sec. 3. Any paid-up annuity benefit available under a contract shall be such that its present value

on the date annuity payments are to commence is at least equal to the minimum non-forfeiture amount on that date. Such present value shall be computed using the mortality table, if any, and the interest rate specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract.

Contracts Which Provide Cash Surrender Benefits

Sec. 4. For contracts which provide cash surrender benefits, such cash surrender benefits available prior to maturity shall not be less than the present value as of the date of surrender of that portion of the maturity value of the paid-up annuity benefit which would be provided under the contract at maturity arising from considerations paid prior to the time of cash surrender reduced by the amount appropriate to reflect any prior withdrawals from or partial surrenders of the contract, such present value being calculated on the basis of an interest rate not more than one per cent (1%) higher than the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, decreased by the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the company to the contract. In no event shall any cash surrender benefit be less than the minimum non-forfeiture amount at that time. The death benefit under such contracts shall be at least equal to the cash surrender benefit.

Contracts Which Do Not Provide Cash Surrender Benefits

Sec. 5. For contracts which do not provide cash surrender benefits, the present value of any paid-up annuity benefit available as a non-forfeiture option at any time prior to maturity shall not be less than the present value of that portion of the maturity value of the paid-up annuity benefit provided under the contract arising from considerations paid prior to the time the contract is surrendered in exchange for, or changed to, a deferred paid-up annuity, such present value being calculated for the period prior to the maturity date on the basis of the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, and increased by any existing additional amounts credited by the company to the contract. For contracts which do not provide any death benefits prior to the commencement of any annuity payments, such present values shall be calculated on the basis of the interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit. However, in no event shall the present values of a paid-up annuity be less than the minimum non-forfeiture amount at that time.

Maturity Dates

Sec. 6. For the purpose of determining the benefits calculated under Sections 4 and 5 of this Article,

in the case of annuity contracts under which an election may be made to have annuity payments commence at optional maturity dates, the maturity date shall be deemed to be the latest date for which election shall be permitted by the contract, but shall not be deemed to be later than the anniversary of the contract next following the annuitant's 70th birthday or the 10th anniversary of the contract, whichever is later.

Statement Indicating No Benefits

Sec. 7. Any contract which does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum non-forfeiture amount prior to the commencement of any annuity payments shall include a statement in a prominent place in the contract that such benefits are not provided.

Benefits Available Other Than On Contract Anniversary

Sec. 8. Any paid-up annuity, cash surrender or death benefits available at any time, other than on the contract anniversary under any contract with fixed scheduled considerations, shall be calculated with allowance for the lapse of time and the payment of any scheduled considerations beyond the beginning of the contract year in which cessation of payment of consideration under the contract occurs.

Contracts Which Provide Both Annuity Benefits and Life Insurance Benefits

Sec. 9. For any contract which provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum non-forfeiture benefits shall be equal to the sum of the minimum non-forfeiture benefits for the annuity portion and the minimum non-forfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding the provisions of Sections 3, 4, 5, 6, and 8 of this Article, additional benefits payable (a) in the event of total and permanent disability, (b) as reversionary annuity or deferred reversionary annuity benefits, or (c) as other policy benefits additional to life insurance, endowment and annuity benefits, and considerations for all such additional benefits, shall be disregarded in ascertaining the minimum non-forfeiture amounts, paid-up annuity, cash surrender and death benefits that may be required by this Article. The inclusion of such additional benefits shall not be required in any paid-up benefits, unless such additional benefits separately would require minimum non-forfeiture amounts, paid-up annuity, cash surrender and death benefits.

Inapplicability of Article

Sec. 10. This Article shall not apply to any reinsurance, group annuity purchased under a retire-

ment plan or plan of deferred compensation established or maintained by an employer (including a partnership or sole proprietorship), or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code of 1954, as amended (Title 26, United States Code, as amended), premium deposit fund, variable annuity, investment annuity, immediate annuity, any deferred annuity contract after annuity payments have commenced, or reversionary annuity, nor to any contract which shall be delivered outside this state through an agent or other representative of the company issuing the contract.

Operative Date of Article

Sec. 11. After the effective date of this Article, any company may file with the State Board of Insurance a written notice of its election to comply with the provisions of this Article after a specified date before the second anniversary of the effective date of this Article. After the filing of such notices, then upon such specified date, which shall be the operative date of this Article for such company, the Article shall become operative with respect to annuity contracts thereafter issued by such company. If a company makes no such election, the operative date of this Article for such company shall be the second anniversary of the effective date of this Article.

[Added by Acts 1977, 65th Leg., p. 2104, ch. 843, § 1, eff. Aug. 29, 1977.]

SUBCHAPTER E. GROUP; INDUSTRIAL AND CREDIT INSURANCE

Art. 3.50. Group Life Insurance

Definitions

Sec. 1. No policy of group life insurance shall be delivered in this state unless it conforms to one of the following descriptions:

(1) A policy issued to an employer, or to the trustees of a fund established by an employer, which employer or trustees shall be deemed the policyholder, to insure employees of the employer for the benefit of persons other than the employer, subject to the following requirements:

(a) The employees eligible for insurance under the policy shall be all of the employees of the employer, or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term "employees" shall include the employees of one or more subsidiary corporations, and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietors or partnerships if the business of the employer and of such affiliated corporations,

proprietors or partnerships is under common control through stock ownership, contract, or otherwise. The policy may provide that the term "employees" shall include the individual proprietor or partners if the employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include retired employees.

(b) The premium for the policy shall be paid by the policyholder, either wholly from the employer's fund or funds contributed by him, or partly from such funds and partly from funds contributed by the insured employees. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured employees. A policy on which part of the premium is to be derived from funds contributed by the insured employees may be placed in force only if at least seventy-five percent (75%) of the then eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(c) The policy must cover at least ten (10) employees at date of issue.

(d) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the employees or by the employer or trustees. No policy may be issued which provides insurance on any employee which together with any other insurance under any group life insurance policies issued to the employer or to the trustees of a fund established by the employer exceeds Fifty Thousand Dollars (\$50,000.00), unless two hundred percent (200%) of the annual compensation of such employee from his employer or employers exceeds Fifty Thousand Dollars (\$50,000.00), in which event all such term insurance shall not exceed One Hundred Thousand Dollars (\$100,000.00), or two hundred percent (200%) of such annual compensation, whichever is the lesser, except that this limitation shall not apply to group insurance on other than the term plan where such insurance is to be used to fund the benefits under a pension or profit sharing plan and the amount of such insurance does not exceed that required to provide at normal retirement date the pension specified by the plan, and except that a group policy which is issued by the same or another carrier to replace another group policy may provide term insurance not to exceed the amounts provided by the policy which it re-

places, or the amounts provided above, whichever are greater.

(2) A policy issued to a labor union, which shall be deemed the employer and policyholder, to insure the members of such union who are actively engaged in the same occupation and who shall be deemed to be the employees of such union within the meaning of this Article.

(3) A policy issued to any association of employees of the United States Government or any subdivision thereof, provided the majority of the members of such association are residents of this state, an association of public employees, an incorporated city, town or village, an independent school district, common school district, state colleges or universities, any association of state employees, any association of state, county and city, town or village employees, and any association of any combination of state, county or city, town or village employees and any department of the state government which employer or association shall be deemed the policyholder to insure the employees of any such incorporated city, town or village, of any such independent school district, of any common school district, of any such state college or university, of any such department of the state government, members of any association of state, county or city, town or village or of the United States Government or any subdivision thereof, provided the majority of such employees reside in this state, employees for the benefit of persons other than the policyholder subject to the following requirements:

(a) The persons eligible for insurance under the policy shall be all of the employees of the employer or if the policyholder is an association, all of the members of the association.

(b) The premium for a policy issued to any policyholder authorized to be such policyholder under Subsection (3) of Section 1, Article 3.50, Texas Insurance Code, may be paid in whole or in part from funds contributed by the employer, or in whole or in part from funds contributed by the persons insured under said policy; or in whole or in part from funds contributed by the insured employees who are members of such association of employees; provided, however, that any monies or credits received by or allowed to the policyholder pursuant to any participation agreement contained in or issued in connection with the policy shall be applied to the payment of future premiums and to the pro rata abatement of the insured employees' contribution therefor; and provided further, that the employer may deduct from the employees' salaries the employees' contributions for the premiums when authorized in writing by the respective employees so to do. Such policy may

be placed in force only if at least 75% of the eligible employees or if an association of employees is the policyholder, 75% of the eligible members of said association, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required premium contributions and become insured thereunder. Any group policies heretofore issued to any of the groups named in Section 1(3) above and in existence on the effective date of this Act shall continue in force even though the number of employees or members insured thereunder is less than 75% of the eligible employees or members on the effective date of this Act.

(c) The policy must cover at least ten (10) employees at date of issue, or if an association of employees is the policyholder, ten (10) members of said association at date of issue.

(d) The term employees as used herein in addition to its usual meaning shall include elective and appointive officials of the state.

(4) A policy issued to a creditor, who shall be deemed the policyholder, to insure debtors of the creditor, subject to the following requirements:

(a) The debtors eligible for insurance under the policy shall all be members of a group of persons numbering not less than fifty (50) at all times, who become borrowers, or purchasers of securities, merchandise or other property, under agreement to repay the sum borrowed or to pay the balance of the price of the securities, merchandise or other property purchase, to the extent of their respective indebtedness, but not to exceed Twenty Thousand Dollars (\$20,000.00) on any one life; provided, however, the face amount of any loan or loan commitment, totally or partially executed, made to a debtor for educational purposes or to a debtor with seasonal income by a creditor in good faith for general agricultural or horticultural purposes, secured or unsecured, where the debtor becomes personally liable for the payment of such loan, may be so insured in an initial amount of such insurance not to exceed the total amount repayable under the contract of indebtedness and, when such indebtedness is repayable in substantially equal installments, the amount of insurance shall at no time exceed the scheduled or actual amount of unpaid indebtedness, whichever is greater, and such insurance on such credit commitments not exceeding one year in duration may be written up to the amount of the loan commitment on a nondecreasing or level term plan, but such insurance shall not exceed Fifty Thousand Dollars (\$50,000.00) on any one life.

(b) The premium for the policy shall be paid by the policyholder, either from the creditor's

funds or from charges collected from the insured debtors, or both.

(c) The insurance issued shall not include annuities or endowment insurance.

(d) The insurance shall be payable to the policyholder. Such payment shall reduce or extinguish the unpaid indebtedness of the debtor to the extent of such payment; provided that in the case of a debtor for educational purposes or of a debtor with seasonal income, under a loan or loan commitment for general agricultural or horticultural purposes of the type described in paragraph (a), the insurance in excess of the indebtedness to the creditor, if any, shall be payable to the estate of the debtor or under the provision of a facility of payment clause.

(5) A policy issued to the trustees of a fund established by two or more employers in the same industry or by one or more labor unions, or to the trustees of a fund established by one or more employers in the same industry and one or more labor unions, or by one or more employers and one or more labor unions whose members are in the same or related occupations or trades, which trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions for the benefit of persons other than the employers or the union, subject to the following requirements:

(a) The persons eligible for insurance shall be all of the employees of the employers and the employees of the trade association of such employers or all of the members of the union, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the unions, or both. The policy may provide that the term "employees" shall include retired employees, and the individual proprietor or partners if an employer is an individual proprietor or a partnership. No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation by performing services other than the usual duties of a director. No individual proprietor or partner shall be eligible for insurance under the policy unless he is actively engaged in and devotes a substantial part of his time to the conduct of the business of the proprietor or partnership. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship.

(b) The premium for the policy shall be paid by the trustees wholly from funds contributed by the employer or employers of the insured persons, or by the union or unions, or by both,

or, partly from such funds and partly from funds contributed by the insured persons, except that in no event shall the contribution by an insured person toward the cost of his insurance exceed forty cents per thousand per month. A policy on which part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance may be placed in force only if at least seventy-five percent (75%) of the then eligible persons of each participating employer unit, excluding any as to whom evidence of insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance must insure all eligible persons, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(c) The policy must cover at date of issue at least one hundred (100) persons; unless the policy is issued to the trustees of a fund established by employers which have assumed obligations through a collective bargaining agreement and are participating in the fund either pursuant to those obligations with regard to one or more classes of their employees which are encompassed in the collective bargaining agreement or as a method of providing insurance benefits for other classes of their employees, or unless the policy is issued to the trustees of a fund established by one or more labor unions.

(d) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured persons or by the policyholder or employer. No policy may be issued which provides term insurance on any person which together with any other term insurance under any group life insurance policy or policies issued to trustees or employers exceeds Fifty Thousand Dollars (\$50,000.00), unless two hundred percent (200%) of the annual compensation of such employee from his employer or employers exceeds Fifty Thousand Dollars (\$50,000.00), in which event all such term insurance shall not exceed One Hundred Thousand Dollars (\$100,000.00) or two hundred percent (200%) of such annual compensation, whichever is the lesser.

(e) The limitation as to amount of group insurance on any person shall not apply to group insurance on other than the term plan where such insurance is to be used to fund the benefits under a pension plan and the amount of such insurance does not exceed that required to provide at normal retirement date the pension specified by the plan, and except that a group policy

which is issued by the same or another carrier to replace another group policy may provide term insurance not to exceed the amount provided by the policy which it replaces, or the amounts provided above whichever is greater.

(f) No policy may be issued (i) to insure employees of any employer whose eligibility to participate in the fund as an employer arises out of considerations directly related to the employer being a commercial correspondent or business client or patron of another employer (regardless of whether such other employer is or is not participating in the fund); or (ii) to insure employees of any employer which is not located in this state, unless the majority of the employers whose employees are to be insured are located in this state, or unless the policy is issued to the trustees of a fund established by one or more labor unions.

(6) A policy issued to cover any other substantially similar group which, in the discretion of the commissioner of insurance, may be subject to the issuance of a group life insurance policy or contract.

(7) No policy of wholesale, franchise or employee life insurance, as hereinafter defined, shall be issued or delivered in this state unless it conforms to the following requirements:

(a) Wholesale, franchise or employee life insurance is hereby defined as: a term life insurance plan under which a number of individual term life insurance policies are issued at special rates to a selected group. A special rate is any rate lower than the rate shown in the issuing insurance company's manual for individually issued policies of the same type and to insureds of the same class.

(b) Wholesale, franchise or employee life insurance may be issued to (1) the employees of a common employer or employers, covering at date of issue not less than five employees; or (2) the members of a labor union or unions covering at date of issue not less than five members; or (3) the members of a credit union or credit unions covering at date of issue not less than five (5) members.

(c) The premium for the policy shall be paid either wholly from funds contributed by the employer or employers of the insured persons, or by the union or unions or by both, or partly from such funds and partly from funds contributed by the insured person, except that in no event shall the contribution by an insured person toward the cost of his insurance exceed forty cents per thousand per month.

(d) No policy may be issued on a wholesale, franchise or employee life insurance basis which, together with any other term life insurance

policy or policies issued on a wholesale, franchise, employee life insurance or group basis, provides term life insurance coverage for an amount in excess of Fifty Thousand Dollars (\$50,000.00), unless two hundred percent (200%) of the annual compensation of such employee from his employer or employers exceeds Fifty Thousand Dollars (\$50,000.00), in which event all such term insurance shall not exceed One Hundred Thousand Dollars (\$100,000.00), or two hundred percent (200%) of such annual compensation, whichever is the lesser. An individual application shall be taken for each such policy and the insurer shall be entitled to rely upon the applicant's statements as to applicant's other similar coverage upon his life.

(e) Each such policy of insurance shall contain a provision substantially as follows:

A provision that if the insurance on an insured person ceases because of termination of employment or of membership in the union, such person shall be entitled to have issued to him by the insurer, without evidence of insurability an individual policy of life insurance without disability or other supplementary benefits, provided application for the individual policy shall be made, and the first premium paid to the insurer, within thirty-one (31) days after such termination.

(f) Each such policy may contain any provision substantially as follows:

(1) A provision that the policy is renewable at the option of the insurer only;

(2) A provision for termination of coverage by the insurer upon termination of employment by the insured employee;

(3) A provision requiring a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as condition to coverage.

(g) The limitation as to amount of group and wholesale, franchise or employee life insurance on any person shall not apply to group insurance on other than the term plan where such insurance is to be used to fund benefits under a pension plan and the amount of such insurance does not exceed that required to provide at normal retirement date the pension specified by the plan, and except that a group policy which is issued by the same or another carrier to replace another group policy may provide term insurance not to exceed the amounts provided by the policy which it replaces, or the amounts provided above, whichever are greater.

(h) Nothing contained in this Subsection (6) shall in any manner alter, impair or invalidate (1) any policy heretofore issued prior to the

effective date of this Act; nor (2) any such plan heretofore placed in force and effect provided such prior plan was at date of issue legal and valid; nor (3) any policy issued on a salary savings franchise plan, bank deduction plan, pre-authorized check plan or similar plan of premium collection.

(7A) A policy may be issued to a principal, or if such principal is a life or life and accident or life, accident and health insurer, by or to such principal, covering when issued not less than ten (10) agents of the principal, subject to the following requirements:

(a) As used in this section, the term "agents" shall be deemed to include general agents, sub-agents and salesmen.

(b) The agents eligible for insurance under the policy shall be those who are under contract to render personal services for the principal for a commission or other fixed or ascertainable compensation.

(c) The premium for the policy shall be paid either wholly by the principal or partly from funds contributed by the principal and partly from funds contributed by the insured agents. A policy on which no part of the premium is to be derived from funds contributed by the insured agents must insure all of the eligible agents or all of any class or classes thereof determined by conditions pertaining to the services to be rendered by the agents to the principal. A policy on which part of the premium is to be derived from funds contributed by the insured agents must cover at issue at least seventy-five percent (75%) of the eligible agents or at least seventy-five percent (75%) of any class or classes thereof determined by conditions pertaining to the services to be rendered by the agents; provided, however, that the benefits may be extended to other classes of agents as seventy-five percent (75%) thereof express the desire to be covered.

(d) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the principal or by the agents. No policy may be issued which provides term insurance on any agent which together with any other term insurance under any group life insurance policy or policies issued to the principal exceeds Fifty Thousand Dollars (\$50,000.00), unless two hundred percent (200%) of the annual commissions or other fixed or ascertainable compensation of such agent from the principal exceeds Fifty Thousand Dollars (\$50,000.00), in which event all such term insurance shall not exceed One Hundred Thousand Dollars (\$100,000.00), or two hundred percent (200%) of such annual commissions or other

fixed or ascertainable compensation, whichever is the lesser.

(e) The insurance shall be for the benefit of persons other than the principal.

(8) A policy issued to the Veterans Land Board of the State of Texas, who shall be deemed the policyholder to insure persons purchasing land under the Texas Veterans Land Program as provided in Section 16(B) of Article 5421m, Vernon's Texas Civil Statutes (Chapter 318, Acts of the 51st Legislature, Regular Session, 1949, as amended).

(9) Any policy of group term life insurance may be extended, in the form of group term life insurance only, to insure the spouse and minor children, natural or adopted, of an insured employee, provided the policy constitutes a part of the employee benefit program established for the benefit of employees of the United States government or any subdivision thereof, and provided further, that the spouse or children of other employees covered by the same employee benefit program in other states of the United States are or may be covered by group term life insurance, subject to the following requirements:

(a) The premiums for the group term life insurance shall be paid by the policyholder from funds solely contributed by the insured employee.

(b) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured employee or by the policyholder, provided that group term life insurance upon the life of a spouse shall not exceed the lesser of (1) Ten Thousand Dollars (\$10,000.00) or (2) one-half of the amount of insurance on the life of the insured employee under the group policy; and provided that group term life insurance on the life of any minor child shall not exceed Two Thousand Dollars (\$2,000.00).

(c) Upon termination of the group term life insurance with respect to the spouse of any insured employee by reason of such person's termination of employment or death, or termination of the group contract, the spouse insured pursuant to this section shall have the same conversion rights as to the group term life insurance on his or her life as is provided for the insured employee.

(d) Only one certificate need be issued for delivery to an insured employee if a statement concerning any dependent's coverage is included in such certificate.

(10)¹ A policy of group life insurance may be issued to a nonprofit service, civic, fraternal, or community organization or association which has had an active existence for at least two years, has

a constitution or bylaws, was formed for purposes other than obtaining insurance, and which association shall be deemed the policyholder to insure members and employees of such association for the benefit of persons other than the association or any of its officers, subject to the following requirements:

(a) The persons eligible for insurance shall be all the members of the association, or all of any class thereof determined by conditions pertaining to membership in the association.

(b) The amounts of insurance under the policy shall be based upon some plan precluding individual selection either by the insured members or by the association.

(c) The premium for the policy shall be paid by the policyholder from the policyholder's own funds or from funds contributed by the employees or members specifically for their insurance, or from both.

(d) The policy shall cover at least twenty-five (25) persons at date of issue.

[See Compact Edition, Volume 2 for text of 2 to 5]

Dependents: Continuation of Benefits After Death of Insured

Sec. 6. Any group life insurance policy which contains provisions for the payment by the insurer of benefits for members of the family or dependents of a person in the insured group may provide for a continuation of such benefits or any part or parts thereof after the death of the person in the insured group, and provided further that any amounts of insurance so provided by such benefits shall not be construed as life insurance for the purpose of determining the maximum amount of term insurance that may be issued on any one life.

[Amended by Acts 1975, 64th Leg., p. 766, ch. 299, § 1, eff. May 27, 1975; Acts 1975, 64th Leg., p. 2171, ch. 698, § 1, eff. June 21, 1975, Acts 1977, 65th Leg., p. 1512, ch. 612, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2194, ch. 867, § 1, eff. Aug. 29, 1977.]

¹ Added as subsec. (9) by Acts 1977, 65th Leg., ch. 867 and editorially redesignated as subsec. (10).

Art. 3.50-2. Employees Uniform Group Insurance Benefits Act

Citation

Sec. 1. This Act shall be known and may be cited as the "Texas Employees Uniform Group Insurance Benefits Act."

Purposes

Sec. 2. It is hereby declared that the purposes of this Act are:

(a) to provide uniformity in life, accident, and health insurance and benefits coverages on all employees of the State of Texas;

(b) to enable the State of Texas to attract and retain competent and able employees by providing them with life, accident, and health insurance and benefits coverages at least equal to those commonly provided in private industry;

(c) to foster, promote, and encourage employment by and service to the State of Texas as a career profession for persons of high standards of competence and ability;

(d) to recognize and protect the state's investment in each permanent employee by promoting and preserving economic security and good health among state employees;

(e) to foster and develop high standards of employer-employee relationships between the State of Texas and its employees;

(f) to recognize the service to the state by elected state officials by extending to them the same life, accident, and health insurance and benefits coverages as are provided herein for state employees; and

(g) to recognize the long and faithful service and dedication of employees of the State of Texas and to encourage them to remain in state service until eligible for retirement by providing health insurance benefits for such employees.

Definitions

Sec. 3. (a) Unless a different meaning is plainly required by the context, the following words and phrases as used in this Act shall have the following meanings:

(1) "Administering carrier" shall mean any carrier designated by the trustee to administer any insurance coverages, services, benefits, or requirements in accordance with this Act and the trustee's regulations promulgated pursuant thereto.

(2) "Annuitant" shall mean an officer or employee who retires under the jurisdiction of the Employees Retirement System of Texas and either receives an annuity or is eligible to receive an annuity, pursuant to Chapter 352, Acts of the 50th Legislature, 1947, as amended (Article 6228a, Vernon's Texas Civil Statutes), Chapter 99, Acts of the 51st Legislature, Regular Session, 1949, as amended (Article 6228b, Vernon's Texas Civil Statutes), and Chapter 573, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6228i, Vernon's Texas Civil Statutes), and an employee who retires under the jurisdiction of the Teacher Retirement System of Texas and either receives an annuity or is eligible to receive an annuity, pursuant to Chapter 3, Title I, Texas Education Code,¹ whose last state employment prior to retirement is as an employee of the Teacher Retirement System of Texas, school districts established within state eleemosynary institutions, the Texas Rehabilitation Commission, the Central

Education Agency, or the Coordinating Board, Texas College and University System.

(3) "Carrier" shall mean a qualified carrier as defined in this Act.

(4) "Department" shall mean commission, board, agency, division, or department of the State of Texas created as such by the constitution or statutes of this state.

(5)(A) "Employee" shall mean any appointive or elective state officer or employee in the service of the State of Texas, except employees of any university, senior or community/junior college, or any other agency of higher education within the meaning and jurisdiction of Chapter 61, Title 3, Texas Education Code:²

(i) who is retired or retires and is an annuitant under the jurisdiction of the Employees Retirement System of Texas, pursuant to Chapter 352, Acts of the 50th Legislature, 1947, as amended (Article 6228a, Vernon's Texas Civil Statutes), Chapter 99, Acts of the 51st Legislature, Regular Session, 1949, as amended (Article 6228b, Vernon's Texas Civil Statutes), and Chapter 573, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6228i, Vernon's Texas Civil Statutes), and an employee who is retired or retires and is an annuitant under the jurisdiction of the Teacher Retirement System of Texas, pursuant to Chapter 3, Title I, Texas Education Code, whose last employment with the state prior to retirement was or is as an employee of the Teacher Retirement System of Texas, school districts established within state eleemosynary institutions, the Texas Rehabilitation Commission, the Central Education Agency, or the Coordinating Board, Texas College and University System; or

(ii) who receives his compensation for services rendered to the State of Texas on a warrant issued pursuant to a payroll certified by a department or by an elected or duly appointed officer of this state; or

(iii) who receives payment for the performance of personal services on a warrant issued pursuant to a payroll certified by a department and drawn by the State Comptroller of Public Accounts upon the State Treasurer against appropriations made by the Texas Legislature from any state funds or against any trust funds held by the State Treasurer or who is paid from funds of an official budget of a state department, rather than from funds of the General Appropriations Act; or

(iv) who is appointed, subject to confirmation of the senate, as a member of a board or commission with administrative responsibility over a statutory agency having statewide jurisdiction whose employees are covered by this Act.

(B) Persons performing personal services for the State of Texas as independent contractors shall never be considered employees of the state for purposes of this Act.

(C) Repealed by Acts 1977, 65th Leg., p. 55, ch. 31, § 1, eff. March 29, 1977.

(6) "Employer" shall mean the State of Texas and all its departments.

(7) "Health benefits plan" shall mean any group insurance policy or contract, medical, dental, or hospital service agreement, membership or subscription contract, salary continuation plan, or similar group arrangement provided by a carrier for the purpose of providing, paying for, or reimbursing expenses for health care services, including comparable health care services for employees who rely solely on spiritual means through prayer for healing in accordance with the teachings of a well recognized church or denomination.

(8) "Dependent" shall mean the spouse of an employee or retired employee and an unmarried child under 25 years of age, including: (A) an adopted child and (B) a stepchild, foster child, or other child who is in a regular parent-child relationship and (C) any such child, regardless of age, who lives with or whose care is provided by an employee or annuitant on a regular basis if such child is mentally retarded or physically incapacitated to such an extent as to be dependent upon the employee or retired employee for care or support, as the trustee shall determine.

(9) "Qualified carrier" shall mean: (A) any insurance company authorized to do business in this state by the State Board of Insurance to provide any of the types of insurance coverages, benefits, or services provided for in this Act under any of the insurance laws of the State of Texas, which has a surplus of \$1 million, a successful operating history, and which has had successful experience in providing and servicing any of the types of group coverage provided for in this Act as determined by the State Board of Insurance; (B) any corporation operating under Chapter 20 of the Insurance Code³ which provides any of the types of coverage, benefits, or services provided for in this Act, a successful operating history, and which has had successful experience in providing and servicing any of the types of group coverage provided for in this Act as determined by the State Board of Insurance; or (C) any combination or carriers as herein defined, upon such terms and conditions as may be prescribed by the trustee, providing, however, that for purposes of this Act carriers combining for the purpose of bidding and/or underwriting this program shall not be considered in violation of Sections 15.01 through 15.34, Chapter 15, Title 2, Competition and Trade Practices, Texas Business & Commerce Code.

(10) "Service" shall mean any personal service of an employee creditable in accordance with rules and regulations promulgated by the trustee.

(11) "Trustee" shall mean the State Board of Trustees, provided for in Section 6, Chapter 352, Acts of the 50th Legislature, 1947, as amended (Article 6228a, Vernon's Texas Civil Statutes), to administer the Employees Retirement System of Texas.

(12) "Active employee plan" shall mean a plan or program of group insurance as determined by the trustee as defined in Paragraph (11) above for the benefit of employees of the State of Texas as defined in this Act who are not retired.

(13) "Retired employees plan" shall mean a plan or program of group insurance as determined by the trustee for all retired employees as defined in this Act. This plan may be separate or a part of the active employee plan at the discretion of the trustee, and, if separate, shall include both full benefits and supplemental coverage options.

(14) "Part-time employee" shall mean, for purposes of this Act, an employee designated by his employing agency as working less than 20 hours per week. A part-time employee shall receive the benefits of one-half the amount of the state's contribution received by full-time employees.

(15) "Full-time employee" shall mean, for purposes of this Act, an employee designated by his employing agency as working 20 or more hours per week. A full-time employee shall receive the benefits of a full state contribution for coverage under this Act.

(16) "Basic plan for active full-time employees" shall mean the program of group insurance determined by the trustee in which every full-time employee participates automatically unless participation is specifically waived, the premium for which is paid wholly by the state or the employing department.

(17) "Basic plan for retired employee-annuitants" shall mean the program of group insurance determined by the trustee in which every retired employee-annuitant participates automatically unless participation is specifically waived, the premium for which is paid wholly by the state.

(b) In addition to the foregoing definitions, the trustee shall have authority to define by rule any words in terms necessary in the administration of this Act.

¹ Education Code, § 3.01 et seq.

² Education Code, § 61.001 et seq.

³ Article 20.01 et seq.

Administration

Sec. 4. The administration and implementation of this Act are vested solely in the trustee. As it shall deem necessary to insure the proper administration of this Act and the insurance coverages,

services, and benefits provided for or authorized by this Act, the trustee, as an agency of the State of Texas, shall have full power and authority to hire employees. The duties of such employees and their compensation shall be determined and assigned by the trustee. The trustee may, on a competitive bid basis, contract with a qualified, experienced firm of group insurance specialists who shall act for the trustee in a capacity as independent administrators and managers of the programs authorized under this Act. The independent administrator so selected by the trustee shall assist the trustee to insure the proper administration of the Act and the insurance coverages, services, and benefits provided for or authorized by the Act and shall be paid by the trustee. Compensation of all persons employed by the trustee and their expenses shall be paid at such rates and in such amounts as the trustee shall approve, providing that in no case shall they be greater than those expenses paid for like or similar services. Also, as an agency of the State of Texas, the trustee shall have full power and authority to enter into interagency contracts with any department of the State of Texas. The interagency contracts shall provide for reimbursement to the state departments and shall define the services to be performed by the departments for the trustee. The trustee shall have full power and authority to promulgate all rules, regulations, plans, procedures, and orders reasonably necessary to implement and carry out the purposes and provisions of this Act in all its particulars, including but not limited to the following:

- (a) preparation of specifications for all insurance provided by authority of this Act;
- (b) prescribing the time at which and the conditions under which an employee is eligible for all coverages provided under this Act;
- (c) determination of the methods and procedures of claims administration;
- (d) determination of the amount of employee payroll deductions and the responsibility of establishing procedures by which such deductions shall be made;
- (e) establishment of grievance procedures by which the trustee shall act as an appeals body for complaints by insured employees regarding the allowance and payment of claims, eligibility, and other matters;
- (f) continuing study of the operation of all insurance coverages provided under this Act, including such matters as gross and net cost, administration costs, benefits, utilization of benefits, and claims administration;
- (g) administration of the Employees Life, Accident, and Health Insurance and Benefits Fund, providing for the beginning and ending dates of coverages of employees and annuitants and their dependents under health benefit plans;

(h) adoption of all rules and regulations consistent with the provisions of this Act and its purpose as it deems necessary to carry out its statutory duties and responsibilities;

(i) development of basic plans of group insurance coverages and benefits applicable to all state employees. The trustee also may provide for optional group insurance coverages and benefits in addition to the basic plan; and

(j) to provide either additional statewide optional programs or individual agency optional programs as the trustee may determine is appropriate.

Authority to Purchase Group Insurance

Sec. 5. (a) The trustee shall establish a plan or plans for active employees and retired employees, and is hereby authorized, empowered, and directed to contract with one or more qualified carriers or a combination of qualified carriers for the establishment of such plans. The trustee is further authorized, empowered, and directed to establish the above referenced plans of group insurance which in the trustee's discretion may include but are not necessarily limited to the following: group life insurance, accidental death and dismemberment, health benefits plans, including but not limited to hospital care and benefits, surgical care and treatment, medical care and treatment, dental care, obstetrical benefits, prescribed drugs, medicines, and prosthetic devices and supplement benefits, supplies, and services in conformity with the provisions of this Act, insurance protection against either long or short term loss of salary and any other coverages of group insurance which in the discretion of the trustee with consultation from the advisory committee shall be deemed advisable. All rules and regulations shall be promulgated pursuant thereto upon such terms and conditions as shall be agreed upon between the trustee and the carrier or carriers selected to provide such insurance coverages and benefits. The trustee shall determine the insurance coverages desired for state employees and will submit this information to the State Board of Insurance for any recommendations as to the types and sufficiency of such coverages. The State Board of Insurance will notify the board of trustees within 15 days as to any such recommendations and will furnish the board of trustees with a list of all carriers authorized to do business in the State of Texas who would be eligible to bid on the insurance coverage proposed. The trustee will notify those carriers that competitive bidding will be conducted and that they are to submit their bids to the State Board of Insurance by a specified date if they wish to bid on the contract. The State Board of Insurance will, after the designated closing date for receiving bids, examine and evaluate the bidding contracts and certify their actuarial soundness to the trustee within 15 days from the closing date. The

trustee shall select the desired carrier or carriers and will notify the bidding eligible carriers as to the results of the bidding. The trustee shall select the desired carrier or carriers to provide services which shall be in the best interest of the employees covered by this Act. The trustee is not required to select the lowest bid but shall take into consideration other factors such as ability to service contracts, past experience, financial ability, and other relevant criteria. Should the trustee select a carrier whose bid differs from that advertised, such deviation shall be recorded and the reasons for such deviation shall be fully justified and explained in the minutes of the next meeting of the trustee.

(b) In the event the trustee shall select as the carrier one whose bid was not the lowest of all bids submitted, such selection shall be submitted together with justifications and reasons therefor to the State Board of Insurance. Such deviating selection shall not be deemed final and binding unless and until a majority of the State Board of Insurance has certified its approval in writing to the trustee, or upon the expiration of 30 days after receipt thereof by the State Board of Insurance such deviating selection shall be deemed approved.

(c) The trustee will be required to submit for competitive bidding the coverages provided by the group plan as follows:

(1) at least every three years;

(2) whenever a change in the types and amounts of coverage occurs, provided that submission for competitive bidding shall not be required more than once within a year from the last submission.

(d) No department shall establish, continue, or authorize payroll deductions for any benefits or coverage as provided in this section without the express approval of the trustee, except for benefits from the deferred compensation program established pursuant to Chapter 197, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-3b, Vernon's Texas Civil Statutes).

(e) The trustee is authorized to select and contract for services performed by health maintenance organizations which are approved by the federal government or the State of Texas to offer health care services to eligible employees and annuitants in a specific area of the state. Eligible employees and annuitants may participate in a selected health maintenance organization in lieu of participation in the health insurance benefits in the Employees Uniform Group Insurance Program, and the employer contributions provided by Subsection (a), Section 15 of this Act for health care coverage shall be paid to the selected health maintenance organizations on behalf of the participants.

Benefit Certificates

Sec. 6. The trustees shall provide for the issuance to each employee insured under this Act a certificate of insurance setting forth the benefits to which the employee is entitled, to whom the benefits are payable, to whom the claims shall be submitted, and summarizing the provisions of the policy principally affecting the employee.

Annual Report

Sec. 7. As soon as practicable after the end of each calendar year but not later than 90 days thereafter, the trustee shall make a written report to the State Board of Insurance concerning the insurance coverages provided and the benefits and services being received by all state employees insured under the provisions of this Act. It shall be the duty of the State Board of Insurance to review such report and advise the trustee in regard to the insurance features of the coverages provided for all state employees and cooperate fully with the trustee in carrying out the purposes of this Act.

Reinsurance

Sec. 8. (a) The trustee shall arrange with any carrier or carriers issuing any policy or policies under this Act for the reinsurance, under conditions approved by the trustee, of portions of the total amount of insurance under such policy or policies, with other qualified carriers which elect to participate in the reinsurance.

(b) The trustee shall determine for and in advance of a policy year which qualified carriers are eligible to participate as reinsurers and the amount of insurance under a policy or policies which is to be allocated to the issuing company and reinsurers. The trustee shall make this determination at least every three years and when a participating company withdraws.

Annual Accounting; Special Contingency Reserve

Sec. 9. (a) Carriers providing any policy purchased under this Act shall provide an accounting to the trustee not later than 90 days after the end of each policy year. The accounting shall set forth, in a form approved by the trustee:

(1) the amounts of premiums actually accrued under the policy from its date of issue to the end of the policy year;

(2) the total of all mortality and other claims, charges, losses, costs, and expenses incurred for that period; and

(3) the amounts of the insurers' allowance for a reasonable profit and contingencies for that period.

(b) An excess of the total of Subdivision (a)(1) of this section over the sum of Subdivisions (a)(2) and (a)(3) of this section shall be held by the carrier

issuing the policy as a special contingency reserve to be used by the carrier only for charges, claims, costs, and expenses under the policy. The reserve shall bear interest at a rate determined in advance of each policy year by the carrier and approved by the trustee as being consistent with the rates generally used by the carrier for similar funds held under other group insurance policies. When the trustee determines that the special contingency reserve has attained an amount estimated by it to make satisfactory provision for adverse fluctuations in future charges, claims, costs, or expenses under the policy, any further excess shall be deposited in the State Treasury to the credit of the Employees Life, Accident, and Health Insurance and Benefits Fund. When a policy is discontinued, any balance remaining in the special contingency reserve after all charges have been made shall be deposited in the State Treasury to the credit of the fund. The carrier may make the deposit in equal monthly installments over a period of not more than two years.

Exemption from Execution and Taxes on Premiums

Sec. 10. (a) Exemption from Execution. All insurance benefit payments, employee contributions, optional benefits payments, and any and all rights, benefits, or payments accruing to any person under the provisions of this Act, as well as all money in any fund created by this Act, shall be and the same are hereby exempt from execution, attachment, garnishment, or any other process whatsoever and shall be unassigned except for direct payment which the employee may assign to providers of health care services and as specifically provided in this Act.

(b) Exemption from Taxes on Premiums. Premiums on policies, insurance contracts, or agreements with health maintenance organizations established under this Act shall not be subject to any state tax.

Group Life Insurance

Sec. 11. (a) The trustee is authorized and directed to establish a group life insurance program for all employees, including retired employees, of this state as herein provided, which, subject to the conditions and limitations contained in this Act and the trustee's rules and regulations promulgated pursuant thereto, will provide for each employee group life insurance in such an amount as shall be determined by the trustee. In addition to the benefits hereinabove provided and subject to the conditions and limitations of the policy or policies purchased by the trustee, such policy or policies shall provide such payments and benefits for employees and retired employees as shall be determined by the trustee. The trustee is also authorized to include the dependents of employees in the group life insurance program.

(b) The trustee shall prescribe regulations providing for the conversion of other than annual rates of pay to annual rates of pay, and specify the types of pay included in annual pay and all other matters necessary to implement this section.

Death Claims; Order of Precedence; Escheat

Sec. 12. (a) The amount of group life insurance and group accidental death and dismemberment insurance in force on an employee at the date of his death shall be paid, on the establishment of a valid claim, to the person or persons surviving at the date of his death, in the following order of precedence:

First, to the beneficiary or beneficiaries designated by the employee in a signed and witnessed writing received before death in the employing office. For this purpose, a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed has no force or effect.

Second, if there is no designated beneficiary, to the widow or widower of the employee.

Third, if none of the above, to the child or children of the employee and descendants of deceased children by representation.

Fourth, if none of the above, to the parents of the employee or the survivor of them.

Fifth, if none of the above, to the duly appointed executor or administrator of the estate of the employee.

Sixth, if none of the above, to other kin of the employee entitled under the laws of the domicile of the employee at the date of his death.

(b) If, within one year after the death of the employee, no claim for payment has been filed by a person entitled under the order of precedence named by Subsection (a) of this section, or if payment to the person within that period is prohibited by any statute or regulation, payment may be made in the order of precedence as if the person had predeceased the employee, and the payment bars recovery by any other person.

(c) If, within two years after the death of the employee, no claim for payment has been filed by a person entitled under the order of precedence named in Subsection (a) of this section, and neither the trustee nor the office established by the administering carrier has received notice that such a claim will be made, payment may be to the claimant who in the judgment of the trustee is equitably entitled thereto, and the payment bars recovery by any other person.

(d) If, within four years after the death of the employee, payment has not been made under this section and no claim for payment by a person entitled under this section is pending, the amount payable escheats to the credit of the fund.

Automatic Coverage

Sec. 13. (a) No employee of the State of Texas shall be denied any of the group insurance coverage provided under this Act.

(b) Unless participation is waived specifically, every full-time employee shall be covered automatically by the basic plan for active full-time employees and every employee-annuitant shall be covered by the basic plan for retired employee-annuitants. Coverage shall begin on the date he becomes eligible for insurance, and each policy of insurance purchased by the trustee providing such insurance shall provide for such automatic coverage.

(c) Every part-time employee is eligible for participation in the group insurance programs provided under this Act upon execution of appropriate payroll deduction authorization for the required payment of premiums.

(d) On application to the trustee and on arrangement for payment of premiums, and postage, a person who has at least eight years creditable legislative service, as defined in Chapter 352, Acts of the 50th Legislature, Regular Session, 1947, as amended (Article 6228a, Vernon's Texas Civil Statutes), on ending his or her service in the legislature, continues to be eligible for participation in the group insurance programs under this Act.

Payment of Premiums

Sec. 14. (a) The State of Texas shall contribute monthly to the cost of each insured employee's group insurance such amount as shall be appropriated therefor by the legislature in the General Appropriations Act. A like amount for each employee shall be appropriated by the governing board of state departments in their respective official operating budgets if their employees are compensated from funds appropriated by such budgets rather than by the General Appropriations Act.

(b) If an employee or annuitant refuses in writing the coverages, benefits, or services provided by this Act by a statement in writing satisfactory to the trustee, then in no event shall the State of Texas or the employee's department make any contribution to the cost of any other insurance coverages, services, or benefits on such employee or annuitant.

(c) If any insured employee or annuitant applies for coverage for which the premium exceeds the state's or the employing department's contribution under this Act, he shall authorize in writing and in a form satisfactory to the trustee a deduction from his monthly compensation or annuity the difference between the cost of premiums under said group policies and the amount contributed therefor by the State of Texas or the employing department.

Employer Contributions

Sec. 15. (a) On or before the first day of November next preceding each regular session of the legislature, the trustee shall certify to the Legislative Budget Board and budget division of the governor's office for information and review the amount necessary to pay the contributions of the State of Texas to the trustee for insurance premiums on the coverages provided under this Act during the ensuing biennium. This amount shall be included in the budget of the state which the governor submits to the legislature. The trustee shall certify on or before August 31 of each year to the state comptroller of public accounts and the State Treasurer the estimated amount of state contributions to be received for employees covered by this Act during the ensuing year.

(b) From and after the effective date of this Act, there is hereby allocated and appropriated to the trustee, in accordance with the provisions of this Act, from the several funds from which state employees receive their respective salaries, a sum equal to the total of all employer contributions computed in accordance with the provisions of this Act and the rules and regulations of the trustee promulgated pursuant thereto.

(c) All money hereby allocated and appropriated by the state to the trustee under this Act shall be paid to the trustee in monthly installments based on the annual estimate by the trustee of the contributions to be received for all state employees during said year; provided, however, that in the event said estimate of the contributions of the state employees shall vary from the actual amount of the employer contributions during the year, such adjustments shall be made at the close of each fiscal year as may be required. Each of said monthly installments shall be paid into the appropriate fund created by this Act in the amount certified by the trustee.

(d) The trustee shall certify to the governing boards of those state departments who provide contributions for their employees from operating budgets provided from sources other than the General Appropriations Act the proportionate amounts needed to pay their respective contributions. Such certifications shall be made at least 30 days prior to the meeting at which the governing board adopts its operating budget.

Employees Life, Accident, and Health Insurance and Benefits Fund

Sec. 16. (a) There is hereby created with the treasury of the State of Texas an Employees Life, Accident, and Health Insurance and Benefits Fund which shall be administered by the trustee. The contributions of employees, annuitants, and the state provided for under this Act shall be paid into the fund. The fund is available:

(1) without fiscal year limitation for all payments for any insurance coverages provided for under this Act; and

(2) to pay expenses for administering this Act within the limitations that may be specified annually by the legislature.

(b) Portions of the contributions made by employees, annuitants, and the state shall be regularly set aside in the fund as follows: a percentage, not to exceed one percent of all contributions, determined by the trustee to be reasonably adequate to pay the administrative expenses made available by Subsection (a) of this section. The trustee, from time to time and in amounts it considers appropriate, may transfer unused funds for administrative expenses to the contingency reserves of the plans then under contract with the trustee. When funds are so transferred, each contingency reserve shall be credited in proportion to the total amount of the subscription charges paid and accrued to the plan for the contract term immediately before the contract term in which the transfer is made. The income derived from dividends, rate adjustments, or other refunds made by a plan shall be credited to its contingency reserve. The contingency reserves may be used to defray increases in future rates, or may be applied to reduce the contributions of employees and the state to, or to increase the benefits provided by, the plan from which the reserves are derived, as the trustee from time to time shall determine.

(c) The trustee shall have full power to invest and reinvest any of the money in the fund subject only to the restrictions contained in Section 7, Chapter 352, Acts of the 50th Legislature, 1947, as amended (Article 6228a, Vernon's Texas Civil Statutes). The interest on and the proceeds from the sale of these obligations become a part of the fund.

(d) When insurance coverages or benefits provided for under this Act are discontinued, the contingency reserve of that plan shall be credited to the contingency reserves of such insurance continuing under this Act for the contract term following that in which termination occurs, each reserve to be credited in proportion to the amount of the subscription charges paid and accrued to the plan for the year of termination.

Studies, Reports, Records, and Audits

Sec. 17. (a) The trustee shall make a continuing study of the operation and administration of this Act, including surveys and reports on group insurance coverages and benefits available to employees and on the experience thereof.

(b) Each contract entered into under this Act shall contain provisions requiring carriers to

(1) furnish such reasonable reports as the trustee determines to be necessary to enable it to carry out its functions under this Act; and

(2) permit the trustee and representatives of the state auditor to examine records of the carriers as may be necessary to carry out the purposes of this Act.

(c) Each state department shall keep such records, make such certifications, and furnish the trustee with such information and reports as may be necessary to enable the trustee to carry out its functions under this Act.

Group Insurance Advisory Committee

Sec. 18. (a) There is created and established hereby the Group Insurance Advisory Committee, which shall consist of 23 members who shall be active or retired employees of the State of Texas. One classified employee shall be appointed from each of the 10 largest state agencies or departments by the chief administrative officer of those agencies or departments. One nonvoting member shall be the executive director of the Employees Retirement System of Texas. One member shall be a classified employee of the governor's office, appointed by the governor. One member shall be a retired state employee appointed by the trustee for a three-year term. The remaining members shall be elected by and from the classified employees of the other state departments and agencies in a manner consonant with the election for membership to the board of the Employees Retirement System of Texas, but not more than one employee shall be from any one agency or department.

(b) All members of the committee shall be appointed or elected for three-year terms; provided, however, that in the initial appointments and election, the trustee shall designate seven members to serve for one year, seven to serve for two years, and seven to serve for three years. Subsequent appointments or elections shall be for three-year terms. During a term of appointment or election, vacancies shall be filled by an employee of the same agency from which the vacancy occurred, being appointed by the trustees for the balance of the vacated term.

(c) The Group Insurance Advisory Committee shall advise and consult with the trustee on matters concerning all insurance coverages provided under this Act. The committee shall cooperate and work with the trustee in coordinating and correlating the administration of the Employees Uniform Group Insurance Program among the various state departments and agencies. The duties of each member of the Group Insurance Advisory Committee shall be to secure input from fellow employees and shall be considered additional duties required of his or her other state office or employment and all expenses incurred by any such member in performing his or her duties as a member of the committee shall be paid out of funds made available for those purposes to the agency or department of which he or she is an employee or officer.

Coverage for Dependents

Sec. 19. (a) Any employee or annuitant shall be entitled to secure for his dependents any uniform group insurance coverages provided for employees under this Act, as shall be determined by the trustee. Premium payments required of the employee in excess of employer contributions shall be deducted from the monthly pay of the employee or from his retirement benefits in such manner and form as the trustee shall determine.

(b) A surviving spouse of an employee or a retiree who is entitled to monthly benefits paid by a retirement system named in this Act may, following the death of the employee or retiree, elect to retain the spouse's authorized insurance coverage and also retain authorized insurance coverage for any dependent of the spouse, at the group rate for employees, provided such coverage was previously secured by the employee or retiree for the spouse or dependent, and the spouse directs the applicable retirement system to deduct required premiums from the monthly benefits paid the surviving spouse by the retirement system.

(c) The surviving spouse of an employee or a retiree who designated or selected a time certain annuity option, upon expiration of the annuity option, may retain authorized insurance coverage by advance payment of premiums to the Employees Retirement System of Texas under rules and regulations adopted by the trustee.

Effective Date

Sec. 20. This Act shall become effective September 1, 1975, but no insurance coverages shall be provided hereunder until such time as the trustee shall have made a study of the coverages and benefits authorized by this Act and gathered the necessary statistical data and information to secure such group insurance and the Texas Legislature has appropriated the funds necessary to provide the insurance coverages and benefits provided for in this Act; provided, however, that subject only to the legislature's appropriating the necessary funds, group insurance coverages for state employees contemplated by this Act shall be provided beginning not later than September 1, 1976. Departments are specifically authorized to continue or initiate state employee insurance plans and policies with state financial participation until the date and time this Act is implemented; provided, however, that any experience rating refunds becoming payable to such department under any such plans or policies on or after the date and time this Act is implemented shall be paid to the Employees Life, Accident, and Health Insurance and Benefits Fund, and such payment shall be deemed payment to such department.

Affect of Section Headings

Sec. 21. Section headings contained in this Act shall not be deemed to govern, limit, expand, modify, or in any manner affect the scope, meaning, or intent of the provisions of any section hereof.

Severability

Sec. 22. If any word, phrase, clause, paragraph, sentence, part, portion, or provision of this Act or the application thereof to any person or circumstance shall be held to be invalid or unconstitutional, the remainder of the Act in all its particulars and as to all other persons and circumstances shall be valid and of full force and effect, and the legislature hereby declares that this Act would have been enacted without such invalid or unconstitutional word, phrase, clause, paragraph, sentence, part, portion, or provision; and to this end the provisions of this Act are declared to be severable.

Repeal

Sec. 23. All laws or parts of laws in conflict with this Act are hereby repealed to the extent of such conflict only.

[Acts 1975, 64th Leg., p. 208, ch. 79, §§ 1 to 23, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 55, ch. 31, § 1, eff. March 29, 1977; Acts 1977, 65th Leg., p. 1995, ch. 797, §§ 1 to 10, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 512, ch. 238, § 1, eff. Aug. 27, 1979.]

Article 3.50-2 was not enacted as part of the Insurance Code of 1951.

Section 11 of Acts 1977, 65th Leg., p. 2000, ch. 797, provided a September 1, 1977 effective date.

Art. 3.50-3. Texas State College and University Employees Uniform Insurance Benefits Act

Citation

Sec. 1. This Act shall be known and may be cited as the "Texas State College and University Employees Uniform Insurance Benefits Act."

Purposes

Sec. 2. It is hereby declared that the policy and purposes of this Act are:

(a) to provide uniformity in the basic group life, accident, and health insurance coverages for all employees of Texas state colleges and universities;

(b) to enable Texas state colleges and universities to attract and retain competent and able employees by providing them with basic life, accident, and health insurance coverages at least equal to those commonly provided in private industry and those provided employees of other agencies of the State of Texas under the Texas Employees Uniform Group Insurance Benefits Act;¹

(c) to foster, promote, and encourage employment by and service to the state colleges and

universities of Texas as a career profession for persons of high standards of competence and ability;

(d) to recognize and protect the investment of the Texas state colleges and universities in each employee by promoting and preserving economic security and good health among employees of the Texas state colleges and universities;

(e) to foster and develop high standards of employer-employee relationships between the Texas state colleges and universities and their employees;

(f) to recognize the long and faithful service and dedication of employees of the Texas state colleges and universities and to encourage them to remain in service until eligible for retirement by providing health insurance and other group insurance benefits for such employees;

(g) to provide for greater uniformity of procedures for administration of retirement annuity insurance programs available to employees of Texas state colleges and universities through the optional retirement programs and tax sheltered annuity programs.

¹ Article 3.50-2.

Definitions

Sec. 3. (a) Unless a different meaning is plainly required by the context, the following words and phrases as used in this Act shall have the following meanings:

(1) "Administering carrier" shall mean any carrier or organization, qualified to do business in Texas, designated by the administrative council to administer any services, benefits, insurance coverages, or requirements in accordance with this Act and the council's regulations thereunder.

(2) "Retired employee" shall mean an employee as defined in this Act who retires or has retired under a retirement provision under the jurisdiction of:

(A) the Teachers Retirement System of Texas, pursuant to Chapter 3, Title 1, Texas Education Code, as amended;¹

(B) the Optional Retirement Program, Articles 51.351 et seq., Texas Education Code, as amended; provided, however, that the employee has met service requirements, age requirements, and other applicable requirements as may be promulgated by the administrative council comparable to the requirements for retirement under the Teachers Retirement System of Texas;

(C) the Employees Retirement System of Texas, Chapter 352, Acts of the 50th Legislature, 1947, as amended (Article 6228a, Vernon's Texas Civil Statutes), as authorized by Chapter 75, Acts of the 54th Legislature, Regular Ses-

sion, 1955, as amended (Article 6228a-2, Vernon's Texas Civil Statutes);

(D) any other federal or state statutory retirement program to which the institution has made employer contributions; provided, however, that the employee has met service requirements, age requirements, and other applicable requirements as may be promulgated by the administrative council comparable to the requirements for retirement under the Teachers Retirement System of Texas.

(3) "Carrier" shall mean a qualified carrier as defined in this Act.

(4) (A) "Employee" shall mean any person employed by a governing board of a state university, senior or community/junior college, or any other agency of higher education within the meaning and jurisdiction of Chapter 61, Title 3, Texas Education Code:²

(i) who retires under the provisions cited in subsection (a)(2) of this section;

(ii) who receives his compensation for services rendered to a public community/junior college or a senior college, university, or other agency of education within the meaning and jurisdiction of Chapter 61, Title 3, Texas Education Code, on a warrant or check issued pursuant to a payroll certified by an institution or by an elected or duly appointed officer of this state, and who is eligible for participation in the Teacher Retirement System of Texas.

(B) Persons performing personal services for such public community/junior colleges or senior colleges, universities, or other agencies of higher education within the meaning and jurisdiction of Chapter 61, Title 3, Texas Education Code, as independent contractors shall never be considered employees for purposes of this Act.

(5) "Employer" shall mean the institutions defined elsewhere in Subsection (8) of this section.

(6) "Group life, accident, or health insurance plan" shall mean any group insurance policy or contract, life, accident, medical, dental, or hospital service agreement, membership or subscription contract, or similar group arrangement provided by an administering carrier.

(7) "Retirement annuity insurance" shall mean policies or contracts provided by an administering carrier or carriers to provide optional retirement and/or tax sheltered annuity benefits as authorized by applicable state and federal statutes.

(8) "Institution" shall mean each association of one or more public community/junior colleges or senior colleges or universities, medical or dental units, technical institutes, or other agencies of higher education under the policy direction of a single governing board.

(9) "Dependent" shall mean the spouse, as defined in the Texas Family Code, of an employee or retired employee, and an unmarried child under 25 years of age including: (A) an adopted child, (B) a stepchild, foster child, or other child who is in a regular parent-child relationship, (C) any such child, regardless of age, who lives with or whose care is provided by an employee or retired employee on a regular basis, if such child is mentally retarded or physically incapacitated to such an extent as to be dependent upon the employee or retired employee for care or support, as the administrative council shall determine.

(10) "President" shall mean the duly authorized chief official of any institution covered under the provisions of this Act or such other official as may be designated by a governing board to carry out the provisions of this Act.

(11) "Qualified carrier" shall mean:

(A) any insurance company authorized to do business in this state by the State Board of Insurance to provide any of the types of insurance coverages, benefits, or services provided for in this Act under any of the insurance laws of the State of Texas, which has an adequate surplus, a successful operating history, and which has had successful experience in providing and servicing any of the types of group coverage provided for in this Act as determined by the State Board of Insurance;

(B) any corporation operating under Chapter 20 of the Texas Insurance Code³ which provides any of the types of coverage, benefits, or services provided for in this Act, which has a successful operating history, and which has had successful experience in providing and servicing any of the types of group coverage provided for in this Act as determined by the State Board of Insurance; or

(C) any combination of carriers as herein defined, upon such terms and conditions as may be prescribed by the administrative council; provided, however, that for purposes of this Act carriers combining for the purpose of bidding and/or underwriting this program shall not be considered in violation of Sections 15.01 through 15.34, Chapter 15, Title 2, Competition and Trade Practices, Texas Business & Commerce Code.

(12) "Service" shall mean any personal services of an employee creditable in accordance with rules and regulations promulgated by the administrative council.

(13) "Active employee plan" shall mean a plan or program of group life, accident, or health insurance for active employees as determined by the administrative council as provided in this Act.

(14) "Retired employee plan" shall mean a plan or program of group insurance as determined by the administrative council as defined in this Act for all retired employees as defined in this Act.

(b) In addition to the foregoing definitions, the administrative council shall have authority to define by rule any words and terms necessary in the administration of this Act.

¹ Education Code, § 3.01 et seq.

² Education Code, § 61.001 et seq.

³ Article 20.01 et seq.

Authority

Sec. 4. (a) A Texas State College and University Employees Uniform Insurance Benefits Program is hereby created. The uniform insurance benefits program shall be established within the authority of the Coordinating Board, Texas College and University System. The commissioner of higher education, acting under the direction and established policies of the coordinating board, shall appoint a coordinating board staff member who shall serve as executive secretary for the program, and shall provide from appropriated funds such additional staff and other resources necessary to provide technical consulting and administrative and clerical support for the effective administration of this Act by the administrative council and the advisory committee as hereinafter provided.

(b) The administrative council shall be selected, serve, and perform duties as hereinafter described:

(1) Selection. (A) Acting as a group, the presidents of the six senior level institutions having the highest number of employees as defined in this Act, based on the most current statistical reports of the Coordinating Board, Texas College and University System, shall with prior consultation with all other presidents of all senior level institutions covered by this Act, designate three representatives to serve as members of the council. The persons so designated shall be employees as defined in this Act and may be from any of the senior level institutions.

(B) Acting as a group, the presidents of the three junior level institutions or technical institutions having the highest number of employees as defined in this Act, based on the most current statistical reports of the Coordinating Board, Texas College and University System, shall with prior consultation with all other presidents of all junior level institutions covered by this Act, designate three representatives to serve as members of the council. The persons so designated shall be employees as defined in this Act and may be from any of the junior level institutions or technical institutions.

(C) The commissioner of higher education shall appoint three members of the council, which members shall not be subject to the restrictions in Section 4(b)(2).

(2) Qualifications of members. The persons designated as members of the administrative council, in addition to being employees as defined in this Act, shall have demonstrable qualifications for the administration of the program established by this Act.

(3) Terms of membership. (A) Except for initial appointments, all appointments shall serve for a period of six years each except for appointments to fill vacancies occurring in cases of incompleting terms, in which case the appointment shall be for the remainder of the unexpired term.

(B) The administrative council initially shall be established as follows:

(i) Of the three appointments made by the presidents of senior level institutions as described in Subsection (b)(1)(A) of this section, one of the members so appointed shall serve for a period of six years, one shall serve for a period of four years, and one shall serve for a period of two years from the effective date of this Act. Thereafter terms of all appointees shall be for six years.

(ii) Of the three appointments made by the presidents of the junior level institutions or technical institutions as described in this Act, one of these appointments shall be for a period of six years, one shall be for a period of four years, and one shall be for a period of two years from the effective date of this Act. Thereafter terms of all appointees shall be for six years.

(iii) The members thus appointed shall, at the first organizational meeting of the administrative council, draw lots for terms of office as described above in this Act and shall elect a chairman and other such officers as may be necessary. Thereafter, elections shall be held annually for the chairmanship and other such offices.

(4) Duties. The administrative council shall:

(A) determine basic coverage standards which shall be at least equal to those commonly provided in private industry and those provided employees of other agencies of the State of Texas under the Texas Employees Uniform Group Insurance Benefits Act,¹ after considering recommendations of the advisory committee.

(B) determine maximum costs for administration of the plans by the administering carriers.

(C) determine basic procedural and administrative practices for insurance coverages to be provided employees covered under the provisions of this Act, after considering recommendations of the advisory committee.

(D) determine if existing institutional programs meet, equate to, or exceed standards for such basic coverages. If so, such programs may

be continued in accordance with existing contractual arrangements between those institutions and their carrier or carriers, provided, however, that each program so continued shall be submitted by the institution for competitive bidding within standards established by the administrative council at least once during each four-year period following the effective date of coverage under this Act. It is further provided that:

(i) The State Board of Insurance shall provide, by request of the institution, a list of all carriers authorized to do business in the State of Texas and who will be eligible to bid on the insurance coverage or coverages provided in this Act.

(ii) The State Board of Insurance shall, upon request by the institution, examine and evaluate the bidding contracts and certify their actuarial soundness to the institution within 15 days from the date of request.

(iii) The institution is not required to select the lowest bid, but shall take into consideration other factors such as ability to service contracts, past experience, financial stability, and other relevant criteria. Should the institution select a carrier whose bid differs from that advertised, such deviation shall be reported to the administrative council and the reasons for such deviation shall be fully justified and recorded in the minutes of the next meeting of the administrative council.

(E) determine those institutions whose programs contain deficiencies with regard to the basic standards, administrative costs, and practices provided for under this Act. Where such program deficiencies occur, the president of each institution found to be deficient shall be notified of such program deficiencies by the administrative council, which shall also report its action to the commissioner of higher education, and the institution shall be provided a reasonable deadline not to exceed two years for correcting said deficiencies. The affected institution may appeal this determination of deficiency to the Coordinating Board, Texas College and University System. The board shall within 90 days from receipt of the appeal either affirm or reverse the decision of the administrative council. In case of reversal the board shall return the appeal to the administrative council with written instructions for disposition. Where institutions do not correct said deficiencies as directed by the administrative council, the council is hereby authorized and empowered to direct the institution to establish such plans as determined by the council, and to report its action to the commissioner of higher education.

If such plans are not established within a reasonable time period not to exceed six months from date of notification, the council shall notify the state comptroller of public accounts, who shall withhold state insurance premium matching funds from the affected institutions until notified by the administrative council that the deficiencies have been corrected. These notifications to the state comptroller shall be reported to the commissioner of higher education.

(F) provide that the governing boards of two or more institutions of higher education may procure one or more group contracts with any insurance company or companies authorized to do business in this state, insuring the employees of each participating institution. The purpose of such authorization shall be to provide institutions of higher education with the ability to obtain the benefits of economy and/or improved coverages for their employees which may occur through increased purchasing economies for larger groups of employees. All contracts for basic coverages negotiated from the effective date of this Act shall be in compliance with basic coverage standards, rules, and regulations of the administrative council promulgated pursuant to this Act. Each governing board may provide such additional or optional insurance programs and coverages as it deems desirable for its employees.

(G) adopt rules and regulations consistent with the provisions of this Act and its purpose as it deems necessary to carry out the statutory responsibilities.

(H) require that procedures be established by each institution to allow each covered employee to obtain prompt action regarding claims pertaining to insurance provided under this Act.

(I) publish such additional goals, guidelines, and surveys as are necessary to assist covered institutions in providing their employees with effective benefits programs.

(J) develop policies, practices, and procedures as necessary in accordance with provisions of applicable statutes to provide for greater uniformity in the administration of retirement annuity insurance programs available to employees of Texas state colleges and universities through the Optional Retirement Program, Article 51.351 et seq., Texas Education Code, as amended, and tax sheltered annuity programs as provided in Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962, as amended (Article 6228a-5, Vernon's Texas Civil Statutes).

(K) establish rules, regulations, and procedures for preparation and review of the annual reports of the institutions as further provided for under Section 6 of the Act.

(c) The advisory committee shall be selected, serve, and perform duties as hereinafter described:

(1) Selection. One member of the advisory committee shall be elected from each of the institutional components, units, or agencies under the policy direction of a single governing board at such times as designated by the administrative council and in accordance with general guidelines for such elections provided by the administrative council.

(2) Qualifications of members. The members of the advisory committee shall be chosen from among employees as defined in this Act. The persons so elected shall demonstrate mature judgment, special abilities, and sincere interests in employee insurance programs and be able to represent the needs of all employees of the institution represented with regard to advisory committee actions.

(3) Terms of membership. Members of the advisory committee elected under the terms of this Act shall serve for a period of two years, subject to reelection. At the initial meeting of the advisory committee, and subsequently each year, the members who are elected shall elect a chairman and other such officers as may be necessary. A vacancy shall be filled by an employee of the same institution from which the vacancy occurred, being appointed by the president of said institution for the balance of the vacated term.

(4) Duties. (A) The advisory committee shall cooperate and work with the administrative council in coordinating and correlating the administration of the group insurance program among the various institutions. Members of the advisory committee shall cooperate and work with the administrative council as advisors in development, implementation, coordination, and administration of the group insurance programs among the various institutions.

(B) The advisory committee shall provide a channel for open communication of ideas and suggestions regarding coverages, eligibility, claims, procedures, bidding, administration, and all other aspects of employee insurance benefits.

¹ Article 3.50-2.

Benefit Certificates

Sec. 5. The administrative council shall assure that each employee insured under this Act is issued a certificate of insurance setting forth the benefits to which the employee is entitled, to whom the benefits are payable, to whom the claims shall be submitted, and summarizing the provisions of the policy principally affecting the employee.

Annual Report

Sec. 6. As soon as practicable after the end of each contract year, but not later than 180 days

thereafter, each institution covered under the provisions of this Act shall submit an annual report to the administrative council, comparing the insurance coverages provided and the benefits and services received by its employees insured under the provisions of this Act. The administrative council shall, within 30 days of receipt of the institutional annual reports, submit the annual reports together with a summary and commentary to the commissioner of higher education for submission to the Coordinating Board, Texas College and University System.

Reinsurance

Sec. 7. (a) The institutions may arrange with any administering carrier or carriers issuing any policy or policies under this Act for the reinsurance of portions of the total amount of insurance under such policy or policies with other qualified carriers which elect to participate in the reinsurance.

(b) The administrative council may determine all rules, regulations, and actions necessary for the providing of such reinsurance through qualified carriers.

Annual Accounting

Sec. 8. (a) Carriers providing any policy purchased under this Act shall provide an accounting to the institution not later than 120 days after the end of each policy year. The accounting for each line of coverage shall set forth, in a form acceptable to the administrative council:

(1) the cumulative amount of premiums actually remitted to the carrier under the policy from its date of issue to the end of the policy year, the amount of premiums actually remitted under the policy for each year from the anniversary date to the end of that policy year;

(2) the total of all mortality and other claims, charges, losses, costs, contingency reserve for pending and unreported claims and expenses incurred for each of the periods corresponding to each of the periods heretofore described in Subsection (a)(1) of this section;

(3) the amounts of the allowance for a reasonable profit, contingency reserves, and all other administrative charges corresponding to each of the periods as heretofore described in Subsection (a)(1) of this section.

(b) Any excess of the total of Subsection (a)(1) of this section over the corresponding sum of Subsections (a)(2) and (a)(3) of this section may be held by the carrier issuing the policy as a special reserve. Such reserve may be used at the discretion of the institution with prior approval of the administrative council for, but not limited to, providing additional coverage for participating employees, offsetting necessary employee premium rate increases, or to reduce participating employee premium contributions

to the coverage. Any reserve held by the carrier would bear interest at a rate determined each policy year by the carrier and approved by the institution as being consistent with the rate generally used by the carrier for similar funds held under other group insurance policies. Alternative report requirements or arrangements may be approved by the administrative council.

Exemption from Execution

Sec. 9. All insurance benefits and other payments and transactions made pursuant to the provisions of this Act to any employee covered under the provisions of this Act shall be exempt from execution, attachment, garnishment, or any other process whatsoever.

Death Claims

Sec. 10. The amount of group life insurance and group accidental death and dismemberment insurance in force on an employee at the date of his death shall be paid, on the establishment of a valid claim, to the person or persons surviving at the date of his death, in the following order:

(a) to the beneficiary or beneficiaries designated by the employee in a signed and witnessed writing received before death in the employing office. For this purpose, a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed has no force or effect.

(b) if no beneficiary is designated in accordance with Subsection (a) of this section, payment shall be made in accordance with the death benefit provisions of the Teacher Retirement System of Texas, Chapter 3, Title 1, Texas Education Code, as amended.¹

¹ See Education Code, § 3.33.

Automatic Coverage

Sec. 11. No eligible employee shall be denied enrollment in any of the coverages provided by this Act; provided, however, that the employee may waive in writing any or all such coverages. Each policy of insurance shall provide for automatic coverage on the date the employee becomes eligible for insurance. From the first day of employment, each active full-time employee who has not waived basic coverage or selected optional coverages shall be protected by a basic plan of insurance coverage automatically. The premium for such coverage shall not exceed the amount of the employer contribution. Each employee who is automatically covered under this section may subsequently retain or waive the basic plan and may make application for any other coverages provided under this Act within institutional and administrative council standards.

Payment of Premiums

Sec. 12. Each institution and agency covered under the provisions of this Act shall contribute monthly to the cost of each insured employee's coverage no less than the amount appropriated therefor by the legislature in the General Appropriations Act or as determined by the governing board of the institution in its respective official operating budget, if the employees are compensated from funds appropriated by such budgets rather than by the General Appropriations Act. The employees shall authorize in writing and in a form satisfactory to the institution a deduction from his monthly compensation of the difference between the total cost of benefits and the amount contributed therefor by the institution or agency.

Employer Contributions

Sec. 13. Certification shall be submitted on or before the first day of November next preceding each regular session of the legislature; the institutions and agencies covered under the provisions of this Act shall certify to the Legislative Budget Board and budget division of the Governor's Budget and Planning Office the amount necessary to pay employer contributions for each active and retired employee from the effective date of this Act. The Legislative Budget Board and the Governor's Budget and Planning Office will establish procedures to insure that eligible institutions request appropriate funds to support this program and shall present appropriate budget recommendations to the legislature. The Teacher Retirement System of Texas, Optional Retirement Program carriers, and Employees Retirement System of Texas shall furnish each institution such information as may be deemed necessary by the administrative council to provide retired employees with the coverages and employer contributions provided under the Act.

Administrative Costs

Sec. 14. No employee covered under the provisions of this Act shall be required to pay out of the amount of employer contributions due him or out of the amount of his additional premiums due for selected coverages, any administrative costs, fees, or tax whatsoever to pay expenses of a state institution, the coordinating board, or committees as herein established for administering this Act. The duties of each member of the administrative council and the advisory committee shall be considered additional duties to those required of his other state office or employment, and all expenses incurred by any such member in performing his duties as a member of the council or committee shall be paid out of funds made available for those purposes to the institution of which he is an employee or officer.

Studies, Reports, Records, and Audits

Sec. 15. (a) The administrative council shall cause to be established a continuing study of the operation and administration of this Act, including surveys and reports on group insurance coverages and benefits.

(b) Each contract entered into under this Act shall contain provisions requiring administering carriers to

(1) furnish such reasonable reports as the administrative council determines to be necessary to enable it to carry out its functions under this Act; and

(2) permit the administrative council and representatives of the state auditor to examine records of the carriers as may be necessary to carry out the purpose of this Act.

(c) Each institution shall keep such records, make such certifications, and furnish the administrative council with such information and reports as may be necessary to enable the administrative council to carry out its functions under this Act.

Applicability of State Open-Meetings and Open-Records Statutes and Federal and State Privacy Statutes

Sec. 16. Any reports which shall be required by action of the administrative council and advisory committee which have been established under the Act shall be a matter of open record, available for review under the provisions of applicable open-record statutes of the State of Texas. This shall not be interpreted to require the release of any records pertaining to individuals insured under the provisions of this Act, the release of which would be in conflict with the rights of these individuals under federal and state privacy statutes. Meetings which are necessary for the administration of the Act shall be subject to applicable provisions of state open-meetings statutes.

Coverage for Dependents

Sec. 17. Any employee or retired employee shall be entitled to secure for his dependents any uniform group insurance coverages provided for such dependents under the rules and regulations to be promulgated by the administrative council. Such payments for such coverages for dependents shall be deducted from the monthly pay of the employee or paid in such manner and form as the administrative council shall determine.

Effective Date

Sec. 18. This Act shall become effective September 1, 1977, and basic coverages shall be provided by each institution covered under this Act beginning no later than September 1, 1979.

Severability

Sec. 19. If any word, phrase, clause, paragraph, sentence, part, portion, or provision of this Act or the application thereof to any person or circumstance shall be held to be invalid or unconstitutional, the remainder of the Act in all its particulars and as to all other persons and circumstances shall be valid and of full force and effect, and the legislature hereby declares that this Act would have been enacted without such invalid or unconstitutional word, phrase, clause, paragraph, sentence, part, portion, or provision, and to this end the provisions of this Act are declared to be severable.

Repeal

Sec. 20. All laws or parts of laws in conflict with this Act are hereby repealed to the extent of such conflict only.

[Acts 1977, 65th Leg., p. 56, ch. 32, §§ 1 to 20, eff. Sept. 1, 1977.]

Article 3.50-3 was not enacted as part of the Insurance Code of 1951.

Art. 3.51-2. County and Political Subdivision of the State of Texas—Officials, Employees, and Retirees

(a) Each county or political subdivision of the State of Texas is authorized to procure contracts insuring its officials, employees, and retirees or any class or classes thereof under a policy or policies of group life, group health, accident, accidental death and dismemberment, and hospital, surgical, and/or medical expense insurance. The dependents of any such officials, employees, and retirees may be insured under group policies which provide hospital, surgical and/or medical expense insurance. The employees' contributions to the premiums for such insurance issued to the employer as the policyholder may be deducted by the employer from the employees' salaries when authorized in writing by the respective employees so to do; provided, however, no state funds shall be used to procure such contracts, nor shall any state funds be used to pay premiums under said contracts of insurance.

(b) Any county or political subdivision of the State of Texas which is authorized by law to procure a contract insuring its respective officials, employees, and retirees or any class or classes thereof under a policy or policies of group insurance covering one or more risks may pay all or any portion of the premiums on such policy or policies from the local funds of such county or political subdivision of the State of Texas.

[Amended by Acts 1975, 64th Leg., p. 278, ch. 120, § 1, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 537, ch. 252, § 1, eff. Aug. 27, 1979.]

Section 2 of the 1975 amendatory act provided:

"Sec. 2. The provisions of this Act are severable. If any provision of this Act or the application thereof to any person or circumstance shall be held to be invalid or unconstitutional, the remainder of the Act and the application of such provision to other persons or circumstances shall not thereby be rendered invalid or unconstitutional, nor be affected thereby."

Art. 3.51-4. Payment of Premiums of Group Life and Health Insurance Policies for Retirees of the Central Education Agency, the Texas Rehabilitation Commission, the Coordinating Board, Texas College and University System, Retired Employees of the Texas Department of Mental Health and Mental Retardation Who Accepted Retirement Under the Teacher Retirement System of Texas, Retired Employees of the Texas Youth Council Who Accepted Retirement Under the Teacher Retirement System of Texas, and Retired Employees of the Teacher Retirement System of Texas Who Accepted Retirement Under the Teacher Retirement System of Texas

The premium cost of group life, health, accident, hospital, surgical and/or medical expense insurance for retirees of the Central Education Agency, the Texas Rehabilitation Commission, the Coordinating Board, Texas College and University System, for retired employees of the Texas Department of Mental Health and Mental Retardation, the Texas Youth Council, and the Teacher Retirement System of Texas who accepted retirement under the Teacher Retirement System of Texas pursuant to Chapter 3, Texas Education Code,¹ shall be paid by the State of Texas, subject to the following limitations and conditions:

(a) Payment shall be from the funds of the agency, commission, board or department from which the officer or employee retired, shall be limited to the same amount allowed active employees under current group life and health insurance programs of the agency, commission, board or department, and shall be made in accordance with rules and regulations to be established no later than September 1, 1973, by the Central Education Agency, the Texas Rehabilitation Commission, and the Coordinating Board, Texas College and University System for its respective retirees and no later than September 1, 1975, by the Texas Department of Mental Health and Mental Retardation, the Texas Youth Council, and the Teacher Retirement System of Texas for their retired employees who accepted retirement under the Teacher Retirement System of Texas pursuant to Chapter 3, Texas Education Code.

(b) The agency, commission, board and department shall certify to the state comptroller of public accounts and to the state treasurer each month the amount required each month to pay the insurance premiums of the said retirees, and the State of Texas shall pay the amount so ascertained each month, beginning September 1, 1973, to the Central Education Agency, the Texas Rehabilitation Commission, and the Coordinating Board, Texas

College and University System, and beginning September 1, 1975, to the Texas Department of Mental Health and Mental Retardation and the Texas Youth Council.

[Amended by Acts 1975, 64th Leg., p. 1027, ch. 394, § 1, eff. June 19, 1975.]

¹ Education Code, § 3.01 et seq.

Art. 3.51-4A. Extension of Term Life Insurance to Spouses and Children

Sec. 1. Insurance under any group term life insurance policy issued and delivered pursuant to the laws of the State of Texas, except a policy issued and delivered to a creditor pursuant to Section 1(4) of Article 3.50 of the Texas Insurance Code or pursuant to any other law of the State of Texas providing for credit life insurance, may be extended to cover the spouse, the children under 21 years of age, natural or adopted, and the children over 21 years of age, natural or adopted, who are enrolled as full-time students at an educational institution or are physically or mentally disabled and who are under the supervision of the parents, of each insured thereunder, provided that the amounts of insurance under the policy are based on some plan precluding individual selection either by the insured or the policyholder, and provided further that the amount of such insurance on the life of the spouse shall not exceed \$10,000 or one-half of the amount of insurance on the life of the aforesaid insured under said policy, whichever is less, nor shall the amount of such insurance on the life of a child exceed \$2,000.

[See Compact Edition, Volume 2 for text of 2 to 4]

[Amended by Acts 1975, 64th Leg., p. 766, ch. 299, § 2, eff. May 27, 1975.]

Art. 3.51-5. Payments of Group Life and Health Insurance Premiums for Retired Employees of the Texas Central Education Agency, the Texas Rehabilitation Commission, the Texas Department of Mental Health and Mental Retardation, the Texas Youth Council, a Texas Senior College or University, and the Coordinating Board, Texas College and University System

(a) The costs of group life and health insurance premiums to persons retired under the Teacher Retirement Act, who at the time of their retirement were employed by the Texas Central Education Agency, the Texas Rehabilitation Commission, the Texas Department of Mental Health and Mental Retardation, the Texas Youth Council, a Texas senior college or university, and the Coordinating Board, Texas College and University System, shall be fully paid from the funds of such agency, commission, institution, or board under the following provisions and conditions:

(1) The coverage of this Act shall extend to all such retired persons within the limits of eligibility under state contracts in force on the effective date of this Act or as may be otherwise provided by law;

(2) such payment shall be in accordance with rules and regulations established by such agency, commission, institution, or board;

(3) such agency, commission, institution, and board shall certify to the Comptroller of Public Accounts and the State Treasurer each month the amount so ascertained each month to such agency, commission, institution, and board;

(4) payments shall begin on the first day of the month following the month in which this Act takes effect and shall continue to be paid until otherwise provided by law.

(b) There are hereby authorized to be paid out of the funds of each agency, commission, institution, or board named in the Act the sums necessary to fund the payments of premiums provided in this Act. [Added by Acts 1975, 64th Leg., p. 1062, ch. 408, § 1, eff. Sept. 1, 1975.]

Art. 3.51-6. Group and Blanket Accident and Health Insurance

Group Insurance Defined: Coverage, Certificate, Fees or Allowances

Sec. 1. (a) Group accident and health insurance is hereby defined to be that form of accident, sickness, or accident and sickness insurance covering groups of persons as provided in Subdivisions (1) through (5) below:

(1) under a policy issued to an employer or trustees of a fund established by an employer, who shall be deemed the policyholder, insuring employees of such employer for the benefit of persons other than the employer. The term "employees" as used herein shall be deemed to include the officers, managers, and employees of the employer, the individual proprietor, or partner if the employer is an individual proprietor or partnership, the officers, managers, and employees of subsidiary or affiliated corporations, the individual proprietors, partners, and employees of individuals and firms, if the business of the employer and such individual or firm is under common control through stock ownership, contract, or otherwise, and retired employees. A policy issued to insure employees of a public body may provide that the term "employees" shall include elected or appointed officials. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship;

(2) under a policy issued to an association, including but not limited to a labor union or organi-

zations of such unions, membership corporations organized or holding a certificate of authority under the Texas Non-Profit Corporation Act,¹ and cooperatives and corporations subject to the supervision and control of the Farm Credit Administration of the United States of America, and which association shall have a constitution and bylaws, and which has been organized and is maintained in good faith for purposes other than that of obtaining insurance, to insure members, employees, or employees of members (active and retired for the benefit of persons other than the association or its officers or trustees);

(3) under a policy issued to the trustees of a fund established by two or more employers in the same or related industry or by one or more labor unions or by one or more employers and one or more labor unions or by an association as defined in (2) above, which trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions or such association, or employees of members of such association for the benefit of persons other than the employers or the unions or such association. The term "employees" as used herein may include the officers, managers, and employees of the employer, retired employees, and the individual proprietor or partners if the employer is an individual proprietor or partnership. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship;

(4) under a policy issued to any person or organization to which a policy of group life insurance may be issued or delivered in this state to insure any class or classes of individuals that could be insured under such group life policy;

(5) under a policy issued to cover any other substantially similar group which, in the discretion of the commissioner of insurance, may be subject to the issuance of a group accident and sickness policy or contract.

(b) The spouse and dependents of employees or members referred to in Subdivisions (a)(1) through (a)(5) of this section may be included within the coverage provided in a group policy.

(c) An insurer issuing a group policy under this article shall furnish to the policyholder for delivery to each employee or member of the insured group a certificate of insurance which shall contain a statement, in summary form, of the essential features of the insurance coverage of such employee or member and to whom benefits are payable. If dependents are included in the coverage, only one certificate need be issued for each family unit.

(d) No group policy of accident, health, or accident and health insurance shall be delivered or issued for delivery in this state which does not con-

form to the requirements and definitions set forth in Subdivisions (a)(1) through (a)(5) of this section.

(e) No insurer shall pay to any individual, firm, corporation, or group entity any fees or allowances for services related to group policies except as reimbursement for the cost of such services which would otherwise have been provided by the insurer, provided that this provision shall not limit the right of the insurer to pay dividends or make returns of premium to any group or to any combination of groups or make provision for rate stabilization funds with combinations of groups, nor shall it prohibit payment of commissions or compensation to a duly licensed agent.

(f) Any group accident and health insurance policy which contains provisions for the payment by the insurer of benefits for members of the family or dependents of a person in the insured group may provide for a continuation of such benefits or any part thereof after the death of the person in the insured group and provided further that any amounts of insurance so provided by such benefits shall not be construed as life insurance under this chapter. Such coverage may continue for a period not to exceed 180 days subject to any other policy provisions relating to termination of dependent's coverage.

¹ Civil Statutes, Art. 1396-1.01 et seq.

Blanket Insurance Defined; Application or Certificate; Liability for Death or Injury of Member; Fees or Allowances

Sec. 2. (a) Blanket accident and health insurance is hereby defined to be that form of accident, health, or accident and health insurance covering groups of persons as provided in (1) through (9) below:

(1) under a policy issued to any common carrier or to any operator, owner, or lessor of a means of transportation, who or which shall be deemed the policyholder, covering a group of persons who may become passengers defined by reference to their travel status on such common carrier or such means of transportation; or, under a policy issued to any automobile and/or truck leasing company, which shall be deemed the policyholder, covering a group of persons who may become either renters, lessees, or passengers defined by their travel status on such rented or leased vehicles;

(2) under a policy issued to an employer, who shall be deemed the policyholder, covering any group of employees, dependents, or guests, defined by reference to specified hazards incident to an activity or activities or operations of the policyholder;

(3) under a policy issued to a college, school, or other institution of learning, a school district or districts, or school jurisdictional unit, or to the head, principal, or governing board of any such education unit, who or which shall be deemed the policyholder, covering students, teachers, or employees;

(4) under a policy issued to any religious, charitable, recreational, educational, or civic organization, or branch thereof, which shall be deemed the policyholder, covering any group of members or participants defined by reference to specified hazards incident to any activity or activities or operations sponsored or supervised by such policyholder;

(5) under a policy issued to a sports team, camp, or sponsor thereof, which shall be deemed the policyholder, covering members, campers, employees, officials, or supervisors;

(6) under a policy issued to any governmental or volunteer fire department or fire company, first aid, civil defense, or other such governmental or volunteer organization, which shall be deemed the policyholder, covering any group of members or participants defined by reference to specified hazards incident to an activity or activities or operations sponsored or supervised by such policyholder;

(7) under a policy issued to a newspaper or other publisher, which shall be deemed the policyholder, covering its carriers;

(8) under a policy issued to an association, including a labor union, which shall have a constitution and bylaws and which has been organized and is maintained in good faith for purposes other than that of obtaining insurance, which shall be deemed the policyholder, covering any group of members or participants defined by reference to specified hazards incident to an activity or activities or operations sponsored or supervised by such policyholder;

(9) under a policy issued to cover any other risk or class of risks which, in the discretion of the commissioner of insurance, may be properly eligible for blanket accident and sickness insurance. The discretion of the commissioner of insurance may be exercised on an individual risk basis or class of risks, or both.

(b) An individual application need not be required from a person covered under a blanket accident and sickness policy or contract, nor shall it be necessary for the insurer to furnish each person a certificate.

(c) Nothing in this section shall be deemed to affect the legal liability of any policyholder for the death of or injury to any member of a group.

(d) No blanket policy shall be delivered or issued for delivery in this state which does not conform to the requirements and definitions set forth in Subdivisions (a)(1) through (a)(9) of this section.

(e) No insurer shall pay to any individual, firm, or corporation any fees or allowances for services related to blanket policies except as reimbursement for the cost of such services which would otherwise have been provided by the insurer provided that this provision shall not limit the right of the insurer to pay dividends or make return of premium to any

group or any combination of groups or make provision for rate stabilization funds with combinations of groups, nor shall it prohibit the payment of commissions or compensation to a duly licensed agent.

Payment of Benefits

Sec. 3. All benefits under any group or blanket accident and sickness policy shall be payable to the person insured, or to his designated beneficiary or beneficiaries, or to his estate, except that if the person insured be a minor or otherwise not competent to give a valid release, such benefits may be made payable to his parent, guardian, or other person actually supporting him. The policy may provide that all or a portion of any indemnities provided by any such policy on account of hospital, nursing, medical, or surgical services may, at the option of the insurer and unless the insured requests otherwise in writing not later than the time of filing proofs of such loss, be paid directly to the hospital or person rendering such services; but the policy may not require that the service be rendered by a particular hospital or person. Payment so made shall discharge the obligation of the insurer with respect to the amount of insurance so paid.

Conversion Privilege

Sec. 3A. (a) In this section:

(1) "Health insurance policy" means a group policy or contract, including group contracts issued by companies subject to Chapter 20, Insurance Code, as amended, providing insurance for hospital, surgical, or medical expenses incurred as a result of an accident or sickness.

(2) "Insured" means an employee or member of a group that is covered by a health insurance policy.

(b) A health insurance policy delivered or issued for delivery in this state that provides for conversion to an individual policy by an insured on termination of membership in or employment with the group shall provide a conversion privilege to an individual policy to the spouse of the insured on death of the insured or divorce from the insured or on termination of the insured's membership in or employment with the group for any reason including retirement. If the conversion privilege available to the insured provides for coverage of the insured's spouse, the group insurer shall not be required to issue a separate conversion policy to the spouse.

(c) Subsection (b) of this section applies only to a spouse of an insured if the spouse is covered under the health insurance policy at the time of the insured's death or divorce from the insured or termination of the insured's coverage.

Exemptions

Sec. 4. The provisions of this article shall not be applicable to:

(1) credit accident and health insurance policies subject to Article 3.53 of the Insurance Code, as amended;

(2) any group specifically provided for or authorized by law in existence and covered under a policy filed with the State Board of Insurance prior to April 1, 1975;

(3) accident and health coverages that are incidental to any form of group automobile, casualty, property, or workmen's compensation—employers' liability policies promulgated or approved by the State Board of Insurance;

(4) any policy or contract of insurance with a state agency, department, or board providing health services to all eligible persons under Section 6, The Medical Assistance Act of 1967, as amended (Article 695j-1, Vernon's Texas Civil Statutes), 343-353¹ (42 U.S.C.A. 1396-1396g), providing health care and services under a state plan.

¹ So in enrolled bill; probably should read "79 Stat. 343-353".

Rules and Regulations

Sec. 5. The State Board of Insurance is authorized to issue such rules and regulations as may be necessary to carry out the various provisions of this article. Rules and regulations promulgated pursuant to this article shall be subject to notice and hearing pursuant to Section 10, Chapter 397, Acts of the 54th Legislature, Regular Session, 1955 (Article 3.70-10, Vernon's Texas Insurance Code).

[Added by Acts 1975, 64th Leg., p. 1112, ch. 419, § 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 805, ch. 364, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1063, ch. 498, § 1, eff. June 7, 1979.]

Section 2 of the 1975 Act provided:

"This Act shall apply to all group accident, health, or accident and health insurance policies and all blanket accident, health, or accident and health insurance policies, delivered or issued for delivery in the State of Texas on and after January 1, 1976."

Section 2 of Acts 1979, 66th Leg., p. 805, ch. 364, provided:

"This Act applies to all health insurance policies defined in Section 3A of Article 3.51-6, Insurance Code, and group contracts issued by companies subject to Chapter 20, Insurance Code, as amended, that are delivered or issued for delivery in this state on or after January 1, 1980. Any presently approved policy forms containing any provision in conflict with the requirements of this Act may be brought into compliance with this Act by the use of riders and endorsements which have been approved by the State Board of Insurance."

Art. 3.51-7. Payments of Additional Death Benefits for Retired Appointed Officers and Employees of the Teacher Retirement System of Texas, and the Texas Central Education Agency, and the Texas Schools for the Blind and Deaf

Text as added by Acts 1977, 65th Leg., p. 1272, ch. 494, § 1

(a) This article shall apply only to persons retired as annuitants under the provisions of the Teacher Retirement System of Texas who were immediately prior to retirement appointed officers or employees of the Central Education Agency, the Teacher Retirement System of Texas, and the Texas Schools for the Blind and Deaf.

(b) There shall be paid from the funds of the Central Education Agency, the Teacher Retirement System of Texas or the Texas Schools for the Blind and Deaf an additional lump-sum death benefit in such amount as, when added to any lump-sum death benefit payable under the provisions of the Teacher Retirement System of Texas, shall equal \$5,000 upon satisfactory proof of the death, occurring on or after September 1, 1977, of any person defined in Part (a) of this article. Each such additional lump-sum death benefit shall be paid from the funds of the agency or school from which such person retired.

(c) Such benefit shall be paid as provided by the laws of descent and distribution unless the retiree has directed in writing that it be paid otherwise.

(d) Such payment shall be made in accordance with rules and regulations established by the Central Education Agency, the Teacher Retirement System of Texas, and the Texas Schools for the Blind and Deaf, and each shall certify to the Comptroller of Public Accounts of Texas and the State Treasurer each month the amounts of all such payments made in the preceding month.

(e) There are hereby authorized to be paid out of the funds of the Central Education Agency, the Teacher Retirement System of Texas, and the Texas Schools for the Blind and Deaf the sums necessary to pay such additional lump-sum death benefits. [Added by Acts 1977, 65th Leg., p. 1272, ch. 494, § 1, eff. June 15, 1977.]

For text added by Act 1977, 65th Leg., p. 1948, ch. 774, § 1, see art. 3.51-7, post

Art. 3.51-7. Continuation of Group Life and Group Accident and Health Insurance During Labor Dispute

Text as added by Acts 1977, 65th Leg., p. 1948, ch. 774, § 1

No group life insurance policy or group accident and health insurance policy shall be delivered or issued for delivery in this state where the premiums or any part thereof is paid or is to be paid in whole or in part by an employer pursuant to the terms of a collective bargaining agreement unless the policy provides that in the event of a cessation of work by the employees covered by the policy as the result of a labor dispute, the policy upon timely payment of the premium shall continue in effect with respect to all employees insured by the policy on the date of the cessation of work who continue to pay their individual contribution and who assume and pay the contribution due from the employer for the period of cessation of work, under the following conditions:

(a) If the policyholder is not a trustee or the trustees of a fund established or maintained in whole or in part by the employer, the policy shall provide that the employee's individual contribu-

tion shall be the rate in the policy, on the date cessation of work occurs, applicable to an individual in the class to which the employee belongs as set forth in the policy. If the policy does not provide for a rate applicable to individuals, the policy shall provide that the employee's individual contribution shall be an amount equal to the amount determined by dividing (1) the total monthly premium in effect under the policy at the date of cessation of work by (2) the total number of persons insured under the policy at such date.

(b) If the policyholder is a trustee or the trustees of a fund established or maintained in whole or in part by the employer, the employee's contribution shall be the amount which he and his employer would have been required to contribute to the trust for such employee if (1) the cessation of work had not occurred and (2) the agreement requiring the employer to make contributions to the trust were in full force.

(c) The policy may provide that the continuation of insurance is contingent upon the collection of individual contributions by the union or unions representing the employees for policies referred to in Subdivision (a) above and by the policyholder or the policyholder's agent with respect to policies referred to in Subdivision (b) above.

(d) The policy may provide that the continuation of insurance on each employee is contingent upon timely payment of contributions by the individual and timely payment of the premium by the entity responsible for collecting the individual contributions.

(e) The policy may provide that each individual premium rate shall be increased by any amount up to 20 percent, or any higher percent which may be approved by the commissioner, of that otherwise shown in the policy during the period of cessation of work in order to provide sufficient compensation to the insurer to cover increased administrative costs and increased mortality and morbidity. If the policy does provide for such an increase, this shall have the effect of increasing the employee's contribution by a like percent.

(f) Nothing in this article shall be deemed to limit any right which the insurer may have in accordance with the terms of the policy to increase or decrease the premium rates before, during, or after such cessation of work if in fact the insurer would have had the right to increase the premium rate had the cessation of work not occurred. If such a premium rate change is made, it shall be effective, notwithstanding any other provisions of this article, on such date as the insurer shall determine in accordance with the terms of the policy.

(g) The policy may contain such other provisions with respect to such continuation of insurance as the Commissioner of Insurance may approve.

(h) The policy may provide that, if a premium is unpaid at the date of cessation of work and such premium became due prior to such cessation of work, the continuation of insurance is contingent upon payment of such premium prior to the date the next premium becomes due under the terms of the policy.

(i) Nothing herein shall be deemed to require the continuation of any loss of time payments included in any such group accident and health insurance policy, nor of any other coverages beyond the time that 75 percent of the employees continue such coverage or as to any individual employee beyond the time that he takes full-time employment with another employer; nor shall anything herein be deemed to require continuation of coverage more than six months after the cessation of work.

[Added by Acts 1977, 65th Leg., p. 1948, ch. 774, § 1, eff. Aug. 29, 1977.]

For text as added by Acts 1977, 65th Leg., p. 1272, ch. 494, § 1, see art. 3.51-7, ante

SUBCHAPTER G. ACCIDENT AND SICKNESS INSURANCE

Art. 3.70-1. Purpose; Definitions; Scope of Act; Rules and Regulations; Standards for Policy Provisions; Minimum Standards; Outline of Coverage; Pre-Existing Conditions; Administrative Procedures

(A) Purpose. The purpose of this Act shall be to provide for reasonable standardization, readability, and simplification of terms and coverages contained in individual accident and sickness insurance policies; to facilitate public understanding of coverages; to eliminate provisions contained in individual accident and sickness insurance policies which may be unjust, unfair, misleading, or unreasonably confusing in connection either with the purchase of such coverages or with the settlement of claims; and to provide for full and fair disclosure in the sale of accident and sickness coverages.

(B) Definitions. As used in this Act,

(1) "Board" shall mean the State Board of Insurance of the State of Texas.

(2) "Commissioner" shall mean the Commissioner of Insurance of the State of Texas.

(3) "Policy of accident and sickness insurance" as used herein, includes any policy or contract providing insurance against loss resulting from sickness or from bodily injury or death by accident or both.

(4) "Policy" means the entire contract between the insurer and the insured, including the policy,

riders, endorsements, and the application, if attached.

(C) Scope of Act. This Act shall apply to and govern individual accident and sickness insurance policies delivered, or issued for delivery, in the State of Texas by life, health and accident companies, mutual life insurance companies, mutual assessment life insurance companies, mutual insurance companies, local mutual aid associations, mutual or natural premium life or casualty insurance companies, general casualty companies, Lloyds, reciprocal or inter-insurance exchanges, nonprofit hospital, medical, or dental service corporations including but not limited to companies subject to Chapter 20 of this code, as amended, stipulated premium insurance companies, or any other insurer which by law is required to be licensed by the Board; provided, however, this Act shall not apply to any society, company or other insurer whose activities are by statute exempt from the control of the Board and which are entitled by statute to an exemption certificate from the Board in evidence of their exempt status, nor to fraternal benefit societies; nor to credit accident and sickness insurance policies written under Article 3.53 of this code, as amended; provided further, that this Act shall not be construed to enlarge the powers of any of the enumerated companies. Conversion policies issued pursuant to a contractual conversion privilege under a group accident and sickness insurance policy shall not be subject to Subsections (D) through (H) of this article.

(D) Rules and Regulations. The Board is authorized to issue such reasonable rules and regulations as may be necessary to carry out the various purposes and provisions of this article.

(E) Standards for Policy Provisions.

(1) The Board shall issue reasonable rules and regulations to establish specific standards including standards for readability of policies and for full and fair disclosure, that set forth the manner, content, and required disclosure for the sale of individual policies of accident and sickness insurance which shall be in addition to and in accordance with applicable laws of this state which may cover but shall not be limited to:

- (a) terms of renewability;
- (b) initial and subsequent conditions of eligibility;
- (c) nonduplication of coverage provisions;
- (d) coverage of dependents;
- (e) pre-existing conditions;
- (f) termination of insurance;
- (g) probationary periods;
- (h) limitations;
- (i) exceptions;
- (j) reductions;

- (k) elimination periods;
- (l) requirements for replacement;
- (m) recurrent conditions; and

(n) the definition of terms including but not limited to the following: hospital, accident, sickness, injury, physician, accidental means, total disability, partial disability, nervous disorder, guaranteed renewable and noncancellable; provided that any definition of hospital so developed shall not be applicable to companies organized under Chapter 20 of this code, as amended.

(2) The Board may issue rules and regulations that specify prohibited policy provisions, not otherwise specifically authorized by statute, which in the opinion of the Board are unjust, unfair, or unfairly discriminatory to the policyholder, any person insured under the policy, or beneficiary.

(F) Minimum Standards for Benefits.

(1) The Board shall issue rules and regulations to establish minimum standards for benefits under each of the following categories of coverage in individual policies of accident and sickness insurance:

- (a) basic hospital expense coverage;
- (b) basic medical-surgical expense coverage;
- (c) hospital confinement indemnity coverage;
- (d) major medical expense coverage;
- (e) disability income protection coverage;
- (f) accident only coverage;
- (g) specified disease or specified accident coverage; and
- (h) limited benefit coverage.

(2) Nothing in this section shall preclude the issuance of any policy which combines two or more of the categories of coverage enumerated in Paragraphs (a) through (h) of Subsection (1) of this section.

(3) No policy shall be issued, or issued for delivery, in the State of Texas which does not meet the prescribed minimum standards for the categories of coverage listed in Paragraphs (a) through (h) of Subsection (1) of this section which are contained within the policy unless the Board finds such policy to be a supplemental policy, a policy experimental in nature or finds such policy will fulfill a reasonable public need and such policy meets the requirements set forth in Article 3.42 of the Insurance Code.

(4) The Board shall prescribe the method of identification of policies based on coverages provided.

(G) Outline of Coverage.

(1) In order to provide for full and fair disclosure in the sale of individual accident and sickness insurance policies, no such policy shall be deliv-

ered, or issued for delivery, in the State of Texas unless: (i) in the case of a direct response insurance product, the outline of coverage described in Subsection (2) of this section accompanies the policy; (ii) in all other cases, the outline of coverage described in Subsection (2) of this section is delivered to the applicant at the time application is made and an acknowledgement of receipt or certificate of delivery of such outline is provided the insurer with the application. In the event the policy is issued on a basis other than that applied for, the outline of coverage properly describing the policy must accompany the policy when it is delivered and clearly state that it is not the policy for which application was made.

(2) The Board shall prescribe the format and content of the outline of coverage required by Subsection (1) of this section. "Format" means style, arrangement, and overall appearance, including such items as the size, color, and prominence of type and the arrangement of text and captions. Such outline of coverage shall include:

(a) a statement identifying the applicable category or categories of coverage provided by the policy as prescribed in Section (F) of this article;

(b) a description of the principal benefits and coverage provided in the policy;

(c) a statement of the exceptions, reductions, and limitations contained in the policy;

(d) a statement of the renewal provision including any reservation by the insurer of a right to change premiums;

(e) a statement that the outline is a summary of the policy issued or applied for and that the policy should be consulted to determine governing contractual provisions;

(f) a summary of such provisions required to be in the policy by Section 3, Chapter 397, Acts of the 54th Legislature, Regular Session, 1955, as amended (Article 3.70-3, Vernon's Texas Insurance Code), as the Board may determine to be necessary to carry out the purposes of this Act.

(g) Any other statements, descriptions, or outlines that the Board may determine to be reasonably necessary to carry out the purposes of this Act.

(H) Pre-existing Conditions. (1) Notwithstanding the provisions of Section 3(A)(2)(b), Chapter 397, Acts of the 54th Legislature, Regular Session, 1955, as amended (Article 3.70-3, Vernon's Texas Insurance Code), if an insurer elects to use a simplified application form, with or without a question as to the applicant's health at the time of application, but without any questions concerning the insured's health history or medical treatment history, the policy must cover any loss occurring after 12 months

from any pre-existing condition not specifically excluded from coverage by terms of the policy. (2) Notwithstanding the provisions of Section 3(A)(2)(b), Chapter 397, Acts of the 54th Legislature, Regular Session, 1955, as amended (Article 3.70-3, Vernon's Texas Insurance Code), or of Paragraph (1) of this subsection, no individual policy of accident and sickness insurance delivered or issued for delivery in this state to a person age 65 or over may contain a provision excluding from coverage any loss due to a pre-existing condition, not specifically excluded from coverage by name or specific description in an exclusion endorsement or rider effective on the date of the loss, for a period in excess of six months from the effective date of coverage under the policy; provided, however, that if the Board finds that the public interest would be served thereby, it may authorize a policy provision excluding coverage for pre-existing conditions for a period in excess of six months but in no event shall such period exceed one year. (3) Except as so provided, a policy issued under the provisions of this section may not include wording that would permit a defense based on pre-existing conditions.

(I) Administrative Procedures. Rules and regulations promulgated pursuant to this Article shall be subject to notice and hearing pursuant to Section 10, Chapter 397, Acts of the 54th Legislature, Regular Session, 1955 (Article 3.70-10, Vernon's Texas Insurance Code).

[Amended by Acts 1975, 64th Leg., p. 2199, ch. 703, § 1, eff. June 21, 1975; Acts 1977, 65th Leg., p. 1285, ch. 505, § 1, eff. June 15, 1977.]

Sections 2 and 3 of the 1975 amendatory act amended subsecs. (A) and (B) of art. 3.70-3; § 4 amended art. 3.42; § 5 amended art. 3.70-9; and § 6 thereof provided:

"This Act shall apply to all policies of accident and sickness insurance issued, or issued for delivery, in the State of Texas after June 1, 1976. This Act shall not apply to policies issued, or issued for delivery, in the State of Texas prior to such date."

Art. 3.70-3. Accident and Sickness Policy Provisions

(A) Required Provisions. Except as provided in paragraph (C) of this section each such policy delivered or issued for delivery to any person in this state shall contain the provisions specified in this subsection in the words in which the same appear in this section; provided, however, that the insurer may, at its option, substitute for one or more of such provisions, provisions of different wording approved by the Board, in accordance with reasonable rules and regulations promulgated by the Board, which are in each instance not less favorable in any respect to the insured or the beneficiary; and provided further that Provisions 6, 8, and 9 shall not be required provisions under this Subsection A for companies organized under Chapter 20 of this code, as amended. Such provisions shall be preceded individually by the caption appearing in this subsection or, at the option of the insurer, by such appropriate individual

or group captions or subcaptions as the Board may approve.

(1) A provision as follows:

Entire Contract; Changes: This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the insurer and unless such approval be endorsed hereon or attached hereto. No agent has authority to change this policy or to waive any of its provisions.

(2) A provision as follows:

Time Limit on Certain Defenses: (a) After two years from the date of issue of this policy no misstatements, except fraudulent misstatements, made by the applicant in the application for such policy shall be used to void the policy or to deny a claim for loss incurred or disability (as defined in the policy) commencing after the expiration of such two-year period.

(The foregoing policy provision shall not be so construed as to affect any legal requirement for avoidance of a policy or denial of a claim during such initial two-year period, nor to limit the application of Section 3(B), (1), (2), (3), (4), and (5) in the event of misstatement with respect to age or occupation or other insurance.)

(A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium (1) until at least age 50 or, (2) in the case of a policy issued after age 44, for at least five years from its date of issue, may contain in lieu of the foregoing the following provision (from which the clause in parentheses may be omitted at the insurer's option) under the caption "incontestible":

After this policy has been in force for a period of two years during the lifetime of the insured (excluding any period during which the insured is disabled), it shall become incontestible as to the statements contained in the application.)

(b) No claim for loss incurred or disability (as defined in the policy) commencing after two years from the date of issue of this policy shall be reduced or denied on the ground that a disease or physical condition not excluded from coverage by name or specific description effective on the date of loss had existed prior to the effective date of coverage of this policy.

(3) A provision as follows:

Grace Period: A grace period of (insert a number not less than "7" for weekly premium policies, "10" for monthly premium policies, and "31" for all other policies) days will be granted for the payment of each premium falling due after the first premium, during which grace period the policy shall continue in force.

(A policy which contains a cancellation provision may add, at the end of the above provision, subject to the right of the insurer to cancel in accordance with the cancellation provision hereof.

A policy in which the insurer reserves the right to refuse any renewal shall have, at the beginning of the above provision:

Unless not less than five days prior to the premium due date the insurer has delivered to the insured or has mailed to his last address as shown by the records of the insurer written notice of its intention not to renew this policy beyond the period for which the premium has been accepted.)

(4) A provision as follows:

Reinstatement: If any renewal premium be not paid within the time granted the insured for payment, a subsequent acceptance of premium by the insurer or by any agent duly authorized by the insurer to accept such premium, without requiring in connection therewith an application for reinstatement, shall reinstate the policy; provided, however, that if the insurer or such agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy will be reinstated upon approval of such application by the insurer or, lacking such approval, upon the forty-fifth day following the date of such conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of such application. The reinstated policy shall cover only loss resulting from such accidental injury as may be sustained after the date of reinstatement and loss due to such sickness as may begin more than ten days after such date. In all other respects the insured and insurer shall have the same rights thereunder as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed hereon or attached hereto in connection with the reinstatement. Any premium accepted in connection with a reinstatement shall be applied to a period for which premium has not been previously paid, but not to any period more than sixty days prior to the date of reinstatement.

(The last sentence of the above provision may be omitted from any policy which the insured has the right to continue in force subject to its terms by the timely payment of premium (1) until at least age 50 or, (2) in the case of a policy issued after age 44, for at least five years from its date of issue.)

(5) A provision as follows:

Notice of Claim: Written notice of claim must be given to the insurer within twenty days after the occurrence or commencement of any loss covered by the policy, or as soon thereafter as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insurer at

..... (insert the location of such office as the insurer may designate for the purpose), or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer.

(In a policy providing a loss-of-time benefit which may be payable for at least two years, an insurer may at its option insert the following between the first and second sentences of the above provision:

Subject to the qualifications set forth below, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least two years, he shall, at least once in every (insert a number not less than one nor more than six) months after having given notice of claim, give to the insurer notice of continuance of said disability, except in the event of legal incapacity. The period of (insert a number not less than one nor more than six) months following any filing of proof by the insured or any payment by the insurer on account of such claim or any denial of liability in whole or in part by the insurer shall be excluded in applying this provision. Delay in the giving of such notice shall not impair the insured's right to any indemnity which would otherwise have accrued during the period of (insert a number not less than one nor more than six) months preceding the date on which such notice is actually given.)

(6) A provision as follows:

Claim Forms: The insurer, upon receipt of a notice of claim, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not furnished within fifteen days after the giving of such notice the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting, within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, the character and the extent of the loss for which claim is made.

(7) A provision as follows:

Proofs of Loss: Written proof of loss must be furnished to the insurer at its said office in case of claim for loss for which this policy provides any periodic payment contingent upon continuing loss within ninety days after the termination of the period for which the insurer is liable and in case of claim for any other loss within ninety days after the date of such loss. Failure to furnish such proof within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible; and in no event, except in the absence of

legal capacity, later than one year from the time proof is otherwise required.

(8) A provision as follows:

Time of Payment of Claims: Indemnities payable under this policy for any loss other than loss for which this policy provides any periodic payment will be paid immediately upon receipt of due written proof of such loss. Subject to due written proof of loss, all accrued indemnities for loss for which this policy provides periodic payment will be paid (insert period for payment which must not be less frequently than monthly) and any balance remaining unpaid upon the termination of liability will be paid immediately upon receipt of due written proof.

(9) A provision as follows:

Payment of Claims: Indemnity for loss of life will be payable in accordance with the beneficiary designation and the provisions respecting such payment which may be prescribed herein and effective at the time of payment. If no such designation or provision is then effective, such indemnity shall be payable to the estate of the insured. Any other accrued indemnities unpaid at the insured's death may, at the option of the insurer, be paid either to such beneficiary or to such estate. All other indemnities will be payable to the insured.

(The following provisions, or either of them, may be included with the foregoing provision at the option of the insurer:

If any indemnity of this policy shall be payable to the estate of the insured, or to an insured or beneficiary who is a minor or otherwise not competent to give a valid release, the insurer may pay such indemnity, up to an amount not exceeding \$. (insert an amount which shall not exceed \$1,000), to any relative by blood or connection by marriage of the insured or beneficiary who is deemed by the insurer to be equitably entitled thereto. Any payment made by the insurer in good faith pursuant to this provision shall fully discharge the insurer to the extent of such payment.

Subject to any written direction of the insured in the application or otherwise all or a portion of any indemnities provided by this policy on account of hospital, nursing, medical or surgical services may, at the insurer's option and unless the insured requests otherwise in writing not later than the time of filing proofs of such loss, be paid directly to the hospital or person rendering such services; but it is not required that the service be rendered by a particular hospital or person.)

(10) A provision as follows:

Physical Examinations and Autopsy: The insurer at its own expense shall have the right and

opportunity to examine the person of the insured when and as often as it may reasonably require during the pendency of a claim hereunder and to make an autopsy in case of death where it is not forbidden by law.

(11) A provision as follows:

Legal Actions: No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after written proof of loss has been furnished in accordance with the requirements of this policy. No such action shall be brought after the expiration of three years after the time written proof of loss is required to be furnished.

(12) A provision as follows:

Change of Beneficiary: Unless the insured makes an irrevocable designation of beneficiary, the right to change of beneficiary is reserved to the insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy or to any change of beneficiary or beneficiaries, or to any other changes in this policy.

(The first clause of this provision, relating to the irrevocable designation of beneficiary, may be omitted at the insurer's option.)

(B) Other Provisions. Except as provided in paragraph (C) of this section, no such policy delivered or issued for delivery to any person in this state shall contain provisions respecting the matters set forth below unless such provisions are in the words in which the same appear in this section; provided, however, that the insurer may, at its option, use in lieu of any such provision a provision of different wording approved by the Board, in accordance with reasonable rules and regulations promulgated by the Board, which is not less favorable in any respect to the insured or the beneficiary. Any such provision contained in the policy shall be preceded individually by the appropriate caption appearing in this subsection or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the Board may approve.

(1) A provision as follows:

Change of Occupation: If the insured be injured or contract sickness after having changed his occupation to one classified by the insurer as more hazardous than that stated in this policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provided in this policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer for such more hazardous occupation. If the insured changes his occupation to one classified by the insurer as less hazardous than that stated in this policy,

the insurer, upon receipt of proof of such change of occupation, will reduce the premium rate accordingly, and will return the excess pro-rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of such proof, whichever is the more recent. In applying this provision, the classification of occupational risk and the premium rates shall be such as have been last filed by the insurer prior to the occurrence of the loss for which the insurer is liable or prior to date of proof of change in occupation with the state official having supervision of insurance in the state where the insured resided at the time this policy was issued; but if such filing was not required, then the classification of occupational risk and the premium rates shall be those last made effective by the insurer in such state prior to the occurrence of the loss or prior to the date of proof of change in occupation.

(2) A provision as follows:

Misstatement of Age: If the age of the insured has been misstated, all amounts payable under this policy shall be such as the premium paid would have purchased at the correct age.

(3) A provision as follows:

Other Insurance in This Insurer: If an accident or sickness or accident and sickness policy or policies previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for (insert type of coverage or coverages) in excess of \$. (insert maximum limit of indemnity or indemnities) the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured or to his estate; or, in lieu thereof:

Insurance effective at any one time on the insured under a like policy or policies in this insurer is limited to the one such policy elected by the insured, his beneficiary or his estate, as the case may be, and the insurer will return all premiums paid for all other such policies.

(4) A provision as follows:

Relation of Earnings to Insurance: If the total monthly amount of loss of time benefits promised for the same loss under all valid loss of time coverage upon the insured, whether payable on a weekly or monthly basis, shall exceed the monthly earnings of the insured at the time disability commenced or his average monthly earnings for the period of two years immediately preceding a disability for which claim is made, whichever is the greater, the insurer will be liable only for such proportionate amount of such benefits under this policy as the amount of

such monthly earnings or such average monthly earnings of the insured bears to the total amount of monthly benefits for the same loss under all such coverage upon the insured at the time such disability commences and for the return of such part of the premiums paid during such two years as shall exceed the pro-rata amount of the premiums for the benefits actually paid hereunder; but this shall not operate to reduce the total monthly amount of benefits payable under all such coverage upon the insured below the sum of Two Hundred Dollars (\$200.00) or the sum of the monthly benefits specified in such coverages, whichever is the lesser, nor shall it operate to reduce benefits other than those payable for loss of time.

(The foregoing policy provision may be inserted only in a policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (1) until at least age 50 or, (2) in the case of a policy issued after age 44, for at least five years from its date of issue. The insurer may, at its option, include in this provision a definition of "valid loss of time coverage," approved as to form by the Board, which definition shall be limited in subject matter to coverage provided by governmental agencies or by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, or to any other coverage the inclusion of which may be approved by the Board or any combination of such coverages. In the absence of such definition such term shall not include any coverage provided for such insured pursuant to any compulsory benefit statute (including any workmen's compensation or employer's liability statute), or benefits provided by union welfare plans or by employer or employee benefit organizations.)

(5) A provision as follows:

Unpaid Premium: Upon the payment of a claim under this policy, any premium then due and unpaid or covered by any note or written order may be deducted therefrom.

(6) A provision as follows:

Cancellation: The insurer may cancel this policy at any time by written notice delivered to the insured, or mailed to his last address as shown by the records of the insurer, stating when, not less than five days thereafter, such cancellation shall be effective; and after the policy has been continued beyond its original term the insured may cancel this policy at any time by written notice delivered or mailed to the insurer, effective upon receipt or on such later date as may be specified in such notice. In the

event of cancellation, the insurer will return promptly the unearned portion of any premium paid. If the insured cancels, the earned premium shall be computed by the use of the short-rate table last filed with the state official having supervision of insurance in the state where the insured resided when the policy was issued. If the insurer cancels, the earned premium shall be computed pro-rata. Cancellation shall be without prejudice to any claim originating prior to the effective date of cancellation.

(7) A provision as follows:

Conformity With State Statutes: Any provision of this policy which, on its effective date, is in conflict with the statutes of the state in which the insured resides on such date is hereby amended to conform to the minimum requirements of such statutes.

(8) A provision as follows:

Illegal Occupation: The insurer shall not be liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a felony or to which a contributing cause was the insured's being engaged in an illegal occupation.

(9) A provision as follows:

Intoxicants and Narcotics: The insurer shall not be liable for any loss sustained or contracted in consequence of the insured's being intoxicated or under the influence of any narcotic unless administered on the advice of a physician.

[See Compact Edition, Volume 2 for text of (C) to (G)]

[Amended by Acts 1975, 64th Leg., p. 2202, ch. 703, §§ 2 and 3, eff. June 21, 1975.]

Art. 3.70-9. Violation

Any person, partnership, or corporation wilfully violating any provision of this Act or order of the Board made in accordance with this Act, shall forfeit to the people of the state a sum not to exceed Five Thousand Dollars (\$5,000.00) for each such violation, which may be recovered by a civil action. The Board may also suspend or revoke the license of an insurer or agent for any such wilful violation. [Amended by Acts 1975, 64th Leg., p. 2210, ch. 703, § 5, eff. June 21, 1975.]

Art. 3.72. Variable Annuity Contracts

[See Compact Edition, Volume 2 for text of 1 to 7]

Investment of Separate Account Funds

Sec. 8. Any domestic insurance company which has established one or more separate variable annuity accounts pursuant to this article may invest and reinvest all or any part of the assets allocated to any such account in and only in the securities and invest-

ments authorized by Article 3.39 of this Insurance Code for any of the funds of a domestic life insurance company, free and clear of any and all limitations and restrictions in such Article 3.39, and in addition thereto in common capital stocks or other equities which are listed on or admitted to trading in a securities exchange located in the United States of America, or which are publicly held and traded in the "over-the-counter market" as defined by the State Board of Insurance and as to which market quotations have been available. None of the assets allocated to any such variable annuity account shall be invested in common stocks of corporations which shall have defaulted in the payment of any debt within five years next preceding such investment. No such company shall invest in excess of the greater of (a) Twenty-Five Thousand Dollars (\$25,000) or (b) five percent (5%) of the assets of any such separate variable annuity account in any one corporation issuing such common capital stock, except that subject to the approval of the State Board of Insurance all of the assets of a separate account may be invested in the shares of one or more open-end management companies registered under the Federal Investment Company Act of 1940¹ and qualifying as a diversified company thereunder. The assets and investments of such separate variable annuity accounts shall not be taken into account in applying the quantitative investment limitations applicable to other investments of the company. In the purchase of common capital stock or other equities, the insurer shall designate to the broker, or to the seller if the purchase is not made through broker, the specific variable annuity account for which the investment is made.

[See Compact Edition, Volume 2 for text of 9 to 12]

Variable Annuity Agents' Licenses

Sec. 13. (a) Notwithstanding any other law of this State, no person shall, within this State, sell or offer for sale a variable annuity contract, or do or perform any act or thing in the sale, negotiation, making or consummating of any variable annuity contract other than for himself unless such person shall have a valid and current certificate from the State Board of Insurance authorizing such person to act within this State as a variable annuity insurance agent. No such certificate shall be issued unless and until the said Board is satisfied, after examination, that such person is by training, knowledge, ability and character qualified to act as such agent. Any such certificate may be withdrawn and cancelled by said Board, after notice and hearing, if it shall find that the holder thereof does not then have the qualifications required for issue of such certificate.

(b) The Commissioner of Insurance shall collect in advance from variable annuity agent applicants a

license fee of \$25 and an examination fee of \$10. A new examination fee shall be paid for each and every examination. The examination fee shall not be returned under any circumstance other than for failure to appear and take the examination after the applicant has given at least 24 hours notice of an emergency situation to the Commissioner of Insurance and received the commissioner's approval. All fees collected pursuant to this section shall be paid into the State Treasury to the credit of the Insurance Agents License Fund to be used to administer the provisions of this section and Article 21.07-1, Insurance Code.

(c) Each license issued to a variable annuity agent shall expire two years following the date of issue, unless prior thereto it is suspended or revoked by the Commissioner of Insurance or the authority of the agent to act for the insurer is terminated.

(d) Licenses which have not expired or which have not been suspended or revoked may be renewed upon request in writing of the agent and payment of a renewal fee of \$25.

(e) Any agent licensed under this article may represent and act as an agent for more than one insurance carrier any time while his or its license is in force, if he or it so desires. Any such agent and the insurance carrier involved must give notice to the State Board of Insurance of any additional appointment or appointments authorizing him or it to act as agent for an additional insurance carrier or carriers. Such notice must set forth the insurance carrier or carriers which the agent is then licensed to represent and shall be accompanied by a certificate from each insurance carrier to be named in each additional appointment that said insurance carrier desires to appoint the applicant as its agent. This notice shall also contain such other information as the State Board of Insurance may require. The agent or company shall be required to pay a fee of \$8 for each additional appointment applied for, which fee shall accompany the notice.

[See Compact Edition, Volume 2 for text of 14 to 16]

[Amended by Acts 1975, 64th Leg., p. 1379, ch. 528, § 1, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 457, ch. 212, § 1, eff. Aug. 27, 1979.]

¹ 15 U.S.C.A. § 80a-1 et seq.

Art. 3.73. Variable Life Insurance or Annuity Contracts

[See Compact Edition, Volume 2 for text of 1 to 9]

Agent's Licenses: Application, Issuance, Renewal, and Cancellation

Sec. 10. (a) No person or other legal entity may act as a variable life insurance agent within the State of Texas for any insurance company authorized to write variable life insurance, unless the person or entity receives a special license to write variable

life insurance from the commissioner. Persons or entities applying shall file applications for licenses on forms provided by the commissioner.

(b) The Commissioner of Insurance shall collect in advance from variable life insurance agent applicants a license fee of \$25 and an examination fee of \$10. A new examination fee shall be paid for each examination. The examination fee shall not be returned under any circumstance other than for failure to appear and take the examination after the applicant has given at least 24 hours notice of an emergency situation to the Commissioner of Insurance and received the commissioner's approval. The examination fee and license fee shall be paid into the State Treasury to the credit of the Insurance Agents License Fund.

(c) Each license issued to a variable life insurance agent shall expire two years following the date of issue, unless prior thereto it is suspended or revoked by the Commissioner of Insurance or the authority of the agent to act for the insurer is terminated.

(d) Licenses which have not expired or which have not been suspended or revoked may be renewed upon request in writing of the agent and the payment of a \$25 renewal fee.

Additional Appointments

Sec. 11. Any agent licensed under this article may represent and act as an agent for more than one insurance carrier any time while his or its license is in force, if he or it so desires. Any such agent and the insurance carrier involved must give notice to the State Board of Insurance of any additional appointment or appointments authorizing him or it to act as agent for an additional insurance carrier or carriers. Such notice must set forth the insurance carrier or carriers which the agent is then licensed to represent and shall be accompanied by a certificate from each insurance carrier to be named in each additional appointment that said insurance carrier desires to appoint the applicant as its agent. This notice shall also contain such other information as the State Board of Insurance may require. The agent or insurance carrier shall be required to pay a fee of \$8 for each additional appointment applied for, which fee shall accompany the notice. All fees collected pursuant to this section and Section 10 of this article shall be deposited with the State Treasury to the credit of the Insurance Agents License Fund to be used to administer the provisions of this article and Article 21.07-1, Insurance Code.

[Amended by Acts 1979, 66th Leg., p. 458, ch. 212, § 2, eff. Aug. 27, 1979.]

CHAPTER FIVE. RATING AND POLICY FORMS

SUBCHAPTER A. MOTOR VEHICLE OR AUTOMOBILE INSURANCE

Article

5.01-1. Premium Rating Plans.

SUBCHAPTER B. CASUALTY INSURANCE AND FIDELITY, GUARANTY AND SURETY BONDS

Article

5.13-1. Legal Service Contracts.

5.15-1. Professional Liability Insurance for Physicians and Health Care Providers.

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SUBCHAPTER C. FIRE INSURANCE AND ALLIED LINES

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5.92. Rules.

SUBCHAPTER A. MOTOR VEHICLE OR AUTOMOBILE INSURANCE

Art. 5.01-1. Premium Rating Plans

A rating plan promulgated by the State Board of Insurance respecting the writing of motor vehicle insurance, other than insurance written pursuant to Section 35 of the Texas Motor Vehicle Safety-Responsibility Act (Article 6701h, Vernon's Texas Civil Statutes), may not assign any rate consequence to a charge or conviction, or otherwise cause premiums for motor vehicle insurance to be increased because of a charge or conviction for a violation of the Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes).

[Added by Acts 1979, 66th Leg., p. 1769, ch. 717, § 1, eff. June 13, 1979.]

Art. 5.03. Promulgated Rates as Controlling

(a) On and after the filing and effective date of such classification of such risks and rates, no such insurer, except as otherwise provided herein, shall issue or renew any such insurance at premium rates which are greater or lesser than those promulgated by the Board as just, reasonable, adequate and not excessive for the risks to which they respectively apply, and not confiscatory as to any class of insurance carriers authorized by law to write such insurance after taking into consideration the deviation provisions of this Article. Any insurer desiring to write insurance at rates different from those promulgated by the Board shall make a written application to the Board for permission to file a uniform percentage deviation for a lesser or greater rate, on a statewide basis unless otherwise ordered by the Board, from the class rates or classes of rates promulgated by the Board. Any insurer desiring to write insurance under a classification plan different from that promulgated by the Board shall make

written application to the Board for permission to do so; provided, however, the Board shall approve the use of only such additions or refinements in its classification plan as will produce subclassifications which, when combined, will enable consideration of the insurer's experience under both the Board classification plan and its own classification plan. Such application shall be approved in whole or in part by the Board, provided the Board finds that the resulting premiums will be just, adequate, reasonable, not excessive and not unfairly discriminatory, taking into consideration the following:

- (1) the financial condition of the insurer;
- (2) the method of operation and expenses of such insurer;
- (3) the actual paid and incurred loss experience of the insurer;
- (4) earnings of the insurer from investments together with a projection of prospective earnings from investments during the period for which the application is made; and
- (5) such application meets the reasonable conditions, limitations, and restrictions deemed necessary by the Board.

In considering all matters set forth in such application the Board shall give consideration to the composite effect of items (2), (3), and (4) above and the Board shall deny such application if it finds that the resulting premiums would be inadequate, excessive, or unfairly discriminatory. Any original or renewal policy of insurance issued pursuant to an approved plan of deviation shall have attached to or imprinted on the face of such policy the following notice: "The premium charged for this policy is greater than the premium rates promulgated by the State Board of Insurance." The notice shall be in 10-point or larger prominent type-size.

Except as the Board may authorize, the deviation provisions in this Article shall not apply to insurance written pursuant to other provisions of this Chapter in which a deviation from standard rates is authorized, including, but not limited to, automobile liability experience rating and fleet rating plans.

[See *Compact Edition, Volume 2 for text of (b) to (f)*]

[Amended by Acts 1977, 65th Leg., p. 1981, ch. 792, § 1, eff. Aug. 29, 1977.]

Art. 5.06-1. Uninsured or Underinsured Motorist Coverage

(1) No automobile liability insurance (including insurance issued pursuant to an Assigned Risk Plan established under authority of Section 35 of the Texas Motor Vehicle Safety-Responsibility Act),¹ covering liability arising out of the ownership, maintenance, or use of any motor vehicle shall be delivered or issued for delivery in this state unless cover-

age is provided therein or supplemental thereto, in at least the limits described in the Texas Motor Vehicle Safety-Responsibility Act, under provisions prescribed by the Board, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured or underinsured motor vehicles because of bodily injury, sickness, or disease, including death, or property damage resulting therefrom. The coverages required under this Article shall not be applicable where any insured named in the policy shall reject the coverage; provided that unless the named insured thereafter requests such coverage in writing, such coverage need not be provided in or supplemental to a renewal policy where the named insured has rejected the coverage in connection with a policy previously issued to him by the same insurer.

(2) For the purpose of these coverages: (a) the term "uninsured motor vehicle" shall, subject to the terms and conditions of such coverage, be deemed to include an insured motor vehicle where the liability insurer thereof is unable to make payment with respect to the legal liability of its insured within the limits specified therein because of insolvency.

(b) The term "underinsured motor vehicle" means an insured motor vehicle on which there is valid and collectible liability insurance coverage with limits of liability for the owner or operator which were originally lower than, or have been reduced by payment of claims arising from the same accident to, an amount less than the limit of liability stated in the underinsured coverage of the insured's policy.

(c) The State Board of Insurance is hereby authorized to promulgate the forms of the uninsured and underinsured motorist coverages. The Board may also, in such forms, define "uninsured motor vehicle" to exclude certain motor vehicles whose operators are in fact uninsured.

(d) The forms promulgated under the authority of this section shall include provisions that, regardless of the number of persons insured, policies or bonds applicable, vehicles involved, or claims made, the total aggregate limit of liability to any one person who sustains bodily injury or property damage as the result of any one occurrence shall not exceed the limit of liability for these coverages as stated in the policy and the total aggregate limit of liability to all claimants, if more than one, shall not exceed the total limit of liability per occurrence as stated in the policy; and shall provide for the exclusion of the recovery of damages for bodily injury or property damage or both resulting from the intentional acts of the insured. The forms promulgated under the authority of this section shall require that in order for the insured to recover under the uninsured motorist coverages where the owner or operator of any motor vehicle which causes bodily injury or property damage to the insured is unknown, actual physical

contact must have occurred between the motor vehicle owned or operated by such unknown person and the person or property of the insured.

(3) The limits of liability for bodily injury, sickness, or disease, including death, shall be offered to the insured in amounts not less than those prescribed in the Texas Motor Vehicle Safety-Responsibility Act and such higher available limits as may be desired by the insured, but not greater than the limits of liability specified in the bodily injury liability provisions of the insured's policy.

(4) (a) Coverage for property damage shall be offered to the insured in amounts not less than those prescribed in the Texas Motor Vehicle Safety-Responsibility Act and such higher available limits as may be desired by the insured, but not greater than limits of liability specified in the property damage liability provisions of the insured's policy, subject to a deductible amount of \$250.

(b) If the insured has collision coverage and uninsured or underinsured property damage liability coverage, the insured may recover under the policy coverage chosen by the insured. In the event neither coverage is sufficient alone to cover all damage resulting from a single occurrence, the insured may recover under both coverages. When recovering under both coverages, the insured shall designate one coverage as the primary coverage and pay the deductible applicable to that coverage. The primary coverage must be exhausted before any recovery is made under the secondary coverage. If both coverages are utilized in the payment of damages from a single occurrence, the insured shall not be required to pay the deductible applicable to the secondary coverage when the amount of the deductible otherwise applicable to the secondary coverage is the same as or less than the amount of the deductible applicable to the primary coverage. If both coverages are utilized in the payment of damages from a single occurrence and the amount of the deductible otherwise applicable to the secondary coverage is greater than the amount of the deductible applicable to the primary coverage, the insured shall be required to pay in respect of the secondary coverage only the difference between the amount of the two deductibles. In no event shall the insured recover under both coverages more than the actual damages suffered.

(5) The underinsured motorist coverage shall provide for payment to the insured of all sums which he shall be legally entitled to recover as damages from owners or operators of underinsured motor vehicles because of bodily injury or property damage in an amount up to the limit specified in the policy, reduced by the amount recovered or recoverable from the insurer of the underinsured motor vehicle.

(6) In the event of payment to any person under any coverage required by this Section and subject to

the terms and conditions of such coverage, the insurer making such payment shall, to the extent thereof, be entitled to the proceeds of any settlement or judgment resulting from the exercise of any rights of recovery of such person against any person or organization legally responsible for the bodily injury, sickness or disease, or death for which such payment is made, including the proceeds recoverable from the assets of the insolvent insurer; provided, however, whenever an insurer shall make payment under a policy of insurance issued pursuant to this Act, which payment is occasioned by the insolvency of an insurer, the insured of said insolvent insurer shall be given credit in any judgment obtained against him, with respect to his legal liability for such damages, to the extent of such payment, but such paying insurer shall have the right to proceed directly against the insolvent insurer or its receiver, and in pursuance of such right such paying insurer shall possess any rights which the insured of the insolvent company might otherwise have had if the insured of the insolvent insurer had made the payment.

(7) If a dispute exists as to whether a motor vehicle is uninsured, the burden of proof as to that issue shall be upon the insurer.

[Amended by Acts 1977, 65th Leg., p. 370, ch. 182, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1418, ch. 626, § 1, eff. Jan. 1, 1980.]

¹ Civil Statutes, art. 6701h, § 35.

SUBCHAPTER B. CASUALTY INSURANCE AND FIDELITY, GUARANTY AND SURETY BONDS

Art. 5.13-1. Legal Service Contracts

(a) Every insurer governed by Subchapter B of Chapter 5 of the Insurance Code, as amended,¹ and every life, health, and accident insurer governed by Chapter 3 of the Insurance Code, as amended,² is authorized to issue prepaid legal services contracts. Every such insurer or rating organization authorized under Article 5.16 of the Insurance Code shall file with the State Board of Insurance all rules and forms applicable to prepaid legal service contracts in a manner to be established by the State Board of Insurance. All rates, rating plans, and charges shall be established in accordance with actuarial principles for various categories of insureds. Rates, rating plans, and charges shall not be excessive, inadequate, unfairly discriminatory, and the benefits shall be reasonable with respect to the rates charged. Certification, by a qualified actuary, to the appropriateness of the charges, rates, or rating plans, based upon reasonable assumptions, shall accompany the filing along with adequate supporting information.

(b) The State Board of Insurance shall, within a reasonable period, approve any form if the requirements of this section are met. It shall be unlawful to issue such forms until approved or to use such schedules of charges, rates, or rating plans until filed

and approved. If the State Board of Insurance has good cause to believe such rates and rating plans do not comply with the standards of this article, it shall give notice in writing to every insurer or rating organization which filed such rates or rating plans, stating therein in what manner and to what extent such noncompliance is alleged to exist and specifying therein a reasonable time, not less than 30 days thereafter, in which such noncompliance may be corrected. If the board has not acted on any form, rate, rating plan, or charges within 30 days after the filing of same, they shall be deemed approved. The board may require the submission of whatever relevant information is deemed necessary in determining whether to approve or disapprove a filing made pursuant to this section.

(c) The right of such insurers to issue prepaid legal services contracts on individual, group, or franchise bases is hereby recognized, and qualified agents of such insurers who are licensed under Articles 21.07 and 21.14 of the Insurance Code, as amended, and Chapter 213, Acts of the 54th Legislature, 1955, as amended (Article 21.07-1, Vernon's Texas Insurance Code), shall be authorized to write such coverages under such rules and regulations as the State Board of Insurance may prescribe.

(d) The State Board of Insurance is hereby vested with power and authority under this article to promulgate, after notice of hearing, and to enforce, rules and regulations concerning the application to the designated insurers of this article and for such clarification, amplification, and augmentation as in the discretion of the State Board of Insurance are deemed necessary to accomplish the purposes of this article.

(e) This article shall be construed as a specific exception to Article 3.54 of the Texas Insurance Code.

(f) Nothing in this Act shall be construed as compelling the State Board of Insurance to establish standard or absolute rates and the board is specifically authorized, in its discretion, to approve different rates for different insurers for the same risk or risks on the types of insurance covered by this article; nor shall this article be construed as to require the State Board of Insurance to establish a single or uniform rate for each risk or risks or to compel all insurers to adhere to such rates previously filed by other insurers; and the board is empowered to approve such different rates for different insurers, and is required to approve such rates as filed by any insurer unless it finds that such filing does not meet the requirements of this article.

[Added by Acts 1975, 64th Leg., p. 126, ch. 60, § 2, eff. Sept. 1, 1975.]

¹ Article 5.13 et seq.

² Article 3.01 et seq.

Limitations. Section 3 of the 1975 Act provided:

"An insurer operating under the requirements of Section 2 shall not contract itself to practice law in any manner, nor shall it control or attempt to control

the relations existing between an insured and his or her attorney. These attorneys shall never be employees of the insurer but shall at all times be independent contractors maintaining a direct lawyer and client relationship with the insured. Such insurer must agree to pay any attorney licensed by the Supreme Court to practice law in Texas for such services rendered."

Art. 5.15. Filing of Rates and Rating Information; Approval

[See Compact Edition, Volume 2 for text of (a) to (c)]

(d) It is expressly provided, however, that notwithstanding any other provision of this subchapter to the contrary, a rate or premium for such insurance greater than the standard rate or premium that has been approved by the Board may be used on any specific risk if:

(1) a written application is made to the Board naming the insurer and stating the coverage and rate proposed;

(2) the person to be insured or person authorized to act in relation to the risk to be insured consents to such rate;

(3) the reasons for requiring such greater rate or premium are stated in or attached to the application;

(4) the person to be insured or person authorized to act for such person signs the application; and

(5) the Board approves the application by order or by stamping.

(e) Any filing for which there is no approved rate shall be deemed approved from the date of filing to the date of such formal approval or disapproval.

(f) If at any time the Board finds that a filing so approved no longer meets the requirements of this subchapter, it may, after a hearing held on not less than twenty (20) days' notice specifying the matters to be considered at such hearing, to every insurer and rating organization which made such filing, issue an order withdrawing its approval thereof. Said order shall specify in what respects the Board finds that such filing no longer meets the requirements of this subchapter and shall be effective not less than thirty (30) days after its issuance. Copies of such order shall be sent to every such insurer and rating organization.

(g) Any person or organization aggrieved by the action of the Board with respect to any filing may, within thirty (30) days after such action, make written request to the Board for a hearing thereon. The Board shall hear such aggrieved party within thirty (30) days after receipt of such request and shall give not less than ten days' written notice of the time and place of the hearing to the insurer or rating organization which made the filing and to any other aggrieved party. Within thirty (30) days after such hearings the Board shall affirm, reverse or modify its previous action. Pending such hearing and decision thereon the Board may suspend or postpone the effective date of its previous action.

[Amended by Acts 1977, 65th Leg., p. 225, ch. 108, § 1, eff. May 4, 1977.]

Art. 5.15-1. Professional Liability Insurance for Physicians and Health Care Providers

Scope of Article

Sec. 1. This article shall apply to the making and use of insurance rates by every insurer licensed to write or engaged in writing professional liability insurance for any physician or any health care provider including rating organizations, acting on behalf of insurers.

Definitions

Sec. 2. In this article:

(1) "Physician" means a person licensed to practice medicine in this state.

(2) "Health care provider" means any person, partnership, professional association, corporation, facility, or institution licensed or chartered by the State of Texas to provide health care as a registered nurse, hospital, dentist, podiatrist, chiropractor, optometrist, blood bank that is a nonprofit corporation chartered to operate a blood bank and which is accredited by the American Association of Blood Banks, or not-for-profit nursing home, or an officer, employee, or agent of any of them acting in the course and scope of his employment.

(3) "Hospital" means a licensed public or private institution as defined in Chapter 223, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4437f, Vernon's Texas Civil Statutes), or in Section 88, Chapter 243, Acts of the 55th Legislature, Regular Session, 1957 (Article 5547-88, Vernon's Texas Civil Statutes).

Rate Standards

Sec. 3. Rates shall be made in accordance with the following provisions:

(a) Consideration shall be given to past and prospective loss and expense experience inside this state, unless the State Board of Insurance shall find that the group or risk to be insured is not of sufficient size to be deemed credible, in which event, past and prospective loss and expense experience outside this state shall also be considered, to a reasonable margin for underwriting profit and contingencies, to investment income, to dividends or savings allowed or returned by insurers to their policyholders or members.

(b) For the establishment of rates, risks may be grouped by classifications, by rating schedules, or by any other reasonable methods. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Those standards may measure any difference among risks that can be demonstrated to have a probable effect upon losses or expenses.

(c) Rates shall be reasonable and shall not be excessive or inadequate, as defined in this subsection, nor shall they be unfairly discriminatory. No rate shall be held to be excessive unless the rate is unreasonably high for the insurance coverage provided and a reasonable degree of competition does not exist in the area with respect to the classification to which the rate is applicable. No rate shall be held to be inadequate unless the rate is unreasonably low for the insurance coverage provided and is insufficient to sustain projected losses and expenses; or unless the rate is unreasonably low for the insurance coverage provided and the use of the rate has or, if continued, will have the effect of destroying competition or creating a monopoly.

Filing Rates

Sec. 4. (a) The provisions of Article 5.15, Insurance Code, shall apply to the filing of rates and rating information required under this article.

(b) Nothing contained in this article or other provisions of this subchapter concerning the regulation of rates, rating plans, and rating classifications shall, as applies to the writing of professional liability insurance for health care providers and physicians, give the board the power to prescribe uniform or absolute rates; nor shall anything therein be construed as preventing the filing of different rates for risks in a given classification or modified rates for individual risks made in accordance with rating plans, as filed by different insurers or organizations authorized to file such rates. As used in this subsection, "absolute rates" means rates, rating classifications, or rating plans filed by an insurer or authorized rating organization in accordance with this subchapter and the rates, rating classifications, or rating plans so filed are required to be used, to the exclusion of all others, by each insurer lawfully engaged in writing policies.

(c) The State Board of Insurance shall prescribe standardized policy forms for occurrence, claims-made and claims-paid policies of professional liability insurance covering health care providers and physicians, and no insurer may use any other forms in writing professional liability insurance for health care providers and physicians without the prior approval of the State Board of Insurance. However, an insurer writing professional liability insurance for health care providers and physicians may use any form of endorsement if the endorsement is first submitted to and approved by the board.

Reporting of Claims and Claims Information

Sec. 5. Each insurer who issues policies of professional liability insurance covering physicians and health care providers shall file annually with the State Board of Insurance a report of all claims and amount of claims, amounts of claims reserves, investment income of the company derived from medi-

cal professional liability premiums, information relating to amounts of judgments and settlements paid on claims, and other information required by the board. The board may formulate and promulgate a form on which this information shall be reported. The form shall be so devised as to require the information to be reported in an accurate manner, reasonably calculated to facilitate interpretation and to protect the confidentiality of the health care provider or physician.

Annual Premiums

Sec. 6. Policies of professional liability insurance under this article shall be written on not less than an annual premium basis.

Notice of Cancellation or Nonrenewal

Sec. 7. An insurer who issues a policy of professional liability insurance covered by this article shall give at least 90 days' written notice to an insured if premiums on the insurance are to be increased or the policy is to be cancelled or is not to be renewed other than for nonpayment of premiums or because the insured is no longer licensed. If the premiums are to be increased, the notice shall state the amount of the increase, and if the policy is to be cancelled or is not to be renewed, the insurer shall state in the notice the reason for cancellation or nonrenewal. Notice of cancellation under this section may only be given within the first 90 days from the effective date of the policy.

Punitive Damages under Medical Professional Liability Insurance

Sec. 8. No policy of medical professional liability insurance issued to or renewed for a health care provider or physician in this state may include coverage for punitive damages that may be assessed against the health care provider or physician.

Claim Surcharges

Sec. 9. A claim surcharge assessed by an insurer against a health care provider or physician under a professional liability insurance policy may be based only on claims actually paid by an insurer as a result of a settlement or an adverse judgment or an adverse decision of a court.

[Added by Acts 1977, 65th Leg., p. 2054, ch. 817, § 31.01, eff. Aug. 29, 1977.]

Art. 5.15-2. Accident Prevention Services

(a) Any insurer desiring to write professional liability insurance for hospitals in Texas shall maintain or provide accident prevention facilities as a prerequisite for a license to write such insurance. Such facilities shall be adequate to furnish accident prevention services required by the nature of its policyholder's operations and shall include surveys, recommendations, training programs, consultations, analyses of accident causes and hospital risk control management, to implement the program of accident

prevention services. Each field safety representative shall be either a college graduate who shall have a bachelor's degree in science or engineering, a registered professional engineer, a certified safety professional, or an individual who shall have completed a course of training in accident prevention services approved by the State Board of Insurance.

(b) The insurer shall render accident prevention services to its policyholders reasonably commensurate with the risks and exposures and experience of the subscriber's business. To provide such facilities, the insurer may employ qualified personnel, retain qualified independent contractors, contract with the policyholder to provide qualified accident prevention personnel and services, or use a combination of the methods enumerated in this subsection. Such personnel shall have the qualification required for field safety representatives as provided in Subsection (a) of this article.

(c) If the Commissioner of Insurance shall determine that reasonable accident prevention services are not being maintained or provided by the insurer or are not being used by the insurer in a reasonable manner to prevent injury to patients of its policyholders, the fact shall be reported to the State Board of Insurance, and the board shall order a hearing to determine if the insurer is not in compliance with this article. If it is determined that the insurer is not in compliance, its authority to write professional liability insurance for hospitals in Texas shall be revoked.

(d) The State Board of Insurance may promulgate reasonable rules and regulations for the enforcement of this article after holding a public hearing on the proposed rules and regulations.

(e) In this article, "hospital" means a licensed public or private institution as defined in Chapter 223, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4437f, Vernon's Texas Civil Statutes), or in Section 88, Chapter 243, Acts of the 55th Legislature, Regular Session, 1957 (Article 5547-88, Vernon's Texas Civil Statutes).

(f) The provisions of this section shall become effective on January 1, 1978.

[Added by Acts 1977, 65th Leg., p. 2057, ch. 817, § 31.02, eff. Aug. 29, 1977.]

SUBCHAPTER C. FIRE INSURANCE AND ALLIED LINES

Art. 5.43-1. Fire Extinguishers; Installation and Servicing; Penalties

[See Compact Edition, Volume 2 for text of 1 and 2]

Definitions

Sec. 3. As used in this Act the following terms have the meanings specified in this section.

(a) "Firm" means any person, partnership, corporation, or association.

(b) "Hydrostatic testing" means pressure testing by hydrostatic methods.

(c) "Portable fire extinguisher" means any device that contains within it chemical fluids, powder, or gases for extinguishing fires and has a label of approval attached by a nationally recognized testing laboratory, such as, but not limited to, the Underwriters Laboratory and Factory Mutual.

(d) "Service and servicing" means servicing portable fire extinguishers or fixed fire extinguisher systems by charging, filling, maintaining, recharging, refilling, repairing, or testing.

(e) "Fixed fire extinguisher system" means those listed or approved fire extinguisher systems installed in compliance with one or more of the following:

(1) the National Fire Protection Association Standards Foam Extinguisher Systems, No. 11, 1978 edition;

(2) the National Fire Protection Association Standards on Carbon Dioxide Extinguisher Systems, No. 12, 1977 edition;

(3) the National Fire Protection Association Standards for Dry Chemical Extinguisher Systems, No. 17, 1975 edition;

(4) the National Fire Protection Association Standards for the Installation of Equipment for the Removal of Smoke and Grease-Laden Vapors from Commercial Cooking Equipment, No. 96, 1976 edition;

(5) the National Fire Protection Association Standards for Halogenated Fire Extinguisher Systems, No. 12A, 1977 edition; and

(6) additional or updated National Fire Protection Association Standards as adopted by the State Board of Insurance.

Registration and Licensing

Sec. 4. (a) Each firm engaged in the business of servicing portable fire extinguishers or installing or servicing fixed fire extinguisher systems must have a certificate of registration issued by the State Board of Insurance. The initial fee for the certificate of registration is \$75 and the renewal fee for each year thereafter is \$75.

(b) Each employee, other than an apprentice, of firms engaged in the business of servicing portable fire extinguishers or installing or servicing fixed fire extinguisher systems who services extinguishers or fixed systems, must have a license issued by the State Board of Insurance. The initial fee for the license is \$5 and the renewal fee for each year thereafter is \$5.

[See Compact Edition, Volume 2 for text of 4(c) and (d), 5 to 12]

[Amended by Acts 1975, 64th Leg., p. 899, ch. 335, § 1, eff. June 19, 1975; Acts 1979, 66th Leg., p. 903, ch. 412, § 1, eff. Aug. 27, 1979.]

Art. 5.43-2. Fire Detection and Alarm Devices

Purpose

Sec. 1. The purpose of this article is to regulate the sales, servicing, installation, and maintenance of fire detection and fire alarm devices and systems in the interest of safeguarding lives and property.

Definitions

Sec. 2. As used in this article:

(1) "Person" means a natural person, including an owner, manager, officer, employee, occupant, or individual.

(2) "Organization" means a corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership, firm or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(3) "Advisory council" means a group of five individuals experienced and knowledgeable in one or more of the following areas: sale, installation, maintenance, or manufacturing of fire alarm or detection systems, electrical engineering, fire services or be a member of a fire protection association which is to be appointed by the State Board of Insurance.

(4) "Board" means the State Board of Insurance.

(5) "Sale" means sale or offering for sale, lease, or rent any merchandise, equipment, or service at wholesale or retail, to the public or any person, for an agreed sum of money or other consideration.

(6) "Installation" means the initial placement of equipment and/or the extension, modification, or alteration of equipment already in place.

(7) "Approval, approved" means that equipment which has been tested or listed by a nationally recognized testing laboratory such as but not limited to Underwriters' Laboratories, Incorporated, or Factory Mutual Research Corporation, or has gained specific written approval for the use intended by the state marshal.

(8) "Maintenance" means to maintain in a condition of repair that will allow performance as originally designed or intended.

(9) "Service, servicing" means any charging, recharging, maintaining, repairing, testing, or installing.

(10) "Fire detection device" means any arrangement of materials, the sole function of which is to

provide indication of fire, smoke, or combustion in its incipient stages.

(11) "Fire alarm device" means any device capable, through audible and/or visible means, of sounding a warning that fire or combustion has taken or is taking place.

(12) "Fire alarm installation superintendent" means an individual or individuals who shall be designated by each company that sells, services, installs, or maintains a fire alarm or detection system to inspect and certify that each fire alarm or detection system as installed meets the standards as provided for by law.

Exceptions

Sec. 3. (a) The provisions of this article and the rules and regulations promulgated under this article shall have uniform force and effect throughout the state and no municipality or county shall hereinafter enact any ordinances, rules, or regulations inconsistent with the provisions of this article or rules and regulations promulgated pursuant to this article. Provided, however, that any municipality or county ordinances, rules, or regulations in force or effect on the effective date of this article shall not be invalidated because of any provision of this article.

(b) This article shall not apply to:

(1) the sale, offer for sale, or installation of fire detection devices or fire alarm devices that are not specifically required by Chapters 8 through 16, Life Safety Code, National Fire Protection Association Standard, No. 101, 1976 edition;

(2) a person or organization in the business of building construction that installs electrical wiring and devices that may include in part the installation of a fire alarm or detection device if:

(A) the person or organization is a party to a contract that provides that the installation will be performed under the direct supervision of and inspected and certified by a person or organization licensed to install and certify such an alarm or detection device and that the licensee assumes full responsibility for the installation of the alarm or detection device; and

(B) the person or organization does not sell, service, or maintain fire alarms or detection devices;

(3) a person or organization that owns and installs fire detection or fire alarm devices on the person's or organization's own property or, if the person or organization does not charge for the device or its installation, installs it for the protection of the person's or organization's personal property located on another's property and does not install the devices as a normal business practice on the property of another;

(4) a person or organization that sells fire detection or fire alarm devices if the sales are exclusively over-the-counter or by mail order and if the person or organization does not install, service, or maintain this equipment; or

(5) response to a fire alarm or detection device by a law enforcement agency or fire department or by a law enforcement officer or fireman acting in an official capacity.

Administration

Sec. 4. The board shall administer this article and it may issue rules and regulations which it considers necessary to its administration through the state fire marshal. The board, in promulgating necessary rules and regulations, may utilize recognized standards such as, but not limited to, those of the National Fire Protection Association, the National Electrical Code, those recognized by federal law or regulation, those published by any nationally recognized standards-making organization, or any information furnished by individual manufacturers. Also, the board may issue necessary rules and regulations for protection of life and property, after due notice and hearing.

Registration and Licensing

Sec. 5. (a) Each organization engaged in the business of selling, servicing, installing, or maintaining fire alarm or fire detection devices shall have a certificate of registration issued by the board. The initial fee for the certificate of registration is \$250 and the renewal fee for each year thereafter is \$250.

(b) Each separate office location of an organization engaged in the act of selling, leasing, servicing, maintaining, or installing fire detection or fire alarm devices or systems, other than the location identified on the certificate of registration, shall have a branch office registration certificate, issued by the board. The initial fee for this branch office registration certificate is \$75 and the renewal fee for each year thereafter is \$75. The board shall identify each branch office location as a part of a registered organization before a branch office registration certificate may be issued.

(c) Each fire alarm installation superintendent must obtain a license issued by the board. The initial fee for the license is \$50 and the renewal fee for each year thereafter is \$50.

(d) No person may inspect with the intention of certifying any fire alarm or fire detection system or device unless he is the holder of a valid and current license issued pursuant to this article.

(e) A person licensed pursuant to this article to inspect and certify a fire alarm or fire detection system or device shall be an employee or agent of an organization that holds a valid and current certificate of registration issued pursuant to this article.

(f) A person who sells, services, installs, or maintains fire alarm systems or fire detection devices shall be an employee or agent of an organization that holds a valid certificate of registration issued pursuant to this article.

Expiration Dates of Licenses

Sec. 5A. (a) Each renewal of a license issued under this article is valid for a period of two years. The total license fee for both years is payable on renewal.

(b) The State Board of Insurance by rule may adopt a system under which the licenses issued under this article expire on various dates during the year. For the year in which the expiration date is changed, license fees payable on the date of issuance shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee that is applicable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license fee is payable.

(3) proof of a policy of public liability insurance conditioned to pay on behalf of the principal all sums that the principal becomes legally obligated to pay as damages because of injury caused by an occurrence involving the principal or the principal's servant, officer, agent, or employee in the conduct of any business licensed under this article.

(b) The limits of insurance coverage required by Subdivision (3) of Subsection (a) of this section may not be less than:

- (1) \$50,000 for bodily injury;
- (2) \$25,000 for property damage; and
- (3) \$50,000 for personal injury.

(c) The policies of public liability insurance required by this section must be in the form of a certificate of insurance executed by an insurer authorized to do business in the state and countersigned by a local recording agent licensed in the state. Insurance certificates executed and filed with the board under this section remain in force until the insurer has terminated future liability by a 10-day notice to the board.

Required Bond and Insurance

Sec. 5B. (a) The board may not issue a license under this article unless the applicant files with the board:

- (1) a surety bond executed by a surety company authorized to do business in this state in the sum of \$10,000 conditioned to compensate for damages caused by wrongful or illegal acts of the principal or the principal's servant, officer, agent, or employee in conducting the business licensed under this article, or instead of the surety bond, the applicant may deposit with the state a sum of \$10,000 in cash;

(2) proof of a policy of public liability insurance in an amount that is not less than \$50,000 conditioned to compensate any person for damages, including but not limited to bodily injuries, caused by the wrongful acts of the principal or the principal's servant, officer, agent, or employee in the conduct of any business licensed under this article; and

(d) The applicant shall make the required surety bond payable to the state. Anyone injured by the principal or by the principal's servant, officer, agent, or employee may sue directly on the bond. The bond is subject to successive suits for recovery until the face amount of the bond is completely exhausted. Bonds executed and filed with the board under this section remain in force until the surety has terminated future liability by a 30-day notice to the board.

(e) Each licensee at all times shall maintain in force and on file with the board the surety bond and certificates of insurance required by this section. If the licensee fails to do so, the board shall immediately suspend the license and may not reinstate it until an application in the form prescribed by the board is filed with a proper bond and proper insurance certificates. The board may deny such an application if:

- (1) the board finds a reason that justifies:
 - (A) refusal to issue a license; or
 - (B) suspension or revocation of a license; or
- (2) while under suspension for failure to keep the bond or insurance certificate in force, the applicant performs a practice for which a license under this article is required.

(f) A person who on September 1, 1979, holds a valid license issued under this article shall before November 1, 1979, comply with the requirements of this section applicable to applicants for licenses. If the person does not do so, the board shall suspend the license until the person complies with those requirements.

(g) For a person who is licensed to install or service burglar alarms under the Private Investigators and Private Security Agencies Act, as amended (Article 4413(29bb), Vernon's Texas Civil Statutes), compliance with the bond and insurance requirements of that Act constitutes compliance with the bond and insurance requirements of this section.

Powers and Duties of the State Board of Insurance

Sec. 6. The board shall delegate authority to exercise all or part of its functions, powers, and duties under this article, including the issuance of certificates, to the state fire marshal, and the state fire marshal along with assistance of a nonbinding advisory council to be appointed by the board shall implement such rules and regulations as may be determined by the board to be essentially necessary for the protection and preservation of life and property in controlling:

(1) the registration of organizations engaging in the business of selling, servicing, installing, or maintaining fire alarm or fire detection devices and systems;

(2) the requirements for the sale, service, installation, or maintenance of fire alarm or fire detection devices or systems by:

(A) conducting examinations and evaluating the qualifications of applicants for a certificate of registration to engage in the business of selling, servicing, installing, or maintaining fire alarm or fire detection devices and systems;

(B) evaluating and determining which organizations shall be approved as testing laboratories for fire alarm and fire detection devices and systems; and

(C) evaluating and approving a required training program for all persons who engage in the business of selling, servicing, installing, or maintaining fire alarm or fire detection devices and systems.

Certain Acts Prohibited

Sec. 7. No organization pursuant to this article may do any of the following:

(1) sell, service, install, or maintain fire alarm or fire detection devices and systems without a valid and current certificate of registration;

(2) obtain or attempt to obtain a certificate of registration by fraudulent representation; or

(3) sell, service, install, or maintain fire alarm or fire detection devices or systems contrary to the provisions of this article or the rules and regulations formulated by the board under the authority of this article.

Fees Collected

Sec. 8. The fees herein provided for, when collected, shall be placed with the State Treasurer in a separate fund, which shall be known as the fire alarm and detection systems fund, and expenditures shall be made from said fund as set forth in the General Appropriations Act.

Selling or Leasing Fire Alarm or Fire Detection Devices

Sec. 9. (a) No device or alarm, the sole intended purpose of which is to detect and/or give alarm of fire, may be sold, offered for sale, leased, or installed in this state unless it carries a label of approval of a nationally recognized testing laboratory or a laboratory approved by the fire marshal.

(b) No fire detection or fire alarm device may be sold or installed in this state unless accompanied by printed information supplied to the owner by the supplier or installing contractor concerning:

(1) instructions describing the installation, operation, testing, and proper maintenance of the device;

(2) information which will aid in establishing an emergency evacuation plan for the protected premises; and

(3) the telephone number and location, including notification procedures, of the nearest fire department.

Applications and Hearings on Licenses and Certificates

Sec. 10. (a) Applications and qualifications for certificates issued hereunder shall be made pursuant to rules and regulations adopted by the board.

(b) The board may, through the State Fire Marshal, conduct hearings or proceedings concerning the suspension, revocation, or refusal of the issuance or renewal of certificates of registration or approvals of testing laboratories issued under this article or the application to suspend, revoke, refuse to renew, or refuse to issue the same.

(c) A certificate of registration or testing laboratory approval may be denied, or same duly issued may be suspended or revoked, or the renewal thereof refused, if after notice and public hearing, the board, through the State Fire Marshal, finds from the evidence presented at said hearing that one or more provisions of this article or of any rule or regulation promulgated under this article has been violated.

Penalties

Sec. 11. (a) Any person who individually, or as an employee or agent of an organization, violates any of the provisions of this article or order of the board made in accordance with this article, shall forfeit to the people of the state a sum not to exceed \$500 for each such violation, which may be recovered by a civil action.

(b) In addition to any other penalties, any person of an organization who performs a function that requires a certificate of registration as described herein without first obtaining such certificate of registration commits a Class B misdemeanor.

[Added by Acts 1975, 64th Leg., p. 853, ch. 326, § 1, eff. May 30, 1975. Amended by Acts 1977, 65th Leg., p. 363, ch. 178, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 2173, ch. 830, § 1, eff. Sept. 1, 1979.]

Art. 5.45. Acting Fire Marshal

If for any reason the State Fire Marshal is unable to make any required investigation in person, he may designate the fire marshal of such city or town or some other suitable person to act for him; and such person so designated shall have the same authority as is herein given the State Fire Marshal with reference to the particular matter to be investigated by him, and shall receive such compensation for his services as the Board may allow.

[Amended by Acts, 1977, 65th Leg., p. 2002, ch. 800, § 1, eff. Aug. 29, 1977.]

Art. 5.46. Report of Information

(A) The State Fire Marshal, any fire marshal of a political subdivision in Texas, or the chief of any established fire department in Texas, or any peace officer in Texas, may request any insurance company investigating a fire loss of real or personal property in which damages or losses exceed \$1,000 to release information in its possession relative to that loss. The company shall release the information and cooperate with any official authorized to request such information pursuant to this section. The information may include but not exceed:

- (1) any insurance policy relevant to a fire loss under investigation and any application for such a policy;
- (2) policy premium payment records;
- (3) history of previous claims made by the insured for fire loss;
- (4) material relating to the investigation of the loss, including statements of any person, proof of loss, or other relevant evidence.
- (5) The provisions of this section shall not be construed to authorize a public official or agency to promulgate or require any type or form of periodic report by an insurer.

(B) If an insurance company has reason to suspect that a fire loss to its insured's real or personal property was caused by incendiary means and if it receives a request for information pursuant to Section (A) of this article, the company shall notify the requesting official and furnish him with all relevant material acquired during its investigation of the fire loss, cooperate with and take such action as may be requested of it by any law enforcement agency, and permit any person ordered by a court to inspect any of its records pertaining to the policy and the loss.

(C) In the absence of fraud or malice no insurance company or person who furnished information on its behalf is liable for damages in a civil action or subject to criminal prosecution for oral or written statement made or any other action taken that is necessary to supply information required pursuant to this section.

(D) The officials and departmental and agency personnel receiving any information furnished pursuant to this section shall hold the information in confidence until such time as its release is required pursuant to a criminal or civil proceeding.

(E) Any official referred to in Section (A) of this article may be required to testify as to any information in his possession regarding the fire loss of real or personal property in any civil action in which any person seeks recovery under a policy against an insurance company for the fire loss.

(F)(1) No person shall purposely refuse to release any information requested pursuant to Section (A) of this article.

(2) No person shall purposely refuse to notify the fire marshal of a fire loss required to be reported pursuant to Section (B) of this article.

(3) No person shall purposely refuse to supply the fire marshal with pertinent information required to be furnished pursuant to Section (B) of this article.

(4) No person shall purposely fail to hold in confidence information required to be held in confidence by Section (D) of this article.

[Amended by Acts 1977, 65th Leg., p. 2003, ch. 800, § 2, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1099, ch. 515, § 1, eff. June 11, 1979.]

Section 3 of the 1977 Act provides as follows:

"For the purpose of paying the expenditures authorized for the enforcement and administration of this Act, the state comptroller shall place in the Insurance Board Operating Fund from current revenues and balances on hand the amounts designated by the Commissioner of Insurance from the following sources:

- "Fireworks License Fund 119;
- "Fire Extinguisher Fund 110;
- "Fire Alarms and Detection System Fund 181."

Art. 5.53-A. Home Warranty Insurance

Sec. 1. Any company licensed to engage in the business of fire insurance and its allied lines, or marine insurance, or both, is authorized to write home warranty insurance in Texas. Home warranty insurance is not inland marine insurance, but shall be governed in the same manner and to the same extent as inland marine insurance.

Sec. 2. As used in this Code, the term "home warranty insurance" means insurance assuring either

- (1) performance by builders of residential property of their warranty obligations to purchasers of such property; or
- (2) against named defects arising from failure of the builder to construct residential property in accordance with specified construction standards.

[Added by Acts 1975, 64th Leg., p. 56, ch. 32, § 1, eff. April 3, 1975.]

SUBCHAPTER G. WORKERS' COMPENSATION AND LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION INSURANCE**Art. 5.76. Prevention of Injuries and Assignment of Rejected Risks**

(a) The words "company" and "association" used in this Subchapter shall mean the Texas Employers' Insurance Association, or any stock company, or any mutual company, or any reciprocal, or any inter-insurance exchange, or Lloyds association authorized to write Workers' Compensation and/or Longshoremen's and Harbor Workers' Compensation Insurance in this State. The word "Board" shall mean the Board of Insurance Commissioners of this State.

(b) For the purpose of carrying into effect the provisions of this Article, and with the approval of the Board, there shall be organized and maintained in this State, by insurance companies and associa-

tions as defined herein, an Administrative Agency to be known as "The Texas Workers' Compensation Assigned Risk Pool" (hereinafter referred to as "Agency"), and every such company and association shall be a member of the Agency. Provided, that any company or association not engaged in writing such insurance for members of the public generally shall, upon being so certified by the Board and under such conditions and for such time as the Board may determine, be exempt from the provisions of this Article during the period of any such certification.

(c) It shall be the duty of the companies and associations, members of the agency established pursuant to Paragraph (b) of this article, to provide insurance, in the manner herein provided, for any risk under the Workers' Compensation Law of Texas,¹ the Longshoremen's and Harbor Workers' Compensation Act,² and/or the Federal Coal Mine Health and Safety Act of 1969, as amended,³ or for any city, county or any other political subdivision, agency or department of the State authorized to provide workers compensation insurance for its employees under any laws of the State of Texas, heretofore or hereafter enacted, which risk shall have been tendered to and rejected by any member of said agency. It shall be the further duty of the companies and associations, members of the agency established pursuant to Paragraph (b) of this article, to provide insurance in the manner herein provided on all policies and claims in existence for any insurance company which has been declared insolvent by the courts of this State or any other state in the same manner as if said policies had been written by servicing companies of this agency. With respect to said claims in existence at the time of said declaration of insolvency and paid by the agency, the agency shall have the same rights against the receiver of said insolvent company as are provided by the laws of this State for workers' compensation loss claimants of the insolvent insurance company. From and after the date the rules made and adopted under Paragraph (e) have been approved by the Board the procedures and remedies established under this article shall be the sole and exclusive procedure and remedies, either at law or in equity, of any applicant for such insurance whose insurance has been rejected or cancelled by any company or association.

[See Compact Edition, Volume 2 for text of (d) to (g)]

(h) Any company or association may make and enforce reasonable rules for the prevention of injuries to employees of its policyholders or applicants for insurance under the Workers' Compensation Act. For this purpose, representatives of any such company or association, and representatives of the Board, shall be granted free access to the premises of each such policyholder or applicant during regular working hours. Failure or refusal by any such policy-

holder or applicant to comply with any such reasonable rule for the prevention of injuries as shall be prescribed by the Agency, together with such other relevant factors, shall determine the issue of whether said policyholder or applicant in good faith is entitled to such insurance. Any policyholder or applicant aggrieved by any such rule for the prevention of injuries may, within thirty (30) days after notice of such rule, petition the Board for a review, and the Board, upon a hearing held after notice and in conformity with Article 5.65 of this Code, shall affirm, modify or annul such rule.

[Amended by Acts 1975, 64th Leg., p. 1164, ch. 436, § 1, eff. June 19, 1975; Acts 1977, 65th Leg., p. 154, ch. 77, § 3, eff. Aug. 29, 1977.]

¹ Civil Statutes, Art. 8306 et seq.

² 33 U.S.C.A. § 901 et seq.

³ 30 U.S.C.A. § 801 et seq.

Section 2 of the 1975 amendatory act provided:

"As respects claims for injury sustained prior to the effective date of this Act, no inchoate, vested, matured, existing, or other rights, remedies, powers, duties, or authority, either of any employee or legal beneficiary, or of the Board, or of the association, or of any other person shall be in any way affected by any of the amendments herein made to the original law hereby amended, but all such rights, remedies, powers, duties, and authority shall remain and be in force as under the original law just as if the amendments hereby adopted had never been made."

SUBCHAPTER J. PROFESSIONAL LIABILITY INSURANCE FOR PHYSICIANS, PODIATRISTS, AND HOSPITALS

Art. 5.82. Repealed by Acts 1977, 65th Leg., p. 2064, ch. 817, § 41.03, eff. Aug. 29, 1977

The repealed article, relating to professional liability insurance for physicians, podiatrists, and hospitals, was added by Acts 1975, 65th Leg., p. 864, ch. 330, § 1.

See, now, art. 5.15-1.

SUBCHAPTER K. POLICY FORMS AND ENDORSEMENTS FOR CERTAIN AIRCRAFT

Art. 5.90. Policy Forms and Endorsements

When the State Board of Insurance finds that a public need exists for the regulation of aircraft hull and aircraft liability insurance, it may, by board order, require all insurers issuing any form of aircraft hull and aircraft liability insurance in Texas to file with the board all policy forms and endorsements used by each insurer in the writing of such insurance. The board may disapprove the use of any form or endorsement so filed and no insurer may thereafter use such disapproved form or endorsement. Any contract or agreement not written into the application, if any, or policy shall be void and of no effect and in violation of the provisions of this subchapter and shall be sufficient cause for revocation of license of the insurer to write aircraft insurance within this state.

[Added by Acts 1977, 65th Leg., p. 1455, ch. 593, § 1, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 1070, ch. 501, § 1, eff. June 7, 1979.]

Art. 5.91. Maintenance Tax

The State of Texas shall assess and collect not exceeding an additional two-fifths of one percent of

the gross premiums on all classes of insurance covered by this subchapter, of all insurers writing such insurance in this state, according to the reports made to the State Board of Insurance as required by law. Said taxes when collected shall be deposited with the state treasurer to the credit of a special fund to be designated as the aircraft insurance fund, which fund shall be kept separate and apart from all other funds and money in his or her hands, to be used for the sole purpose of administering this subchapter; and to be expended only on warrants issued by the comptroller upon vouchers drawn by the State Board of Insurance, such vouchers to be accompanied by itemized sworn statements of the expenditures, and to be in addition to all taxes now imposed, or which may hereafter be imposed, not in conflict with this article of this subchapter. Should there be an unexpended balance at the end of any year in said fund, the board shall reduce the assessment for the succeeding year so that the amount produced and paid into the treasury will not exceed the amount necessary for the current year to pay all expenses of maintaining the division of the State Board of Insurance administering this subchapter. [Added by Acts 1977, 65th Leg., p. 1455, ch. 593, § 1, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 1070, ch. 501, § 1, eff. June 7, 1979.]

Art. 5.92. Rules

When the State Board of Insurance acts under Article 5.90, it shall have authority to make any rules that are necessary to carry out the provisions of this subchapter.

[Added by Acts 1977, 65th Leg., p. 1455, ch. 593, § 1, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 1070, ch. 501, § 1, eff. June 7, 1979.]

CHAPTER SIX. FIRE AND MARINE COMPANIES

Article

6.01-A. Reserving Home Warranty Insurance.

Art. 6.01-A. Reserving Home Warranty Insurance

Sec. 1. Every company writing home warranty insurance in Texas shall maintain reinsurance or unearned premium reserves on all policies in force.

Sec. 2. The reserves on home warranty insurance shall be computed in the same manner and to the same extent as fire insurance is reserved in accordance with Article 6.01 of this Code.

[Added by Acts 1975, 64th Leg., p. 56, ch. 32, § 2, eff. April 3, 1975.]

CHAPTER NINE. TEXAS TITLE INSURANCE ACT

Article

9.48. Title Insurance Guaranty.

9.49. Insured Closing.

9.50. Home Solicitation Transactions Act as Consumer Protection Law.

9.51. Title Insurance Agents Right to Surrender License.

9.52. Escrow Officer's Right to Surrender License.

9.53. Uniform Closing and Settlement Statements.

9.54. Advance Disclosure of Settlement Costs Involving Residential Property.

9.55. Requirement for Issuance of Owners and Mortgagee Title Policies in Connection With Residential Property.

9.56. Creation and Operation of Attorney's Title Insurance Company.

Art. 9.01. Short Title and Legislative Purpose and Intent

A. This Act shall be known and may be cited as the "Texas Title Insurance Act."

B. The Legislature of the State of Texas finds that the business of title insurance, both the direct issuance of policies and the reinsurance of any assumed risks, of every type, shall in all respects be totally regulated by the State of Texas so as to provide for the protection of every consumer and purchaser of a title insurance policy. It is the express legislative intent that this Chapter 9 accomplish such a result.

[Amended by Acts 1975, 64th Leg., p. 1063, ch. 409, § 1, eff. Sept. 1, 1975.]

Art. 9.02. Definitions

(a) "Title Insurance" means insuring, guaranteeing or indemnifying owners of real property or others interested therein against loss or damage suffered by reason of liens, encumbrances upon, or defects in the title to said property, and the invalidity of liens thereon, or doing any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of this Act.

(b) The "business of title insurance" shall be deemed to be (1) the making as insurer, guarantor or surety, or proposing to make as insurer, guarantor or surety, of any contract or policy of title insurance; (2) the transacting or proposing to transact, any phase of title insurance, including solicitation, negotiation preliminary to execution, execution of a contract of title insurance, insuring and transacting matters subsequent to the execution of the contract and arising out of it, including reinsurance; or (3) the doing, or proposing to do, any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of this Act.

(c) "Title Insurance Company" means any domestic company organized under the provisions of this Act for the purpose of insuring titles to real property, any title insurance company organized under the laws of another state or foreign government meet-

ing the requirements of this Act and holding a certificate of authority to transact business in Texas and any domestic or foreign company having a certificate of authority to insure titles to real estate within this state and which meet the requirements of this Act.

(d) "Commissioner" means the Commissioner of Insurance of the State of Texas.

(e) "Board" means the State Board of Insurance of the State of Texas.

(f) "Title Insurance Agent" means a person, firm, association, or corporation owning or leasing and controlling an abstract plant as defined by the Board, or as a participant in a bona fide joint abstract plant operation as defined by the Board, and authorized in writing by a title insurance company to solicit insurance and collect premiums and to issue or countersign policies in its behalf.

(g) "Escrow Officer" means an officer or employee of a title insurance agent whose duties include any or all of the following:

(1) countersigning title insurance policies, commitments and binders; or

(2) supervising the preparation and delivery of title insurance policies, commitments and binders; or

(3) receiving, handling, or disbursing escrow funds;

provided that no clerical employees who perform any of the above duties under the direction and control of an escrow officer shall be included in this definition.

(h) "Foreign Title Insurance Company" means a title insurance company organized under the laws of any jurisdiction other than the State of Texas.

(i) "Abstract plant" as used herein shall mean a geographical abstract plant such as is defined by the Board from time to time and the Board, in defining an abstract plant, shall require a geographically arranged plant, currently kept to date, that is found by the Board to be adequate for use in insuring titles, so as to provide for the safety and protection of the policyholders.

(j) "Residential real property" means any real property which has improvements thereon and is designed principally for the occupancy of from one to four families (including individual units of condominiums and cooperatives).

(k) "Thing of value" includes any payment, advance, funds, loan, service, or other consideration.

(l) "Person" includes individuals, corporations, associations, partnerships and trusts.

[Amended by Acts 1975, 64th Leg., p. 1063, ch. 409, § 2, eff. Sept. 1, 1975.]

Art. 9.06. Capital Stock and Surplus Required

Except as provided by Article 9.56, Section 4A of this Chapter 9, all title insurance companies created and operating under the provisions of this Chapter must have a paid up capital of not less than One Million Dollars (\$1,000,000) and a surplus of not less than Four Hundred Thousand Dollars (\$400,000), provided, however, that the minimum unimpaired capital and surplus for a corporation which was authorized to transact title insurance business on the effective date of this Chapter and which on that date had an unimpaired capital of less than One Million Dollars (\$1,000,000) and a surplus of less than Four Hundred Thousand Dollars (\$400,000) shall be as follows:

(a) Two Hundred Fifty Thousand Dollars (\$250,000) capital and One Hundred Thousand Dollars (\$100,000) surplus until July 1, 1976;

(b) From July 1, 1976, to July 1, 1977, Five Hundred Twenty-Five Thousand Dollars (\$525,000) capital and One Hundred Sixty Thousand Dollars (\$160,000) surplus;

(c) From July 1, 1977, to July 1, 1978, Six Hundred Fifty Thousand Dollars (\$650,000) capital and Two Hundred Twenty Thousand Dollars (\$220,000) surplus;

(d) From July 1, 1978, to July 1, 1979, Seven Hundred Seventy-Five Thousand Dollars (\$775,000) capital and Two Hundred Eighty Thousand Dollars (\$280,000) surplus;

(e) From July 1, 1979, to July 1, 1980, Nine Hundred Thousand Dollars (\$900,000) capital and Three Hundred Forty Thousand Dollars (\$340,000) surplus; and

(f) After July 1, 1980, every such corporation shall be required to have and maintain unimpaired capital of not less than One Million Dollars (\$1,000,000) and surplus of not less than Four Hundred Thousand Dollars (\$400,000) as otherwise required by this Chapter.

[Amended by Acts 1975, 64th Leg., p. 1063, ch. 409, § 3, eff. Sept. 1, 1975.]

Art. 9.07. Policy Forms and Premiums

Corporations organized under this Chapter, as well as foreign corporations and those created under Subdivision 57, Article 1302, of the Revised Civil Statutes of 1925, or under Chapter 8 of this Code, or any other law insofar as the business of either may be the business of title insurance, shall operate in Texas under the control and supervision and under such uniform rules and regulations as to forms of policies and underwriting contracts and premiums therefor, and such underwriting standards and practices as may be from time to time prescribed by the Board; and no Texas or foreign corporation, whether incorporated under this Chapter or any other law of the State of Texas, shall be permitted to issue any title

policy of any character, or underwriting contract, or reinsure any portion of the risk assumed by any title policy, on Texas real property other than under this Chapter under such rules and regulations. No policy of title insurance, reinsurance of any risk assumed under any policy of title insurance, or any guarantee of any character on Texas titles shall be issued or valid unless written by a corporation complying with all provisions of and authorized or qualified under this Chapter, except as is provided in Article 9.19D. Before any premium rate provided for herein shall be fixed or charged, reasonable notice shall issue, and a hearing afforded to the title insurance companies and title insurance agents authorized or qualified under this Chapter and the public. Under no circumstances may any title insurance company or title insurance agent use any form which is required under the provisions of this Chapter 9 to be promulgated or approved until the same shall have been so promulgated or approved by the Board.

The Board shall have the duty to fix and promulgate the premium rates to be charged by title insurance companies and title insurance agents created or operating under this Chapter for policies of title insurance or other promulgated or approved forms, and the premiums therefor shall be paid in the due and ordinary course of business. Premium rates for reinsurance as between title insurance companies qualified under this Chapter shall not be fixed or promulgated by the Board, and title insurance companies may set such premium rates for reinsurance as such title insurance companies shall agree upon. Under no circumstance shall any premium be charged for any policy of title insurance or other promulgated or approved forms different from those fixed and promulgated by the Board, except for premiums charged for reinsurance. The premium rates fixed by the Board shall be reasonable to the public and nonconfiscatory as to the title insurance companies and title insurance agents. For the purpose of collecting data on which to determine the proper rates to be fixed, the Board shall require all title insurance companies and all title insurance agents operating in Texas to submit such information in such form as it may deem proper, all information as to loss experience, expense of operation, and other material matter for the Board's consideration.

The Board shall hold an annual hearing during November of each calendar year, commencing in 1975, to consider adoption of premium rates and such other matters and subjects relative to the regulation of the business of title insurance as may be requested by any title insurance company, any title insurance agent, any member of the public, or as the Board may determine necessary to consider. Proper notice of such public hearing and the items to be considered shall be made to the public and shall be sent direct to all title insurance companies and title

insurance agents qualified or authorized to do business under this Chapter for at least four (4) weeks in advance of such hearing.

Premium rates when once fixed shall not be changed until after a public hearing shall be had by the Board, after proper notice sent direct to all title insurance companies and title insurance agents qualified or authorized to do business under this Chapter, and after public notice in such manner as to give fair publicity thereto for at least four (4) weeks in advance. The Board must call such additional hearing to consider premium rate changes at the request of a title insurance company.

The Board may, on its own motion, following notice as required for the annual hearing hold at any time a public hearing to consider adoption of premium rates and such other matters and subjects relative to the regulation of the business of title insurance as the Board shall determine necessary or proper.

Any title insurance company, any title insurance agent, or other person interested, feeling injured by any action of the Board with regard to premium rates or other action taken by the Board, shall have the right to file a suit in the District Court of Travis County, within thirty (30) days after the Board has made such order, to review the action. Such cases shall be tried de novo in the District Court in accordance with the provisions of Article 21.44 of the Insurance Code and shall be governed by the same rules of evidence and procedure as other civil cases in said court; in which suit the court may enter a judgment setting aside the Board's order, or affirming, the action of the Board.

[Amended by Acts 1975, 64th Leg., p. 1063, ch. 409, § 4, eff. Sept. 1, 1975.]

Art. 9.09. Prohibiting Transacting of Other Kinds of Insurance by Title Insurance Companies or the Transacting of Title Insurance by Other Types of Insurance Companies

Corporations, domestic or foreign, operating under this Chapter shall not transact, underwrite or issue any kind of insurance other than title insurance on real property; nor shall title insurance be transacted, underwritten or issued by any company transacting any other kinds of insurance; provided, however, that the above prohibitions shall not apply as to any corporation, domestic or foreign, which on October 1, 1967 was transacting, underwriting and issuing within the State of Texas title insurance and any other kind of insurance. Any corporation now organized and doing business under the provisions of Chapter 8 and actively writing title insurance shall be subject to all the provisions of this Chapter except Article 9.18 relating to investments.

[Amended by Acts 1975, 64th Leg., p. 1063, ch. 409, § 5, eff. Sept. 1, 1975.]

Art. 9.11. Revocation of Right to Do Business

Any foreign or domestic corporations issuing any form of title insurance policy or other promulgated or approved forms, or charging any premium rates on an owner, mortgagee, or other title insurance policy, or on other promulgated or approved forms, except for the premium rates charged for reinsurance, on Texas real property other than forms and premium rates prescribed by the Board, under the provisions of this Chapter shall forfeit its right to do business in this state. The provisions of this Article 9.11 shall not, however, be applicable to premium rates charged in connection with reinsurance transactions between or among title insurance companies doing business under the provisions of this Chapter, provided any such reinsurance contract complies with the provisions of Article 9.19 of this Chapter. [Amended by Acts 1975, 64th Leg., p. 1063, ch. 409, § 6, eff. Sept. 1, 1975.]

Art. 9.13. Fees

The general laws applicable to payment of filing fees of corporations having capital stock are hereby made applicable to corporations coming under the provisions of this Chapter. [Amended by Acts 1975, 64th Leg., p. 1063, ch. 409, § 7, eff. Sept. 1, 1975.]

Art. 9.14. Charter and Amendments

The original charter of corporations doing the business of title insurance and incorporated under the provisions of this Chapter, or under Subdivision 57, Article 1302, Revised Civil Statutes of 1925, or under Article 1302a, Texas Civil Statutes (Acts 1929, 41st Legislature, page 383, Chapter 245, Section 1) or under any other law regardless of the nature of such amendment, shall be certified only to and filed only with the Board, and only the Board shall collect from the said companies filing fees required under the law. All other laws or parts of laws, to the extent that the same are in conflict with the provisions of this Article, shall not hereafter apply to such corporations.

[Amended by Acts 1975, 64th Leg., p. 1063, ch. 409, § 8, eff. Sept. 1, 1975.]

Art. 9.15. Certificate of Authority

The Board after having satisfied itself by such investigation as it may deem proper with reference to the payment of capital stock and surplus as required by this Chapter 9, and the value of the assets offered in payment thereof (the expense of which examination shall be borne by the title insurance company), shall issue to such title insurance company a certificate of authority to transact the characters of business provided for in this Chapter on either an annual or a continuing basis. No title insurance company, domestic or foreign, shall transact business under this Chapter unless it shall hold a valid certificate of authority.

[Amended by Acts 1975, 64th Leg., p. 1063, ch. 409, § 9, eff. Sept. 1, 1975.]

Art. 9.19. Maximum Liability

A. No title insurance company operating under the provisions of this Chapter shall issue any policy of title insurance on any real property located within the State of Texas involving a potential liability by virtue of such policy of more than fifty (50%) percent of the capital stock and surplus as stated in the most recent annual statement of the company unless the excess shall in due course be reinsured in some other title insurance company authorized to do business in Texas under this Chapter. Each title insurance company authorized to do business under the provisions of this Chapter may reinsure any or all of its policies and contracts issued on real property situated within the State of Texas, provided:

(i) the reinsuring title insurance company shall be licensed to do business in the State of Texas under the provisions of this Chapter; and

(ii) the form of the reinsurance contract shall be approved in advance by the Board.

B. If the Board has first approved one or more forms of reinsurance contracts for a title insurance company, such title insurance company may thereafter continue using such form or forms without submitting individual reinsurance contracts to the Board. Authority is reserved to the Board, however, to alter the required form so previously approved by it after first giving written notice to the title insurance company or title insurance companies affected by such required change.

C. No title insurance company authorized to do business in Texas under the provisions of this Chapter may accept reinsurance risks on real property situated within the State of Texas except from other title insurance companies holding a certificate of authority to do business in the State of Texas under the provisions of this Chapter.

D. The Board may, however, upon application and hearing permit any title insurance company licensed to do business in this State under this Chapter to acquire reinsurance upon an individual policy or facultative basis from title insurance companies not licensed to do business in this State, provided:

(i) any such non-admitted foreign title insurance company has a combined capital and surplus of at least \$1,400,000 evidenced by its annual statement last preceding the acceptance of such reinsurance; and

(ii) any such title insurance company so authorized to do business under this Chapter has exhausted the opportunity to acquire such reinsurance from all other title insurance companies so authorized to do business under the provisions of this Chapter.

[Amended by Acts 1975, 64th Leg., p. 1063, ch. 409, § 10, eff. Sept. 1, 1975.]

Art. 9.25. Capital and Surplus Required; Foreign Corporations

No foreign corporation shall conduct the business of title insurance in this state unless it shall show from its financial statement and such other examination as the Board may desire to make, an unimpaired capital of not less than One Million Dollars (\$1,000,000.00) and surplus of not less than Four Hundred Thousand Dollars (\$400,000.00), provided, however, that the minimum unimpaired capital and surplus requirements for a foreign corporation operating under a certificate of authority on the effective date of this Chapter, which corporation on such date had an unimpaired capital of less than One Million Dollars (\$1,000,000.00) and surplus of less than Four Hundred Thousand Dollars (\$400,000.00) shall be as follows:

(a) Two Hundred Fifty Thousand Dollars (\$250,000.00) capital and One Hundred Thousand Dollars (\$100,000.00) surplus until July 1, 1976;

(b) From July 1, 1976, to July 1, 1977, Five Hundred Twenty-five Thousand Dollars (\$525,000.00) capital and One Hundred Sixty Thousand Dollars (\$160,000.00) surplus;

(c) From July 1, 1977, to July 1, 1978, Six Hundred Fifty Thousand Dollars (\$650,000.00) capital and Two Hundred Twenty Thousand Dollars (\$220,000.00) surplus;

(d) From July 1, 1978, to July 1, 1979, Seven Hundred Seventy-five Thousand Dollars (\$775,000.00) capital and Two Hundred Eighty Thousand Dollars (\$280,000.00) surplus;

(e) From July 1, 1979, to July 1, 1980, Nine Hundred Thousand Dollars (\$900,000.00) capital and Three Hundred Forty Thousand Dollars (\$340,000.00) surplus; and

(f) After July 1, 1980, every such corporation shall be required to have and maintain unimpaired capital of not less than One Million Dollars (\$1,000,000.00) and surplus of not less than Four Hundred Thousand Dollars (\$400,000.00) as otherwise required by this Chapter.

[Amended by Acts 1975, 64th Leg., p. 1063, ch. 409, § 11, eff. Sept. 1, 1975.]

Art. 9.30. Rebates and Discounts

A. No commission, rebate, discount, or other thing of value shall be paid, allowed or permitted by any title insurance company, domestic or foreign, or by any title insurance agent doing the business of title insurance provided for in this Chapter, relating to title policies or underwriting contracts and no portion of any premium shall be paid to any person for soliciting or referring title insurance business; provided this Article 9.30 shall not prevent any title insurance company, domestic or foreign, doing business under this Chapter, from appointing as its title insurance agent in any county any person, firm, or

corporation owning and operating an abstract plant of such county as its title insurance agent and making such arrangements for division of premiums as may be approved by the Board.

B. No person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a real estate settlement or closing in connection with a transaction involving the conveyance or mortgaging of real estate located in the State of Texas other than for services actually performed.

C. Nothing in this Article 9.30 shall, however, be construed as prohibiting (a) the payment of a fee to attorneys at law for services actually rendered or (b) the payment to any person of a bona fide salary, compensation or other payment for goods or facilities actually furnished or for services actually performed.

[Amended by Acts 1975, 64th Leg., p. 1063, ch. 409, § 12, eff. Sept. 1, 1975.]

Art. 9.40. Right of Title Insurance Company to Examine Agent's Trust Fund Accounts and to Require Reports

Any title insurance company may at such time or times as it sees fit, through its examiners or auditors or through independent certified public accountants commissioned by it, examine the trust fund accounts and records pertaining thereto of any of its title insurance agents, such examination to be made at the expense of the title insurance company; or the title insurance company may require special reports from any such agent regarding any of its transactions. Each title insurance company shall periodically, but at least every two years, audit the unused forms in the possession of each of its title insurance agents so as to determine that all used forms have been reported to the title insurance company. A report of each such audit shall be made to the State Board of Insurance.

[Amended by Acts 1975, 64th Leg., p. 1063, ch. 409, § 22, eff. Sept. 1, 1975.]

Art. 9.36. Agent's License: Application, Issuance, Renewal, and Cancellation

A. Before an initial license is issued to any person, firm, association or corporation to act as agent within the State of Texas for any title insurance company, there shall first be filed by the title insurance company with the Board an application for agent's license, on forms to be provided by the Board, accompanied by a license fee of Twenty-Five Dollars (\$25), which fee including license renewal fees shall be paid into the state treasury to the credit of the title insurance fund to be used by the State Board of Insurance to enforce the provisions of this article and all laws of this state governing and regulating title agents for such insurance companies. On initial application if an applicant fails to

qualify for, or is refused a license, the license fee shall be refunded. The application shall be signed and duly sworn to by the title insurance company and the proposed agent. Such application shall contain the following:

(1) That the proposed agent, if an individual, is a bona fide resident of Texas; or if a firm or association, that it is composed wholly of Texas residents; or if a corporation, that it is a Texas corporation or a foreign corporation which has been authorized to do business in Texas; and

(2) That the proposed agent (and if a corporation, its managerial personnel) has reasonable experience or instruction in the field of title insurance; and

(3) That the proposed agent is known to the title insurance company to have a good business reputation and is worthy of the public trust and said title insurance company knows of no fact or condition which would disqualify him from receiving a license; and

(4) That the proposed agent qualified as a title insurance agent as defined in this Act.

The Board shall grant such license if it determines from the application and its own investigation that the foregoing requirements have been met.

B. On or before the first day of June of each year, every title insurance company, domestic or foreign, operating under the provisions of this Act, shall certify to the Board, on forms provided by the Board, the names and addresses of every title insurance agent of said company within the state whose license is to be renewed, and shall apply for and pay a license renewal fee of Twenty-Five Dollars (\$25) for a license in the name of each such agent included in said list; if any such company shall terminate any licensed agent, it shall immediately notify the Board in writing of such act and request cancellation of such license, notifying the agent of such action. No such title insurance company shall permit any agent appointed by it to write, sign, or deliver title insurance within the state until the foregoing conditions have been complied with, and the Board has granted said license. The Board shall deliver such license to the title insurance company for transmittal to the Agent.

A license shall continue in force until the second June first following its issuance, unless previously cancelled; provided, however, that if any title insurance company surrenders or has its certificate of authority revoked by the Board, all existing licenses of its title insurance agents shall automatically terminate without notice.

Any title insurance agent may be licensed to represent one or more such title insurance companies, with a separate license granted for each.

The Board shall keep a record of the names and addresses of all licensed agents in such manner that the agents appointed by any company authorized to transact title insurance business within the State of Texas may be conveniently ascertained and inspected by any person upon request.

C. A licensed title insurance agent may be licensed to represent additional title insurance companies upon application by such additional title insurance company for agent's license, on forms to be provided by the Board, and upon payment of a license fee. The application shall be signed and duly sworn to by such additional title insurance company. Such application shall contain the following:

(1) That the proposed agent, if an individual, is a bona fide resident of Texas; or if a firm or association, that it is composed wholly of Texas residents; or if a corporation, that it is a Texas corporation or a foreign corporation which has been authorized to do business in Texas; and

(2) That the proposed agent (and if a corporation, its managerial personnel) has reasonable experience or instruction in the field of title insurance; and

(3) That the proposed agent is known to the title insurance company to have a good business reputation and is worthy of the public trust and said title insurance company knows of no fact or condition which would disqualify him from receiving a license; and

(4) That the proposed agent qualified as a title insurance agent as defined in this Act; and

(5) That the proposed agent is currently licensed by a title insurance company.

D. If a title insurance company terminates its contract with a title insurance agent or gives notice of termination to the title insurance agent, then any such agent may, within thirty (30) days after either occurrence apply to the Board for continuation of his license with an amendment thereto showing the name of another title insurance company for whom he is or will be authorized to act.

[Amended by Acts 1979, 66th Leg., p. 1890, ch. 765, § 1, eff. Aug. 27, 1979.]

Art. 9.39. Annual Audit

Every title insurance agent shall have an annual audit, at its or his expense, made of trust fund accounts, and within ninety (90) days from the termination of its fiscal year, shall send by certified mail, postage prepaid, to the Board one copy of such audit report with a letter of transmittal, and each such agent, shall also send a copy of such letter of transmittal and audit report to every title insurance company which it represents.

Every title insurance company shall have an annual audit, at its expense, made of trust fund accounts

for each county in which it operates in its own name and within ninety (90) days from the termination of its fiscal year shall send by certified mail, postage prepaid, to the Board one copy of such audit report.

The Board shall promulgate regulations setting forth the standards of audit and the form of audit report required.

Said audit shall be made by an independent certified public accountant or licensed public accountant, or a firm composed of either.

Each title insurance company shall examine and analyze the audit report furnished by each of its agents, and shall within three (3) months of receipt of same report to the Board on forms to be furnished by the Board the findings and results of its examination and analysis of such audit report. If a title insurance company fails to receive an audit report from any of its agents within the time specified above, it shall forthwith report such omission to the Board.

All such reports and analyses furnished by the title insurance company to the Board shall, at the election of the Commissioner, be classed as confidential and privileged after having been filed with the Board.

If any agent or title insurance company shall fail or refuse to furnish an audit report within the time required, or shall furnish an audit report which reveals any shortage or other irregularity, or any practice not in keeping with sound, honest business practices, the Board may, after notice to the agent or each title insurance company involved and after a hearing at which the agent or title insurance company may offer evidence explaining or excusing such omissions or irregularity, revoke the license of such agent or revoke the certificate of authority of such title insurance company.

Any agent or title insurance company feeling aggrieved by any action of the Board hereunder shall have the right to file a suit in the District Court of Travis County in the time and manner provided in Article 9.37.

[Amended by Acts 1979, 66th Leg., p. 1891, ch. 765, § 2, eff. Aug. 27, 1979.]

Art. 9.42. List of Escrow Officers Must Be Filed

Every title insurance agent licensed and operating under the provisions of this Act shall on or before the first day of June of each year, certify to the Board on forms provided by the Board the names and addresses of every person employed by it to serve in the capacity of escrow officer within the state, whose license is to be renewed, and shall apply for and pay a license renewal fee of Twenty-Five Dollars (\$25) for each person included in said list. If it shall terminate any licensed escrow officer, it shall immediately notify the Board in writing of such act

and request cancellation of the license, notifying such escrow officer of such action. No agent shall permit any person to act as escrow officer within the state until the foregoing conditions have been complied with, and the Board has granted the said license.

A license shall continue in force until the second June first following its issuance, unless previously cancelled. Provided, however, that if any title insurance agent surrenders all its licenses, or has all its licenses revoked by the Board, all existing licenses of its escrow officers shall automatically terminate without notice.

The Board shall keep a record of the names and addresses of all escrow officers licensed by it in such manner that the escrow officers employed by any title insurance agent within the state may be conveniently determined.

[Amended by Acts 1979, 66th Leg., p. 1892, ch. 765, § 3, eff. Aug. 27, 1979.]

Art. 9.43. Application for Escrow Officer's License

A. Before an initial license is issued to any person to act as escrow officer within the State of Texas for any title insurance agent, there shall be first filed by such title insurance agent with the Board an application for an escrow officer's license on forms provided by the Board, accompanied by a license fee of Twenty-Five Dollars (\$25), which fees including license renewal fees under Article 9.42 shall be paid into the state treasury to the credit of the title insurance fund to be used by the State Board of Insurance to enforce the provisions of this article and all laws of this state governing and regulating escrow officers for such title insurance agents. In the event an applicant fails to qualify for, or is refused a license, the license fee shall be refunded. The application shall be signed and duly sworn to by such title insurance agent and by the proposed escrow officer.

B. Such application shall contain the following:

(1) that the proposed escrow officer is a natural person and a bona fide resident of the State of Texas;

(2) that the proposed escrow officer has reasonable experience or instruction in the field of title insurance;

(3) that the proposed escrow officer is known to the agent to have a good business reputation and is worthy of the public trust and the agent knows of no fact or condition which would disqualify him from receiving a license;

(4) that the proposed escrow officer qualifies as an escrow officer as defined in this Act.

The Board shall grant such license, if it determines from the application and its own investigation that the foregoing requirements have been met. [Amended by Acts 1979, 66th Leg., p. 1893, ch. 765, § 4, eff. Aug. 27, 1979.]

Art. 9.48. Title Insurance Guaranty

Title

Sec. 1. This article shall be known and may be cited as the "Texas Title Insurance Guaranty Act."

Purpose

Sec. 2. This article is for the purposes and findings set forth in Section 1 of Article 21.28-A of the Insurance Code and in supplementation thereto by providing funds in addition to assets of impaired insurers for the protection of the holders of "covered claims" as defined herein through payment and through contracts of reinsurance or assumption of liabilities or of substitution or otherwise.

Scope

Sec. 3. This article shall apply only to all title insurance (direct and reinsurance) written by title insurance companies authorized to do business in this state and doing business under and regulated by the provisions of this Chapter 9.

Construction

Sec. 4. This article shall be liberally construed to effect the purpose under Section 2 which shall constitute an aid and guide to interpretation.

Definitions

Sec. 5. As used in this article

(1) A. "State Board of Insurance" is the State Board of Insurance of this State.

B. "Commissioner" is the Commissioner of Insurance of this State.

(2) "Covered claim" is an unpaid claim of an insured which arises out of and is within the coverage and not in excess of the applicable limits of a title insurance policy to which this article applies, issued or assumed (whereby an assumption certificate is issued) by an insurer licensed to do business in this state and covered by this article, if such insurer becomes an "impaired insurer" after the effective date of this article and the insured real property (or lien thereon) is located within this state. Individual "covered claims" shall be limited to \$100,000 and shall not include any amount in excess of \$100,000. "Covered claim" shall also include any sum up to \$100,000 for which any insurer is liable in connection with the fidelity or solvency of any title insurance agent of such insurer as authorized by Article 9.49 of this chapter of this code. "Covered claim" shall not include any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise. "Covered claim" shall not include supplementary payment obligations, including but not limited to adjustment fees and expenses, attorneys' fees and expenses, court costs, interest, and bond premiums, incurred prior to the determination that an insurer is an "impaired insurer" under this article.

(3) "Insurer" is any title insurance company authorized to do business in this state, and doing business under and regulated by the provisions of this Chapter 9.

(4) "Impaired insurer" is (a) an insurer which, after the effective date of this article, is placed in temporary or permanent receivership under an order of a court of competent jurisdiction based on a finding of insolvency, and which has been designated an "impaired insurer" by the commissioner; or (b) after the effective date of this article, an insurer placed in conservatorship after it has been deemed by the commissioner to be insolvent and which has been designated an "impaired insurer" by the commissioner.

(5) "Payment of covered claims" is actual payment of claims and also is the utilization of funds of the impaired insurer and funds derived from assessments for consummation of contracts of reinsurance or assumption of liabilities or contracts of substitution to provide for liabilities arising from covered claims.

(6) "Net direct written premiums" is the gross amount of premiums paid by policyholders for issuance of policies of title insurance insuring risks located in this state and to which this article applies. The term does not include premiums for reinsurance accepted from other licensed insurers, and there shall be no deductions for premiums for reinsurance ceded to other insurers.

Assessments

Sec. 6. Whenever the commissioner determines that an insurer has become an impaired insurer, the receiver appointed in accordance with Article 21.28 of the Insurance Code or the conservator appointed under the authority of Article 21.28-A or Article 9.29 of the Insurance Code shall promptly estimate the amount of additional funds needed to supplement the assets of the impaired insurer immediately available to the receiver or the conservator for the purpose of making payment of all covered claims. Thereafter, the commissioner shall be empowered to make such assessments as may be necessary to produce the additional funds needed to make payment of all covered claims. The commissioner may make partial assessments as the actual need for additional funds arises for each impaired insurer.

The commissioner shall assess individual insurers in proportion to the ratio that the total net direct written premium collected in the State of Texas by the insurer during the next preceding year bears to the total net direct written premium collected by all insurers (except impaired insurers) in the State of Texas. Assessments during a calendar year may be made up to, but not in excess of, two percent of each insurer's net direct written premium for the preceding calendar year. If the maximum assessment in

any calendar year does not provide an amount sufficient for payment of covered claims of impaired insurers, assessments may be made in the next successive calendar years.

Insurers designated as impaired insurers by the commissioner shall be exempt from assessment from and after the date of such designation and until the commissioner determines that such insurer is no longer an impaired insurer.

The commissioner shall designate the impaired insurer for which each assessment or partial assessment is made and it shall be the duty of each insurer to pay the amount of its assessment to the conservator or receiver, as the case may be, within 30 days after the commissioner gives notice of the assessment, and assessments may be collected by the conservator or receiver through suits brought for that purpose. Venue for such suits shall lie in Travis County, Texas, and actions to collect such assessments shall have precedence over all other causes on the docket of a different nature. Either party to said action may appeal to the appellate court having jurisdiction over said cause, and said appeal shall be at once returnable to said appellate court having jurisdiction over said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. Neither the receiver nor the conservator shall be required to give an appeal bond in any cause arising hereunder.

Funds derived from assessments under the provisions of this article shall not become assets of the impaired insurer but shall be deemed a special fund loaned to the receiver or the conservator for payment of covered claims, which loan shall be repayable to the extent available from the funds of such impaired insurer, as herein provided.

No insurer shall be deemed or considered to have or incur any liability, real or contingent, under the provisions of this Article 9.48 of this Chapter 9 until any such assessment shall have been actually made in writing by the commissioner under the provisions of this Article 9.48.

Penalty for Failure to Pay Assessments

Sec. 7. The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact business in this state of any insurer who fails to pay an assessment when due.

Any insurer whose certificate or authority to do business in this state is cancelled or surrendered shall be liable for any unpaid assessments made prior to the date of such cancellation or surrender.

Accounting for and Repayment of Assessments

Sec. 8. Upon receipt from an insurer of payment of an assessment or partial assessment, the receiver or conservator shall provide the insurer with a participation receipt which shall create a liability against the impaired insurer, and the holder of such participation receipt shall be regarded as a general creditor of the impaired insurer; provided, however, that with reference to the remaining balance of any portions of assessments received by the receiver or conservator and not expended in payment of "covered claims," the holders of such participation receipts shall have preference over other general creditors and shall share pro rata with other holders of participation receipts. The receiver or conservator of any impaired insurer shall adopt accounting procedures reflecting the expenditure and use of all funds received from assessments or partial assessments and shall make a final report of the expenditure and use of such funds to the commissioner, which final report shall set forth the remaining balance, if any, from the funds collected by assessment. The receiver or conservator shall also make any interim reports concerning such accounting as may be required by the commissioner. Upon completion of the final report, the receiver or conservator shall, as soon thereafter as is practicable, refund pro rata the remaining balance of such assessments to the holders of the participation receipts.

Payment of Covered Claims

Sec. 9. When an insurer has been designated by the commissioner as an impaired insurer, the receiver or conservator, as the case may be, shall marshal all assets of the impaired insurer, including but not limited to those which are designated as or that constituted reserve assets offsetting reserve liabilities for all liabilities falling within the definition of "covered claim" as defined in this article. The receiver or conservator shall apply all of such assets to the payment of covered claims, but may utilize funds received from assessments in the payment of claims, pending orderly liquidation or disposition of such assets. When all covered claims have been paid or satisfied by the receiver or conservator, any balance remaining from the liquidation or disposition of such assets shall first be applied in repayment of funds expended from assessments. Such repayments shall be credited as remaining balances and be refunded as provided in Section 9 of this article.

In addition to authorization to make actual payment of covered claims, the receiver or conservator is specifically authorized to utilize such marshalled assets and funds derived from assessments for the purpose of negotiating and consummating contracts of reinsurance or assumption of liabilities or contracts of substitution to provide for outstanding liabilities of covered claims. The commissioner shall not require the insurer that reinsures or assumes the

policies of the impaired insurer or enters into an agreement to substitute itself in the place of the impaired insurer, to issue assumption certificates or other written evidence of such agreement to the policyholders of the impaired insurer, except to policyholders that have made a claim for loss arising under their policy (issued by the impaired insurer) before the date of such reinsurance, assumption or substitution agreement. The commissioner shall require that the reinsurance, assumption, or substitution agreement be filed as a public record with the State Board of Insurance. The commissioner shall approve such agreement unless, after public hearing held within 30 days following such filing, he determines that such agreement does not effectively protect the policyholders of the insurers to give notice of such hearing to its policyholders. Such notice shall be by publication, not less than seven days in advance of the hearing, in a newspaper of general circulation printed in the State of Texas. No cause of action shall lie against the impaired insurer for breach of contract or refund of premium after the agreement has been approved by the commissioner and the notice of hearing before the commissioner shall so advise the policyholders of the impaired insurer.

This article shall not be construed to impose restriction or limitation upon the authority granted or authorized the commissioner, the conservator, or the receiver elsewhere in the Insurance Code and other statutes of this state but shall be construed and authorized for use in conjunction with other portions of the Insurance Code dealing with delinquency proceedings or threatened insolvencies or supervisions or conservatorships.

Approval of Covered Claims

Sec. 10. Covered claims against an impaired insurer placed in temporary or permanent receivership under an order of liquidation, rehabilitation, or conservation by a court of competent jurisdiction shall be processed and acted upon by the receiver or ancillary receiver in the same manner as other claims as provided in Article 21.28 of the Insurance Code and as ordered by the court in which such receivership is pending; provided, however, that funds received from assessments shall be liable only for the difference between the amount of the covered claims approved by the receiver and the amount of the assets marshalled by the receiver for payment to holders of covered claims; and provided further that in ancillary receiverships in this state, funds received from assessments shall be liable only for the difference between the amount of the covered claims approved by the ancillary receiver and the amount of assets marshalled by the receivers in other states for application to payment of covered claims within this state. Such funds received from assessments

shall not be liable for any amount over and above that approved by the receiver for a covered claim, and any action brought by the holder of such covered claim appealing from the receiver's action shall not increase the liability of such funds; provided, however, that the receiver may review his action in approving a covered claim and for just cause modify such approval at any time during the pendency of the receivership.

If a conservator is appointed to handle the affairs of an impaired insurer, the conservator shall determine whether or not covered claims should or can be provided for in whole or in part by reinsurance, assumption, or substitution. Upon determination by the conservator that actual payment of covered claims should be made, the conservator shall give notice of such determination to claimants falling within the class of "covered claims." The conservator shall mail such notice to the latest address reflected in the records of the impaired insurer. If the records of the impaired insurer do not reflect the address of a claimant, the conservator may give notice by publication in a newspaper of general circulation. Such notice shall state the time within which the claimant must file his claim with the conservator, which time shall in no event be less than 90 days from the date of the mailing or publication of such notice. The conservator may require, in whole or in part, that sworn claim forms be filed and may require that additional information or evidence be filed as may be reasonably necessary for the conservator to determine the legality or the amount due under a covered claim. When an impaired insurer has been placed in conservatorship, the funds received from assessments shall be liable only for the difference between the amount of the covered claim approved by the conservator and the amount of assets marshalled by the conservator for payment to holders of covered claims. Any action brought by the holder of such covered claim against the impaired insurer shall not increase the liability of such funds; provided, however, that the conservator may review his action in approving a covered claim and may for just cause modify such approval at any time during the pendency of the conservatorship.

Upon determination by the conservator that actual payment of covered claims should be made or upon order of the court to the receiver to give notice for the filing of claims, any person who has a cause of action against an insured of the impaired insurer under a title insurance policy issued or assumed by such insurer shall, if such cause of action meets the definition of "covered claim," have the right to file a claim with the receiver or the conservator, regardless of the fact that such claim may be contingent, and such claim may be approved as a "covered claim" (1) if it may be reasonably inferred from the proof presented upon such claim that such person

would be able to obtain a judgment upon such cause of action against such insured; and (2) if such person shall furnish suitable proof that no further valid claims against such insurer arising out of his cause of action other than those already presented can be made; and (3) if the total liability of such insurer to all claimants arising from the same title insurance policy shall be no greater than its total liability would be were it not in liquidation, rehabilitation, or conservation. In the proceedings of considering "covered claims," no judgment against an insured taken after the date of the commencement of the delinquency proceedings or the appointment of a conservator shall be considered as evidence of liability, or of the amount of damages, and no judgment against an insured taken by default or by collusion prior to the commencement of the delinquency proceedings or the appointment of a conservator shall be considered as conclusive evidence either (1) of the liability of such insured to such person upon such cause of action, or (2) of the amount of damages to which such person is therein entitled.

The acceptance of payment from the receiver or conservator by the holder of a covered claim or the acceptance of the benefits of contracts negotiated by the receiver or conservator providing for reinsurance or assumption of liabilities or for substitution shall constitute an assignment to the impaired insurer of any cause of action or right of the holder of such covered claim arising from the occurrence upon which the covered claim is based. Such assignment shall be to the extent of the amount accepted or the value of the benefits provided by such contracts of reinsurance or assumption of liabilities or substitution. Such assignment to the impaired insurer may be assigned to the insurer executing such reinsurance, assumption or substitution agreement.

Release From Conservatorship or Receivership

Sec. 11. An impaired insurer placed in conservatorship or receivership for which assessments have been made under the provisions of this article shall not be authorized, upon release from conservatorship or receivership, to issue new or renewal insurance policies until such time as the impaired insurer has repaid pro rata in full to each holder of a participation receipt the assessment amount paid by the receipt holder or its assigns; provided, however, the commissioner may, upon application of the advisory association and after hearing, permit the issuance of new policies in accordance with a plan of operations by the released insurer for repayment of assessments. The commissioner may, in approving such plan, place such restrictions upon the issuance of new or renewal policies as he deems necessary to the implementation of the plan. The commissioner shall give 10 days notice of such hearing to the insurers to whom the participation receipts were issued for an

assessment made for the benefit of the released insurer, and the holders of the receipts shall be entitled to appear at and participate in such hearing.

Creation of Advisory Association

Sec. 12. There is created by this article an advisory association to be known as the "Texas Title Insurance Advisory Association", herein called the "advisory association", to be composed of four insurers. Within 30 days after the effective date of this article, the State Board of Insurance shall appoint the insurers who will serve as the initial advisory association. Of the initial advisory association members, one shall be appointed to serve for a one-year term of office, one shall be appointed to serve for a two-year term of office, one shall be appointed to serve for a three-year term of office, and one shall be appointed to serve a four-year term of office. Subsequent members of the advisory association shall serve for the term of office as stated above and shall be elected by insurers, subject to the approval by the commissioner.

The initial members of the advisory association and subsequent members shall be chosen to afford fair representation to all insurers subject to this article, giving due consideration to geographical location and segments of the industry represented in Texas. Vacancies on the advisory association shall be filled for the remaining period of the term in the same manner as the initial appointments.

The advisory association shall conduct its meetings in Austin, Texas, in the Insurance Building of the State of Texas. Meetings shall be held upon call by the commissioner or upon written request of a majority of the members. Meetings shall not be open to the public, and only members of the advisory association, members of the State Board of Insurance, the commissioner, and persons authorized by the commissioner shall attend such meetings.

The advisory association shall advise and counsel with the commissioner upon matters relating to the solvency of insurers. The commissioner shall call a meeting of the advisory association when he determines that an insurer is insolvent or impaired and may call a meeting of the advisory association when he determines that a danger of insolvency or impairment of an insurer exists. The advisory association shall, upon majority vote, notify the commissioner of any information indicating that an insurer may be unable or potentially unable to fulfill its contractual obligations and request a meeting with the commissioner. At such meetings the commissioner may divulge to the advisory association any information in his possession and any records of the State Board of Insurance, including examination reports or preliminary reports from examiners relating to such insurer. The commissioner may summon officers, directors, and employees of an insolvent or impaired

insurer, or an insurer the commissioner considers to be in danger of insolvency or impairment, to appear before the advisory association for conference or for the taking of testimony. Members of the advisory association shall not reveal information received in such meetings to anyone unless authorized by the commissioner or the State Board of Insurance or when required as witness in court. Advisory association members shall be subject to the same standard of confidentiality as is imposed upon examiners under Article 1.18 of the Insurance Code, except that no bond shall be required of advisory association members.

The advisory association shall, upon request by the commissioner, attend hearings before the commissioner and meet with and advise the commissioner, the liquidator or conservator appointed by the commissioner, on matters relating to the affairs of an impaired insurer and relating to action that may be taken by the commissioner, liquidator, or conservator to best protect the interests of persons holding covered claims against an impaired insurer and relating to the amount and timing of partial assessments and the marshalling of assets and the processing and handling of covered claims.

Reports or recommendations made by the advisory association to the commissioner, liquidator, or conservator shall not be considered public documents, and there shall be no liability on the part of and no cause of action against a member of the advisory association or the advisory association for any report, individual report, recommendation or individual recommendation by the advisory association or members to the commissioner, liquidator, or conservator.

Members shall serve without pay, but their expenses in attending meetings shall be paid subject to the authorization by the legislature in its appropriations bills or otherwise, and subject to the rules of the State Board of Insurance. Members shall serve until their successors are appointed.

Any insurer that has an officer, director, or employee serving as a member of the advisory association shall not lose the right to negotiate for and enter into contracts of reinsurance or assumption of liability or contracts of substitution to provide for liabilities for covered claims with the receiver or conservator of an impaired insurer. The entering into any such contract shall not be deemed a conflict of interest.

The advisory association or any insurer assessed under this article shall be an interested party under Section 3(h) of Article 21.28 of the Insurance Code.

The State Board of Insurance shall within 90 days after the effective date of this article promulgate reasonable organizational rules for the association which shall set forth, among other things, quorum

and attendance requirements for meetings, procedural rules to be followed at association meetings and rules concerning the replacement of members.

Recognition of Assessments in Rates and Premium Tax Offset

Sec. 13. Insurers shall be entitled to recoup assessments up to one percent of their net direct written premiums from rates promulgated, established, or approved by the State Board of Insurance in the next calendar year. The State Board of Insurance in promulgating, establishing, or approving rates shall take into account assessments and refunds of assessments made in accordance with this article and shall include in the formula forming the basis for promulgating, establishing, or approving rates sums sufficient to provide for such recoupment.

Unless the State Board of Insurance has determined that all amounts paid by each insurer on assessments on total net direct written premiums have been included in the rates and premiums as provided above, any amounts not so included shall be allowed to such insurer as a credit against its premium tax under Article 7064, Revised Civil Statutes of Texas, 1925, as amended. The tax credit referred to herein shall be allowed at a rate of 20 percent per year for five successive years following the date of assessment and at the option of the insurer may be taken over an additional number of years.

Advertisement

Sec. 14. It shall be unlawful for an insurer to advertise or refer to this Act in any manner as an inducement to the purchase of title insurance.

Immunity

Sec. 15. There shall be no liability on the part of and no cause of action of any nature shall arise against any insurer subject to this article or its agents or employees, the advisory association, or the commissioner or his representatives for any action taken by them in the performance of their powers and duties under this article.

Rules and Regulations

Sec. 16. The State Board of Insurance is authorized and directed to issue such reasonable rules and regulations as may be necessary to carry out the various purposes and provisions of this article and in augmentation thereof.

Appeals

Sec. 17. Any action or ruling of the commissioner under this article may be appealed as provided in Article 1.04 of the Insurance Code, as amended. The liability of the appealing insurer for an assessment shall be suspended pending appeal by such insurer contesting the amount or legality of such assessment.

Control Over Conflicts

Sec. 18. The provisions of this article and the powers and functions authorized by this article are to be exercised to the end that its purposes are accomplished. This article is cumulative of existing laws, but in the event of conflict between this article and any other law relating to the subject matter of this article or its application, the provisions of this article shall control.

Unconstitutional Application Prohibited

Sec. 19. This article and law does not apply to any insurer or other person to whom, under the Constitution of the United States or the Constitution of the State of Texas, it cannot validly apply. [Added by Acts 1975, 64th Leg., p. 1063, ch. 409, § 13, eff. Sept. 1, 1975.]

Art. 9.49. Insured Closing

Title insurance companies operating under the provisions of this chapter are hereby expressly authorized and empowered to issue upon request on real property transactions in this state at no charge whatever insured closing and settlement letters, in the form prescribed by the board, in connection with the closing and settlement of loans made by title insurance agents for any title insurance company operating under the provisions of this chapter. After January 1, 1976, only the form prescribed by the board shall be used thereafter in issuing such insured closing and settlement letters. The liability of the title insurance company shall not be changed or altered by the failure of the title insurance company to issue such insured closing and settlement letters as authorized by this Article 9.49.

[Added by Acts 1975, 64th Leg., p. 1063, ch. 409, § 14, eff. Sept. 1, 1975.]

Art. 9.50. Home Solicitation Transactions Act as Consumer Protection Law

Chapter 246, Acts of the 63rd Legislature, Regular Session, 1973 (Article 5069-13.01 through Article 5069-13.06, Vernon's Texas Civil Statutes), shall be deemed and considered a consumer protection law when construed in connection with any policy of title insurance issued in this state.

[Added by Acts 1975, 64th Leg., p. 1063, ch. 409, § 15, eff. Sept. 1, 1975.]

Art. 9.51. Title Insurance Agents Right to Surrender License

No title insurance agent shall be permitted to surrender his license under the provisions of Article 9.37 of this Chapter 9 if, prior to the offer to surrender such license, an action shall have been commenced under the provisions of Article 9.37 by the commissioner of insurance for revocation of such person's title insurance agent's license.

[Added by Acts 1975, 64th Leg., p. 1063, ch. 409, § 16, eff. Sept. 1, 1975.]

Art. 9.52. Escrow Officer's Right to Surrender License

No escrow officer shall be permitted to surrender his license under the provisions of Article 9.44 of this Chapter 9 if, prior to the offer to surrender such license, an action shall have been commenced under the provisions of Article 9.44 by the commissioner of insurance for revocation of such person's escrow agent's license.

[Added by Acts 1975, 64th Leg., p. 1063, ch. 409, § 17, eff. Sept. 1, 1975.]

Art. 9.53. Uniform Closing and Settlement Statements

On or prior to January 1, 1976, the board, after notice and hearing, shall prescribe uniform settlement and closing statement forms to be used in connection with the settlement and closing of any conveyance or mortgaging of real estate in which transaction a title insurance policy is issued by any title insurance company or title insurance agent. The board is specifically authorized to establish separate forms for transactions involving improved residential real property and for all other real property transactions. The forms prescribed by the board shall be designed so that dual forms or separate forms provided for each party to the transaction identifying only the charges made to such party may be used at any settlement or closing.

Every such settlement and closing statement furnished to a party to the transaction shall state thereon the name of any person, firm, or corporation receiving any sum from such party to the settlement or closing. The title insurance company and the title insurance agent, however, shall be required to include within the closing and settlement statement only those items of disbursement as are actually disbursed by the title insurance company or the title insurance agent. If a title is examined or any closing or settlement services rendered by an attorney, other than a full-time employee of either the title insurance company or the title insurance agent, the amount of such fee (shown as included in the premium) and the name of the attorney (which may be expressed by the name of the firm, if applicable) to whom such fee was paid shall be shown thereon. Such form shall also conspicuously and clearly itemize the charges imposed upon such party in connection with the settlement and closing. If a charge for title insurance is made to such party, the form shall state whether the title insurance premium included in such charges covers or insures the mortgagee's interest in the property, the borrower's interest, or both.

Any title insurance company or any title insurance agent may at its election use the uniform closing statement prepared under the provisions of the Real Estate Settlement Procedures Act of 1974 (Public

Law 93-533)¹ in lieu of the uniform closing statement prescribed by the board.

The provisions of this Article 9.53 of this Chapter 9 shall not apply to the settlement or closing of any residential real estate transaction regulated by the provisions of the Real Estate Settlement Procedures Act of 1974 (Public Law 93-533).

The provisions of this Article 9.53 of this Chapter 9 shall not apply to a settlement or closing if neither a title insurance company, a title insurance agent, an attorney for a title insurance company or title insurance agent, nor a representative of the title insurance company, title insurance agent or attorney for a title insurance company or title insurance agent has actually handled the closing or settlement of such real estate transaction.

[Added by Acts 1975, 64th Leg., p. 1063, ch. 409, § 18, eff. Sept. 1, 1975.]

¹ 12 U.S.C.A. § 2601 et seq.

Art. 9.54. Advance Disclosure of Settlement Costs Involving Residential Property

Every title insurance company and every title insurance agent licensed to do business in Texas under the provisions of this Chapter 9 shall, in connection with the issuance of any type of title policy guaranteeing either a lien upon or the title to improved residential property, upon written request of the buyer, seller, or borrower prior to settlement and closing, furnish to any such requesting party to such transaction an itemized disclosure in writing, to the extent that the information is available, each charge to be made to such party, arising in connection with such closing and settlement, upon any standard real estate settlement and closing form developed, prescribed or authorized under Article 9.53 of this chapter. If information is not available concerning any item or items of charges to be made to such party, proper notation shall be made that a charge is to be made, but the information is not available or that the amount shown is an estimate of such charge. Such person shall be advised in writing as to the identity of the person or organization responsible for such charges to be made for which an estimate has been made or for which notation has been made that the information is not available.

Provided, however, that the title insurance company or title insurance agent providing the disclosures of items of charge shall not be required to disclose costs or charges which the lender is required by any law to disclose to such party. Nothing contained in this Article 9.54 shall be deemed or construed as placing upon any title insurance company or title insurance agent any of the obligations imposed upon lenders by reason of the Federal Real Estate Settlement Procedures Act of 1974 (Public Law 93-533).¹

The provisions of this Article 9.54 of this Chapter 9 shall not apply to a settlement or closing if neither

a title insurance company, a title insurance agent, an attorney for a title insurance company or title insurance agent, nor a representative of the title insurance company, title insurance agent or attorney for a title insurance company or title insurance agent has actually handled the closing or settlement of such real estate transaction.

[Added by Acts 1975, 64th Leg., p. 1063, ch. 409, § 19, eff. Sept. 1, 1975.]

¹ 12 U.S.C.A. § 2601 et seq.

Art. 9.55. Requirement for Issuance of Owners and Mortgagee Title Policies in Connection With Residential Property

After January 1, 1976, whenever any improved residential real property situated in the State of Texas shall be sold and a mortgagee title policy issued to guarantee the validity of a lien thereon, the title insurance company or title insurance agent so issuing such mortgagee title policy of insurance shall also issue an owner title policy to the owner of such property and the required premium as promulgated by the board shall be charged.

The provisions of this article may, however, be rejected, provided that the person acquiring title shall, at or prior to closing and settlement, execute a written and acknowledged rejection wherein the purchaser rejects issuance of such owner title policy. The form of such rejection shall be prescribed, after notice and hearing, by the board.

The provisions of this Article 9.55 of this Chapter 9 shall not apply to a settlement or closing if neither a title insurance company, a title insurance agent, an attorney for a title insurance company or title insurance agent, nor a representative of the title insurance company, title insurance agent or attorney for a title insurance company or title insurance agent has actually handled the closing or settlement of such real estate transaction.

[Added by Acts 1975, 64th Leg., p. 1063, ch. 409, § 20, eff. Sept. 1, 1975.]

Art. 9.56. Creation and Operation of Attorney's Title Insurance Company

Authorization; Applicability of Chapter; Legislative Intent

Sec. 1. (a) This Article 9.56 authorizes, under the limitations and express requirements as herein contained, the incorporation and operation of an "attorney's title insurance company."

(b) All provisions of Chapter 9 of this Insurance Code shall be applicable to such attorney's title insurance company as may be so incorporated, except as shall be otherwise expressly provided in this Article 9.56. The provisions of this Chapter 9 which apply to title insurance companies shall also apply to attorney's title insurance companies except as otherwise expressly provided in this Article 9.56; the

provisions of this Chapter 9 which apply to title insurance agents shall also apply to title attorneys, except as otherwise expressly provided in this Article 9.56.

(c) Any rule, regulation, or promulgated premium rate heretofore adopted by the State Board of Insurance or hereafter adopted by the State Board of Insurance under the provisions of Chapter 9 of this Insurance Code shall likewise be applicable to any such attorney's title insurance company and to any title attorneys.

(d) It is the express intent of the Legislature of the State of Texas that any such attorney's title insurance company as and when created shall be expressly regulated as are other title insurance companies conducting the business of title insurance under the provisions of this Chapter 9 of this Insurance Code unless expressly provided in this Article 9.56 to the contrary.

Definitions

Sec. 2. The following definitions shall be applicable to this Article 9.56 of this Chapter 9, to wit:

(a) "Attorney's title insurance" means insuring, guaranteeing, or indemnifying owners of real property or others interested therein against loss or damage suffered by reason of liens, encumbrances upon, or defects in the title to said property, and the invalidity of liens thereon, issued only in connection with and as a part of a real property transaction and title opinion of a title attorney as the term "title attorney" is defined herein, or doing any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of this Chapter 9.

(b) The "business of attorney's title insurance" shall be conducted by and through a title attorney, as herein defined, duly appointed by such attorney's title insurance company and such business of attorney's title insurance shall be deemed to be

(1) the making as insurer, guarantor, or surety, or proposing to make as insurer, guarantor, or surety, of any contract or policy of title insurance;

(2) the transacting or proposing to transact, any phase of title insurance, including solicitation, negotiation preliminary to execution, execution of a contract of title insurance, insuring and transacting matters subsequent to the execution of the contract and arising out of it, including reinsurance; or

(3) the doing, or proposing to do, any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of this Chapter 9, all as a part of a real estate transaction and title opinion of a title attorney.

(c) "Attorney's title insurance company" means any domestic company organized under the provisions of this chapter for the business of attorney's title insurance.

(d) "Title attorney" means any attorney who

(1) is a member in good standing of the State Bar of Texas; and

(2) owns one or more shares of stock in the attorney's title insurance company by which he is appointed a title attorney under this section; and

(3) is actively engaged in the practice of law; and

(4) owns or leases and controls an abstract plant as defined by the board, or is a participant in a bona fide joint plant operation as defined by the board, or has a contract to obtain title information from an abstract plant licensed by the board (which said contract is upon the form promulgated by the board and the portion of the premium to be paid to the owner or the operator of said abstract plant has been approved by the board), or who is the appointed title attorney for an attorney's title insurance company and bases his title opinion upon title evidence furnished from an abstract plant approved by the board and owned or leased and controlled by such attorney's title insurance company, except that in the event any attorney does not own or lease and control a licensed abstract plant nor is a participant in a bona fide joint plant operation and is further unable to contract to obtain title information from an abstract plant licensed by the board and located in the county in which such attorney is a resident, such attorney may satisfy the requirements of this Subsection (4) by filing with the board disclosure of the inability to obtain said contract as a part of his license application upon a form prescribed by the board so as to make such disclosure a part of the application; and

(5) is appointed as a title attorney by an attorney's title insurance company by contract making such arrangements for division of premium as may be approved by the board under this chapter and authorized by such attorney's title insurance company to solicit insurance and collect premiums and to issue or countersign policies in its behalf; and

(6) is certified as such to the State Board of Insurance; and

(7) is licensed by the board as a title attorney for such attorney's title insurance company.

May Incorporate

Sec. 3. Private corporations may be created by 15 or more State of Texas resident members of the State Bar of Texas to insure titles to lands or

interest therein in this state and indemnify the owners of such lands, or the holders of interests in or liens on such lands, against loss or damage on account of encumbrances upon or defects in the title to such lands or interests therein, provided that such title insurance shall be issued only in connection with and as a part of a title opinion of a title attorney, without any premium or fee therefor except the prescribed title insurance rates provided for in Article 9.07 of this Chapter 9.

Subject to the provisions of Article 9.06 of this Chapter 9, and Section 4 of this article, the capital shares of such corporations may be issued for a par value of \$100 or more per share, and in one or more classes, provided, however, that (a) except as provided in (b) hereafter, all such shares shall be subscribed and paid for, and issued to members of the State Bar of Texas, residing in the State of Texas, subject to the right of reacquisition of such shares by such corporation in the event of death of such attorney shareholder or failure of such attorney shareholder to be and remain a licensed member of the State Bar of Texas, or failure of such attorney shareholder to be and remain qualified to be appointed a title attorney under the provisions of this Article 9.56; and (b) nothing herein contained prohibits an association of the organized State Bar of Texas, the State Bar of Texas, or any foundation created by or through the State Bar of Texas, whose purposes include among others the continuing legal education of the bench and bar of Texas, from owning shares of any class thereof, providing at least 15 resident members of the State Bar of Texas at all times own shares therein whether of the same class or not.

Capital Stock and Surplus Required—Association of the Organized State Bar of Texas, the State Bar of Texas, or any Foundation Created By or Through the State Bar of Texas

Sec. 4. (a) The attorney's title insurance company created as an affiliate or subsidiary of the organized State Bar of Texas, the State Bar of Texas, or any foundation created by or through the State Bar of Texas, and operating under the provisions of this section, must have a paid-up capital of not less than \$250,000 and a surplus of not less than \$150,000.

(b) Any other attorney's title insurance company shall meet the capital and surplus requirements upon organization as required by Article 9.06 of this Chapter 9.

Requirements for Title Attorneys

Sec. 5. No attorney shall act within this state as a title attorney for an attorney's title insurance company without first having been (1) licensed as a title attorney for such company by the board and (2) filing a bond or cash deposit in lieu thereof as required in Section 9; and no attorney's title insur-

ance company shall allow or permit any attorney to act as its title attorney within the state unless said attorney shall first have obtained a license and filed a bond as required by this chapter.

Title Attorney's Licenses

Sec. 6. (a) Before an initial license is issued to any Texas licensed attorney to act as a title attorney within the State of Texas for an attorney's title insurance company, there shall first be filed by the attorney's title insurance company with the board an application for a title attorney's license, on forms to be provided by the board, accompanied by a fee of \$2. The application shall be signed and duly sworn to by the attorney's title insurance company and the applicant title attorney. Such application shall contain the following:

- (1) that the applicant title attorney is a bona fide licensed Texas attorney, resident of Texas; and
- (2) that the applicant title attorney is actively engaged in the practice of law; and
- (3) that the applicant title attorney is known to the attorney's title insurance company to have a good business reputation, to be a current member of the State Bar of Texas, in good standing, and is worthy of the public trust and said attorney's title insurance company knows of no fact or condition which would disqualify him from receiving a license; and
- (4) that the applicant title attorney is qualified as defined in this Article 9.56 of this Chapter 9.

The board shall grant such title attorney's license if it determines from the application and its own investigation that the foregoing requirements have been met.

(b) On or before the first day of June of each year, every attorney's title insurance company operating under the provisions of this Chapter 9 shall certify to the board, on forms provided by the board, the names and addresses of every title attorney of said attorney's title insurance company, and shall apply for and pay a fee of \$2 for an annual license in the name of each title attorney included in said list; if any such attorney's title insurance company shall terminate any licensed title attorney, it shall immediately notify the board in writing of such act and request cancellation of such license, notifying the title attorney of such action. No such attorney's title insurance company shall permit any title attorney appointed by it to write, sign, or deliver title insurance policies within the state until the foregoing conditions have been complied with, and the board has granted said license. The board shall deliver such license to the attorney's title insurance company for transmittal to the title attorney.

Licenses shall continue until the first day of the next June unless previously cancelled; provided, however, that if any attorney's title insurance company surrenders or has its certificate of authority revoked by the board, all existing licenses of its title attorneys shall automatically terminate without notice.

The board shall keep a record of the names and addresses of all licensed title attorneys in such manner that the title attorneys appointed by any attorney's title insurance company authorized to transact the business of an attorney's title insurance company within the State of Texas may be conveniently ascertained and inspected by any person upon request.

(c) If an attorney's title insurance company terminates its contract with a title attorney or gives notice of termination to the title attorney, then any such title attorney may, within 30 days after either occurrence apply to the board for continuation of his license with an amendment thereto showing the name of another attorney's title insurance company for whom he is or will be authorized to act.

Authority of Title Attorney

Sec. 7. (a) A duly licensed title attorney may issue policies of title insurance for an attorney's title insurance company only if: (1) such title attorney is an appointed title attorney for an attorney's title insurance company; and (2) such title attorney bases each title opinion upon separate and current title evidence furnished by a licensed abstract plant of the records of the county in which the real property, the title to which is to be insured, is located; and (3) if such title attorney does not own or lease and control a licensed abstract plant and does not participate in a bona fide joint plant operation, such title attorney pays to the licensed abstract plant furnishing the title information the portion of the premium which may be agreed upon between the title attorney and the licensed abstract plant and approved by the board under the contract to furnish title information provided for under Paragraph (b) of this Section 7.

(b) The board shall, not later than January 1, 1976, promulgate the form of the contract to be made and entered into between a title attorney and a licensed abstract plant whereby title information shall be furnished by a licensed abstract plant to a title attorney. Such contract shall state therein the standards for the information which is to be furnished. Contracts shall be entered into between each title attorney and each licensed abstract plant. The board may from time to time alter, change, or amend the form of such contract.

The parties to any such contract shall determine the portion of the premium to be paid by the title attorney to the licensed abstract plant, except that

the board is authorized to and may disapprove any division of the premium which the board finds to be excessive or inadequate. Such portion of the premium to be paid to the licensed abstract plant shall be deemed and considered as the "regular charge" for title information as that term is used in Article 9.34 of this Chapter 9. Within 10 days following execution, the parties to each such contract shall file a copy of the executed contract with the board. Each such contract shall be deemed to be approved as to the division of the premium until the parties are notified of disapproval by the board.

(c) In the event a title attorney does not own or lease and control a licensed abstract plant nor is a participant in a bona fide joint plant operation and is unable to contract with a licensed abstract plant to obtain the required title information in the county in which the real property, the title to which is to be insured, is located, such title attorney may deliver (but not issue) title insurance policies in conformity with the provisions of Article 9.34 of this Chapter 9. Likewise, a title attorney may deliver (but not issue) a title insurance policy upon real property in conformity with the provisions of Article 9.34 of this Chapter 9 when based upon a duly certified abstract of title prepared by a licensed abstract plant covering the particular real property from the sovereignty of the soil to the date of the transaction.

(d) Each annual audit of each title attorney shall include therein disclosure of the payments for title information and to whom such payments were made."

Title Attorneys' Licenses: Surrender, Forfeiture, Grounds for Revocation; Notice, Hearing, and Appeal

Sec. 8. (a) Any title attorney may surrender his license at any time by giving notice to the board and to the attorney's title insurance company concerned, except that no title attorney shall be permitted to surrender his license under the provisions of this Section 8 if prior to the offer to surrender such license an action shall have been commenced under the provisions of this Section 8 by the Commissioner of Insurance for revocation of such title attorney's license. Any title attorney shall automatically forfeit the license under the attorney's title insurance company represented if he shall terminate his relationship with the attorney's title insurance company.

(b) The license of any title attorney may be denied, or a license duly issued may be suspended or revoked or a renewal thereof refused by the board, if, after notice and hearing as hereafter provided, it finds that the applicant for or holder of such license:

- (1) has wilfully violated any provision of this Chapter 9; or
- (2) has intentionally made a material misstatement in the application for such license; or
- (3) has obtained, or attempted to obtain, such license by fraud or misrepresentation; or

(4) has misappropriated or converted to his own use or illegally withheld money belonging to an attorney's title insurance company, an insured, or any other person; or

(5) has otherwise demonstrated lack of trustworthiness or competence to act as a title attorney; or

(6) has been guilty of fraudulent or dishonest practices; or

(7) has materially misrepresented the terms and conditions of title insurance policies or contracts; or

(8) is not of good character or reputation; or

(9) has failed to maintain a separate and distinct accounting of escrow funds, and has failed to maintain an escrow bank account or accounts separate and apart from all other accounts; or

(10) has failed to remain a member of the State Bar of Texas, or has been disbarred; or

(11) is no longer actively engaged in the practice of law.

(c) Before the license of any title attorney shall be denied, or suspended or revoked, or the renewal thereof refused hereunder, the board shall give notice of its intention so to do, by registered mail, to the applicant for or holder of such license and to the attorney's title insurance company who desires that such license be granted or continued in effect, and shall set a date not less than 20 days from the date of mailing such notice when the applicant or licensee and a duly authorized representative of the attorney's title insurance company may appear to be heard and produce evidence. In the conduct of such hearing, the commissioner of insurance or any regular salaried employee specially designated by him for such purpose shall have power to administer oaths, to require the appearance of and examine any person under oath, and to require the production of books, records, or papers relevant to the inquiry upon his own initiative or upon the request of the applicant or licensee. Upon termination of such hearing, findings shall be reduced to writing and, upon approval by the commissioner, shall be filed in his office and notice of the findings sent by registered mail to the applicant or licensee and the attorney's title insurance company concerned.

(d) No applicant or licensee whose license has been denied, refused, or revoked hereunder shall be entitled to file another application for a license as a title attorney within one year from the effective date of such denial, refusal, or revocation, or, if judicial review of such denial, refusal, or revocation is sought, within one year from the date of final court order or decree affirming such action. Such application, when filed after one year, may be refused by the board unless the applicant shows good cause why the denial, refusal, or revocation of his

license shall not be deemed a bar to the issuance of a new license.

(e) If the board shall refuse an application for any license provided for in this Act, or shall suspend, revoke, or refuse to renew any such license at said hearing, then any such applicant or licensee, and any attorney's title insurance company concerned, may appeal from said order by filing suit against the board as defendant in any of the district courts of Travis County, Texas, and not elsewhere, within 20 days from the date of the order of said board. Said action shall have precedence over all other causes of a different nature on the docket. The action shall not be limited to questions of law and shall be tried and determined upon a trial de novo to the same extent as now provided for in the case of an appeal from the justice court to the county court. Any party to said action may appeal to the appellate court having jurisdiction of said cause, and said appeal shall be at once returnable to said appellate court having jurisdiction of said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. The board shall not be required to give any appeal bond in any cause arising hereunder.

Bonds for Title Attorneys

Sec. 9. (a) Every attorney who has been licensed as a title attorney shall make, file, and pay for a surety bond with a corporate surety company authorized to write surety bonds in this state, payable to the State Board of Insurance in the sum of \$7,500, which bond shall obligate the principal and surety to (1) pay such pecuniary losses as may result to any participant in a real estate settlement or closing where an attorney's title insurance policy is issued by such title attorney which shall be sustained through acts of fraud, dishonesty, theft, embezzlement, or wilful misapplication on the part of any title attorney, (2) to pay such pecuniary loss as any party to an escrow agreement in which the title attorney is escrowee shall sustain through acts of fraud, dishonesty, forgery, theft, embezzlement, or wilful misapplication on the part of such title attorney, either directly and alone, or in connivance with others. In lieu of such bond any title attorney may deposit with the board cash (or securities approved by the board) which cash and securities shall be in the amount of \$7,500 and subject to the same conditions as provided for in said bond.

(b) If at any time it appears to the board that the terms of any title attorney's bond may have been violated, the board may require the title attorney to appear in Travis County with such records as the board deems proper on a named date not earlier than 10 days nor later than 15 days from service of notice, and there conduct an examination into the matter. If upon such examination the board is

satisfied that the terms of said bond have been violated, the board shall immediately notify the surety and prepare a written statement covering the facts and deliver it to the Attorney General of Texas, whose duty it shall be to investigate the charges, and if satisfied that the terms of said bond have been violated, then to enforce the liability against cash or securities, or by suit on said bond in Travis County in the name of the board for the benefit of all parties who have suffered any loss because of breach of the terms of said bond.

Annual Audit and Report of Title Attorneys

Sec. 10. Every title attorney shall have an annual audit, at his expense, made of trust fund accounts, and within 90 days after January 1 of each calendar year shall send by certified mail, postage prepaid, to the board one copy of such audit report with a letter of transmittal, and each such title attorney shall also send a copy of such letter of transmittal and audit report to the attorney's title insurance company which he represents.

Said audit shall be made by an independent certified public accountant or licensed public accountant, or a firm composed of either, recommended by said title attorney and approved by the title insurance company represented by said title attorney.

Each attorney's title insurance company shall examine and analyze the audit report furnished by each of its title attorneys and shall within three months of receipt of same report to the board on forms to be promulgated by the board the findings and results of its examination and analysis of such audit report. If an attorney's title insurance company fails to receive an audit report from any of its title attorneys within the time specified above, it shall forthwith report such omission to the board.

All such reports and analyses furnished by the attorney's title insurance company to the board shall, at the election of the commissioner, be classed as confidential and privileged after having been filed with the board.

If any title attorney shall fail or refuse to furnish an audit report within the time required, or shall furnish an audit report which reveals any shortage or other irregularity, or any practice not in keeping with sound, honest business practices, the board may, after notice to the title attorney and the attorney's title insurance company involved and after a hearing at which the attorney and attorney's title insurance company may offer evidence explaining or excusing such omissions or irregularity, revoke the license of such title attorney.

Any title attorney or attorney's title insurance company feeling aggrieved by any action of the board hereunder shall have the right to file a suit in a District Court of Travis County in the time and manner provided in Section 8.

Right of Attorney's Title Insurance Company to Examine Title Attorney's Fund Accounts and Require Reports

Sec. 11. Any attorney's title insurance company may at such time or times as it sees fit, through its examiners or auditors or through independent certified public accountants commissioned by it, examine the trust fund accounts and records pertaining thereto of any of its title attorneys, such examination to be made at the expense of the attorney's title insurance company; or the attorney's title insurance company may require special reports from any such title attorney regarding any of its transactions.

Application to Other Title Insurance Companies

Sec. 12. The business of attorney's title insurance shall only be conducted by attorney's title insurance companies, as defined herein, and no title insurance company, foreign or domestic, or title insurance agent or escrow officer of a title insurance agent presently or hereafter licensed to transact a title insurance business in the State of Texas, pursuant to the provisions of this Chapter 9 of this Insurance Code, may operate as an attorney's title insurance company or a title attorney under the provisions of this chapter.

Exemption From Other Acts

Sec. 13. (a) The sale, issuance, or offering of any capital stock to persons permitted by the provisions of this Article 9.56 to own such capital stock are hereby exempted from all provisions of the laws of this state, other than this Chapter 9, which provide for supervision, registration, or regulation in connection with the sale, issuance, or offering of securities; and the sale, issuance, or offering of any such capital stock to such persons shall be legal without any action or approval whatsoever on the part of any official or state regulatory agency authorized to license, regulate, or supervise the sale, issuance, or offering of securities.

(b) The shares of stock of each attorney's title insurance company (regardless of class) may be owned only (except as provided in Section 3 of this Article 9.56) by attorneys duly licensed by the State Bar of Texas, residing in the State of Texas, and qualified to be appointed a title attorney under the provisions of this Article 9.56. Each certificate evidencing any share shall have endorsed thereon provisions relating to limitation upon the alienation of such shares whereby such shares may be owned only by such qualifying attorneys or the attorney's title insurance company so issuing such shares. The provisions of this Section 13B shall not, however, be applicable to shares owned by the organized State Bar of Texas, the State Bar of Texas, or any foundation created by or through the State Bar of Texas, whose purposes include among others the continuing legal education of the bench and bar of Texas.

(c) At time of organization of any attorney's title insurance company, the applicants for such attorney's title insurance company shall, as a part of the application for granting and approving the charter of such attorney's title insurance company, file with and obtain the approval of the State Board of Insurance an acceptable plan providing for the reacquisition of any and all shares of stock of such attorney's title insurance company issued to any qualified attorney when such attorney no longer remains qualified to own the same or upon the death of such attorney, whichever shall first occur. Such plan shall, in addition to its other provisions, contain an express provision that under no circumstance may such attorney's title insurance company acquire outstanding shares of its stock as treasury stock if such reacquisition of such shares will result in reducing the capital and surplus of such attorney's title insurance company below the minimum capital and surplus required for the initial organization of such attorney's title insurance company.

(d) In the event of the death of any title attorney, the attorney's title insurance company shall have a period of nine months following the death of such title attorney within which to acquire such deceased title attorney's share or shares.

[Added by Acts 1975, 64th Leg., p. 1063, ch. 409, § 21, eff. Sept. 1, 1975.]

CHAPTER FOURTEEN. GENERAL PROVISIONS FOR MUTUAL ASSESSMENT COMPANIES

Article

14.40a. Repealed.

Art. 14.17. Certificate of Authority Required; Exemptions

It shall be the duty of the Board of Insurance Commissioners to require any corporation, person, firm, association, local mutual aid association, or any local association, company, or organization to have a certificate of authority before being authorized to carry on any insurance business in this State. If, in any event, any such company, person, firm, association, corporation, local aid association, or local organization is writing any form of insurance whatsoever without a permit or certificate of authority issued by the Department of Insurance of Texas, it shall be the duty of the Board to make known said fact to the Attorney General of the State of Texas, who is hereby required to institute proceedings in the District Court of Travis County, Texas, to restrain such corporation, person, firm, association, company, local aid association, or organization from writing any insurance of any kind or character without a permit; provided no provision of this and the preceding Article shall be construed to apply to associations which limit their membership to the employees and

the families of employees of any particular designated firm, corporation, or individual, nor shall it apply to associations which limit their membership to bona fide borrowers of a Federal agency in Texas and members of the borrower's immediate family who are living with him and who are not engaged in nonfarm work for their chief income, and which association has been in existence for at least five (5) years, and which are not operated for profit and which pay no commissions to anyone and whose operating expenses do not exceed One Thousand Dollars (\$1,000) per month; provided, however, that all such associations shall make annual reports to the Department of Insurance on blanks furnished for that purpose, showing the financial condition, the receipts and expenditures, and such other facts as the Board of Insurance Commissioners may require. No such association shall be permitted to operate, however, without making report to the Insurance Department of the State of Texas and securing a permit to so function. Such permit shall be for the current year or fractional part thereof and shall expire on the thirty-first day of May thereafter and shall be renewed annually upon the approval of the financial statement of the organization by the Board of Insurance Commissioners.

[Amended by Acts 1975, 64th Leg., p. 483, ch. 206, § 1, eff. Sept. 1, 1975.]

Art. 14.20. Reduced Benefits or Excluded Coverage on Life Policies; Health and Accident Policies Excluded

Sec. 1. Any company or association licensed and operating under this chapter, may with the approval of the State Board of Insurance issue policies providing for reduced benefits when death or injury occurs while the insured is engaged in military, naval, aerial service, or aerial flight in time of peace or war; or in case of death of the member by his own hand while sane or insane; or while engaged in certain hazardous occupations to be named in the policy; or if death or injury is caused by mob violence or legal execution; or reduce or exclude benefits for sickness from certain named causes. Attention shall be called on the front page of the policy to any reduction or exclusion of benefits provided herein, and the circumstances or conditions under which reduction or exclusion of benefits are applicable shall be plainly stated in the policy. The provisions of this Section 1 of this Article 14.20 shall apply to all outstanding policies already containing such limitations.

Sec. 2. In the event a policy providing natural death benefits shall contain a provision for reduction (other than for the specific reductions enumerated and authorized by Section 1 of this Article 14.20) of the highest or ultimate death benefit stated in such policy for a specified insured, such reduced death

benefit for such specified insured shall at all times during the period of time such reduction in death benefit is in effect equal at least 120 percent of the total premium then paid upon such policy by such specified insured; the period of any such reduced benefit (other than as enumerated and authorized by Section 1 of this Article 14.20) shall not exceed five years from issue date. This Section 2 of this Article 14.20 shall not be applicable, however, to any policy of life insurance upon which the reduction of the death benefit is not applicable at the time of the death of such specified insured.

Sec. 3. In the event a policy of life insurance shall provide, during any of the first five years of such policy, for an increase in the death benefit whereby the initial amount of the death benefit for a specified insured shall be increased one or more times during such five-year period, such amount of death benefit for any such specified insured shall at all times during the period or periods of such increasing benefit equal at least 120 percent of the premiums paid on such policy by such specified insured during the period of such increase. This Section 3 of this Article 14.20 shall not be applicable, however, to any policy of life insurance after it has been in force for more than five years from the policy issue date.

Sec. 4. The provisions of Section 2 and Section 3 of this Article 14.20 shall not be applicable to family group life policies as the term "family group life policies" is defined in Section 2(a)(2) of Article 14.15 of this Insurance Code.

Sec. 5. The provisions of this Article 14.20 shall not apply to health and accident policies.
[Amended by Acts 1975, 64th Leg., p. 1035, ch. 400, § 1, eff. Nov. 1, 1975.]

Section 2 of the 1975 Act amended § 5 of art. 22.13; § 3 thereof provided:
"Sec. 3. The provisions of this Act shall be effective on November 1, 1975, and any insurer issuing a policy which has been previously approved for issuance in this state may bring it into compliance with the provisions of this Act by the use of endorsements thereon or affixed thereto, provided that any such endorsement is approved by the State Board of Insurance prior to usage."

Arts. 14.40 to 14.41. Repealed by Acts 1979, 66th Leg., p. 1252, ch. 593, § 4, eff. June 13, 1979

Former art. 14.40a, relating to application of the Sunset Act to the Burial Association Rate Board, was added by Acts 1977, 65th Leg., p. 1835, ch. 735, § 2.020.

Art. 14.42. Annual Assessment; Burial Association Rate Fund

There is levied upon each burial association having a permit to do business in Texas and upon each burial association which may hereafter be granted a permit to do business in Texas, an annual assessment of one-half of one cent ($\frac{1}{2}$ of 1¢) per member in the association as of December thirty-first of each year but not less than Five (\$5.00) Dollars annually, which shall be in addition to any other fees now

payable and which assessment shall be paid by each association between January first and March first of each year. Said assessments shall be paid to the State Board of Insurance along with and at the same time each association files with said Board its annual statement. Said assessment shall be based upon the calendar year and a proportionate part of said assessment for the remaining part of the current calendar year. All assessments paid to the State Board of Insurance under this article shall be and the same are here and now appropriated for and to the use and benefit of the State Board of Insurance for the purpose of obtaining advice, information, and knowledge relative to adequate and reasonable rates to be charged by burial associations of Texas and compiling records thereof and carrying out Articles 14.42-14.52 of this code. All assessments collected under this article shall be deposited in the State Treasury as a special fund to be known as the Burial Association Rate Fund to be used as and for the purposes aforesaid.

[Amended by Acts 1979, 66th Leg., p. 1250, ch. 593, § 1, eff. June 13, 1979.]

Section 2 of the 1979 amendatory act provided:
"On the effective date of this Act, the Burial Association Rate Board is abolished, and its powers, duties, and functions are transferred to the State Board of Insurance."

Art. 14.43. General Responsibilities of Board; Contracts

(a) The State Board of Insurance shall assume and exercise the powers, duties, and functions provided by Articles 14.44-14.52 of this code.

(b) The State Board of Insurance may contract with experts and consultants to assist it in carrying out its powers, duties, and functions under Articles 14.44, 14.45, 14.47, and 14.48 of this code. Before entering into a contract, the Board shall solicit competitive bids, and the contract shall be awarded to the lowest and best bidder. Procedures for soliciting bids and awarding contracts shall be provided in the rules of the Board.

[Amended by Acts 1979, 66th Leg., p. 1250, ch. 593, § 1, eff. June 13, 1979.]

Art. 14.44. Experience Rating; Rate Schedules Fixed

The State Board of Insurance shall adopt a schedule of reasonable and adequate rates, giving the maximum and minimum rates which may be charged per week, per month, per quarter, per six (6) months and per annum by burial associations for the definite benefits at the definite ages, which ages will be in convenient groups as designated by said Board. Such schedule of rates shall be adopted in compliance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). To insure the adequacy and reasonableness of rates the Board may take into consideration experience gathered from a territory within this

State sufficiently broad to include the varying conditions of the risks involved and over a period sufficiently long to insure that the minimum and maximum rates determined therefrom shall be just and reasonable as they may apply to the insuring public, and adequate and non-confiscatory as they may apply to the burial associations. The Board is hereby authorized and empowered to require sworn statements from any burial association within this State showing its experience in assessments collected and claims paid over a reasonable period of time and such other information as the Board shall find to be necessary or helpful in making the maximum and minimum rate schedules. After said rate schedules have been adopted, the Board shall cause to be mailed a copy of such rate schedule to each burial association having a permit to do business in Texas. [Amended by Acts 1979, 66th Leg., p. 1250, ch. 593, § 1, eff. June 13, 1979.]

Section 3 of the 1979 amendatory act provided: "Within 90 days after the effective date of this Act, the State Board of Insurance shall adopt a schedule of rates for burial associations that is in compliance with and that is adopted in the manner provided by Article 14.44, Insurance Code, as amended. Until the schedule of rates is adopted under this section, the schedule of rates in effect on the effective date of this Act continues in force."

Art. 14.45. Adoption and Filing of Rate Schedule by Associations

After such rate schedule has been so mailed by the State Board of Insurance, it shall be the duty of the officers and directors of each burial association to convene and to adopt a rate schedule to be thereafter used and charged by such association for the different benefits at the different ages and which schedule shall use the same age groups and benefits as is given in the rate schedule so mailed to it by the State Board of Insurance and which rates so adopted shall not be less than the minimum nor more than the maximum rates adopted by the Board. Each burial association shall file with the State Board of Insurance, duplicate copies of the rate schedule adopted by it and which rate schedule must be so filed at least within thirty (30) days from the date the rate schedule was so mailed by the State Board of Insurance. Such copy shall be endorsed by the State Board of Insurance showing the date of its filing and one of such copies shall be retained by the Board and the other copy returned to the association to be kept as a part of its permanent files. With the consent of the State Board of Insurance an association may change its rates by adopting and filing with the Board, a new rate schedule in all respects similar to the first schedule but in each instance each rate must be within the maximum and minimum as adopted by the State Board of Insurance. [Amended by Acts 1979, 66th Leg., p. 1250, ch. 593, § 1, eff. June 13, 1979.]

Art. 14.47. Data for Fixing Rates

It shall be the duty of said State Board of Insurance to gather such data, statistics, and information

as it can from time to time as to the death rates, lapses, experiences and other information relative to burial association rates within, and without the State of Texas as may be deemed beneficial in fixing reasonable and adequate burial association rates and which information may be disseminated by the Board among the burial associations of Texas. [Amended by Acts 1979, 66th Leg., p. 1250, ch. 593, § 1, eff. June 13, 1979.]

Art. 14.48. Limitation on Board's Power; Amendment of Schedules

The Board's duties and power shall not cease upon the adoption of its first rate schedule, but it shall continue to study the statistics, rates, and experiences of burial associations and at any time it deems proper, it may adopt a new rate schedule or amendment to a previous schedule and when any such amendment or new schedule is adopted, it shall thereafter be considered the official rate schedule of burial associations. When a new or amended schedule is adopted and copies forwarded to the burial associations by the State Board of Insurance, the new or amended rate schedule shall be thereafter used by it as to members thereafter accepted and such procedure shall be followed from time to time, when and as often as the Board shall adopt an amended or new rate schedule for the State. [Amended by Acts 1979, 66th Leg., p. 1250, ch. 593, § 1, eff. June 13, 1979.]

Art. 14.51. Affiliation with Funeral Home; Rules and Regulations

It is against the public policy of this State for a funeral home or for those who own it in whole or in part to be connected directly or indirectly or affiliated with more than one burial association and the provisions of Articles 14.42 through 14.52 of this chapter shall be liberally construed and the State Board of Insurance shall make such rules and regulations as may be necessary to carry out the spirit and purpose of this article. [Amended by Acts 1979, 66th Leg., p. 1250, ch. 593, § 1, eff. June 13, 1979.]

CHAPTER FIFTEEN. MUTUAL INSURANCE COMPANIES OTHER THAN LIFE

Article

15.05-A. Application of Texas Non-Profit Corporation Act.

Art. 15.05-A. Application of Texas Non-Profit Corporation Act

Insofar as the provisions of the Texas Non-Profit Corporation Act, as amended (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), are not inconsistent with or contrary to any applicable provisions of the Insurance Code, as amended, the provisions of the Texas Non-Profit Corporation Act as amended

(Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), shall apply to and govern mutual insurance companies as defined in Article 15.01 of this chapter. Provided however, any such mutual insurance company may upon advance approval of the Commissioner of Insurance pay dividends to its members, and wherever in the Texas Non-Profit Corporation Act, as amended (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), some duty, responsibility, power, authority, or act is vested in, required of, or to be performed by the secretary of state, such is to be vested in, required of, or performed by the Commissioner of Insurance insofar as such mutual insurance companies are concerned.

[Added by Acts 1975, 64th Leg., p. 347, ch. 148, § 1, eff. May 8, 1975.]

CHAPTER SEVENTEEN. COUNTY MUTUAL INSURANCE COMPANIES

Art. 17.25. County Mutual Insurance Companies

[See Compact Edition, Volume 2 for text of 1 to 8]

Agents' License

Sec. 9. Agents or solicitors for such companies shall be licensed and appointed as provided in Article 21.07 of this Code.

[See Compact Edition, Volume 2 for text of 10 to 22]

[Amended by Acts 1979, 66th Leg., p. 873, ch. 399, § 1, eff. June 6, 1979.]

CHAPTER TWENTY. GROUP HOSPITAL SERVICE

Art. 20.02. Supervision; Requirements

All corporations organized under the provisions of this chapter shall be under the direct supervision of the Board of Insurance Commissioners of the State of Texas, and shall be subject to the following requirements:

[See Compact Edition, Volume 2 for text of (a) and (b)]

(c) They shall maintain reserves to cover the liability for claims incurred but not yet paid and for the expenses of settlement on those claims; provided that the reserves shall be estimated using a method which has been submitted to the Commissioner of Insurance for approval; and provided further that the method shall be deemed approved thirty (30) days after filing unless earlier affirmatively approved or disapproved by the Commissioner of Insurance;

[See Compact Edition, Volume 2 for text of (d)]

(e) Policy, certificate, and application forms, and forms of all contracts with health care provid-

ers, as defined in Article 20.11 of this chapter, as amended, shall be subject to the provisions of Article 3.42 of this code, as amended.

[Amended by Acts 1977, 65th Leg., p. 1037, ch. 383, § 1, eff. Oct. 1, 1977.]

Section 10 of Acts 1977, 65th Leg., p. 1039, ch. 383, provided an October 1, 1977 effective date.

Art. 20.06. Dissolution; Liquidation; Rehabilitation; Conservation

Any dissolution, liquidation, rehabilitation, or conservation of any such corporation shall be handled as provided in Articles 21.28, 21.28-A, and 21.28-B of this code.

[Amended by Acts 1977, 65th Leg., p. 1037, ch. 383, § 2, eff. Oct. 1, 1977.]

Art. 20.07. Repealed by Acts 1977, 65th Leg., p. 1039, ch. 383, § 9, eff. Oct. 1, 1977

Art. 20.09. Applicability of Certain Legal Requirements

Such corporations organized and operated under the provisions of this chapter shall not be required by any department of this State to post bond, or place deposits with any department of this State to begin and/or operate under this chapter, except as may be otherwise required in this chapter, and the provisions of the other chapters of this code which are not expressly made applicable to corporations organized and operating under this chapter are hereby declared inapplicable.

[Amended by Acts 1977, 65th Leg., p. 1038, ch. 383, § 3, eff. Oct. 1, 1977.]

Art. 20.10. Corporations Nonprofit; Salaries; Investments; Expenses

Such corporations shall be governed and conducted as nonprofit organizations; and provided that no paid officer or employee of said corporations shall receive more than Twenty Thousand Dollars (\$20,000.00) per annum for his services, unless such payment be first authorized by a vote of the board of directors of such company, or by a committee of such board charged with the duty of authorizing such payments. Such corporation's investments shall be subject to the limitations applicable to insurance companies operating under the provisions of Chapter 3 of this code. No corporation operating under this chapter may incur general expenses during a calendar year in excess of twenty percent (20%) of premiums earned in that calendar year; provided further that the maximum expense shall be reduced by one-half percent ($\frac{1}{2}\%$) for each Fifty Million Dollars (\$50,000,000) of premium earned to fifteen percent (15%) for corporations earning Five Hundred Million Dollars (\$500,000,000) or more of premium in a calendar year. "General expenses" means the expenses incurred by a corporation in the operation of its business except that the term shall not be deemed to

include taxes, license fees, commissions, or any expenses incurred in the performance of contracts made directly or indirectly with the government of this state or of the United States under which the corporation does not assume an insurance risk.

[Amended by Acts 1977, 65th Leg., p. 1038, ch. 383, § 4, eff. Oct. 1, 1977.]

Art. 20.11. Authority of Corporation to Contract with Providers Other Than Physicians

Such corporations shall have authority to contract with health care providers, other than physicians, in such manner as to assure to each person holding a policy or certificate of said corporation the furnishing of such services and supplies as may be agreed upon in the policy, with the right to said corporation to limit in the policy the types of disease for which it shall furnish benefits; provided that such corporations shall not be required to contract with any particular health care provider; and provided further that this Article shall not be deemed to authorize such corporation to contract with any health care provider in any manner which is prohibited by any licensing law of this state under which the health care provider operates. Health care provider means any person, association, partnership, corporation, or other entity furnishing or providing any services or supplies for the purpose of preventing, alleviating, curing, or healing human illness or injury.

[Amended by Acts 1977, 65th Leg., p. 1038, ch. 383, § 5, eff. Oct. 1, 1977.]

Art. 20.12. Prohibition Against Contracting for Medical Services

Such corporations shall not contract to furnish to the member a physician or any medical services, nor shall said corporation contract to practice medicine in any manner, nor shall said corporation control or attempt to control the relations existing between said member and his or her physician, nor restrict the right of the patient to obtain the services of any licensed doctor of medicine; provided that nothing in this article shall prohibit a corporation from contracting with a health organization certified under Article 4509a, Revised Civil Statutes of Texas, 1925. In addition, such corporations are hereby authorized to provide benefits for medical and/or surgical care on the basis of indemnity payments for expenses incurred.

[Amended by Acts 1977, 65th Leg., p. 1039, ch. 383, § 6, eff. Oct. 1, 1977.]

Art. 20.13. Personnel of Directors

Such corporation shall have 20 directors who shall have full control over its management affairs. The board of directors shall be composed of persons who are residents of Texas. Not more than five directors

may be persons who are chief executive officers or owners of an institutional health care provider. Not more than three directors may be persons licensed by the Texas State Board of Medical Examiners. Not more than one director may be a person licensed by the Texas State Board of Dental Examiners. The remaining directors shall not be health care providers or employees of or have a financial interest in a health care provider as defined in this chapter. [Amended by Acts 1977, 65th Leg., p. 1039, ch. 383, § 7, eff. Oct. 1, 1977.]

Art. 20.15. Minimum Surplus

Such corporation shall maintain a surplus of at least \$100,000 to meet adverse contingencies.

[Amended by Acts 1977, 65th Leg., p. 1039, ch. 383, § 8, eff. Oct. 1, 1977.]

CHAPTER TWENTY A. HEALTH MAINTENANCE ORGANIZATION ACT

Article

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This chapter was not enacted as part of the Insurance Code of 1951.

Art. 20A.01. Short Title

This Act may be cited as the Texas Health Maintenance Organization Act.

[Acts 1975, 64th Leg., p. 514, ch. 214, § 1, eff. Dec. 1, 1975.]

Art. 20A.02. Definitions

For the Purposes of this Act:

(a) "Basic health care services" means health care services which an enrolled population might reasonably require in order to be maintained in good health, including, as a minimum, emergency care, inpatient hospital and medical services, and outpatient medical services.

(b) "Board" means the State Board of Health.

(c) "Commissioner" means the commissioner of insurance.

(d) "Enrollee" means an individual who is enrolled in a health care plan, including covered dependents.

(e) "Evidence of coverage" means any certificate, agreement, or contract issued to an enrollee setting out the coverage to which the enrollee is entitled.

(f) "Group hospital service corporation" means a nonprofit corporation organized and operating under Chapter 20 of the Insurance Code.¹

(g) "Health care" means prevention, maintenance, and rehabilitation services provided by qualified persons other than medical care.

(h) "Health care plan" means any arrangement whereby any person undertakes to provide, arrange for, pay for, or reimburse any part of the cost of any health care services and at least part of such arrangement consists of arranging for or the provision of health care services, as distinguished from mere indemnification against the cost of such service, on a prepaid basis through insurance or otherwise.

(i) "Health care services" means any services, including the furnishing to any individual of medical or dental care, or hospitalization or incident to the furnishing of such care or hospitalization, as well as the furnishing to any person of any and all other services for the purpose of preventing, alleviating, curing or healing human illness or injury.

(j) "Health maintenance organization" means any person who undertakes to provide or arrange for one or more health care plans.

(k) "Medical care" means furnishing those services defined as the practice of medicine in Section 11, Chapter 426, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4510a, Vernon's Texas Civil Statutes).

(l) "Person" means any natural or artificial person, including, but not limited to, individuals, partnerships, associations, trusts, or corporations.

(m) "Physician" means anyone licensed to practice medicine in the State of Texas.

(n) "Provider" means any practitioner other than a physician, such as a registered nurse, pharmacist, optometrist, pharmacy, hospital, or other institution or organization or person that furnishes health care services, who is licensed or otherwise authorized to practice in this state.

[Acts 1975, 64th Leg., p. 514, ch. 214, § 2, eff. Dec. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1449, ch. 638, § 1, eff. June 13, 1979.]

¹ Article 20.01 et seq.

Art. 20A.03. Establishment of Health Maintenance Organization

(a) Notwithstanding any law of this state to the contrary, any person may apply to the commissioner for and obtain a certificate of authority to establish and operate a health maintenance organization in compliance with this Act. No person shall establish or operate a health maintenance organization in this state, or sell or offer to sell or solicit offers to purchase or receive advance or periodic consideration in conjunction with a health maintenance organization without obtaining a certificate of authority under this Act. A foreign corporation may qualify under this Act, subject to its registration to do business in this state as a foreign corporation under the Texas Business Corporation Act and compliance with all provisions of this Act and other applicable Texas statutes.

(b) Within 90 days of the effective date of this Act, every existing health maintenance organization shall submit an application for a certificate of authority. Each such applicant may continue to operate until the commissioner acts on the application. In the event that an application is denied, the applicant shall henceforth be treated as a health maintenance organization whose certificate of authority has been revoked.

[Acts 1975, 64th Leg., p. 514, ch. 214, § 3, eff. Dec. 1, 1975.]

Art. 20A.04. Application for Certificate of Authority

(a) Each application for a certificate of authority shall be on a form prescribed by rule of the commissioner and shall be verified by the applicant, an officer, or other authorized representative of the applicant, and shall set forth or be accompanied by the following:

(1) a copy of the basic organizational document, if any, of the applicant, such as the articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents, and all amendments thereto;

(2) a copy of the bylaws, rules and regulations, or similar document, if any, regulating the conduct of the internal affairs of the applicant;

(3) a list of the names, addresses, and official positions of the persons who are to be responsible for the conduct of the affairs of the applicant, including all members of the board of directors, board of trustees, executive committee, or other governing body or committee, the principal officer in the case of a corporation, and the partnership or members in the case of a partnership or association;

(4) a copy of any independent or other contract made or to be made between any provider, physician, or persons listed in Paragraph (3) hereof and the applicant;

(5) a statement generally describing the health maintenance organization, its health care plan or plans, facilities, and personnel;

(6) a copy of the form of evidence of coverage to be issued to the enrollee;

(7) a copy of the form of the group contract, if any, which is to be issued to employers, unions, trustees, or other organizations;

(8) a financial statement showing the applicant's assets, liabilities, and sources of financial support; if the applicant's financial affairs are audited by an independent certified public accountant, a copy of the applicant's most recent regular certified financial statement shall be deemed to satisfy this requirement unless the commissioner directs that additional or more recent financial information is required for the proper administration of this Act;

(9) a description of the proposed method of marketing the plan, a financial plan which includes a three-year projection of the initial operating results anticipated, and a statement as to the sources of working capital, as well as any other sources of funding;

(10) a power of attorney duly executed by such applicant, if not domiciled in this state, appointing the commissioner and his successors in office, or a duly authorized deputy, as the true and lawful attorney of such applicant in and for the state upon whom all lawful processes in any legal action or proceedings against the health maintenance organization on a cause of action arising in this state may be served;

(11) a statement reasonably describing the geographic area or areas to be served;

(12) a description of the complaint procedures to be utilized;

(13) a description of the procedures and programs to be implemented to meet the quality of health care requirements set forth herein;

(14) a description of the mechanisms by which enrollees will be afforded the opportunity to participate in matters of policy and operation; and

(15) such other information as the commissioner may require to make the determinations required by this Act.

(b) The State Board of Insurance may promulgate such reasonable rules and regulations as it deems necessary to the proper administration of this Act to require a health maintenance organization, subsequent to receiving its certificate of authority, to submit the modifications or amendments to the operations or documents described in Subsection (a) of this section to the commissioner, either for his approval or for information only, prior to the effectuation of the modification or amendment. As soon as reasonably possible after any filing for approval

required by this subsection is made, the commissioner shall in writing approve or disapprove it. Any modification or amendment for which the commissioner's approval is required shall be considered approved unless disapproved within 30 days; provided that the commissioner may postpone the action for such further time, not exceeding an additional 30 days, as necessary for proper consideration.

[Acts 1975, 64th Leg., p. 515, ch. 214, § 4, eff. Dec. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1450, ch. 638, § 2, eff. June 13, 1979.]

Art. 20A.05. Issuance of Certificate of Authority

(a)(1) Upon receipt of an application for issuance of a certificate of authority, the commissioner shall begin consideration of the application and forthwith transmit copies of such application and accompanying documents to the board.

(2) The board shall determine whether the applicant for a certificate of authority, with respect to health care services to be furnished:

(A) has demonstrated the willingness and potential ability to assure that such health care services will be provided in a manner to assure both availability and accessibility of adequate personnel and facilities, in a manner enhancing availability, accessibility, and continuity of services;

(B) has arrangements, established in accordance with rules and regulations promulgated by the board with the concurrence of the commissioner, for an ongoing quality of health care assurance program concerning health care processes and outcome; and

(C) has a procedure, established by rules and regulations of the board with the concurrence of the commissioner, to develop, compile, evaluate, and report statistics relating to the cost of operation, the pattern of utilization of its services, availability and accessibility of its services.

(3) Within 45 days of receipt of the application by the board for issuance of a certificate of authority, the board shall certify to the commissioner whether the proposed health maintenance organization meets the requirements of this section. If the board certifies that the health maintenance organization does not meet such requirements, it shall specify in what respects it is deficient.

(b) The commissioner shall, after notice and hearing, issue or deny a certificate of authority to any person filing an application pursuant to Section 4 of this Act within 75 days of the receipt of the certification of the board; provided, however, that the commissioner may grant a delay of final action on the application to an applicant who has demonstrated a need therefor, including any delay occasioned by an application to the federal government. Issuance of the certificate of authority shall be granted upon payment of the application fee prescribed in Section 32 of this Act if:

(1) the board certifies that the health maintenance organization's proposed plan of operation meets the requirements of Subsection (a)(2) of this section; and

(2) the commissioner is satisfied that:

(A) the person responsible for the conduct of the affairs of the applicant is competent, trustworthy, and possesses a good reputation;

(B) the health care plan constitutes an appropriate mechanism whereby the health maintenance organization will effectively provide or arrange for the provision of basic health care services on a prepaid basis, through insurance or otherwise, except to the extent of reasonable requirements for co-payment;

(C) the health maintenance organization is fully responsible and may reasonably be expected to meet its obligations to enrollees and prospective enrollees. In making this determination, the commissioner shall consider:

(i) the financial soundness of the health care plan's arrangement for health care services and a schedule of charges used in connection therewith;

(ii) the adequacy of working capital;

(iii) any agreement with an insurer, group hospital service corporation, a political subdivision of government, or any other organization for insuring the payment of the cost of health care services or the provision for automatic applicability of an alternative coverage in the event of discontinuance of plan;

(iv) any agreement which provides for the provision of health care services; and

(v) any surety bond or deposit of cash or securities submitted in accordance with Section 13 of this Act as a guarantee that the obligations will be duly performed;

(D) the enrollees will be afforded an opportunity to participate in matters of policy and operation pursuant to Section 7(b) of this Act;

(E) nothing in the proposed method of operation, as shown by the information submitted pursuant to Section 4 of this Act, or by independent investigation, is contrary to Texas law.

(c) If the board or the commissioner, or both, shall certify that the health maintenance organization's proposed plan of operation does not meet the requirements of this section, the commissioner shall not issue the certificate of authority. The commissioner shall notify the applicant that it is deficient, and shall specify in what respects it is deficient.

(d) A certificate of authority shall continue in force as long as the person to whom it is issued meets the requirements of this Act or until suspended or revoked by the commissioner or terminated at

the request of the certificate holder. Any change in control, as defined by Article 21.49-1 of the Insurance Code of Texas, of the health maintenance organization, shall be subject to the approval of the commissioner.

[Acts 1975, 64th Leg., p. 517, ch. 214, § 5, eff. Dec. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1450, ch. 638, § 3, eff. June 13, 1979.]

Art. 20A.06. Powers of Health Maintenance Organization

(a) The powers of a health maintenance organization include, but are not limited to, the following:

(1) the purchase, lease, construction, renovation, operation, or maintenance of hospitals, medical facilities, or both, and ancillary equipment and such property as may reasonably be required for its principal office or for such other purposes as may be necessary in the transaction of the business of the health maintenance organization;

(2) the making of loans to a medical group, under an independent contract with it in furtherance of its program, or corporations under its control, for the purpose of acquiring or constructing medical facilities and hospitals, or in the furtherance of a program providing health care services to enrollees;

(3) the furnishing of medical care services through physicians who have independent contracts with the health maintenance organizations; the furnishing or arranging for the delivery of health care services through providers or groups of providers who are under contract with or employed by the health maintenance organization; provided, however, that a health maintenance organization is not authorized to employ or contract with physicians or providers in any manner which is prohibited by any licensing law of this state under which such physicians or providers are licensed;

(4) the contracting with any person for the performance on its behalf of certain functions such as marketing, enrollment, and administration;

(5) the contracting with an insurance company licensed in this state, or with a group hospital service corporation authorized to do business in the state, for the provision of insurance, indemnity, or reimbursement against the cost of health care and medical care services provided by the health maintenance organization;

(6) the offering, in addition to the basic health care services, of:

(A) additional health care or medical services;

(B) indemnity benefits covering out-of-area emergency services; and

(C) indemnity benefits in addition to those relating to out-of-area and emergency services,

provided through insurers or group hospital service corporations;

(7) receiving and accepting from government or private agencies payments covering all or part of the cost of the services provided or arranged for by the organization;

(8) all powers given to corporations (including professional corporations and associations), partnerships, and associations pursuant to their organizational documents which are not in conflict with provisions of this Act, or other applicable law.

(b)(1) The health maintenance organization shall file notice, with adequate supporting information, with the commissioner prior to the exercise of any power granted in Subdivision (1) or (2) of Subsection (a) of this section. The commissioner shall disapprove such exercise of powers which, in his or her opinion would substantially and adversely affect the financial soundness of the health maintenance organization and endanger its ability to meet its obligations. If the commissioner does not disapprove within 30 days of filing, it shall be deemed approved; provided that the commissioner may, by official order, postpone action for such further time, not exceeding 30 days, as may be considered necessary for proper consideration.

(2) The commissioner may promulgate rules and regulations exempting from the filing requirements of this subdivision those activities having a de minimis effect.

[Acts 1975, 64th Leg., p. 518, ch. 214, § 6, eff. Dec. 1, 1975.]

Art. 20A.07. Governing Body

(a) The governing body of any health maintenance organization may include physicians, providers, or other individuals, or any combination of the above.

(b) The governing body shall establish a mechanism to afford the enrollees an opportunity to participate in matters of policy and operation through the establishment of advisory panels, by the use of advisory referenda on major policy decisions, or through the use of other mechanisms.

[Acts 1975, 64th Leg., p. 519, ch. 214, § 7, eff. Dec. 1, 1975.]

Art. 20A.08. Fiduciary Responsibility

Any director, officer, member, employee, or partner of a health maintenance organization who receives, collects, disburses, or invests funds in connection with the activities of such organization shall be responsible for such funds in a fiduciary relationship to the enrollees.

[Acts 1975, 64th Leg., p. 519, ch. 214, § 8, eff. Dec. 1, 1975.]

Art. 20A.09. Evidence of Coverage and Charges

(a)(1) Every enrollee residing in this state is entitled to evidence of coverage under a health care plan. If the enrollee obtains coverage under a

health care plan through an insurance policy or a contract issued by a group hospital service corporation, whether by option or otherwise, the insurer or the group hospital service corporation shall issue the evidence of coverage. Otherwise, the health maintenance organization shall issue the evidence of coverage.

(2) No evidence of coverage, or amendment thereto, shall be issued or delivered to any person in this state until a copy of the form of evidence of coverage, or amendment thereto, has been filed with and approved by the commissioner.

(3) An evidence of coverage shall contain:

(A) no provisions or statements which are unjust, unfair, inequitable, misleading, deceptive, which encourage misrepresentation, or which are untrue, misleading, or deceptive as defined in Section 14 of this Act; and

(B) a clear and complete statement, if a contract, or a reasonably complete facsimile, if a certificate, of:

(i) the medical and health care services and the issuance of other benefits, if any, to which the enrollee is entitled under the health care plan;

(ii) any limitation on the services, kinds of services, benefits, or kinds of benefits to be provided, including any deductible or co-payment feature;

(iii) where and in what manner information is available as to how services may be obtained;

(iv) the total amount of payment for health care services and the indemnity or service benefits, if any, which the enrollee is obligated to pay with respect to individual contracts, or indication whether the plan is contributory or non-contributory with respect to group certificates; and

(v) a clear and understandable description of the health maintenance organization's methods for resolving enrollee complaints. Any subsequent changes may be evidenced in a separate document issued to the enrollee.

(4) Any form of the evidence of coverage or group contract to be used in this state, and any amendments thereto, are subject to the filing and approval requirements of Subsection (c) of this section, unless it is subject to the jurisdiction of the commissioner under the laws governing health insurance or group hospital service corporations, in which event the filing and approval provisions of such law shall apply. To the extent, however, that such provisions do not apply to the requirements of Subdivision (3), Subsection (a) of this section, the requirements of Subdivision (3) shall be applicable.

(b)(1) No schedule of charges for enrollee coverage for medical services or health care services, or

amendments thereto may be used in conjunction with any health care plan until a copy of such schedule or amendments thereto has been filed with the commissioner.

(2) Such charges may be established in accordance with actuarial principles for various categories of enrollees, provided that charges applicable to an enrollee shall not be individually determined based on the status of his or her health. However, the charges shall not be excessive, inadequate, or unfairly discriminatory, and the benefits shall be reasonable with respect to the rates charged. A certification, by a qualified actuary, to the appropriateness of the charges, based on reasonable assumptions, shall accompany the filing along with adequate supporting information.

(c) The commissioner shall, within a reasonable period, approve any form of the evidence of coverage or group contract, or amendment thereto, if the requirements of this section are met. It shall be unlawful to issue such form until approved. If the commissioner disapproves such form, the commissioner shall notify the filer. In the notice, the commissioner shall specify the reason for the disapproval. A hearing shall be granted within 30 days after a request in writing by the person filing. If the commissioner does not disapprove any form within 30 days after the filing of such form it shall be considered approved; provided that the commissioner may by written notice extend the period for approval or disapproval of any filing for such further time, not exceeding an additional 30 days, as necessary for proper consideration of the filing.

(d) The commissioner may require the submission of whatever relevant information he or she deems necessary in determining whether to approve or disapprove a filing made pursuant to this section. [Acts 1975, 64th Leg., p. 519, ch. 214, § 9, eff. Dec. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1451, ch. 638, § 4, eff. June 13, 1979.]

Art. 20A.10. Annual Report

(a) Each health maintenance organization shall annually, on or before the 1st day of March, file a report, verified by at least two principal officers, with the commissioner, with a copy to the board, covering the preceding calendar year.

(b) Such report shall be on forms prescribed by the State Board of Insurance and shall include:

(1) a financial statement of the organization, including its balance sheet and receipts and disbursements for the preceding year, certified by an independent public accountant;

(2) the number of persons enrolled during the year, the number of enrollees as of the end of the year, and the number of enrollments terminated during the year;

(3) a summary of the information compiled pursuant to Section 12 of this Act in such form as required by the State Board of Insurance; and

(4) such other information relating to the performance of the health maintenance organization as is necessary to enable the commissioner to carry out the duties under this Act.

[Acts 1975, 64th Leg., p. 521, ch. 214, § 10, eff. Dec. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1451, ch. 638, § 5, eff. June 13, 1979.]

Art. 20A.11. Information to Enrollees

Every health maintenance organization shall annually provide to its enrollees:

(a) the most recent annual statement of financial condition, including a balance sheet and summary of receipts and disbursements;

(b) a description of the organizational structure and operation of the health care plan and a summary of any material changes since the issuance of the last report;

(c) a description of services and information describing where and how to secure the services; and

(d) a clear and understandable description of the health maintenance organization's method for resolving enrollee complaints.

[Acts 1975, 64th Leg., p. 521, ch. 214, § 11, eff. Dec. 1, 1975.]

Art. 20A.12. Complaint System

(a)(1) Every health maintenance organization shall establish and maintain a complaint system which has been approved by the commissioner after consultation with the board to provide reasonable procedures for the resolution of written complaints initiated by enrollees concerning health care services.

(2) Every health maintenance organization shall submit to the commissioner and to the board an annual report in a form prescribed by rule of the State Board of Insurance after consultation with the board.

(b) The commissioner or board may examine such complaint system.

[Acts 1975, 64th Leg., p. 521, ch. 214, § 12, eff. Dec. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1452, ch. 638, § 6, eff. June 13, 1979.]

Art. 20A.13. Protection Against Insolvency

Each health maintenance organization shall furnish a surety bond in a reasonable amount satisfactory to the commissioner or deposit with the commissioner cash or securities acceptable to the commissioner in at least the same amount as a guarantee that the obligations to the enrollees will be performed. The commissioner may waive this requirement when satisfied that the assets of the organiza-

tion or its contracts with insurers, group hospital service corporations, governments, or other organizations are sufficient to assure reasonably the performance of its obligations.

[Acts 1975, 64th Leg., p. 521, ch. 214, § 13, eff. Dec. 1, 1975.]

Art. 20A.14. Prohibited Practices

(a) No health maintenance organization, or representatives thereof, may cause or knowingly permit the use of advertising which is untrue or misleading, solicitation which is untrue or misleading, or any form of evidence of coverage which is deceptive. For the purposes of this Act:

(1) a statement or item of information shall be deemed to be untrue if it does not conform to fact in any respect which is or may be significant to an enrollee of, or person considering enrollment in, a health care plan;

(2) a statement or item of information shall be deemed to be misleading, whether or not it may be literally untrue, if, in the total context in which said statement is made or such item of information is communicated, such statement or items of information may be reasonably understood by a reasonable person, not possessing special knowledge, regarding health care coverage, as indicating any benefit or advantage or absence of any exclusion, limitation, or disadvantage of possible significance to an enrollee of or person considering enrollment in, a health care plan, if such benefit or advantage or absence of limitation, exclusion, or disadvantage does not in fact exist;

(3) an evidence of coverage shall be deemed to be deceptive if the evidence of coverage, taken as a whole, and with consideration given to typography and format, as well as language, shall be such as to cause a reasonable person, not possessing special knowledge regarding health care plans, and evidence of coverage therefor, to expect benefits, services, charges, or other advantages which the evidence of coverage does not provide or which the health care plan issuing such evidence of coverage does not regularly make available for enrollees covered under such evidence of coverage.

(b) Article 21.21, as amended, of the Insurance Code, shall be construed to apply to health maintenance organizations and health care plans and evidence of coverage, except to the extent that the commissioner determines that the nature of health maintenance organizations and health care plans and evidence of coverage renders such sections clearly inappropriate.

(c) An enrollee may not be cancelled or not renewed except for the failure to pay the charges for such coverage, or for such other reason as may be promulgated by rule of the commissioner.

(d) No health maintenance organization, unless licensed as an insurer, may use in its name, con-

tracts, or literature, any of the words "insurance," "casualty," "surety," "mutual," or any other words descriptive of the insurance, casualty, or surety business or deceptively similar to the name or description of any insurance or surety corporation doing business in this state.

(e) No physician or health care provider or group of physicians or providers or health care facility or institution may exclude any other physician or provider from staff privileges, facilities, or institutions solely on the ground that such physician or provider is associated with a health maintenance organization issued a certificate of authority under this Act.

(f) Only those persons who comply with the provisions of this Act and are issued a certificate of authority by the commissioner may use the phrase "health maintenance organization" or "HMO" in the course of operation.

[Acts 1975, 64th Leg., p. 522, ch. 214, § 14, eff. Dec. 1, 1975.]

Art. 20A.15. Regulation of Agents

(a) A health maintenance organization agent is anyone who represents any health maintenance organization in the solicitation, negotiation, procurement, or effectuation of health maintenance organization membership or holds himself or herself out as such. No person or other legal entity may perform the acts of a health maintenance organization agent within this state unless such person or legal entity has a valid health maintenance organization agent's license issued pursuant to this Act. The term "health maintenance organization agent" shall not include:

(1) any regular salaried officer or employee of a health maintenance organization or of a licensed health maintenance organization agent, who devotes substantially all of his or her time to activities other than the solicitation of applications for health maintenance organization membership and receives no commission or other compensation directly dependent upon the business obtained and who does not solicit or accept from the public applications for health maintenance organization membership;

(2) employers or their officers or employees or the trustees of any employee benefit plan to the extent that such employers, officers, employees, or trustees are engaged in the administration or operation of any program of employee benefits involving the use of membership in a health maintenance organization; provided that such employers, officers, employees, or trustees are not in any manner compensated directly or indirectly by the health maintenance organization issuing such health maintenance organization membership;

(3) banks or their officers and employees to the extent that such banks, officers, and employees collect and remit charges by charging same

against accounts of depositors on the orders of such depositors.

(b) The Commissioner of Insurance shall collect in advance from health maintenance organization agent applicants a license fee of \$25 and an examination fee of \$10. A new examination fee shall be paid for each examination. The examination fee shall not be returned under any circumstances other than for failure to appear and take the examination after the applicant has given at least 24 hours notice of an emergency situation to the Commissioner of Insurance and received the commissioner's approval.

(c) Each license issued to a health maintenance organization agent shall expire two years following the date of issue, unless prior thereto it is suspended or revoked by the commissioner or the authority of the agent to act for the health maintenance organization is terminated.

(d) Licenses which have not expired or been suspended or revoked may be renewed upon written request and payment of a \$25 renewal fee by the agent.

(e) Any agent licensed under this section may represent and act as an agent for more than one health maintenance organization at any time while the agent's license is in force. Any such agent and the health maintenance organization involved must give notice to the State Board of Insurance of any additional appointment or appointments authorizing the agent to act as agent for an additional health maintenance organization or health maintenance organizations. Such notice must set forth the health maintenance organization or health maintenance organizations which the agent is then licensed to represent and shall be accompanied by a certificate from each health maintenance organization to be named in each additional appointment that said health maintenance organization desires to appoint the applicant as its agent. This notice shall contain such other information as the State Board of Insurance may require. The agent shall be required to pay a fee of \$8 for each additional appointment applied for, which fee shall accompany the notice.

(f) It shall be the duty of the commissioner to collect from every agent of any health maintenance organization in the State of Texas under the provisions of this section a licensing fee and an initial appointment fee for each appointment by a health maintenance organization, which fees shall constitute a fund to be used by the State Board of Insurance to administer the provisions of the Texas Health Maintenance Organization Act and all laws of this state governing and regulating agents for such health maintenance organizations as provided for in this section. All of such funds shall be paid into the State Treasury to the credit of the Health Maintenance Organization Fund and shall be paid out for salaries, traveling expenses, office expenses,

and other incidental expenses incurred and approved by the State Board of Insurance.

(g) The State Board of Insurance may, after notice and hearings, promulgate such reasonable rules and regulations as are necessary to provide for the licensing of agents.

[Acts 1975, 64th Leg., p. 523, ch. 214, § 15, eff. Dec. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1452, ch. 638, § 7, eff. June 13, 1979.]

Art. 20A.16. Powers of Insurers and Others

(a) An insurance company licensed in this state, pursuant to Chapter 2, 3, or 15 of the Insurance Code,¹ or a group hospital service corporation authorized to do business in this state, may either directly or through a subsidiary or affiliate organize and operate a health maintenance organization under the provisions of this Act. Notwithstanding any other law which may be inconsistent herewith, any two or more such insurance companies or group hospital service corporations, or subsidiaries or affiliates thereof, may jointly organize and operate a health maintenance organization under the provisions of this Act.

(b) Notwithstanding any provision of insurance or group hospital service corporation laws, an insurer or group hospital service corporation may contract with a health maintenance organization to provide insurance or similar protection against the cost of care provided by a health maintenance organization and to provide coverage in the event of failure of a health maintenance organization to meet its obligations. Among other things, under such contracts, the insurer or group hospital service corporation may make benefit payments to a health maintenance organization for health care services rendered by physicians or providers pursuant to health care plans.

[Acts 1975, 64th Leg., p. 523, ch. 214, § 16, eff. Dec. 1, 1975.]

¹ Articles 2.01 et seq., 3.01 et seq., 15.01 et seq.

Art. 20A.17. Examinations

(a) The commissioner may make an examination of the affairs of any health maintenance organization as it is deemed necessary, but not less frequently than once every three years.

(b) The board may make an examination concerning the quality of health care services of any health maintenance organization and providers with whom such organization has contracts, agreements, or other arrangements as often as it deems it necessary, but not less frequently than once every three years.

(c)(1) Every health maintenance organization shall make its books and records relating to its operation available for such examinations and in every way facilitate the examinations. Every physician and provider so examined need only make available for examination that portion of its books and records

relevant to its relationship with the health maintenance organization.

(2) Medical, hospital and health records of enrollees and records of physicians and providers providing service under independent contract with a health maintenance organization shall only be subject to such examination as is necessary for an ongoing quality of health assurance program concerning health care procedures and outcome in accordance with an approved plan as provided for in this Act. Said plan shall provide for adequate protection of confidentiality of medical information and shall only be disclosed in accordance with applicable law and this Act and shall only be subject to subpoena upon a showing of good cause.

(3) For the purpose of examinations, the commissioner and board may administer oaths to and examine the officers and agents of the health maintenance organization and the principals of such physicians and providers concerning their business.

(d) Article 1.19, as amended, of the Insurance Code shall be construed to apply to health maintenance organizations, except to the extent that the commissioner determines that the nature of the examination of a health maintenance organization renders such clearly inappropriate.

[Acts 1975, 64th Leg., p. 523, ch. 214, § 17, eff. Dec. 1, 1975.]

Art. 20A.18. Management and Exclusive Contracts

(a) No health maintenance organization may enter into an exclusive agency contract or management contract, unless the contract is first filed with the commissioner and approved under this section within 30 days after filing or such reasonable extended period as the commissioner may specify by notice given within the 30 days.

(b) The commissioner shall disapprove a contract submitted under Subsection (a) of this section if he finds that:

- (1) it subjects the health maintenance organization to excessive charges;
- (2) the contract extends for an unreasonable period of time;
- (3) the contract does not contain fair and adequate standards of performance;
- (4) the persons empowered under the contract to manage the health maintenance organization are not sufficiently trustworthy, competent, experienced, and free from conflict of interest to manage the health maintenance organization with due regard for the interests of its enrollees, creditors, or the public; or
- (5) the contract contains provisions which impair the interests of the organization's enrollees, creditors, or the public in this state.

[Acts 1975, 64th Leg., p. 524, ch. 214, § 18, eff. Dec. 1, 1975.]

Art. 20A.19. Hazardous Financial Condition

(a) Whenever the financial condition of any health maintenance organization indicates a condition such that the continued operation of the health maintenance organization might be hazardous to its enrollees, creditors, or the general public, then the commissioner of insurance may, after notice and hearing, order the health maintenance organization to take such action as may be reasonably necessary to rectify the existing condition, including but not necessarily limited to one or more of the following steps:

- (1) to reduce the total amount of present and potential liability for benefits by reinsurance;
- (2) to reduce the volume of new business being accepted;
- (3) to reduce expenses by specified methods;
- (4) to suspend or limit the writing of new business for a period of time; or
- (5) to increase the health maintenance organization's capital and surplus by contribution.

(b) The State Board of Insurance is authorized, by rules and regulations, to fix uniform standards and criteria for early warning that the continued operation of any health maintenance organization might be hazardous to its enrollees, creditors, or the general public, and to fix standards for evaluating the financial condition of any health maintenance organization, which standards shall be consistent with the purposes expressed in Subsection (a) of this section. [Acts 1975, 64th Leg., p. 524, ch. 214, § 19, eff. Dec. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1453, ch. 638, § 8, eff. June 13, 1979.]

Art. 20A.20. Suspension or Revocation of Certificate of Authority

(a) The commissioner may suspend or revoke any certificate of authority issued to a health maintenance organization under this Act if the commissioner finds that any of the following conditions exist:

- (1) The health maintenance organization is operating significantly in contravention of its basic organizational documents, or its health care plan, or in a manner contrary to that described in and reasonably inferred from any other information submitted under Section 4 of this Act.
- (2) The health maintenance organization issues evidence of coverage or uses a schedule of charges for health care services which does not comply with the requirements of Section 9 of this Act.
- (3) The health care plan does not provide or arrange for basic health care services.
- (4) The board certifies to the commissioner that:

(A) the health maintenance organization does not meet the requirements of Section 5(a)(2) of this Act; or

(B) the health maintenance organization is unable to fulfill its obligation to furnish health care services as required under its health care plan.

(5) The health maintenance organization is no longer financially responsible and may be reasonably expected to be unable to meet its obligations to enrollees or prospective enrollees.

(6) The health maintenance organization has failed to implement a mechanism affording the enrollees an opportunity to participate in matters of policy and operation under Section 7(b) of this Act.

(7) The health maintenance organization has failed to implement the complaint system required by Section 12 of this Act in a manner to resolve reasonably valid complaints.

(8) The health maintenance organization, or any person on its behalf, has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive, or unfair manner.

(9) The continued operation of the health maintenance organization would be hazardous to its enrollees.

(10) The health maintenance organization has otherwise failed to comply substantially with this Act, and any rule and regulation thereunder.

(b) A certificate of authority shall be suspended or revoked only after compliance with this section.

(c) When the certificate of authority of a health maintenance organization is suspended, the health maintenance organization shall not, during the period of such suspension, enroll any additional enrollees except newborn children, or newly acquired dependents of existing enrollees, and shall not engage in any advertising or solicitation whatsoever.

(d) When the certificate of authority of a health maintenance organization is revoked, such organization shall proceed, immediately following the effective date of the order of revocation, to wind up its affairs, and shall conduct no further business except as may be essential to the orderly conclusion of the affairs of such organization. It shall engage in no further advertising or solicitation whatsoever. The commissioner may, by written order, permit such further operation of the organization, as he may find to be in the best interest of the enrollees, to the end that the enrollees will be afforded the greatest practical opportunity to obtain continuing health care coverage.

[Acts 1975, 64th Leg., p. 525, ch. 214, § 20, eff. Dec. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1453, ch. 638, § 9, eff. June 13, 1979.]

Art. 20A.21. Rehabilitation, Liquidation, or Conservation of Health Maintenance Organizations

All rehabilitation, liquidation, or conservation of a health maintenance organization shall be considered to be rehabilitation, liquidation, or conservation of an insurance company and shall be conducted under the supervision of the commissioner pursuant to Articles 21.28, as amended, 21.28-A, and 21.28-B of the Insurance Code. The commissioner may also order the conservation, liquidation, or rehabilitation of a health maintenance organization if the commissioner is of the opinion that the continued operation of the health maintenance organization would be hazardous either to the enrollees or to the people of the state.

[Acts 1975, 64th Leg., p. 526, ch. 214, § 21, eff. Dec. 1, 1975.]

Art. 20A.22. Rules and Regulations

The State Board of Insurance may, after notice and hearing, promulgate such reasonable rules and regulations as are necessary and proper to carry out the provisions of this Act.

[Acts 1975, 64th Leg., p. 526, ch. 214, § 22, eff. Dec. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1454, ch. 638, § 10, eff. June 13, 1979.]

Art. 20A.23. Appeals

(a) Any person who is affected by any rule, ruling, or decision of the commissioner or board shall have the right to have such rule, ruling, or decision reviewed by the State Board of Insurance by making an application to the State Board of Insurance. Such application shall state the identities of the person, the rule, ruling, or decision complained of, the interest of the person in such rule, ruling, or decision, the grounds of such objection, the action sought of the State Board of Insurance, and the reasons and grounds for such action by the State Board of Insurance. The original shall be filed with the chief clerk of the State Board of Insurance together with a certification that a true and correct copy of such application has been filed with the commissioner. Within 30 days after the application is filed, and after 10 days' written notice to all parties of record, the State Board of Insurance shall review the action complained of in a public hearing and render its decision at the earliest possible date thereafter. The State Board of Insurance shall make such other rules and regulations with respect to such applications and their consideration as it considers to be advisable, not inconsistent with this Act. Said application shall have precedence over all other business of a different nature pending before said State Board of Insurance.

(b) In the public hearing, any and all evidence and matters pertinent to the appeal may be submitted to the State Board of Insurance whether included in the application or not.

(c) If any person who is affected by any rule, ruling, or decision of the State Board of Insurance be dissatisfied with any rule, ruling, or decision adopted by the commissioner, board, or State Board of Insurance, that person, after failing to get relief from the State Board of Insurance, may file a petition setting forth the particular objection to such rule, ruling, or decision, or either or all of them, in the district court of Travis County, Texas, and not elsewhere, against the State Board of Insurance as a defendant. Said action shall have precedence over all other causes on the docket of a different nature. Said appeal shall be filed within 20 days after the State Board of Insurance has entered an order. The decision of the State Board of Insurance shall not be enjoined or stayed except on application to such district court after notice to the State Board of Insurance. The proceedings on appeal shall be under the substantial evidence rule, and such appeal shall be taken to a district court in Travis County, Texas. Either party to said action may appeal to the appellate court having jurisdiction of said cause and said appeal shall at once be returnable to said appellate court having jurisdiction of said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. The State Board of Insurance shall not be required to give any appeal bond in any cause arising hereunder.

[Acts 1975, 64th Leg., p. 526, ch. 214, § 23, eff. Dec. 1, 1975.]

Art. 20A.24. Violation of Act

A person or an agent or an officer of a health maintenance organization who wilfully violates this Act or the rules promulgated pursuant to this Act or who knowingly makes a false statement with respect to a report or a statement required by this Act is guilty of a Class B misdemeanor.

[Acts 1975, 64th Leg., p. 527, ch. 214, § 24, eff. Dec. 1, 1975.]

Art. 20A.25. Confidentiality of Medical and Health Information

Any data or information pertaining to the diagnosis, treatment, or health of any enrollee or applicant obtained from such person or from any physician or provider by any health maintenance organization shall be held in confidence and shall not be disclosed to any person except to the extent that it may be necessary to carry out the purposes of this Act; or upon the express consent of the enrollee or applicant; or pursuant to a statute or court order for the production of evidence or to discovery therefor; or in the event of claim or litigation between such person and the health maintenance organization wherein such data or information is pertinent. The health maintenance organization shall be entitled to claim such statutory privilege against such disclosure which the physician or provider who furnishes such information to the health maintenance organization is entitled to claim.

[Acts 1975, 64th Leg., p. 527, ch. 214, § 25, eff. Dec. 1, 1975.]

Art. 20A.26. Statutory Construction in Relationship to Other Laws

(a) Except as otherwise provided in this Act, provisions of the insurance law and provisions of the group hospital service corporation laws shall not be applicable to any health maintenance organization granted a certificate of authority under this Act. This provision shall not apply to an insurance company or a group hospital service corporation licensed and regulated pursuant to the insurance laws or the group hospital service corporation laws of this state except with respect to its health maintenance organization's activities authorized and regulated pursuant to this Act.

(b) Solicitation of enrollees by health maintenance organizations granted a certificate of authority, or their representatives or agents, shall not be construed to violate any provision of law relating to solicitation or advertising by providers or physicians.

(c) Nothing in this Act shall be construed as permitting the practice of medicine as defined by the laws of this state. Nothing in this Act shall be construed to repeal, modify, or amend Section 3, Chapter 627, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4505, Vernon's Texas Civil Statutes), and no health maintenance organization shall be exempt from same.

(d) The provision of factually accurate information regarding coverage, rates, location and hours of service, and names of affiliated institutions, physicians, and providers by health maintenance organizations or its personnel to potential enrolled participants shall not be construed to be violative of any provision of law relating to solicitation or advertising by physicians or providers. Such information with respect to providers or physicians shall in no manner be contrary to or in conflict with any law or ethics regulating the practice of practitioners of any professional service rendered through or in connection with such providers or physicians.

(e) Any health maintenance organization authorized under this Act which contracts with a health facility or enters into an independent contractual arrangement with physicians or providers organized on a group practice or individual practice basis shall not by virtue of any contracts or arrangements be deemed to have entered into a conspiracy in restraint of trade in violation of Sections 15.01 through 15.34 of the Business & Commerce Code.

(f)(1) This Act shall not be applicable to any person licensed to practice medicine in this state, nor to any professional association organized under the Texas Professional Association Act, as amended (Article 1528f, Vernon's Texas Civil Statutes), nor to any nonprofit corporation organized and complying with Section 4, Chapter 627, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4509a, Vernon's Texas Civil Statutes), so long as that person,

professional association, or nonprofit corporation is engaged in the delivery of health or medical care that is within the definition of the practice of medicine as defined in Section 2(k) of this Act.

(2) Any person, professional association, or nonprofit corporation referred to above, which shall employ or enter into a contractual arrangement with a provider or group of providers to furnish basic health care services as defined in Section 2(a) of this Act, would be subject to the provisions of this Act, and shall be required to obtain a certificate of authority from the commissioner.

(3) Notwithstanding any other law, any person, professional association, or nonprofit corporation referred to above, which conducts activities permitted by law but which do not require a certificate of authority under this Act, and in the process contracts with one or more physicians, professional associations, or nonprofit corporations referred to above, shall not, by virtue of such contract or arrangement, be deemed to have entered into a conspiracy in restraint of trade in violation of Sections 15.01 through 15.34 of the Business & Commerce Code.

(4) Notwithstanding any other law, provisions of the insurance law and the provisions of the group hospital service corporation law shall not be applicable to the above persons, professional associations, or nonprofit corporations.

(g)(1) No health maintenance organization shall be exempt from any statute that provides for the regulation and certification of need of health care facility construction, expansion, or other modification, or the institution of a health care service through the issuance of a certificate of need, if at the time of establishment of operation or during the course of operation of the health maintenance organization it becomes subject to the provisions of that statute.

(2) If the proposed plan of operation of the health maintenance organization includes the provision of any facility and/or service that makes the health maintenance organization subject to the statute mentioned in Subdivision (1) of this subsection, the commissioner may not issue a certificate of authority until the commissioner has received a certified copy of the certificate of need granted to the health maintenance organization by the agency responsible for the issuance of the certificate of need.

(h) Activities permitted under authority of Chapter 491, Acts of the 52nd Legislature, 1951, as amended,¹ shall not be considered subject to the provisions of this Act.

[Acts 1975, 64th Leg., p. 527, ch. 214, § 26, eff. Dec. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1454, ch. 638, § 11, eff. June 13, 1979.]

¹ Article 1.01 et seq.

Art. 20A.27. Public Record

All applications, filings, and reports required under this Act shall be treated as public documents, except that examination reports shall be considered confidential documents which may be released if, in the opinion of the commissioner, it is in the public interest.

[Acts 1975, 64th Leg., p. 529, ch. 214, § 27, eff. Dec. 1, 1975.]

Art. 20A.28. Authority to Contract

The commissioner or board, in carrying out their obligations under this Act, may contract with other state agencies or, after notice and hearing, with other qualified persons to make recommendations concerning the determinations to be made by the commissioner or board.

[Acts 1975, 64th Leg., p. 529, ch. 214, § 28, eff. Dec. 1, 1975.]

Art. 20A.29. Physician-Patient Relationship

This Act shall not be construed to:

(a) authorize any person, other than a duly licensed physician or practitioner of the healing arts, acting within the scope of his or her license, to engage, directly or indirectly, in the practice of medicine or any healing art, or

(b) authorize any person to regulate, interfere, or intervene in any manner in the practice of medicine or any healing art.

[Acts 1975, 64th Leg., p. 529, ch. 214, § 29, eff. Dec. 1, 1975.]

Art. 20A.30. Officers and Employees Bond

(a) Each health maintenance organization shall, by resolution adopted and entered on its minute book, a copy of which properly certified to by the president, secretary, or general manager shall be filed with the commissioner, designate therein some officer who shall be responsible in the handling of the funds of the health maintenance organization. Said health maintenance organization shall make and file for such officer a surety bond with a corporate surety company authorized to write surety bonds in this state, as surety, satisfactory and payable to the State Board of Insurance in the sum of not less than \$25,000 for the use and benefit of the health maintenance organization, which said bond shall obligate the principal and surety to pay such pecuniary loss as the health maintenance organization shall sustain through acts of fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction, or wilful misapplication on the part of such officer, either directly or alone or in connivance with others, while employed as such officer or exercising powers of such office. In lieu of any such bond, any such officer may deposit with the commissioner cash, or securities approved by the commissioner, which cash or securities shall be in the amount and subject to the same conditions as provided for in said bond.

(b) In addition to the bond required in the preceding paragraph, each health maintenance organization shall procure for all other office employees, and other persons who may have access to any of its funds, separate bonds or blanket bonds with some surety licensed by the State Board of Insurance to do business in Texas, in an amount or amounts of not less than \$1,000, satisfactory and payable to the State Board of Insurance for the use and benefit of the health maintenance organization obligating the principal and surety to pay each pecuniary loss as the health maintenance organization shall sustain through acts of fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction, or wilful misapplication on the part of such persons, either directly or alone or in connivance with others. Successive recoveries on any of the bonds provided from this article may be had on such bonds until same are exhausted.

[Acts 1975, 64th Leg., p. 529, ch. 214, § 30, eff. Dec. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1455, ch. 638, § 12, eff. June 13, 1979.]

Art. 20A.31. Injunctions

When it appears to the commissioner that a health maintenance organization is violating or has violated this Act or any rule or regulation issued pursuant to this Act, the commissioner may bring suit in a district court of Travis County to enjoin the violation and for such other relief as the court may deem appropriate.

[Acts 1975, 64th Leg., p. 529, ch. 214, § 31, eff. Dec. 1, 1975.]

Art. 20A.32. Fees

Every organization subject to this chapter shall pay to the commissioner the following fees:

- (a) for filing its original application for a certificate of authority, \$250;
- (b) for filing each annual report pursuant to Section 10 of this Act, \$100;
- (c) the expenses of any examinations conducted pursuant to this Act; and
- (d) the licensing, appointment, and examination fees pursuant to Section 15, Texas Health Maintenance Organization Act (Article 20A.15, Vernon's Texas Insurance Code).

[Acts 1975, 64th Leg., p. 530, ch. 214, § 32, eff. Dec. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1455, ch. 638, § 13, eff. June 13, 1979.]

Art. 20A.33. Taxation

(a) Each health maintenance organization shall on or before the first day of March of each year file its annual statement showing the gross amount of revenues collected during the year ending December 31 preceding, and each such health maintenance organization if organized under the laws of this state shall pay an annual tax for the gross amounts of revenues

collected for the issuance of health maintenance certificates or contracts in accordance with Article 7064a, Revised Civil Statutes of Texas, 1925, as amended; if such health maintenance organization is not organized under Texas laws, said health maintenance organization shall pay an annual tax for the gross amounts of revenues collected for the issuance of health maintenance certificates or contracts in accordance with Article 4769, Revised Civil Statutes of Texas, 1925, as amended. For the purposes of computing and collecting the tax herein provided, a health maintenance organization is an "insurance organization" within the terms of Article 7064a, Revised Civil Statutes of Texas, 1925, as amended, and Article 4.03, Insurance Code.

Upon receipt of the sworn statement above provided, the State Board of Insurance shall certify to the State Treasurer the amount of taxes due by such health maintenance organization which shall be paid to the State Treasurer on or before March 15 following, and the State Treasurer shall issue his receipt therefor as evidence of the payment of such tax. Such taxes shall be for and on account of business transacted within this state during the calendar year ending December 31 in which such payments were collected, or for that portion of the year during which the health maintenance organization transacted business in this state.

(b) Each such health maintenance organization shall be subject to the provisions of Articles 7074 through 7078 of the Revised Civil Statutes of Texas, 1925, as amended.

[Acts 1975, 64th Leg., p. 530, ch. 214, § 33, eff. Dec. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1456, ch. 638, § 14, eff. June 13, 1979.]

Art. 20A.34. Effective Date

This Act shall take effect on the first day of December, 1975.

[Acts 1975, 64th Leg., p. 531, ch. 214, § 34, eff. Dec. 1, 1975.]

Art. 20A.35. Severability

If any provision of this Act or the application thereof to any person or circumstance is held invalid for any reason, the invalidity shall not affect the other provisions or any other application of this Act which can be given effect without the invalid provisions or application. To this end, all provisions of the Texas Health Maintenance Organization Act are declared to be severable.

[Acts 1979, 66th Leg., p. 1456, ch. 638, § 15, eff. June 13, 1979.]

CHAPTER TWENTY-ONE. GENERAL PROVISIONS

SUBCHAPTER E. MISCELLANEOUS PROVISIONS

Article

21.32A. Legality of Dividend.

21.35A. Coverage Under Group Insurance and Group Hospital Plans for Psychological Services.

Article

- 21.39-B. Restriction on Transactions with Funds and Assets.
 21.49-3. Texas Medical Liability Insurance Underwriting Association Act.
 21.49-4. Self-Insurance Trusts.
 21.49-4a. Coverage of Physicians Under Contracts of Professional Liability Insurance Issued by Health Care Liability Claim Trusts.
 21.49-5. [Blank].
 21.49-6. Self-Insurance Trusts for Banks.
 21.49-9. Exclusionary Clauses in Health Insurance.
 21.49-10. Payment to State.
 21.52. Right to Select Practitioner under Health and Accident Policies.
 21.53 to 21.76. [Blank].
 21.77. Group Marketing of Motor Vehicle Insurance.

SUBCHAPTER A. AGENTS AND AGENTS'
 LICENSES

Art. 21.05. Who May Not Be Agents

No stock company shall be licensed or granted a certificate of authority as the agent or representative of any life insurance company in soliciting, selling or in any manner placing life insurance policies or contracts in the State.

[Amended by Acts 1977, 65th Leg., p. 1421, ch. 579, § 1, eff. Aug. 29, 1977.]

Art. 21.07. Licensing of Agents

Applicability of Act

Sec. 1. (a) No person or corporation shall act as an agent of any (i) local mutual aid association, (ii) local mutual burial association, (iii) statewide mutual assessment corporation, (iv) stipulated premium company, (v) county mutual insurance company, (vi) casualty company writing accident and health insurance, or (vii) any other type of insurance carrier licensed to do business in the State of Texas and which insurance carrier's agents are required to be licensed under the provisions of Article 21.07, Texas Insurance Code, 1951, as amended, on the date that this Act shall become effective, unless he or it shall have first procured a license from the State Board of Insurance as in this Article 21.07, as amended hereby, is provided, and no such insurance carrier shall appoint any person or corporation to act as its agent unless such person or corporation shall have obtained a license under the provisions of this Article, and no such person or corporation who obtains a license shall engage in business as an agent until he or it shall have been appointed to act as an agent by some duly authorized insurance carrier designated by the provisions of this Article 21.07 and authorized to do business in the State of Texas. Any person or corporation desiring to act as an agent of any insurance carrier licensed to do business in the State of Texas and writing health and accident insurance may obtain a separate license as an agent to write health and accident insurance provided such person or corporation complies with the provisions of this Article and has been appointed to act as an agent by

some duly authorized insurance carrier authorized to do health and accident insurance business in the State of Texas.

(b) No insurer or licensed insurance agent doing business in this State shall pay directly or indirectly any commission, or other valuable consideration, to any person or corporation for services as an insurance agent within this State, unless such person or corporation shall hold a currently valid license to act as an insurance agent as required by the laws of this State; nor shall any person or corporation other than a duly licensed insurance agent, accept any such commission or other valuable consideration; provided, however, that the provisions of this Section shall not prevent the payment or receipt of renewal or other deferred commissions to or by any person solely because such person or corporation has ceased to hold a license to act as an insurance agent.

Application for License; To Whom License May Be Issued

Sec. 2. (a) Hereafter, when any person or corporation shall desire to become a agent for a (i) local mutual aid association, (ii) a local mutual burial association, (iii) a statewide mutual assessment corporation, (iv) a stipulated premium company, (v) a county mutual insurance company, (vi) a casualty company writing accident and health insurance, or (vii) any other type of insurance carrier licensed to do business in the State of Texas and which insurance carrier's agents are required to be licensed under the provisions of Article 21.07, Texas Insurance Code, 1951, as amended, such person or corporation shall, in such form and giving such information as may be reasonably required, make application to the State Board of Insurance for a license to act as an agent. The application shall be accompanied by a certificate on forms to be prescribed and furnished by the State Board of Insurance and signed by an officer or properly authorized representative of the insurance carrier the applicant proposes to represent, stating that the insurance carrier has investigated the character and background of the applicant and is satisfied that he or its officers, directors, and shareholders are trustworthy and qualified to hold himself or the corporation out in good faith to the general public as an insurance agent, and that the insurance carrier desires that the applicant act as an insurance agent to represent it in this state.

(b) The Board shall issue a license to a corporation if the Board finds:

- (1) That the corporation is a Texas corporation organized or existing under the Texas Business Corporation Act having its principal place of business in the State of Texas and having as one of its purposes the authority to act as an agent covered by this Article;

(2) That every officer, director, and shareholder of the corporation is individually licensed under the provisions of this Article; and

(3) That such corporation will have the ability to pay any sums up to \$25,000 which it might become legally obligated to pay on account of any claim made against it by any customer and caused by any negligent act, error, or omission of the corporation or any person for whose acts the corporation is legally liable in the conduct of its business under this Article. The term "customer" means any person, firm, or corporation to whom such corporation sells or attempts to sell a policy of insurance, or from whom such corporation accepts an application for insurance. Such ability shall be proven in one of the following ways:

(A) an errors and omissions policy insuring such corporation against errors and omissions in at least the sum of \$50,000 with no more than a \$2,500 deductible feature issued by an insurance company licensed to do business in the State of Texas or, if a policy cannot be obtained from a company licensed to do business in Texas, a policy issued by a company not licensed to do business in Texas on filing an affidavit with the State Board of Insurance stating the inability to obtain coverage and receiving the Board's approval;

(B) a bond executed by such corporation as principal and a surety company authorized to do business in this State, as surety, in the principal sum of \$25,000, payable to the State Board of Insurance for the use and benefit of customers of such corporation, conditioned that such corporation shall pay any final judgment recovered against it by any customer; or

(C) a deposit of cash or securities of the class authorized by Articles 2.08 and 2.10, Insurance Code, as amended, having a fair market value of \$25,000 with the State Treasurer. The State Treasurer is directed to accept and receive such deposit and hold it exclusively for the protection of any customer of such corporation recovering a final judgment against such corporation. Such deposit may be withdrawn only upon filing with the Board evidence satisfactory to it that the corporation has withdrawn from business and has no unsecured liabilities outstanding, or that such corporation has provided for the protection of its customers by furnishing an errors and omissions policy or a bond as provided. Securities so deposited may be exchanged from time to time for other qualified securities.

A binding commitment to issue such a policy or bond, or the tender of such securities, shall be sufficient in connection with any application for license.

Nothing contained herein shall be construed to permit any unlicensed employee or agent of any

corporation to perform any act of an agent under this Article without obtaining a license.

If at any time, any corporation holding an agent's license does not maintain the qualifications necessary to obtain a license, the license of such corporation to act as an agent shall be cancelled or denied in accordance with the provisions of Sections 10 and 11 of this Article; provided, however, that should any person who is not a licensed agent under this Article acquire shares in such a corporation by devise or descent, he shall have a period of 90 days from date of acquisition within which to obtain a license or to dispose of the shares of a person licensed under this Article.

Should such an unlicensed person acquire shares in a corporation and not dispose of them within a period of 90 days to a licensed agent, then they must be purchased by the corporation for their book value, that is, the value of said shares of stock as reflected by the regular books and records of said corporation, as of the date of the acquisition of said shares by said unlicensed person. Should the corporation fail or refuse to so purchase such shares, its license shall be cancelled.

Any such corporation shall have the power to redeem the shares of any shareholder, or the shares of a deceased shareholder, upon such terms as may be agreed upon by the board of directors and such shareholder or his personal representative, or at a price and upon such terms as may be provided in the articles of incorporation, the bylaws, or an existing contract entered into between the shareholders of the corporation.

Each corporation licensed as an agent under this Article shall file, under oath, a list of the names and addresses of all of its officers, directors, and shareholders with its yearly application for renewal license.

Each corporation shall immediately notify the State Board of Insurance upon any change in its officers, directors, or shareholders.

No other corporation may own any interest in a corporation licensed under this Article, and each owner of an interest in a corporation licensed under this Article shall be a natural person who holds a valid license issued under this Article.

Issuance of License Under Certain Circumstances

Sec. 3. After the State Board of Insurance has determined that such applicant is of good character and trustworthy, the State Board of Insurance shall issue a license to such person or corporation in such form as it may prepare authorizing such applicant to write the types of insurance authorized by law to be issued by applicant's appointing insurance carrier, except that such applicant shall not be authorized to

write health and accident insurance unless: (i) applicant, if not a corporation, shall have first passed a written examination as provided for in this Article 21.07, as amended, or (ii) applicant will act only as a ticket-selling agent of a public carrier with respect to accident life insurance covering risks of travel or as an agent selling credit life, health and accident insurance issued exclusively in connection with credit transactions, or (iii) applicant will write policies or riders to policies providing only lump sum cash benefits in the event of the accidental death, or death by accidental means, or dismemberment, or providing only ambulance expense benefits in the event of accident or sickness.

Examination of Applicant for License to Write Health
and Accident Insurance

Sec. 4. (a) Each applicant for a license under the provisions of this Article 21.07, Texas Insurance Code, 1951, as amended, who desires to write health and accident insurance, other than as excepted in Section 3 of this Article 21.07, within this State shall submit to a personal written examination prescribed and administered in the English or Spanish language by the State Board of Insurance to determine his competency with respect to health and accident insurance and his familiarity with the pertinent provisions of the laws of the State of Texas relating to health and accident insurance, and shall pass the same to the satisfaction of the State Board of Insurance; except that no written examination shall be required of:

(i) An applicant for the renewal of a license issued by the State Board of Insurance pursuant to Article 21.07, Texas Insurance Code, 1951, as amended, which is currently in force at the effective date of this Act;

(ii) An applicant whose license expired less than one year prior to the date of application may, in the discretion of the State Board of Insurance, be issued a license without written examination, provided such prior license granted such applicant the right to sell health and accident insurance; or

(iii) An applicant that is a corporation.

(b)(i) The State Board of Insurance shall, within sixty (60) days from the effective date of this Act, establish reasonable rules and regulations with respect to the scope, type and conduct of such written examination and the times and places within this State where such examinations shall be held; applicants, shall, however, be permitted to take such examinations at least once in each week at the office of the State Board of Insurance. The rules and regulations of the State Board of Insurance shall designate text books, manuals and other materials to be studied by applicants in preparation for examination pursuant to this Section. Such text books, manuals and other materials may consist of matter available to applicants by purchase from the publish-

er or may consist of matter prepared at the direction of the State Board of Insurance and distributed to applicants upon request therefor and payment of the reasonable cost thereof. All examination questions shall be prepared from the contents of the text books, manuals and other materials designated or prepared by the State Board of Insurance pursuant to this Section and such questions shall be limited to and substantially similar to the questions relating to health and accident insurance contained in the written examination prescribed by the State Board of Insurance pursuant to Article 21.07-1 of this Insurance Code. The State Board of Insurance shall charge each applicant a fee of \$10.00 for the privilege of taking such written examination and which fee shall not be returned under any circumstance other than for failure to appear and take the examination after the applicant has given at least 24 hours' notice of an emergency situation to the State Board of Insurance and received board approval. A new examination fee shall be paid for each and every examination.

*[See Compact Edition, Volume 2 for text
of 4(b)(ii) to (e)]*

Failure of Applicant to Qualify for License

Sec. 5. If the State Board of Insurance is not satisfied that the applicant for a license is trustworthy and of good character, or, if applicable, that the applicant, if required to do so, has not passed the written examination to the satisfaction of the State Board of Insurance, the State Board of Insurance shall forthwith notify the applicant and the insurance carrier in writing that the license will not be issued to the applicant, and return to said agent the \$25.00 fee for application for license and the \$8.00 fee for appointment.

Agent May Be Licensed to Represent Additional Insurers

Sec. 6. Any agent licensed under this Article may represent and act as an agent for more than one insurance carrier at any time while his or its license is in force, if he or it so desires. Any such agent and the insurance carrier involved must give notice to the State Board of Insurance of any additional appointment or appointments authorizing him or it to act as agent for an additional insurance carrier or carriers. Such notice must set forth the insurance carrier or carriers which the agent is then licensed to represent, and shall be accompanied by a certificate from each insurance carrier to be named in each additional appointment, that said insurance carrier desires to appoint the applicant as its agent. This notice shall also contain such other information as the State Board of Insurance may require. The agent shall be required to pay a fee of \$8.00 for each additional appointment applied for, which fee shall accompany the notice.

Expiration and Renewal of License

Sec. 7. (a) Each license issued to an agent shall expire two years following the date of issue, unless prior thereto it is suspended or revoked by the State Board of Insurance or the authority of the agent to act for the insurance carrier is terminated.

(b) Licenses which have not expired or which have not been suspended or revoked may be renewed upon request in writing of the agent.

[See Compact Edition, Volume 2 for text of (c)]

(d) The appointment or appointments given under any Section of this Article authorizing the agents to act as an agent for an insurance carrier shall continue in full force and effect without the necessity of renewal until terminated and withdrawn by the insurance carrier in accordance with Section 9 of this Article 21.07 or otherwise terminated in accordance with this Article 21.07, and each renewal license issued to the agent shall authorize him or it to represent and act for the insurance carriers for which he or it holds an appointment until the appointment is so terminated, and the agent shall prima facie be deemed, for the purpose of this Article 21.07, to be the agent of the appointing insurance carriers, provided that on or before April 1st of each and every calendar year, commencing on or before April 1, 1970, each such insurance carrier so appointing such agent shall file with the State Board of Insurance a certificate, upon forms promulgated by the State Board of Insurance, certifying that such insurance carrier desires to continue the appointment of such agent, and if such insurance carrier shall for any reason fail to file such certificate for any year as relates to such agent, it shall be deemed and considered for all purposes that such insurance carrier has terminated the appointment of such agent in like manner as if compliance had been made by such insurance carrier with Section 9 of this Article.

[See Compact Edition, Volume 2 for text of 8 and 9]

Denial, Refusal, Suspension or Revocation of Licenses

Sec. 10. (a) A license may be denied, or a license duly issued may be suspended or revoked or the renewal thereof refused by the State Board of Insurance if, after notice and hearing as hereafter provided, it finds that the applicant, individually or through any officer, director, or shareholder, for, or holder of, such license:

- (1) Has wilfully violated any provision of the insurance laws of this State; or
- (2) Has intentionally made a material misstatement in the application for such license; or
- (3) Has obtained, or attempted to obtain, such license by fraud or misrepresentation; or

(4) Has misappropriated or converted to his or its own use or illegally withheld money belonging to an insurance carrier or an insured or beneficiary; or

(5) Has otherwise demonstrated lack of trustworthiness or competence to act as an agent; or

(6) Has been guilty of fraudulent or dishonest practices; or

(7) Has materially misrepresented the terms and conditions of any insurance policy or contract; or

(8) Has made or issued, or caused to be made or issued, any statement misrepresenting or making incomplete comparisons regarding the terms or conditions of any insurance contract legally issued by any insurance carrier, for the purpose of inducing or attempting to induce the owner of such contract to forfeit or surrender such contract or allow it to lapse for the purpose of replacing such contract with another; or

(9) Is not of good character or reputation.

(b) Before any license shall be denied (except for failure to pass a required written examination), or suspended or revoked, or the renewal thereof refused hereunder, the Board shall give notice of its intention so to do, by registered mail, to the applicant for, or holder of, such license and the insurance carrier whom he or it represents or who desires that he or it be licensed, and shall set a date not less than twenty days from the date of mailing such notice when the applicant or licensee and a duly authorized representative of the insurance carrier may appear to be heard and produce evidence. In the conduct of such hearing, the Board or any regular salaried employee specially designated by it for such purpose shall have power to administer oaths, to require the appearance of and examine any person under oath, and to require the production of books, records or papers relevant to the inquiry upon its own initiative or upon the request of the applicant or licensee. Upon termination of such hearings, findings shall be reduced to writing and, upon approval by the Board, shall be filed in its office and notice of the findings sent by registered mail to the applicant or licensee and the insurance carrier concerned.

(c) No applicant or licensee whose license has been denied, refused or revoked hereunder (except for failure to pass a required written examination) shall be entitled to file another application for a license as an agent within one year from the effective date of such denial, refusal or revocation, or, if judicial review of such denial, refusal or revocation is sought, within one year from the date of final court order or decree affirming such action. Such application, when filed after one year, may be refused by the Board unless the applicant shows good cause why the denial, refusal or revocation of his or its license shall not be deemed a bar to the issuance of a new license.

Judicial Review of Acts of State Board of Insurance

Sec. 11. If the said Board shall refuse an application for any license provided for in this Article, or shall suspend, revoke or refuse to renew any such license or permit at said hearing, then any such applicant or accused may appeal from said order by filing suit against the State Board of Insurance as defendant in any of the District Courts of Travis County, Texas, or in any District Court in the county of the applicant's residence or principal place of business, and not elsewhere, within twenty (20) days from the date of the order of said State Board of Insurance.

Said action shall have precedence over all other causes of a different nature on the docket. The action shall not be limited to questions of law and shall be tried and determined upon a trial de novo to the same extent as now provided for in the case of an appeal from the justice court to the county court. Either party to said action may appeal to the appellate court having jurisdiction of said cause, and said appeal shall be at once returnable to said appellate court having jurisdiction of said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. The State Board of Insurance shall not be required to give any appeal bond in any cause arising hereunder.

Penalty

Sec. 12. Any person or officer, director, or shareholder of a corporation required to be licensed by this Article who individually, or as an officer or employee of an insurance carrier, or other corporation, wilfully violates any of the provisions of this Article shall, in addition to any other penalty specifically provided, be guilty of a misdemeanor and, upon conviction, shall be fined not more than \$500.00 or imprisoned not more than six (6) months, or both, each such violation being a separate offense hereunder. In addition, if such offender or the corporation of which he is an officer, director, or shareholder holds a license as an agent, such license shall automatically expire upon such conviction.

[See Compact Edition, Volume 2 for text of 13]

Fees and Use of Funds

Sec. 14. (a) It shall be the duty of the State Board of Insurance to collect from every agent of any insurance carrier writing insurance in the State of Texas under the provisions of this Article, a licensing fee and an initial appointment fee, as provided in Subsection (b) of this section, for each and every appointment by any insurance carrier, which fees shall constitute a fund to be used by the State Board of Insurance to enforce the provisions of this Article 21.07 and all laws of this State governing and regulating agents for such insurance carriers, as provided in Subsection (b) of this section.

(b) For those agents subject to licensing under the provisions of this Act, the license fee shall be Twenty-five Dollars (\$25) and Eight Dollars (\$8) for each appointment.

[See Compact Edition, Volume 2 for text of 14(c)]

Dual Licensing

Sec. 15. Any person or corporation that holds a license under the provisions of Article 21.07-1, Texas Insurance Code, 1951, as amended, shall be entitled to receive a license under this Article 21.07, and be authorized to write health and accident insurance without being required to pass the examination as required under this Article 21.07. Any person or corporation that holds a license under the provisions of Article 21.14, Texas Insurance Code, 1951, as amended, shall be entitled to write health and accident insurance written by those companies for whom he or it is licensed under Article 21.14 without being required to pass the examination required under this Article 21.07.

[See Compact Edition, Volume 2 for text of 16 and 17]

[Amended by Acts 1975, 64th Leg., p. 2372, ch. 731, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 386, ch. 192, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 387, ch. 193, §§ 1 to 4, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1421, ch. 579, §§ 2 to 4, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 369, ch. 166, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 884, ch. 404, § 1, eff. June 6, 1979.]

Art. 21.07-1. Legal Reserve Life Insurance Agents; Examination; Licenses

Legal Reserve Life Insurance Agent Defined

Sec. 1.

[See Compact Edition, Volume 2 for text of 1(a)]

(b) The term "life insurance agent" for the purpose of this Act means any person or corporation that is an authorized agent of a legal reserve life insurance company, and any person who is a sub-agent of such agent, who acts as such in the solicitation of, negotiation for, or procurement of, or collection of premiums on, an insurance or annuity contract with a legal reserve life insurance company; except that the term "life insurance agent" shall not include:

[See Compact Edition, Volume 2 for text of 1(b)(1) to (5), (c) to (g)]

Acting for Unauthorized Companies Prohibited

Sec. 2. (a) No person or corporation shall, within this State, solicit, procure, receive, or forward applications for life insurance or annuities, or issue or deliver policies for, or in any manner secure, help, or aid in the placing of any contract of life insurance or annuity for any person other than himself, or itself, directly or indirectly, with any legal reserve life

insurance company not authorized to do business in this State.

[See Compact Edition, Volume 2 for text of 2(b)]

Acting as Agent Without License Prohibited; No Commissions to Be Paid to Unlicensed Persons

Sec. 3. (a) No person or corporation shall act as a life insurance agent within this State until he or it shall have procured a license as required by the laws of this State.

(b) No insurer or licensed life insurance agent doing business in this State shall pay directly or indirectly any commission, or other valuable consideration, to any person or corporation for services as a life insurance agent within this State, unless such person or corporation shall hold a currently valid license to act as a life insurance agent as required by the laws of this State; nor shall any person or corporation, other than a duly licensed life insurance agent, accept any such commission or other valuable consideration; provided, however, that the provisions of this Section shall not prevent the payment or receipt of renewal or other deferred commissions to or by any person solely because such person or corporation has ceased to hold a license to act as a life insurance agent.

Application for License; To Whom License May Be Issued

Sec. 4. (a) Each applicant for a license to act as a life insurance agent within this State shall file with the Insurance Commissioner his or its written application on forms furnished by the Commissioner. The application shall be signed and duly sworn by the applicant. The prescribed form shall require the applicant to state his full name; residence; age; occupation and place of business for five years preceding date of the application; whether applicant has ever held a license to solicit life, or any other insurance in any State; whether he has been refused, or has had suspended or revoked a license to solicit life, or any other insurance in any State; what insurance experience, if any, he has had; what instruction in life insurance and in the insurance laws of this State he has had or expects to have; whether any insurer or general agent claims applicant is indebted under any agency contract, and if so, the name of the claimant, the nature of the claim and the applicant's defense thereto; whether applicant has had an agency contract cancelled and, if so, when, by what company or general agent and the reasons therefor; whether applicant will devote all or part of his efforts to acting as a life insurance agent, and, if part only, how much time he will devote to such work, and in what other business or businesses he is engaged or employed; whether, if applicant is a married woman, her husband has ever applied for or held a license to solicit life, or any other insurance in any State and whether such

license has been refused, suspended, or revoked; and such other information pertinent to the licensing of such agent as the Insurance Commissioner in his discretion may prescribe. It is not intended that the Insurance Commissioner shall be authorized to deny a license to an applicant on the sole ground that he will act only part time as a life insurance agent.

(b) The application shall be accompanied by a certificate on forms furnished by the Insurance Commissioner and signed by an officer or properly authorized representative of the legal reserve life insurance company he or it proposes to represent, stating that the insurer has investigated the character and background of the applicant and is satisfied that he or the officers, directors, and shareholders of the corporation are trustworthy and qualified to hold himself or itself out in good faith to the general public as a life insurance agent, that the applicant has completed the educational requirements as provided in sub-section (e), Section 4 of this Act, and that the insurer desires that the applicant be licensed as a life insurance agent to represent it in this State.

(c) The application, when filed, shall be accompanied by a filing fee in the amount of \$25.00 and, in the case of applicants required to take an examination administered by the Commissioner of Insurance as hereafter prescribed, by an examination fee in the amount of \$10.00. In the event an applicant fails to qualify for, or is refused a license, the filing fee shall be returned; the examination fee shall not be returned for any reason other than for failure to appear and take the examination after the applicant has given at least 24 hours' notice of an emergency situation to the Commissioner of Insurance and received the commissioner's approval. A new examination fee shall be paid for each and every examination.

(d) The Insurance Commissioner shall issue a license to a corporation if he finds:

(1) That the corporation is a Texas corporation organized or existing under the Texas Business Corporation Act or the Texas Professional Corporation Act¹ having its principal place of business in the State of Texas and having as one of its purposes the authority to act as agent under this Act;

(2) That every officer, director, and shareholder of the corporation is individually licensed as an agent under the provisions of this Act; and

(3) That such corporation will have the ability to pay any sums up to \$25,000.00 which it might become legally obligated to pay on account of any claim made against it by any customer and caused by any negligent act, error, or omission of the corporation or any person for whose acts the corporation is legally liable in the conduct of its

business as under this Act. The term "customer" as used herein shall mean any person, firm, or corporation to whom such corporation sells or attempts to sell a policy of insurance or from whom such corporation accepts an application for insurance. Such ability shall be proven in one of the following ways:

(A) An errors and omissions policy insuring such corporation against errors and omissions in at least the sum of \$50,000.00, with no more than a \$2,500.00 deductible feature issued by an insurance company licensed to do business in the State of Texas or, if a policy cannot be obtained from a company licensed to do business in Texas, a policy issued by a company not licensed to do business in Texas on filing an affidavit with the State Board of Insurance stating the inability to obtain coverage and receiving the Board's approval; or

(B) A bond executed by such corporation as principal and a surety company authorized to do business in this State, as surety, in the principal sum of \$25,000.00, payable to the State Board of Insurance for the use and benefit of customers of such corporation, conditioned that such corporation shall pay any final judgment recovered against it by any customer; or

(C) A deposit of cash or securities of the class authorized by Articles 2.08 and 2.10 of the Insurance Code, having a fair market value of \$25,000.00 with the State Treasurer. The State Treasurer is hereby authorized and directed to accept and receive such deposit and hold it exclusively for the protection of any customer of such corporation recovering a final judgment against such corporation. Such deposit may be withdrawn only upon filing with the Insurance Commissioner evidence satisfactory to it that the corporation has withdrawn from business and has no unsecured liabilities outstanding, or that such corporation has provided for the protection of its customers by furnishing an errors and omissions policy or a bond as hereinbefore provided. Securities so deposited may be exchanged from time to time for other qualified securities.

A binding commitment to issue such a policy or bond, or the tender of such securities, shall be sufficient in connection with any application for license.

Nothing contained herein shall be construed to permit any unlicensed employee or agent of any corporation to perform any act of an agent under this Act without obtaining a license.

If at any time, any corporation holding a license under this Act does not maintain the qualifications necessary to obtain a license, the license of such corporation to act as an agent shall be cancelled or

denied in accordance with the provisions of Sections 12 and 13 of this Act; provided, however, that should any person who is not an agent licensed under this Act acquire shares in such a corporation by devise or descent, they shall have a period of 90 days from date of acquisition within which to obtain a license as an agent or to dispose of the shares to an agent licensed under this Act.

Should such an unlicensed person acquire shares in such a corporation and not dispose of them within said period of 90 days to a licensed agent, then they must be purchased by the corporation for their book value, that is, the value of said shares of stock as reflected by the regular books and records of said corporation as of the date of the acquisition of said shares by said unlicensed person. Should the corporation fail or refuse to so purchase such shares, its license shall be cancelled.

Any such corporation shall have the power to redeem the shares of any shareholder, or the shares of a deceased shareholder, upon such terms as may be agreed upon by the board of directors and such shareholder or his personal representative, or at such price and upon such terms as may be provided in the articles of incorporation, the bylaws, or an existing contract entered into between the shareholders of the corporation.

Each corporation licensed as an agent under this Act shall file, under oath, a list of the names and addresses of all of its officers, directors, and shareholders with its yearly application for renewal license.

Each corporation licensed as an agent under this Act shall immediately notify the State Board of Insurance upon any change in its officers, directors, or shareholders.

No other corporation may own any interest in a corporation licensed under this Act, and each owner of an interest in a corporation licensed under this Act shall be a natural person who holds a valid license issued under this Act.

No association, partnership, or any legal entity of any nature, other than an individual person or corporation, may be licensed as a life insurance agent.

(e) Each applicant, prior to sitting for the written examination as provided for in Section 5 of this Act, shall complete, under the supervision of such sponsoring insurer, an educational program that shall include:

(1) such texts as may be prescribed by the Commissioner of Insurance on the recommendation of the Advisory Board as provided in Subsection (c) of Section 5 of this Act; and

(2) materials that will provide the applicant with the basic knowledge of:

(A) the broad principles of insurance, licensing, and regulatory laws of this State; and

(B) the obligations and duties of a life insurance agent.

¹ Civil Statutes, art. 1528e.

Examination of Applicant for License

Sec. 5. (a) Each applicant for a license to act as a life insurance agent within this State shall submit to a personal written examination administered in the English or Spanish language, and as shall be prescribed by the State Board of Insurance, to determine his competence with respect to insurance and annuity contracts and his familiarity with the pertinent provisions of the laws of this State, and shall pass the same to the satisfaction of the State Board of Insurance; except that no such written examination shall be required of:

(1) An applicant for the renewal of a license issued by the State Board of Insurance pursuant to Article 21.07, Texas Insurance Code, 1951, which is currently in force at the time of the effective date of this Act;

(2) An applicant whose license as a life insurance agent expired less than one year prior to the date of application may, in the discretion of the State Board of Insurance, be issued a license without written examination;

(3) A person who holds the designation Chartered Life Underwriter (CLU);

(4) An applicant that is a corporation.

(b) The Commissioner shall establish rules and regulations with respect to the scope, type and conduct of such written examinations and the times and places within this State where they shall be held; provided, that applicants shall be permitted to take such examinations at least once in each week at the office of the Commissioner, and at least once in each month in the county court house of the residence of the applicant. The rules and regulations of the Commissioner shall designate text books, manuals and other materials to be studied by applicants in preparation for examinations pursuant to this Section. Such text books, manuals or other materials may consist of matter available to applicants by purchase from the publisher or may consist of matter prepared at the direction of the Commissioner and distributed to applicants upon request therefor and payment of the reasonable cost thereof. All examination questions shall be prepared from the contents of the text books, manuals and other materials designated or prepared by the Commissioner pursuant to this Section.

(c) The Commissioner shall appoint an Advisory Board consisting of eight persons of whom two shall be holders of licenses issued under this Article, two shall be employed by and familiar with the operations of legal reserve life insurance companies, two shall be general agents and managers, and two shall be citizens of the State of Texas who are neither

agents, general managers, nor employees of legal reserve life insurance companies, which shall make recommendations to him with respect to the scope, type, and conduct of written examinations and the times and places within the State where they shall be held. This Advisory Board shall make such recommendations not less frequently than once every four years. The members of the Advisory Board shall serve without pay but shall be reimbursed for their reasonable expenses in attending meetings of the Advisory Board.

(d) An applicant other than a corporation for a license to act as a combination life insurance agent for a combination company, or as an industrial life agent for an industrial company, may, in lieu of taking and passing to the satisfaction of the Insurance Commissioner a personal written examination as provided in Sub-section (a) of this Section 5, submit to a personal written examination given by the combination or industrial insurer for which he is to be licensed, subject to the following definitions and conditions:

[See Compact Edition, Volume 2 for text of 5(d)(1)]

(2) Any combination or industrial insurer desiring to qualify to administer the examination to its agents shall file with the Commissioner a complete outline and explanation of the course of study and instruction to be given such applicants and the nature and manner of conducting the examinations of applicants and, after official approval thereof by the Commissioner, may administer such examinations.

[See Compact Edition, Volume 2 for text of 5(d)(3)]

(4) It shall be the duty of the Commissioner to investigate the manner and method of instruction and examination of each combination and industrial insurer as often as deemed necessary by the Commissioner and the Commissioner may, in his discretion, withdraw from any insurer the privilege of examining agents in lieu of the examination administered by the Commissioner pursuant to Sub-section (a) of this Section 5.

[See Compact Edition, Volume 2 for text of 5(d)(5), 6 and 7]

Agent May Be Licensed to Represent Additional Insurers

Sec. 8. (a) Any life insurance agent licensed in this state may represent and act as a life insurance agent for more than one legal reserve life insurance company at any time while his or its license is in force, if he or it so desires. Any such life insurance agent and the company involved must give notice to the Commissioner of Insurance of any additional appointment or appointments authorizing him or it to act as a life insurance agent for an additional legal reserve life insurance company or companies.

Such notice must set forth the insurer or insurers which the agent is then licensed to represent, and shall be accompanied by a certificate from each insurer to be named in each additional appointment, that said insurer desires to appoint the applicant as its agent. This notice shall also contain such other information as the Commissioner may require. The agent shall be required to pay a fee of \$8.00 for each additional appointment applied for, which fee shall accompany the notice. Any insurer may file a request with the Insurance Commissioner for notification in the event any agent licensed to represent such insurer has given the Commissioner of Insurance notice of an additional appointment to represent another insurer; and in such event the Commissioner shall notify the insurer filing such request.

(b) Any life insurance agent licensed in this state may place excess or rejected risks with any legal reserve life insurance company lawfully doing business in this state other than an insurer such agent is licensed to represent; provided, however, that such life insurance agent shall procure an additional appointment to represent such other insurer before receiving commissions or other compensation for his or its services.

Expiration and Renewal of License

Sec. 9. (a) Each license issued to a life insurance agent shall expire two years following the date of issue, unless prior thereto it is suspended or revoked by the Insurance Commissioner or the authority of the agent to act for the insurer is terminated.

(b) Licenses which have not expired or which have not been suspended or revoked, may be renewed upon request in writing of the agent.

(c) Each request for renewal of license shall show whether the agent devotes all or part of his or its efforts to acting as a life insurance agent, and if part only, how much time he or it devotes to such work.

(d) Upon the filing of a request for renewal of license, and payment of a renewal fee of \$25.00 for such license, prior to the date of expiration, the current license shall continue in force until the renewal license is issued by the Commissioner or until the Commissioner has refused, for cause, to issue such renewal license, as provided in Section 12, of this Act, and has given notice of such refusal in writing to the insurer and the agent.

(e) The appointment or appointments given under Section 4 or Section 8 of this Act authorizing the agents to act as a life insurance agent for a legal reserve life insurance company or companies, shall continue in full force and effect, without the necessity of renewal, until terminated and withdrawn by the companies in accordance with Section 11 of this Act, or otherwise terminated in accordance with this

Act, and each renewal license issued to the agent shall authorize him or it to represent and act for the companies for which he or it holds an appointment until the appointment is so terminated, and the agent shall prima facie be deemed, for the purpose of this Article, to be the agent of the appointing companies, provided that on or before April 1st of each and every calendar year, commencing on or before April 1, 1968, each such company so appointing such life insurance agent shall file with the Commissioner a certificate, upon forms promulgated by the Commissioner, certifying that such legal reserve life insurance company desires to continue the appointment of such life insurance agent, and if such company shall for any reason fail to file such certificate for any year as relates to such agent, it shall be deemed and considered for all purposes that such company has terminated the appointment of such life insurance agent in like manner as if compliance has been made by such company with Section 11 of this Act.

Temporary License

Sec. 10. The Life Insurance Commissioner, if he is satisfied with the honesty and trustworthiness of the applicant, may issue a temporary life insurance agent's license, effective for ninety days, without requiring the applicant to pass a written examination, as follows:

[See Compact Edition, Volume 2 for text of 10(a) to (b)(3)]

(4) that such person will complete, under such insurer's supervision, at least forty hours of training as prescribed by sub-section (c) of Section 10 of this Act within fourteen days from the date on which the application and certificate were delivered or mailed to the Commissioner.

(5) The Commissioner shall have the authority to cancel, suspend, or revoke the temporary appointment powers of any life insurance company, if, after notice and hearing, he finds that such company has abused such temporary appointment powers. In considering such abuse, the Commissioner may consider, but is not limited to, the number of temporary appointments made by a company, the percentage of appointees sitting for the examination as life insurance agents under this Article as it may be in violation of sub-section (d) of this Section, and the number of appointees successfully passing said examination. Appeals from the Commissioner's decision shall be made in accordance with Section 13 hereof.

(c) At least forty hours of training must be administered to any applicant for a temporary license as herein defined within fourteen days from the date on which the application and certificate were delivered or mailed to the Commission-

er. Such training program shall be constructed so as to provide an applicant with the basic knowledge of:

- (1) the broad principles of insurance, licensing, and regulatory laws of this State; and
- (2) the obligations and duties of a life insurance agent.

The Commissioner of Insurance may, in his discretion, require that such training program shall be filed with the State Board of Insurance for approval in the event he finds an abuse of temporary appointment powers under sub-section (b)(5) of this Section.

(d) Each insurer is responsible for requiring at least 70 percent of such insurer's applicants for temporary licenses during a fiscal year to sit for the examination as defined in Section 5 of this Act.

[See Compact Edition, Volume 2 for text of 11]

Denial, Refusal, Suspension, or Revocation of Licenses

Sec. 12. (a) A license may be denied, or a license duly issued may be suspended or revoked or the renewal thereof refused by the Insurance Commissioner if, after notice and hearing as hereafter provided, he finds that the applicant, individually or through any officer, director, or shareholder, for, or holder of such license:

[See Compact Edition, Volume 2 for text of 12(a)(1) to (3)]

(4) Has misappropriated or converted to his or its own use or illegally withheld money belonging to an insurer or an insured or beneficiary; or

[See Compact Edition, Volume 2 for text of 12(a)(5) to (8)]

(9) Has obtained, or attempted to obtain such license, not for the purpose of holding himself or itself out to the general public as a life insurance agent, but primarily for the purpose of soliciting, negotiating or procuring life insurance or annuity contracts covering himself or itself or members of his family or his or its business associates; or

[See Compact Edition, Volume 2 for text of 12(a)(10)]

(b) Before any license shall be denied (except for failure to pass a required written examination), or suspended or revoked, or the renewal thereof refused hereunder, the Insurance Commissioner shall give notice of his intention so to do, by registered mail, to the applicant for, or holder of such license and the insurer whom he or it represents or who desires that he or it be licensed, and shall set a date not less than twenty days from the date of mailing such notice when the applicant or licensee and a duly authorized representative of the insurer may appear to be heard and produce evidence. In the conduct of such hear-

ing, the Commissioner or any regular salaried employee specially designated by him for such purpose shall have power to administer oaths, to require the appearance of and examine any person under oath, and to require the production of books, records or papers relevant to the inquiry upon his own initiative or upon the request of the applicant or licensee. Upon termination of such hearing, findings shall be reduced to writing and, upon approval by the Commissioner, shall be filed in his office and notice of the findings sent by registered mail to the applicant or licensee and the insurer concerned.

(c) No applicant or licensee whose license has been denied, refused or revoked hereunder (except for failure to pass a required written examination) shall be entitled to file another application for a license as a life insurance agent within one year from the effective date of such denial, refusal or revocation, or, if judicial review of such denial, refusal or revocation is sought, within one year from the date of final court order or decree affirming such action. Such application, when filed after one year, may be refused by the Commissioner unless the applicant shows good cause why the denial, refusal or revocation of his or its license shall not be deemed a bar to the issuance of a new license.

Judicial Review of Acts of Commissioner

Sec. 13. If the said Insurance Commissioner shall refuse an application for any license provided for in this Act, or shall suspend, revoke or refuse to renew any such license or permit at said hearing, then any such applicant or accused may appeal from said order by filing suit against the Insurance Commissioner as defendant in any of the District Courts of Travis County, Texas, or in any District Court in the county of the applicant's residence or principal place of business, and not elsewhere, within twenty (20) days from the date of the order of said Insurance Commissioner.

Said action shall have precedence over all other causes of a different nature on the docket. The action shall not be limited to questions of law and shall be tried and determined upon a trial de novo to the same extent as now provided for in the case of an appeal from the justice court to the county court. Either party to said action may appeal to the appellate court having jurisdiction of said cause, and said appeal shall be at once returnable to said appellate court having jurisdiction of said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. The Board shall not be required to give any appeal bond in any cause arising hereunder.

Penalty

Sec. 14. Any person or officer, director, or shareholder of a corporation required to be licensed by

this Act who individually, or as an officer or employee of a legal reserve life insurance company, or other corporation, violates any of the provisions of this Act shall, in addition to any other penalty specifically provided, be guilty of a misdemeanor and, upon conviction, shall be fined not more than \$500.00 or imprisoned not more than six months, or both, each such violation being a separate offense hereunder. In addition, if such offender or corporation of which he is an officer, director, or shareholder holds a license as a life insurance agent, such license shall automatically expire upon such conviction.

[See Compact Edition, Volume 2 for text of 15]

[Amended by Acts 1975, 64th Leg., p. 2372, ch. 731, § 2, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 383, ch. 191, §§ 1 to 3, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 386, ch. 192, § 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 388, ch. 193, §§ 5 to 7, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1427, ch. 579, §§ 5 to 9, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2124, ch. 849, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 488, ch. 166, § 2, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 2045, ch. 800, § 2, eff. June 13, 1979.]

Art. 21.07-3. Managing General Agent's Licensing Act

[See Compact Edition, Volume 2 for text of 1 and 2]

Acting Without License Prohibited

Sec. 3. It shall be unlawful for any person, firm or corporation to act as a managing general agent in behalf of any insurance company or carrier without having in force the license provided for herein, except that no license shall be required if the applicant is a business corporation authorized to do business in Texas, all of whose outstanding stock is solely owned by an insurance company or carrier licensed to do business in Texas, whose business affairs are completely controlled by such insurance company or carrier and the principal purpose for which the corporation exists is to facilitate the accumulation of commissions from the insurance company or carrier and its subsidiaries and affiliates for the account of and payment to an agent who could otherwise lawfully receive such commission direct from the insurance company or carrier and its subsidiaries and affiliates and the corporation does no other act of a managing general agent as provided for in this article; provided, however, that any contracts entered into with agents shall be executed by the managing general agent in behalf of the insurance company or carrier.

[See Compact Edition, Volume 2 for text of 4 to 21]

[Amended by Acts 1975, 64th Leg., p. 1094, ch. 414, § 2, eff. Sept. 1, 1975.]

Art. 21.07-4. Licensing of Insurance Adjusters

[See Compact Edition, Volume 2 for text of 1 to 13]

Fees for License and Examination; Insurance Adjusters' Fund

Sec. 14. (a) The commissioner shall collect in advance the following fees for an adjuster's license and examination:

[See Compact Edition, Volume 2 for text of (a)(1) to (b)]

(c) When collected, the fees provided for by this section shall be placed with the state treasurer in a separate fund, which shall be known as the insurance adjusters' fund, provided that no expenditure shall be made from said fund except under authority of the Legislature as set forth in the general appropriations bill.

[Amended by Acts 1975, 64th Leg., p. 656, ch. 273, § 1, eff. Sept. 1, 1975.]

Art. 21.09. Resident Agents, Companies Excepted

Any fire, fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety, or fidelity insurance company, legally authorized to do business in this State is hereby prohibited from authorizing or allowing any person, agent, firm or corporation that is a nonresident of the State of Texas to issue, or cause to be issued, to sign or countersign, or to deliver, or cause to be delivered, any policy or policies of insurance on property, person or persons located in this State, except through regularly licensed local recording agents of such companies in Texas. By the term "Local Recording Agent" is meant a person or firm engaged in soliciting and writing insurance, being authorized by an insurance company or insurance carrier including Fidelity and Surety Companies to solicit business and to write, sign, execute and deliver policies of insurance and to bind companies on insurance risks, and who maintains an office and a record of such business and the transactions which are involved, who collects premiums on such business and otherwise performs the customary duties of a local recording agent representing an insurance carrier in its relation with the public.

This law shall not apply to property owned by the railroad companies or other common carriers. Upon oath made in writing by any person that he can not procure insurance on property through such agents in Texas it shall be lawful for any insurance company not having an agent in Texas to insure property of any person upon application of said person, upon his filing said oath with the county clerk of the county in which such person resides, and with the Board of Insurance Commissioners.

Countersigning may be effected manually or by stamp or by any other method of printing, if authorized by the agent in writing.

This Article shall not apply to insurance companies whose general plan of operation does not contemplate the use of local recording agents, and such companies may issue policies signed by any of their other resident licensed agents.

This Article shall not apply to bid bonds issued by any surety company authorized to do business in the State of Texas in connection with any public or private contract.

[Amended by Acts 1979, 66th Leg., p. 448, ch. 205, § 1, eff. Aug. 27, 1979.]

Art. 21.14. Licensing of Local Recording Agents and Solicitors; Life, Health and Accident Insurance Excepted; Other Exceptions

[See Compact Edition, Volume 2 for text of 1 and 2]

Application for License; To Whom License May Be Issued

Sec. 3. (a) When any person, partnership or corporation shall desire to engage in business as a local recording agent for an insurance company, or insurance carrier, he or it shall make application for a license to the State Board of Insurance, in such form as the Board may require. Such application shall bear a signed endorsement by a general, state or special agent of a qualified insurance company, or insurance carrier that applicant or each member of the partnership or each stockholder of the corporation is a resident of Texas, trustworthy, of good character and good reputation, and is worthy of a license.

(b) The Board shall issue licenses to individuals or to individuals engaging as partners in the insurance business, provided the names of all persons interested in any such partnership are named in the license, and each named as active in the business of the partnership qualify, and it be established that none not active have interest in the partnership principally to have written and be compensated therefor for insurance on property controlled through ownership, mortgage or sale, family relationship, or employment; and provided further, that all licensed agents must be residents of Texas. Provided, that a person who may reside in a town through which the state line may run and whose residence is in the town in the adjoining state may be licensed, if his business office is being maintained in this state. All persons acting as agent or solicitor for health and accident insurance within the provisions hereof, and who represent only fire and casualty companies, and not life insurance companies, shall be required to procure only one license, and such license as is required under the provisions of this article.

(c) The Board shall issue a license to a corporation if the Board finds:

(1) That the corporation is a Texas corporation organized or existing under the Texas Business Corporation Act or the Texas Professional Corporation Act¹ having its principal place of business in the State of Texas and having as one of its purposes the authority to act as a local recording agent; and

(2) That every officer, director and shareholder of the corporation is individually licensed as a local recording agent under the provisions of this Insurance Code, except as may be otherwise permitted by this Section or Section 3a of this article; and

(3) That such corporation will have the ability to pay any sums up to Twenty-Five Thousand Dollars (\$25,000.00) which it might become legally obligated to pay on account of any claim made against it by any customer and caused by any negligent act, error or omission of the corporation or any person for whose acts the corporation is legally liable in the conduct of its business as a local recording agent. The term "customer" as used herein shall mean any person, firm or corporation to whom such corporation sells or attempts to sell a policy of insurance, or from whom such corporation accepts an application for insurance. Such ability shall be proven in one of the following ways:

(a) An errors and omissions policy issued by an insurance company licensed to do business in the State of Texas insuring such corporation against errors and omissions in at least the sum of One Hundred Thousand Dollars (\$100,000.00), with no more than a Five Thousand Dollars (\$5,000.00) deductible feature; or

(b) A bond executed by such corporation as principal and a surety company authorized to do business in this state, as surety, in the principal sum of Twenty-Five Thousand Dollars (\$25,000.00), payable to the State Board of Insurance for the use and benefit of customers of such corporation, conditioned that such corporation shall pay any final judgment recovered against it by any customer; or

(c) A deposit of cash or securities of the class authorized by Articles 2.08 and 2.10 of this Code, having a fair market value of Twenty-Five Thousand Dollars (\$25,000.00) with the State Treasurer. The State Treasurer is hereby authorized and directed to accept and receive such deposit and hold it exclusively for the protection of any customer of such corporation recovering a final judgment against such corporation. Such deposit may be withdrawn only upon filing with the Board evidence satisfactory to it that the corporation has withdrawn from business, and has no unsecured liabilities outstanding, or

that such corporation has provided for the protection of its customers by furnishing an errors and omissions policy or a bond as hereinbefore provided. Securities so deposited may be exchanged from time to time for other qualified securities.

A binding commitment to issue such a policy or bond, or the tender of such securities, shall be sufficient in connection with any application for license.

Nothing contained herein shall be construed to permit any unlicensed employee or agent of any corporation to perform any act of a local recording agent without obtaining a local recording agent's license. The Board shall not require a corporation to take the examination provided in Section 6 of this Article 21.14.

If at any time, any corporation holding a local recording agent's license does not maintain the qualifications necessary to obtain a license, the license of such corporation to act as a local recording agent shall be cancelled or denied in accordance with the provisions of Sections 16, 17 and 18 of this Article 21.14; provided, however, that should any person who is not a licensed local recording agent acquire shares in such a corporation by devise or descent, they shall have a period of ninety (90) days from date of acquisition within which to obtain a license as a local recording agent or to dispose of the shares to a licensed local recording agent except as may be permitted by Section 3a of this article.

Should such an unlicensed person, except as may be permitted by Section 3a of this article, acquire shares in such a corporation and not dispose of them within said period of ninety (90) days to a licensed local recording agent, then they must be purchased by the corporation for their book value, that is, the value of said shares of stock as reflected by the regular books and records of said corporation, as of the date of the acquisition of said shares by said unlicensed person. Should the corporation fail or refuse to so purchase such shares, its license shall be cancelled.

Any such corporation shall have the power to redeem the shares of any shareholder, or the shares of a deceased shareholder, upon such terms as may be agreed upon by the Board of Directors and such shareholder or his personal representative, or at such price and upon such terms as may be provided in the Articles of Incorporation, the Bylaws, or an existing contract entered into between the shareholders of the corporation.

Each corporation licensed as a local recording agent shall file, under oath, a list of the names and addresses of all of its officers, directors and shareholders with its yearly application for renewal license.

Each corporation licensed as a local recording agent shall immediately notify the State Board of Insurance upon any change in its officers, directors or shareholders.

The term "firm" as it applies to local recording agents in Sections 2, 12 and 16 of this Article 21.14 shall be construed to include corporations.

¹ Civil Statutes, art. 1528e.

Persons Other Than Licensed Local Recording Agents Who May Share in Profits of Local Recording Agent

Sec. 3a. (1) Upon the death of a duly licensed local recording agent who is a member of an agency partnership, the surviving spouse and children, if any, of such deceased partner, or a trust for such surviving spouse and children, may share in the profits of such agency partnership during the lifetime of such surviving spouse or such children, as the case may be, if and as provided by a written partnership agreement, or in the absence of any written agreement, if and as agreed by the surviving partner or partners and the surviving spouse, the trustee, and the legal representative of the surviving child or children. Such surviving spouse and any such surviving children or trusts shall not be required to qualify as local recording agents to participate in such profits, but shall not do or perform any act of a local recording agent on behalf of such partnership without having qualified as a local recording agent; provided, however, that a duly licensed local recording agent who is a member of an agency partnership may, with the approval of the other members of the partnership, transfer an interest in the agency partnership to his children or a trust for same, and may operate such interest for their use and benefit; and such children or trusts may share in the profits of such agency partnership. Such child or children or trusts shall not be required to qualify as a local recording agent to participate in such profits, but shall not do or perform any act of a local recording agent on behalf of such partnership without having qualified as a local recording agent.

(2) Upon the death of a duly licensed local recording agent, who is a sole proprietorship, unless otherwise provided by the last will of such deceased agent, the surviving spouse and children, if any, of such deceased agent, or a trust for such spouse or children, may share in the profits of the continuance of the agency business of said deceased agent, provided such agency business is continued by a duly licensed local recording agent. Said surviving spouse, trusts or children, may participate in such profits during the lifetime of such surviving spouse and said children. Said surviving spouse, trusts or children shall not be required to qualify as local recording agents in order to participate in the profits of such agency, but shall not do or perform any act of a local recording agent in connection with the continuance of such agency business without first

having been duly licensed as a local recording agent; provided, however, that a duly licensed local recording agent who is a sole proprietorship may transfer an interest in his agency to his children, or a trust for same, and may operate such interest for their use and benefit; and such children may share in the profits of such local recording agency during their lifetime, and during such time shall not be required to qualify as a local recording agent in order to participate in such profits, but shall not do or perform any act of a local recording agent in connection with such agency business without first having been duly licensed as a local recording agent.

(3) Upon the death of a shareholder in a corporate licensed local recording agency, the surviving spouse and children, if any, of such deceased shareholder, or a trust for such surviving spouse and children, may share in the profits of such corporate agency during the lifetime of such surviving spouse or children, as the case may be, if and as provided by a contract entered into by and between all of the shareholders and the corporation. Any such surviving spouse, surviving children, or trusts shall not be required to individually qualify as a local recording agent in order to participate in such profits, but shall not do or perform any act of a local recording agency on behalf of such corporation without having qualified as a local recording agent; provided, however, that a shareholder in a corporate licensed local recording agent, may, if provided by a contract entered into by and between all of the shareholders and the corporation, transfer an interest in the agency to his children or a trust for same, and such children or trusts may share in the profits of such agency to the extent of such interest during their lifetime. Such children or trusts shall not be required to qualify as a local recording agent to participate in such profits, but shall not do or perform any act of a local recording agent on behalf of such corporation without having qualified as a local recording agent.

(4) Except as provided in Subsections (1), (2), and (3) above, and as may be provided in Section 6a, Article 21.14 of the Insurance Code, no person shall be entitled to perform any act of a local recording agent nor in any way participate as a partner or corporate shareholder in the profits of any local recording agent, without first having qualified as a duly licensed local recording agent and having successfully passed the examination required by the Insurance Code; provided, however, that all persons, or trusts for any person, that received licenses before March 1, 1963, as silent, inactive, or non-active partners, or who are silent, inactive, or non-active partners in an agency which was so qualified before such date, shall continue to receive licenses, or renewals thereof, as partners in such agency or in any successor agency, providing: (a) that such persons are members of an agency in which there is at least one partner who has qualified as a duly licensed

local recording agent; (b) that such non-active partner or partners do not actively solicit insurance; and (c) that such agency is not a limited partnership.

[See Compact Edition, Volume 2 for text of 4 to 6]

Death, Disability or Insolvency; Emergency License Without Examination

Sec. 6a. In event of death or disability of a local recording agent or in event a local recording agent is found to be insolvent and unable to pay for premiums coming to his hands as such local recording agent, the Board may issue to an applicant for local recording agent's license an emergency local recording agent's license for a period of ninety (90) days in any twelve (12) consecutive months and at the Board's option, an additional period up to ninety (90) days without an examination provided the other requirements of this article are met and if it is established to the satisfaction of the Board that such emergency license is necessary for the preservation of the agency assets of a deceased or disabled local recording agent or of an insolvent local recording agent.

Conduct of Examinations; Notice; Manual of Questions and Answers

Sec. 7. All examinations provided by this article shall be conducted by the State Board of Insurance, and shall be held not less frequently than one each sixty (60) days every year at times and places prescribed by the State Board of Insurance, of which applicants shall be notified by the State Board of Insurance in writing, ten (10) days prior to the date of such examinations, and shall be conducted in writing in either the English or Spanish language, except that the applicant upon notice to the State Board of Insurance shall be entitled to be examined in the county seat of the county of his residence. Provided, further, that printed copies of a manual of questions and answers thereto pertaining to the examination published under the direction of the State Board of Insurance shall be made available to all companies, general agents, and managers for the use of their prospective agents, to all agents for the use of their prospective solicitors in preparing for such examination. The questions to be asked on such examination shall be based upon the questions and answers contained in the manual.

Expiration of License; Renewal

Sec. 8. Every license issued to a local recording agent shall expire two years from the date of its issue, unless an application to qualify for the renewal of any such license shall be filed with the Board of Insurance Commissioners and fee paid on or before such date, in which event the license sought to be renewed shall continue in full force and effect until renewed or renewal is denied. Every license issued to a solicitor for a local recording agent shall expire

on the same date that the license of the local recording agent expires, unless an application to qualify for the renewal of the local recording agent's license and the solicitor's license shall be filed with the Board of Insurance Commissioners and fee paid on or before such date, in which event the solicitor's license sought to be renewed shall continue in full force and effect until renewed or renewal is denied.

Fees Payable Before Examination

Sec. 9. Applicants required to be examined shall, at time and place of examination, pay prior to being examined the following fees: For a local recording agent's license a fee of Twenty-five dollars (\$25.00) and for a solicitor's license a fee of Ten Dollars (\$10.00). The fees paid under this section shall not be returned for any reason other than failure to appear and take the examination after the applicant has given at least 24 hours' notice of an emergency situation to the State Board of Insurance and received board approval. A new fee shall be paid before each and every examination.

Renewal Fees

Sec. 10. An applicant for the renewal of a local recording agent's license shall pay, at the time the renewal application is filed, a fee of Twenty-five Dollars (\$25.00). An applicant for the renewal of a solicitor's license shall pay, at the time the renewal application is filed, a fee of Ten Dollars (\$10.00).

[See Compact Edition, Volume 2 for text of 11 to 19]

**Life, Health and Accident Insurance, Inapplicable to;
Other Exceptions**

Sec. 20. No provisions of this article shall apply to the Life, Health and Accident Insurance business or the Life, Health and Accident Department of the companies engaged therein, nor shall it apply to any of the following, namely:

- (a) Any actual full-time home office or salaried traveling representatives of any insurance carrier licensed to do business in Texas.
- (b) Any actual attorney in fact and its actual traveling salaried representative as to business transacted through such attorney in fact or salaried representative of any reciprocal exchange or interinsurance exchange admitted to do business in Texas.
- (c) Any adjuster of losses, and/or inspector of risks, for an insurance carrier licensed to do business in Texas.
- (d) Any General Agent or State Agent or Branch Manager representing an admitted and licensed insurance company or carrier, or insurance companies or carriers, in a supervisory capacity.
- (e) The actual attorney in fact for any Lloyds.

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(f) All incorporated or unincorporated mutual insurance companies, their agents and representatives, organized and/or operating under and by authority of Chapters 16 and 17 of this code.

(g) Nothing in this entire article shall ever be construed to apply to any member, agent, employee, or representative of any county or farm mutual insurance company as exempted under Chapters 16 and 17 of this code.

(h) Nothing in this article shall apply to the group motor vehicle insurance business or the group motor vehicle department of the companies engaged in that business.

[See Compact Edition, Volume 2 for text of 21 to 26]

[Amended by Acts 1975, 64th Leg., p. 2373, ch. 731, § 3, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 359, ch. 176, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 386, ch. 192, § 3, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 389, ch. 193, § 8, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 834, ch. 310, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1030, ch. 461, § 2, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1170, ch. 569, §§ 1, 2, eff. June 11, 1979; Acts 1979, 66th Leg., p. 2043, ch. 800, § 1, eff. June 13, 1979.]

**SUBCHAPTER B. MISREPRESENTATION
AND DISCRIMINATION**

**Art. 21.21A. Misrepresentations of Policy Terms;
Penalty**

Sec. 1. No insurer or agent thereof may make any contract of insurance or agreement as to such contract other than as expressed in the policy issued thereon, nor may any such insurer or any officer, agent, solicitor or representative thereof, pay, allow or give, or offer to pay, allow or give, directly or indirectly as an inducement to insurance, any rebate of premium payable on the policy, or any special favor or advantage in the dividends or other benefits to accrue thereon or any paid employment or contract for service of any kind, or any thing of value or inducement whatever, not specified in the policy; or give, sell or purchase, or offer to give, sell or purchase, as an inducement to insurance or in connection therewith, any stocks, bonds or other securities of any insurer or other corporation, association or partnership, or any dividends or profits to accrue thereon, or anything of value whatsoever not specified in the policy, or issue any policy containing any special or board contract or similar provision by the terms of which said policy will share or participate in any special fund derived from a tax or a charge against any portion of the premium on any other policy.

Sec. 2. No life, health, or casualty insurance corporation including corporations operating on the cooperative or assessment plan, mutual insurance companies, and fraternal benefit associations or socie-

ties, and any other societies or associations authorized to issue insurance policies in this state, and no officer, director, representative, or agent therefor or thereof, or any other person, corporation, or copartnership may issue or circulate or cause or permit to be issued or circulated any illustrated circular or statement of any sort misrepresenting the terms of any policy issued by any such corporation or association or any certificate of membership issued by any such society or corporation, or other benefits or advantages permitted thereby, or any misleading statement of the dividends or share of surplus to be received thereon, or may use any name or title of any policy or class of policy or class of policies, or certificate of membership or class of such certificate misrepresenting the true nature thereof. Nor may any such corporation, society, or association, or officer, director, agent, or representative thereof, or any other person, make any misleading representations or incomplete comparisons of policies or certificates of membership to any person insured in such corporation, association, or society, or member thereof, for the purpose of inducing or tending to induce such person to lapse, forfeit, or surrender said insurance or membership therein.

Sec. 3. If any person violates any of the provisions of this Article, the person shall, in addition to any other penalty specifically provided, be guilty of a Class A misdemeanor.

Sec. 4. The commissioner, upon giving 10 days' notice of hearing by certified mail, and upon hearing, may suspend or cancel the certificate, charter, permit, or license to engage in the business of insurance of any society, association, corporation, or person violating the provisions of this Article.

[Amended by Acts 1977, 65th Leg., p. 2084, ch. 834, § 1, eff. Aug. 29, 1977.]

Art. 21.21B. Repealed by Acts 1977, 65th Leg., p. 2085, ch. 834, § 2, eff. Aug. 29, 1977

SUBCHAPTER D. CONSOLIDATION, LIQUIDATION, REHABILITATION, REORGANIZATION OR CONSERVATION OF INSURERS

Art. 21.25. Mergers and Consolidations of Stock Insurers

[See Compact Edition, Volume 2 for text of 1 to 6]

Purchase of Outstanding Stock: Conditions and Limitations

Sec. 7. One life insurance corporation may purchase or contract to purchase all or part of the outstanding stock of another life insurance corporation for purposes of merger or consolidation. The provisions contained in Article 3.39 of the Insurance Code which limit investments in the corporate stock of another corporation shall not apply provided that such purchase or contract to purchase shall be subject to the following conditions or limitations:

[See Compact Edition, Volume 2 for text of 7(a)]

(b) The purchasing corporation shall either (1) initially purchase or contract to purchase at least the number of shares of the stock of the other insurance corporation necessary to vote an approval of such merger or consolidation under the laws of the state in which such other insurance corporation was organized, (2) offer to purchase, make a tender offer for, request or invite tenders of, or otherwise seek to acquire, in the open market or otherwise, at least the number of shares of the stock of the other insurance corporation necessary to vote an approval of such merger or consolidation under the laws of the state in which such other corporation was organized, or (3) by any combination of the provisions of (1) and (2) hereof, obtain or seek to obtain the number of shares of stock of the other insurance corporation necessary to vote an approval of such merger or consolidation under the laws of the state in which such other insurance corporation was organized; and

(c) No such purchase of stock, offer to purchase, tender offer, request or invitation to purchase stock in excess of the limits of Article 3.39 of the Insurance Code may be made until such proposed purchase, offer to purchase, tender offer, request or invitation to purchase has been filed with and approved by the commissioner in accordance with the provisions of Article 21.49-1 of this code; and

(d) Following the date of the contract to purchase such shares or the date of the commissioner's approval of such purchase, offer to purchase, tender offer, request or invitation to purchase such stock, whichever shall first occur, the corporation whose stock is being purchased shall not purchase or contract to purchase any of its own shares as treasury stock, issue or contract to issue any of its authorized but unissued stock, nor shall such corporation make any investments in or loans to the purchasing corporation or any of its affiliates unless such investment or loan is otherwise authorized and approved in advance by the commissioner under the provisions of Article 21.49-1, as amended, of the Insurance Code; and

(e) The merger or consolidation shall become effective on or before December 31st in the second year following the year in which the initial purchase of such stock is made or the initial contract to purchase is executed, whichever shall occur first, unless the commissioner for good cause shown shall extend such time for the effective date of the merger or consolidation; and

(f) If the merger or consolidation fails to become effective within such time as may be finally determined and extended by the commissioner, the purchasing corporation must sell or otherwise dispose of such purchased shares which are in excess

of the investment limitations of Article 3.39 of this code within six months of such final effective date; and

(g) In no event shall any sums actually paid out by the purchasing corporation for the purchase of stock acquired or obtained hereunder include the minimum capital, minimum surplus, and policy reserves required by law for such corporation.

[See Compact Edition, Volume 2 for text of 8]

[Amended by Acts 1977, 65th Leg., p. 222, ch. 107, § 1, eff. May 4, 1977.]

Art. 21.26. Purchase of Stock for Total Assumption Reinsurance

Sec. 1. Nothing in this Act or in the Insurance Code shall be construed as in any way affecting or limiting the right of a life insurance corporation organized or operating under Chapter Three (3) or Chapter Eleven (11) of the Insurance Code of the State of Texas to purchase or to contract to purchase all or part of the outstanding shares of another life insurance corporation, domestic or foreign, doing a similar line of business for the purpose of reinsuring all of the business of such other insurance corporation and assuming all of the liabilities and taking over all of the assets of such other corporation. The provisions contained in Article 3.39 of the Insurance Code limiting investments in the purchase of the corporate shares of another corporation shall not apply to such purchase or contract to purchase provided that:

[See Compact Edition, Volume 2 for text of 1(a)]

(b) The reinsuring corporation shall either (1) initially purchase or contract to purchase the number of shares of the stock of the other insurance corporation necessary to vote an approval of a total assumption reinsurance agreement under the laws of the state in which such other insurance corporation was organized, (2) offer to purchase, make a tender offer for, request or invite tenders of, or otherwise seek to acquire, in the open market at least the number of shares of the stock of the other insurance corporation necessary to vote an approval of such reinsurance agreement under the laws of the state in which such other corporation was organized, or (3) by any combination of the provisions of (1) and (2) hereof, obtain or seek to obtain the number of shares of stock of the other insurance corporation necessary to vote an approval of such reinsurance agreement under the laws of the state in which such other insurance corporation was organized; and

(c) No such purchase of stock, offer to purchase, tender offer, request or invitation to purchase stock in excess of the limits of Article 3.39 of the Insurance Code may be made until such proposed purchase, offer to purchase, tender offer, request

or invitation to purchase has been filed with and approved by the commissioner in accordance with the provisions of Article 21.49-1 of this code; and

(d) Following the date of the contract to purchase such shares or the date of the commissioner's approval of such purchase, offer to purchase, tender offer, request or invitation to purchase such stock, whichever shall first occur, the corporation whose stock is being purchased shall not purchase or contract to purchase any of its own shares as treasury stock, issue or contract to issue any of its authorized but unissued stock, nor shall such corporation make any investments in or loans to the purchasing corporation or any of its affiliates unless such investment or loan is otherwise authorized and approved in advance by the commissioner under the provisions of Article 21.49-1, Insurance Code as amended, of the Insurance Code; and

(e) The reinsurance agreement shall become effective on or before December 31st in the second year following the year in which the initial purchase of such stock is made or the initial contract to purchase is executed, whichever shall occur first, unless the commissioner for good cause shown shall extend such time for the effective date of the reinsurance agreement; and

(f) If the reinsurance agreement fails to become effective within such time as may be finally determined and extended by the commissioner, the purchasing corporation must sell or otherwise dispose of such purchased shares which are in excess of the investment limitations of Article 3.39 of this code within six months of such final effective date; and

(g) In no event shall any sums actually paid out by the purchasing corporation for the purchase of stock acquired or obtained hereunder include the minimum capital, minimum surplus, and policy reserves required by law for such corporation.

[See Compact Edition, Volume 2 for text of 2 and 3]

[Amended by Acts 1977, 65th Leg., p. 223, ch. 107, § 2, eff. May 4, 1977.]

Art. 21.28-C. Property and Casualty Insurance Guaranty Act

[See Compact Edition, Volume 2 for text of 1 and 2]

Scope

Sec. 3. This Act shall apply to all kinds of insurance written by stock and mutual fire insurance companies; casualty insurance companies and fire and casualty insurance companies licensed to do business in this State; and shall also include all kinds of insurance written by county mutual insurance companies, Lloyd's and reciprocal exchanges licensed to do business in this State; but shall not

apply to insurance written by farm mutual insurance companies or title insurance companies or title insurance written by any insurer; and shall not apply to mortgage guaranty insurance companies or mortgage guaranty insurance, nor to ocean marine insurance, nor to home warranty insurance; and shall not apply to Mexican casualty insurance companies or to policies of insurance issued by Mexican casualty insurance companies.

[See Compact Edition, Volume 2 for text of 4]

Definitions

Sec. 5. As used in this Act

[See Compact Edition, Volume 2 for text of 5(1)]

(2) "Covered claim" is an unpaid claim of an insured or third party liability claimant which arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this Act applies, issued or assumed (whereby an assumption certificate is issued to the insured) by an insurer licensed to do business in this State, if such insurer becomes an "impaired insurer" after the effective date of this Act and (a) the third party claimant or liability claimant or insured is a resident of this State at the time of the insured event; or (b) the property from which the claim arises is permanently located in this State. "Covered claim" shall also include seventy-five percent (75%) of unearned premiums but in no event shall a "covered claim" for unearned premiums exceed Five Hundred Dollars (\$500). Individual "covered claims" shall be limited to Fifty Thousand Dollars (\$50,000) and shall not include any amount in excess of Fifty Thousand Dollars (\$50,000). "Covered claim" shall not include any amount due any reinsurer, insurer, insurance pool or underwriting association, as subrogation recoveries or otherwise. "Covered claim" shall not include supplementary payment obligations, including but not limited to adjustment fees and expenses, attorneys fees and expenses, court costs, interest and bond premiums, incurred prior to the determination that an insurer is an "impaired insurer" under this Act. With respect to a "covered claim" for unearned premiums, both persons who were residents of this State at the time the policy was issued and persons who are residents of this State at the time the company is found to be an "impaired insurer" shall be considered to have "covered claims" under this Act. Where the impaired insurer has no assets within the State of Texas, or has insufficient assets to pay the expenses of administering the receivership or conservatorship estate, that portion of the expenses of administration incurred in the processing and payment of claims against the estate shall also be a "covered claim" under this Act.

(3) "Insurer" and "member insurer" includes all stock and mutual fire insurance companies, casualty insurance companies and fire and casualty insurance companies licensed to do business in this State; and also includes all county mutual insurance companies, Lloyd's and reciprocal exchanges licensed to do business in this State; but shall not include farm mutual insurance companies, title insurance companies, mortgage guaranty insurance companies or Mexican casualty insurance companies.

(4) "Impaired insurer" is (a) a member insurer which, after the effective date of this Act, is placed in temporary or permanent receivership under an order of a court of competent jurisdiction based on a finding of insolvency, and which has been designated an "impaired insurer" by the Commissioner; or (b) after the effective date of this Act, a member insurer placed in conservatorship after it has been deemed by the Commissioner to be insolvent and which has been designated an "impaired insurer" by the Commissioner.

[See Compact Edition, Volume 2 for text of 5(5) to (7)]

(8) "Association" means the Texas Property and Casualty Insurance Guaranty Association created under Section 14 of this article.

(9) "Account" means one of the four accounts created under Section 14 of this article.

(10) "Board" or "board of directors" means the board of directors of the Texas Property and Casualty Insurance Guaranty Association created under Section 14 of this article.

[See Compact Edition, Volume 2 for text of 6]

Assessments

Sec. 7. Whenever the Commissioner determines that an insurer has become an impaired insurer the receiver appointed in accordance with Article 21.28 of the Insurance Code or the conservator appointed under the authority of Article 21.28-A of the Insurance Code shall promptly estimate the amount of additional funds, by lines of business, needed to supplement the assets of the impaired insurer immediately available to the receiver or the conservator for the purpose of making payment of all covered claims. The receiver or conservator shall advise the board of directors of the association of such estimates, and the board shall make available from the account maintained by the association for each line of business funds sufficient to enable the receiver or conservator to carry out an efficient program of paying the covered claims of the impaired insurer. The board shall make additional funds available as the actual need therefor arises for each impaired insurer.

When the board of directors shall determine that additional funds are needed in any of the three accounts, they shall advise the Commissioner who shall make such assessments as may be needed to produce the necessary funds. The Commissioner in determining the proportionate amount to be paid by individual insurers under an assessment shall take into consideration the lines of business written by the impaired insurer and shall assess individual insurers in proportion to the ratio that the total net direct written premium collected in the State of Texas by the insurer for such line or lines of business during the next preceding year bears to the total net direct written premium collected by all insurers (except impaired insurers) in the State of Texas for such lines of business. Assessments during a calendar year may be made up to, but not in excess of, two percent (2%) of each insurer's net direct written premium for the preceding calendar year in the lines of business for which the assessments are being made. If the maximum assessment in any calendar year does not provide an amount sufficient for payment of covered claims of impaired insurers, assessments may be made in the next and successive calendar years.

Insurers designated as impaired insurers by the Commissioner shall be exempt from assessment from and after the date of such designation and until the Commissioner determines that such insurer is no longer an impaired insurer.

It shall be the duty of each insurer to pay the amount of its assessment to the association within thirty (30) days after the Commissioner gives notice of the assessment, and assessments may be collected on behalf of the association by the conservator or receiver through suits brought for that purpose. Venue for such suits shall lie in Travis County, Texas, and actions to collect such assessments shall have precedence over all other causes on the docket of a different nature. Either party to said action may appeal to the appellate court having jurisdiction over said cause and said appeal shall be at once returnable to said appellate court having jurisdiction over said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. Neither the receiver, the conservator, nor the association shall be required to give an appeal bond in any cause arising hereunder.

Funds advanced by the association under the provisions of the Act shall not become assets of the impaired insurer but shall be deemed a special fund loaned to the receiver or the conservator for payment of covered claims, which loan shall be repayable to the extent available from the funds of such impaired insurer, as herein provided.

Income from the investment of any of the funds of the association may be transferred to the administrative account authorized in Section 14A(1) of this article. The funds in this account may be used by the association for the purpose of meeting administrative costs and other general expenses of the association. Upon notification by the association of the amount of any additional funds needed for the administrative account the Commissioner shall assess member insurers to obtain the needed funds in the same manner as hereinbefore set out, provided, that he shall take into consideration the net direct written premium collected in the State of Texas for all lines of business covered by this article.

Penalty for Failure to Pay Assessments

Sec. 8. The Commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact business in this State of any insurer who fails to pay an assessment when due, and the association shall promptly report to the Commissioner any such failure.

Any insurer whose certificate of authority to do business in this State is cancelled or surrendered shall be liable for any unpaid assessments made prior to the date of such cancellation or surrender.

Accounting for and Repayment of Assessments

Sec. 9. Upon receipt from an insurer of payment of an assessment or partial assessment, the association shall provide the insurer with a participation receipt which shall create a liability against the account for the line or lines of business for which the assessment was made. The account from which an advance is made to an impaired insurer for the payment of covered claims shall be regarded as a general creditor of the impaired insurer for the amount of funds so advanced; provided, however, that with reference to the remaining balance of any advances received by the receiver or conservator and not expended in payment of "covered claims" the claim of such account shall have preference over other general creditors. The receiver or conservator of any impaired insurer shall adopt accounting procedures reflecting the expenditure and use of all funds received from the association and shall make a final report of the expenditure and use of such funds to the Commissioner and to the association, which final report shall set forth the remaining balance, if any, from the moneys advanced. The receiver or conservator shall also make any interim reports concerning such accounting as may be required by the Commissioner or requested by the association. Upon completion of the final report, the receiver or conservator shall, as soon thereafter as is practicable, refund by line of business the remaining balance of such advances to the accounts maintained by the association.

Should the association at any time determine that there exist moneys in the account for any line of business in excess of those reasonably necessary for efficient future operation under the terms of this Act, it shall cause such excess moneys to be returned pro rata to the holders of any participation receipts on which there is a balance outstanding after deducting any credits taken against premium taxes as authorized in Section 15 of this article, which receipts were issued for an assessment on the same line of business as that for which the excess moneys are found to exist. If after such a distribution the association finds that an excess amount still exists in any such fund, or if there are no such participation receipts on which there is an outstanding balance, it shall cause such excess amount to be deposited with the State Treasurer for credit to the general fund of this State.

Payment of Covered Claims

Sec. 10. When an insurer has been designated by the Commissioner as an impaired insurer, the receiver or conservator, as the case may be, shall marshal all assets of the impaired insurer, including but not limited to those which are designated as or that constitute reserve assets offsetting reserve liabilities for all liabilities falling within the definition of "covered claim" as defined in this Act. The receiver or conservator shall apply all of such assets to the payment of covered claims, but may utilize funds received from the association in the payment of claims, pending orderly liquidation or disposition of such assets. When all covered claims have been paid or satisfied by the receiver or conservator, any balance remaining from the liquidation or disposition of such assets shall first be applied in repayment of funds expended from those advanced by the association. Such repayments shall be credited as remaining balances and be refunded as provided in Section 9 of this Act.

In addition to authorization to make actual payment of covered claims, the receiver or conservator is specifically authorized to utilize such marshalled assets and funds derived from the association for the purpose of negotiating and consummating contracts of reinsurance or assumption of liabilities or contracts of substitution to provide for outstanding liabilities of covered claims. This Act shall not be construed to impose restrictions or limitations upon the authority granted or authorized the Commissioner, the conservator or the receiver elsewhere in the Insurance Code and other statutes of this State but shall be construed and authorized for use in conjunction with other portions of the Insurance Code dealing with delinquency proceedings or threatened insolvencies or supervisions or conservatorships.

Approval of Covered Claims

Sec. 11. Covered claims against an impaired insurer placed in temporary or permanent receivership under an order of liquidation, rehabilitation or conservation by a court of competent jurisdiction shall be processed and acted upon by the receiver or ancillary receiver in the same manner as other claims as provided in Article 21.28 of the Insurance Code and as ordered by the court in which such receivership is pending; provided, however, that funds received from the association shall be liable only for the difference between the amount of the covered claims approved by the receiver and the amount of the assets marshalled by the receiver for payment to holders of covered claims; and provided further, that in ancillary receiverships in this State, funds received from the association shall be liable only for the difference between the amount of the covered claims approved by the ancillary receiver and the amount of assets marshalled by the receivers in other states for application to payment of covered claims within this State. Such funds received from the association shall not be liable for any amount over and above that approved by the receiver for a covered claim, and any action brought by the holder of such covered claim appealing from the receiver's action shall not increase the liability of such funds; provided, however, that the receiver may review his action in approving a covered claim and for just cause modify such approval at any time during the pendency of the receivership.

If a conservator is appointed to handle the affairs of an impaired insurer the conservator shall determine whether or not covered claims should or can be provided for in whole or in part by reinsurance, assumption or substitution. Upon determination by the conservator that actual payment of covered claims should be made the conservator shall give notice of such determination to claimants falling within the class of "covered claims." The conservator shall mail such notice to the latest address reflected in the records of the impaired insurer. If the records of the impaired insurer do not reflect the address of a claimant, the conservator may give notice by publication in a newspaper of general circulation. Such notice shall state the time within which the claimant must file his claim with the conservator, which time shall in no event be less than ninety (90) days from the date of the mailing or publication of such notice. The conservator may require, in whole or in part, that sworn claim forms be filed and may require that additional information or evidence be filed as may be reasonably necessary for the conservator to determine the legality or the amount due under a covered claim. When an impaired insurer has been placed in conservatorship, the funds received from the association shall be liable only for the difference between the amount of

the covered claim approved by the conservator and the amount of assets marshalled by the conservator for payment to holders of covered claims. Any action brought by the holder of such covered claim against the impaired insurer shall not increase the liability of such funds; provided, however, that the conservator may review his action in approving a covered claim and may for just cause modify such approval at any time during the pendency of the conservatorship.

Upon determination by the conservator that actual payment of covered claims should be made or upon order of the court to the receiver to give notice for the filing of claims, any person who has a cause of action against an insured of the impaired insurer under a liability insurance policy issued or assumed by such insurer shall (if such cause of action meets the definition of "covered claim") have the right to file a claim with the receiver or the conservator, regardless of the fact that such claim may be contingent, and such claim may be approved as a "covered claim" (1) if it may be reasonably inferred from the proof presented upon such claim that such person would be able to obtain a judgment upon such cause of action against such insured; and (2) if such person shall furnish suitable proof that no further valid claims against such insurer arising out of his cause of action other than those already presented can be made; and (3) if the total liability of such insurer to all claimants arising out of the same act of its insured shall be no greater than its total liability would be were it not in liquidation, rehabilitation or conservation. In the proceedings of considering "covered claims" no judgment against an insured taken after the date of the commencement of the delinquency proceedings or the appointment of a conservator shall be considered as evidence of liability, or of the amount of damages, and no judgment against an insured taken by default or by collusion prior to the commencement of the delinquency proceedings or the appointment of a conservator shall be considered as conclusive evidence either (1) of the liability of such insured to such person upon such cause of action, or (2) of the amount of damages to which such person is therein entitled.

The acceptance of payment from the receiver or conservator by the holder of a covered claim or the acceptance of the benefits of contracts negotiated by the receiver or conservator providing for reinsurance or assumption of liabilities or for substitution shall constitute an assignment to the impaired insurer of any cause of action or right of the holder of such covered claim arising from the occurrence upon which the covered claim is based. Such assignment shall be to the extent of the amount accepted or the value of the benefits provided by such contracts of reinsurance or assumption of liabilities or substitution.

[See Compact Edition, Volume 2 for text of 12]

Release from Conservatorship or Receivership

Sec. 13. An impaired insurer placed in conservatorship or receivership for which advances have been made under the provisions of this Act shall not be authorized, upon release from conservatorship or receivership, to issue new or renewal insurance policies until such time as the impaired insurer has repaid in full to the association the funds advanced by it; provided, however, the Commissioner may, upon application of the association and after hearing, permit the issuance of new policies in accordance with a plan of operations by the released insurer for repayment of advances. The Commissioner may, in approving such plan, place such restrictions upon the issuance of new or renewal policies as he deems necessary to the implementation of the plan.

Advisory Association

Sec. 14. A. Creation of the Association. (1) There is hereby created a nonprofit legal entity to be known as the Texas Property and Casualty Insurance Guaranty Association. All member insurers shall be and remain members of the association as a condition precedent to their authority to transact insurance in this State. The association shall perform its functions under the plan of operation established and approved as set out below and shall exercise its powers through a board of directors established as set out below. For the purposes of administration and assessment, the board shall establish four accounts:

- (a) the administrative account;
- (b) the workmen's compensation account;
- (c) the automobile account; and
- (d) the other lines of insurance account.

(2) The association shall come under the immediate supervision of the Commissioner and shall be subject to the applicable provisions of the insurance laws of this State.

B. Board of Directors. (1) The association shall exercise its powers through a board of directors consisting of eight (8) persons who shall be chosen from employees or officers of the member insurers and who shall be chosen to give fair representation to all member insurers giving due consideration to the various categories of premium income, geographical location, and segments of the industry represented in Texas. Members of the board shall be elected for overlapping four-year terms, with the terms of two of the members expiring each year. The initial membership of the board of directors shall consist of the industry representatives in the Texas Property and Casualty Advisory Association as it exists under this Act prior to the time this amendment takes effect, and those members shall serve out the terms for which they were elected to

the advisory association. Their replacements shall be elected by the member insurers under procedures to be established in the plan of operation. All directors shall be eligible to succeed themselves in office.

(2) Directors shall not receive any remuneration or emolument of office, but they shall be entitled to reimbursement for their actual expenses incurred in performing their duties as directors.

C. Powers and Duties of Association. In addition to the powers and duties enumerated in other sections of this article, the association:

(1) May render assistance and advice to the Commissioner, upon his request, concerning rehabilitation, payment of claims, continuations of coverage, or the performance of other contractual obligations of any impaired insurer;

(2) Shall have the standing to appear before any court in this State with jurisdiction over an impaired insurer concerning which the association is or may become obligated under this Act;

(3) May enter into such contracts as are necessary or proper to carry out the provisions and purposes of this article;

(4) May sue or be sued, including taking any legal actions necessary or proper for recovery of any unpaid assessments;

(5) May employ or retain such persons as are necessary to handle the financial transactions of the association, and to perform such other functions as become necessary or proper under this Act;

(6) May negotiate and contract with any liquidator, rehabilitator, conservator, receiver, or ancillary receiver to carry out the powers and duties of the association; and

(7) May take such legal action as may be necessary to avoid the payment of improper claims.

D. Plan of Operation. (1)(a) The association shall submit to the Commissioner a plan of operation and any amendment thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the Commissioner.

(b) If the association fails to submit a suitable plan of operation within one hundred and eighty (180) days following the effective date of this Act, or if at any time thereafter the association fails to submit suitable amendments to the plan, the Commissioner may, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this Act. Such rules shall continue in force until modified by the Commissioner or superseded by a plan submitted by the association and approved by the Commissioner.

(2) All member insurers shall comply with the plan of operation.

(3) The plan of operation shall, in addition to requirements enumerated elsewhere in this Act:

(a) establish procedures for handling the assets of the association;

(b) establish the amount and method of reimbursing members of the board of directors under this section;

(c) establish regular places and times for meetings of the board of directors;

(d) establish procedures for records to be kept of all financial transactions of the association, its agents and the board of directors;

(e) establish any additional procedures for assessments under Section 7 of this article; and

(f) contain additional provisions necessary or proper for the execution of the powers and duties of the association.

E. Prevention of Impairments. To aid in the detection and prevention of insurer impairments:

(1) The board of directors shall, upon majority vote, notify the Commissioner of any information indicating any member insurer may be unable or potentially unable to fulfill its contractual obligations and may request appropriate investigation and action by the Commissioner who may, in his discretion, make such investigation and take such action as he deems appropriate.

(2) The board of directors shall advise and counsel with the Commissioner upon matters relating to the solvency of insurers. The Commissioner shall call a meeting of the board of directors when he determines that an insurer is insolvent or impaired and may call a meeting of the board of directors when he determines that a danger of insolvency or impairment of an insurer exists. Such meetings shall not be open to the public and only members of the board of directors, members of the State Board of Insurance, the Commissioner, and persons authorized by the Commissioner shall attend such meetings. The board of directors shall, upon majority vote, notify the Commissioner of any information indicating that an insurer may be unable or potentially unable to fulfill its contractual obligations and request a meeting with the Commissioner. At such meetings the Commissioner may divulge to the board of directors any information in his possession and any records of the State Board of Insurance, including examination reports or preliminary reports from examiners relating to such insurer. The Commissioner may summon officers, directors, and employees of an insolvent or impaired insurer (or an insurer the Commissioner considers to be in danger of insolvency or impairment) to appear before the board of directors for confer-

ence or for the taking of testimony. Members of the board of directors shall not reveal information received in such meetings to anyone unless authorized by the Commissioner or the State Board of Insurance or when required as witness in court. Board members and all of such meetings and proceedings under this section shall be subject to the same standard of confidentiality as is imposed upon examiners under Article 1.18 of the Insurance Code, as amended, except that no bond shall be required of a board member.

The board of directors shall, upon request by the Commissioner, attend hearings before the Commissioner and meet with and advise the Commissioner, liquidator, or conservator appointed by the Commissioner, on matters relating to the affairs of an impaired insurer and relating to action that may be taken by the Commissioner, liquidator, or conservator appointed by the Commissioner to best protect the interests of persons holding covered contractual obligations against an impaired insurer and relating to the amount and timing of partial assessments and the marshalling of assets and the processing and handling of contractual obligations.

(3) The board of directors may, upon majority vote, make reports and recommendations to the Commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer. Such reports and recommendations shall not be considered public documents. Reports or recommendations made by the board of directors to the Commissioner, liquidator, or conservator shall not be considered public documents, and there shall be no liability on the part of and no cause of action against a member of the board of directors or the board of directors for any report, individual report, recommendation, or individual recommendation by the board of directors or members to the Commissioner, liquidator, or conservator.

(4) The board of directors may, upon majority vote, make recommendations to the Commissioner for the detection and prevention of member insurer impairments.

(5) The board of directors shall, at the conclusion of any member insurer impairment in which the association carried out its duties under this article or exercised any of its powers under this article, prepare a report on the history and causes of such impairment, based on the information available to the association, and submit a report on same to the Commissioner.

(6) Any insurer that has an officer, director, or employee serving as a member of the board of directors shall not lose the right to negotiate for and enter into contracts of reinsurance or assumption of liability or contracts of substitution to

provide for liabilities for contractual obligations with the receiver or conservator of an impaired insurer. The entering into any such contract shall not be deemed a conflict of interest.

(7) The association or any insurer assessed under this article shall be an interested party under Section 3(h) of Article 21.28 of the Insurance Code, as amended.

Recognition of Assessments in Premium Tax Offset

Sec. 15. Any assessment paid by an insurer under this Act shall be allowed to such insurer as a credit against its premium tax under Article 7064, Revised Civil Statutes of Texas, 1925, as amended. The tax credit referred to herein shall be allowed at a rate of twenty percent (20%) per year for five (5) successive years following the date of assessment and at the option of the insurer may be taken over an additional number of years, and the balance of any assessment paid by the insurer and not claimed as such tax credit may be reflected in the books and records of the insurer as an admitted asset of the insurer for all purposes, including exhibition in annual statements pursuant to Article 6.12 of this Code.

[See Compact Edition, Volume 2 for text of 16 and 17]

Advertising Prohibited

Sec. 17a. It shall be unlawful for any insurer required to participate in the association to advertise or use in any manner for promotional purposes the fact that its policies are protected under this Act, and such acts of advertisement or promotion shall constitute unfair methods of competition or unfair or deceptive acts or practices under Article 21.21, Insurance Code, and shall be subject to the provisions thereof.

[See Compact Edition, Volume 2 for text of 18]

Certain Evidence Not Admissible; Unfair Practices

Sec. 19. (1) In any lawsuit brought by a conservator or receiver of an impaired insurer for the purpose of recovering assets of the impaired insurer, the fact that claims against the impaired insurer have been or will be paid under the provisions of this article shall not be admissible for any purposes and shall not be placed before any jury either by evidence or argument.

(2) The use in any manner of the protection afforded by this article by any person in the sale of insurance shall constitute unfair competition and unfair practices under Article 21.21 of the Insurance Code, as amended, and shall be subject to the provisions thereof.

Control Over Conflicts

Sec. 20. The provisions of this Act and the powers and functions authorized by this Act are to be exercised to the end that its purposes are accomplished. This Act is cumulative of existing laws, but in the event of conflict between this Act and any other law relating to the subject matter of this Act or its application, the provisions of this Act shall control.

Unconstitutional Application Prohibited

Sec. 21. This Act and law does not apply to any insurer or other person to whom, under the Constitution of the United States or the Constitution of the State of Texas, it cannot validly apply.

Severance Clause

Sec. 22. If any provision of this Act or the application thereof to any person or circumstance is held invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

[Amended by Acts 1975, 64th Leg., p. 56, ch. 32, § 3, eff. April 3, 1975; Acts 1975, 64th Leg., p. 1094, ch. 414, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1950, ch. 775, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2110, ch. 845, §§ 1 to 12, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1057, ch. 487, § 1, eff. Aug. 27, 1979.]

Section 13 of Acts 1977, 65th Leg., p. 2120, ch. 845, provided:

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

Section 2 of the 1979 amendatory act provided:

"If any provision of this Act or the application thereof to any person or circumstance is held invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or application of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

SUBCHAPTER E. MISCELLANEOUS PROVISIONS**Art. 21.32A. Legality of Dividend**

For the purpose of determining the legality of a dividend to shareholders paid by stock domestic insurance companies authorized to transact life, accident, and health insurance business in Texas, all stock foreign and alien life, health, and accident insurance companies, stock insurance companies authorized to transact property and casualty business and fire insurance business and domestic Lloyds', reciprocals, and title insurance companies under the laws of the State of Texas, the "earned surplus" or "surplus profits arising from the business" of the insurance company may include the acquired "earned surplus" of an insurance subsidiary which has been acquired by the insurance company, to the extent allowed by an order of the commissioner made in accordance with the rules of the board but only to the extent that the "earned surplus" of the acquired subsidiary on the date of acquisition, and in

existence on the date of the order, is not otherwise reflected in the "earned surplus" of the insurance company.

[Added by Acts 1977, 65th Leg., p. 844, ch. 315, § 1, eff. Aug. 29, 1977.]

Art. 21.35A. Coverage Under Group Insurance and Group Hospital Plans for Psychological Services

Any person who is covered by a policy, contract, or certificate of group insurance or of a group hospital plan including but not limited to coverage issued by a company operating under Chapter 20, Insurance Code, as amended, and whose policy, contract, or certificate provides for services or partial or total reimbursement for services that are within the scope of practice of a licensed psychologist, is entitled to obtain these services or receive reimbursement for these services regardless of whether the services are performed by a licensed doctor of medicine or a licensed psychologist. This article applies to all policies, contracts, and certificates issued, renewed, modified, altered, amended, or reissued on or after the effective date of this article.

[Added by Acts 1977, 65th Leg., p. 1389, ch. 556, § 1, eff. Aug. 29, 1977.]

Art. 21.39-B. Restriction on Transactions with Funds and Assets

Sec. 1. Any director, member of a committee, or officer, or any clerk of a domestic company, who is charged with the duty of handling or investing its funds, shall not:

(1) deposit or invest such funds, except in the corporate name of such company, provided, however, that securities kept under a custodial agreement or trust agreement with a bank or trust company may be issued in the name of a nominee of such bank or trust company if such bank or trust company has corporate trust powers and is duly authorized to act as a custodian or trustee and is organized under the laws of the United States of America or any state thereof and either is a member of the Federal Reserve System or is a member of the Federal Deposit Insurance Corporation;

(2) borrow the funds of such company;

(3) be interested in any way in any loan, pledge, security, or property of such company, except as stockholder; or

(4) take or receive to his own use any fee, brokerage, commission, gift, or other consideration for, or on account of, a loan made by or on behalf of such company.

Sec. 2. The State Board of Insurance may promulgate such regulations as may be deemed necessary to carry out the provisions of this article.

Sec. 3. The provisions of this article are applicable to all domestic insurance companies subject to regulation by the Insurance Code, as amended, and any provision of exemption or any provision of inapplicability or applicability limiting such regulation in any chapter of the code are not in limitation of the provisions of this article, and in the event of conflict between this article and any other article of the code or in the event of any ambiguity, the provisions of this article shall govern.

As used herein, the term "insurance companies" includes stock companies, reciprocals or inter-insurance exchanges, Lloyds associations, fraternal benefit societies, stipulated premium companies, and mutual companies of all kinds, including state-wide mutual assessment corporations, local mutual aids, burial associations, and county mutual insurance companies and farm mutual insurance companies and all other organizations, corporations, or persons transacting an insurance business, unless such insurance companies are by statute specifically, by naming this article, exempted from the operation of this article.

[Added by Acts 1975, 64th Leg., p. 464, ch. 198, § 1, eff. May 15, 1975.]

Art. 21.43. Foreign Insurance Corporations

[See Compact Edition, Volume 2 for text of (a)]

(b) No foreign insurance corporation of a type provided for in any Chapter of this Code shall be denied permission to do business in this state for the reason that the name of such corporation is the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of this state or of any foreign corporation authorized to transact business in this state, provided such foreign insurance corporation files an assumed name certificate setting forth a different name, with the State Board of Insurance and with any county clerks as provided by Sections 36.10 and 36.11 of the Business & Commerce Code. No such foreign insurance corporation shall transact or conduct any business in this state except under the assumed name.

[See Compact Edition, Volume 2 for text of (c)]

[Amended by Acts 1977, 65th Leg., p. 1101, ch. 403, § 3, eff. Aug. 29, 1977.]

Art. 21.48A. Prohibiting Certain Practices Relating to Insurance of Real or Personal Property

Definitions

Sec. 1. (1) "Lender" means any person, partnership, corporation, association, or other entity, or any agent, loan agent, servicing agent, or any loan or mortgage broker, who lends money and receives or otherwise acquires a mortgage, lien, deed of trust, or any other security interest in or upon any real or personal property as security for such loan.

(2) "Borrower" means any person, partnership, corporation, association, or other entity, who has or acquires a legal or equitable interest in real or personal property which is or becomes subject to a mortgage, lien, security agreement, deed of trust, or other security instrument.

Prohibited Practices

Sec. 2. (a) No Lender shall require a fee of over Ten Dollars (\$10.00) for the substitution by the Borrower of an insurance policy for another insurance policy still in effect, or require any fee for the furnishing by the Borrower of an insurance policy for an existing policy upon termination of the existing policy, when such insurance policy is provided through an insurance company duly licensed to do business in the State of Texas pursuant to the provisions of this Insurance Code.

(b) No Lender shall directly or indirectly impose or require as a condition of any financing or lending of money or the renewal or the extension thereof, that the purchaser or borrower or his successors, shall procure any policy of insurance or the renewal or extension thereof, covering the property involved in the transaction, from or through any particular agent or agents, solicitor or solicitors, insurer or insurers, or any other person or persons, or from or through any particular type or class of any of the foregoing.

(c) No Lender shall use or permit the use of any of the information taken from a policy of insurance insuring the property of a Borrower for the purpose of soliciting insurance business from the Borrower, or make any of such information available to any other person for any purpose, unless such Lender has first been furnished specific written authority from the Borrower permitting or directing such particular use or disclosure; provided, however, this paragraph shall not prevent a Lender who is a licensed local recording agent from selling insurance to a Borrower.

(d) No Lender may require a Borrower to furnish evidence of insurance more than fifteen (15) days prior to the termination date of an existing policy.

Exceptions

Sec. 3. Nothing contained in Section 2 hereof shall be deemed to prevent such Lender from:

(a) requiring evidence, to be produced prior to the commencement or renewal of the risk, that insurance with a fixed termination date providing adequate coverage has been obtained in an amount sufficient to cover the debt or loan and that it will not be cancelled without reasonable notice to the lender;

(b) requiring insurance in an insurer authorized to do business and having a licensed resident agent in this state;

(c) refusing to accept or approve insurance in any particular insurer on reasonable and nondiscriminatory grounds relating to its financial soundness, or its facility to service the policy;

(d) providing adequate insurance coverage to protect the Lender's security interest in any property in accordance with the terms of the mortgage, security agreement, deed of trust, or other security instrument should the Borrower fail to furnish an insurance policy meeting the requirements established by the Lender as authorized by this article within fifteen (15) days prior to the termination date of an existing policy, and in such instance the Lender shall be entitled to use any information contained in the existing policy for the purpose of determining adequate insurance coverage;

(e) requiring at or before the time of delivery of an insurance policy to the Lender by a local recording agent or insurer a statement in writing from the Borrower designating such agent or insurer as his agent for such purpose; provided, however, such statement shall not be required when an agent or insurer is furnishing a renewal of an existing expiring policy provided by such agent or insurer;

(f) furnishing to any person, firm, or corporation who is or becomes the owner or holder of any note or obligation secured by a mortgage, security agreement, deed of trust, or other security instrument the policy of insurance or any information contained therein covering property which is security for such loan; or

(g) processing a claim under the terms of the insurance policy.

Violations, Enforcement, and Civil Remedies

Sec. 4. (a) The attorney general or the commissioner or board may institute any injunction or other proceeding to enforce the provisions of this article and to enjoin any person, partnership, corporation, association, or other entity from engaging or attempting to engage in any activity in violation of this article or any of its provisions. The provisions of this section are cumulative of the other penalties or remedies provided for by law.

(b) A Borrower may recover from any Lender who violates any of the provisions of this article civil damages in an amount equal to three (3) times the annual premium for the policy of insurance in force upon the mortgaged property. In the event that such policy of insurance be for a period of more than one (1) year, the annual premium shall be calculated by dividing the number of years of the duration of such policy into the total premium specified therein for such entire period.

Application to Title Insurance

[See Compact Edition, Volume 2 for text of 5]
[Amended by Acts 1977, 65th Leg., p. 349, ch. 171, § 1, eff. Aug. 29, 1977.]

Art. 21.49. Catastrophe Property Insurance Pool Act

[See Compact Edition, Volume 2 for text of 1 to 18]

Payment of Losses Exceeding \$100 Million in Year; Premium Tax Credit

Sec. 19. In the event any occurrence or series of occurrences within the defined catastrophe area results in insured losses of the association totaling in excess of \$100 million within a single calendar year, the proportion of the total loss allocable to each insurer shall be determined in the same manner as its participation in the association has been determined for the year under Subsection (c) of Section 5 of the Texas Catastrophe Insurance Pool Act, as amended, and any insurer which has paid its share of total losses exceeding \$100 million in a calendar year shall be entitled to credit the amount of that excess share against its premium tax under Article 7064, Revised Civil Statutes of Texas, 1925, as amended. The tax credit herein authorized shall be allowed at a rate not to exceed 20 percent per year for five or more successive years following the year of payment of the claims. The balance of payments paid by the insurer and not claimed as such tax credit may be reflected in the books and records of the insurer as an admitted asset of the insurer for all purposes, including exhibition in annual statements pursuant to Article 6.12 of this Insurance Code.

[Amended by Acts 1979, 66th Leg., p. 1599, ch. 675, § 1, eff. Aug. 27, 1979.]

Art. 21.49-1. Insurance Holding Company System Regulatory Act

[See Compact Edition, Volume 2 for text of 1 and 2]

Registration of Insurers

Sec. 3.

[See Compact Edition, Volume 2 for text of 3(a)]

(b) Information and Form Required. Every insurer subject to registration shall file a registration statement on a form provided by the commissioner, which shall contain current information about:

[See Compact Edition, Volume 2 for text of 3(b)(1) and (2)]

(3) the following agreements in force, relationships subsisting, and transactions currently outstanding between such insurer and its holding company, its subsidiaries, or its affiliates:

[See Compact Edition, Volume 2 for text of 3(b)(3)(i) to (iv)]

(v) all management and service contracts and all cost-sharing arrangements; and

[See Compact Edition, Volume 2 for text of 3(b)(3)(vi) to (5), 4]

Acquisition or Retention of Control of or Merger with Domestic Insurer

Sec. 5. (a) Filing Requirements of Public Tenders or Offers. (1) Except as otherwise provided in Subsection (b) of this Section, no person other than the issuer shall make a public tender offer for, solicitation or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire, in the open market or otherwise, from the shareholders, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of such insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer unless, at the time any such offer, request, or invitation is made or any such agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is involved, such person has filed with the commissioner and has sent to such insurer, and such insurer has sent to its shareholders, a statement containing the information required by this section and such offer, request, invitation, agreement, or acquisition has been approved by the commissioner in the manner hereinafter prescribed.

[See Compact Edition, Volume 2 for text of 5(a)(2)]

(b) Filing Requirements of Negotiated Agreements. No person who has executed or entered into a privately negotiated agreement or contract directly with shareholders of a domestic insurer to acquire any voting security of such insurer by which, after the consummation thereof, such person would, directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of such insurer, shall consummate or make effective any such agreement or control, or acquire any further right, title, or interest in such voting security, or exercise any control over such insurer, until and unless such person has filed with the commissioner a statement containing the information required by Subsection (c) of this section and such agreement, contract, and acquisition has been approved by the commissioner in the manner hereinafter prescribed. The statement filed under this Subsection (b) shall be subject to public inspection at the office of the commissioner, and a copy thereof shall be sent to the insurer but shall not be required to be sent to the insurer's shareholders.

(c) Content of Statement. The statement to be filed with the commissioner hereunder shall be made under oath or affirmation and shall contain the following information:

(1) the name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in either Subsection (a) or (b) is to be effected (hereinafter called "acquiring party"), and

(i) if such person is an individual, his principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations during the past 10 years; and

(ii) if such person is not an individual, a report of the nature of its business operations during the past five years or for such lesser period as such person and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by such person and such person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of such person, or who perform or will perform functions appropriate to such positions. Such list shall include for each such individual the information required by Paragraph (i) of this subsection;

(2) the source, nature, and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction wherein funds were or are to be obtained for any such purpose, and the identity of persons furnishing such consideration, provided, however, that where a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing such statement so requests;

(3) fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five fiscal years of each such acquiring party (or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence), and similar unaudited information as of a date not earlier than 90 days prior to the filing of the statement, unless such acquiring party is an individual person in which case he shall provide such personal financial information as required by the commissioner;

(4) any plans or proposals which each acquiring party may have to liquidate such insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management;

(5) the number of shares of any security referred to in either Subsection (a) or (b), which

each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement, or acquisition referred to in either Subsection (a) or (b), and a statement as to the method by which the fairness of the proposal was arrived at;

(6) the amount of each class of any security referred to in either Subsection (a) or (b) which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;

(7) a full description of any contracts, arrangements, or understanding with respect to any security referred to in either Subsection (a) or (b) in which any acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements or understandings have been entered into;

(8) a description of the purchase of any security referred to in either Subsection (a) or (b) during the 12 calendar months preceding the filing of the statement by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor;

(9) a description of any recommendations to purchase any security referred to in either Subsection (a) or (b) made during the 12 calendar months preceding the filing of the statement, by any acquiring party, or by anyone based upon interviews or at the suggestion of such acquiring party;

(10) copies of all tender offers for, requests or invitations for tenders of, exchange offers for, and contracts or agreements to acquire or exchange any securities referred to in either Subsection (a) or (b), and (if distributed) of additional soliciting material relating thereto;

(11) the terms of any agreement, contract or understanding made with any broker-dealer as to solicitation of securities referred to in either Subsection (a) or (b) for tender, and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto;

(12) such additional information as the commissioner may by rule or regulation prescribe as necessary or appropriate for the protection of policyholders and securityholders of the insurer or in the public interest.

If the person required to file the statement referred to in either Subsection (a) or (b) is a partnership, limited partnership, syndicate, or other group, the commissioner may require that the information called for by Clauses (1) through (12) shall be given with respect to each partner of such partnership or

limited partnership, each member of such syndicate or group, and each person who controls such partner or member. If any such partner, member, or person is a corporation or the person required to file the statement referred to in either Subsection (a) or (b) is a corporation, the commissioner may require that the information called for by Clauses (1) through (12) shall be given with respect to such corporation, each officer and director of such corporation, and each person who is directly or indirectly the beneficial owner of more than 10 percent of the outstanding voting securities of such corporation.

If any material change occurs in the facts set forth in the statement filed with the commissioner and sent to such insurer pursuant to this section, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the commissioner and sent to such insurer within two business days after the person learns of such change.

(d) Alternative Filing Materials. If any offer, request, invitation, contract, agreement, or acquisition referred to in either Subsection (a) or Subsection (b) is proposed to be made by means of a registration statement under the Securities Act of 1933, as amended,¹ or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, as amended,² or under a State law requiring similar registration or disclosure, the person required to file the statement referred to in either Subsection (a) or Subsection (b) may utilize such documents in furnishing the information called for by that statement.

(e) Approval by Commissioner; Hearings. (1) The commissioner shall approve any such acquisition of control referred to in either Subsection (a) or Subsection (b) unless, after a public hearing thereon, he finds that:

(i) after the change of control the domestic insurer referred to in either Subsection (a) or Subsection (b) would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(ii) the effect of such acquisition of control would be substantially to lessen competition in insurance in this State or tend to create a monopoly therein;

(iii) the financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders or the interests of any remaining securityholders who are unaffiliated with such acquiring party;

(iv) the terms of the offer, request, invitation, agreement, or acquisition referred to in Subsection (a) are unfair and unreasonable to the securityholders of the insurer;

(v) the plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair, prejudicial, hazardous, or unreasonable to policyholders or stockholders of the insurer and not in the public interest;

(vi) the competence, trustworthiness, experience, and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control; or

(vii) such acquisition or merger would violate any law of this or any other state or of the United States.

(2) The public hearing referred to in Clause (1) hereof shall be held within 30 days after the statement required by either Subsection (a) or Subsection (b) is filed, and at least 20 days' notice thereof shall be given by the commissioner to the person filing the statement and to the domestic insurer. Not less than 10 days' notice of such public hearing shall be given by the person filing the statement to such other persons as may be designated by the commissioner. The insurer shall give prompt notice of the hearing to its securityholders as prescribed in Subsection (f) hereof. The commissioner shall make a determination within 30 days after the conclusion of such hearing. At such hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interests may be affected thereby shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments in connection therewith.

(f) Mailings to Shareholders; Payment of Expenses. Except as provided in Subsection (b), all statements, amendments, or other material filed pursuant to Subsection (a), (b), or (c), and all notices of public hearings held pursuant to Subsection (e), shall be mailed by the insurer to its shareholders within five business days after the insurer has received such statements, amendments, other material, or notices. The expenses of mailing shall be borne by the person making the filing. As security for the payment of such expenses, such person shall file with the commissioner an acceptable bond or other deposit in an amount to be determined by the commissioner.

(g) Exemptions. The provisions of this section shall not apply to:

(1) any offers, requests, invitations, agreements, or acquisitions by the person referred to in Subsection (a) who is a broker-dealer under state or federal securities laws of any voting security referred to in Subsection (a) which, immediately

prior to consummation of such offer, request, invitation, agreement, or acquisition, was not issued and outstanding and which acquisition is solely for resale under a plan approved by the commissioner that will not reasonably result in acquisition of control on resale and where during the period prior to resale no actual positive act of control by virtue of those shares is committed;

(2) any transaction which is subject to the provisions of: (i) Article 21.25, Sections 1 through 5, of this code, dealing with the merger or consolidation of two or more insurers and complying with the terms of such article until the plan of merger or consolidation has been filed by the insurer with the Commissioner of Insurance in accordance with such Article 21.25. After the filing of such plan of merger or consolidation the transaction shall be subject to the approval provisions of Subsection (e) of Section 5 of this article, but the Commissioner may exempt such transaction from any or all of the other provisions and requirements of Section 5 of this article if he finds that the notice, proxy statement, and other materials furnished to shareholders and security holders in connection with such merger or consolidation contained reasonable and adequate factual and financial disclosure, material and information relating to such transaction, (ii) Article 11.20 of this code, (iii) Article 11.21 of this code, (iv) Article 14.13 of this code, (v) Article 14.61 of this code, (vi) Article 14.63 of this code, (vii) Article 21.26 of this code, provided that the requirements of said article are fully complied with, (viii) Article 22.15 of this code, and (ix) Article 22.19 of this code, provided that the reinsurance is a total direct reinsurance agreement; or

(3) any offer, request, invitation, agreement, or acquisition which the commissioner by order shall exempt therefrom as (i) not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer, or (ii) as otherwise not comprehended within the purposes of this section.

(h) Retention of Control. (1) The following conditions affecting any controlled insurer, regardless of when such control has been acquired, are violations of this article: (i) the violation of this article, or other demonstration of untrustworthiness, by the insurer, its holding company or any controlling person, or any of the officers or directors of either; or (ii) the violation of any provision of Chapter 15 of the Business and Commerce Code, Chapter 785, Acts of the 60th Legislature, 1967, as amended, or any other antitrust law of this State by the insurer, the holding company or any affiliate. If, after notice and an opportunity to be heard the commissioner determines that any of the foregoing violations exists, he shall reduce his findings to writing and shall issue an order based thereon and cause the same to

be served upon the insurer and upon all persons affected thereby directing any person found to be in violation hereof to take appropriate action to cure such violation. Upon the failure of any such person to comply with such order, Section 3 of Article 1.14 of this code shall become applicable to such person, as well as any other provisions of this article.

(2) The commissioner may require the submission of such information as he deems necessary to determine whether any retention of control complies with this article and may require, as a condition of approval of such retention of control, that all or any portion of such information be disclosed to the insurer's stockholders.

(i) Duty of Insurer. Unless subject to registration under Section 3, or unless it is a foreign insurer not subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this article, or unless acquisition of its control is subject to Subsections (a), (b), (c), and (d) hereof, every authorized insurer shall, on or before November 1, 1971, or within 30 days after any event requiring notice hereunder, whichever is later, notify the commissioner in writing of the identity of any person whom the insurer then knows, or has reason to believe, controls or has taken any action, other than preliminary negotiations or discussions, to acquire control of the insurer.

(j) Violations. The following shall be violations of this section:

(1) the failure to file any statement, amendment, or other material required to be filed pursuant to this section; or

(2) the effectuation or any attempt to effectuate an acquisition of control of, or merger with, a domestic insurer unless the commissioner has given his approval thereto.

(k) Jurisdiction; Consent to Service of Process. The courts of this State are hereby vested with jurisdiction over every person not resident, domiciled, or authorized to do business in this State who files a statement with the commissioner under this section, and over all actions involving such person arising out of violations of this section, and each such person shall be deemed to have performed acts equivalent to and constituting an appointment by such person of the commissioner to be his true and lawful attorney upon whom may be served all lawful process in any action, suit, or proceeding arising out of violations of this section. Copies of all such lawful process shall be served on the commissioner and transmitted by registered or certified mail by the commissioner to such person at his last known address.

¹ 15 U.S.C.A. § 77a et seq.

² 15 U.S.C.A. § 78a et seq.

Subsidiaries of Insurers

Sec. 6. (a) Any domestic insurer, either by itself or in cooperation with one or more persons, may organize, acquire, invest in or make loans to one or more subsidiaries, and may loan to or invest in affiliates, as permitted by the investment provisions of the Insurance Code.

(b) Additional investment authority. In addition to investments in common stock, preferred stock, debt obligations, and other securities permitted under all other sections of the Insurance Code, a domestic insurer may also:

(1) invest in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries and affiliates organized for any lawful purpose amounts which in the aggregate do not exceed the lesser of five percent of the insurer's assets or 50 percent of the insurer's surplus as regards policyholders, but after such investments the insurer's surplus as regards policyholders must be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. In calculating the amount of such investments, there must be included (i) total net money or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of the subsidiary whether or not represented by the purchase of capital stock or issuance of other securities, and (ii) all amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities and all contributions to the capital or surplus of a subsidiary subsequent to its acquisition or formation;

(2) if the insurer's total liabilities, as calculated for National Association of Insurance Commissioners annual statement purposes, are less than 10 percent of assets, invest any amount in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries and affiliates organized for any lawful purpose, but after such investment the insurer's surplus as regards policyholders, considering such investment as if it were a nonadmitted asset, must be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs;

(3) invest any amount in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries and affiliates organized for any lawful purpose, provided that such subsidiary or affiliate agrees to limit its investments in any particular asset so that such investments will not cause the amount of the total investment of the insurer to exceed the amount the insurer could have directly invested in such asset. For the purpose of this clause, "the total investment of the insurer" will include (i) any

direct investment by the insurer in an asset and (ii) the insurer's proportionate share of any investment in such asset by any subsidiary or affiliate of the insurer, which must be calculated by multiplying the amount of the subsidiary's or affiliate's investment by the percentage of the insurer's ownership of such subsidiary or affiliate; and

(4) with the prior approval of the commissioner, invest any amount in common stock, preferred stock, debt obligations, or other securities of one or more subsidiaries and affiliates, but after such investment the insurer's surplus as regards policyholders must be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(c) Exemption from Investment Restrictions. Investments in common stock, preferred stock, debt obligations, or other securities of subsidiaries and affiliates made under Subsection (b) hereof are not subject to any of the otherwise applicable restrictions or prohibitions contained in this code applicable to such investment of a company subject to this code, but such investments are subject to all of the provisions of Section 4 of this Act.

(d) Qualification of Investment. Whether any investment under Subsection (b) hereof meets the applicable requirements thereof is to be determined on a pro forma basis as of the time immediately after such investment is made, taking into account the insurer's assets, liabilities, and surplus as regards policyholders, the then outstanding principal balance of all previous investments in debt obligations of subsidiaries and affiliates, and the value of all previous investments in equity securities of subsidiaries and affiliates.

(e) Cessation of Control. If an insurer ceases to control a subsidiary, it must dispose of any investment therein made under Subsection (b) within three years from the time of the cessation of control or within such further time as the commissioner may prescribe and approve, unless at any time after the investment is made the investment otherwise meets the requirements of and qualifies for investment under any other section of this code, and the insurer has notified the commissioner thereof.

Valuation of Investment in a Subsidiary or Affiliate

Sec. 6A. (a) Valuation of an investment by an insurer in a subsidiary or affiliate of an insurer, which is not itself an insurer, shall be valued, subject to the additional provisions of this section, on the basis of the greater of:

(1) the net stockholder equity value owned by the insurer in the subsidiary or affiliate, adjusted to include the value of only such of the assets of such subsidiary as would constitute lawful investments for the insurer if acquired or held directly by the insurer; or

(2) one of the following bases appropriate to each type of subsidiary or affiliate owned by it, provided, however, that an insurer shall not be required to value the stock of all its subsidiaries or affiliates on the same basis:

(i) the net worth of the subsidiary or affiliate determined in accordance with generally accepted accounting principles as of the end of its most recent fiscal year, provided, subject to the other provisions of this section, that the financial statements of the subsidiary or affiliate for its most recent fiscal year have been audited by an independent certified public accountant in accordance with generally accepted auditing standards; or

(ii) a value equal to the cost of the stock of the subsidiary or affiliate, provided such value is determined and adjusted to reflect subsequent operating results in accordance with generally accepted accounting principles; or

(iii) the market value of the stock of the subsidiary or affiliate, if the stock is listed on a national securities exchange; or

(iv) the value, if any, placed on the stock of such subsidiary or affiliate by the National Association of Insurance Commissioners; or

(v) any other value which the insurer can substantiate to the satisfaction of the commissioner as being a reasonable value.

(b) Within 60 days after the effective date of this section, an insurer shall file with the commissioner relevant information identifying, supporting, and justifying the value of and basis of valuation used in accordance with the provisions of Subsection (a) hereof for each of its noninsurer subsidiaries and affiliates.

(c) Within 30 days after the acquisition of a noninsurer subsidiary or affiliate, an insurer shall file with the commissioner relevant information identifying, supporting, and justifying the value of and the basis of valuation used in accordance with the provisions of Subsection (a) for such subsidiary or affiliate.

(d) A valuation basis used for a subsidiary or affiliate shall thereafter be consistently used unless a change is substantiated as reasonable and on that basis is approved in writing by the commissioner.

(e) If a subsidiary or affiliate is valued on the basis of Subsection (a)(2)(i) and the books of the subsidiary or affiliate are not audited at the time the valuation is included in the insurer's annual statement, the insurer shall thereafter report and explain the difference, if any, between the value of the subsidiary or affiliate as reported in the annual statement and the value as determined by audit. Such report and explanation shall be made as soon as possible following such audit.

(f) If any subsidiary or affiliate, which is not itself an insurance company, is valued other than on a basis of market value as defined in Subsection (a)(2)(iii), there shall be deducted from otherwise determined value a sum equal to the value claimed for any of its assets which would not constitute admitted assets for the insurer if held directly by the insurer, if such assets

(1) are held by the subsidiary or affiliate but used, under a lease agreement or otherwise, significantly in the conduct of the insurer's business; or

(2) were acquired from or purchased for the benefit or use of the insurer by the subsidiary or affiliate under specific circumstances that, in the opinion of the commissioner, support a reasonable finding that the primary purpose of such acquisition or purchase was the evasion or avoidance of the Insurance Code.

(g) The commissioner may, after notice and opportunity to be heard, determine that the basis used for valuation of the stock of any subsidiary or affiliate does not, under the specific circumstances of the case, reflect the value of the subsidiary or affiliate and may order either an adjustment in valuation or the use of one of the other specified bases of valuation.

[See Compact Edition, Volume 2 for text of 7 to 15]

Rescission, Revocation, and Reversal of Unauthorized Transactions

Sec. 16. Whenever it appears to the commissioner that any person has entered into any transaction or act without having first complied with the provisions of this article applicable to such transaction or act, and in violation hereof, or has obtained his approval of or acquiescence in a transaction or act subject to this article based upon a material fraudulent misrepresentation, misstatement, or omission, the commissioner may, after giving notice and an opportunity to be heard, determine and order that such transaction or act be set aside, rescinded, revoked, reversed, and rendered void and of no force or effect, and that the parties to such transaction or act shall be returned to the position they would have occupied had not such transaction or act occurred in violation of this article.

[See Compact Edition, Volume 2 for text of 17 and 18]

[Amended by Acts 1977, 65th Leg., p. 2195, ch. 868, §§ 1 to 5, eff. May 11, 1977.]

Art. 21.49-3. Medical Liability Insurance Underwriting Association Act

Short Title

Sec. 1. This Act shall be known as the "Texas Medical Liability Insurance Underwriting Association Act."

Definitions

Sec. 2. (1) "Medical liability insurance" means primary and excess insurance coverage against the legal liability of the insured and against loss, damage, or expense incident to a claim arising out of the death or injury of any person as the result of negligence in rendering or the failure to render professional service by a health care provider or physician who is in one of the categories eligible for coverage by the association.

(2) "Association" means the joint underwriting association established pursuant to the provisions of this article.

(3) "Net direct premiums" means gross direct premiums written on automobile liability and liability other than auto insurance written pursuant to the provisions of the Insurance Code, less policyholder dividends, return premiums for the unused or unabsorbed portion of premium deposits and less return premiums upon cancelled contracts written on such liability risks.

(4) "Board" means the State Board of Insurance of the State of Texas.

(5) "Physician" means a person licensed to practice medicine in this state.

(6) "Health care provider" means any person; partnership, professional association, corporation, facility, or institution duly licensed or chartered by the State of Texas to provide health care as defined in Section 1.03(2), Medical Liability Insurance Improvement Act of Texas,¹ as a registered nurse, hospital, dentist, podiatrist, pharmacist, chiropractor, optometrist, or not-for-profit nursing home, or a radiation therapy center that is independent of any other medical treatment facility and which is licensed by the Texas State Radiation Control Agency pursuant to the provisions of Chapter 72, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 4590f, Vernon's Texas Civil Statutes), and which is in compliance with the regulations promulgated by the Texas State Radiation Control Agency, a blood bank that is a nonprofit corporation chartered to operate a blood bank and which is accredited by the American Association of Blood Banks, or a nonprofit corporation which is organized for the delivery of health care to the public and which is certified under Article 4509a, Revised Civil Statutes of Texas, 1925, or an officer, employee, or agent of any of them acting in the course and scope of his employment.

¹ Civil Statutes, art. 4590i.

Joint Underwriting Association

Sec. 3. (a) A joint underwriting association is hereby created, consisting of all insurers authorized to write and engaged in writing, within this state, on a direct basis, automobile liability and liability other than auto insurance on or after January 1,

1975, as provided in the Insurance Code, specifically including and applicable to Lloyds and reciprocal or interinsurance exchanges, but excluding farm mutual insurance companies as authorized by Chapter 16 of this code, and county mutual insurance companies as authorized by Chapter 17 of this code. Every such insurer shall be a member of the association and shall remain a member as a condition of its authority to continue to transact such kind of insurance in this state. The purpose of the association shall be to provide medical liability insurance on a self-supporting basis. The association shall not be a licensed insurer within the meaning of Article 1.14-2, Insurance Code.

(b) The association shall, pursuant to the provisions of this article and the plan of operation with respect to medical liability insurance, have the power on behalf of its members:

(1) to issue, or to cause to be issued, policies of insurance to applicants, including primary, excess, and incidental coverages and subject to limits as specified in the plan of operation; provided that no individual or organization may be insured by policies issued by the association for an amount exceeding a total of \$750,000 per occurrence and \$1.5 million aggregate per annum;

(2) to underwrite such insurance and to adjust and pay losses with respect thereto, or to appoint service companies to perform those functions;

(3) to either or both accept and refuse the assumption of reinsurance from its members; and

(4) to cede and purchase reinsurance.

(c)(1) The board shall, after consultation with the joint underwriting association, representatives of the public, the Texas Medical Association, the Texas Podiatry Association, the Texas Hospital Association, and other affected individuals and organizations, promulgate a plan of operation consistent with the provisions of this article, to become effective and operative no later than 90 days after the effective date of this Act.

(2) The plan of operation shall provide for economic, fair, and nondiscriminatory administration and for the prompt and efficient provision of medical liability insurance, and shall contain other provisions including, but not limited to, preliminary assessment of all members for initial expenses necessary to commence operations, establishment of necessary facilities, management of the association, assessment of members and assessment of policyholders to defray losses and expenses, administration of the policyholder's stabilization reserve fund, commission arrangements, reasonable and objective underwriting standards, acceptance, assumption, and cession of reinsurance, appointment of servicing carriers, and procedures for determining amounts of insurance to be provided by the association.

(3) The plan of operation shall provide that any balance remaining in the funds of the association at the close of its fiscal year, meaning its then excess of revenue over expenditures after reimbursement of members' contributions in accordance with Section 4(b)(5) of this article by the association shall be added to the reserves of the association.

(4) Amendments to the plan of operation may be made by the directors of the association, subject to the approval of the board, or shall be made at the direction of the board.

Eligibility for Coverage

Sec. 3A. The board shall establish by order the categories of physicians and health care providers who are eligible to obtain coverage from the association and may, from time to time, revise its order to include or exclude from eligibility particular categories of such physicians and health care providers.

Procedures

Sec. 4. (a)(1) Any health care provider or physician included in one of the categories of health care providers eligible for coverage by the association shall, on or after the effective date of the plan of operation, be entitled to apply to the association for such coverage. Such application may be made on behalf of an applicant by an agent authorized pursuant to Article 21.14 of this code.

(2) If the association determines that the applicant meets the underwriting standards of the association as prescribed in the plan of operation and there is no unpaid, uncontested premium, policyholder stabilization reserve fund charge, or assessment due from the applicant for prior insurance (as shown by the insured having failed to pay or make written objection to such charges within 30 days after billing) then the association, upon receipt of the premium and the policyholder stabilization reserve fund charge, or such portion thereof as is prescribed in the plan of operation, shall cause to be issued a policy of medical liability insurance for a term of one year.

(b)(1) The rates, rating plans, rating rules, rating classifications, territories, and policy forms applicable to the insurance written by the association and statistics relating thereto shall be subject to Subchapter B of Chapter 5 of the Insurance Code, as amended,¹ giving due consideration to the past and prospective loss and expense experience for medical professional liability insurance within and without this state of all of the member companies of the association, trends in the frequency and severity of losses, the investment income of the association, and such other information as the board may require; provided, that if any article of the above subchapter is in conflict with any provision of this Act, this Act shall prevail.

(2) Within such time as the board shall direct, the association shall submit, for the approval of the board pursuant to Article 5.15 of the Insurance Code, an initial filing, in proper form, of policy forms, classifications, rates, rating plans, and rating rules applicable to medical liability insurance to be written by the association.

(3) Any deficit sustained by the association in any one year shall be recouped, pursuant to the plan of operation and the rating plan then in effect, by one or more of the following procedures in this sequence:

First, a contribution from the policyholder's stabilization reserve fund until the same is exhausted.

Second, an assessment upon the policyholders pursuant to section 5(a) of this article;

Third, an assessment upon the members pursuant to Section 5(b) of this article. To the extent a member has paid one or more assessments and has not received reimbursement from the association in accordance with Subdivision (5) of this subsection, a credit against premium taxes under Article 7064, Revised Civil Statutes of Texas, 1925, as amended shall be allowed. The tax credit shall be allowed at a rate of 20 percent per year for five successive years following the year in which said deficit was sustained and at the option of the insurer may be taken over an additional number of years.

(4) After the initial year of operation, rates, rating plans, and rating rules, and any provision for recoupment should be based upon the association's loss and expense experience, together with such other information based upon such experience as the board may deem appropriate. The resultant premium rates shall be on an actuarially sound basis and shall be calculated to be self-supporting.

(5) In the event that sufficient funds are not available for the sound financial operation of the association, in addition to assessments paid pursuant to the plan of operation in accordance with Section 3(c)(2) of this article and contributions from the policyholder's stabilization reserve fund, all members shall, on a basis authorized by the board, as long as the board deems it necessary, contribute to the financial requirements of the association in the manner provided for in Section 5. Any assessment or contribution shall be reimbursed to the members with interest at a rate to be approved by the board. Pending recoupment or reimbursement of assessments or contributions paid to the association by a member, the unrepaid balance of such assessments and contributions may be reflected in the books and records of the insurer as an admitted asset of the insurer for all purposes, including exhibition in annual statements pursuant to Article 6.12 of this code.

(c) Excess insurance coverage written for a health care provider or a physician by the association under this article shall be written on a following form basis to the primary insurance coverage of that health care provider.

¹ Article 5.13 et seq.

Policyholder's Stabilization Reserve Fund

Sec. 4A. There is hereby created a policyholder's stabilization reserve fund which shall be administered as provided herein and in the plan of operation of the association. Each policyholder shall pay annually into the stabilization reserve fund a charge, the amount of which shall be established annually by advisory directors chosen by health care providers and physicians eligible for insurance in the association in accordance with the plan of operation. The charge shall be in proportion to each premium payment due for liability insurance through the association. Such charge shall be separately stated in the policy, but shall not constitute a part of premiums or be subject to premium taxation, servicing fees, acquisition costs, or any other such charges. The policyholder's stabilization reserve fund shall be collected and administered by the association and shall be treated as a liability of the association along with and in the same manner as premium and loss reserves. The fund shall be valued annually by the board of directors as of the close of the last preceding year. Collections of the stabilization reserve fund charge shall continue until such time as the net balance of the stabilization reserve fund is not less than the projected sum of premiums to be written in the year following valuation date. The fund shall be credited with all stabilization reserve fund charges collected from policyholders and shall be charged with any deficit from the prior year's operation of the association.

Participation

Sec. 5. (a) Each policyholder shall have contingent liability for a proportionate share of any assessment of policyholders made under the authority of this article. Whenever a deficit, as calculated pursuant to the plan of operation, is sustained by the association in any one year, its directors shall levy an assessment only upon those policyholders who held policies in force at any time within the two most recently completed calendar years in which the association was issuing policies preceding the date on which the assessment was levied. The aggregate amount of the assessment shall be equal to that part of the deficit not recouped from the stabilization reserve fund. The maximum aggregate assessment per policyholder shall not exceed the annual premium for the liability policy most recently in effect. Subject to such maximum limitation, each policyholder shall be assessed for that portion of the deficit reflecting the proportion which the earned premium on the policies of such policyholder bears to

the total earned premium for all policies of the association in the two most recently completed calendar years.

(b) All insurers which are members of the association shall participate in its writings, expenses, and losses in the proportion that the net direct premiums, as defined herein, of each such member, excluding that portion of premiums attributable to the operation of the association, written during the preceding calendar year bears to the aggregate net direct premiums written in this state by all members of the association. Each insurer's participation in the association shall be determined annually on the basis of such net direct premiums written during the preceding calendar year, as reported in the annual statements and other reports filed by the insurer that may be required by the board. No member shall be obligated in any one year to reimburse the association on account of its proportionate share in the deficit from operations of the association in that year in excess of one percent of its surplus to policyholders and the aggregate amount not so reimbursed shall be reallocated among the remaining members in accordance with the method of determining participation prescribed in this subdivision, after excluding from the computation the total net direct premiums of all members not sharing in such excess deficit. In the event that the deficit from operations allocated to all members of the association in any calendar year shall exceed one percent of their respective surplus to policyholders, the amount of such deficit shall be allocated to each member in accordance with the method of determining participation prescribed in this subdivision.

Directors

Sec. 6. The association shall be governed by a board of nine directors, to be elected annually by the members of the association. On or before 15 days after the effective date of this Act, the State Board of Insurance shall appoint a temporary board of directors of the association which shall consist of nine members who are representatives of the association, selected so as to fairly represent various classes of member insurers and organizations of insurers. Such temporary board of directors shall serve until the first annual meeting of the members of the association or until their successors have been elected in accordance with this section. The first elected board shall be elected at the annual meeting of the members, or their authorized representatives, which shall be held at a time and place designated by the board.

Appeals

Sec. 7. (a) Any person insured or applying for insurance pursuant to this Act, or his duly authorized representative, or any affected insurer who may be aggrieved by an act, ruling, or decision of the

association, may, within 30 days after such act, ruling, or decision, appeal to the board of directors of the association. The board of directors of the association shall hear said appeal within 30 days after receipt of such request or appeal and shall give not less than 10 days' written notice of the time and place of hearing to the person making such request or the duly authorized representative. Within 10 days after such hearing, the board of directors of the association shall affirm, reverse, or modify its previous action or the act, ruling, or decision appealed to the board of directors of the association.

(b) In the event any person insured or applying for insurance is aggrieved by the final action of the board of directors of the association or in the event the association is aggrieved by the action of the board with respect to any ruling, order, or determination of the board of directors of the association or the board, the aggrieved party may, within 30 days after such action, make a written request to the board for a hearing thereon. The board shall hear the association, or the appeal from an act, ruling, or decision of the association, within 30 days after receipt of such request or appeal and shall give not less than 10 days' written notice of the time and place of hearing to the association making such request or the person, or his duly authorized representative, appealing from the act, ruling, or decision of the board of directors of the association. Within 30 days after such hearing, the board shall affirm, reverse, or modify its previous action or the act, ruling, or decision appealed to the board. Pending such hearing and decision thereon, the board may suspend or postpone the effective date of its previous rule or of the act, ruling, or decision appealed to the board. The association, or the person aggrieved by any order or decision of the board, may thereafter appeal in accordance with Article 1.04(f) of the Insurance Code of Texas.

Privileged Communications

Sec. 8. There shall be no liability on the part of, and no cause of action of any nature shall arise against the association, its agents or employees, an insurer, any licensed agent, or the board or its authorized representatives, for any statements made in good faith by them in any reports or communications, concerning risks insured or to be insured by the association, or at any administrative hearings conducted in connection therewith.

Annual Statements

Sec. 9. The association shall file in the office of the board, annually on or before the first day of March, a statement which shall contain information with respect to its transactions, condition, operations, and affairs during the preceding calendar year. Such statement shall contain such matters and information as are prescribed and shall be in

such form as is approved by the board. The board may, at any time, require the association to furnish additional information with respect to its transactions, condition, or any matter connected therewith considered to be material and of assistance in evaluating the scope, operation, and experience of the association.

Examinations

Sec. 10. The board shall make an examination into the affairs of the association at least annually. Such examination shall be conducted, the report thereon filed, and expenses borne and paid for, in the manner prescribed in Articles 1.15 and 1.16 of the Insurance Code.

Dissolution of the Association

Sec. 11. Upon the effective date of this article, the board shall, after consultation with the joint underwriting association, representatives of the public, the Texas Medical Association, the Texas Podiatry Association, the Texas Hospital Association, and other affected individuals and organizations, promulgate a plan of dissolution consistent with the provisions of this article, to become effective and operative on December 31, 1981, unless the board determines before that time that the association is no longer needed to accomplish the purposes for which it was created and orders its dissolution, in which case, the plan of dissolution shall become effective on the date of dissolution ordered by the board. The plan of dissolution shall contain provisions for maintaining reserves for losses which may be reported subsequent to the expiration of all policies in force. If, at the expiration of five years and annually thereafter, if necessary, from December 31, 1981, or the date of dissolution ordered by the board, the board finds, after notice and hearing, that all known claims have been paid or otherwise disposed of by the association, then the board may wind up the affairs of the association by paying to a special fund created by the statutory liquidator of the board a reasonable reserve to be administered by said liquidator for unknown claims; reimbursing assessments and contributions of members in accordance with Section 4(b)(5) of this article, and distributing the remainder to the policyholders ratably in proportion to premiums and assessments paid during or after the last two years in which the association was issuing policies. If such reserve fund administered by the statutory liquidator proves inadequate, the association shall be treated as an insolvent insurer in respect to the application of the provisions of Article 21.28-C, Property and Casualty Insurance Guaranty Act, Insurance Code. Notice of claim shall be made upon the board.

Authority of the Board Over Dissolution

Sec. 12. Before December 31, 1979, if the board finds that the association is no longer needed to

accomplish the purposes for which it was created, the board may issue an order dissolving the association as of a certain date stated in the order.

Termination of Policies

Sec. 13. After December 31, 1981, if no earlier dissolution date is ordered by the board, or after the date ordered for dissolution by the board, no policies will be issued by the association. All then issued policies shall continue in force until terminated in accordance with the terms and conditions of such policies.

[Added by Acts 1975, 64th Leg., p. 867, ch. 331, § 1, eff. June 3, 1975. Amended by Acts 1977, 65th Leg., p. 129, ch. 59, §§ 1, 2, eff. April 13, 1977; Acts 1977, 65th Leg., p. 2057, ch. 817, §§ 31.03 to 31.12, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 147, ch. 79, §§ 1 & 2, eff. Aug. 27, 1979.]

Section 2 of the 1975 Act provided:

"(a) There is created a medical professional liability study commission to consist of the following members:

- (1) the lieutenant governor, or his designee;
- (2) the speaker of the Texas House of Representatives, or his designee;
- (3) one senator who shall be a member of the Senate Economic Development Committee, to be appointed by the lieutenant governor;
- (4) one representative who shall be a member of the House Insurance Committee, to be appointed by the speaker;
- (5) two representatives of the joint underwriting association established in this bill, to be appointed by the chairman of the board of directors;
- (6) two persons licensed to practice medicine in Texas, to be appointed or designated by the president of the Texas Medical Association;
- (7) two persons licensed to practice law in Texas, to be appointed or designated by the president of the State Bar of Texas;
- (8) two licensed insurance agents, one to be appointed or designated by the president of the Texas Association of Insurance Agents and one member to be appointed by the president of the Insurance Counselors of Texas;
- (9) two hospital administrators, to be appointed or designated by the Texas Hospital Association;
- (10) two individuals not associated with any of the above associations, to be appointed by the governor; and
- (11) two members representing the two insurers which would have the largest assessment under Section 5 of this Act.

"(b) The commission shall meet and organize before August 1, 1975. Appointments or designations shall be made by an authorized official or public official by notifying in writing the chairman of the board of directors of the association, with a copy to the Secretary of State of Texas. The lieutenant governor or his designee or a member of the commission appointed by the lieutenant governor shall serve as chairman. The commission shall meet at least twice in calendar year of 1975 and at least four times annually thereafter, or more often as the commission considers necessary to carry out its purposes.

"(c) The legislative council shall provide staff assistance to the commission if necessary.

"(d) The commissioner of insurance shall provide all information and reports at his disposal which the commission requests.

"(e) No member of the commission shall be entitled to any compensation, except all reasonable travel and other expenses shall be paid to the commission members. Any commission member who is a member of the legislature shall be entitled to reimbursement of his expenses from the appropriate contingent expense fund.

"(f) The commission is authorized to employ such staff as it sees fit to carry out its functions.

"(g) The commission shall have authority to adopt reasonable rules and regulations in relation to such items as meetings, quorums, voting, and other matters relating to the orderly conduct of its business.

"(h) The commission shall make specific recommendations, including proposed legislation to the governor, lieutenant governor, speaker, legislative council, and members of the legislature on or before December 1, 1976. The report shall offer specific recommendations regarding the professional liability problem. In addition, the report shall include, but not be limited to, discussions of the following topics:

- (1) the scope and extent of the medical professional liability problem;
- (2) reasons for the increase in such claims;
- (3) effects of the rise in such claims on physicians and health care providers, including the increased use of defensive medicine and increased premium costs;
- (4) effect of claims increase on patients, including increased costs;
- (5) alternative approaches and proposed solutions to this problem;
- (6) review of comparable law on compensation commissions, arbitration panels, screening panels, and recommendations regarding use;
- (7) review of existing and proposed laws governing compensation and the amount of compensation to patients, including the time within which claims may be brought and the elements of loss for which compensation may be recovered;
- (8) the existing tort law in the area of concern and recommendations for change, if any;

(9) any other matters or procedures which the commission considers relevant to its report.

"(c) This commission shall expire on the last day of the regular session of the 65th Legislature."

Section 3 of the 1975 Act was repealed by Acts 1977, 65th Leg., p. 2064, ch. 817, § 41.03. Prior thereto it read:

"This Act shall take effect upon its passage; provided, however, that after December 31, 1977, no new policies will be issued by the association. All then issued policies shall continue in force until their expiration."

Art. 21.49-4. Self-Insurance Trusts

(a) In this article:

(1) "Physician" means a person licensed to practice medicine in this state.

(2) "Dentist" means a person licensed to practice dentistry in this state.

(3) "Health care liability claim" means a cause of action against a physician or dentist for treatment, lack of treatment, or other claimed departure from accepted standards of health care or safety which proximately results in injury to or death of the patient, whether the patient's claim or cause of action sounds in tort or contract.

(b) An incorporated association, the purpose of which, among other things, shall be to federate and bring into one compact organization the entire profession licensed to practice medicine and surgery or dentistry in the State of Texas and to unite with similar associations of other states to form a nationwide medical association or dental association, may create a trust to self-insure physicians or dentists and by contract or otherwise agree to insure other members of the organization or association against health care liability claims and related risks on complying with the following conditions:

(1) the organization or association must have been in continuing existence for a period of at least two years prior to the effective date of this Act;

(2) establishment of a health care liability claim trust or other agreement to provide coverage against health care liability claims and related risks; and

(3) employment of appropriate professional staff and consultants for program management.

(c) The trust may purchase, on behalf of the members of the organizing association, medical professional liability insurance, specific excess insurance, aggregate excess insurance, and reinsurance, as in the opinion of the trustees are necessary. The trust fund is further authorized to purchase such risk management services as may be required and pay claims that arise under any deductible provisions.

(d) The trust investment powers and limitations shall be the same as those of any state bank with trust powers. The trust shall adopt rules and regulations to guarantee all contingent liabilities in the event of dissolution.

(e) The trust is not engaged in the business of insurance under this code and other laws of this

state and the provisions of any chapters or sections of this code are declared inapplicable to a trust organized and operated under this article, provided that the State Board of Insurance may require any trust created under this article to satisfy reasonable minimum requirements to insure the capability of the trust to satisfy its contractual obligations.

[Added by Acts 1977, 65th Leg., p. 2063, ch. 817, § 31.13, eff. Aug. 29, 1977.]

Art. 21.49-4a. Coverage of Physicians Under Contracts of Professional Liability Insurance Issued by Health Care Liability Claim Trusts

Contracts of professional liability insurance issued by a health care liability claim trust created under Article 21.49-4, Insurance Code, may include any of the following:

(1) Coverage of professional associations and partnerships of physicians against health care liability claims and related risks where a majority of the persons having a proprietary interest in the professional association or partnership to be insured are members of the association that created such trust.

(2) Coverage of proprietary members, associates, and stockholders of such professional associations and partnerships and executive officers and directors thereof, with respect to potential vicarious liability for acts or omissions of others giving rise to health care liability claims and related risks.

(3) Coverage of insured physicians and, as applicable, insured professional associations and partnerships (including proprietary members, associates, and stockholders thereof and executive officers and directors thereof) with respect to liability on the part of any applicable insured arising out of:

(i) injuries to patients related to ownership, maintenance, or use of premises for the practice of medicine, including operations necessary or incidental thereto; or

(ii) service by an insured physician as a member of a duly established committee, board, or similar group of a hospital medical staff or of a professional association or society with respect to medical staff privileges, accreditation, or disciplinary matters relating to competency or patient safety and risk reduction programs; or

(iii) health care liability claims or related risks based in whole or in part upon any act or omission occurring prior to the date a contract of professional insurance is issued by such trust.

(4) Coverage of an applicant for membership in the association that created such trust, pending final action upon such application, with respect to health care liability claims and related risks, in-

cluding coverages described in the preceding Sub-paragraphs (1), (2), and (3), as applicable.
 [Added by Acts 1979, 66th Leg., p. 335, ch. 152, § 1, eff. May 11, 1979.]

Art. 21.49-5. [Blank]

Art. 21.49-6. Self-Insurance Trusts for Banks

Definitions

Sec. 1. In this article:

- (1) "Bank" means any bank chartered under the provisions of federal or state law.
- (2) "Board" means the State Board of Insurance.
- (3) "Trustees" means the trustees of a self-insurance trust created under this article.

Authorization to Create Trusts to Self-Insure Banks

Sec. 2. On approval of its plan of organization and operation as provided in Section 3 of this article, a group or association of banks or bankers, composed of any number of members, may create a trust to self-insure banks that are members of the group or association or any of whose officers are members of the group or association against losses resulting from dishonest acts and criminal acts of employees or losses resulting from robbery or both.

Plan of Organization and Operation

Sec. 3. Before organizing and operating a trust as provided in this article, the group or association proposing to organize the trust shall select trustees to administer the trust and shall prepare a detailed plan of organization and operation in the form and manner prescribed by the board. The plan shall be submitted to the board for examination, suggested changes, and final approval, and may be amended from time to time with the approval of the board.

Approval of Plan

Sec. 4. The board shall approve a self-insurance plan under this article only if it is satisfied that the trust has and will continue to possess the ability to pay valid claims made against it.

Creation of Trust Fund

Sec. 5. (a) The trustees of the self-insurance trust shall create a trust fund to pay claims made under the coverage provided in Section 2 of this article.

(b) The fund shall be under the administration and control of the trustees and shall be paid out on claims and shall be invested as provided in the plan.

Participation in Trust; Contributions

Sec. 6. Any bank that is a member or any of whose officers are members of the group or association organizing the trust may participate in the self-insurance trust by entering into contract or

agreement with the trustees for insurance under the trust against losses resulting from dishonest acts or criminal acts of its employees or losses resulting from robbery, or both, and shall pay the required contribution to the trust fund.

Amount of Coverage

Sec. 7. The amount of coverage to be provided banks participating in the trust and the amount of contributions to be paid by those banks shall be determined by the trustees as provided in the plan.

Professional Staff and Consultants

Sec. 8. (a) The trustees shall employ appropriate professional staff and consultants for program management.

(b) Salaries for professional staff and consultants and for paying the costs of administering the trust program shall be paid from the trust fund; provided that, the total amount for payment of salaries and administration shall not exceed an amount fixed by the board but in no event to exceed 35 percent of the total amount of money in the trust fund in any one year.

Continuing Supervision

Sec. 9. A self-insurance trust approved by the board under the provisions of this article is subject to the continuing supervision of the board relating to its solvency and to approval of its policy forms, and the board may set certain minimum requirements to ensure the capability of the trust to satisfy its contractual obligations.

Rules

Sec. 10. The board may adopt necessary rules to carry out the provisions of this article.

Trust Not Engaged in Business of Insurance

Sec. 11. A self-insurance trust created under this article is not engaged in the business of insurance under this code and under other laws of this state, and the provisions of any chapters or articles of this code, including Article 21.28-C, are declared inapplicable to a trust organized and operated under this article.

[Added by Acts 1977, 65th Leg., p. 1698, ch. 674, § 1, eff. June 15, 1977.]

Art. 21.49-9. Exclusionary Clauses in Health Insurance

No individual policy or group policy of accident or sickness insurance, including policies issued by companies subject to Chapter 20 of this code, delivered or issued for delivery to any person in this state, may include a provision that excludes or limits coverage of the insurer from paying benefits covered by The Medical Assistance Act of 1967, as amended (Article 695j-1, Vernon's Texas Civil Statutes).¹

[Added by Acts 1979, 66th Leg., p. 1988, ch. 783, § 3, eff. Sept. 1, 1979.]

¹ Repealed; see, now Human Resources Code, § 32.001 et seq.

Section 4 of the 1979 Act provided:

"Articles 21.49-9 and 21.49-10, Insurance Code, as added by this Act, apply to all accident and sickness policies issued or issued for delivery, renewed, extended, or amended in this state on or after January 1, 1980."

Art. 21.49-10. Payment to State

Each individual policy or group policy of accident or sickness insurance, including policies issued by companies subject to Chapter 20 of this Code, delivered or issued for delivery to any person in this state shall provide for payment to the Texas Department of Human Resources for the actual cost of medical expenses the department pays through medical assistance for a person insured by the contract if the insured is entitled to payment for the medical expenses by the insurance contract.

[Added by Acts 1979, 66th Leg., p. 1988, ch. 783, § 3, eff. Sept. 1, 1979.]

Policies to which this article applies, see note under art. 21.49-9.

Art. 21.52. Right to Select Practitioner under Health and Accident Policies

Definitions

Sec. 1. As used in this article:

(a) "health insurance policy" means any individual, group, blanket, or franchise insurance policy, insurance agreement, or group hospital service contract, providing benefits for medical or surgical expenses incurred as a result of an accident or sickness;

(b) "doctor of podiatric medicine" includes D.P.M., podiatrist, doctor of surgical chiropody, D.S.C., and chiropodist;

(c) "doctor of optometry" includes optometrist, doctor of optometry, and O.D.; and

Text of subsection (d) as added by Acts 1979, 66th Leg., p. 340, ch. 155, § 1

(d) "doctor of chiropractic" means a person who is licensed by the Texas Board of Chiropractic Examiners to practice chiropractic.

Text of subsection (d) as added by Acts 1979, 66th Leg., p. 1037, ch. 467, § 1

(d) "licensed dentist" means a person who is licensed to practice dentistry by the State Board of Dental Examiners.

Application of this Article

Sec. 2. This article applies to and embraces all insurance companies, associations, and organizations, whether incorporated or not, which provide health benefits, accident benefits, or health and accident benefits for medical or surgical expenses incurred as a result of an accident or sickness. Without limiting the foregoing, this article specifically applies to the insurance companies, associations, and organizations which come within the purview of the following designated chapters of the Insurance Code: Chapter

3, pertaining to life, health and accident insurance companies; Chapter 8, pertaining to general casualty companies; Chapter 10, pertaining to fraternal benefit societies; Chapter 11, pertaining to mutual life insurance companies; Chapter 12, pertaining to local mutual aid associations; Chapters 13 and 14, pertaining to statewide mutual assessment companies, mutual assessment companies, and mutual assessment life, health and accident associations; Chapter 15, pertaining to mutual insurance companies writing other than life insurance; Chapter 18, pertaining to underwriters making insurance on the Lloyd's Plan; Chapter 19, pertaining to reciprocal exchanges; and Chapter 22, pertaining to stipulated premium insurance companies. This article also applies to health maintenance organizations established pursuant to Chapter 214, Acts of the 64th Legislature, Regular Session, 1975 (Articles 20A.01-20A.33, Insurance Code), as now or hereafter amended.

Selection of Practitioners.

Text of section as amended by Acts 1979, 66th Leg., p. 16, ch. 8, § 1; Acts 1979, 66th Leg., p. 340, ch. 155, § 1

Sec. 3. Any person who is issued, who is a party to, or who is a beneficiary under any health insurance policy delivered, renewed, or issued for delivery in this state by any insurance company, association, or organization to which this article applies may select a licensed doctor of podiatric medicine or a doctor of chiropractic to perform the medical or surgical services or procedures scheduled in the policy which fall within the scope of the license of that doctor or a licensed doctor of optometry to perform the services or procedures scheduled in the policy which fall within the scope of the license of that doctor of optometry, and payment or reimbursement by the insurance company, association, or organization for those services or procedures in accordance with the payment schedule or the payment provisions in the policy shall not be denied because the same were performed by a licensed doctor of podiatric medicine, a licensed doctor of optometry, or a licensed doctor of chiropractic. There shall not be any classification, differentiation, or other discrimination in the payment schedule or the payment provisions in a health insurance policy, nor in the amount or manner of payment or reimbursement thereunder, between scheduled services or procedures when performed by a doctor of podiatric medicine, a doctor of optometry, or a doctor of chiropractic which fall within the scope of his license and the same services or procedures when performed by any other practitioner of the healing arts whose services or procedures are covered by the policy. Any provision in a health insurance policy contrary to or in conflict with the provisions of this article shall, to the extent of the conflict, be void, but such invalidity shall not affect the validity of the other provi-

sions of this policy. Any presently approved policy form containing any provision in conflict with the requirements of this Act shall be brought into compliance with this Act by the use of riders and endorsements which have been approved by the State Board of Insurance or by the filing of new or revised policy forms for approval by the State Board of Insurance.

Selection of Practitioners

Text of section as amended by Acts 1979, 66th Leg., p. 16, ch. 8, § 1; Acts 1979, 66th Leg., p. 1037, ch. 467, § 1

Sec. 3. Any person who is issued, who is a party to, or who is a beneficiary under any health insurance policy delivered, renewed, or issued for delivery in this state by any insurance company, association, or organization to which this article applies may select a licensed doctor of podiatric medicine or a licensed dentist to perform the medical or surgical services or procedures scheduled in the policy which fall within the scope of the license of that doctor or a licensed doctor of optometry or licensed dentist to perform the services or procedures scheduled in the policy which fall within the scope of the license of that doctor of optometry or licensed dentist, and payment or reimbursement by the insurance company, association, or organization for those services or procedures in accordance with the payment schedule or the payment provisions in the policy shall not be denied because the same were performed by a licensed doctor of podiatric medicine, a licensed doctor of optometry, or a licensed dentist. There shall not be any classification, differentiation, or other discrimination in the payment schedule or the payment provisions in a health insurance policy, nor in the amount or manner of payment or reimbursement thereunder, between scheduled services or procedures when performed by a doctor of podiatric medicine, a doctor of optometry, or a licensed dentist which fall within the scope of his license and the same services or procedures when performed by any other practitioner of the healing arts whose services or procedures are covered by the policy. Any provision in a health insurance policy contrary to or in conflict with the provisions of this article shall, to the extent of the conflict, be void, but such invalidity shall not affect the validity of the other provisions of this policy. Any presently approved policy form containing any provision in conflict with the requirements of this Act may be brought into compliance with this Act by the use of riders and endorsements which have been approved by the State Board of Insurance or by the filing of new or revised policy forms for approval by the State Board of Insurance.

Certain Exemptions not Applicable

Sec. 4. The exemptions and exceptions in Articles 13.09 and 21.41 of the Insurance Code do not apply to this article.

[Added by Acts 1977, 65th Leg., p. 1102, ch. 404, § 1, eff. June 15, 1977. Amended by Acts 1979, 66th Leg., p. 16, ch. 8, § 1, eff. March 7, 1979; Acts 1979, 66th Leg., p. 340, ch. 155, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1037, ch. 467, § 1, eff. Aug. 27, 1979.]

Section 2 of the 1977 Act provided:

"All laws or parts of laws in conflict with this Act are repealed to the extent of such conflict."

Section 2 of Acts 1979, 66th Leg., p. 1038, ch. 467, provided:

"The provisions of Section 3, Article 21.52, Insurance Code, relating to certain insurance coverage of services of a licensed dentist are applicable only to policies delivered, renewed, or issued for delivery in this state more than 90 days after the effective date of this Act."

Arts. 21.53 to 21.76. [Blank]

Art. 21.77. **Group Marketing of Motor Vehicle Insurance**

Purpose

Sec. 1. The purpose of this article is to authorize the writing of motor vehicle insurance covering persons over 55 years of age in this state on a group marketing basis subject to the conditions stated in this article and to set forth the terms and conditions under which insurance covering persons over 55 years of age on a group marketing basis may be written.

Definitions

Sec. 2. As used in this article:

(1) "Group motor vehicle insurance" means all motor vehicle insurance covering persons over 55 years of age that is offered by a licensed insurer in this state on a group marketing plan to an eligible group as defined in this article.

(2) "Group marketing" means the marketing of group motor vehicle insurance by a licensed insurer otherwise engaged in insuring independent individual risks to an eligible group on a guaranteed basis under a single insurance program without individual underwriting selection or individual proof of insurability.

Eligible Group

Sec. 3. Any group, to be eligible for group marketing, must have been in existence for at least six months before the purchase of the insurance and must be a group organized for a purpose other than to become an insurance group under this Act, and the group may include any group that will be actuarially credible for underwriting purposes.

Eligible Members of Group

Sec. 4. Eligible members of a group shall include all members in good standing in the group who are over 55 years of age and lawful drivers.

Conditions

Sec. 5. (a) Group motor vehicle insurance may be issued in this state provided the conditions in this section are met.

(b) The insurer and the group insured must accept all members who are eligible and wish to participate in the plan.

(c) To qualify to write the group insurance defined in this article, an insurer must also be engaged in the business of writing the type of coverage offered for insureds other than group and may not be organized solely for the purpose of furnishing coverage to such groups.

(d) Each member of the group shall be issued a policy on forms prescribed for issue in this state by the State Board of Insurance.

(e) Insurance must be provided by individual policies to each member of the group under an agreement whereby the premiums on the policies will be paid to the insurer periodically by the group.

(f) An insurer may not cancel the insurance of an individual member of the group except for the non-payment of premiums by the member or unless the insurance for the entire group is cancelled, and in such cases, notice of cancellation as provided in like nongroup policies shall be given to each member.

(g) The plan shall provide that only those motor vehicles owned by members of the group or their spouses jointly or severally shall be eligible for coverage.

Maintenance of Records

Sec. 6. Every insurer writing insurance under a group marketing plan shall keep and maintain separate experience data on this type of business, including complete records of premium income, losses, and expenses so that the experience may be fairly ascertained.

Rates

Sec. 7. Rates for the type of business authorized under this article shall be determined, fixed, prescribed, and promulgated in the manner provided in Article 5.01, Insurance Code, as amended, so far as it is applicable.

Policy Forms

Sec. 8. All policy forms for insurance written under this article shall be prescribed by the board as provided in Article 5.06, Insurance Code.

Rules

Sec. 9. The board may make any rules necessary to carry out the provisions of this article.

Construction of Other Provisions

Sec. 10. The provisions of Article 21.02 of this code may not be construed to apply to groups participating in group plans approved under this article. [Added by Acts 1979, 66th Leg., p. 1028, ch. 461, § 1, eff. Aug. 27, 1979.]

CHAPTER TWENTY-TWO. STIPULATED PREMIUM INSURANCE COMPANIES

Art. 22.13. Policy Form Approval

[See Compact Edition, Volume 2 for text of 1 to 4]

Reductions or Increases

Sec. 5. A. Any policy may provide for reduced benefits when death or injury occurs while the insured is engaged in military, naval, aerial service or aerial flight in time of peace or war; or in case of death of the insured by his own hand while sane or insane; or while engaged in certain hazardous occupations to be named in the policy. Attention shall be called on the front page of the policy to any reduction or exclusion of benefits provided in any life policy, and the circumstances or conditions under which reduction or exclusion of benefits are applicable shall be plainly stated in the policy.

B. In the event a policy providing natural death benefits shall contain a provision for reduction (other than for the specific reductions enumerated and authorized by Subparagraph A of Section 5 of this Article 22.13) of the highest or ultimate death benefit stated in such policy for a specified insured, such reduced death benefit for such specified insured shall at all times during the period of time such reduction in death benefit is in effect equal at least 120 percent of the total premium then paid upon such policy by such specified insured; the period of any such reduced benefit (other than as enumerated and authorized by Subparagraph A of Section 5 of this Article 22.13) shall not exceed five years from issue date. This Subparagraph A of Section 5 of this Article 22.13 shall not be applicable, however, to any policy of life insurance upon which the reduction of the death benefit is not applicable at the time of the death of such specified insured.

C. In the event a policy of life insurance shall provide, during any of the first five years of such policy, for an increase in the death benefit whereby the initial amount of the death benefit for a specified insured shall be increased one or more times during such five-year period, such amount of death benefit for any such specified insured shall at all times during the period or periods of such increasing benefit equal at least 120 percent of the premiums paid on such policy by such specified insured during the period of such increase. This Subparagraph C of this Section 5 of this Article 22.13 shall not be applicable, however, to any policy of life insurance after it has been in force for more than five years from the policy issue date.

D. The provisions of Section 5 of this Article 22.13 shall not be applicable to family group life policies as the term "family group life policies" is defined in Section 1(b) of Article 22.11 of this Insurance Code.

E. The provisions of this Section 5 of this Article 22.13 shall not apply to health and accident policies.

[See Compact Edition, Volume 2 for text of 6]

[Amended by Acts 1975, 64th Leg., p. 1035, ch. 400, § 2, eff. Nov. 1, 1975.]

Section 1 of the 1975 Act amended art. 14.20; § 3 thereof provided: "The provisions of this Act shall be effective on November 1, 1975, and any insurer issuing a policy which has been previously approved for issuance in this state may bring it into compliance with the provisions of this Act by the use of endorsements thereon or affixed thereto, provided that any such endorsement is approved by the State Board of Insurance prior to usage."

Art. 22.23. Issuance of Life Insurance Policies and Annuity Contracts by Stipulated Premium Companies

Each stipulated premium company possessing capital and unencumbered surplus of at least the combined total sum of \$100,000.00 may issue policies of life insurance as authorized and permitted under the provisions of Chapter Three of this Insurance Code provided that:

- (1) no individual life shall be insured for more than \$5,000.00,
- (2) each such policy shall be reserved and reinsured as required under the provisions of Chapter Three of this Insurance Code, and
- (3) each such life policy shall be issued only upon an endowment or limited pay basis.

Each stipulated premium company possessing capital and unencumbered surplus of at least the combined total sum of \$100,000.00, over and above all liabilities, including contingent liabilities, may issue annuity contracts as authorized and permitted under the provisions of Chapter Three of this Insurance Code. Reserves on such contracts shall be maintained in accordance with the statutes governing reserves on equivalent contracts issued by legal reserve companies, as such laws now exist or as they may hereafter be amended. Any insurer which elects to write annuity contracts under authority of this Article shall thereafter be required to maintain capital and unencumbered surplus of at least the combined total sum of \$100,000.00, over and above all liabilities, including contingent liabilities, and any such company shall be regarded as insolvent which fails to maintain capital and unencumbered surplus of at least a combined total sum of \$100,000.00, over and above all liabilities, including contingent liabilities.

[Amended by Acts 1975, 64th Leg., p. 1126, ch. 425, § 1, eff. June 19, 1975.]

CHAPTER TWENTY-THREE. NON-PROFIT LEGAL SERVICES CORPORATIONS

Article
 23.01. Incorporations; Definitions.
 23.02. Supervision; Requirements.
 23.03. Attorneys Under Contract.
 23.04. Officers: Employees Bond.
 23.05. Claims: Cancellation of Certificate of Authority.

Article
 23.06. Dissolution.
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Art. 23.01. Incorporation; Definitions

Any seven or more persons on application to the secretary of state for a corporate charter under the Texas Non-Profit Corporation Act as a nonmembership corporation may be incorporated for the sole purpose of establishing, maintaining, and operating non-profit legal service plans, whereby legal services may be provided by such corporation through contracting attorneys as is hereinafter provided.

As used in this chapter, the following words, unless the context of their use clearly indicates otherwise, shall have the following meanings:

- (1) "Attorney" means a person currently licensed by the Supreme Court of Texas to practice law.
- (2) "Applicant" means a person applying for a legal services contract for performance of legal services through a corporation qualified under this chapter.
- (3) "Benefit certificate" means a writing setting forth the benefits and other required matters issued to a participant under a group contract for legal services and also an individual contract for legal services issued to a participant.
- (4) "Contracting attorney" means an attorney who has entered into the contract provided by Article 23.11 of this code.
- (5) "Participant" means the person entitled to performance of legal services under contract with a corporation qualified under this chapter.
- (6) "State Board of Insurance" means all of the insurance regulatory officials whose duties and functions are designated by the Insurance Code of Texas as such now exists or may be amended in the future. Any duty stated by this chapter to be performed by or to be placed on the State Board of Insurance is placed upon and is to be performed by the insurance regulatory official or group of officials on whom similar duties are placed or to

be performed for insurers or the business of insurance by the Insurance Code. The multimember insurance regulatory body designated by the Insurance Code as the uniform insurance rule-making authority is authorized to enact rules designating the proper insurance regulatory official to perform any duty placed by this chapter on the insurance regulatory officials where such duty is not similar to duties otherwise performed by a specific official or group of such officials.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.02. Supervision; Requirements

All corporations organized under the provisions of this chapter shall be under the direct supervision of the State Board of Insurance, and shall be subject to the following requirements:

(1) After incorporation, but as a condition of doing business other than seeking applicants and obtaining contracting attorneys, they shall have collected in advance from at least 200 applicants (unless a lesser number of applicants is found by the State Board of Insurance to be a large enough number of applicants to constitute a workable prepaid legal service plan) the application fee and at least one month's payment for services. Such funds shall, at all times prior to issuance by the State Board of Insurance of its certificate of authority as below provided, be maintained in a trust account in a bank in Texas and shall be refunded in full should such certificate of authority not be issued. It shall thereafter be a condition of continued operation that a minimum number of 200 participants or lesser number previously approved by the State Board of Insurance be maintained.

(2) They shall file a statement of their operations for the year ending December 31 each year, said statement to reach the State Board of Insurance not later than March 1 of the succeeding year. The statements shall be on such forms and shall reveal such information as shall be required by the State Board of Insurance.

(3) They shall maintain solvency in each of its funds, i. e., the admitted assets of each such fund shall exceed its liabilities (except for claim liability covered by attorney guarantees provided by Article 23.15 of this code), and it shall be a continuing condition of licensing by the State Board of Insurance that such solvency be maintained.

(4) If any such corporation files an acceptable statement showing solvency, and otherwise complies with this chapter, the State Board of Insurance shall issue it a certificate of authority authorizing it to transact business until such certificate shall be revoked for noncompliance with law, by operation of law or as provided by this chapter.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.03. Attorneys Under Contract

Each corporation complying with the requirements of this chapter before issuing any contract for pre-paid legal services shall have and so long as it issues such contracts maintain such number of contracting attorneys as is sufficient in the determination of the State Board of Insurance to service the participant contracts contemplated by the corporation's plan of operation.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.04. Officers: Employees Bond

Each corporation complying with the requirements of this chapter shall, by resolution adopted and entered on its minute book, a copy of which properly certified to by the president, secretary, or general manager shall be filed with the State Board of Insurance, designate some officer or officers who shall be responsible in the handling of the funds of the corporation. Said corporation shall make and file for each such officer a surety bond or blanket bond covering all such officers with a corporate surety company authorized to write surety bonds in this state, as surety, satisfactory and payable to the State Board of Insurance in the sum of not less than \$25,000 for each officer for the use and benefit of said corporation, which said bond shall obligate the principal and surety to pay such pecuniary loss as the corporation shall sustain through acts of fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction or willful misapplication on the part of each such officer, either directly and alone or in connivance with others, while employed as such an officer or exercising powers of such office. In lieu of such bond any such officer may deposit with the State Board of Insurance cash (or securities approved by the State Board of Insurance) which cash or securities shall be in the amount and subject to the same conditions as provided for in said bond.

In addition to the bond required in the preceding paragraph, each corporation shall procure for all other office employees, or other persons who may have access to any of its funds, separate bonds or blanket bonds with some surety licensed by the State Board of Insurance to do business in Texas, in an amount or amounts fixed by the State Board of Insurance with a minimum of \$1,000 and a maximum of \$10,000 for each employee, satisfactory and payable to the State Board of Insurance for the use and benefit of the corporation obligating the principal and surety to pay each pecuniary loss as the corporation shall sustain through acts of fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction or willful misapplication on the part of such persons, either directly and alone, or in connivance with others. Successive recoveries on any of the bonds provided from this article may be had on such bonds until same are exhausted.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.05. Claims; Cancellation of Certificate of Authority

All lawful claims for payment based upon certificates issued to participants shall be paid within 120 days after receipt of due proof of claim. Written notice of claim given to a corporation complying with the requirements of this chapter shall be deemed due proof in the event the corporation fails, upon receipt of notice, to furnish the participant making claim within 15 days such forms as are usually furnished by it for filing such claims. The State Board of Insurance after public hearing on written specifications after 20 days notice shall cancel the certificate of authority of any such corporation found to be not in compliance with this chapter, operating fraudulently, or which fails to pay its valid claims in accordance with the provisions of this article.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.06. Dissolution

Any dissolution or liquidation of any corporation subject to the provisions of this chapter shall be under the supervision of the State Board of Insurance. In case of dissolution of any group formed under the provisions of this chapter, participants' claims shall be given priority over all other claims except cost of liquidation.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.07. Method of Dissolution

Any corporation operating under this chapter may be dissolved at any time by a vote of its board of directors, and after such action has been approved by the State Board of Insurance. In the case of voluntary dissolution, the disposition of the affairs of the corporation shall be made by the officers (including the settlement of all outstanding obligations to participants), and when the liquidation has been completed and a final statement, in acceptable form, filed with and approved by the State Board of Insurance, the provisions for voluntary dissolution under the Texas Non-Profit Corporation Act shall be followed to dissolve the corporation. In all other cases where a corporation operating under this chapter is found to be insolvent, or to have violated the provisions of this chapter, on a determination of this condition, and after due notice and hearing, the affairs of the corporation shall be disposed of by a liquidator appointed by and under the supervision of the State Board of Insurance, or, in appropriate cases, under the direction of a court of competent jurisdiction in Travis County.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.08. Fees; Taxes

(a) The State Board of Insurance shall charge a fee of \$50 for filing the annual statement of each corporation operating under this chapter; an appli-

cation fee of \$100 for each corporation applying under this chapter; and a fee of \$25 for the issuance of each certificate of authority to the corporation.

(b) To defray the expense of carrying out the provisions of this chapter, there shall be annually assessed and collected by the State of Texas, through the State Board of Insurance, from each corporation operating under this chapter, in addition to all other taxes now imposed, or which may hereafter be imposed by law, a tax of one percent of all revenues received by such corporation in return for issuance of prepaid legal services contracts in this state, according to the reports made to the State Board of Insurance as required by law. Said taxes, when collected, shall be placed in a separate fund with the State Treasurer which shall be kept separate and apart from other funds and money in his hands, and shall be known as the Prepaid Legal Services Fund, said fund to be expended during the current and succeeding years, or so much thereof as may be necessary, in carrying out such provisions. Such expenditures shall not exceed in the aggregate the sum assessed and collected from such corporations; and should there be an unexpended balance at the end of any year, the State Board of Insurance shall reduce the assessment for the succeeding year so that the amount produced and paid into the State Treasury together with said unexpended balance in the treasury will be sufficient to pay all expenses of carrying out the provisions of this chapter, which funds shall be paid out and filed by a majority of the State Board of Insurance when the comptroller shall issue warrants therefor. Any amount remaining in said fund at the end of any year shall be carried over and expended in accordance with the provisions of this article during the subsequent year or years. Provided, that no expenditures shall be made from said fund except under authority of the legislature as set forth in the general appropriations bill.

(c) The payment of the maximum tax of one percent provided by the preceding section of this article by any corporation complying with this chapter in any year either as a maintenance tax or as a voluntary elected payment into the General Revenue Fund of the State of Texas or a combination of such payments equaling such one percent shall be deemed to be a payment in lieu of any franchise or other gross receipts tax by or under the laws of this state and such corporation shall be exempt from such franchise and other gross revenue taxes as would apply to such corporation during the period for which the one percent tax or voluntary payment or combination thereof is made.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.09. Applications

Any corporation complying with the requirements of this chapter shall be authorized to accept appli-

cants, who upon issuance of a benefit certificate shall be entitled to legal services for such period of time as is provided therein. Such corporation shall be governed by this chapter and shall not be construed as being engaged in the business of insurance nor subject to laws respecting insurers so long as it complies with the provisions of this chapter. The provisions of this article shall not be deemed to declare the issuance of contracts for prepaid legal services when done by those entities other than corporations complying with this chapter not to be the business of insurance. The right of corporations complying with the requirements of this chapter to issue prepaid legal services contracts on individual, group, and franchise bases is recognized.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.10. Corporations Non-Profit; Funds; Investments

The corporations complying with the requirements of this chapter shall be governed and conducted as non-profit nonmembership organizations for the purpose of contracting for and obtaining legal services for their participants through contracting attorneys, in consideration of the payment by the participants of a definite sum to fund the payment of attorneys fees for the legal services to be furnished by the contracting attorneys. Provided further, that each such corporation shall have two funds, namely: the claim fund and the expense fund. The claim fund shall be composed of at least 80 percent of the regular payments by participants, and the application fees. The percentage amounts above stated may be modified by the State Board of Insurance upon showing that such is in the best interest of the then existing persons receiving legal services under contract or that such is necessary for the development of the corporation during its first year of existence. The application fees shall be paid by applicants prior to issuance of a benefit certificate, and shall not apply as a part of the cost of receiving benefits under the benefit certificate issued. Claim fund investments may include, besides lawful money and demand deposits, only certificates of deposits, share accounts, and time deposits in public banks and savings and loan institutions whose deposits are insured by a federal governmental agency, and obligations of a state or the federal government; and the expense fund investments may include only such as are legal investments for the capital, surplus, and contingency funds of capital stock life insurance companies. The net income from the investments shall accrue to the funds, respectively, from which the investments were made. The claim fund shall be disbursed only for the payment of valid claims, taxes on income of such fund, security transfer costs, and refunds of fees paid into such fund; and to the extent approved by the State Board of Insurance, cost of settling contested claims, expenses directly

incurred on or for preservation of investments of the claim fund and contracts authorized under Article 23.19 of this code.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.11. Authority to Contract

Corporations complying with the requirements of this chapter shall have authority to contract in accordance with this chapter with attorneys in such manner as to assure to each participant holding a benefit certificate of the corporation the furnishing of such legal services by attorney under contract, or who shall agree to contract, to the extent agreed upon in prepaid legal service contract between the corporation and the participant, with the right to the corporation to limit in the prepaid legal service contract and benefit certificate the types and extent of benefits and the circumstances for which such legal services shall be furnished.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.12. Limitations

The corporation complying with the requirements of this chapter shall not contract itself to practice law in any manner, nor shall the corporation control or attempt to control the relations existing between a participant and his or her attorney, but the corporation shall confine its activities to contracting as an agent on behalf of its participants for legal services to be rendered only by and through contracting attorneys, who shall never be employees of the corporation but shall at all times be independent contractors maintaining a direct lawyer and client relationship with the participants. Such corporation must agree to contract under Article 23.11 of this code with any attorney licensed by the Supreme Court to practice law in Texas. Contracting attorneys shall maintain such professional liability, and errors and omissions insurance as the corporation shall deem proper and the State Board of Insurance may by uniform rule declare a minimum amount of each such coverage to be maintained.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.13. Contingent Liabilities

Any person may advance to the corporation on contingent liability basis such funds as are necessary for the purposes of its business or to enable it to comply with any requirements of this chapter and such money and interest thereon as may have been agreed upon shall be repayable and shall be repaid only on prior approval of the State Board of Insurance.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.14. Supervision

Every corporation complying with the requirements of this chapter shall, before accepting applications for participation in said non-profit legal service

plan, have sufficient money in its expense fund to cover initial operations and shall submit to the State Board of Insurance a plan of operation together with a rate schedule of its charges to participants and a schedule and projections of costs of legal services to be contracted for on behalf of the participants; which plan, rate schedule, and the sufficiency of expense fund shall first be approved by the State Board of Insurance as adequate, fair, and reasonable and not excessive before such corporation shall engage in business. The State Board of Insurance shall have continuing control over the plan of operation of such corporation and its rate schedule of charges to participants. No change in such plan or rate schedule shall be effectuated without its first being filed and approved by the State Board of Insurance.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.15. Approval of Rates

The State Board of Insurance shall likewise approve the ratio of benefits to be paid to anticipated revenues from the rate schedule proposed to be used if such be found to be actuarially sound. No prepaid legal services contract or benefit certificate thereunder shall be issued by corporations complying with this chapter without such finding. The contracting attorneys shall guarantee to the participants the services stated under the benefit certificates and shall agree to perform such services which they agree to render to the participants under the benefit certificates without there being any liability for the cost thereof to the participants beyond the funds of such corporation held for their benefit in accordance with the plan of operation of the corporation. Such corporations may issue prepaid legal service contracts without such guarantees and providing for indemnity for costs of attorney services where the attorney is not a contracting attorney under such rules and regulations as may be approved by the State Board of Insurance provided that the State Board of Insurance be satisfied that the plan of operation, financial standing and experience of the corporation (including but not limited to a proper amount of free surplus) is adequate to assure the performance of such contracts.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.16. Benefit Certificates and Legal Services Contracts

Every corporation shall issue to its applicants that are covered by a contract for prepaid legal services benefit certificates setting forth the benefits to which they are or may become entitled. Such certificates, application forms, and contracts made between the corporation and the participants' employer or group representative shall be in form approved by the State Board of Insurance prior to issuance. The State Board of Insurance shall be authorized to

issue rules and regulations concerning such forms to provide that they shall properly describe their benefits and not be unjust, misleading, or deceptive. [Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.17. Blank Deposits

All funds collected from applicants and participants of a corporation complying with this chapter shall be deposited to the account of the corporation in a public bank, which is a state depository having Federal Deposit Insurance Corporation protection of its deposits.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.18. Finance Procedures

A corporation complying with the requirements of this chapter shall not pay any of the claim funds collected from participants to any attorney except for legal services rendered by such attorney to the participants.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.19. Participation Contracts; Agreements with Insurers

Corporations complying with the requirements of this chapter shall be authorized to contract with other organizations complying with this chapter and insurers licensed to do business in Texas for joint participation through mutualization contract agreements or guaranty treaties or otherwise cede or accept legal services obligations from such companies on the whole or any part of such legal service obligations, provided that such contract forms, documents, treaties, or agreement forms are filed with and approved by the State Board of Insurance to be in accordance with the plan of operation of the corporation prior to their effectiveness.

The State Board of Insurance shall be authorized to issue rules and regulations concerning such participation contracts and agreements with insurers as provided by this article in accordance with and in carrying out its purposes.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.20. Expenses of Directors: Meetings

No director of any corporation created under this chapter shall receive any salary, wages, or compensation for his services, but shall be allowed reasonable and necessary expenses incurred in attending any meeting called for the purpose of managing or directing the affairs of the corporation.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.21. Examination of Books and Records

Every corporation complying with this chapter shall keep complete books and records, showing all funds collected and disbursed, and all books and records shall be subject to examination by the State

Board of Insurance, the expense of such examination to be borne by said corporation.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.22. Complaints

The State Board of Insurance shall refer any complaints received by it concerning the performance of any attorney connected with any corporation complying with this chapter to the Supreme Court of the State of Texas or to any person designated by the Supreme Court to receive attorney grievances from the public.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.23. Regulation of Agents

(a) The State Board of Insurance may after notice and hearing promulgate such reasonable rules and regulations as are necessary to license and control agents of corporations complying with this chapter. An agent means a natural person who solicits legal services contracts or enrolls applicants.

(b) The Commissioner of Insurance shall collect in advance from agents of corporations complying with this chapter a license fee of \$25 and an examination fee of \$10. A new examination fee shall be paid for each and every examination. The examination fee shall not be returned under any circumstances other than for failure to appear and take the examination after the applicant has given at least 24 hours notice of an emergency situation to the Commissioner of Insurance and received the commissioner's approval.

(c) Each license issued to agents of corporations complying with this chapter shall expire two years following the date of issue, unless prior thereto it is suspended or revoked by the Commissioner of Insurance or the authority of the agent to act for the corporation complying with this chapter is terminated.

(d) Licenses which have not expired or which have not been suspended or revoked may be renewed upon request in writing of the agent and payment of \$25 renewal fee.

(e) Any agent licensed under this article may represent and act as an agent for more than one corporation complying with this chapter at any time while his or its license is in force, if he or it so desires. Any such agent and the corporation complying with this chapter involved must give notice to the State Board of Insurance of any additional appointment or appointments authorizing him or it to act as agent for an additional corporation complying with this chapter. Such notice must set forth the corporation or corporations complying with this chapter which the agent is then licensed to represent and shall be accompanied by a certificate from each corporation complying with this chapter to be named in each additional appointment that said corporation desires to appoint the applicant as its agent. This notice

shall also contain such other information as the State Board of Insurance may require. The agent shall be required to pay a fee of \$8 for each additional appointment applied for, which fee shall accompany the notice.

(f) All fees collected pursuant to this article constitute a fund to be used by the State Board of Insurance to administer the provisions of Chapter 23 and all laws of this state governing and regulating agents for such corporations complying with this chapter, which fees shall be paid into the State Treasury to the credit of the Prepaid Legal Services Fund and shall be paid out for salaries, traveling expenses, office expenses, and other incidental expenses incurred and approved by the State Board of Insurance.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 459, ch. 212, § 3, eff. Aug. 27, 1979.]

Art. 23.24. Hazardous Financial Condition

(a) Whenever the financial condition of any corporation complying with the requirements of this chapter indicates a condition such that the continued operation of such corporation might be hazardous to its participants, creditors, or the general public, then the State Board of Insurance may, after notice and hearing, order such corporation to take such action as may be reasonably necessary to rectify the existing condition, including but not necessarily limited to one or more of the following steps:

(1) to reduce the total amount of present and potential liability for benefits by use of Article 23.19 of this code;

(2) to reduce the volume of new business being accepted;

(3) to reduce expenses by specified methods; or

(4) to suspend or limit the writing of new business for a period of time.

Where none of the foregoing remedies is effective and the hazardous condition is determined to be a shortage of money in the expense fund the State Board of Insurance may after further notice and hearing order funds sufficient to cure the hazardous condition to be placed in the expense fund. The State Board of Insurance shall not have authority hereby to require the maintenance of money in the expense fund except as provided by Article 23.02(3) of this code.

(b) The State Board of Insurance is authorized, by rule and regulations, to fix uniform standards and criteria for early warning that the continued operation of any company might be hazardous to its participants, creditors, or the general public, and to fix standards for evaluating the financial condition of any corporation complying with the requirement of this chapter, which standards shall be consistent with the purposes expressed in this article.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.25. Management and Exclusive Agency Contracts

(a) No corporation complying with the requirements of this chapter may enter into an exclusive agency contract or management contract, unless the contract is first filed with the State Board of Insurance and approved under this article within 30 days after filing or such reasonable extended period as the State Board of Insurance may specify by notice given within the 30 days.

(b) The State Board of Insurance shall disapprove a contract submitted under Section (a) of this article if it finds that:

(1) it subjects the corporation to excessive charges;

(2) the contract extends for an unreasonable period of time;

(3) the contract does not contain fair and adequate standards of performance;

(4) the persons empowered under the contract to manage the corporation are not sufficiently trustworthy, competent, experienced, and free from conflict of interest to manage the corporation with due regard for the interest of its participants, creditors, or the public; or

(5) the contract contains provisions which impair the interests of the corporation's participants, creditors, or the public in this state.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.26. Application of Other Laws

(a) Corporations complying with this chapter shall be subject to and are required to comply with the provisions of the Texas Miscellaneous Corporation Laws Act and the Texas Non-Profit Corporation Act as those laws now exist or may be amended in the future to the extent the provisions of this chapter are not in conflict therewith.

(b) The following provisions of the Insurance Code as they now exist or shall hereafter be amended shall, where not in conflict with this chapter, apply to corporations complying with the provisions of this chapter to the same extent as they apply to insurers and to those doing the business of insurance: Articles 1.01, 1.02, 1.04, 1.08, 1.09, 1.09-1, 1.11, 1.12, 1.13, 1.14, 1.15, 1.16, 1.17, 1.18, 1.19, 1.20, 1.21, 1.22, 1.23, 1.24, 1.25, 1.29, 3.12, 3.13, 3.14, 21.21, 21.25, 21.28, 21.28A, and 21.47 and Sections 1, 2, 6, 8, 9, 10, 11, 12, 13, 14, and 17 of Article 1.10 of the Insurance Code, as amended.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

CHAPTER TWENTY-FOUR. FINANCING OF INSURANCE PREMIUMS

Article

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- 24.19. Restrictions on Premium Finance Agreements.
- 24.20. Authority of Licensed Local Recording Agents to Charge Interest to Certain Purchasers of Insurance.
- 24.21. Transfer of Records and Funds.

Article 24.01. Definitions

In this chapter:

(1) "Insurance premium finance company" means:

(A) a person engaged in the business of making loans under this chapter by entering into premium finance agreements with insureds or prospective insureds, except that the preparation and delivery of a premium finance agreement or disclosure statement required by Section (f), Article 24.11 of this chapter by an insurance agent on behalf of the insured is not doing business as an insurance premium finance company;

(B) a person engaged in the business of acquiring premium finance agreements from insurance agents or brokers or other premium finance companies; or

(C) an insurance agent or broker making loans under this chapter who holds premium finance agreements made and delivered by insureds payable to him or her or his or her order.

(2) "Premium finance agreement" means an agreement by which an insured or prospective insured promises to pay to a premium finance company the amount advanced or to be advanced under the agreement to an insurer or to an insurance agent in payment of premium on an insurance contract.

(3) "Board" means the State Board of Insurance.

(4) "Licensee" means an insurance premium finance company holding a license issued by the board under this chapter.

(5) "Annual percentage rate" means the annual percentage rate of finance charge as determined in accordance with the Consumer Credit Protection Act of 1970 (15 U.S.C.A. Section 1601 et seq.; 18 U.S.C.A. Section 891 et seq.) and Regulation Z (12 C.F.R. 226.1 et seq.) promulgated under that Act.

(6) "Insured" means a person who enters into a premium finance agreement with an insurance premium finance company.

(7) "Person" means an individual, partnership, corporation, joint venture, trust, association, or any other legal entity, however organized.

[Added by Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980.]

Art. 24.02. License; Offices

(a) A person, without first obtaining a license from the board as provided in Section (d), Article 24.03 of this chapter, may not negotiate, transact, or engage in the business of insurance premium financing in this state or contract for, charge, or receive directly or indirectly on or in connection with any insurance premium financing any charges, whether for interest, compensation, consideration, expense, or otherwise, that in the aggregate are greater than the person would be permitted by law to charge if the person were not a licensee under this chapter. A license issued under this chapter allows the holder to maintain only one office from which business may be conducted. The board may issue more than one license but not more than 60 licenses to any one person on compliance with this chapter for each license.

(b) Any bank or savings and loan association doing business under the laws of this state or the United States is entitled to receive a license on notification to the board of its intention to operate under this chapter. The board shall immediately issue a license to that bank or savings and loan association.

[Added by Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980.]

Art. 24.03. License Application; Fees; Action by Board

(a) Each application for a license to engage in the business of insurance premium financing must be in writing and in the form prescribed by the board. It must be accompanied by an investigation fee of \$200.

(b) Within 90 days after receipt of an application, the board shall notify the applicant that:

(1) the application has been approved and a license will be issued on payment of the appropriate license fee; or

(2) the application has been denied.

(c) The board may refuse to issue a license if it finds that:

(1) the financial responsibility, experience, character, or general fitness of the applicant or any person associated with the applicant does not command the confidence of the community and does not warrant the belief that the business will be conducted honestly, fairly, and efficiently; or

(2) the applicant does not have available for the operation for the business net assets of at least \$25,000.

(d) After approval and on receipt of the license fee, the board shall execute the license to engage in the business of a premium finance company at the location specified in the application and shall transmit the license to the applicant.

(e) The refusal of the board to issue a license does not entitle the applicant to a return of any part of the investigation fee that accompanied the application.

(f) The fee for each license is \$100 and shall be paid to the board. Each license shall be issued for the calendar year and shall remain in force until December 31 of each year, unless suspended, revoked, or surrendered in accordance with Article 24.05 of this chapter. If a license is granted after June 30 of any year, the fee is \$50 for that year.

(g) Any person holding a license under Chapter 3, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-3.01 et seq., Vernon's Texas Civil Statutes), on the effective date of this chapter is required only to pay the license fee required under this article and is not required to pay the investigation fee required by Section (a) of this article. [Added by Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980.]

Sections 2 and 4 of the 1979 Act provided:

"Sec. 2. Beginning November 1, 1979, the license fee for a license to engage in the business of insurance premium financing shall be paid to the State Board of Insurance."

"Sec. 4. (a) Except as provided by Subsection (b) of this section, this Act takes effect January 1, 1980.

"(b) Section 1 of this Act to the extent that it relates to the collection of license fees; the deposit of those fees in the State Treasury, and the use of those fees and Section 2 of this Act take effect November 1, 1979.

"(c) The provisions of this Act shall not apply to arrangements and accounts covered by Chapter 15 of Subtitle 3, Title 79, Interest-Consumer Credit-Consumer Protection, Revised Civil Statutes of Texas, 1925, as amended by Senate Bill Number 811, Acts of the 66th Legislature, Regular Session, 1979 [Civil Statutes, art. 5069-15.01 et seq.]."

Art. 24.04. License Provisions; Posting; Change of Location; Other Business

(a) A license issued under this chapter must state the name and address of the licensee. The license shall be conspicuously posted in the specified office of the licensee. Except as provided in this chapter, the license is not transferable or assignable. Before a licensee changes an office from one location to another, the licensee shall give written notice of the change to the board which, if it approves the change, shall issue an endorsement indicating the change and the date of the change. The licensee shall attach the

endorsement to the license for that office. The endorsement constitutes authority for the operation of the business under the license at the new location.

(b) A licensee may conduct the business of premium financing under this chapter in any office, suite, room, or place of business in which any other business is solicited or engaged in or in association or conjunction with any other business, unless the board:

(1) finds, after a hearing, that the conduct by the licensee of the other business in the particular licensed office has concealed evasions of this chapter; and

(2) orders the licensee in writing to stop conducting the business of premium financing in that office.

(c) A licensee may not conduct the business of premium financing provided for by this chapter under any name or at any place of business other than that stated in the license. The preparation and delivery of a premium finance agreement by an insurance agent on behalf of the insured does not constitute doing business as an insurance premium finance company, unless the agreement is held for the benefit of the agent in accordance with Article 24.01(1)(C) of this chapter.

(d) Nothing in this chapter limits the premium financing of any licensee to residents of the community in which the licensed office is situated or prohibits the licensee from conducting premium financing by mail.

[Added by Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980.]

Art. 24.05. Grounds for Revocation of License; Procedure

(a) After notice and hearing, the board may revoke or suspend any license issued under this chapter if it finds:

(1) that the licensee has violated this chapter or any rule lawfully made by the board under this chapter; or

(2) the existence of any fact or condition that, if it had existed at the time of the original application for the license, clearly would have warranted the board to refuse to issue the license.

(b) The board, after notice and hearing, may suspend or revoke a license if it learns from the commissioner of insurance or from any other source that the licensee has failed to return all amounts due from the insurance premium finance company to the person whose insurance policy has been canceled as required by Section (g), Article 24.17 of this chapter.

(c) Any licensee may surrender any license by delivering to the board written notice that the licensee surrenders the license. The surrender of a license does not affect the licensee's civil or criminal

liability, if any, for acts committed before the surrender.

(d) A revocation, suspension, or surrender of any license does not affect the obligation of any insured under a lawful premium finance agreement previously acquired or held by the licensee.

(e) If the board revokes or suspends a license, it shall immediately execute in duplicate a written order to that effect and shall file one copy of that order in the office of the secretary of state and mail one copy to the licensee.

(f) The board may reinstate a suspended license or issue a new license to a person whose license has been revoked if no fact or condition then exists that clearly would have justified the board in refusing originally to issue the license under this chapter. [Added by Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980.]

Art. 24.06. Examinations, Investigations, and Use of Fees

(a) The board may make examinations or investigations necessary to determine whether a licensee is in compliance with this chapter or whether a licensee has conducted himself or herself so as to justify the revocation of his or her license. The board or its duly authorized representatives may require the attendance of any person, may examine the person under oath, and may compel the production of all relevant books, records, accounts, and documents.

(b) All reports of examinations or investigations and all correspondence and memoranda concerning or arising out of those examinations or investigations, including any duly authenticated copy or copies of those reports in the possession of any licensee or the board, are confidential communications, are not subject to subpoena, and may not be made public, except in connection with a hearing under Article 24.05 of this chapter and any appearance in connection with such a hearing. Information obtained in the course of these examinations or investigations may be made available to other governmental agencies when the information involves matters within the scope or jurisdiction of those agencies.

(c) In addition to the investigation and license fees set forth in Article 24.03 of this chapter, each licensee shall pay to the board an amount assessed by the board to cover the direct and indirect cost of examinations and investigations made under this article and a proportionate share of general administrative expense attributable to the regulation of the persons licensed under this chapter.

(d) Fees collected under this chapter shall be placed in the State Treasury in a separate fund. The board may use any portion of those fees to enforce this chapter. The board may employ persons as necessary to examine or investigate and

make reports on alleged violations of this chapter or on compliance with the other provisions of this code by persons licensed under this chapter and may pay the salaries and expenses of those persons and of all office employees and the expenses necessary to enforce this chapter.

(e) If any residue of those funds remains after the amounts necessary to carry on the work, examinations, and investigations and to employ the persons as authorized by this chapter have been paid, the residue shall be carried over from year to year and used in the enforcement of this article. All funds collected under this provision shall be paid into the State Treasury at least once each week and kept in a special fund and shall be paid out for salaries, traveling expenses, office expenses, and other expenses incurred by the board under this chapter on proper account duly approved by the board.

[Added by Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980.]

Art. 24.07. Hearings and Investigations; Subpoena Power

In conducting a hearing or investigation under this chapter, the board or any person duly designated by it may:

- (1) subpoena witnesses;
- (2) take depositions of witnesses residing outside of the state in the manner provided for in civil actions in district courts;
- (3) pay to those witnesses the fees and mileage for their attendance as provided for witnesses in civil actions in district courts; and
- (4) administer oaths.

[Added by Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980.]

Art. 24.08. Violations

(a)(1) A person commits an offense if the person:

(A) intentionally, knowingly, recklessly, or negligently engages in the operation of a premium finance company without first obtaining a license;

(B) intentionally, knowingly, recklessly, or negligently acts in violation of this chapter;

(C) intentionally or knowingly omits to state any material fact necessary to give the board any information lawfully required of the person; or

(D) refuses to permit any lawful investigation or examination under this chapter.

(2) An offense under this chapter is a Class B misdemeanor.

(b) A premium finance company's taking or receiving from or charging an insured a greater charge than authorized by this chapter does not invalidate the premium finance agreement or the

principal balance payable under the agreement but may be adjudged a forfeiture of all charges that the premium finance agreement carries with it or that have been agreed to be paid on the agreement. If a greater charge has been paid by an insured, the person paying the charge or the person's legal representative may recover from the premium finance agency twice the entire amount of the charges paid if action is brought within two years after the day on which the payment was made.

[Added by Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980.]

Art. 24.09. Rules

The board may adopt and enforce rules necessary to carry out this chapter. Those rules may contain the classifications, differentiations, or other provisions and may provide for the adjustments and exceptions for any class of transactions that are necessary to carry out the purposes of this chapter, to prevent circumvention or evasion of this chapter, or to facilitate compliance with this chapter. Those rules may not contain any classification, differentiation, or other provision with respect to or provide for any adjustment or exception for any class of transaction that would result in less stringent disclosure requirements than afforded that class of transaction under the Federal Consumer Credit Protection Act of 1970 (15 U.S.C.A. Section 1601 et seq.; 18 U.S.C.A. Section 891 et seq.) and the applicable portions of Regulation Z (12 C.F.R. 226.1 et seq.).

[Added by Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980.]

Art. 24.10. Licensee's Books and Records

(a) The licensee shall keep and use books, accounts, and records that enable the board to determine whether the licensee is complying with this chapter and with the rules lawfully made by the board under this chapter. Every licensee shall preserve those books, accounts, and records, including cards used in a card system, if any, for at least two years after making the final entry of any premium finance agreement recorded in those books, accounts, and records.

(b) On or before the first day of April of each year each licensee shall file with the board a report giving the information that the board requires concerning the business and operations during the preceding calendar year of each licensed place of business conducted by the licensee in the state.

[Added by Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980.]

Art. 24.11. Written Premium Finance Agreement

(a) A premium finance agreement shall be in writing on a form approved by the board.

(b) The agreement shall be dated and signed by the insured. If the agreement contains policies for other than personal, family, or household purposes and if the premiums for the policies exceed \$1,000, it may be signed on behalf of the insured by the insured's agent.

(c) The agreement must contain:

(1) the name and business address of the insurance agent or insurance broker negotiating the related insurance contract;

(2) the name and residence or business address of the insured as specified by the insured;

(3) the name and place of business of the premium finance company to which payments are to be made;

(4) a description of each insurance contract involved;

(5) the amount of the premium for each insurance contract;

(6) the total amount of the premiums for all insurance contracts;

(7) the amount of the down payment;

(8) the principal balance (difference between items (6) and (7));

(9) the total amount of the finance charge, with a description of each amount included, using the term "finance charge"; and

(10) the balance payable by the insured (sum of items (8) and (9)).

(d) The premium finance agreement in addition must contain the following items as applicable:

(1) the finance charge expressed as an annual percentage rate, using the term "annual percentage rate";

(2) the number of installments required, the amount of each installment expressed in dollars, and the due date or period of each installment;

(3) the amount or method of computing the amount of any default or delinquency charge that is payable in the event of late payment; and

(4) identification of the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation.

(e) The disclosures required to be given shall be made clearly, conspicuously, and in meaningful sequence. Where the terms "finance charge" and "annual percentage rate" are required to be used, they shall be printed more conspicuously than other terminology required by this chapter. All numerical amounts and percentages shall be stated in figures and shall be printed in not less than the equivalent of 10-point type, 75/1,000 inch computer type, or elite size typewritten numerals or shall be legibly handwritten.

(f) It shall be a violation of this Act for any licensee to take an insurance premium finance agreement that has not been fully completed and executed at the time the insurance premium finance agreement is executed. The insurance agent is responsible for the completion of the insurance premium finance agreement and for delivery to the insured any and all disclosure statements that are required by any existing law.

(g) If, in a premium finance agreement, changes in an insured's policy due to amending of the rate classification by endorsement or otherwise result in an increased principal balance and the amount under the previous contract has not been fully paid, the subsequent increase may at the insured's option be included in and consolidated with the previous contract, if so provided in the premium finance agreement.

(h) Those additions may be accomplished by a memorandum of agreement between the agent and the insured, if before the first scheduled payment date of the amended transaction the premium finance company gives to the insured the following information in writing:

(1) the amount of the premium increase;

(2) the down payment on increase;

(3) the principal amount of increase;

(4) the total amount of finance charge on increase;

(5) the total of additional balance due;

(6) the outstanding balance of original agreement;

(7) the consolidated agreement balance;

(8) the annual percentage rate of finance charge on additional balance due;

(9) the revised schedule of payments;

(10) the amount or method of computing the amount of any default, deferment, or similar charges authorized in Chapter 3, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-3.01 et seq., Vernon's Texas Civil Statutes), payable in the event of late payments; and

(11) identification of the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation.

[Added by Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980.]

Art. 24.12. Application of Truth-in-Lending Act

A transaction, although subject to this chapter, is also subject to the Consumer Credit Protection Act of 1970 (15 U.S.C.A. Section 1601 et seq.; 18 U.S.C.A. Section 891 et seq.) and those applicable portions of Regulation Z (12 C.F.R. 226.1 et seq.) adopted under that Act.

[Added by Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980.]

Art. 24.13. Deceptive Advertising

A licensee may not advertise or cause to be advertised in any manner whatsoever any false, misleading, or deceptive statement or representation with regard to the rates, terms, or conditions of any premium finance agreement. If rates or charges are stated in advertising, the licensee shall express them in terms of a simple annual percentage rate as defined by federal law.

[Added by Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980.]

Art. 24.14. Rebate of Finance Charge; Filing of Premium Finance Agreement

(a) A premium finance company or an employee of such a company may not pay or allow or offer to pay or allow in any manner whatsoever to an insurance agent or broker or any employee of an insurance agent or broker or to any other person any consideration or compensation whatsoever, either from the charge for financing specified in the premium finance agreement or otherwise, or give or offer to give any valuable consideration or inducement of any kind directly or indirectly to an insurance agent or broker or any employee of an insurance agent or broker other than an article of merchandise not exceeding \$1 in value on which there is an advertisement of the premium finance company, except that nothing in this article prevents payments by a premium finance company under contractual arrangements with a validly organized and operating association of insurance agents or its subsidiary, so long as no part of any funds received under the agreement is distributed to any insurance agent or broker or employee of any insurance agent or broker or inures directly to the benefit of any member of the association or employee of the member. All of those contractual agreements must be in writing and are not valid until approval of the board has been received.

(b) Filing of a premium finance agreement or a financing statement is not necessary to perfect the validity of such an agreement as a secured transaction against creditors, subsequent purchasers, pledgees, encumbrancers, successors, or assigns of the insured or any other party.

[Added by Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980.]

Art. 24.15. Services Charges; Limitation of Charges; Computation

A premium finance company may not take or receive from an insured a greater rate or charge than is provided by Chapters 3 and 4, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-3.01 et seq. and Article 5069-4.01 et seq., Vernon's Texas Civil Statutes). Those charges begin on the date from which the insurance company requires payment of the premium and payment was made to the insurance company for the finance

policy or on the effective date of the policy, whichever is earlier. The finance charge shall be computed on the balance of the premiums due after subtracting the down payment made by the insured in accordance with the premium finance agreement. On insurance premium finance agreements made under this chapter, no insurance charges or any other charge or fee, except those authorized by this chapter, are permitted.

[Added by Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980.]

Art. 24.16. Prepayment; Refund

Notwithstanding the provisions of any premium finance agreement to the contrary, any insured may pay it in full at any time before the maturity of the final installment of the balance of the agreement, and if the insured does so and the agreement included an amount for a charge, the insured shall receive for the prepayment either by cash or by renewal a refund credit in accordance with the provisions for refunds contained in Section (6), Article 3.15, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-3.15, Vernon's Texas Civil Statutes), and the regulations issued under that article. Where the amount of the credit for anticipation of payments is less than \$1, no refund need be made.

[Added by Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980.]

Art. 24.17. Default and Cancellation; Right to Cancel; Refund

(a) A premium finance agreement may provide for the payment of a default charge by the insured as provided in Section (5), Article 3.15, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-3.15, Vernon's Texas Civil Statutes), the Insurance Code, and the regulations issued under those statutes.

(b) A premium finance agreement may contain a power of attorney enabling the premium finance company to cancel any insurance contract or contracts listed in the agreement. An insurance contract or contracts may not be canceled by the premium finance company unless the cancellation is effectuated in accordance with this section.

(c) If the insured fails to make the payments at the time and in the amount provided in the premium finance agreement, the premium finance company shall mail to the insured a written notice of the intent of the premium finance company to cancel the insurance contract because of the default in payments by the insured unless the default in payments is cured within a time certain stated in the notice. That time may not be earlier than the 10th day after the date on which the written notice was mailed. The premium finance company shall also mail a copy of the notice to the insurance agent or insurance broker indicated on the premium finance agreements.

(d) After expiration of the period given to cure the default, the premium finance company may cancel the insurance contract or contracts by mailing to the insurer a notice of cancellation. The insurance contract shall be canceled as if the notice of cancellation had been submitted by the insured, but without requiring the return of the insurance contract or contracts. The premium finance company shall also mail a notice of cancellation to the insured at the insured's last known address and to the insurance agent or insurance broker indicated on the premium finance agreement.

(e) All statutory, regulatory, and contractual restrictions providing that the insurance contract may not be canceled unless notice is given to a governmental agency, mortgagee, or other third party apply where cancellation is effected under this section. The insurer shall give the prescribed notice on behalf of itself or the insured to any governmental agency, mortgagee, or other third party on or before the second business day after the day on which it receives the notice of cancellation from the premium finance company and shall determine the effective date of cancellation taking into consideration the number of days' notice required to complete the cancellation.

(f) Whenever a financed insurance contract is canceled, the insurer shall return whatever unearned premiums are due under the insurance contract to the premium finance company either directly or through the agent or agency writing the insurance where an assignment of those funds is included in the premium finance agreement for the account of the insured or insureds.

(g) In the event that the crediting of return premiums to the account of the insured results in a surplus over the amount due from the insured, the premium finance company shall refund the excess to the insured. No refund is required if it amounts to less than \$1.

[Added by Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980.]

Art. 24.18. Assignments

Unless the insured has notice of actual or intended assignment of a premium finance agreement, payment under the agreement by the insured to the last known holder of the agreement is binding on all subsequent holders or assignees.

[Added by Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980.]

Art. 24.19. Restrictions on Premium Finance Agreements

(a) A premium finance agreement may not contain any provision by which, in the absence of default of the insured, the premium finance company holding the agreement may arbitrarily and without

reasonable cause accelerate the maturity of any part or all of the amount owing thereunder. Reasonable cause without limitation includes a proceeding in bankruptcy, receivership, or insolvency being instituted by or against the insured or the insolvency of or suspension of business or cessation of the right to conduct business by an insurance company writing policies that are financed for the insured under the premium finance agreement.

(b) A licensee may not take:

(1) any instrument in which the borrower waives any right accruing to the borrower under this chapter;

(2) any instrument that has not been fully completed and executed by the insured;

(3) an assignment of wages as security for any insurance premium finance agreement made under this chapter;

(4) a lien on real estate as security for any insurance premium finance agreement made under this chapter, except such a lien as is created by law on the recording of an abstract of judgment; or

(5) any confession of judgment or any power of attorney running to the licensee or to any third person to confess judgment or to appear for a borrower in a judicial proceeding.

[Added by Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980.]

Art. 24.20. Authority of Licensed Local Recording Agents to Charge Interest to Certain Purchasers of Insurance

Notwithstanding any other provision of law, any person, partnership, or corporation duly licensed as a local recording agent under Article 21.14, Insurance Code, as amended, may enter into or establish a written agreement with any purchaser of insurance from the agent providing for the payment of interest to the agent in an amount not to exceed the rate of one percent a month on any amount due and owing to the agent for insurance purchased by the purchaser. In those instances the claim or defense of usury is prohibited.

[Added by Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980.]

Art. 24.21. Transfer of Records and Funds

(a) There shall be transferred to the State Board of Insurance from the consumer credit commissioner all records collected under Chapter 12, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-12.01 et seq., Vernon's Texas Civil Statutes), necessary to insure the continuous regulation of insurance premium finance companies by the

State Board of Insurance. This transfer shall be made no later than January 1, 1980.

(b) The consumer credit commissioner and the State Board of Insurance shall cooperate to ensure an orderly transition period. It is the intent and desire of the legislature that the consumer credit commissioner and the State Board of Insurance con-

sult with the state auditor, the comptroller of public accounts, the Legislative Budget Board, and any other state agency for the orderly transfer of all funds and records as outlined in Subsection (a) of this section from the consumer credit commissioner to the State Board of Insurance.

[Added by Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980.]

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Chapter XI. Nontestamentary Transfers ----- Sec. 436

CHAPTER I. GENERAL PROVISIONS

Section

5A. Matters Appertaining and Incident to an Estate.

§ 3. Definitions and Use of Terms

When used in this Code, unless otherwise apparent from the context:

[See Compact Edition, Volume 2 for text of (a) to (d)]

(e) "County Court" and "Probate Court" are synonymous terms and denote county courts in the exercise of their probate jurisdiction, courts created by statute and authorized to exercise original probate jurisdiction, and district courts exercising probate jurisdiction in contested matters.

(f) "County Judge," "Probate Judge," and "Judge" denote the presiding judge of any court having original jurisdiction over probate proceedings, whether it be a county court in the exercise of its probate jurisdiction, a court created by statute and authorized to exercise probate jurisdiction, or a district court exercising probate jurisdiction in contested matters.

(g) "Court" denotes and includes both a county court in the exercise of its probate jurisdiction, a court created by statute and authorized to exercise original probate jurisdiction, or a district court exercising original probate jurisdiction in contested matters.

[See Compact Edition, Volume 2 for text of (h) to (p)]

(q) "Independent executor" means the personal representative of an estate under independent administration as provided in Section 145 of this Code. The term "independent executor" includes the term "independent administrator."

[See Compact Edition, Volume 2 for text of (r) to (s)]

(t) "Minors" are all persons under eighteen years of age who have never been married or who have not had disabilities of minority removed for general purposes.

[See Compact Edition, Volume 2 for text of (u) to (z)]

(aa) "Personal representative" or "Representative" includes executor, independent executor, administrator, independent administrator, temporary administrator, guardian, and temporary guardian, together with their successors. The inclusion of independent executors herein shall not be held to subject such representatives to control of the courts in probate matters with respect to settlement of estates except as expressly provided by law.

[See Compact Edition, Volume 2 for text of (bb) to (hh)]

(ii) "Statutory probate court" refers to any statutory court presently in existence or created after the passage of this Act, the jurisdiction of which is limited by statute to the general jurisdiction of a probate court, and such courts whose statutorily designated name contains the word "probate." County courts at law exercising probate jurisdiction are not statutory probate courts under this Code unless their statutorily designated name includes the word "probate."

(jj) "Next of kin" includes an adopted child or his or her descendants and the adoptive parent of the adopted child.

[Amended by Acts 1975, 64th Leg., p. 104, ch. 45, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 2195, ch. 701, § 1, eff. June 21, 1975; Acts 1977, 65th Leg., p. 1061, ch. 390, §§ 1, 2, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 1740, ch. 713, § 1, eff. Aug. 27, 1979.]

Acts 1977, 65th Leg., ch. 390, which by §§ 1 to 8 amended subsecs. (q) and (aa) of this section, §§ 145, 147, 148, 149A(a), (b), and 150 and added § 154A, provided in §§ 9 and 10:

"Sec. 9. All other laws in conflict with this Act are hereby repealed to the extent they conflict.

"Sec. 10. This Act shall become effective September 1, 1977, and shall apply to estates of decedents who die intestate after September 1, 1977."

§ 5. Jurisdiction of District Court and Other Courts of Record With Respect to Probate Proceedings and Appeals from Probate Orders

(a) The district court shall have original control and jurisdiction over executors, administrators, guardians and wards under such regulations as may be prescribed by law.

(b) In those counties where there is no statutory probate court, county court at law or other statutory court exercising the jurisdiction of a probate court, all applications, petitions and motions regarding probate, administrations, guardianships, and mental illness matters shall be filed and heard in the county court, except that in contested probate matters, the judge of the county court may on his own motion, or

shall on the motion of any party to the proceeding transfer such proceeding to the district court, which may then hear such proceeding as if originally filed in such court. In contested matters transferred to the district court in those counties, the district court, concurrently with the county court, shall have the general jurisdiction of a probate court, and it shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards, grant letters testamentary and of administration, settle accounts of executors, transact all business appertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the settlement, partition, and distribution of estates of deceased persons and to apprentice minors, as provided by law. Upon resolution of all pending contested matters, the probate proceeding shall be transferred by the district court to the county court for further proceedings not inconsistent with the orders of the district court.

(c) In those counties where there is a statutory probate court, county court at law, or other statutory court exercising the jurisdiction of a probate court, all applications, petitions and motions regarding probate, administrations, guardianships, and mental illness matters shall be filed and heard in such courts and the constitutional county court, rather than in the district courts, unless otherwise provided by the legislature, and the judges of such courts may hear any of such matters sitting for the judge of any of such courts. In contested probate matters, the judge of the constitutional county court may on his own motion, and shall on the motion of any party to the proceeding, transfer the proceeding to the statutory probate court, county court at law, or other statutory court exercising the jurisdiction of a probate court, which may then hear the proceeding as if originally filed in such court.

(d) All courts exercising original probate jurisdiction shall have the power to hear all matters incident to an estate. When a surety is called on to perform in place of an administrator or guardian, all courts exercising original probate jurisdiction may award judgment against the personal representative in favor of his surety in the same suit.

(e) All final orders of any court exercising original probate jurisdiction shall be appealable to the courts of (civil) appeals.

[Amended by Acts 1975, 64th Leg., p. 2195, ch. 701, § 2, eff. June 21, 1975; Acts 1977, 65th Leg., p. 1170, ch. 448, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1740, ch. 713, § 2, eff. Aug. 27, 1979.]

§ 5A. Matters Appertaining and Incident to an Estate

(a) In proceedings in the constitutional county courts and statutory county courts at law, the phrases "appertaining to estates" and "incident to an estate" in this Code include the probate of wills, the

issuance of letters testamentary and of administration, the determination of heirship, and also include, but are not limited to, all claims by or against an estate, all actions for trial of title to land incident to an estate and for the enforcement of liens thereon incident to an estate, all actions for trial of the right of property incident to an estate, and actions to construe wills, and generally all matters relating to the settlement, partition, and distribution of estates of wards and deceased persons.

(b) In proceedings in the statutory probate courts and district courts, the phrases "appertaining to estates" and "incident to an estate" in this Code include the probate of wills, the issuance of letters testamentary and of administration, and the determination of heirship, and also include, but are not limited to, all claims by or against an estate, all actions for trial of title to land and for the enforcement of liens thereon, all actions for trial of the right of property, all actions to construe wills, the interpretation and administration of testamentary trusts and the applying of constructive trusts, and generally all matters relating to the settlement, partition, and distribution of estates of wards and deceased persons. All statutory probate courts may, in the exercise of their jurisdiction, notwithstanding any other provisions of this Code, hear all suits, actions, and applications filed against or on behalf of any guardianship, heirship proceeding, or decedent's estate, including estates administered by an independent executor. This subsection shall be construed in conjunction with and in harmony with Section 145 and all other sections of this Code dealing with independent executors, but shall not be construed so as to increase permissible judicial control over independent executors. All statutory probate courts shall have the same powers over independent executors that are exercisable by the district courts. In situations where the jurisdiction of a statutory probate court is concurrent with that of a district court, any cause of action appertaining to estates or incident to an estate shall be brought in a statutory probate court rather than in the district court. [Added by Acts 1979, 66th Leg., p. 1741, ch. 713, § 3, eff. Aug. 27, 1979.]

§ 28. Personal Representative to Serve Pending Appeal of Appointment

Pending appeals from orders or judgments appointing administrators or guardians or temporary administrators or guardians, the appointees shall continue to act as such and shall continue the prosecution of any suits then pending in favor of the estate.

[Amended by Acts 1975, 64th Leg., p. 2196, ch. 701, § 3, eff. June 21, 1975.]

§ 30. Repealed by Acts 1975, 64th Leg., p. 2197, ch. 701, § 7, eff. June 21, 1975

§ 36. Duty and Responsibility of Judge

It shall be the duty of each county and probate court to use reasonable diligence to see that personal representatives of estates being administered under orders of the court, guardians of the persons of wards, and other officers of the court, perform the duty enjoined upon them by law pertaining to such estates and wards. The judge shall annually, if in his opinion the same be necessary, examine the condition of each of said estates, the well-being of each ward of the court, and the solvency of the bonds of personal representatives of estate and guardians of persons. He shall, at any time he finds that the personal representative's bond is not sufficient to protect such estate or ward, require such personal representatives to execute a new bond in accordance with law. In each case, he shall notify the personal representative, and the sureties on the bond, as provided by law; and should damage or loss result to estates or wards through the gross neglect of the judge to use reasonable diligence in the performance of his duty, he shall be liable on his bond to those damaged by such neglect.

[Amended by Acts 1975, 64th Leg., p. 979, ch. 375, § 1, eff. June 19, 1975.]

CHAPTER II. DESCENT AND DISTRIBUTION

§ 37A. Means of Evidencing Disclaimer or Renunciation of Property or Interest Receivable from a Decedent Under a Will or by an Inheritance

Any person, or the personal representative of an incompetent, deceased, or minor person, with prior court approval of the court having, or which would have, jurisdiction over such personal representative or any independent executor of a deceased person, without prior court approval, who may be entitled to receive any property from a decedent by an insurance contract or under any will of or by inheritance from a decedent and who intends to effect disclaimer irrevocably on or after September 1, 1977, of the whole or any part of such property shall evidence same as herein provided. A disclaimer evidenced as provided herein, shall be effective as of the death of decedent and the property subject thereof shall pass as if the person disclaiming or on whose behalf a disclaimer is made had predeceased the decedent unless decedent's will provides otherwise. Failure to comply with the provisions hereof shall render such disclaimer ineffective except as an assignment of such property to those who would have received same had the person attempting the disclaimer died prior to the decedent. The term "property" as used in this section shall include all legal and equitable interests, powers, and property, whether present or future, whether vested or contingent, and whether beneficial or burdensome, in whole or in part. The

term "disclaimer" as used in this section shall include "renunciation." Nothing in this section shall be construed to preclude a subsequent disclaimer by any person who shall be entitled to property as a result of a disclaimer.

The following shall apply to such disclaimers:

(a) Written Memorandum of Disclaimer and Filing Thereof.

In the case of property receivable under a will or by inheritance or by an insurance contract, the disclaimer shall be evidenced by a written memorandum, acknowledged before a notary public or other person authorized to take acknowledgements of conveyances of real estate. A written memorandum of disclaimer disclaiming a present interest shall be filed not later than nine months after the death of the decedent and a written memorandum of disclaimer disclaiming a future interest may be filed not later than nine months after the event determining that the taker of the property or interest is finally ascertained and his interest is indefeasibly vested. The written memorandum of disclaimer shall be filed in the probate court in which the decedent's will has been probated or in which proceedings have been commenced for the administration of the decedent's estate or which has before it an application for either of the same; provided, however, if the administration of the decedent's estate is closed, or after the expiration of one year following the date of the issuance of letters testamentary in an independent administration, or if there has been no will of the decedent probated or filed for probate, or if no administration of the decedent's estate has been commenced, or if no application for administration of the decedent's estate has been filed, the written memorandum of disclaimer shall be filed with the county clerk of the county of the decedent's residence, or, if the decedent is not a resident of this state but real property or an interest therein located in this state is disclaimed, a written memorandum of disclaimer shall be filed with the county clerk of the county in which such real property or interest therein is located, and recorded by such county clerk in the deed records of that county.

(b) Notice of Disclaimer.

Copies of any written memorandum of disclaimer shall be delivered in person to, or shall be mailed by registered or certified mail to and received by, the legal representative of the transferor of the interest or the holder of legal title to the property to which the disclaimer relates not later than nine months after the date on which the transfer creating the interest in the disclaiming person is made.

(c) **Power of Testator to Provide for Disclaimer.** Nothing herein shall prevent a testator from providing in a will for the making of disclaimers by legatees, devisees, and beneficiaries and for the disposition of disclaimed property in a manner different from the provisions hereof.

(d) **Irrevocability of Disclaimer.** Any disclaimer filed and served under this section shall be irrevocable.

(e) **Partial Disclaimer.** Any person who may be entitled to receive any property from a decedent by an insurance contract or under any will of or by inheritance from a decedent may disclaim such property in whole or in part, including but not limited to specific powers of invasion, powers of appointment, and fee estate in favor of life estates; and a partial disclaimer or renunciation, in accordance with the provisions of this section, shall be effective whether the property so renounced or disclaimed constitutes a portion of a single, aggregate gift or constitutes part or all of a separate, independent gift; provided, however, that a partial disclaimer shall be effective only with respect to property expressly described or referred to by category in such disclaimer; and provided further, that a partial disclaimer of property which is subject to a burdensome interest created by the decedent's will shall not be effective unless such property constitutes a gift which is separate and distinct from undisclaimed gifts.

(f) **Disclaimer After Acceptance.** No disclaimer shall be effective after the acceptance of the property by the heir, legatee, devisee, or beneficiary. For the purpose of this section, acceptance shall occur only if the person making such disclaimer has previously taken possession or exercised dominion and control of such property in the capacity of heir, legatee, devisee, or beneficiary.

[Amended by Acts 1977, 65th Leg., p. 1918, ch. 769, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1741, ch. 713, § 4, eff. Aug. 27, 1979.]

§ 42. Inheritance Rights of Legitimated Children

(a) **Maternal Inheritance.** For the purpose of inheritance, a child is the legitimate child of his mother, so that he and his issue shall inherit from his mother and from his maternal kindred, both descendants, ascendants, and collaterals in all degrees, and they may inherit from him and his issue.

(b) **Paternal Inheritance.** For the purpose of inheritance, a child is the legitimate child of his father if the child is born or conceived before or during the marriage of his father and mother or is legitimated by a court decree as provided by Chapter 13 of the Family Code, or if the father executed a statement

of paternity as provided by Section 13.22 of the Family Code, or a like statement properly executed in another jurisdiction, so that he and his issue shall inherit from his father and from his paternal kindred, both descendants, ascendants, and collaterals in all degrees, and they may inherit from him and his issue.

(c) **Homestead Rights, Exempt Property, and Family Allowances.** A legitimate child as provided by Subsections (a) and (b) of this section is a legitimate child of his mother, and a legitimate child of his father, for the purpose of determining homestead rights, distribution of exempt property, and the making of family allowances.

(d) **Marriages Null in Law.** The issue also of marriages deemed null in law shall nevertheless be legitimate.

[Amended by Acts 1977, 65th Leg., p. 762, ch. 290, § 1, eff. May 28, 1977; Acts 1979, 66th Leg., p. 40, ch. 24, § 25, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1743, ch. 713, § 5, eff. Aug. 27, 1979.]

§ 47. Requirement of Survival by 120 Hours

(a) **Survival of Heirs.** A person who fails to survive the decedent by 120 hours is deemed to have predeceased the decedent for purposes of homestead allowance, exempt property, and intestate succession, and the decedent's heirs are determined accordingly, except as otherwise provided in this section. If the time of death of the decedent or of the person who would otherwise be an heir, or the times of death of both, cannot be determined, and it cannot be established that the person who would otherwise be an heir has survived the decedent by 120 hours, it is deemed that the person failed to survive for the required period. This subsection does not apply where its application would result in the escheat of an intestate estate.

(b) **Disposal of Community Property.** When a husband and wife have died, leaving community property, and neither the husband nor wife survived the other by 120 hours, one-half of all community property shall be distributed as if the husband had survived, and the other one-half thereof shall be distributed as if the wife had survived. The provisions of this subsection apply to proceeds of life or accident insurance which are community property and become payable to the estate of either the husband or the wife, as well as to other kinds of community property.

(c) **Survival of Devisees or Beneficiaries.** A devisee who does not survive the testator by 120 hours is treated as if he predeceased the testator, unless the will of the decedent contains some language dealing explicitly with simultaneous death or deaths in a common disaster, or requiring that the devisee survive the testator or survive the testator for a stated period in order to take under the will. If

property is so disposed of that the right of a beneficiary to succeed to any interest therein is conditional upon his surviving another person, the beneficiary shall be deemed not to have survived unless he or she survives the person by 120 hours. However, if any interest in property is given alternatively to one of two or more beneficiaries, with the right of each to take being dependent upon his surviving the other or others, and all shall die within a period of less than 120 hours, the property shall be divided into as many equal portions as there are beneficiaries, and those portions shall be distributed respectively to those who would have taken in the event that each beneficiary had survived.

(d) **Joint Owners.** If any stocks, bonds, bank deposits, or other intangible property shall be so owned that one of two joint owners is entitled to the whole on the death of the other, and neither survives the other by 120 hours, these assets shall be distributed one-half as if one joint owner had survived and the other one-half as if the other joint owner had survived. If there are more than two joint owners and all have died within a period of less than 120 hours, these assets shall be divided into as many equal portions as there are joint owners and these portions shall be distributed respectively to those who would have taken in the event that each joint owner survived.

(e) **Insured and Beneficiary.** When the insured and a beneficiary in a policy of life or accident insurance have died within a period of less than 120 hours, the insured shall be deemed to have survived the beneficiary for the purpose of determining the rights under the policy of the beneficiary or beneficiaries as such. The provisions of this subsection shall not prevent the application of subsection (b) above to the proceeds of life or accident insurance which are community property.

(f) **Instruments Providing Different Disposition.** When provision has been made in the case of wills, living trusts, deeds, or contracts of insurance, or any other situation, for disposition of property different from the provisions of this Section, this Section shall not apply.

[Amended by Acts 1979, 66th Leg., p. 1743, ch. 713, § 6, eff. Aug. 29, 1979.]

CHAPTER III. DETERMINATION OF HEIRSHIP

§ 48. Proceedings to Declare Heirship. When and Where Instituted

[See Compact Edition, Volume 2 for text of
(a) and (b)]

(c) Notwithstanding any other provision of this section, a probate court in which the proceedings for

the guardianship of the estate of a ward who dies intestate were pending at the time of the death of the ward may, if there is no administration pending in the estate, determine and declare who are the heirs and only heirs of the ward, and their respective shares and interests, under the laws of this State, in the estate of the ward.

[Amended by Acts 1977, 65th Leg., p. 1521, ch. 616, § 1, eff. Aug. 29, 1977.]

§ 49. Who May Institute Proceedings to Declare Heirship

(a) Such proceedings may be instituted and maintained in any of the instances enumerated above by any person or persons claiming to be the owner of the whole or a part of the estate of such decedent, or by the guardian of the estate of a ward, if the proceedings are instituted and maintained in the probate court in which the proceedings for the guardianship of the estate were pending at the time of the death of the ward. In such a case an application shall be filed in a proper court stating the following information:

(1) the name of the decedent and the time and place of death;

(2) the names and residences of the decedent's heirs, the relationship of each heir to the decedent, and the true interest of the applicant and each of the heirs in the estate of the decedent;

(3) all the material facts and circumstances within the knowledge and information of the applicant that might reasonably tend to show the time or place of death or the names or residences of all heirs, if the time or place of death or the names or residences of all the heirs are not definitely known to the applicant;

(4) a statement that all children born to or adopted by the decedent have been listed;

(5) a statement that each marriage of the decedent has been listed with the date of the marriage, the name of the spouse, and if the marriage was terminated, the date and place of termination, and other facts to show whether a spouse has had an interest in the property of the decedent;

(6) whether the decedent died testate and if so, what disposition has been made of the will;

(7) a general description of all the real and personal property belonging to the estate of the decedent; and

(8) an explanation for the omission of any of the foregoing information that is omitted from the application.

(b) Such application shall be supported by the affidavit of each applicant to the effect that, insofar as is known to such applicant, all the allegations of such application are true in substance and in fact and that no such material fact or circumstance has, within the affiant's knowledge, been omitted from such application. The unknown heirs of such decedent, all persons who are named in the application as heirs of such decedent, and all persons who are, at the date of the filing of the application, shown by the deed records of the county in which any of the real property described in such application is situated to own any share or interest in any such real property, shall be made parties in such proceeding. [Amended by Acts 1977, 65th Leg., p. 1522, ch. 616, § 2, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1744, ch. 713, § 7, eff. Aug. 29, 1979.]

§ 50. Notice

(a) Citation shall be served by registered or certified mail upon all distributees whose names and addresses are known, or whose names and addresses can be learned through the exercise of reasonable diligence, provided that the court may in its discretion require that service of citation shall be made by personal service upon some or all of those named as distributees in the application.

(b) Unknown heirs, and known heirs whose addresses cannot be ascertained, shall be served by publication in the county in which the proceedings are commenced, and if the decedent resided in another county, then a citation shall also be published in the county of his last residence.

(c) Except in proceedings in which there is service of citation by publication as provided by Subsection (b) of this section, citation shall also be posted in the county in which the proceedings are commenced and in the county of the decedent's last residence.

(d) A party to the proceedings who has executed the application need not be served by any method. [Amended by Acts 1979, 66th Leg., p. 1745, ch. 713, § 8, eff. Aug. 29, 1979.]

§ 55. Effect of Judgment

(a) Such judgment shall be a final judgment, and may be appealed or reviewed within the same time limits and in the same manner as may other judgments in probate matters at the instance of any interested person. If any person who is an heir of the decedent is not served with citation by registered or certified mail, or by personal service, he may at any time within four years from the date of such judgment have the same corrected by bill of review, or upon proof of actual fraud, after the passage of any length of time, and may recover from

the heirs named in the judgment, and those claiming under them who are not bona fide purchasers for value, his just share of the property or its value.

[See Compact Edition, Volume 2 for text of (b) and (c)]

[Amended by Acts 1979, 66th Leg., p. 1746, ch. 713, § 9, eff. Aug. 29, 1979.]

CHAPTER IV. EXECUTION AND REVOCATION OF WILLS

Section
59A. Contracts Concerning Succession.

§ 59A. Contracts Concerning Succession

(a) A contract to make a will or devise, or not to revoke a will or devise, if executed or entered into on or after September 1, 1979, can be established only by provisions of a will stating that a contract does exist and stating the material provisions of the contract.

(b) The execution of a joint will or reciprocal wills does not by itself suffice as evidence of the existence of a contract.

[Added by Acts 1979, 66th Leg., p. 1746, ch. 713, § 10, eff. Aug. 29, 1979.]

§ 66. Repealed by Acts 1979, 66th Leg., p. 1746, ch. 713, § 11, eff. Aug. 27, 1979

§ 69. Voidness Arising From Divorce

(a) If the testator is divorced after making a will, all provisions in the will in favor of the testator's spouse so divorced, or appointing such spouse to any fiduciary capacity under the will or with respect to the estate or person of the testator's children, shall be null and void and of no effect.

(b) A person who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, the person is married to the decedent at the time of death.

[Amended by Acts 1979, 66th Leg., p. 1746, ch. 713, § 12, eff. Aug. 29, 1979.]

§ 77. Order of Persons Qualified to Serve

Letters testamentary or of administration shall be granted to persons who are qualified to act, in the following order:

(a) To the person named as executor in the will of the deceased.

- (b) To the surviving husband or wife.
- (c) To the principal devisee or legatee of the testator.
- (d) To any devisee or legatee of the testator.
- (e) To the next of kin of the deceased, the nearest in order of descent first, and so on, and next of kin includes a person and his descendants who legally adopted the deceased or who have been legally adopted by the deceased.
- (f) To a creditor of the deceased.
- (g) To any person of good character residing in the county who applies therefor.
- (h) To any other person not disqualified under the following Section. When applicants are equally entitled, letters shall be granted to the applicant who, in the judgment of the court, is most likely to administer the estate advantageously, or they may be granted to any two or more of such applicants.

[Amended by Acts 1979, 66th Leg., p. 1763, ch. 713, § 34, eff. Aug. 27, 1979.]

CHAPTER V. PROBATE, GRANT OF ADMINISTRATION, AND GUARDIANSHIP

PART 2. PROCEDURE PERTAINING TO FOREIGN WILLS

Section

107A. Suit for the Recovery of Debts by a Foreign Executor or Administrator.

PART 3. ESTATES OF MINORS AND INCOMPETENTS

- 113A. Appointment of Attorney Ad Litem.
- 127A. Guardianship of Person Missing on Public Service.

PART 5. LIMITED GUARDIANSHIP PROCEEDINGS

- 130A. Limited Guardianship.
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- 130F. Examination and Report.
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- 130H. Order of the Court.
- 130I. Who May be Guardians.
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- 130K. Oath and Bond of Limited Guardian.
- 130L. Authority of Limited Guardian.
- 130M. Termination, Removal, or Resignation of Limited Guardian.
- 130N. Venue.
- 130O. Transfer of Venue.

PART 1. ESTATES OF DECEDENTS

§ 82. Contents of Application for Letters of Administration

An application for letters of administration when no will, written or oral, is alleged to exist shall state:

- (a) The name and domicile of the applicant, relationship to the decedent, if any, and that the applicant is not disqualified by law to act as administrator;
- (b) The name and intestacy of the decedent, and the fact, time and place of death;
- (c) Facts necessary to show venue in the court to which the application is made;
- (d) Whether the decedent owned real or personal property, with a statement of its probable value;
- (e) The name, age, marital status and address, if known, and the relationship, if any, of each heir to the decedent;
- (f) If known by the applicant at the time of the filing of the application, whether children were born to or adopted by the decedent, with the name and the date and place of birth of each;
- (g) If known by the applicant at the time of the filing of the application, whether the decedent was ever divorced, and if so, when and from whom; and
- (h) That a necessity exists for administration of the estate, alleging the facts which show such necessity.

[Amended by Acts 1979, 66th Leg., p. 1746, ch. 713, § 13, eff. Aug. 27, 1979.]

PART 2. PROCEDURE PERTAINING TO FOREIGN WILLS

§ 107A. Suit for the Recovery of Debts by a Foreign Executor or Administrator

- (a) On giving notice by registered or certified mail to all creditors of the decedent in this state who have filed a claim against the estate of the decedent for a debt due to the creditor, a foreign executor or administrator of a person who was a nonresident at the time of death may prosecute a suit in this state for the recovery of debts due to the decedent.
- (b) The plaintiff's letters testamentary or letters of administration granted by a competent tribunal, properly authenticated, shall be filed with the suit.
- (c) By filing suit in this state for the recovery of a debt due to the decedent, a foreign executor or administrator submits personally to the jurisdiction of the courts of this state in a proceeding relating to the recovery of a debt due by his decedent to a resident of this state. Jurisdiction under this subsection is limited to the money or value of personal property recovered in this state by the foreign executor or administrator.
- (d) Suit may not be maintained in this state by a foreign executor or administrator if there is an executor or administrator of the decedent qualified by a court of this state or if there is pending in this

state an application for appointment as an executor or administrator.

[Added by Acts 1977, 65th Leg., p. 1190, ch. 457, § 1, eff. Aug. 29, 1977.]

PART 3. ESTATES OF MINORS AND INCOMPETENTS

§ 109. Persons Qualified to Serve as Guardians

(a) **Natural Guardians.** If the parents live together, both parents are the natural guardians of the person of the minor children by the marriage, and one of the parents, which may be either the father or the mother, is entitled to be appointed guardian of their estates. In event of disagreement as to which parent shall be appointed, the court shall make the appointment on the basis of which one is the better qualified to serve in that capacity. If one parent is dead, the survivor is the natural guardian of the person of the minor children, and is entitled to be appointed guardian of their estates. The rights of parents who do not live together are equal; the guardianship of their minor children shall be assigned to one or the other, the interest of the children alone being considered.

[See Compact Edition, Volume 2 for text of (b) and (c)]

[Amended by Acts 1979, 66th Leg., p. 39, ch. 24, § 22, eff. Aug. 27, 1979.]

§ 110. Persons Disqualified to Serve as Guardians

The following persons shall not be appointed guardians:

- (a) Minors.
- (b) Persons whose conduct is notoriously bad.
- (c) Incompetents.
- (d) Those who are themselves parties, or whose father or mother is a party to a lawsuit on the result of which the welfare of the person for whom, or for whose estate, a guardian is to be appointed, may depend.
- (e) Those who are indebted to the person for whom or for whose estate a guardian is to be appointed, unless they pay the debt prior to the appointment, or who are asserting any claim to any property, real or personal, adverse to the person for whom, or for whose estate, the appointment is sought.
- (f) [Deleted.]
- (g) Those who by reason of inexperience or lack of education, or for other good reason, are shown to be incapable of properly and prudently managing and controlling the ward or his estate.

[Amended by Acts 1977, 65th Leg., p. 2142, ch. 857, § 1, eff. Aug. 29, 1977.]

§ 113A. Appointment of Attorney Ad Litem

In a proceeding under the provisions of this chapter for the appointment of a guardian of a person who is not a minor, the judge may appoint an attorney ad litem to represent the interests of the person for whom the permanent guardianship is sought and shall allow the attorney ad litem a reasonable fee for his services to be taxed as part of the costs.

[Added by Acts 1977, 65th Leg., p. 1380, ch. 551, § 1, eff. Aug. 29, 1977.]

§ 127A. Guardianship of Person Missing on Public Service

(a) Not less than six months after a person is reported by an executive department of the United States to be a prisoner of war or missing on the public service of the United States, any person may file a written application for the appointment of a guardian of the person of the missing person in the court of the county of residence of the missing person's spouse or, if there is no spouse, in the county of residence of a parent or child of the missing person, or if there is no parent or child, in the county of residence of the missing person's next of kin.

(b) The application shall state:

(1) the name, sex, and last known residence of the person for whom the appointment of a guardian is sought;

(2) the executive department issuing the report, the date of the report, and the last known whereabouts of the missing person;

(3) the names and addresses of the missing person's spouse, children, and parents or, if there is no spouse, child, or parent, the name and address of the person's next of kin and facts that show that the court has venue of the proceeding;

(4) the reason for the appointment and the interest of the applicant in the appointment; and

(5) the name, relationship, and address of the person whom the applicant desires to have appointed as guardian.

(c) The court shall appoint an attorney to represent the interests of the missing person and shall allow the attorney a reasonable fee, not to exceed \$25, for his services to be taxed as part of the costs.

(d) The attorney appointed to represent the interest of the missing person shall be personally served with citation to appear and answer the application for the appointment of a guardian. The clerk of the court shall issue a notice setting forth that an application has been filed for the guardianship of the person of the missing person and by whom the application is made. The notice shall cite all persons

interested in the welfare of that person to appear at the time and place stated in the notice and contest the application, if they so desire. The notice shall be served by posting, and the sheriff or other officer posting the notice shall return the original, signed officially, stating thereon in writing the time and place that he posted the copy of the notice. In addition to posting the notice, a copy of the notice shall be mailed by registered or certified mail to the spouse, to each child, to each parent of the missing person, and to any other person that the court deems appropriate.

(e) Any person has the right to appear and contest the appointment of a particular person as guardian of the missing person, or to contest any guardianship proceeding which he deems to be injurious to the missing person, or to commence a guardianship proceeding which he deems beneficial to the missing person.

(f) Before appointing a guardian, the court must find:

(1) that the person has been reported missing by an executive department of the United States and still is missing;

(2) that the court has venue of the proceeding and that there is not an existing guardianship of this person;

(3) that the person applying for appointment as the guardian is a proper person to act as the guardian; and

(4) that the rights of the missing person will be protected by the appointment of the guardian.

(g) After the hearing, the court shall dismiss the application or enter an order appointing a guardian to protect the rights of the missing person and may impose in the order any conditions or restrictions it deems necessary to protect the rights of the missing person. In appointing the guardian, the court shall give preference to the spouse of the missing person, and if there is no spouse shall give preference to parents and children of the missing person.

(h) The jurisdiction of the court over the guardianship is continuing. If the missing person returns, on motion of any interested person after a notice, stating that the motion has been filed and specifying the date of a hearing, has been issued and served on the formerly missing person as in other cases, the court shall amend or vacate the original order of guardianship. A copy of the motion shall accompany the notice.

[Added by Acts 1977, 65th Leg., p. 569, ch. 203, § 1, eff. Aug. 29, 1977.]

PART. 5. LIMITED GUARDIANSHIP PROCEEDINGS

§ 130A. Limited Guardianship

Limited guardianship for mentally retarded persons shall be utilized only as necessary to promote and protect the well-being of the individual, shall be designed to encourage the development of maximum self-reliance and independence in the individual, and shall be ordered only to the extent necessitated by the individual's actual mental and adaptive limitations. A mentally retarded person for whom a limited guardian has been appointed shall not be presumed to be incompetent and shall retain all legal and civil rights and powers except those which have by court order been designated as legal disabilities by virtue of having been specifically granted to the limited guardian. An appointment of a limited guardian shall be made pursuant to the provisions of Part 5, Chapter V. For the purposes of Chapter V, Texas Probate Code, a mentally retarded person is defined as a person with significantly subaverage general intellectual functioning of two or more standard deviations below the age-group mean for the tests used, existing concurrently with deficits in adaptive behavior.

[Added by Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977.]

§ 130B. Authority to Appoint

The court exercising original probate jurisdiction of the county having venue may appoint limited guardians for mentally retarded persons. However, no limited guardianship may be created for a person who is the ward under a full guardianship of the person or the estate.

[Added by Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977.]

§ 130C. Petition; Contents

The mentally retarded person or a person interested in his welfare may petition the court for the appointment of a limited guardian. A petition for a limited guardianship shall state:

(1) the name, age, residence, and post-office address of the alleged mentally retarded person;

(2) the nature of his alleged incompetency, in accordance with Section 130A of this code;

(3) the approximate value and description of his property, including any compensation, pension, insurance, or allowance to which he may be entitled;

(4) whether there is, in any state, a guardian or limited guardian of the alleged mentally retarded person;

(5) the nature and description of any existing guardianship or limited guardianship;

(6) the residence and post-office address of the person whom the petitioner asks to be appointed limited guardian;

(7) the names and addresses, so far as is known or can be reasonably ascertained, of the persons most closely related to the alleged mentally retarded person;

(8) the name and address of the person or institution having the care and custody of the alleged mentally retarded person;

(9) the reason for the appointment of a limited guardian and the interest of the petitioner in the appointment;

(10) the nature and degree of the alleged disability, the specific areas of protection and assistance requested, and the limitation of rights requested to be included in the court's order of appointment; and

(11) the requested term of the limited guardianship to be included in the court's order of appointment.

[Added by Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977.]

§ 130D. Filing Fee

A fee of \$15 shall be charged for filing a petition for limited guardianship, and a fee of \$4 shall be charged for the service of notice and citation. However, no fees shall be charged by the court for filing a petition for limited guardianship unless the alleged mentally retarded person has an estate valued in excess of \$1500. A party may file with the county clerk an affidavit stating that the estate of the alleged mentally retarded person is valued at less than \$1500, and the clerk shall thereupon accept the application and issue process and perform all other services required of him in the same manner as if security had been given.

[Added by Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977.]

§ 130E. Notices and Citations in Limited Guardianship Proceedings

(a) On the filing of an application for appointment of a limited guardian, the clerk shall issue a notice setting forth that the application has been filed for the limited guardianship, the name of the person for whom the guardian is sought and the nature of the disability, and by whom the application is made. The notice shall cite all persons interested in the welfare of that person to appear at the time and place stated in the notice and contest the application, if they so desire.

(b) The notice shall be served by posting, and the sheriff or other officer posting the notice shall return the original, signed officially and stating thereon in writing the time and place that he posted the copy.

(c) The alleged mentally retarded person and his parents, if the parents can be found within this state, or the conservator or any person having control of the care and welfare of the alleged mentally retarded person shall be personally served with citation to appear and answer the application for the appointment of a limited guardian. Notwithstanding the foregoing, all persons then living who stand in the first degree of consanguinity or affinity to the alleged mentally retarded person shall be given notice if their whereabouts are known or can be reasonably ascertained.

[Added by Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977.]

§ 130F. Examination and Report

Within 30 days after the filing of the petition for limited guardianship, the person alleged to be mentally retarded shall be examined at a facility approved by the Texas Department of Mental Health and Mental Retardation to perform such service. The examination shall be conducted in accordance with rules promulgated by the commissioner of the Texas Department of Mental Health and Mental Retardation. The facility shall submit a written report of its findings and recommendations to the court with copies to the alleged mentally retarded person and the petitioner. The report may include a description of the alleged mentally retarded person's degree of incompetency, if any. The findings and recommendations of the examinations shall not be binding on the court.

[Added by Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977.]

§ 130G. Hearing

The person alleged to be mentally retarded shall be present at the hearing, unless the court determines that such personal appearance would not be in the person's best interest. He is entitled to be represented by counsel. If he is unable to pay for counsel, the county is responsible for costs of counsel. He is entitled, on request, to a jury trial. The hearing may be closed if the person alleged to be mentally retarded or his counsel requests a closed hearing. At the hearing, the court shall:

(1) inquire into the nature and extent of the general intellectual functioning of the individual asserted to need a limited guardian;

(2) evaluate the extent of the impairment in his adaptive behavior;

(3) ascertain his capacity to care for himself and manage his property; and

(4) inquire into the qualifications, abilities, and capabilities of the person seeking to be appointed limited guardian.

[Added by Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977.]

§ 130H. Order of the Court

If it is found that the alleged mentally retarded person possesses the capacity to care for himself and to manage his property as would a reasonably prudent person or if it is found that the alleged mentally retarded person is totally without capacity to care for himself and to manage his property, the court shall dismiss the petition for the appointment of a limited guardian. If it is found that the alleged mentally retarded person lacks the capacity to do some, but not all, of the tasks necessary to care for himself or to manage his property, the court may appoint a limited guardian for the individual and shall define the powers and duties of the limited guardian so as to permit the mentally retarded person to care for himself or to manage his property commensurate with his ability to do so. However, the powers and duties granted to and imposed on the limited guardian by the court in its order shall not duplicate or be in conflict with the powers and duties of any other limited guardian, and the powers and duties shall not exceed those applicable to full guardians under this code. An order appointing a limited guardian shall contain findings of fact and shall also specify:

(1) the properties of the mentally retarded person to which the limited guardian is entitled to possession and management, giving the description of the properties that will be sufficient to identify them;

(2) the debts, rentals, wages, or other claims due the mentally retarded person which the limited guardian is entitled to collect, or file suit with respect to, if necessary, and thereafter to possess and manage;

(3) the contractual or other obligations which the limited guardian may incur on behalf of the mentally retarded person;

(4) the claims against the mentally retarded person which the limited guardian may pay, compromise, or defend, if necessary; and

(5) any other powers, limitations, or duties with respect to the care of the mentally retarded person or the management of his property by the limited guardian which the court shall specifically and explicitly specify.

[Added by Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977.]

§ 130I. Who May be Guardians

(a) Only a person, institution, or corporation found by the court to be suitable may be appointed limited guardian of a mentally retarded person. The court shall not customarily or ordinarily appoint the Texas Department of Mental Health and Mental Retardation or a community mental health and mental retardation center, or any other agency, public or private, that is directly providing services to the mentally retarded person, except as a last resort.

(b) Prior to appointment, the court shall make reasonable effort to question the mentally retarded person concerning his preference of the person to be appointed limited guardian, and a preference indicated shall be given due consideration by the court. [Added by Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977.]

§ 130J. Certain Duties of Limited Guardian

(a) It is the duty of the limited guardian to file annually within 30 days after the anniversary date of his appointment and also within 30 days after termination of his appointment as the limited guardian a written verified account of his administration. The court in its discretion may also allow such accounts to be filed at intervals of up to 36 months, with instructions to the limited guardian that any substantial increase in income or assets or substantial change in the mentally retarded person's condition shall be reported within 30 days of the substantial increase or change.

(b) It is the duty of the limited guardian who is managing properties to prepare and file within three months after his appointment a verified inventory of all the property of the mentally retarded person which shall come to his possession or knowledge, including a statement of all encumbrances, liens, and other secured charges on any item.

(c) To the extent that the order of the court gives the limited guardian control of any property of a mentally retarded person, the limited guardian must take care of and manage the property as a prudent man would manage his own property.

(d) Pursuant to the orders of the court, the limited guardian may expend funds of the limited guardianship in order to care for and maintain the mentally retarded person, including making application for residential care and services provided by public or private facilities. The limited guardian is required to report the condition of the mentally retarded person to the court at regular intervals or otherwise as the court may direct. If the person is receiving residential care in a public or private residential care facility, the limited guardian shall report to the court the necessity for continued care in the facility. [Added by Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977.]

§ 130K. Oath and Bond of Limited Guardian

The limited guardian shall take and subscribe an oath and, unless dispensed with by order of the court, shall file a bond in accordance with the provisions of Section 194, Texas Probate Code, as amended, except that in a limited guardianship of the person and in a limited guardianship of the estate in which the inventory filed with the court shows that the person has total accumulated assets of a value of less than \$1500, the court may dispense with the

requirement of a bond. If the court dispenses with a bond, the limited guardian shall report to the court any known changes in the accumulated assets of the mentally retarded person that increase the value to more than \$1500.

[Added by Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977.]

§ 130L. Authority of Limited Guardian

On the filing of the oath and bond, if any, the order of the court appointing the limited guardian shall become effective without the necessity for issuance of letters of guardianship. The order shall be evidence of the authority of the limited guardian to act within the scope of the powers and duties set forth in the order.

[Added by Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977.]

§ 130M. Termination, Removal, or Resignation of Limited Guardian

(a) The limited guardianship shall be settled and closed when the mentally retarded person has died, or when he has been found by the court to have full capacity to care for himself and to manage his property, or when a full guardian of the person or estate of such individual has been appointed in this state and has qualified, or being married, when such individual's spouse has qualified as survivor in community.

(b) On petition of the mentally retarded person or any person interested in his welfare and on such notice as the court may direct, the court may remove the limited guardian if the court finds that to be in the best interest of the mentally retarded person. On petition of the limited guardian, the court may accept his resignation.

(c) When a limited guardian dies, resigns, or is removed, the court may, on application and on such notice as the court may direct, appoint a successor limited guardian. A successor limited guardian shall have all of the powers and rights and shall be subject to all of the duties of the prior limited guardian.

(d) An order appointing a limited guardian or a successor limited guardian may specify a minimum period, not exceeding one year, during which no petition for adjudication that the mentally retarded person no longer requires the limited guardianship may be filed without special leave. Subject to this restriction, the mentally retarded person or any person interested in his welfare may petition the court for an order that he is no longer in need of the limited guardianship and that requires the removal or resignation of the limited guardian. A request for this order may be made by informal letter to the court or judge, and a person who knowingly interferes with the transmission of this kind of request to

the court or judge may be adjudged guilty of contempt of court.

[Added by Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977.]

§ 130N. Venue

A proceeding for the appointment of a limited guardian of a mentally retarded person shall begin in the county where the mentally retarded person resides or where his principal estate is situated.

[Added by Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977.]

§ 130O. Transfer of Venue

A court having venue of a limited guardianship proceeding may transfer venue of the limited guardianship proceeding to the court of any other county of the state on application of the limited guardian and with such notice to the mentally retarded person or other interested party as the court may require. A transfer of a limited guardianship proceeding shall be made to the court of the county in which either the limited guardian or the mentally retarded person resides, as the court may deem appropriate, at the time of making application for the transfer. The original order providing for a transfer shall be retained as the permanent record by the clerk of the court in which the order is entered, and a certified copy thereof, together with the original file in the limited guardianship proceeding and a certified transcript of all record entries up to and including the order for the change, shall be transmitted to the clerk of the court to which the proceeding is transferred.

[Added by Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977.]

CHAPTER VI. SPECIAL TYPES OF ADMINISTRATION AND GUARDIANSHIP

PART 3. SMALL ESTATES

Section

149B. Accounting and Distribution.

149C. Removal of Independent Executor.

PART 4. INDEPENDENT ADMINISTRATION

154A. Court-Appointed Successor Independent Executor.

PART 3. SMALL ESTATES

§ 137. Collection of Small Estates Upon Affidavit

The distributees of an estate shall be entitled thereto, to the extent that the assets, exclusive of homestead and exempt property, exceed the known liabilities of said estate, without awaiting the appointment of a personal representative when:

(a) No petition for the appointment of a personal representative is pending or has been granted; and

(b) Thirty days have elapsed since the death of the decedent; and

(c) The value of the entire assets of the estate, not including homestead and exempt property, does not exceed \$50,000; and

(d) There is filed with the clerk of the court having jurisdiction and venue an affidavit sworn to by such distributees as have legal capacity, and, if the facts warrant, by the natural guardian or next of kin of any minor or incompetent who is also a distributee, which affidavit shall be approved by the judge of the court having jurisdiction and venue, to be recorded in "Small Estates" records by the clerk, showing the existence of the foregoing conditions, including a list of the assets and liabilities of the estate, the names and addresses of the distributees, and their right to receive the money or property of the estate, or to have such evidences of money, property or other rights of the estate as found to exist transferred to them, being heirs, devisees, or assignees, and listing all assets and known liabilities of the estates; and

(e) A copy of such affidavit, certified to by said clerk, is furnished by the distributees of the estate to the person or persons owing money to the estate, having custody or possession of property of the estate, or acting as registrar, fiduciary or transfer agent of or for evidences of interest, indebtedness, property or other right belonging to said estate.

Henceforth the county clerk of every county in this state shall provide and keep in his office an appropriate book labeled "Small Estates," with accurate index, in which he shall record every such affidavit so filed, upon being paid his legal recording fee, said index to show the name of decedent and reference to land, if any, involved.

[Amended by Acts 1975, 64th Leg., p. 1402, ch. 543, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 361, ch. 177, § 1, eff. May 20, 1977; Acts 1979, 66th Leg., p. 1747, ch. 713, § 14, eff. Aug. 29, 1979.]

§ 144. Payment of Claims Without Guardianship

(a) **To Residents.** Whenever a resident minor, or whenever a resident person legally adjudged to be of unsound mind or to be an habitual or common drunkard sometimes referred to in this Section as "creditor," being without a legal guardian of his person or estate, shall be entitled to money in an amount not exceeding Ten Thousand Dollars, the right to which is liquidated and is uncontested in any pending lawsuit, the debtor may pay same to the County Clerk of the county in which such creditor resides in this state, for the account of such creditor, giving his name, the nature of his disability, and if a minor his age, and his post-office address, and the receipt for such money signed by the clerk shall be

forever binding on such creditor as of the date and to the extent of such payment. Upon receipt of such payment by the clerk, he shall forthwith call same to the attention of the court and shall invest such money as authorized by the Probate Code pursuant to the orders of the court in the name and for the account of such minor or other person entitled to same, and by letter mailed to the address given by the debtor, shall apprise such creditor of the fact that such deposit has been made. Any increase, dividend or income from such investments shall be credited to the account of such minor or other person entitled to such investment. Any money heretofore deposited under the terms of this section which has not been paid out shall within thirty (30) days after the effective date of this Act be subject to the provisions of this Act as amended.

Within sixty (60) days from the first day of each calendar year the clerk of the court shall make a report to the court in writing of the status of such investments. Such report shall contain the following:

- (1) The amount of the original investment or the amount of the investment at the last annual report, whichever is later.
- (2) Any increase, dividend or income from such investment since the last annual report.
- (3) The total amount of the investment and all increases, dividends or income at the date of the report.
- (4) The name of the depository or the type of investment.

The father or mother or unestranged spouse of such creditor, priority being given to such spouse, residing in this state or if there be no such spouse and both father and mother be dead or nonresidents of this state, then the person residing in this state who has actual custody of such creditor, may as custodian, upon filing with such clerk written application and bond approved by the County Judge of such county, withdraw such money from the clerk for the use and benefit of such creditor, such bond to be in double the amount of said money and to be payable to the judge or his successors in office and to be conditioned that such custodian will use said money for the benefit of such creditor under directions of the court and that he will, when legally called upon to do so, faithfully account to such creditor, his heirs or legal representatives for such money and any increase thereof upon removal of the disability to which such creditor is subject, or upon his death or the appointment of a guardian. No fees or commissions shall be allowed to such custodian for taking care of, handling or expending such money so withdrawn by him.

When such custodian shall have expended such money in accordance with directions of the court or shall have otherwise complied with the terms of his

bond by accounting for said money and any increase, he shall file with the County Clerk of said county his sworn report of his accounting, the filing of which report, when approved by the court shall operate as a discharge of said person as custodian and his sureties from all further liability under said bond. The court shall satisfy itself that the report is true and correct and may require proof as in other cases.

(b) To Non-Resident. Whenever a non-resident minor or whenever a non-resident person duly adjudged by a court of competent jurisdiction to be of unsound mind or to be an habitual drunkard, having no legal guardian qualified in this state, is entitled to money in an amount, not exceeding Ten Thousand Dollars owing as a result of transactions within this state, the right to which is liquidated and is uncontested in any pending lawsuit in this state, the debtor in this state may pay such money to the guardian of such creditor duly qualified in his domiciliary jurisdiction or to the county clerk of any county in this state in which real property owned by such non-resident person is situated. If such person is not known to own any real property in any county in this state such debtor shall have the right to pay such money to the county clerk of the county of this state in which the debtor resides. In either case, such payment to the clerk shall be for the use and benefit and for the account of such non-resident creditor, and the receipt for such payment signed by the clerk, reciting the name of such creditor and his post-office address, if known, shall be forever binding against such creditor as of the date and to the extent of such payment. Such money so paid to such clerk shall be handled by him in the same manner as above provided for in cases of payments to the clerk for the accounts of residents of this state, and all applicable provisions of Subsection (a) above shall apply to the handling and disposition of money or any increase, dividend, or income herefrom so paid to the clerk for the use, benefit, and account of such non-resident creditor.

(c) When the Deposit Is Not Withdrawn by Another Person. If no person authorized hereunder withdraws such money from the clerk as provided for in this Section, then the creditor himself, after termination of his disability, or his subsequent personal representatives or heirs, as the case may be, may at any time, without special bond for the purpose, withdraw such money upon simply exhibiting to the clerk an order of the county or probate court of the county where such money is held by the clerk, directing the clerk to deliver such money to such creditor or to his personal representative or heirs named in such order, the identity of such persons and their credentials being first proved to the satisfaction of the court.

(d) Money in the Registry of a Court and Belonging to an Inmate of a State Eleemosynary

Institute. Whenever it is made to appear to the judge of a county court, district court, or other court of the State of Texas, by an affidavit executed by the superintendent, business manager or field representative of any eleemosynary institution of the State of Texas, that a certain inmate therein is a lunatic, idiot, person of unsound mind or a person whose mental illness or mental incapacity, or both, renders him incapable of caring for himself and managing his property and financial affairs, and there is no known legal guardian appointed for the estate of such inmate, and that there is on deposit in the registry of the court a certain sum of money belonging to the inmate and not exceeding the sum of Ten Thousand Dollars, the judge of the court may order the disposition of the funds as herein provided. The judge of the court, upon satisfactory proof by affidavit or otherwise, that the inmate is a lunatic, idiot, person of unsound mind, or a person whose mental illness or mental incapacity, or both, renders him incapable of caring for himself and managing his property and financial affairs, without a legally appointed guardian of his estate, may by order direct the clerk of the court to pay the money to the institution for the use and benefit of the inmate. The State institution to which the payment is made shall not be required to give bond or security for receiving the fund from the registry of the court, and the receipt from the State institution for such payment, or the cancelled check or warrant by which the payment was made, shall be sufficient evidence of the disposition thereof and the clerk of the court shall be relieved of further responsibility therefor. Upon receipt of the money the institution shall deposit all of the amount received to the trust account of the inmate, to be used by or for the personal use of the owner thereof under the regulations or custom of the institution in the expenditure of such funds by the inmate or for the use and benefit of the inmate by the responsible officer of the institution. The provisions of this subdivision shall be cumulative of all other laws affecting the rights of lunatics, idiots, persons of unsound mind or of mental illness, and moneys belonging to such persons as inmates of a state eleemosynary institution.

Should such inmate become deceased leaving a balance in his trust account, such balance may be applied on the burial expenses of said inmate, or applied on his care, support and treatment account at said institution. After the expenditure of all funds in such trust account or after the death of such inmate the responsible officer shall furnish a statement of expenditures of such funds to nearest relative entitled to such statement; and, a copy of such statement shall be filed with the court which first granted the order to dispose of the funds in accordance with the provisions of this Act.

[Amended by Acts 1979, 66th Leg., p. 1747, ch. 713, § 15, eff. Aug. 27, 1979.]

PART 4. INDEPENDENT ADMINISTRATION

§ 145. Independent Administration

(a) Independent administration of an estate may be created as provided in Subsections (b) through (e) of this section.

(b) Any person capable of making a will may provide in his will that no other action shall be had in the county court in relation to the settlement of his estate than the probating and recording of his will, and the return of an inventory, appraisalment, and list of claims of his estate.

(c) In situations where an executor is named in a decedent's will, but the will does not provide for independent administration of the decedent's estate as provided in Subsection (b) of this section, all of the distributees of the decedent may agree on the advisability of having an independent administration and collectively designate in the application for probate of the decedent's will the executor named in the will to serve as independent executor and request in the application that no other action shall be had in the county court in relation to the settlement of the decedent's estate other than the probating and recording of the decedent's will, and the return of an inventory, appraisalment, and list of claims of the decedent's estate. In such case the county court shall enter an order granting independent administration and appointing the person, firm, or corporation designated in the application as independent executor, unless the county court finds that it would not be in the best interest of the estate to do so.

(d) In situations where no executor is named in the decedent's will, or in situations where each executor named in the will is deceased or is disqualified to serve as executor or indicates by affidavit filed with the application for administration of the decedent's estate his inability or unwillingness to serve as executor, all of the distributees of the decedent may agree on the advisability of having an independent administration and collectively designate in the application for probate of the decedent's will a qualified person, firm, or corporation to serve as independent administrator and request in the application that no other action shall be had in the county court in relation to the settlement of the decedent's estate other than the probating and recording of the decedent's will, and the return of an inventory, appraisalment, and list of claims of the decedent's estate. In such case the county court shall enter an order granting independent administration and appointing the person, firm, or corporation designated in the application as independent administrator, unless the county court finds that it would not be in the best interest of the estate to do so.

(e) All of the distributees of a decedent dying intestate may agree on the advisability of having an independent administration and collectively designate

in the application for administration of the decedent's estate a qualified person, firm, or corporation to serve as independent administrator and request in the application that no other action shall be had in the county court in relation to the settlement of the decedent's estate other than the return of an inventory, appraisalment, and list of claims of the decedent's estate. In such case the county court shall enter an order granting independent administration and appointing the person, firm, or corporation designated in the application as independent administrator, unless the county court finds that it would not be in the best interest of the estate to do so.

(f) In those cases where an independent administration is sought under the provisions of Subsections (c) through (e) above, all distributees shall be served with citation and notice of the application for independent administration unless the distributee waives the issuance or service of citation or enters an appearance in court.

(g) In no case shall any independent administrator be appointed by any court to serve in any intestate administration until those parties seeking the appointment of said independent administrator offer clear and convincing evidence to the court that they constitute all of the said decedent's heirs.

(h) When an independent administration has been created, and the order appointing an independent executor has been entered by the county court, and the inventory, appraisalment, and list aforesaid has been filed by the executor and approved by the county court, as long as the estate is represented by an independent executor, further action of any nature shall not be had in the county court except where this Code specifically and explicitly provides for some action in the county court.

(i) If a distributee described in Subsections (c) through (e) of this section is a minor or an incompetent, the guardian of the person of the distributee may sign the application on behalf of the distributee. If the county court finds that either the granting of independent administration or the appointment of the person, firm, or corporation designated in the application as independent executor would not be in the best interests of the minor or incompetent, then, notwithstanding anything to the contrary in Subsections (c) through (e) of this section, the county court shall not enter an order granting independent administration of the estate. If such distributee who is a minor or incompetent has no guardian of the person, the county court may appoint a guardian ad litem to make application on behalf of the minor or incompetent if the county court considers such an appointment necessary to protect the interest of the distributees.

(j) If a trust is created in the decedent's will, the person or class of persons first eligible to receive the

income from the trust, when determined as if the trust were to be in existence on the date of the decedent's death, shall, for the purposes of Subsections (c) and (d) of this section, be deemed to be the distributee or distributees on behalf of such trust, and any other trust or trusts coming into existence upon the termination of such trust, and are authorized to apply for independent administration on behalf of the trusts without the consent or agreement of the trustee or any other beneficiary of the trust, or the trustee or any beneficiary of any other trust which may come into existence upon the termination of such trust.

(k) If a life estate is created either in the decedent's will or by law, the life tenant or life tenants, when determined as if the life estate were to commence on the date of the decedent's death, shall, for the purposes of Subsections (c) through (e) of this section, be deemed to be the distributee or distributees on behalf of the entire estate created, and are authorized to apply for independent administration on behalf of the estate without the consent or approval of any remainderman.

(l) If a decedent's will contains a provision that a distributee must survive the decedent by a prescribed period of time in order to take under the decedent's will, then, for the purposes of determining who shall be the distributee under Subsections (c), (d), (h), and (i) of this section, it shall be presumed that the distributees living at the time of the filing of the application for probate of the decedent's will survived the decedent by the prescribed period.

(m) In the case of all decedents, whether dying testate or intestate, for the purposes of determining who shall be the distributees under Subsections (c), (d), (e), (h), and (i) of this section, it shall be presumed that no distributee living at the time the application for independent administration is filed shall subsequently disclaim any portion of such distributee's interest in the decedent's estate.

(n) If a distributee of a decedent's estate should die and if by virtue of such distributee's death such distributee's share of the decedent's estate shall become payable to such distributee's estate, then the deceased distributee's personal representative may sign the application for independent administration of the decedent's estate under Subsections (c), (d), (e), (h), and (i) of this section.

(o) Notwithstanding anything to the contrary in this section, a person capable of making a will may provide in his will that no independent administration of his estate may be allowed. In such case, his estate, if administered, shall be administered and settled under the direction of the county court as other estates are required to be settled.

(p) If an independent administration of a decedent's estate is created pursuant to Subsections (c), (d), or (e) of this section, then, unless the county

court shall waive bond on application for waiver, the independent executor shall be required to enter into bond payable to and to be approved by the judge and his or her successors in a sum that is found by the judge to be adequate under all circumstances, or a bond with one surety in a sum that is found by the judge to be adequate under all circumstances, if the surety is an authorized corporate surety. This subsection does not repeal any other section of this Code.

(q) Absent proof of fraud or collusion on the part of a judge, no judge may be held civilly liable for the commission of misdeeds, or the omission of any required act of any person, firm, or corporation designated as an independent executor under Subsections (c), (d), and (e) of this section.

[Amended by Acts 1977, 65th Leg., p. 1061, ch. 390, § 3, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 1750, ch. 713, § 16, eff. Aug. 27, 1979.]

§ 147. Enforcement of Claims by Suit

Any person having a debt or claim against the estate may enforce the payment of the same by suit against the independent executor; and, when judgment is recovered against the independent executor, the execution shall run against the estate of the decedent in the hands of the independent executor which is subject to such debt. The independent executor shall not be required to plead to any suit brought against him for money until after six months from the date that an independent administration was created and the order appointing an independent executor was entered by the county court.

[Amended by Acts 1975, 64th Leg., p. 980, ch. 376, § 1, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1064, ch. 390, § 4, eff. Sept. 1, 1977.]

§ 148. Requiring Heirs to Give Bond

When an independent administration is created and the order appointing an independent executor is entered by the county court, any person having a debt against such estate may, by written complaint filed in the county court where such order was entered, cause all distributees of the estate, heirs at law, and other persons entitled to any portion of such estate under the will, if any, to be cited by personal service to appear before such county court and execute a bond for an amount equal to the amount of the creditor's claim or the full value of such estate, as shown by the inventory and list of claims, whichever is the smaller, such bond to be payable to the judge, and his successors, and to be approved by said judge, and conditioned that all obligors shall pay all debts that shall be established against such estate in the manner provided by law. Upon the return of the citation served, unless such person so entitled to any portion of the estate, or some of them, or some other person for them, shall execute

such bond to the satisfaction of the county court, such estate shall thereafter be administered and settled under the direction of the county court as other estates are required to be settled. If the bond is executed and approved, the independent administration shall proceed. Creditors of the estate may sue on such bond, and shall be entitled to judgment thereon for the amount of their debt, or they may have their action against those in possession of the estate.

[Amended by Acts 1977, 65th Leg., p. 1064, ch. 390, § 5, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 1750, ch. 713, § 17, eff. Aug. 29, 1979.]

§ 149A. Accounting

(a) Interested Person May Demand Accounting.

At any time after the expiration of fifteen months from the date that an independent administration was created and the order appointing an independent executor was entered by the county court, any person interested in the estate may demand an accounting from the independent executor. The independent executor shall thereupon furnish to the person or persons making the demand an exhibit in writing, sworn and subscribed by the independent executor, setting forth in detail:

1. The property belonging to the estate which has come into his hands as executor.
2. The disposition that has been made of such property.
3. The debts that have been paid.
4. The debts and expenses, if any, still owing by the estate.
5. The property of the estate, if any, still remaining in his hands.
6. Such other facts as may be necessary to a full and definite understanding of the exact condition of the estate.
7. Such facts, if any, that show why the administration should not be closed and the estate distributed.

Any other interested person shall, upon demand, be entitled to a copy of any exhibit or accounting that has been made by an independent executor in compliance with this section.

(b) **Enforcement of Demand.** Should the independent executor not comply with a demand for an accounting authorized by this section within sixty days after receipt of the demand, the person making the demand may compel compliance by an action in the county court or by a suit in the district court. After a hearing, the court shall enter an order requiring the accounting to be made at such time as it deems proper under the circumstances.

[See *Compact Edition, Volume 2 for text of (c) and (d)*]

[Amended by Acts 1977, 65th Leg., p. 1065, ch. 390, § 6, eff. Sept. 1, 1977.]

§ 149B. Accounting and Distribution

(a) In addition to or in lieu of the right to an accounting provided by Section 149A of this code, at any time after the expiration of 12 months after all estate and all inheritance taxes are paid or three years from the date that an independent administration was created and the order appointing an independent executor was entered, whichever date is later, a person interested in the estate may petition the court for an accounting and distribution. The proceeding for an accounting and distribution may be brought in the county court if the county judge is licensed to practice law in the State of Texas or may be brought in a statutory probate court, a county court at law with probate jurisdiction, or a district court of the county. The court may order an accounting to be made with the court by the independent executor at such time as the court deems proper. The accounting shall include the information that the court deems necessary to determine whether any part of the estate should be distributed.

(b) On receipt of the accounting and, after notice to the independent executor and a hearing, unless the court finds a continued necessity for administration of the estate, the court may order its distribution by the independent executor to the persons entitled to the property.

(c) If all the property in the estate is ordered distributed by the executor and the estate is fully administered, the court also may order the independent executor to file a final account with the court and may enter an order closing the administration and terminating the power of the independent executor to act as executor.

[Added by Acts 1979, 66th Leg., p. 1751, ch. 713, § 18, eff. Aug. 27, 1979.]

§ 149C. Removal of Independent Executor

(a) The county court, if the county judge is licensed to practice law in the State of Texas, or a statutory probate court, a county court at law with probate jurisdiction, or a district court of the county, on motion of any interested person, after the independent executor has been cited by personal service to answer at a time and place fixed in the notice, may remove an independent executor when:

(1) the independent executor fails to return within ninety days after qualification, unless such time is extended by order of the court, an inventory of the property of the estate and list of claims that have come to his knowledge;

(2) sufficient grounds appear to support belief that he has misapplied or embezzled, or that he is about to misapply or embezzle, all or any part of the property committed to his care;

(3) he fails to make an accounting which is required by law to be made;

(4) he is proved to have been guilty of gross misconduct or gross mismanagement in the performance of his duties; or

(5) he becomes an incompetent, or is sentenced to the penitentiary, or from any other cause becomes legally incapacitated from properly performing his fiduciary duties.

(b) The order of removal shall state the cause of removal and shall direct by order the disposition of the assets remaining in the name or under the control of the removed executor. The order of removal shall require that letters issued to the removed executor shall be surrendered and that all letters shall be canceled of record. If an independent executor is removed by the court under this section, the court may, on application, appoint a successor independent executor as provided by Section 154A of this code.

(c) An independent executor who defends an action for his removal in good faith, whether successful or not, shall be allowed out of the estate his necessary expenses and disbursements, including reasonable attorney's fees, in the removal proceedings.

[Added by Acts 1979, 66th Leg., p. 1751, ch. 713, § 19, eff. Aug. 27, 1979.]

§ 150. Partition and Distribution or Sale of Property Incapable of Division

If the will does not distribute the entire estate of the testator, or provide a means for partition of said estate, or if no will was probated, the independent executor may file his final account in the county court in which the will was probated, or if no will was probated, in the county court in which the order appointing the independent executor was entered, and ask for either partition and distribution of the estate or an order of sale of any portion of the estate alleged by the independent executor and found by the court to be incapable of a fair and equal partition and distribution, or both; and the same either shall be partitioned and distributed or shall be sold, or both, in the manner provided for the partition and distribution of property and the sale of property incapable of division in estates administered under the direction of the county court.

[Amended by Acts 1975, 65th Leg., p. 1065, ch. 390, § 7, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 1751, ch. 713, § 20, eff. Aug. 27, 1979.]

§ 151. Closing Independent Administration by Affidavit

[See *Compact Edition, Volume 2* for text of (a) and (b)]

(c) **Authority to Transfer Property of a Decedent After Filing the Affidavit.** An independent executor's affidavit closing the independent administration shall constitute sufficient legal authority to

all persons owing any money, having custody of any property, or acting as registrar or transfer agent or trustee of any evidence of interest, indebtedness, property, or right that belongs to the estate, for payment or transfer without additional administration to the persons described in the will as entitled to receive the particular asset or who as heirs at law are entitled to receive the asset. The persons described in the will as entitled to receive the particular asset or the heirs at law entitled to receive the asset may enforce their right to the payment or transfer by suit.

[Amended by Acts 1979, 66th Leg., p. 1752, ch. 713, § 21, eff. Aug. 27, 1979.]

§ 152. Closing Independent Administration Upon Application by Distributee

(a) At any time after an estate has been fully administered and there is no further need for an independent administration of such estate, any distributee may file an application to close the administration; and, after citation upon the independent executor, and upon hearing, the court may enter an order closing the administration and terminating the power of the independent executor to act as such.

(b) The order of the court closing the independent administration shall constitute sufficient legal authority to all persons owing any money, having custody of any property, or acting as registrar or transfer agent or trustee of any evidence of interest, indebtedness, property, or right that belongs to the estate, for payment or transfer without additional administration to the persons described in the will as entitled to receive the particular asset or who as heirs at law are entitled to receive the asset. The persons described in the will as entitled to receive the particular asset or the heirs at law entitled to receive the asset may enforce their right to the payment or transfer by suit.

[Amended by Acts 1979, 66th Leg., p. 1752, ch. 713, § 22, eff. Aug. 27, 1979.]

§ 154A. Court-Appointed Successor Independent Executor

(a) If the will of a person who dies testate names an independent executor who, having qualified, fails for any reason to continue to serve, or is removed for cause by the court, and the will does not name a successor independent executor or if each successor executor named in the will fails for any reason to qualify as executor or indicates by affidavit filed with the application for an order continuing independent administration his inability or unwillingness to serve as successor independent executor, all of the distributees of the decedent as of the filing of the application for an order continuing independent administration may apply to the county court for the appointment of a qualified person, firm, or corporation to serve as successor independent executor. If

the county court finds that continued administration of the estate is necessary, the county court shall enter an order continuing independent administration and appointing the person, firm, or corporation designated in the application as successor independent executor, unless the county court finds that it would not be in the best interest of the estate to do so. Such successor shall serve with all of the powers and privileges granted to his predecessor independent executor.

(b) If a distributee described in this section is a minor or an incompetent, the guardian of the person of the distributee may sign the application on behalf of the distributee. If the county court finds that either the continuing of independent administration or the appointment of the person, firm, or corporation designated in the application as successor independent executor would not be in the best interest of the minor or incompetent, then, notwithstanding anything to the contrary in subsection (a) of this section, the county court shall not enter an order continuing independent administration of the estate. If the distributee who is a minor or incompetent has no guardian of the person, the court may appoint a guardian ad litem to make application on behalf of the minor or incompetent if the county court considers such an appointment necessary to protect the interest of such distributee.

(c) If a trust is created in the decedent's will, the person or class of persons first eligible to receive the income from the trust, determined as if the trust were to be in existence on the date of the filing of the application for an order continuing independent administration, shall, for the purposes of this section, be deemed to be the distributee or distributees on behalf of such trust, and any other trust or trusts coming into existence upon the termination of such trust, and are authorized to apply for an order continuing independent administration on behalf of the trust without the consent or agreement of the trustee or any other beneficiary of the trust, or the trustee or any beneficiary of any other trust which may come into existence upon the termination of such trust.

(d) If a life estate is created either in the decedent's will or by law, and if a life tenant is living at the time of the filing of the application for an order continuing independent administration, then the life tenant or life tenants, determined as if the life estate were to commence on the date of the filing of the application for an order continuing independent administration, shall, for the purposes of this section, be deemed to be the distributee or distributees on behalf of the entire estate created, and are authorized to apply for an order continuing independent administration on behalf of the estate without the consent or approval of any remainderman.

(e) If a decedent's will contains a provision that a distributee must survive the decedent by a prescribed period of time in order to take under the decedent's will, for the purposes of determining who shall be the distributee under this section, it shall be presumed that the distributees living at the time of the filing of the application for an order continuing independent administration of the decedent's estate survived the decedent for the prescribed period.

(f) In the case of all decedents, whether dying testate or intestate, for the purposes of determining who shall be the distributees under this section, it shall be presumed that no distributee living at the time the application for an order continuing independent administration of the decedent's estate is filed shall subsequently disclaim any portion of such distributee's interest in the decedent's estate.

(g) If a distributee of a decedent's estate should die, and if by virtue of such distributee's death such distributee's share of the decedent's estate shall become payable to such distributee's estate, then the deceased distributee's personal representative may sign the application for an order continuing independent administration of the decedent's estate under this section.

(h) If a successor independent executor is appointed pursuant to this section, then, unless the county court shall waive bond on application for waiver, the successor independent executor shall be required to enter into bond payable to and to be approved by the judge and his or her successors in a sum that is found by the judge to be adequate under all circumstances, or a bond with one surety in a sum that is found by the judge to be adequate under all circumstances, if the surety is an authorized corporate surety.

[Added by Acts 1977, 65th Leg., p. 1066, ch. 390, § 8, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1753, ch. 713, § 23, eff. Aug. 27, 1979.]

PART 5. ADMINISTRATION OF COMMUNITY PROPERTY

§ 176. Remarriage of Surviving Spouse

The remarriage of a surviving spouse shall not terminate the surviving spouse's powers or liabilities as a qualified community administrator or administratrix; nor shall it terminate his or her powers as a surviving partner.

[Amended by Acts 1979, 66th Leg., p. 39, ch. 24, § 23, eff. Aug. 27, 1979.]

CHAPTER VII. EXECUTORS, ADMINISTRATORS, AND GUARDIANS

PART 5. GENERAL POWERS OF PERSONAL REPRESENTATIVES

Section

238A. Administration of Partnership Interest by Personal Representative.

PART 2. OATHS AND BONDS OF PERSONAL REPRESENTATIVES

§ 193. Bond of Guardian of Person

The bond of a guardian of the person shall be in an amount to be fixed by the Court granting such guardianship, payable to and to be approved by the judge and his or her successors in a sum that is found by the judge to be adequate under all circumstances, or a bond with one surety in a sum that is found by the judge to be adequate under all circumstances, if the surety is an authorized corporate surety. The bond shall be conditioned that the guardian will faithfully discharge the duties of guardian of the person of his ward.

[Amended by Acts 1979, 66th Leg., p. 1753, ch. 713, § 24, eff. Aug. 27, 1979.]

§ 194. Bonds of Personal Representatives of Estates

[See Compact Edition, Volume 2 for text of 1 to 3]

4. Penalty of Bond.

The penalty of the bond shall be fixed by the judge in an amount equal to the estimated value of all personal property belonging to the estate, or to the person under disability, together with an additional amount to cover revenue anticipated to be derived during the succeeding twelve (12) months from interest, dividends, collectible claims, the aggregate amount of any installments or periodical payments exclusive of income derived or to be derived from federal social security payments, and rentals for use of real and personal property; provided, that the penalty of the original bond shall be reduced in proportion to the amount of cash or value of securities or other assets authorized or required to be deposited or placed in safekeeping by order of court, or voluntarily made by the representative or by his sureties as hereinafter provided in Subdivisions 6 and 7 hereof.

[See Compact Edition, Volume 2 for text of 5 to 15]

[Amended by Acts 1979, 66th Leg., p. 1754, ch. 713, § 25, eff. Aug. 27, 1979.]

§ 199. Bonds of Married Persons

When a married person is appointed personal representative, the person may, jointly with, or without, his or her spouse, execute such bond as the law requires; and such bond shall bind the person's separate estate, but shall bind his or her spouse only if signed by the spouse.

[Amended by Acts 1979, 66th Leg., p. 39, ch. 24, § 24, eff. Aug. 27, 1979.]

§ 200. Bond of Married Person Under Eighteen Years of Age

When a person under eighteen years of age who is or has been married shall accept and qualify as executor, administrator, or guardian, any bond required to be executed by him shall be as valid and binding for all purposes as if he were of lawful age. [Amended by Acts 1975, 64th Leg., p. 105, ch. 45, § 3, eff. Sept. 1, 1975.]

PART 5. GENERAL POWERS OF PERSONAL REPRESENTATIVES

§ 230. Care of Property of Estates

[See Compact Edition, Volume 2 for text of (a)]

(b) Estates of Wards (1) General Powers and Duties. The guardian of the estate of a ward is entitled to the possession and management of all properties belonging to the ward, to collect all debts, rentals, or claims due such ward, to enforce all obligations in his favor, and to bring and defend suits by or against him; but, in the management of the estate, the guardian shall be governed by the provisions of this Code. It is the duty of the guardian of the estate to take care of and manage such estate as a prudent man would manage his own property. He shall account for all rents, profits, and revenues that the estate would have produced by such prudent management.

(2) Power to Make Tax-Motivated Gifts. (A) On application of the guardian or any interested party, and after notice to all interested persons and to such other persons as the court may direct, and on a showing that the ward will probably remain incompetent during his lifetime, the court may, after hearing and by order, authorize the guardian to apply such principal or income of the ward's estate as is not required for the support of the ward during his lifetime or of his family towards the establishment of an estate plan for the purpose of minimizing income, estate, inheritance, or other taxes payable out of the ward's estate. The court may authorize the guardian to make gifts of the ward's personal property or real estate, outright or in trust, on behalf of the ward, to or for the benefit of

(i) organizations to which charitable contributions may be made under the Internal Revenue Code and in which it is shown the ward would reasonably have an interest,

(ii) the ward's heirs at law who are identifiable at the time of the order,

(iii) devisees under the ward's last validly executed will, if there be such a will,

(iv) and a person serving as guardian of the ward provided he is eligible under either category (ii) or (iii) above.

(B) The person making application to the court shall outline the proposed estate plan, setting forth

all the benefits to be derived therefrom. The application shall also indicate that the planned disposition is consistent with the intentions of the ward insofar as they can be ascertained. If the ward's intentions cannot be ascertained, the ward will be presumed to favor reduction in the incidence of the various forms of taxation and the partial distribution of his estate as herein provided.

(C) The court may appoint a guardian ad litem for the ward or any interested party at any stage of the proceedings, if deemed advisable for the protection of the ward or the interested party.

(D) Subsequent modifications of an approved plan may be made by similar application to the court. [Amended by Acts 1975, 64th Leg., p. 268, ch. 114, § 1, eff. April 30, 1975.]

§ 236. Sums Allowable for Education and Maintenance of Ward

[See *Compact Edition, Volume 2 for text of (a)*]

(b) Court Approval of Previous Expenditures. When a guardian has in good faith expended funds from the corpus of his ward's estate for support and maintenance for the ward, and when it is not convenient or possible to first secure approval of the Court, if the proof is clear and convincing that such expenditures were reasonable and proper and such that the Court would have granted authority to make the expenditures out of the corpus, and that the ward received the benefits of such expenditures, the judge, in the exercise of his sound discretion, may approve such expenditures in the same manner as if such expenditures were made by the guardian out of the income from the ward's estate. Provided, however, such expenditures may not exceed the sum of Two Thousand Dollars (\$2,000) during an annual accounting period.

[Amended by Acts 1975, 64th Leg., p. 978, ch. 374, § 1, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1170, ch. 448, § 2, eff. Aug. 29, 1977.]

§ 238A. Administration of Partnership Interest by Personal Representative

If the decedent was a partner in a general partnership and the articles of partnership provide that, on the death of a partner, his or her executor or other personal representative shall be entitled to the place of the deceased partner in the firm, the executor or other personal representative so contracting to come into the partnership shall, to the extent allowed by law, be liable to third persons only to the extent of the deceased partner's capital in the partnership and the estate's assets held by the executor or other personal representative. This section does not exonerate an executor or other personal representative from liability for his or her negligence. [Amended by Acts 1979, 66th Leg., p. 71, ch. 46, § 1, eff. April 1, 1979.]

PART 6. COMPENSATION, EXPENSES, AND COURT COSTS

§ 245. When Costs Are Adjudged Against Representative

When the personal representative of an estate or person neglects the performance of any duty required of him, and any costs are incurred thereby, or if he is removed for cause, he and the sureties on his bond shall be liable for costs of removal and other additional costs incurred that are not authorized expenditures, as defined by this code.

[Amended by Acts 1977, 65th Leg., p. 1171, ch. 448, § 3, eff. Aug. 29, 1977.]

CHAPTER VIII. PROCEEDINGS DURING ADMINISTRATION AND GUARDIANSHIP

PART 5. SALES

Section

339A. Sale of Property of a Minor by a Parent Without Guardianship.

PART 12. FINAL SETTLEMENT, ACCOUNTING, AND DISCHARGE

404B. Payment by Guardian of Taxes or Expenses.

PART 3. SETTING APART HOMESTEAD AND OTHER EXEMPT PROPERTY, AND FIXING THE FAMILY ALLOWANCE

§ 270. Liability of Homestead for Debts

The homestead shall not be liable for the payment of any of the debts of the estate, except for the purchase money thereof, the taxes due thereon, or work and material used in constructing improvements thereon; and in this last case only when the work and material are contracted for in writing, with the consent of both spouses given in the same manner as required in making a sale and conveyance of the homestead.

[Amended by Acts 1979, 66th Leg., p. 35, ch. 24, § 1, eff. Aug. 27, 1979.]

§ 271. Exempt Property to be Set Apart

Immediately after the inventory, appraisal, and list of claims have been approved, the court shall, by order, set apart for the use and benefit of the surviving spouse and minor children and unmarried children remaining with the family of the deceased, all such property of the estate as is exempt from execution or forced sale by the constitution and laws of the state.

[Amended by Acts 1979, 66th Leg., p. 35, ch. 24, § 2, eff. Aug. 27, 1979.]

§ 272. To Whom Delivered

The exempt property set apart to the surviving spouse and children shall be delivered by the executor or administrator without delay as follows: (a) If there be a surviving spouse and no children, or if the children be the children of the surviving spouse, the whole of such property shall be delivered to the surviving spouse. (b) If there be children and no surviving spouse, such property, except the homestead, shall be delivered to such children if they be of lawful age, or to their guardian if they be minors. (c) If there be children of the deceased of whom the surviving spouse is not the parent, the share of such children in such exempted property, except the homestead, shall be delivered to such children if they be of lawful age, or to their guardian, if they be minors. (d) In all cases, the homestead shall be delivered to the surviving spouse, if there be one, and if there be no surviving spouse, to the guardian of the minor children and unmarried children, if any, living with the family.

[Amended by Acts 1979, 66th Leg., p. 35, ch. 24, § 3, eff. Aug. 27, 1979.]

§ 273. Allowance in Lieu of Exempt Property

In case there should not be among the effects of the deceased all or any of the specific articles exempted from execution or forced sale by the Constitution and laws of this state, the court shall make a reasonable allowance in lieu thereof, to be paid to such surviving spouse and children, or such of them as there are, as hereinafter provided. The allowance in lieu of a homestead shall in no case exceed Ten Thousand Dollars and the allowance for other exempted property shall in no case exceed One Thousand Dollars, exclusive of the allowance for the support of the surviving spouse and minor children which is hereinafter provided for.

[Amended by Acts 1977, 65th Leg., p. 351, ch. 172, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 36, ch. 24, § 4, eff. Aug. 27, 1979.]

§ 274. How Allowance Paid

The allowance made in lieu of any of the exempted property shall be paid either in money out of the funds of the estate that come to the hands of the executor or administrator, or in any property of the deceased that such surviving spouse or children, if they be of lawful age, or their guardian if they be minors, shall choose to take at the appraisal, or a part thereof, or both, as they shall select; provided, however, that property specifically bequeathed or devised to another may be so taken, or may be sold to raise funds for the allowance as hereinafter provided, only if the other available property shall be insufficient to provide the allowance.

[Amended by Acts 1979, 66th Leg., p. 36, ch. 24, § 5, eff. Aug. 27, 1979.]

§ 275. To Whom Allowance Paid

The allowance in lieu of exempt property shall be paid by the executor or administrator, as follows:

(a) If there be a surviving spouse and no children, or if all the children be the children of the surviving spouse, the whole shall be paid to such surviving spouse.

(b) If there be children and no surviving spouse, the whole shall be paid to and equally divided among them if they be of lawful age, but if any of such children are minors, their shares shall be paid to their guardian or guardians.

(c) If there be a surviving spouse, and children of the deceased, some of whom are not children of the surviving spouse, the surviving spouse shall receive one-half of the whole, plus the shares of the children of whom the survivor is the parent, and the remaining shares shall be paid to the children of whom the survivor is not the parent, or, if they are minors, to their guardian.

[Amended by Acts 1979, 66th Leg., p. 36, ch. 24, § 6, eff. Aug. 27, 1979.]

§ 276. Sale to Raise Allowance

If there be no property of the deceased that such surviving spouse or children are willing to take for such allowance, or not a sufficiency, and there be no funds, or not sufficient funds, of the estate in the hands of such executor or administrator to pay such allowance, or any part thereof, the court, on the application in writing of such surviving spouse and children, shall order a sale of so much of the estate for cash as will be sufficient to raise the amount of such allowance, or a part thereof, as the case requires.

[Amended by Acts 1979, 66th Leg., p. 36, ch. 24, § 7, eff. Aug. 27, 1979.]

§ 277. Preference of Liens

If property upon which there is a valid subsisting lien or encumbrance shall be set apart to the surviving spouse or children as exempt property, or appropriated to make up allowances made in lieu of exempt property or for the support of the surviving spouse or children, the debts secured by such lien shall, if necessity requires, be either paid or continued as against such property. This provision applies to all estates, whether solvent or insolvent.

[Amended by Acts 1979, 66th Leg., p. 36, ch. 24, § 8, eff. Aug. 27, 1979.]

§ 279. When Estate is Insolvent

Should the estate, upon final settlement, prove to be insolvent, the title of the surviving spouse and children to all the property and allowances set apart or paid to them under the provisions of this Code

shall be absolute, and shall not be taken for any of the debts of the estate except as hereinafter provided.

[Amended by Acts 1979, 66th Leg., p. 37, ch. 24, § 9, eff. Aug. 27, 1979.]

§ 280. Exempt Property Not Considered in Determining Solvency

In ascertaining whether an estate is solvent or insolvent, the exempt property set apart to the surviving spouse or children, or the allowance in lieu thereof, and the family allowance hereinafter provided for, shall not be estimated or considered as assets of the estate.

[Amended by Acts 1979, 66th Leg., p. 37, ch. 24, § 10, eff. Aug. 27, 1979.]

§ 282. Nature of Homestead Property Immaterial

The homestead rights of the surviving spouse and children of the deceased are the same whether the homestead be the separate property of the deceased or community property between the surviving spouse and the deceased, and the respective interests of such surviving spouse and children shall be the same in one case as in the other.

[Amended by Acts 1979, 66th Leg., p. 37, ch. 24, § 11, eff. Aug. 27, 1979.]

§ 283. Homestead Rights of Surviving Spouse

On the death of the husband or wife, leaving a spouse surviving, the homestead shall descend and vest in like manner as other real property of the deceased and shall be governed by the same laws of descent and distribution.

[Amended by Acts 1979, 66th Leg., p. 37, ch. 24, § 12, eff. Aug. 27, 1979.]

§ 284. When Homestead Not Partitioned

The homestead shall not be partitioned among the heirs of the deceased during the lifetime of the surviving spouse, or so long as the survivor elects to use or occupy the same as a homestead, or so long as the guardian of the minor children of the deceased is permitted, under the order of the proper court having jurisdiction, to use and occupy the same.

[Amended by Acts 1979, 66th Leg., p. 37, ch. 24, § 13, eff. Aug. 27, 1979.]

§ 285. When Homestead Can Be Partitioned

When the surviving spouse dies or sells his or her interest in the homestead, or elects no longer to use or occupy the same as a homestead, or when the proper court no longer permits the guardian of the minor children to use and occupy the same as a homestead, it may be partitioned among the respective owners thereof in like manner as other property held in common.

[Amended by Acts 1979, 66th Leg., p. 38, ch. 24, § 14, eff. Aug. 27, 1979.]

§ 286. Family Allowance to Surviving Spouses and Minors

Immediately after the inventory, appraisal, and list of claims have been approved, the court shall fix a family allowance for the support of the surviving spouse and minor children of the deceased.

[Amended by Acts 1979, 66th Leg., p. 38, ch. 24, § 15, eff. Aug. 27, 1979.]

§ 287. Amount of Family Allowance

Such allowance shall be of an amount sufficient for the maintenance of such surviving spouse and minor children for one year from the time of the death of the testator or intestate. The allowance shall be fixed with regard to the facts or circumstances then existing and those anticipated to exist during the first year after such death. The allowance may be paid either in a lump sum or in installments, as the court shall order.

[Amended by Acts 1979, 66th Leg., p. 38, ch. 24, § 16, eff. Aug. 27, 1979.]

§ 288. When Family Allowance Not Made

No such allowance shall be made for the surviving spouse when the survivor has separate property adequate to the survivor's maintenance; nor shall such allowance be made for the minor children when they have property in their own right adequate to their maintenance.

[Amended by Acts 1979, 66th Leg., p. 38, ch. 24, § 17, eff. Aug. 27, 1979.]

§ 290. Family Allowance Preferred

The family allowance made for the support of the surviving spouse and minor children of the deceased shall be paid in preference to all other debts or charges against the estate, except expenses of the funeral and last sickness of the deceased.

[Amended by Acts 1979, 66th Leg., p. 38, ch. 24, § 18, eff. Aug. 27, 1979.]

§ 291. To Whom Family Allowance Paid

The executor or administrator shall apportion and pay the family allowance:

(a) To the surviving spouse, if there be one, for the use of the survivor and the minor children, if such children be the survivor's.

(b) If the surviving spouse is not the parent of such minor children, or of some of them, the portion of such allowance necessary for the support of such minor child or children of which the survivor is not the parent shall be paid to the guardian or guardians of such child or children.

(c) If there be no surviving spouse, the allowance to the minor child or children shall be paid to the guardian or guardians of such minor child or children.

(d) If there be a surviving spouse and no minor child or children, the entire allowance shall be paid to the surviving spouse.

[Amended by Acts 1979, 66th Leg., p. 38, ch. 24, § 19, eff. Aug. 27, 1979.]

§ 292. May Take Property for Family Allowance

The surviving spouse, or the guardian of the minor children, as the case may be, shall have the right to take in payment of such allowance, or any part thereof, any of the personal property of the estate at its appraised value as shown by the appraisal; provided, however, that property specifically devised or bequeathed to another may be so taken, or may be sold to raise funds for the allowance as herein-after provided, only if the other available property shall be insufficient to provide the allowance.

[Amended by Acts 1979, 66th Leg., p. 39, ch. 24, § 20, eff. Aug. 27, 1979.]

§ 293. Sale to Raise Funds for Family Allowance

If there be no personal property of the deceased that the surviving spouse or guardian is willing to take for such allowance, or not a sufficiency of them, and if there be no funds or not sufficient funds in the hands of such executor or administrator to pay such allowance, or any part thereof, then the court, as soon as the inventory, appraisal, and list of claims are returned and approved, shall order a sale of so much of the estate for cash as will be sufficient to raise the amount of such allowance, or a part thereof, as the case requires.

[Amended by Acts 1979, 66th Leg., p. 39, ch. 24, § 21, eff. Aug. 27, 1979.]

PART 4. PRESENTATION AND PAYMENT OF CLAIMS

§ 312. Contest of Claims, Action by Court, and Appeals

[See Compact Edition Volume 2 for text of (a) to (d)]

(e) **Appeal.** When a claimant or any person interested in an estate or ward shall be dissatisfied with the action of the court upon a claim, he may appeal therefrom to the courts of (civil) appeals, as from other judgments of the county court in probate matters.

[Amended by Acts 1975, 64th Leg., p. 2196, ch. 701, § 14, eff. June 21, 1975.]

§ 313. Suit on Rejected Claim

When a claim or a part thereof has been rejected by the representative, the claimant shall institute suit thereon in the court of original probate jurisdiction in which the estate is pending or in any other court of proper jurisdiction within ninety days after such rejection, or the claim shall be barred. When a rejected claim is sued on, the endorsement made on

or annexed thereto shall be taken to be true without further proof, unless denied under oath. When a rejected claim or part thereof has been established by suit, no execution shall issue, but the judgment shall be certified within thirty days after rendition, if of any court other than the court of original probate jurisdiction, and filed in the court in which the cause is pending, entered upon the claim docket, classified by the court, and handled as if originally allowed and approved in due course of administration.

[Amended by Acts 1975, 64th Leg., p. 2196, ch. 701, § 5, eff. June 21, 1975.]

§ 320. Order of Payment of Claims

(a) **Estates of Decedents.** Executors and administrators, when they have funds in their hands belonging to the estate, shall pay in the following order:

(1) Funeral expenses and expenses of last sickness, in an amount not to exceed Two Thousand Dollars, if the claims therefor have been presented within sixty days from the original grant of letters testamentary or administration, but if not presented within such time, their payment shall be postponed until the allowances made to the widow and children, or to either, are paid.

(2) Allowances made to the widow and children, or to either.

(3) Expenses of administration and the expenses incurred in the preservation, safe-keeping, and management of the estate.

(4) Other claims against the estate in the order of their classification.

(b) **Estates of Wards.** The guardian shall pay all claims against the estate of his ward that have been allowed and approved, or established by suit, as soon as practicable, in the following order:

(1) expenses for the care, maintenance and education of the ward or his dependents;

(2) funeral expenses and expenses of last sickness, if the guardianship is kept open after the death of the ward as provided by Section 404A of this Code, except that any claim against the estate of a ward that has been allowed and approved or established by suit prior to the death of the ward shall be paid prior to the funeral expenses and expenses of last sickness;

(3) expenses of administration; and

(4) other claims against the estate.

(c) A claimant whose claim has not been paid may petition the court for determination of his claim at any time before it is barred by the applicable statute of limitations and upon due proof procure an order for its allowance and payment from the estate.

[Amended by Acts 1975, 64th Leg., p. 1818, ch. 554, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 352, ch. 173, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1876, ch. 758, § 1, eff. Aug. 27, 1979.]

§ 322. Classification of Claims Against Estates of Decedent

Claims against an estate of a decedent shall be classed and have priority of payment, as follows:

Class 1. Funeral expenses and expenses of last sickness for a reasonable amount to be approved by the court, not to exceed Five Thousand Dollars, any excess to be classified and paid as other unsecured claims.

Class 2. Expenses of administration and expenses incurred in the preservation, safe-keeping, and management of the estate.

Class 3. Claims secured by mortgage or other liens so far as the same can be paid out of the proceeds of the property subject to such mortgage or other lien, and when more than one mortgage or lien shall exist upon the same property, the oldest shall be first paid; but no preference shall be given to such mortgage or lien.

Class 4. All other claims legally exhibited within six months after the original grant of letters testamentary or of administration.

Class 5. All claims legally exhibited after the lapse of six months from the original grant of letters testamentary or of administration.

[Amended by Acts 1979, 66th Leg., p. 869, ch. 394, § 1, eff. Aug. 27, 1979.]

PART 5. SALES

§ 339A. Sale of Property of a Minor by a Parent Without Guardianship

(a) A natural or adoptive parent of a minor who is not a ward may apply to the court for an order to sell real or personal property of a minor in an estate without being appointed guardian, when the value of the property does not exceed \$10,000. A sale of property pursuant to an order of the court under this section is not subject to disaffirmance by the minor.

(b) The parent shall make application under oath to the court for the sale of the property. Venue for the application shall be the same as in applications for the appointment for guardians of a minor. The application shall contain the following information:

- (1) a legal description of real property and a description identifying personal property;
- (2) the name of the minor or minors and his interest in the property;
- (3) the name of the purchaser;
- (4) that the sale of the minor's interest is for cash; and
- (5) that all funds received by the parent shall be used for the use and benefit of the minor.

(c) The court, on receipt of the application, shall set the application for hearing at a date not less

than five days from date of the filing of the application and, if it deems necessary, may cause citation to be issued.

(d) At the time of the hearing of the application, the court shall order the sale of the property, if it is satisfied from the evidence that the sale is in the best interest of the minor. The court may require an independent appraisal of the property to be sold to establish the minimum sale price.

(e) When the order of sale has been entered by the court, the purchaser of the property shall pay the proceeds of the sale belonging to the minor or minors into the registry of the court.

(f) Nothing in this section shall prevent the proceeds so deposited from being withdrawn from the registry of the court under Section 144 of the Texas Probate Code.

[Added by Acts 1979, 66th Leg., p. 1754, ch. 713, § 26, eff. Aug. 27, 1979.]

§ 341. Application for Sale of Real Estate

(a) Application may be made to the court for an order to sell property of the estate when it appears necessary or advisable in order to:

(1) Pay expenses of administration, funeral expenses and expenses of last sickness of decedents, and allowances and claims against the estates of decedents and wards.

(2) Make up the deficiency when the income of a ward's estate, and the personal property thereof, and the proceeds of previous sales, are insufficient for the education and maintenance of the ward, or to pay debts against the estate.

(3) Dispose of property of the estate of a ward which consists in whole or in part of an undivided interest in real estate, when it is deemed to the best interest of the estate to sell such interest.

(4) Dispose of real estate of a ward, any part of which is nonproductive or does not produce sufficient revenue to make a fair return upon the value of such real estate, when the improvement of same with a view to making it productive is not deemed advantageous or advisable, and it appears that the sale of such real estate and the investment of the money derived therefrom would be to the best interest of the estate.

(5) Conserve the estate of a ward by selling mineral interest and/or royalties on minerals in place owned by a ward.

(6) Dispose of any interest in real property of the estate of a decedent, when it is deemed to the best interest of the estate to sell such interest.

(b) to (g) Repealed by Acts 1979, 66th Leg., p. 1755, ch. 713, § 27, eff. Aug. 27, 1979.

[Amended by Acts 1975, 64th Leg., p. 975, ch. 372, § 1, eff. June 19, 1975; Acts 1975, 64th Leg., p. 976, ch. 373, § 1, eff. June 19, 1975; Acts 1979, 66th Leg., p. 1755, ch. 713, § 27, eff. Aug. 27, 1979.]

§ 343. Setting of Hearing on Application

Whenever an application for the sale of real estate is filed, it shall immediately be called to the attention of the judge by the clerk, and the judge shall designate in writing a day for hearing said application, any opposition thereto, and any application for the sale of other land, together with the evidence pertaining thereto. The judge may, by entries on the docket, continue such hearing from time to time until he is satisfied concerning the application.

[Amended by Acts 1979, 66th Leg., p. 1755, ch. 713, § 28, eff. Aug. 27, 1979.]

§ 350. Private Sales of Real Estate

All private sales of real estate shall be made in such manner as the court directs in its order of sale, and no further advertising, notice, or citation concerning such sale shall be required, unless the court shall direct otherwise.

[Amended by Acts 1979, 66th Leg., p. 1755, ch. 713, § 29, eff. Aug. 29, 1979.]

§ 355. Action of Court on Report of Sale

After the expiration of five days from the filing of a report of sale, the court shall inquire into the manner in which the sale was made, hear evidence in support of or against such report, and determine the sufficiency or insufficiency of the representative's general bond, if any has been required and given; and, if he is satisfied that the sale was for a fair price, was properly made and in conformity with law, and has approved any increased or additional bond which may have been found necessary to protect the estate, the court shall enter a decree confirming such sale, showing conformity with the foregoing provisions of the Code, and authorizing the conveyance of the property to be made by the representative of the estate upon compliance by the purchaser with the terms of the sale, detailing such terms. If the court is not satisfied that the sale was for a fair price, was properly made, and in conformity with law, an order shall be made setting the same aside and ordering a new sale to be made, if necessary. The action of the court in confirming or disapproving a report of sale shall have the force and effect of a final judgment; and any person interested in the estate or in the sale shall have the right to have such decrees reviewed as in other final judgments in probate proceedings.

[Amended by Acts 1975, 64th Leg., p. 2197, ch. 701, § 6, eff. June 21, 1975.]

PART 9. PARTITION OF WARD'S ESTATE IN REALTY

§ 388. Partition of Ward's Interest in Realty

[See Compact Edition, Volume 2 for text of (a) to (e)]

(f) Judicial Proceeding to Secure Partition. If the guardian of the estate of a ward is of the opinion that it is for the best interest of said ward's estate that any real estate which said ward owns in common with others, part owner or owners, should be partitioned, he may bring suit in the court in which such guardianship proceedings are pending against the other part owner for the partition of such real estate; and the court after hearing such suit may, if it is satisfied that such necessity exists, enter an order partitioning such real estate to the owner thereof.

[Amended by Acts 1975, 64th Leg., p. 1128, ch. 427, § 1, eff. June 19, 1975.]

PART 10. INVESTMENTS, LOANS, AND CONTRIBUTIONS OF ESTATES OF WARDS

§ 389A. Other Investments

(a) Application to Invest or Sell. When a guardian of an estate shall deem it to be in the best interest of its ward to invest in or sell any property or security in which a trustee is authorized to invest by either Article 7425b-46 V.A.T.S. (the Texas Trust Act) or Article 7425b-48 V.A.T.S. (the Uniform Common Trust Fund Act), and such investment or sale is not expressly permitted by other Sections of this Code, the guardian may file a written application in the court where the guardianship is pending, asking for an order authorizing it to make such desired investment or sale and stating the reason why the guardian is of the opinion that such investment or sale would be beneficial to the ward. No citation or notice is necessary unless ordered by the court.

[See Compact Edition, Volume 2 for text of (b) and (c)]

[Amended by Acts 1977, 65th Leg., p. 1137, ch. 428, § 1, eff. Aug. 29, 1977.]

PART 12. FINAL SETTLEMENT, ACCOUNTING, AND DISCHARGE

§ 404. Closing Administration of Estates of Decedents and Guardianship of Wards or Their Estates

Administration of the estates of decedents and guardianship of the persons and estates of wards shall be settled and closed:

(a) Estates of Decedents. When all the debts known to exist against the estate of a deceased person have been paid, or when they have been paid so far as the assets in the hands of an administrator or executor of such estate will permit, and when there is no further need for administration.

(b) Persons and Estates of Wards.

1. Of a Minor. When the minor dies, or becomes an adult by becoming eighteen years

of age, or by removal of disabilities of minority according to the law of this state, or by marriage.

2. Of Incompetents. When the ward dies, or is decreed as provided by law to have been restored to sound mind or sober habits, or, being married, when his or her spouse has qualified as survivor in community.

3. Of a Person Entitled to Funds From Any Governmental Source. When the ward dies, or when the court finds that the necessity for the guardianship has ended.

4. Exhaustion of Estate. When the estate of a ward becomes exhausted.

5. When Income Negligible. When the foreseeable income accruing to a ward or to his estate is so negligible that maintaining the guardianship in force would be burdensome. In such case the court may authorize such income to be paid to a parent, or some other person who has acted as guardian, to assist as far as possible in the maintenance of the ward, and without liability to account to the court for such income.

[Amended by Acts 1975, 64th Leg., p. 104, ch. 45, § 2, eff. Sept. 1, 1975.]

§ 404A. Payment of Funeral Expenses and Other Debts

Notwithstanding the provisions of the preceding Section, before the guardianship of the persons and the estates of wards shall be closed upon the death of any ward, the guardian subject to the approval of the Court may make all funeral arrangements, pay for such funeral expenses out of the estate of the deceased ward and pay all other debts out of such estate. If a personal representative of the estate of a deceased ward is appointed, the Court shall on the written complaint of the personal representative cause the guardian to be cited to appear and present a final account as provided in Section 406 of this Code.

[Amended by Acts 1979, 66th Leg., p. 1876, ch. 758, § 2, eff. Aug. 29, 1979.]

§ 404B. Payment by Guardian of Taxes or Expenses

Notwithstanding any other provision of this Code, a Probate Court in which proceedings to declare heirship are maintained, under the provisions of Subsection (c), Section 48 of this Code, may order the payment by the guardian of inheritance or estate taxes or expenses of administering the estate and may order the sale of properties in the ward's estate, when necessary, for the purpose of paying inheritance or estate taxes, or expenses of administering the estate, or for the purpose of distributing the estate among the heirs.

[Added by Acts 1977, 65th Leg., p. 1522, ch. 616, § 3, eff. Aug. 29, 1977.]

§ 406. Procedure in Case of Neglect or Failure to File Final Account; Payments Due Meantime

If a personal representative charged with the duty of filing a final account fails or neglects so to do at the proper time, the court shall, upon its own motion, or upon the written complaint of any one interested in the decedent's or ward's estate which has been administered, cause such representative to be cited to appear and present such account within the time specified in the citation. So far as applicable, this Section shall also govern with respect to guardians of the person. Meantime, rentals or other payments becoming due to the ward, his estate, or his guardian, between the date the ward's disability terminates or the date of the ward's death and the effective date of the guardian's discharge may be paid or tendered to the emancipated ward, his guardian, or the personal representative of the ward's estate, at obligor's option, and such payment or tender shall constitute and be an absolute discharge of such matured obligation for all purposes to the extent of the amount thus paid or tendered. [Amended by Acts 1979, 66th Leg., p. 1876, ch. 758, § 3, eff. Aug. 27, 1979.]

§ 407. Citation Upon Presentation of Account for Final Settlement

Upon the filing of an account for final settlement by temporary or permanent personal representatives of the estates of decedents or wards, or of the persons of wards, citation shall contain a statement that such final account has been filed, the time and place when it will be considered by the court, and a statement requiring the person or persons cited to appear and contest the same if they see proper. Such citation shall be issued by the county clerk to the persons and in the manner set out below.

1. In case of the estates of deceased persons, notice shall be given as directed by the court by written order.

2. If a ward be a living resident of this state who is 14 years of age or older, and his or her residence be known, the ward shall be cited by personal service, unless the ward, in person or by attorney, by writing filed with the clerk, waives the issuance and personal service of citation.

3. If one who has been a ward be deceased, the ward's executor or administrator, if one has been appointed, shall be personally served, but no service is required if the executor or administrator is the same person as the guardian.

4. If a ward's residence is unknown, or if the ward is a non-resident of this state, or if the ward is deceased and no representative of the ward's estate has been appointed and qualified in this state, the citation to the ward or to the

ward's estate shall be by publication, unless the court by written order directs citation by posting.

5. If the court deems further additional notice necessary, it shall require the same by written order.

[Amended by Acts 1979, 66th Leg., p. 1755, ch. 713, § 30, eff. Aug. 27, 1979.]

§ 408. Action of the Court

[See Compact Edition, Volume 2 for text of (a)]

(b) **Distribution of Remaining Property.** Upon final settlement of an estate, if there be any of such estate remaining in the hands of the personal representative, the court shall order that it be delivered, in case of a ward, to such ward, or in the case of a deceased ward to the personal representative of the deceased ward's estate if one be appointed, or to any other person legally entitled thereto; in case of a decedent, that a partition and distribution be made among the persons entitled to receive such estate.

[See Compact Edition, Volume 2 for text of (c) and (d)]

[Amended by Acts 1979, 66th Leg., p. 1877, ch. 758, § 4, eff. Aug. 27, 1979.]

CHAPTER XI. NONTESTAMENTARY TRANSFERS

PART 1. MULTIPLE-PARTY ACCOUNTS

Section

- 436. Definitions.
- 437. Ownership as Between Parties and Others.
- 438. Ownership During Lifetime.
- 439. Right of Survivorship.
- 440. Effect of Written Notice to Financial Institution.
- 441. Accounts and Transfers Nontestamentary.
- 442. Rights of Creditors.
- 443. Protection of Financial Institutions.
- 444. Payment on Signature of One Party.
- 445. Payment of Joint Account After Death Disability.
- 446. Payment of P.O.D. Account.
- 447. Payment of Trust Account.
- 448. Discharge from Claims.
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PART 2. PROVISIONS RELATING TO EFFECT OF DEATH

- 450. Provisions for Payment or Transfer at Death.

PART 1. MULTIPLE-PARTY ACCOUNTS

§ 436. Definitions

In this part:

(1) "Account" means a contract of deposit of funds between a depositor and a financial institution, and includes a checking account, savings account, certificate of deposit, share account, and other like arrangement.

(2) "Beneficiary" means a person named in a trust account as one for whom a party to the account is named as trustee.

(3) "Financial institution" means an organization authorized to do business under state or

federal laws relating to financial institutions, including, without limitation, banks and trust companies, savings banks, building and loan associations, savings and loan companies or associations, and credit unions.

(4) "Joint account" means an account payable on request to one or more of two or more parties whether or not there is a right of survivorship.

(5) "Multiple-party account" means a joint account, a P.O.D. account, or a trust account. It does not include accounts established for deposit of funds of a partnership, joint venture, or other association for business purposes, or accounts controlled by one or more persons as the duly authorized agent or trustee for a corporation, unincorporated association, charitable or civic organization, or a regular fiduciary or trust account where the relationship is established other than by deposit agreement.

(6) "Net contribution" of a party to a joint account as of any given time is the sum of all deposits made to that account by or for him, less all withdrawals made by or for him which have not been paid to or applied to the use of any other party, plus a pro rata share of any interest or dividends included in the current balance. The term includes, in addition, any proceeds of deposit life insurance added to the account by reason of the death of the party whose net contribution is in question.

(7) "Party" means a person who, by the terms of the account, has a present right, subject to request, to payment from a multiple-party account. A P.O.D. payee or beneficiary of a trust account is a party only after the account becomes payable to him by reason of his surviving the original payee or trustee. Unless the context otherwise requires, it includes a guardian, personal representative, or assignee, including an attaching creditor, of a party. It also includes a person identified as a trustee of an account for another whether or not a beneficiary is named, but it does not include a named beneficiary unless the beneficiary has a present right of withdrawal.

(8) "Payment" of sums on deposit includes withdrawal, payment on check or other directive of a party, and any pledge of sums on deposit by a party and any set-off, or reduction or other disposition of all or part of an account pursuant to a pledge.

(9) "Proof of death" includes a certified copy of a death certificate or the judgment or order of a court in a proceeding where the death of a person is proved by circumstantial evidence to the satisfaction of the court as provided by Section 72 of this code.

(10) "P.O.D. account" means an account payable on request to one person during lifetime and on his death to one or more P.O.D. payees, or to one or more persons during their lifetimes and on the death of all of them to one or more P.O.D. payees.

(11) "P.O.D. payee" means a person designated on a P.O.D. account as one to whom the account is payable on request after the death of one or more persons.

(12) "Request" means a proper request for withdrawal, or a check or order for payment, which complies with all conditions of the account, including special requirements concerning necessary signatures and regulations of the financial institution, but if the financial institution conditions withdrawal or payment on advance notice, for purposes of this part the request for withdrawal or payment is treated as immediately effective and a notice of intent to withdraw is treated as a request for withdrawal.

(13) "Sums on deposit" means the balance payable on a multiple-party account including interest, dividends, and in addition any deposit life insurance proceeds added to the account by reason of the death of a party.

(14) "Trust account" means an account in the name of one or more parties as trustee for one or more beneficiaries where the relationship is established by the form of the account and the deposit agreement with the financial institution and there is no subject of the trust other than the sums on deposit in the account. It is not essential that payment to the beneficiary be mentioned in the deposit agreement. A trust account does not include a regular trust account under a testamentary trust or a trust agreement which has significance apart from the account, or a fiduciary account arising from a fiduciary relation such as attorney-client.

(15) "Withdrawal" includes payment to a third person pursuant to check or other directive of a party.

[Added by Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979.]

§ 437. Ownership as Between Parties and Others

The provisions of Sections 438 through 440 of this code that concern beneficial ownership as between parties, or as between parties and P.O.D. payees or beneficiaries of multiple-party accounts, are relevant only to controversies between these persons and their creditors and other successors, and have no bearing on the power of withdrawal of these persons as determined by the terms of account contracts. A multiple-party account created with community property funds is subject to Article XVI, Section 15,

of the Texas Constitution, and will not in any way alter community property rights.

[Added by Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979.]

§ 438. Ownership During Lifetime

(a) A joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions by each to the sums on deposit, unless there is clear and convincing evidence of a different intent.

(b) A P.O.D. account belongs to the original payee during his lifetime and not to the P.O.D. payee or payees. If two or more parties are named as original payees, during their lifetimes rights as between them are governed by Subsection (a) of this section.

(c) Unless a contrary intent is manifested by the terms of the account or the deposit agreement or there is other clear and convincing evidence of an irrevocable trust, a trust account belongs beneficially to the trustee during his lifetime, and if two or more parties are named as trustee on the account, during their lifetimes beneficial rights as between them are governed by Subsection (a) of this section. If there is an irrevocable trust, the account belongs beneficially to the beneficiary.

[Added by Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979.]

§ 439. Right of Survivorship

(a) Sums remaining on deposit at the death of a party to a joint account belong to the surviving party or parties against the estate of the decedent if, by a written agreement signed by the party who dies, the interest of such deceased party is made to survive to the surviving party or parties. A survivorship agreement will not be inferred from the mere fact that the account is a joint account. If there are two or more surviving parties, their respective ownerships during lifetime shall be in proportion to their previous ownership interests under Section 438 of this code augmented by an equal share for each survivor of any interest the decedent may have owned in the account immediately before his death, and the right of survivorship continues between the surviving parties if a written agreement signed by a party who dies so provides.

(b) If the account is a P.O.D. account, on death of the original payee or of the survivor of two or more original payees, any sums remaining on deposit belong to the P.O.D. payee or payees if surviving, or to the survivor of them if one or more die before the original payee. If two or more P.O.D. payees survive, there is no right of survivorship in event of death of a P.O.D. payee thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.

(c) If the account is a trust account, on death of the trustee or the survivor of two or more trustees,

any sums remaining on deposit belong to the person or persons named as beneficiaries, if surviving, or to the survivor of them if one or more die before the trustee, unless there is clear and convincing evidence of a contrary intent. If two or more beneficiaries survive, there is no right of survivorship in event of death of any beneficiary thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.

(d) In other cases, the death of any party to a multiple-party account has no effect on beneficial ownership of the account other than to transfer the rights of the decedent as part of his estate.

[Added by Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979.]

§ 440. Effect of Written Notice to Financial Institution

The provisions of Section 439 of this code as to rights of survivorship are determined by the form of the account at the death of a party. Notwithstanding any other provision of the law, this form may be altered by written order given by a party to the financial institution to change the form of the account or to stop or vary payment under the terms of the account. The order or request must be signed by a party, received by the financial institution during the party's lifetime, and not countermanded by other written order of the same party during his lifetime.

[Added by Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979.]

§ 441. Accounts and Transfers Nontestamentary

Transfers resulting from the application of Section 439 of this code are effective by reason of the account contracts involved and this statute and are not to be considered as testamentary or subject to the testamentary provisions of this code.

[Added by Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979.]

§ 442. Rights of Creditors

No multiple-party account will be effective against an estate of a deceased party to transfer to a survivor sums needed to pay debts, taxes, and expenses of administration, including statutory allowances to the surviving spouse and minor children, if other assets of the estate are insufficient. A party, P.O.D. payee, or beneficiary who receives payment from a multiple-party account after the death of a deceased party shall be liable to account to the deceased party's personal representative for amounts the decedent owned beneficially immediately before his death to the extent necessary to discharge the claims and charges mentioned above remaining unpaid after application of the decedent's estate, but is not liable in an amount greater than the amount that the party, P.O.D. payee, or beneficiary received from the multiple-party account. No

proceeding to assert this liability shall be commenced unless the personal representative has received a written demand by a surviving spouse, a creditor, or one acting for a minor child of the decedent, and no proceeding shall be commenced later than two years following the death of the decedent. Sums recovered by the personal representative shall be administered as part of the decedent's estate. This section shall not affect the right of a financial institution to make payment on multiple-party accounts according to the terms thereof, or make it liable to the estate of a deceased party unless before payment the institution received written notice from the personal representative stating the sums needed to pay debts, taxes, and expenses of administration.

[Added by Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979.]

§ 443. Protection of Financial Institutions

Sections 444 through 449 of this code govern the liability of financial institutions that make payments as provided in this chapter and the set-off rights of the institutions.

[Added by Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979.]

§ 444. Payment on Signature of One Party

Financial institutions may enter into multiple-party accounts to the same extent that they may enter into single-party accounts. A multiple-party account may be paid, on request, to any one or more of the parties. A financial institution shall not be required to inquire as to the source of funds received for deposit to a multiple-party account, or to inquire as to the proposed application of any sum withdrawn from an account, for purposes of establishing net contributions.

[Added by Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979.]

§ 445. Payment of Joint Account After Death or Disability

Any sums in a joint account may be paid, on request, to any party without regard to whether any other party is incapacitated or deceased at the time the payment is demanded, but payment may not be made to the personal representative or heirs of a deceased party unless proofs of death are presented to the financial institution showing that the decedent was the last surviving party or unless there is no right of survivorship under Section 439 of this code.

[Added by Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979.]

§ 446. Payment of P.O.D. Account

A P.O.D. account may be paid, on request, to any original party to the account. Payment may be

made, on request, to the P.O.D. payee or to the personal representative or heirs of a deceased P.O.D. payee upon presentation to the financial institution of proof of death showing that the P.O.D. payee survived all persons named as original payees. Payment may be made to the personal representative or heirs of a deceased original payee if proof of death is presented to the financial institution showing that his decedent was the survivor of all other persons named on the account either as an original payee or as P.O.D. payee.

[Added by Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979.]

§ 447. Payment of Trust Account

A trust account may be paid, on request, to any trustee. Unless the financial institution has received written notice that the beneficiary has a vested interest not dependent upon his surviving the trustee, payment may be made to the personal representative or heirs of a deceased trustee if proof of death is presented to the financial institution showing that his decedent was the survivor of all other persons named on the account either as trustee or beneficiary. Payment may be made, on request, to the beneficiary upon presentation to the financial institution of proof of death showing that the beneficiary or beneficiaries survived all persons named as trustees.

[Added by Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979.]

§ 448. Discharge from Claims

Payment made as provided by Section 444, 445, 446, or 447 of this code discharges the financial institution from all claims for amounts so paid whether or not the payment is consistent with the beneficial ownership of the account as between parties, P.O.D. payees, or beneficiaries, or their successors. The protection here given does not extend to payments made after a financial institution has received written notice from any party able to request present payment to the effect that withdrawals in accordance with the terms of the account should not be permitted. Unless the notice is withdrawn by the person giving it, the successor of any deceased party must concur in any demand for withdrawal if the financial institution is to be protected under this section. No other notice or any other information shown to have been available to a financial institution shall affect its right to the protection provided here. The protection here provided shall have no bearing on the rights of parties in disputes between themselves or their successors concerning the benefi-

cial ownership of funds in, or withdrawn from, multiple-party accounts.

[Added by Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979.]

§ 449. Set-Off to Financial Institution

Without qualifying any other statutory right to set-off or lien and subject to any contractual provision, if a party to a multiple-party account is indebted to a financial institution, the financial institution has a right to set-off against the account in which the party has or had immediately before his death a present right of withdrawal. The amount of the account subject to set-off is that proportion to which the debtor is, or was immediately before his death, beneficially entitled, and in the absence of proof of net contributions, to an equal share with all parties having present rights of withdrawal.

[Added by Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979.]

PART 2. PROVISIONS RELATING TO EFFECT OF DEATH

§ 450. Provisions for Payment or Transfer at Death

(a) Any of the following provisions in an insurance policy, contract of employment, bond, mortgage, promissory note, deposit agreement, pension plan, trust agreement, conveyance of real or personal property, or any other written instrument effective as a contract, gift, conveyance, or trust is deemed to be nontestamentary, and this code does not invalidate the instrument or any provision:

(1) that money or other benefits theretofore due to, controlled, or owned by a decedent shall be paid after his death to a person designated by the decedent in either the instrument or a separate writing, including a will, executed at the same time as the instrument or subsequently;

(2) that any money due or to become due under the instrument shall cease to be payable in event of the death of the promisee or the promisor before payment or demand; or

(3) that any property which is the subject of the instrument shall pass to a person designated by the decedent in either the instrument or a separate writing, including a will, executed at the same time as the instrument or subsequently.

(b) Nothing in this section limits the rights of creditors under other laws of this state.

[Added by Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979.]

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REVISED CIVIL STATUTES

TITLE 1

GENERAL PROVISIONS

Article

1c. Expired.

Art. 1a. Emergency Care; Relief from Liability for Civil Damages

No person shall be liable in civil damages who administers emergency care in good faith:

(1) at the scene of an emergency or in a hospital for acts performed during the emergency unless such acts are wilfully or wantonly negligent; provided that nothing herein shall apply to the administering of such care where the same is rendered for remuneration or with the expectation of remuneration or is rendered by any person or agent of a principal who was at the scene of the accident or emergency because he or his principal was soliciting business or seeking to perform some services for remuneration; and further provided that this section shall not apply to a person who regularly administers care in a hospital emergency room or to an admitting physician, or to a treating physician associated by the admitting physician, of the patient bringing a health care liability claim;

(2) as emergency medical service personnel not licensed in the healing arts unless the emergency care is wilfully or wantonly negligent whether or not remuneration is received for the rendition of the service or whether or not remuneration is expected as a result of the rendition of the service.

[Amended by Acts 1977, 65th Leg., p. 2054, ch. 817, § 21.02, eff. Aug. 29, 1977.]

Art. 1c. Expired

By the terms of § 2 of this article, the Governor's Committee on Human Relations ceased to exist on August 31, 1975.

SPECIAL LAWS

Art. 2. Special Laws: Notice

Any person intending to apply for the passage of any local or special law shall give notice of such intention by having a statement of the substance of such law published once in some newspaper publish-

ed in the county embracing the locality to be affected by said law, at least thirty days prior to the introduction into the Legislature of such contemplated law.

[Amended by Acts 1977, 65th Leg., p. 1406, ch. 569, § 1, eff. Aug. 29, 1977.]

MISCELLANEOUS

Art. 26. Oaths, Affidavits and Affirmations; Persons Authorized to Administer and Issue Certificate; Armed Forces Members and Spouses; Presumption; Absence of Seal

[See Compact Edition, Volume 3 for text of 1 to 3]

4. In addition to the methods above provided, any such oath, affidavit, or affirmation made by a member of the Armed Forces of the United States of America or any Auxiliaries thereto, or by the husband or wife of a member of the Armed Forces of the United States of America or any Auxiliaries thereto, may be administered by any commissioned officer in the Armed Forces of the United States of America or in the Auxiliaries thereto, and a certificate of such fact may be made by such officer.

In the absence of pleading or proof to the contrary it shall be presumed, when any certificate of an oath, affidavit, or affirmation is offered in evidence, that the person signing such as a commissioned officer was such on the date signed, and that the person making such oath, affidavit, or affirmation, to which such officer certifies, was one of those with respect to whom such action is hereby authorized.

No oath, affidavit, or affirmation administered in accordance with the provisions of this sub-section 4 of this Act shall be held invalid by reason of the failure of the officer certifying to such oath, affidavit, or affirmation to attach an official seal to the certificate thereto.

[Amended by Acts 1975, 64th Leg., p. 166, ch. 70, § 1, eff. Sept. 1, 1975.]

Art. 29e. Boards and Commissioners Courts; Notice of Certain Public Hearings

Text of article effective January 1, 1982

Sec. 1. In addition to other required notice and if not otherwise required by law to give notice by publication, any school board, county commissioners court, or governing board of a city shall place a notice in at least one newspaper of general circulation in the

county where the board or court is located not more than 30 days nor less than 10 days before a public hearing relating to fiscal budgets or a regular or special election.

[Amended by Acts 1979, 66th Leg., p. 2315, ch. 841, § 4(a), eff. Jan. 1, 1982.]

For text of article effective until January 1, 1982, see Compact Edition, Volume 3.

TITLE 2

ACCOUNTANTS—PUBLIC AND CERTIFIED

Article

41a-1. Public Accounting Act of 1979.

41b. Audits of River Authorities.

Art. 41a. Repealed by Acts 1979, 66th Leg., p. 1496, ch. 646, § 30, eff. Sept. 1, 1979

Prior to repeal, this article was amended by Acts 1977, 65th Leg., p. 1834, ch. 735, § 2.017.

See, now, art. 41a-1.

Art. 41a-1. Public Accounting Act of 1979

Policy and Purpose

Sec. 1. The practice of public accountancy is in all respects a learned profession having specialized educational and experience requirements. The terms "accountant" and "auditor" and the derivations, combinations, and abbreviations of those terms carry with them an implication of competence in the profession of public accountancy on which the public relies in personal, business, and public activities and enterprises. It is the policy of this state and the purpose of this Act that the admission of persons to practice public accountancy depends on education and experience commensurate with and required by the exigencies of the profession, that persons professing to practice public accountancy be qualified to do so, that the persons continue to maintain high standards of professional competence, integrity, and learning, that areas of specialized practice require special training, and that the activities and competitive practices of those practicing public accountancy be regulated to be free of commercial exploitation toward the end that the public will be provided with a high level of professional competence at reasonable fees by independent, qualified persons.

Short Title

Sec. 1A. This Act may be cited as the Public Accountancy Act of 1979.

Definitions

Sec. 2. In this Act:

(1) "Board" means the Texas State Board of Public Accountancy.

(2) "Person" means an individual, partnership, or corporation.

(3) "State" includes any state, territory, or insular possession of the United States and the District of Columbia.

(4) "Corporation" means a professional public accounting corporation organized under The Texas

Professional Corporation Act, as amended (Article 1528e, Vernon's Texas Civil Statutes), or an equivalent law of another state, territory, or foreign country.

(5) "Financial statement" means a statement and related footnotes that purport to show financial position at a specified time or changes in financial position during a specified period of time, including a statement that uses the cash or other incomplete basis of accounting. The term includes a balance sheet, statement of income, statement of retained earnings, statement of changes in financial position, and statement of changes in owners' equity or any combination thereof, but does not include incidental financial data included in a management advisory or consulting services report to support recommendations to a client, nor does it include a tax return and supporting schedules.

Acts Not Restricted

Sec. 3. (a) Nothing contained in this Act shall be construed as applying to restrict any official act of any county auditor or other officer of the state, county, municipality, or other political subdivision or any officer of a federal department or agency or of their assistants, deputies, or employees while working in their official capacities.

(b) Nothing contained in this Act shall prohibit any person not a certified public accountant or public accountant from serving as an employee of a certified public accountant or public accountant, partnership, or corporation composed of certified public accountants and/or public accountants holding a license or licenses to practice issued by the board; provided, however, that such employee shall not issue any accounting or financial statement over his own name.

(c) Nothing contained in this Act shall prohibit a certified public accountant or a registered public accountant of another state or any accountant who holds a certificate, degree, or license in a foreign country, constituting a recognized qualification for the practice of public accountancy in such country, from temporarily practicing in this state on professional business incident to his regular practice outside this state; provided that such temporary practice is conducted in conformity with the laws of Texas and the regulations and rules of professional conduct promulgated by the board. The person com-

ing into this state shall notify the board of his incidental, temporary practice in the state and shall pay to the board a fee set by the board, not to exceed \$10.

State Board of Public Accountancy

Sec. 4. (a) The Texas State Board of Public Accountancy shall consist of 12 members, each of whom shall be a citizen of the United States and a resident of this state. Members of the board and their successors shall be appointed by the governor with the advice and consent of the senate. At least seven members shall be certified public accountants in public practice. Two members shall be certified public accountants or public accountants in public practice. The remaining three members shall be public representatives who are not licensed under this Act and who are not financially involved in an organization subject to regulation by the board. The term of office of each member of the board shall be six years and each member shall continue until a successor is appointed. Members of the present board shall continue in office until their respective terms have expired or until their successors have been appointed.

(b) A member of the board may not be an officer, employee, or paid consultant of a trade association of the public accountancy profession.

(c) A member or employee of the board may not be related within the second degree of affinity or within the second degree of consanguinity to a person who is an officer, employee, or paid consultant of a trade association of the profession of public accountancy.

(d) A board member who has served as a member for six consecutive years shall not be eligible for reappointment until two years shall have elapsed between the end of the term of his last prior appointment and the beginning of the term of a new appointment.

(e) Each member of the board is entitled to reimbursement for actual and necessary expenses incurred in performing the functions of the board and to \$50 for each day on which the member attends an official meeting of the board or assists in the administration of an examination under this Act.

(f) Appointments to the board shall be made without regard to the race, creed, sex, religion, or national origin of the appointees.

(g) Each member of the board shall be present for at least one-half of the regularly scheduled board meetings held each year. Failure of a board member to meet this requirement automatically removes the member from the board and creates a vacancy on the board.

(h) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legisla-

ture, Regular Session, 1973, as amended (Article 6252-9c, Vernon's Texas Civil Statutes), may not act as a general counsel to the board or serve as a member of the board.

Powers and Duties of Board

Sec. 5. (a) The board shall administer and carry out this Act and shall:

(1) elect from its members a chairman, secretary, treasurer, and other officers as the board considers necessary;

(2) keep records of all proceedings and actions by and before the board;

(3) keep a seal which shall be judicially noticed; and

(4) employ personnel and independent contractors necessary to assist it in the performance of its duties.

(b) A majority of the board constitutes a quorum for the transaction of business. The members of the board who are not certified public accountants have all the authority, responsibility, and duties of any other member of the board.

(c) The board shall keep an information file about each complaint filed with the board. If a written complaint is filed with the board relating to a licensee under this Act, the board, at least as frequently as quarterly and until the complaint is finally disposed of, shall notify the complainant of the status of the complaint.

Rulemaking

Sec. 6. (a) The board shall promulgate rules deemed necessary or advisable to effectuate this Act, including the promulgation of rules of professional conduct in order to establish and maintain high standards of competence and integrity in the practice of public accountancy and to insure that the conduct and competitive practices of licensees serve the purposes of this Act and the best interest of the public. The board in its rules of professional conduct shall not restrict advertising or competitive bidding by licensees except if necessary to:

(1) insure that advertising, price information, and other communications from licensees are informative, free of deception, and consistent with the professionalism expected and deserved by the public from those engaged in the practice of public accountancy;

(2) insure that the conduct and dealings of licensees are free from fraud, undue influence, deception, intimidation, overreaching, harassment, and other forms of vexatious conduct, including uninvited solicitations to perform professional accounting services; provided, however, that the term "uninvited solicitation" shall not be deemed to include advertising in print, radio, motion pictures, and television media; or

(3) regulate the competitive practices of licensees to the extent necessary to insure that:

(A) contracts or engagements between a licensee and any state agency, political subdivision, county, municipality, district, authority, or publicly owned utility for the performance of professional accounting services are not solicited or awarded on the basis of competitive bids submitted for such contracts or engagements in violation of law;

(B) contracts or engagements for the preparation of or opinion on any financial statement which is or can be used by or given to a person or entity not a party to the contract or engagement for the purpose of inducing reliance thereon are not entered into on the basis of competitive bids; this paragraph shall not apply to any tax or consulting services; further, this paragraph shall not apply to any accounting services or any contracts or engagements for or opinion on any financial statement of any sole proprietorship, partnership, or corporation whose sales or other revenues did not exceed \$300,000 for the latest complete fiscal year; however, the \$300,000 amount provided in this paragraph shall be adjusted proportionately upward or downward on the first day of each calendar year according to changes from January 1, 1979, in the Consumer Price Index for all Urban Consumers published by the United States Department of Labor; or

(C) no licensee engages in any competitive practice which would impair the independence of or quality of services rendered by any licensee or which would impair or restrict the opportunity for members of the public to seek and secure high quality professional accounting services at reasonable prices or which would unreasonably restrict competition among licensees.

The board may adopt a system of required annual continuing education for licensees to assure that the licensees remain informed of changes in the field of accountancy. The board may recognize areas of specialization in the field of accountancy and may recognize alternate ways by which licensees may demonstrate acceptable levels of competency.

(b) If the appropriate standing committees of both houses of the legislature acting under Section 5(g), Administrative Procedure and Texas Register Act, as added (Article 6252-13a, Vernon's Texas Civil Statutes), transmit to the board statements opposing adoption of a rule under that section, the rule may not take effect or, if the rule has already taken effect, the rule is repealed effective on the date the board receives the committees' statements.

Expenses of Board

Sec. 7. (a). The fees and other money received by the board under this Act shall be deposited in the state treasury to the credit of a special fund to be known as the public accountancy fund and may be used only for the administration of this Act.

(b) The board shall file an annual report of its activities with the governor and the Legislative Budget Board. The report shall include a summary statement of all receipts and disbursements of the board for each calendar year. The board's funds shall be audited each fiscal year by the state auditor.

Prohibition Against Practicing Without License

Sec. 8. (a). No person shall assume or use the title or designation "Certified Public Accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a certified public accountant, unless such person has received a certificate as a certified public accountant under this or prior Acts, holds a license issued under Section 9 of this Act which is not revoked or suspended, and all of such person's offices in this state for the practice of public accounting are maintained and registered as required under Section 10 of this Act; provided, however, that an accountant of another state or foreign country who has registered under the provisions of this or prior Acts and who holds a license issued under Section 9 of this Act may use the title under which he is generally known in his state or country followed by the name of the state or country from which he received his certificate, license, or degree.

(b) No partnership or corporation shall assume or use the title or designation "Certified Public Accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such partnership or corporation is composed of certified public accountants unless such partnership or corporation is registered as a partnership or corporation of certified public accountants under this or prior Acts, holds a license issued under Section 9 of this Act, and all of such partnership's or corporation's offices in this state for the practice of public accountancy are maintained and registered as required under Section 10 of this Act.

(c) No person shall assume or use the title or designation "Public Accountant" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a public accountant, unless such person is registered as a public accountant under this or prior Acts, holds a license issued under Section 9 of this Act, and all of such person's offices in this state for the practice of public accounting are maintained and registered as

required under Section 10 of this Act or unless such person has received a certificate as a certified public accountant under this or prior Acts, holds a license issued under Section 9 of this Act, and all of such person's offices in this state for the practice of public accountancy are maintained and registered as required under Section 10 of this Act.

(d) No partnership or corporation shall assume or use the title or designation "Public Accountants" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such partnership or corporation is composed of public accountants, unless such partnership or corporation is registered as a partnership or corporation of public accountants under this or prior Acts or as a partnership or corporation of certified public accountants under this or prior Acts, holds a license issued under Section 9 of this Act, and all of such partnership's or corporation's offices in this state for the practice of public accountancy are maintained and registered as required under Section 10 of this Act.

(e) No person shall assume or use the title or designation "certified accountant," "chartered accountant," "enrolled accountant," "licensed accountant," or any other title or designation likely to be confused with "certified public accountant" or "public accountant," or any of the abbreviations, "CA," "PA," "EA," "RA," or "LA," or similar abbreviations likely to be confused with "CPA"; provided, however, that only a person holding a license issued under Section 9 of this Act and all of whose offices in this state for the practice of public accountancy are maintained and registered as required under Section 10 of this Act may hold himself out to the public as an "accountant" or "auditor" or any combination of said terms; and provided further that a foreign accountant registered under this or prior Acts who holds a license issued under Section 9 of this Act and all of whose offices in this state for the practice of public accountancy are maintained and registered as required under Section 10 of this Act, may use the title under which he is generally known in his state or country, followed by the name of the state or country from which he received his certificate, license, or degree.

(f) No person shall sign or affix his name or any trade or assumed name used by him in his profession or business with any wording indicating that he is an accountant or auditor or with any wording indicating that he has expert knowledge in accounting or auditing, to any accounting or financial statement or to any opinion on, report on, or certificate to any accounting or financial statement, unless he has complied with the applicable provisions of this Act; provided, however, that the provisions of this subsection shall not prohibit any officer, employee, partner, or principal of any organization from affixing his

signature to any statement or report in reference to the financial affairs of the organization with any wording designating the position, title, or office which he holds in such organization, nor shall the provisions of this subsection prohibit any act of a public official or public employee in the performance of his duties as such.

(g) No licensee shall assume or use a name which is misleading in any way as to the legal form of the firm or as to the persons who are partners, officers, or shareholders of the firm. The name or designation any partnership or corporation may assume or use shall contain the personal name or names of one or more individuals presently or previously members thereof, and the name or designation any individual may assume or use shall contain his name. No trade name or descriptive words indicating character or grade of service offered may be used or included except as authorized by rules promulgated by the board.

(h) No licensee shall assume or use the designation "and Company" or "and Associates" or abbreviations thereof in designating a firm in the practice of public accountancy unless there are at least two persons holding licenses under this Act involved in the practice of the firm.

Annual Licenses to Practice

Sec. 9. (a) Licenses shall be issued by the board to the following upon the payment of fees hereinafter specified:

(1) holders of the certificate of "Certified Public Accountant" issued under this or prior Acts; and

(2) such persons as are registered with the board under the provisions of this or prior Acts.

There shall be paid to the Texas State Board of Public Accountancy by all persons referred to in Subdivisions (1) and (2) of this subsection an annual license fee not to exceed \$60. All licenses shall expire on the 31st day of December of each year or on such other date or dates as set by the board pursuant to Subsection (b) of this section, but shall annually be renewed for a period of one year upon the payment of a fee of not more than \$60, the board being hereby given the authority and duty to determine the amount of such renewal fee not less than 30 days prior to the beginning of the year to which it applies and to mail notices thereof each year by that date.

Failure of any licensee to pay the annual license renewal fee on or before the date it is due shall automatically cancel his license. Any licensee whose license shall have been canceled because of failure to pay the annual license renewal fee may secure reinstatement of his license at any time within that license year upon payment of the delinquent fee together with a penalty of \$20. After expiration of

the license year for which the license fee was not paid, no license shall be reinstated except upon application and examination satisfactory to the board and payment of delinquent fees and a penalty to be assessed by the board. The board shall have no authority to waive the collection of any fee or penalty.

(b) The board by rule may adopt a system under which licenses expire on various dates during the year. Dates relating to cancellation and reinstatement of licenses shall be adjusted accordingly. For the year in which the license expiration date is changed, license fees shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee which is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee shall be payable.

Registration With the Board

Sec. 10. The following persons shall be registered with the board for the practice of public accountancy in this state:

- (1) all individuals qualified under this or prior Acts;
- (2) partnerships qualified under this or prior Acts;
- (3) corporations qualified under this or prior Acts; and

(4) each office established or maintained in this state for the practice of public accountancy in this state by a certified public accountant or partnership or corporation of certified public accountants or by a public accountant or a partnership or corporation of public accountants or by an individual registered under Section 14 of this Act, but no fee shall be charged for such registration. Each such office shall be under the direct supervision of a resident manager who may be either a principal or a staff employee holding a license issued by the board which is in full force and effect; provided that the title or designation "Certified Public Accountant" or the abbreviation "CPA" shall not be used in connection with such office unless such resident manager is the holder of a certificate as a certified public accountant and a license issued by the board, both of which are in full force and effect. Such resident manager may serve in such capacity only in one office at the same time except as authorized by rule of the board. The board shall by regulation prescribe the procedure to be followed in effecting such registrations. There shall at all times be prominently displayed in each office registered under the provisions of this section, a sign in letters no smaller than one inch in height, the contents of which shall contain the name, mailing address, and telephone number of the Texas State Board of Public Accountancy and

which shall contain a statement informing consumers that complaints can be directed to the board.

All applicants for registration shall furnish satisfactory evidence of eligibility for registration. The board shall have power to examine such applications and may refuse registration to any applicant who is unable to meet the standards imposed by this Act.

Rules and Requirements Applicable to Partnerships and Corporations

Sec. 11. (a) All rules and statutory requirements applying to partnerships apply to corporations. All rules and statutory requirements applying to partners of partnerships apply to incorporators, stockholders, officers, and directors of corporations. All rules and statutory requirements governing employees or agents of partnerships apply to employees or agents of corporations.

(b) All rules and statutory requirements applying to partnerships apply to the partners of the partnership. Rules and statutory requirements applying to corporations apply to incorporators, stockholders, officers, and directors of corporations.

Certification of Certified Public Accountants

Sec. 12. The certificate of a "Certified Public Accountant" shall be granted by the board to any person:

- (1) who is a citizen of the United States or who, if not a citizen, has lived in the State of Texas for the 90 days immediately preceding the date of submitting to the board the initial application to take the written examination conducted by the board for the purpose of granting a certificate of "Certified Public Accountant" or has maintained permanent legal residence in Texas for the six months immediately preceding the date of submission;
- (2) who shall have qualified to take the examination for the certificate in this state;
- (3) who has attained the age of 18 years;
- (4) who is of good moral character;
- (5) who meets the requirements of education and experience as hereinafter provided:

(A) the experience requirements shall be for the number of years as provided in Paragraph (B) or (C) below and shall be in public practice under the supervision of a certified public accountant or public accountant or in an activity comparable thereto or in any combination of such types of experience in work of a nonroutine accounting nature which continually requires independent thought and judgment on important accounting matters; and all such experience must be satisfactory to the board;

(B) the education requirement shall be either (i) a baccalaureate degree conferred by a college or university recognized by the board, with a major in accounting, or with a nonaccounting major, supplemented by what the board determines to be substantially the equivalent of an accounting major, with not less than 30 semester hours of accounting and 20 additional semester hours of related courses in other areas of business administration; and the experience requirement shall be two years of the experience described in Paragraph (A) above; or (ii) graduation from an accredited high school, plus two years of study of accounting or related subjects including at least 20 semester hours of accounting in one or more colleges or universities recognized by the board, plus six years of experience under the supervision of a certified public accountant in work described in Paragraph (A) above, in which event such certified public accountant or certified public accountants, if the applicant has been employed by more than one, shall certify to the board that the applicant has had during such six-year period the experience described in Paragraph (A) above; and

(C) the experience requirement shall be only one year of the experience described in Paragraph (A) above for any candidate holding a master's degree in accounting or business administration from a college or university recognized by the board or holding a professional degree in accounting with a minimum of 30 semester hours in accounting designated other than as a master's degree but judged by the board to be equivalent to that degree and to be at an appropriate professional level, if the candidate has satisfactorily completed at least 30 semester hours in accounting and 20 semester hours in other areas of business administration and such related subjects as the board shall determine to be appropriate; and

(6) who shall have passed a written examination in theory of accounts, accounting practice, auditing, commercial law affecting public accounting, and such other related subjects as the board shall determine to be appropriate. A grade of at least 75 percent on each subject shall be required as a passing grade.

Any candidate who meets the education requirements under Paragraph (B) or (C) of Subdivision (5) above and who is duly enrolled as an attorney by the Supreme Court of Texas shall be given credit for commercial law without taking the written examination on commercial law.

The board may by written regulations provide for granting credit to a candidate for his satisfactory completion of a written examination in any of the subjects specified in Subdivision (6) above given by

the licensing authority in any other state. Such regulations shall include such requirements as the board shall determine to be appropriate in order that any examination approved as a basis for any such credit shall in the judgment of the board be at least as thorough as the most recent examination given by the board at the time of granting such credit.

None of the education or experience requirements specified above shall apply to a candidate who is registered as a public accountant under The Public Accountancy Act of 1945, as amended (Article 41a, Vernon's Texas Civil Statutes), and holds a license issued under this Act.

A candidate who has met the education requirements shall be eligible to take the examination in all subjects without waiting until he meets the experience requirements; provided that the candidate also meets the requirements of Subdivisions (1), (2), (3), and (4) of this section.

A candidate for the certificate of certified public accountant who has successfully completed the examination under Subdivision (6) above shall have no status as a certified public accountant, unless and until the candidate has the requisite experience and has received notice of certification as a certified public accountant.

The holder of a certificate heretofore issued under the provisions of prior Acts shall not be required to secure a new certificate as a certified public accountant under this Act.

The applicable education and experience requirements under this Act shall be those in effect on the date of the candidate's application for the examination or reexamination by which the candidate successfully completes the examination. Any person qualified to sit under The Public Accountancy Act of 1945, as amended (Article 41a, Vernon's Texas Civil Statutes), shall continue to qualify to sit for the examination as long as the initial qualifications are met.

Any person who at the effective date of this Act has entered a program to meet the education and experience requirements of The Public Accountancy Act of 1945, as amended and as in force immediately prior to the effective date of this Act, shall file with the board within 180 days after the effective date of this Act a written declaration thereof and submit such proof thereof as the board may require. After the filing of such declaration and proof under rules and regulations prescribed by the board, a person shall be allowed the time reasonably required to complete his program to meet the education requirements in force immediately prior to the effective date of this Act, but no more than four years following the effective date of this Act to meet such education requirements in force immediately prior to the effective date of this Act. Upon completion of

such requirements, if otherwise qualified to take the examination, he shall be permitted to make his application and take the examination under such education requirements.

Every person who has met the requirements of Subdivisions (1), (2), (3), (4), (5), and (6) of this section and is ready to receive his certificate as a "Certified Public Accountant" shall before receiving such certificate take an oath that he will support the Constitution of the United States and of this state and the laws thereof and will comply with the rules of professional conduct promulgated under this Act. This oath shall be administered by a member of the board or by such other person as may be authorized by law to administer oaths.

Reciprocity

Sec. 13. The board may in its discretion waive the examination of and may issue a certificate of "Certified Public Accountant" to any person possessing the other qualifications mentioned in Section 12 of this Act who is the holder of a certificate as certified public accountant issued under the laws of any state or territory or the equivalent thereof issued in any foreign country, provided the requirements for such certificate in the state or territory or foreign country which has granted it to the applicant were in the opinion of the board at least equivalent to those required in this state at the time the applicant's original certificate was issued. The board shall charge for the issuance of such a certificate as a "Certified Public Accountant" under this section a fee of not more than \$100.

Registration of Certified Public Accountants of Other States and Persons Holding Similar Titles in Foreign Countries

Sec. 14. A certified public accountant of another state or territory or the holder of a certificate, license, or degree authorizing him to practice public accountancy in a foreign country may register with the board as a certified public accountant of such other state or territory or as holding such certificate, license, or degree of a foreign country, if the board determines that the standards under which the applicant became a certified public accountant or received such certificate, license, or degree were as high as the standards of this state at the same time for granting the certificate of certified public accountant. A person so registered may describe himself as a certified public accountant of the state or territory which issued his certificate or may use the title held by him in a foreign country; provided that the country of its origin is indicated. The registered person must pay the license fee provided in Section 9 of this Act and a processing fee set by the board of not more than \$100.

Examinations, Reexaminations, and Fees

Sec. 15. All examinations provided for under this Act shall be conducted by the board. The examination for the certificate of "Certified Public Accountant" shall take place as often as the board deems necessary, but not less frequently than once each year. The board as it considers appropriate may use all or part of the Uniform CPA Examination and any related service available from the American Institute of Certified Public Accountants or the National Association of State Boards of Accountancy.

Not later than the 30th day after the day on which the board receives a person's examination results, the board shall send to the person the examination results.

A candidate who fails shall have the right to apply for additional examinations, subject to the satisfaction of the board that the candidate continues to meet requirements of Subdivisions (1), (2), and (4) of Section 12 of this Act.

Any candidate who at the time of filing his application to take the examination or reexamination provided for herein had prior to the effective date of this Act any examination credits or who after the effective date of this Act shall pass in a single examination of two or more subjects (accounting practice counting as two subjects), or who is registered as a public accountant under The Public Accountancy Act of 1945, as amended (Article 41a, Vernon's Texas Civil Statutes), and who shall pass one or more subjects after the effective date of this Act shall have the right, subject to the approval of his application for reexamination under the provisions of the preceding paragraph, to be reexamined in the remaining subjects only at subsequent examinations held by the board, except that the candidate must pass the remaining subjects within the next 10 consecutive examinations, and the candidate may receive credit for one or more subjects in any subsequent examination. When the candidate shall have received credit for all subjects, the candidate shall then be considered to have passed the examination. A candidate having two or more credits on September 1, 1979, is entitled to an unlimited number of reexaminations on the remaining parts of the examination.

The board shall charge for the first examination of a candidate for certification as a "Certified Public Accountant" a fee of not more than \$150, which shall be payable by the applicant at the time of making the initial application. For each subsequent examination or reexamination, the fee shall not exceed for each subject for which the candidate is eligible \$60 for accounting practice and \$30 for each of theory of accounts, auditing, and commercial law, which shall be payable by the applicant at the time of making the application for the subsequent exami-

nation or reexamination. Where the applicant fails to be present for the examination and shows to the board satisfactory reason for such failure, the board may in its discretion refund any fee so paid.

All fees provided for herein shall be paid to the Texas State Board of Public Accountancy.

It is further provided that any applicant who has failed any such examination or reexaminations shall have a right to request a copy of the questions and the answers thereto made by him upon any such examination with the grade clearly shown, together with a copy of solutions to such questions; and the board shall forthwith comply with such request by delivering by registered or certified mail to such applicant a true copy of the questions and his answers thereto, together with a copy of solutions to such questions. The board may charge such applicant a reasonable fee therefor, and such request by the candidate shall be made within six months after the grades are mailed to said candidate and not thereafter.

Use of Designation "Certified Public Accountant"

Sec. 16. Any person who has received from the board a certificate of "Certified Public Accountant" and holds a license to practice shall be styled and known as a "Certified Public Accountant" and may also use the abbreviation "CPA."

Use of Designation "Certified Public Accountant" by Partnerships

Sec. 17. A partnership engaged in this state in the practice of public accountancy may register with the board as a partnership of certified public accountants provided it meets the following requirements:

- (1) at least one general partner must be a certified public accountant of this state in good standing;
- (2) each partner thereof personally engaged within this state in the practice of public accountancy as a member must be a certified public accountant in this state in good standing;
- (3) each partner must be a certified public accountant of some state in good standing; and
- (4) each resident manager in charge of an office of the firm in this state must be a certified public accountant of this state in good standing.

Application for such registration must be made upon the affidavit of a general partner of such partnership who is a certified public accountant of this state in good standing. Such affidavit must set forth the partnership name, the post office address within the state, and the address of the principal office wherever located, together with the name, residence, and post office address of each general partner. The board shall in each case determine

whether the applicant is eligible for registration. A partnership which is so registered and which holds a license issued under Section 9 of this Act may use the words "Certified Public Accountants" or the abbreviation "CPAs" in connection with its partnership name. Notification shall be given the board within one month after the admission or withdrawal of a partner to or from any partnership so registered.

Use of Designation "Public Accountant"

Sec. 18. Any individual qualified under this Act to register with the board for the practice of public accountancy and who has so registered and who holds a license for the practice of public accountancy may be styled and known as a "Public Accountant."

Use of Designation "Public Accountant" by Partnerships

Sec. 19. A partnership engaged in this state in the practice of public accountancy may register with the board as a partnership of public accountants provided it meets the following requirements:

- (1) at least one general partner must be a certified public accountant or a public accountant of this state in good standing;
- (2) each partner personally engaged within this state in the practice of public accountancy as a member must be a certified public accountant or a public accountant of this state in good standing;
- (3) each partner must be a certified public accountant or a public accountant of some state in good standing; and
- (4) each resident manager in charge of an office of a firm in this state must be a certified public accountant or a public accountant of this state in good standing.

Application for such registration must be made upon the affidavit of a general partner of such partnership who holds a license to practice in this state as a certified public accountant or as a public accountant. Such affidavit must set forth the partnership name, the post office address within the state, and the address of the principal office of the partnership wherever it is located, together with the name, residence, and post office address of each general partner of the partnership. The board shall in each case determine whether the applicant is eligible for registration. A partnership which is so registered and which holds a partnership license issued under Section 9 of this Act may use the words "Public Accountants" in connection with its partnership name. Notification shall be given the board within one month after the admission or withdrawal of a partner to or from any partnership so registered.

Practice of Public Accountancy by Corporations.

Sec. 20. A corporation authorized to engage in the practice of public accountancy in this state may register with the board as a corporation engaged in the practice of public accountancy. Application for such registration must be made upon the affidavit of an officer of such corporation. The affidavit must set out the corporate name, the post office address within the state, and the address of the principal office of the corporation. The board shall in each case determine whether the applicant is eligible for registration. A corporation which is so registered and which holds a license issued under this Act may practice public accountancy under a corporate name indicating that it is engaged in such practice. Licensing provisions and procedures applicable to partnerships under Sections 17 and 19 of this Act are also applicable to corporations.

Revocation or Suspension of Certificate or License

Sec. 21. (a) After notice and hearing as provided in Section 22 of this Act, the board may revoke or may suspend for a period not to exceed five years any certificate issued under this or any prior Acts or any registration granted under this or any prior Acts or may revoke, suspend, or refuse to renew any license issued under Sections 9 or 13 of this Act or may reprimand the holder of any such license for any one or more of the following causes:

(1) fraud or deceit in obtaining a certificate as certified public accountant or in obtaining registration under this or any prior Acts or in obtaining a license to practice public accountancy under this Act;

(2) dishonesty, fraud, or gross negligence in the practice of public accountancy;

(3) violation of any of the provisions of Section 8 of this Act;

(4) violation of a rule of professional conduct promulgated by the board under the authority granted by law;

(5) final conviction of a felony under the laws of any state or of the United States;

(6) final conviction of any crime, an element of which is dishonesty or fraud, under the laws of any state or of the United States;

(7) cancellation, revocation, suspension, or refusal to renew authority to practice as a certified public accountant or a public accountant by any other state for any cause other than failure to pay an annual registration fee in such other states;

(8) suspension or revocation of the right to practice before any state or federal agency for a cause which in the opinion of the board warrants its action;

(9) failure of a certificate holder or registrant to obtain an annual license under Section 9 of this

Act within either (A) three years from the expiration date of the license to practice last obtained or renewed by said certificate holder or registrant or (B) three years from the date upon which the certificate holder or registrant was granted his certificate or registration, if no license was ever issued to him, unless such failure shall be excused by the board pursuant to the provisions of Section 9 of this Act; or

(10) conduct indicating lack of fitness to serve the public as a professional accountant.

(b) Upon conviction by any court of original jurisdiction of a felony under the laws of any state or of the United States or of any crime, an element of which is dishonesty or fraud, under the laws of any state or the United States and after notice and hearing as provided in Section 22 of this Act, the board may suspend any certificate issued under this or prior Acts, any registration granted under this or prior Acts, or may suspend or refuse to renew any license issued under this Act for the period between the date of such conviction and the date such conviction becomes final or set aside. If such conviction becomes final whether by passage of time, exhaustion of appeal, or otherwise, the board may without further notice and hearing take any action authorized in Subsection (a) of this section. If such conviction is reversed, set aside, or modified so that it no longer constitutes a conviction of a felony or of a crime of which an element is dishonesty or fraud, the board shall reinstate any license, registration, or certificate suspended under this subsection; provided, however, that such reinstatement shall be without prejudice to the rights of the board to invoke any other applicable provisions of this section.

(c) After notice and hearing as provided in Section 22 of this Act, the board shall revoke the registration and license to practice of a partnership or corporation which does not meet all the qualifications for registration prescribed by this Act.

After notice and hearing as provided in Section 22 of this Act, the board may revoke or suspend the registration of a partnership or corporation or may revoke, suspend, or refuse to renew its license under Section 9 of this Act to practice or may reprimand the holder of any such license for any of the causes enumerated in Subsection (a) of this section or for any of the following additional causes:

(1) the revocation or suspension of the certificate or registration or the revocation or suspension or refusal to renew the license to practice of any partner or shareholder;

(2) the cancellation, revocation, suspension, or refusal to renew the authority of the partnership or corporation or any partner or shareholder thereof to practice public accountancy in any other state for any cause other than failure to pay an annual registration fee in such other state; or

(3) the suspension or revocation of the right of any partner or shareholder to practice before any state or federal agency for a cause which in the opinion of the board warrants its action.

Hearing and Review Procedure

Sec. 22. (a) The board may initiate proceedings under this Act either on its own motion or on the complaint of any person.

(b) A written notice stating the nature of the charge or charges against the accused and the time and place of the hearing before the board on such charges shall be served on the accused not less than 20 days prior to the date of said hearing either personally or by mailing a copy thereof by registered or certified mail to the last known address of the accused.

(c) At any hearing the accused may appear in person and by counsel, produce evidence and witnesses on his own behalf, cross-examine witnesses, and examine such evidence as may be produced against him. The accused shall be entitled on application to the board to the issuance of subpoenas to compel the attendance of witnesses on his behalf.

(d) The board or any member thereof may issue subpoenas to compel the attendance of witnesses and the production of documents and may administer oaths, take testimony, hear proofs, and receive exhibits in evidence in connection with or upon hearings under this Act. In cases of disobedience to a subpoena, the board may invoke the aid of any court of this state in requiring the attendance and testimony of witnesses and the production of documentary evidence.

(e) If, after having been served with the notice of hearing as provided for herein, the accused fails to appear at said hearing, the board may proceed to hear evidence against him and may enter such order as shall be justified by the evidence, and a copy of such order shall be mailed by registered or certified mail to the last known address of the accused. The board is hereby authorized to grant continuances upon written request and upon a showing of good cause for failure to appear at such hearing, set out in writing, signed by the accused, and filed with the board. The board may reopen said proceedings and permit the accused to submit evidence in his behalf; provided further that said written request to reopen is filed with the board within 20 days after the date a copy of said order has been mailed to the accused.

(f) A stenographic record of the hearings shall be kept, and if deemed necessary by the board, a transcript shall be ordered.

(g) At all hearings the attorney general or one of his assistants or such other legal counsel as may be employed shall appear and represent the board.

(h) The decision of the board shall be by majority vote.

(i)(1) Any person, firm, or corporation aggrieved by any order, ruling, or decision of the board may file a motion for rehearing. Such a motion must be filed within 15 days of the rendition of the order, ruling, or decision complained of. Replies to motions for rehearings must be filed within 25 days after the rendition of the order, ruling, or decision. Unless the board has acted upon a motion for rehearing within 45 days from the time it is filed, the motion shall be overruled as a matter of law. The board may extend the time for filing of motions for rehearings and replies, but in no event shall the board extend the period within which it may act to more than 90 days from the date of rendition of the order, ruling, or decision. Any motion for rehearing pending after the expiration of 90 days from the date of rendition of the order, ruling, or decision complained of shall be overruled as a matter of law.

(2) An order, ruling, or decision is final and appealable when the motion for rehearing is overruled or when the time for filing a motion has expired and no motion has been filed.

(3) Any party aggrieved by a final order, ruling, or decision of the board shall be entitled to judicial review under the substantial evidence rule. Proceedings for review shall be initiated by the filing of a petition in the District Court of Travis County, Texas, setting forth the particular objection to such decision, ruling, or order against the Texas State Board of Public Accountancy as defendant, such petition to be filed within 30 days after the decision, ruling, or order complained of is final and appealable. Service of citation on the board may be had by delivery of a copy of the petition to the board at its offices in Austin, Travis County, Texas. The board shall not be required to give any bond in any cause or appeal arising hereunder. Neither the board nor any member thereof shall be liable to any person, firm, or corporation charged or investigated by the board for any damages incident to such investigation or any complaint, charge, prosecution, proceeding, or trial of the results thereof.

(j) Upon application in writing and after hearing pursuant to notice, the board may issue a new certificate to a certified public accountant whose certificate shall have been revoked or may permit the reregistration of anyone whose registration has been revoked or may reissue or modify the suspension of any license to practice public accountancy which has been revoked or suspended.

Penalties

Sec. 23. (a) Whenever in the judgment of the board any person who is not the holder of a license to practice public accountancy in this state has engaged in any act or practices which constitute the practice of public accountancy within this state, the board may apply to the district court of the county in which such person resides or has an office to

enjoin such person from engaging in the practice of public accountancy, and in such cases the board shall not be required to give bond as a condition precedent to the issuance of such injunctive relief.

(b) Any person who violates any provision of The Public Accountancy Act of 1945, as amended (Article 41a, Vernon's Texas Civil Statutes), or of this Act shall be deemed guilty of a Class B misdemeanor and each violation shall constitute a separate offense. Any complaints filed under the provisions of this section shall be filed in the county where the offense occurred.

Advisory Committees

Sec. 24. (a) The board may appoint advisory committees composed of individuals who are not members of the board. An advisory committee shall perform the advisory functions assigned to it by the board.

(b) A member of an advisory committee serves without compensation and is entitled to reimbursement for actual and necessary expenses incurred in performing the functions of the committee.

(c) A member of an advisory committee serves at the will of the board.

Confidentiality of Certain Board Files

Sec. 25. Any file maintained or information gathered or received by the board concerning a candidate, licensee, or former licensee shall be available for inspection by that candidate, licensee, or former licensee during normal business hours at the offices of the board in Austin. A candidate, licensee, or former licensee may by written communication authorize the board to make any information about that candidate, licensee, or former licensee available for inspection by designated persons or available for inspection by the public at large. Except upon such written authorization, all information received or gathered by the board concerning the qualifications of any licensee or candidate to register as a public accountant or to receive a certificate as a certified public accountant and all information received or gathered by the board concerning a disciplinary proceeding against a licensee under Section 22 of this Act prior to a public hearing on the matter shall be confidential and shall not be subject to disclosure under Chapter 424, Acts of the 63rd Legislature, 1973, as amended (Article 6252-17a, Vernon's Texas Civil Statutes).

Client-accountant Communications

Sec. 26. (a) Except by permission of the client or person or entity engaging him or the heirs, successors, or personal representatives of such client or person or entity, a certified public accountant, public accountant, partnership, or corporation holding a license to practice under this Act shall not be re-

quired to disclose or divulge information which has come into his possession relative to or in connection with any professional services as a certified public accountant, public accountant, partnership, or corporation. Any information derived from or as the result of such professional services shall be deemed confidential and privileged. However, this section shall not apply to information related to the methods or procedures used in: (1) the preparation of a "financial statement"; (2) management advisory or consulting services; or (3) tax returns and supporting schedules.

(b) No information shall be deemed privileged from disclosure in:

- (1) an action against a licensee by the client or entity engaging the licensee;
- (2) any disciplinary investigation or proceeding conducted under or pursuant to this Act; or
- (3) any criminal investigation or proceeding.

(c) No documentary information, books or records shall be deemed privileged from examination by the Comptroller of Public Accounts or any agency of the State of Texas pursuant to the authority granted by law.

Application of Open Meetings Law and Administrative Procedure and Texas Register Act

Sec. 27. The board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

Application of Sunset Act

Sec. 28. The Texas State Board of Public Accountancy is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1991.

Transition

Sec. 29. (a) The Texas State Board of Public Accountancy to which this Act refers is a continuation of the Texas State Board of Public Accountancy created by The Public Accountancy Act of 1945, as amended (Article 41a, Vernon's Texas Civil Statutes).

(b) A person holding office as a member of the Texas State Board of Public Accountancy on the effective date of this Act shall continue to hold office for the term for which the member was originally appointed.

(c) The terms of office of all succeeding members of the board expire on January 31 of odd-numbered years, six years after expiration of the previous term

of office. The initial appointment under this Act shall be for such staggered terms as are necessary to provide for the expiration of the terms of one-third of the board members every two years.

(d) After the effective date of this Act the governor shall appoint members to the board in a manner that achieves as soon as possible the membership plan provided in this Act.

Repealer

Sec. 30. The Public Accountancy Act of 1945, as amended (Article 41a, Vernon's Texas Civil Statutes), is repealed.

[Acts 1979, 66th Leg., p. 1479, ch. 646, §§ 1 to 30, eff. Sept. 1, 1979.]

Art. 41b. Audits of River Authorities

Annual Audit of Fiscal Accounts by Public Accountant or State Auditor

Sec. 1. The fiscal accounts of each river authority in this state shall be audited annually. The board of directors of a river authority may have the authority's fiscal accounts audited at authority expense by an independent public accountant or certified public accountant holding a permit from the Texas State Board of Public Accountancy. If a river authority does not elect to have the fiscal accounts audited by an independent public accountant or a certified public accountant, the state auditor shall audit the authority in the manner provided by law for state government audits. The annual audit, if performed by an accountant other than the state auditor, shall be completed within 120 days after the close of the district's fiscal year.

Generally Accepted Auditing and Accounting Standards

Sec. 2. The audit shall be performed according to the generally accepted auditing standards adopted by the American Institute of Certified Public Ac-

countants and shall include the auditor's representation that the financial statements have been prepared in accordance with generally accepted accounting principles.

Approval and Filing of Report

Sec. 3. After the board of directors of the authority approves the annual audit report, the report shall be filed with the Texas Water Rights Commission. If the board of directors refuses to approve the audit report, the board shall nevertheless file the report with the commission along with a statement detailing the reasons why the report was not accepted.

Copy of Report Available for Public Inspection

Sec. 4. A copy of the audit report shall be available for public inspection in the administrative office of the river authority during regular office hours.

Advertisement for Competitive Bids Unnecessary

Sec. 5. It is not necessary that the board of directors advertise for competitive bids before selecting the independent public accountant or certified public accountant to perform the annual audit required by the provisions of this Act.

Audit by State Auditor

Sec. 6. If the state auditor considers it necessary, he may have an audit made of any river authority in this state. The audit shall be conducted in the manner provided by law for audit of the state government.

Repealer

Sec. 7. Section 7b, Chapter 293, Acts of the 48th Legislature, 1943, as amended (Article 4413a-7b; Vernon's Texas Civil Statutes), is repealed.

[Acts 1975, 64th Leg., p. 591, ch. 242, §§ 1 to 7, eff. May 20, 1975.]

TITLE 3

ADOPTION

Art. 46b-2. Repealed by Acts 1979, 66th Leg., p. 2429, ch. 842, art. 1, § 2(1), eff. Sept. 1, 1979

Prior to repeal, this article was amended by Acts 1975, 64th Leg., p. 1034, ch. 399, § 1; Acts 1979, 66th Leg., p. 1079, ch. 508, §§ 1, 2.
Acts 1979, 66th Leg., ch. 842, repealing this article, enacts the Human Resources Code.
For disposition of the subject matter of the repealed article, see Disposition Table following the Human Resources Code.

TITLE 3A

AERONAUTICS

AERONAUTICS COMMISSION AND DIRECTOR OF AERONAUTICS

Art. 46c-3. Aeronautics Commission, Organization, Membership

[See Compact Edition, Volume 3 for text of (a) and (b)]

(c) The Texas Aeronautics Commission is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished effective September 1, 1981.

[Amended by Acts of 1977, 65th Leg., p. 1839, ch. 735, § 2.052, eff. Aug. 29, 1977.]

¹ Article 5429k.

Art. 46c-6. Commission Powers and Duties

[See Compact Edition, Volume 3 for text of 1 and 2]

Subd. 3. Air Carriers.

[See Compact Edition, Volume 3 for text of 3(a) and (b)]

(b-1) The Commission by rule may establish reasonable classifications of air carriers. In the interest of limiting the scope of regulation, the Commission by rule may exempt any class of air carriers from any or all of the requirements of this Act or from any or all rules promulgated pursuant to this Act if the exemption is just and reasonable and is in the public interest.

[See Compact Edition, Volume 3 for text of 3(c) to 3(f)]

(g) No carrier may limit its liability for loss of or damage to freight or baggage unless the carrier files a limiting tariff with the Commission before the claimed loss or damage. The Commission shall establish specific liability limits under its rule-making authority.

[See Compact Edition, Volume 3 for text of 4 and 5]

Subd. 6. Airports and Navigation Aids, Gifts, Leases.

[See Compact Edition, Volume 3 for text of 6(a)]

(b) Independently and additionally, the Commission shall be authorized to accept any grant, payment, or gift of moneys, funds or property made to it by any person, individual, firm, association, corpo-

ration, municipality, county, or other political subdivision of the state, or from the United States, or any department or agency thereof, as to which the donor has prescribed a particular use for one or more aeronautical purposes. The Commission shall utilize any such grant of property in accordance with the terms of the grant, and as to any such payment, or gift of funds or moneys, the Commission shall (1) deposit the same in any one or more state or national banks approved by the State Depository Board as a depository of the public funds of Texas, and shall (2) utilize such moneys for the purpose or purposes prescribed by the donor. A record shall be maintained in the Commission's offices of such properties and funds. Such funds shall be expended only upon general or special order of the Commission, and all checks shall be signed by the Director. Reports of any such expenditures shall be made at the end of each fiscal year to the Comptroller of Public Accounts of the State of Texas.

[See Compact Edition, Volume 3 for text of 7 to 9]

Subd. 10. Grants or Loans. When in the discretion of the Commission the public interest will best be served, and the governmental function of the state or its political subdivisions relative to aeronautics will best be discharged, it may grant or loan funds, appropriated to it for that purpose by the Legislature, to any state agency with a governing board that is authorized to operate airports, and to any governmental entity in this state for the establishment, construction, reconstruction, enlargement or repair of airports, airstrips or air navigational facilities. Provided that any such funds must be expended by the governmental entity for the purpose provided herein and in conformity with the laws of this state and with the rules and regulations which the Commission is hereby authorized to promulgate.

Prior to approving any loan or grant under this Act the Commission shall hold a public hearing at which all interested parties shall have an opportunity to be heard. No such loan shall be made without a majority vote of the entire Commission in favor thereof and no such grant shall be made without a two-thirds vote of the entire Commission in favor thereof. In determining whether or not a grant or loan shall be made, the Commission shall consider the following:

(1) The need for an airport or facility or improvement of existing facility in the locality in the light of existing airports or facilities in the area and in light of the overall needs of the state, and

(2) The financial needs of the community with priority given to areas of greatest need.

(3) Loans shall be made in lieu of grants whenever feasible. Prior to approving any loan or grant the Commission shall require that:

(1) The airport or facility remain in the control of the political subdivision or political subdivisions involved for at least 20 years, and

(2) The political subdivision disclose the source of all funds for the project and its ability to finance and operate the project, and

(3) All loans shall bear interest at the rate of at least three percent per annum and have a term of not longer than 20 years, and

(4) At least ten percent of the total project cost be provided from sources other than the State of Texas, and

(5) The project be adequately planned.

[Amended by Acts 1977, 65th Leg., p. 54, ch. 30, § 1, eff. March 29, 1977; Acts 1977, 65th Leg., p. 308, ch. 142, § 1, eff. May 13, 1977; Acts 1977, 65th Leg., p. 380, ch. 189, § 1, eff. May 20, 1977; Acts 1979, 66th Leg., p. 31, ch. 22, § 1, eff. Aug. 27, 1979.]

Validation of certain actions. Acts 1977, 65th Leg., p. 863, ch. 325, § 1, provides:

"All orders previously made, prior to January 1, 1977, by the Texas Aeronautics Commission granting certificates of public convenience and necessity for the operation of intrastate air carriers are hereby in all respects validated, ratified, and confirmed."

Art. 46c-7. Director of Aeronautics

[See Compact Edition, Volume 3 for text of 1]

Subd. 2. Powers and Duties. The Director shall be the executive officer of the Commission and under its supervision shall administer the provisions

of this Act (and the rules, regulations, and orders established thereunder), and all other laws of the state relative to aeronautics. He shall attend all meetings of the Commission, but shall not have the power to vote. At the direction of the Commission he shall execute all contracts entered into by the Commission which are legally authorized and for which funds are provided by this Act, as amended, or in any appropriation Act.

[Amended by Acts 1977, 65th Leg., p. 308, ch. 142, § 2, eff. May 13, 1977.]

MUNICIPAL AIRPORTS ACT

Art. 46d-16. Airport Property and Income Exempt from Taxation

Repeal

This article is repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

MISCELLANEOUS

Art. 46g. Airport Security Personnel; Employment; Commission as Peace Officers

[See Compact Edition, Volume 3 for text of (a) to (c)]

(d) Any peace officer commissioned under this Act shall be vested with all the rights, privileges, obligations, and duties of any other peace officer in this state while he is on the property under the control of the airport, or in the actual course and scope of his employment.

[Amended by Acts 1975, 64th Leg., p. 991, ch. 380, § 1, eff. June 19, 1975.]

TITLE 4

AGRICULTURE AND HORTICULTURE

CHAPTER ONE. COMMISSIONER OF AGRICULTURE

Article

- 47a. Application of Sunset Act.
- 55f. Grading of Livestock.
- 55g. Family Farm and Ranch Security Program.

Art. 47a. Application of Sunset Act

The office of Commissioner of Agriculture is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the office is abolished effective September 1, 1987.

[Added by Acts 1977, 65th Leg., p. 1849, ch. 735, § 2.126, eff. Aug. 29, 1977.]

¹ Article 5429k.

Art. 55c. Financing Programs to Encourage Production and Use of Agricultural Commodities; Referendum; Exemptions; Political Activity; Budget Approval

[See Compact Edition, Volume 3 for text of 1 and 2]

Exemptions

Sec. 2A. Rice, flax, and cattle are exempt from all provisions of this Act. The original referendum and subsequent biennial board elections may provide exemptions for producers within the boundaries of the assessment district, provided such exemptions are included in full written form on the election ballot and are approved by two-thirds or more of those voting in the election.

[See Compact Edition, Volume 3 for text of 3 to 14A]

Producers' Assessment Exemptions

Sec. 14B. (a) Producers of any agricultural commodity may exempt their product sales from assessments by filing a signed request for exemption with the processor at the time of each sale. The processor shall include copies of the exemption requests with remittance of assessed funds each month to the secretary-treasurer of the commodity producers board for the commodity.

(b) The commissioner shall prescribe exemption forms to be used. The board shall furnish the prescribed exemption forms to all processors within the district of operation.

[See Compact Edition, Volume 3 for text of 15 to 17B]

[Amended by Acts 1975, 64th Leg., p. 851, ch. 325, §§ 1 and 2, eff. May 30, 1975.]

Section 3 of Acts 1975, 64th Leg., p. 851, ch. 325, provided:

"Section 14B, Chapter 462, Acts of the 60th Legislature, Regular Session, 1967, as added by this Act, expires on the adoption by the voters of this state of either Senate Joint Resolution No. 34, as proposed by the 64th Legislature, Regular Session, 1975, or Section 5 of Senate Joint Resolution No. 11, as proposed by the 64th Legislature, Regular Session, 1975, revising the constitutional provisions relating to finance and proposing a new Article VIII of the Texas Constitution. Otherwise, Section 14B continues in effect."

The proposed constitutional amendments were rejected by the voters at election held on November 4, 1975.

Art. 55f. Grading of Livestock

Definitions

Sec. 1. In this Act:

- (1) "Livestock" means cattle, sheep, goats, and hogs.
- (2) "Commissioner" means the state commissioner of agriculture.
- (3) "Person" means an individual, firm, partnership, corporation, or association of individuals.

Grading on Request

Sec. 2. The commissioner or his authorized agents may grade livestock alive in this state on request of the owner or a cooperative marketing association.

Agents; Competency Requirements

Sec. 3. The commissioner may employ agents for the purpose of grading livestock and may require applicants for employment or persons employed as inspectors to pass examinations and meet other requirements established by the commissioner to demonstrate competence in grading livestock.

Grade Standards

Sec. 4. Grade standards for classifying livestock under this Act shall be the standards and classifications of the United States Department of Agriculture.

Regulations; Fees

Sec. 5. The commissioner may promulgate regulations relating to the method and procedures for the grading service. The commissioner may collect from persons who requested grading, fees for livestock grading in amounts to cover costs incurred in providing the grading services. Fees collected as provided in this Act shall be deposited in the state treasury. [Acts 1975, 64th Leg., p. 1838, ch. 567, §§ 1 to 5, eff. June 19, 1975.]

Art. 55g. Family Farm and Ranch Security Program

Definitions

Sec. 1. In this Act:

(1) "Applicant" means an individual applying for a family farm and ranch security loan.

(2) "Commissioner" means the commissioner of agriculture.

(3) "Family farm and ranch security loan," except in the case of a seller-sponsored loan, means a loan secured by a first real estate mortgage or deed of trust guaranteed by the state and used to acquire farmland and ranchland.

(4) "Farmland and ranchland" means land in Texas that is capable of supporting the commercial production of agricultural crops, livestock or livestock products, poultry or poultry products, milk or dairy products, or fruit or other horticultural products.

(5) "Lender" means any bank, savings bank, mutual savings bank, credit union, building and loan association, or savings and loan association organized under the laws of this state or the United States, trust companies and other financial institutions subject to the supervision of the banking commissioner, and any corporation engaged in the business of insurance that is subject to the supervision of the State Board of Insurance under the Insurance Code, as amended.

(6) "Seller-sponsored loan" means a loan in which part or all of the purchase price of a farm and/or ranch is financed by a loan from the seller of the property who is an individual, with the remainder of the loan, if any, supplied by a lender.

(7) "Active agricultural production" means that the land is currently devoted to one or more of the following activities: cultivating the soil, producing crops for human food, animal feed, planting seed, and for the production of fibers; floriculture, viticulture, and horticulture; raising or keeping livestock; and planting cover crops or leaving land idle for the purpose of participating in any governmental program, or normal crop or livestock rotation procedure.

Family Farm and Ranch Security Program

Sec. 2. A family farm and ranch security program is established under the administration of the commissioner of agriculture. Subject to the provisions of this Act, the commissioner may guarantee to lenders that, in the event of default on a family farm and ranch security loan, the state will pay the lender 90 percent of the sum due and payable under the first real estate mortgage or deed of trust.

Rules

Sec. 3. The commissioner shall adopt rules necessary for the efficient administration of this program.

Reports

Sec. 4. Before January 1 of each year, the commissioner shall submit a report to the legislature concerning his or her actions under this program during the past year and the status of loans guaranteed.

Advisory Council

Sec. 5. (a) A family farm advisory council is established, composed of nine members appointed by the governor for staggered terms of six years.

(b) The advisory council shall be composed of two officers of commercial lending institutions, one officer of a farm credit association, one general farmer, one agricultural economist, one dairy farmer, one livestock farmer, one cash grain farmer, and one cotton farmer.

(c) The members of the advisory council serve without compensation but shall be reimbursed for actual and necessary expenses incurred in carrying out official duties.

(d) In making the initial appointments, the governor shall designate the terms of three members to expire on January 31, 1981, three to expire on January 31, 1983, and three to expire on January 31, 1985.

(e) The members of the council annually shall elect a presiding officer and other officers they consider necessary.

(f) The council shall:

(1) review and appraise the family farm and ranch security program;

(2) give advice and counsel to the commissioner regarding the program;

(3) review all applications for family farm and ranch security loans, make recommendations to the commissioner as to their disposition, and approve applications for payment adjustments; and

(4) make recommendations to the legislature and to the commissioner regarding any needed state policy or legislative changes to foster and promote the economic health and continued existence of the family farm or ranch.

(g) The commissioner shall provide the council with necessary staff, office space, and administrative services.

Eligibility for Loans

Sec. 6. To be eligible for a family farm and ranch security loan, an applicant must:

(1) be a citizen of the United States;

(2) have been a resident of the State of Texas for five years;

(3) have education, training, or experience in the type of farming or ranching for which the applicant wishes the loan;

(4) together with the applicant's spouse and their dependents, have a total net worth of less than \$100,000 and demonstrate the need for the loan; provided, however, that the value of any residential homestead owned by the applicant shall not be included in determining the applicant's net worth;

(5) intend to purchase farmland and/or ranchland to be used by the applicant and family for agricultural purposes as the applicant's primary occupation; and

(6) be worthy of credit according to standards established by the commissioner.

Application for Loans

Sec. 7. (a) An individual desiring to acquire farmland and/or ranchland may apply to a lender for a family farm and ranch security loan. On completion of the appropriate forms by the applicant and the lender, the lender shall forward the application to the commissioner for approval. The commissioner shall determine eligibility, shall approve the application if the requirements of Sections 6 and 8 of this Act are met, and shall notify the lender and the applicant of the decision.

(b) If the application is denied, the commissioner shall return the application to the lender with a written statement of the reasons for denial. The lender shall give a copy of those reasons to the applicant. If the circumstances of the applicant change so that he or she becomes eligible, the applicant may reapply.

(c) If the commissioner approves the loan application, the commissioner shall file a copy of the application and return the original to the lender. The applicant and the lender may then complete the loan transaction.

(d) No person related within the second degree by affinity or the third degree by consanguinity to any member of the advisory council or to the commissioner of agriculture, the deputy commissioner of agriculture, or the assistant commissioner of agriculture is eligible for a family farm and ranch security loan under this Act.

Terms of the Loan

Sec. 8. (a) A family farm and ranch security loan shall be transacted on forms approved by the commissioner with the advice of the attorney general. Before approving any application, the commissioner shall cause to be made an appraisal of the property in order to determine its value. Any appraiser representing the commissioner must be reasonably qualified to give competent appraisals of land. The appraiser shall make a written report to the commissioner in affidavit form, sworn to before a notary public or other official authorized to administer oaths, showing:

(1) the appraised value of the land;

(2) the names and addresses of any persons communicated with relative to the valuation of the land;

(3) that the appraiser has examined the records of the county clerk's office relative to the land;

(4) that the appraiser has checked past sales of adjacent lands to aid in determining valuation; and

(5) that neither the appraiser nor any member of the appraiser's family has received any personal benefits from the transaction and does not expect to receive any future personal benefits. The cost of this appraisal must be paid by the applicant prior to the date on which the application is approved by the advisory council and the commissioner. The commissioner shall establish by rule an appraisal procedure to determine the income potential of the property to be purchased under a family farm and ranch security loan and may not approve an application if the purchase price exceeds the appraisal value and income potential of the land.

(b) If the family farm and ranch security loan has a term of not more than 20 years and provides for payments at least annually so that the loan is amortized over its term with equal annual payments of principal and interest, an applicant may apply for a payment adjustment. If the application is approved by the advisory council, the commissioner may annually pay to the lender four percent of the outstanding balance due on the loan at the beginning of the year during the first 10 years of the loan. Beginning with the 11th year of the loan, the applicant shall reimburse the commissioner for the sums paid in his or her behalf plus six percent simple interest. An applicant may petition the commissioner for one 10-year renewal of the payment adjustment, in which case the applicant must reimburse the commissioner beginning with the 21st year after the loan was granted for all the sums paid in his or her behalf plus six percent simple interest. An applicant is entitled to make reimbursements for payment adjustments in equal annual payments over a term not to exceed 10 years.

(c) The borrower, the borrower's spouse, and their dependents shall annually submit to the commissioner a sworn statement of their net worth. If their net worth in any year exceeds \$150,000, the applicant is ineligible for a payment adjustment in that year.

(d) The obligation to repay a payment adjustment is a lien against the property.

(e) A lender receiving a payment from the commissioner on behalf of a borrower under this section shall reduce the borrower's payments for the next year in accordance with the amount received from the commissioner.

Seller-Sponsored Loans

Sec. 9. (a) The commissioner may approve a family farm and ranch security loan to an applicant for a loan that is seller-sponsored.

(b) A seller-sponsored loan shall be secured by a purchase money first real estate mortgage or deed of trust evidenced by a negotiable note or notes, and the commissioner must be notified in writing by the holder of that note within 30 days after the note is sold or exchanged.

Sale or Conveyance

Sec. 10. Any borrower who sells or conveys the property for which a family farm and ranch security loan was issued shall immediately retire the entire indebtedness owed to the lender and the state. A family farm and ranch security loan may not be assumed by a new owner. This section does not prohibit a borrower from granting a security interest in the property for the purposes of securing an additional loan.

Default

Sec. 11. (a) Within 90 days of default on a family farm and ranch security loan, the lender shall notify the borrower that the lender must notify the commissioner if the default continues for another 90 days. The lender also shall inform the borrower of the consequences of that default. The lender and the borrower may agree to take any reasonable steps to insure the fulfillment of the loan obligation.

(b) If the borrower has not made arrangements to meet the obligation by the end of the 180th day following the initial default, the lender shall file a claim with the commissioner identifying the loan and the nature of the default. The commissioner shall then conduct a hearing on the alleged default as a contested case under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). Appeal of the commissioner's decision to the district court is under the substantial evidence rule. If the commissioner finds that the borrower is in default, the lender shall assign to the state all of the lender's security and interest in the loan in exchange for payment of 90 percent of all sums due and payable under the first real estate mortgage or deed of trust. In the case of a seller-sponsored loan, the seller may elect to pay the commissioner all sums owed the commissioner by the applicant and retain title to the property in lieu of payment by the commissioner under the terms of the loan guarantee. If the commissioner determines that the lender has met his or her obligations regarding the loan guarantee, the commissioner shall authorize payment to the lender and shall notify the defaulting party. The state shall then become holder of the mortgage or deed of trust.

(c) If the state acquires the mortgage or deed of trust on the property, the commissioner shall undertake to sell the property after all appeals are concluded. Notice of the impending sale shall be published at least once each week for four consecutive weeks in a newspaper of general circulation in the county in which the property is located and in a publication having general statewide circulation. This notice shall specify the time and place in the county at which the sale will be held and give a description of the lots or tracts to be offered and a general statement of the terms of sale. The commissioner shall sell the property to the highest bidder as determined by taking sealed bids or by public auction. In either case, the commissioner shall determine the successful bidder within 15 days of the date of the last published notice of sale. Bidders shall submit bid security in the form of a certified check or bid bond in the amount of two percent of their bid price. The successful bidder shall remit the balance of the purchase price to the commissioner within 90 days of the date of sale. On remittance of the balance, the commissioner shall transfer all right, title, and interest of the state in the property to the purchaser. If the purchaser fails to remit any part of the balance within the 90 days, the purchaser forfeits all rights to the property and any money paid for it, and the commissioner shall restart the sale process. Proceeds from the sale of property obtained by the state under this Act shall be paid into the special account established by Section 14 of this Act, except that if the payment made to a lender under this Act is less than the amount due and payable to the lender, proceeds in excess of the amount of that payment shall be paid to the lender to the extent required in order to reimburse the lender in full.

(d) A borrower who fails to maintain the land purchased under a family farm and ranch security loan in active agricultural production for any period of time longer than one year is in default. This default may be waived by the commissioner in the event of the borrower's physical disability or other extenuating circumstances.

Discrimination Prohibited

Sec. 12. In carrying out duties under this Act, the commissioner and council may not discriminate because of age, race, color, creed, religion, national origin, sex, marital status, disability, or political or ideological persuasion.

Farm and Ranch Loan Security Bonds

Sec. 13. (a) The commissioner by order may provide for the issuance of negotiable farm and ranch loan security bonds in one or more installments and in an aggregate amount not to exceed \$10 million. The order entered shall describe the terms and conditions of the bonds.

(b) The commissioner may not sell an installment or series of bonds for an amount less than the face value of all of the bonds comprising the installment or series with the interest accrued from their date of issuance.

(c) The commissioner shall determine the rate of interest of an installment or series of bonds and shall determine whether interest is payable annually or semiannually.

(d) The commissioner shall determine:

- (1) the form of the bonds, including the form of any interest coupons to be attached;
- (2) the denominations of the bonds; and
- (3) the places for payment of principal and interest.

(e) The bonds of each issue mature, serially or otherwise, not more than 40 years from their date. In issuing bonds, the commissioner may determine the price, terms, and conditions for redemption of bonds before maturity.

(f) The commissioner may provide for the registration of bonds as to ownership, successive conversion and reconversion from bearer to registered bonds, and successive conversion and reconversion from registered to bearer bonds.

(g) After determining to sell a series of bonds, the commissioner shall publish notice of the sale at least once not less than 10 days before the date of the sale. The notice shall be published in at least one financial publication of general circulation published in the state and in at least one financial publication of general circulation published outside the state.

(h) The bonds shall be sold only after competitive bidding to the highest and best bidder. The commissioner may reject any or all bids. The commissioner shall require every bidder, except administrators of state funds, to include with the bid an exchange or cashier's check for an amount the commissioner considers adequate as a deposit guaranteeing acceptance of and payment for all bonds covered by the bid.

(i) Before delivering bonds to the purchasers, the commissioner shall submit the bonds and the records pertaining to them for approval by the attorney general. When approval is obtained, the bonds shall be registered in the office of the comptroller of public accounts.

(j) The bonds shall be executed on behalf of the commissioner as general obligations of the state. The bonds shall be signed by the commissioner and the seal of the commissioner shall be impressed on them. The bonds shall be signed by the governor and attested by the secretary of state, and the state seal shall be impressed on them.

(k) The commissioner may prescribe the extent to which facsimile signatures and facsimile seals in-

stead of manual signatures and manually impressed seals may be used in executing the bonds and appurtenant coupons. Interest coupons may be signed by the facsimile signature of the commissioner. If an officer whose signature or facsimile signature appears on a bond or whose facsimile signature appears on a coupon ceases to be an officer before delivery of the bond, the signature is valid and sufficient for all purposes as if that officer had remained in office until the delivery had been made.

(l) After approval by the attorney general, registration by the comptroller, and delivery to the purchaser, the bonds are incontestable and constitute general obligations of the state and shall be held to be valid and binding obligations of the state in any action, suit, or other proceeding in which their validity is questioned. In an action to enforce collection of the bonds or rights incident to the bonds, the certificate of approval by the attorney general and a certificate of registration by the comptroller, or certified copies of these certificates, is admissible evidence constituting proof of the validity of the bonds.

(m) The state treasurer shall pay or cause to be paid the principal on bonds as they mature and the interest as it becomes payable.

(n) The performance of the official duties of the comptroller and the treasurer may be enforced by mandamus or other appropriate proceeding.

(o) The commissioner may provide for the issuance of refunding bonds. The commissioner may sell these bonds and use the proceeds to retire the outstanding bonds issued under this section, including interest accrued on outstanding bonds, or the commissioner may exchange refunding bonds for outstanding bonds, including accrued interest. The issuance of the refunding bonds, their maturity, the rights of the bondholders, and the duties of the commissioner's office regarding refunding bonds are governed by the provisions of this section relating to the original bonds, to the extent they are applicable, and by refunding statutes of general application not in conflict with the provisions of this section.

(p) The bonds issued under the provisions of this section are negotiable instruments. The bonds, income from the bonds, and profit made on their sale are exempt from taxation within this state.

(q) Bonds issued under this section are legal and authorized investments for:

- (1) banks;
- (2) savings banks;
- (3) trust companies;
- (4) building and loan and savings and loan associations;
- (5) insurance companies;
- (6) fiduciaries;
- (7) trustees;

(8) guardians; and

(9) sinking funds of cities, towns, villages, counties, school districts, and other political subdivisions and public agencies of the state.

(r) Bonds issued under this section, when accompanied by all appurtenant unmatured coupons, are lawful and sufficient security for all deposits of funds of the state or of a city, town, village, county, school district, or other political subdivision or agency of the state, at the par value of the bonds.

(s) The commissioner may provide for the replacement of a mutilated, lost, or destroyed bond.

Special Fund

Sec. 14. (a) The farm and ranch loan security fund is created as provided in Article III, Section 50c, of the Texas Constitution. Proceeds derived from the sale of the farm and ranch loan security bonds, less the administrative costs of issuing the bonds, shall be deposited in the farm and ranch loan security fund.

(b) The commissioner may use the farm and ranch loan security fund only for payment to a lender in order to acquire interest in property purchased under a guaranteed family farm and ranch security loan or for payment adjustments.

(c) The interest and sinking fund for farm and ranch loan security bonds is created to be used exclusively for:

(1) paying the principal of farm and ranch loan security bonds as they mature;

(2) paying interest on the bonds as it comes due; and

(3) paying exchange and collection charges in connection with bonds.

(d) Accrued interest received in the sale of bonds and income from investments of the loan security fund and the interest and sinking fund shall be credited to the interest and sinking fund; provided, however, if the accrued interest and income in any year exceeds the cost of paying principal and interest on farm and ranch loan security bonds and any exchange and collection charges, the amount in excess of those payments shall be deposited in the farm and ranch security fund for the purpose of financing payment adjustments. In authorizing a series of bonds, the commissioner may appropriate from the proceeds of the sale of bonds an amount which, together with the accrued interest received, is sufficient to pay interest coupons becoming due during the fiscal year in which the bonds are sold and to establish appropriate reserves.

(e) After all bonds have been paid, the balance of the interest and sinking fund shall be transferred to the farm and ranch loan security fund.

(f) The comptroller of public accounts shall make any transfer of funds required by this Act.

(g) The commissioner may invest the farm and ranch loan security fund and, in making the investments, is governed by the provisions of Chapter 401, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-5a, Vernon's Texas Civil Statutes). The commissioner may invest the interest and sinking fund only in direct obligations of the United States, certificates of deposit in Texas banks, or in obligations the principal and interest of which are guaranteed by the United States.

(h) All proceeds from the sale of land held by the commissioner as a result of foreclosure on property purchased under a family farm and ranch security loan shall be deposited in the farm and ranch loan security fund.

Administrative Expenses

Sec. 15. The legislature shall appropriate the funds required for the administration of the program created by this Act.

Effective Date

Sec. 16. This Act takes effect on the adoption of the amendment to the constitution proposed by S.J.R. No. 13, 66th Legislature, Regular Session, 1979. If that constitutional amendment is not adopted, this Act has no effect.

[Acts 1979, 66th Leg., p. 2205, ch. 839, §§ 1 to 16.]

S.J.R. No. 13 was approved by the voters at an election held on November 6, 1979.

CHAPTER TWO. STATE SEED AND PLANT BOARD

Article

67b. Seed and Plant Certification Act.

Arts. 56 to 67a. Repealed by Acts 1975, 64th Leg., p. 348, ch. 149, § 15, eff. Sept. 1, 1975

See, now, art. 67b.

Art. 67b. Seed and Plant Certification Act

Short Title

Sec. 1. This Act may be cited as the Texas Seed and Plant Certification Act.

Definitions

Sec. 2. In this Act:

(1) "Person" means an individual, firm, partnership, corporation, association of individuals, or agency, department, or subdivision of the state.

(2) "Plant" includes plant parts.

(3) "Board" means the State Seed and Plant Board.

(4) "Commissioner" means the state commissioner of agriculture.

(5) The terms "certified seed" and "certified plant" mean seed or a plant which has been deter-

mined by a seed or plant certifying agency to meet agency regulations and standards as to genetic purity and identity. The four classes of certified seed and plants are Breeder, Foundation, Registered, and Certified.

(6) The terms "Breeder seed" and "Breeder plant" mean a class of certified seed or plants which is directly controlled by the originating or sponsoring person or his designee and which is the primary source for the production of seed and plants of the other classes of seed and plants.

(7) The terms "Foundation seed" and "Foundation plant" mean a class of certified seed or plants which is the progeny of Breeder or Foundation seed or plants, and is produced and handled under procedures established, in accordance with federal requirements, by a seed or plant certifying agency for the Foundation class of seed or plants for the purpose of maintaining genetic purity and identity.

(8) The terms "Registered seed" and "Registered plant" mean a class of certified seed or plants which is the progeny of Breeder or Foundation seed or plants and is produced and handled under procedures established, in accordance with federal requirements, by a seed or plant certifying agency for the Registered class of seed or plants for the purpose of maintaining genetic purity and identity.

(9) The terms "Certified seed" and "Certified plant" mean a class of certified seed or plants which is the progeny of Breeder, Foundation, or Registered seed or plants, except as otherwise provided by federal law, and is produced and handled under procedures established, in accordance with federal requirements, by a seed or plant certifying agency for the Certified class of seed or plants for the purpose of maintaining genetic purity and identity.

State Seed and Plant Board

Sec. 3. (a) The State Seed and Plant Board is an agency of the state. The board consists of six members appointed by the governor with the advice and consent of the senate. Membership must include:

- (1) one individual from the Soils and Crop Sciences Department, Texas Agricultural Experiment Station, Texas A & M University;
- (2) one individual from the Department of Plant and Soil Sciences, Texas Tech University;
- (3) one individual licensed as a Texas Foundation, Registered, or Certified seed or plant producer who is not employed by a public institution;
- (4) one individual who sells Texas Foundation, Registered, or Certified seed or plants;

(5) one individual actively engaged in farming but not a producer or seller of Texas Foundation, Registered, or Certified seed or plants; and

(6) the head of the seed division of the state department of agriculture.

(b) An individual appointed from a state university or the state department of agriculture serves on the board as an ex officio member. A member serves for a term of two years and until his successor has qualified. Members serve without compensation but are entitled to reimbursement by the state for actual expenses incurred in the performance of their duties.

(c) A member whose employment is terminated with the agency or department from which he was appointed or who ceases to be engaged in the business or professional activity which he was appointed to represent vacates his membership on the board.

(d) The board annually shall elect a chairman, vice-chairman, and secretary. The board shall meet at such times and places as determined by the chairman.

(e) The State Seed and Plant Board is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1987.

¹ Article 5429k.

Licensing of Foundation, Registered, and Certified Seed and Plant Producers

Sec. 4. (a) The board may establish, not inconsistent with federal law, procedures for and eligibility of various kinds and varieties of seed and plants for genetic purity and identity certification. The board may establish standards of genetic purity and identity, not inconsistent with federal law, for classes of certified seed and plants of various kinds or varieties for which the board determines that standards are desirable. The board shall report to the commissioner the standards promulgated for the certification eligibility of various kinds and varieties of seed and plants and shall report to the commissioner the various kinds and varieties eligible for certification. In establishing the standards, the board may consider all factors affecting the quality of seed and plants. This Paragraph (a) shall not go into effect until one year from the time of passage of this Act.

(b) A person who wants to produce a certified class of seed or plant for which the board has established standards of genetic purity and identity may apply to the board for licensing as a Foundation, Registered, or Certified producer of seed or plants. To be licensed as a producer, a person must satisfy the board that:

- (1) he is of good character and has a reputation for honesty;

(2) his facilities meet board requirements for producing and maintaining seed or plants for the certification generations desired; and

(3) he has met any other board requirements as to knowledge of the production or maintenance of seed or plants for the certification generations for which he applies to be licensed.

(c) The board may prescribe regulations governing the production and handling by licensed producers of certified classes of seed and plants to insure the maintenance of genetic purity and identity.

(d) A license to produce Foundation, Registered, or Certified seed or plants is not transferable and is permanent unless revoked as provided in this Act. A person licensed as a producer of Foundation, Registered, or Certified seed or plants is eligible to produce certified seed or plants, as provided in his license, of the class for which he is licensed or of any lower class of certified seed or plants, as determined by the board.

Registration of Plant Breeders

Sec. 5. (a) A person engaging in the development, maintenance, or production of seed or plants for which standards of genetic purity and identity have been established by the board may apply to the board for registration as a plant breeder. Application for a certificate of registration shall be made on forms prescribed by the board, accompanied by a non-refundable registration fee of not more than \$100, as determined by the board. To be registered as a plant breeder, a person must satisfy the board that he is skilled in the science of plant breeding. The board may require skill to be shown by evidence of accomplishments in the field and may require an oral or written examination in the subject.

(b) A certificate of registration is not transferable and is permanent unless revoked as provided in this Act.

Protection of Foundation, Registered, and Certified Cotton Varieties

Sec. 6. (a) The board shall promulgate regulations governing the registration for certification eligibility of newly developed varieties of cotton. A person desiring to register a new variety of cotton shall apply for registration to the board on forms prescribed by the board. To obtain registration for a new variety of cotton, a person must satisfy the board that the cotton to be registered is a distinct new variety and must meet board requirements regulating control of production, maintenance, and handling of the cotton for genetic purity and identity.

(b) On issuance of a certificate of registration for a new cotton variety, the board shall notify the commissioner of the eligibility for certification of seed of the variety.

(1) After issuance of a certificate of registration for a new cotton variety, no person may use the name given the new variety by the registrant in the sale of noncertified cottonseed for a period of 17 years from the date of issuance of the certificate of registration.

(2) Subdivision (1), Subsection (b) of this section does not apply to a variety for which an application is pending for United States plant variety protection, not specifying sale by variety name only as a class of certified seed, nor to a variety for which a certificate has been issued for United States plant variety protection, not specifying sale by variety name only as a class of certified seed.

(c) This section does not require registration of new varieties of cotton. On 10 days' notice to the board, a person may withdraw from the operation of this section a cotton variety previously registered to him.

(d) This section does not prohibit contracts between a registrant and seedmen or farmers for the production or sale of certified seed of the new cotton variety.

(e) This section does not prohibit one farmer from selling to another farmer cottonseed of a new variety grown on his own farm, as provided in Subsection (c), Section 5 of the Texas Seed Law, as amended (Article 93b, Vernon's Texas Civil Statutes).

(f) At any time when the board determines that a critical situation exists because rain, hail, drouth, insects, or other natural elements beyond producers' control have reduced the supply of planting seed of a registered cotton variety, the board may hold a public hearing to determine the extent of the emergency. Notice of the time, place, and nature of the hearing shall be published in at least three newspapers of general circulation in the state at least seven days before the hearing. At the hearing, if the board deems advisable after presentation of evidence from interested parties, the board may allow noncertified seed grown from certified seed of the variety in which a shortage exists to be sold by variety name for that crop year only. This subsection does not apply to a variety for which an application is pending for United States plant variety protection, specifying sale by variety name only as a class of certified seed, nor to a variety for which a certificate has been issued for United States plant variety protection, specifying sale by variety name only as a class of certified seed.

(g) This section does not apply to seeds marketed or approved for certification eligibility before September 1, 1969.

Other Board Duties

Sec. 7. The board shall approve tests for certified classes of seed and plants and formats of labels for certified classes of seed and plants. The board

shall prescribe qualifications for inspectors and shall nominate candidates for employment by the commissioner as certified seed and plant inspectors.

Certification of Seed and Plants

Sec. 8. (a) The state department of agriculture is the certifying agency in Texas for the certification of seed and plants. The commissioner shall appoint a sufficient number of inspectors nominated by the board to carry out the inspection provisions of this Act.

(b) A person licensed as a Foundation, Registered, or Certified seed or plant producer, registered as a plant breeder, or having a certificate of registration for a cotton variety is eligible to have seed or plants of an eligible class and variety certified by the commissioner. On request by a licensed producer, registered plant breeder, or registrant of a cotton variety to have his seed or plants certified, the commissioner shall cause inspections to be made of the producer's or registrant's fields, facilities, and seed or plants. Inspection may include tests approved by the board and carried out by inspectors under the authority of the commissioner. After inspection, if the commissioner determines that the production of seed or plants has met the standards and regulations prescribed by the board, he shall cause to be attached to each container of the product a label identifying the seed or plant and the certified class and including such other information as prescribed by statute or regulations of the board.

(c) However, as a condition to the granting of certification labels, the commissioner shall collect inspection fees in amounts determined by the commissioner to be necessary to cover the costs of inspection and labels.

Seed and Plants from Outside the State

Sec. 9. (a) The commissioner may promulgate regulations, tests, and standards which must be met before seed or plants represented to be of a certified class may be shipped into the state for distribution in the state. Regulations, tests, and standards promulgated shall be designed to insure buyers in the state of having available certified seed and plants of known origin, genetic purity, and identity. Regulations, tests, and standards promulgated shall correspond to appropriate regulations, tests, and standards used in certifying seed and plants produced in Texas.

(b) The commissioner may require inspections of seed and plants represented to be of a certified class and shipped into the state for distribution in the state and may collect fees to cover costs of inspection, as determined by the commissioner. The commissioner may require inspection fee payment before distribution in the state.

(c) No person may distribute in this state seed or plants represented to be of a certified class and shipped into the state for distribution in the state, unless the person has first complied with any regulations, including testing requirements, promulgated by the commissioner for seed or plants shipped into the state.

(d) No person may sell or offer for sale in this state seed or plants represented to be of a certified class and shipped into the state for distribution in the state, unless the seed or plants have been certified by an official certifying agency in the state, province, or country of origin or have been certified by the commissioner.

(e) Seed or plants shipped into the state for distribution in the state which are represented to be of a certified class and which are found by the commissioner after investigation to violate the requirements of this section are restricted from distribution. In addition, the commissioner may order the seed or plants in violation confiscated and retained under his general supervision. An owner or consignee of restricted or confiscated seed or plants may appeal the commissioner's order by filing an appeal within 10 days of the order. Appeal is in the county court of the county where the seed or plants are restricted or were confiscated. The appeal in county court is by trial de novo. If no appeal is filed as provided in this Act, or if after an appeal in county court, the commissioner's action is not reversed, the commissioner may cause confiscated seed or plants to be destroyed.

Prohibited Acts

Sec. 10. (a) No person may sell or offer for sale in this state seed or plants with labeling or packaging accompanying the seed or plants using the terms "from officially inspected fields," "state inspected," "approved seed," "approved plants," "approved sods," "approved trees," "inspected fields," "foundation seed," "certified plants," or terms having the same meaning, unless the seed or plants have been certified as being Foundation, Registered, or Certified seed or plants.

(b) No person may represent himself to be a registered plant breeder or licensed producer of Foundation, Registered, or Certified seed or plants unless he has been registered or licensed as provided in this Act.

(c) No person may sell or offer for sale in this state Foundation, Registered, or Certified seed or plants not in compliance with this Act or with regulations authorized by this Act to be promulgated.

(d) No person may sell or offer for sale seed or plants represented to be certified in explicit oral or written statements or by misleading oral or written statements if the seed or plants have not been certified or have not been certified as being of the class of which they are represented.

Revocation of Registration, License, and Certification

Sec. 11. (a) If an inspector reports to the commissioner that a registered plant breeder or licensed producer of Foundation, Registered, or Certified seed or plants has made exaggerated claims for his products or has failed to observe any regulation governing the maintenance and production of a certified class of seed or plants which he is registered or licensed to produce or maintain, the commissioner may give written notice to the breeder or producer of the time and place of a revocation hearing to be held by the commissioner not less than 10 days after issuance of notice.

(b) If at the hearing, the commissioner finds that the registered plant breeder or licensed producer has made exaggerated claims or has violated any regulation for the production and maintenance of the certified class of seed or plants involved, the commissioner may revoke the registration or license and order the cancellation and withdrawal of all appropriate certification labels previously issued for the seed or plants.

(c) A registered plant breeder or licensed producer whose registration or license has been revoked and whose certification labels have been cancelled and withdrawn may appeal the commissioner's action to the board by filing a notice of appeal with the commissioner within 30 days of the revocation. The commissioner shall report the notice of appeal to the board, which shall give written notice of the time and place for an appeal hearing to the appellant. The hearing on appeal may not be less than 10 nor more than 30 days after notice of appeal is filed with the commissioner. If the commissioner's action is reversed at the appeal hearing, the board shall direct the commissioner to reinstate the registration or license and reissue certification labels for seed or plants for which labels were previously cancelled and withdrawn.

Deposit of Fees

Sec. 12. All fees collected under the provisions of this Act shall be deposited in the State Treasury in a special account known as the special agricultural fund, to be used in the administration of this Act.

Penalties

Sec. 13. (a) A person who violates Subsection (b), Section 6 of this Act is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$1,000.

(b) A person who violates Subsections (c) or (d) of Section 10 of this Act is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$200 nor more than \$500, by confinement in county jail for not more than 60 days, or by both.

(c) A person who violates Subsections (c), (d), or (e) of Section 9, or Subsections (a) or (b) of Section 10 of this Act, is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100, by confinement in county jail for not more than 30 days, or by both.

Repealer

Sec. 14. Articles 56, 57, 58, 59, 60, 61, 62, 63, 64, 64a, 65, 66, and 67, Revised Civil Statutes of Texas, 1925, as amended, and Chapter 93, Acts of the 41st Legislature, 1929, as amended (Article 67a, Vernon's Texas Civil Statutes), are repealed.

Effective Date

Sec. 15. This Act takes effect September 1, 1975. [Acts 1975, 64th Leg., p. 348, ch. 149, §§ 1 to 15, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 1850, ch. 737, § 2.128, eff. Aug. 29, 1977.]

CHAPTER THREE. PINK BOLLWORM

Article

76a. Application of Sunset Act.

Art. 75. Repealed by Acts 1975, 64th Leg., p. 567, ch. 225, § 1, eff. May 20, 1975

Art. 76a. Application of Sunset Act

The Pink Bollworm Commission is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished effective September 1, 1979.

[Added by Acts 1977, 65th Leg., p. 1832, ch. 735, § 2.002, eff. Aug. 29, 1977.]

¹ Article 5429k.

CHAPTER FOUR. AGRICULTURAL SEEDS

Art. 93b. Texas Seed Law

[See Compact Edition, Volume 3 for text of 1]

Definitions

Sec. 2. (a) When used in this Act:

(1) The term "person" shall include an individual, partnership, corporation, company, society, vendor, or association.

(2) The term "agricultural seeds" shall include the seeds of grass, forage, cereal, and fiber crops and any other kind of seeds commonly recognized within this State as agricultural or field seeds, and mixtures of such seeds.

(3) The term "vegetable seeds" shall include the seeds of those crops which are grown in gardens or on truck farms and are generally known and sold under the name of vegetable seeds in this State.

(4) The term "labeling" includes all labels, and other written, printed, or graphic representations, in any form whatsoever, accompanying and per-

taining to any seed whether in bulk or in containers, and includes invoices.

(5) The term "advertisement" means all representations, other than those on the label, disseminated in any manner or by any means, relating to seed within the scope of this Act.

(6) The term "treated" means given an application of a substance or subjected to a process designed to reduce, control, or repel disease organisms, insects, or other pests which attack seeds or seedlings growing therefrom.

(7) The term "public notice" means a description of proposed action or the text of adopted rules or regulations published in three newspapers of general circulation throughout the State for a period of three consecutive weeks.

(b) The Commissioner of Agriculture may classify and define types, kinds, classes, genera, species, subspecies, hybrids, and varieties of agricultural, vegetable, and weed seeds for purposes of this Act. After public notice and public hearing, the Commissioner of Agriculture may classify noxious weed seeds and may establish the rate of each allowed, or prohibit the inclusion of any of them, in containers of agricultural or vegetable seed described in Section 3 of this Act. Immediately after any ruling by the Commissioner of Agriculture made under the provisions of this subsection, the Commissioner shall cause public notice of the new rules or the amendments to the existing rules to be published. Copies of any new rules or changes in the existing rules shall be made available to anyone who requests a copy.

Label Requirements

Sec. 3. Each container of agricultural or vegetable seed which is sold, offered for sale, or exposed for sale, within this state for sowing purposes shall bear thereon or have attached thereto in a conspicuous place a plainly written or printed label in the English language, giving the following information:

(a) For Agricultural Seeds.

(1) The name of the kind or the kind and variety for each agricultural seed component present in excess of 5 percent of the whole and the percentage by weight of each: Provided, that if the variety of those kinds generally labeled as to variety as designated in the rules and regulations is not stated, the label shall show the name of the kind and the words, "Variety Not Stated." Hybrids shall be labeled as hybrids.

(2) Lot number or other lot identification.

(3) Origin, if known, of all agricultural seeds. If the origin is unknown, that fact shall be so stated.

(4) Percentage by weight of all weed seeds.

(5)(A) The name and number of each noxious weed seed will be shown at rate per pound.

(B) All determinations of noxious weed seeds are subject to tolerances and methods of determination prescribed in the rules and regulations under this Act.

(6) Percentage by weight of agricultural seeds other than those named on the label.

(7) Percentage by weight of inert matter.

(8) For each named agricultural seed (a) percentage of germination as prescribed in the rules and regulations exclusive of hard seed, (b) percentage of hard seed, if present, and (c) the calendar month and year the test was completed to determine such percentages. Following (a) and (b) the additional statement "total germination and hard seed" may be stated as such, if desired.

(9) Name and address of the person who labeled said seed, or who sells, offers, or exposes said seed for sale within this state.

(10) Net Weight.

(b) For Vegetable Seed in containers weighing one pound or more:

(1) The name of each kind and variety of vegetable seed component present in excess of five percent of the whole and the percentage by weight of each, in order of predominance.

(2) Name and address of the person who labeled said seed.

(3) Kind and variety of seed.

(4) Percentage purity.

(5) Germination in accordance with the rules and regulations.

(6) Date of Test.

(7) If present, name and number of noxious weed seeds per pound.

(8) Lot number or other lot identification.

(c) For Vegetable Seed in containers weighing less than one pound:

(1) Kind and variety of seed;

(2) The calendar month and year of the germination test, or the year for which the seed was packaged;

(3) Name and address of the person who labeled the seeds; and

(4) For seed with a percentage of germination less than the standard prescribed in the rules and regulations:

(A) Percentage of germination, in accordance with the rules and regulations, exclusive of hard seed;

(B) Percentage of hard seed, if present; and

(C) The words "Below Standard" in a size not smaller than eight-point type.

(d) The labeling requirements for vegetable seeds are met if the seed is weighed from a properly labeled container in the presence of the purchaser.

**Promulgation of Rules and Regulations Concerning Labels;
Procedure**

Sec. 3a. (1) All seeds named and treated as prescribed in this Act (for which a separate label may be used) shall be labeled in accordance with rules and regulations prescribed by the Commissioner of Agriculture.

(2) The Commissioner of Agriculture, after public notice, shall hold a public hearing in Austin, Travis County, Texas, concerning any proposed rules and regulations or any amendments to the rules and regulations pertaining to the seeds described in this section.

(3) Immediately following any ruling by the Commissioner of Agriculture made pursuant to the provisions of this section, the Commissioner shall publish the new rules or the amendments to the existing rules in at least three newspapers of general circulation throughout the State for a period of three consecutive weeks. Copies of any new rules or changes in the existing rules shall be made available to anyone who desires a copy.

Prohibition

Sec. 4. (a) It is unlawful for any person to sell, offer for sale, expose for sale or transport for sale any agricultural and vegetable seeds within this state:

(1) Unless the test to determine the percentage of germination required by Section 3 shall have been completed within a nine month period, exclusive of the calendar month in which the test was completed, immediately prior to sale, exposure for sale, or offering for sale or transportation; except that the Commissioner of Agriculture may prescribe, amend, adopt and publish after public hearing following public notice rules and regulations to designate a longer period for any kind of agricultural or vegetable seed which is packaged in such container materials and under such other conditions prescribed by the Commissioner of Agriculture as he finds will, during such longer period, maintain the viability of said seed under ordinary conditions of handling.

(2) Not labeled in accordance with the provisions of this Act, or having a false or misleading labeling.

(3) Pertaining to which there has been a false or misleading advertisement.

(4) Containing noxious weed seeds in excess of the limitations per pound subject to tolerances and methods of determination prescribed in the rules and regulations under this Act.

(5) If any labeling, advertising, or other representation subject to this Act represents the seed to be certified seed of any class unless:

(A) A seed certifying agency has determined that the seed conforms to standards of purity and identity as to kind, species, subspecies (if appropriate), or variety in accordance with rules and regulations of the certifying agency; and

(B) The seed bears an official label issued for the seed by a seed certifying agency, certifying that the seed is of a specific class, kind, species, subspecies (if appropriate), or variety.

(6) Labeled with a variety name but not certified by an official seed certifying agency, when it is a variety required by federal law to be sold only as a class of certified seed (except that seed from a certified lot may be labeled as to variety name when used in a mixture by, or with approval of, the owner of the variety).

[See Compact Edition, Volume 3 for text of 4(b)]

Exemptions

Sec. 5. (a) The provisions of Sections 2 and 3 do not apply:

(1) To seed or grain not intended for sowing purposes.

(2) To seed in storage for cleaning and processing, if the invoice, labeling, or other records pertaining to the seed bear the phrase "seed for processing."

(3) To seed being transported to, or consigned to, a seed cleaning or processing establishment for cleaning or processing, if the invoice or labeling accompanying the seed bears the phrase "seed for processing." Provided, that any labeling or other representation which may be made with respect to the unclean seed shall be subject to this Act.

(b) No person shall be subject to the penalties of this Act, for having sold, offered, or exposed for sale in this State any agricultural or vegetable seeds which were incorrectly labeled or represented as to kind, variety, type, treatment, or origin, which seeds cannot be identified by examination, unless he has failed to obtain an invoice or grower's declaration giving kind, or kind and variety, or kind and type, treatment, and origin, if required.

(c) Providing that nothing in this Act shall be construed as preventing one farmer from selling to another farmer such seed grown on his own farm, as covered by the provisions of this Act, without having said seed tested and labeled as provided for herein, when such seed is not advertised in the public communications media outside the vendor's home county, is not sold, offered for sale, or exposed for sale by an individual or organization for a farmer, and is not shipped by common carrier.

Duties and Authority of the Commissioner of Agriculture

Sec. 6. (a) The duty of enforcing this Act and carrying out its provisions and requirements shall be vested in the Commissioner of Agriculture. It shall be the duty of such officer, who may act through his authorized agents:

(1) To sample, inspect, make analysis of, and test agricultural and vegetable seed transported, sold, offered, or exposed for sale within this State for sowing purposes, at such time and place and to such extent as he may deem necessary to determine whether said agricultural or vegetable seed is in compliance with the provisions of this Act, and to notify promptly the person who transported, sold, offered, or exposed the seed for sale of any violation.

(2) To prescribe and, after public hearing following public notice, to adopt rules and regulations governing the methods of sampling, inspecting, analysis, tests and examination of agricultural and vegetable seed, and the tolerances to be followed in the administration of this Act, which shall be in general accord with officially prescribed practice in interstate commerce, to provide definition of terms, and such other rules and regulations as may be necessary to secure the efficient enforcement of this Act.

(b) Further, for the purpose of carrying out the provisions of this Act, the Commissioner of Agriculture individually or through his authorized agents is authorized:

(1) To enter upon any public or private premises during regular business hours in order to have access to seeds and the records from personnel authorized by management connected therewith subject to the Act and the rules and regulations thereunder, and any truck or other conveyer by land, water, or air at any time when the conveyer is accessible, for the same purpose.

(2) To issue and enforce a written or printed "stop-sale" order to the owner or custodian of any lot of agricultural or vegetable seed which the Commissioner of Agriculture has reason to believe is in violation of any of the provisions of this Act which shall prohibit further sale of such seed until such officer has evidence that the law has been complied with. Provided, that in respect to seed which has been denied sale as provided in this paragraph, the owner or custodian of such seed shall have the right to appeal from such order to a court of competent jurisdiction where the seed is found, praying for a judgment as to the justification of said order and for the discharge of such seed from the order prohibiting the sale in accordance with the findings of the court; and provided further, that the provisions of this paragraph shall not be construed as limiting the right of the

enforcement officer to proceed as authorized by other sections of this Act.

(3) To establish and maintain or make provision for seed testing facilities, to employ qualified persons, and to incur such expenses as may be necessary to comply with these provisions.

(4) To make or provide for making purity and germination tests of seed for farmers and dealers on request; to prescribe rules and regulations governing such testing; and to fix and collect charges for the tests made.

(5) To cooperate with the United States Department of Agriculture in seed law enforcement.

Inspection Fee; Payment Procedure; Records; Reports; Rules and Regulations; Failure to Comply; Cancellation of Permit

Sec. 7. (a) For the purpose of administering the Texas Seed Act, any person who sells, offers for sale or otherwise distributes for sale any agricultural seed within this state for planting purposes shall pay to the Commissioner of Agriculture an inspection fee to be set by the Commissioner of Agriculture. Said inspection fee shall be deposited in the State Treasury by the Commissioner, and placed by the State Treasurer in the special Department of Agriculture Fund.

(b) The procedure for paying the inspection fee on agricultural seed shall be either by the use of the Texas Tested Seed Label or by means of the reporting system but shall not be by means of both such procedures, and shall in addition to such rules and regulations which the Commissioner of Agriculture is herewith authorized to issue, be in compliance with all the provisions of this Act.

(c) When the inspection fee is to be paid by use of the Texas Tested Seed Label the person who distributes, sells, offers for sale or exposes for sale agricultural seed for planting purposes shall purchase said Texas Tested Seed Label from the Commissioner of Agriculture and shall attach the label to each container of seed sold, offered for sale or otherwise distributed for sale for planting purposes within this state. The Commissioner of Agriculture is hereby empowered to promulgate rules and regulations prescribing the form of the labels and the manner of showing the analysis information required in Section 3 of this Act.

(d) When the inspection fee is paid by means of the reporting system, the Commissioner of Agriculture shall, after application for a permit, issue a permit bearing an assigned number to any person who sells, offers or exposes for sale, or otherwise distributes for sale agricultural seed for planting purposes within this state. The Commissioner of Agriculture is authorized at his discretion and under such rules and regulations as he may promulgate, to prescribe and furnish such forms and to require the

filing of reports. The inspection fee shall be due on the total pounds sold or distributed. In addition to all other provisions of this Act, each person who is issued a permit to sell, offer for sale or otherwise distribute agricultural seed and pay the inspection fee in accordance with the reporting system shall:

(1) Maintain and furnish such records as the Commissioner of Agriculture may require to reflect accurately the total pounds of agricultural seed handled, sold, offered for sale or distributed for sale as planting seed. The Commissioner of Agriculture or his duly authorized agents shall have permission to examine the records of the permittee during normal working hours.

(2) File with the Commissioner of Agriculture within thirty days after the close of each quarter year ending the last day of November, February, May and August, sworn reports covering the total pounds of all sales of agricultural seed subject to an inspection fee sold during the preceding quarter. An inspection fee penalty of 10 percent of the amount due or \$10, whichever is greater, is incurred if a report is not submitted when due and prior written approval for a delayed report has not been obtained.

(3) When located outside the State of Texas and when distributing agricultural seed in the State of Texas, shall maintain in the State of Texas the records and information required by Subsection (d), Section 7, of this Act or pay all costs incurred in the auditing of records at a location outside the state. The Commissioner of Agriculture is authorized and directed to revoke the permit of any person who fails to comply with this requirement. Itemized statements of costs incurred in any such audits shall be furnished the permittee by the Commissioner promptly on completion of any such audit, and the permittee must pay the costs within thirty (30) days from the date of the statement.

(4) Affix to each container of agricultural seed sold, offered for sale, or otherwise distributed and to the invoice of each lot of agricultural seed sold, offered for sale, or otherwise distributed in bulk, a plainly printed or written statement giving the information required in Section 3 of this Act.

Any failure of a permittee to observe these regulations, file required reports, or pay fees required shall be grounds for cancellation of the permit.

(e) The inspection fee must be paid during each germination period that said seed remains offered or exposed for sale. For any seed on which the germination test has expired, payment of the inspection fee is the responsibility of the custodian of said seed.

(f) Any person who sells, offers or exposes for sale, or otherwise distributes seed in bulk when inspection fee payment is by means other than the reporting system must furnish to the purchaser one

Texas Tested Seed Label printed with the analysis information required in Section 3 of this Act for each 100 pounds or fraction of 100 pounds sold.

(g) The Commissioner of Agriculture is authorized to prescribe, amend, adopt, and publish after public hearing following public notice, such rules and regulations as are necessary to carry out and make effective the provisions of this section.

Vegetable Seed License

Sec. 7A. (a) After September 1, 1975, no person may sell, offer or expose for sale, or otherwise distribute for sale in this state any vegetable seed for planting purposes unless the person has a valid current vegetable seed license issued by the Commissioner of Agriculture.

(b) After public notice and a public hearing, the Commissioner of Agriculture may determine from time to time the license fee required of an applicant for an original or renewal vegetable seed license. Application for a license must be made on forms prescribed by the Commissioner. A vegetable seed license expires on August 31 of each year.

(c) No license is required of a person who sells, offers or exposes for sale, or otherwise distributes for sale vegetable seed in containers bearing the name and address of a person licensed under this section.

[See Compact Edition, Volume 3 for text of 8 to 12]

[Amended by Acts 1975, 64th Leg., p. 984, ch. 379, §§ 1 to 4, eff. June 19, 1975.]

CHAPTER SIX. FRUITS AND VEGETABLES

Art. 118b. Citrus Fruit Growers Act

[See Compact Edition, Volume 3 for text of 1 to 3]

License Fee; Surety Bond

Sec. 4. (a) All applications for license under this Act shall be accompanied by a tender of payment in full of the fee for such license required; on receipt of said application duly executed, together with required fee, it shall be the duty of the Commissioner or his agents and/or employees thereunto duly authorized to immediately issue such license, provided that no license shall issue to any person when the application for license filed by such person shall indicate that such person is a suspended licensee within the State of Texas, or that such person's license to do business in Texas has been revoked until the Commissioner is furnished with satisfactory proof that the applicant is, on the date of the filing of such application, qualified to receive the license applied for; the issuance of license to persons who have suffered prior suspension or revocation of

license in this State shall be discretionary with the Commissioner; in the exercise of such discretion, the Commissioner is authorized to take into consideration the facts and circumstances pertaining to the prior suspension and/or revocation; the financial condition of the applicant, as of the date of this application, and the obligations due and owing by the applicant to growers and producers of citrus fruits and/or perishable agricultural commodities; "obligation," as the term is used in this Section, shall be construed to mean any judgment of any court within this State outstanding against the applicant or certified claims as of the date of the application under consideration by the Commissioner; prior to refusal of license by the Commissioner, any applicant for license shall be entitled to an open hearing on the facts pertaining to such application, said hearing to be conducted by the Commissioner, or his agent thereunto duly authorized; if, after such hearing, the Commissioner, in the exercise of his discretion, refuses the license applied for, the applicant shall, within ten (10) days from and after the denial of such license by the Commissioner and not thereafter, file his appeal from the order of the Commissioner denying such license, in any court of competent jurisdiction within this State; if the Commissioner shall determine that the license applied for shall not be granted, the Commissioner shall deduct from the license fee tendered with such application the sum of Five Dollars (\$5), said Five Dollars (\$5) to be retained by the Commissioner to defray costs and expenses incident to the filing and examination of said application and shall return the balance of the license fee so tendered with such application to the applicant.

(b) The following fees are hereby prescribed and shall be paid by applicants for license under this Act, and the Commissioner, his agents and employees are hereby authorized to collect the same.

(1) For license as a "dealer" or "handler" of citrus fruit, the sum of Twenty-five Dollars (\$25).

(2) For license as a "commission merchant" and/or "contract dealer," as the term is in this Act defined, Twenty-five Dollars (\$25).

(3) For a license as a "buying agent," the sum of One Dollar (\$1).

(4) For a license as a "transporting agent," the sum of One Dollar (\$1).

(5) For a license as a "dealer" who sells any citrus fruit from door to door or from temporary locations, the sum of One Dollar (\$1).

(c) All "commission merchants" and/or "dealers" and "contract dealers," all retailers whose annual sales of vegetables and citrus fruit comprise seventy-five percent (75%) or more of the retailer's total sales and whose annual purchases of vegetables and citrus fruit exceed Fifteen Thousand Dollars (\$15,-

000) a year, and all retailers who employ buying agents who buy directly from producers, except persons applying only for licenses to sell citrus fruit from door to door or from temporary locations, shall, in addition to the license fee herein prescribed, deliver to the Commissioner, together with their application for license, a fee of Two Hundred Dollars (\$200). All retailers whose annual sales of vegetables and citrus fruit comprise seventy-five percent (75%) or more of the retailer's total sales and whose annual purchases of vegetables and citrus fruit are less than Fifteen Thousand Dollars (\$15,000) shall pay a fee of Fifty Dollars (\$50) in addition to the fee required in Subsection (b) of this Section. The fee shall be paid annually at the time application is made for licensing, and the Commissioner may not issue a license to a person who fails to pay the fee. No cooperative association organized pursuant to Chapter 8, Title 93 of the Revised Civil Statutes of Texas, 1925, as amended, that handles fruit only for its members shall be required to pay the fee required in this Subsection. Any such cooperative association dealing in citrus fruit other than for its producer members shall be required to pay the fee as any other dealer. It is hereby declared to be the policy of the Legislature to make these exemptions with reference to cooperative associations because of the fact that the producer members pool their fruit for sale rather than immediately selling it.

(d) A person with whom the "commission merchant" and/or "dealer" or "contract dealer" deals in purchasing, handling, selling, and accounting for sales of citrus fruit and who is aggrieved by an action of that merchant in violation of the terms or conditions of a contract made by that merchant or dealer may initiate a claim against the Produce Recovery Fund in accordance with the provisions of this Section. The aggrieved party must file with the Commissioner a sworn complaint against the merchant or dealer and a Fifteen Dollar (\$15) filing fee. The filing fee shall be refunded if the complainant is awarded recovery from the fund. The Commissioner shall conduct an investigation of the complaint and shall determine the amount due the aggrieved party. If the amount determined by the Commissioner is not disputed by the merchant or dealer or by the aggrieved party, the Commissioner shall pay the claim, within the limits prescribed in this Section, from the Produce Recovery Fund. If the amount is disputed, the Produce Recovery Fund Board shall conduct a hearing on the claim in the manner provided for contested cases under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). After a hearing on the disputed amount, the board shall determine the amount due the aggrieved party, and the Commissioner shall pay the aggrieved party that amount, within the limits prescribed in this Section, from the Produce Recovery Fund. A party

not satisfied with the decision of the board may appeal that decision in the manner provided under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(e) In making payments from the Produce Recovery Fund, the Commissioner may not pay the aggrieved party more than sixty percent (60%) of any claim for more than One Hundred Dollars (\$100). The total payment of all claims arising from the same transaction may not exceed Ten Thousand Dollars (\$10,000). The total payment of claims against a single merchant or dealer may not exceed Twenty-five Thousand Dollars (\$25,000) in any one year.

(f) If the Commissioner pays a claim against a merchant or dealer, the Commissioner is subrogated to all rights of the aggrieved party against that merchant or dealer to the extent of the amount paid to the aggrieved party.

(g) If the Commissioner pays a claim against a merchant or dealer, the merchant or dealer must either reimburse the fund immediately or agree in writing to reimburse the fund on a schedule to be determined by rule of the Commissioner. In addition, the merchant must either pay the aggrieved party immediately the amount due him or agree in writing to pay the aggrieved party on a schedule to be determined by rule of the Commissioner. The payments made to the fund and the aggrieved party shall include interest at the rate of eight percent (8%) a year. If the merchant or dealer does not reimburse the fund or pay the aggrieved party, or does not agree in writing to do so, or defaults on a scheduled payment, the Commissioner shall cancel his license and may not issue a new license to that merchant or dealer for four years from the date of cancellation. If the merchant or dealer is a corporation, no officer or director of the corporation, and no person owning more than twenty-five percent (25%) of the stock in that corporation, may be licensed as a "commission merchant" and/or "dealer" or "contract dealer" during the four-year period in which the corporation is ineligible for licensing. An individual or corporation who is ineligible for licensing as a "commission merchant" and/or "dealer" or "contract dealer" under this Act is ineligible for licensing as a commission merchant under Chapter 218, Acts of the 58th Legislature, 1963, as amended (Article 1287-3, Vernon's Texas Civil Statutes), during the period of ineligibility.

(h) The Commissioner may not pay any claim against a "commission merchant" and/or "dealer" or "contract dealer" who was not licensed under this Act at the time of the transaction on which the claim is based and he may not pay any claim against a cash dealer.

[See Compact Edition, Volume 3 for text of 5]

Sec. 6. Any license issued under the provisions of this Act shall remain in full force and effect for a period of twelve (12) months from and after the date of issuance thereof unless said permit shall be cancelled in the manner hereinafter provided and pursuant to the proceedings hereinafter required, to wit: any person aggrieved, injured or damaged by virtue of any violation of the terms and provisions of this Act by any licensee or by the transporting or buying agent of any licensee hereunder, may file with the Commissioner or his duly authorized agent or employee a verified complaint, setting out the specific violation complained of; the complaint must be filed within twelve (12) months from the date of the act that injured the complaining party; the Commissioner, on receipt of said verified complaint, shall set a date not more than ten (10) days from the receipt of such complaint for the hearing thereof; Commissioner shall, by registered mail to the last known address, notify the person complained of and shall furnish such person with a copy of such complaint; the Commissioner may, at his discretion, recess the hearing provided for in this Section from day to day if in his discretion the ends of justice demand such continuance; for the purpose of said hearings the Commissioner shall have the authority to summon witnesses; to inquire into matters of fact; to administer oaths, and to issue the subpoena duces tecum, for the purpose of obtaining any books, records, instruments of writing, and other papers pertinent to the investigation at hand; upon the conclusion of said hearing and the introduction of all evidence by the respective parties thereto, the Commissioner shall, within a reasonable length of time after studying all evidence, make his decision on the basis of the evidence introduced therein, and shall, if the evidence warrants, issue his order canceling the license of the person complained of; any licensee, whose license is so cancelled by an order of the Commissioner, shall be notified in writing by registered mail of the cancellation of said license and it shall be unlawful and a violation of this Act for any licensee or buying or transporting agent to operate from and after said notification of cancellation, provided that said licensee or buying or transporting agent whose license has been so cancelled shall have the right of appeal from the order of the Commissioner canceling said license to any court of competent jurisdiction within this State, provided that such appeal shall be filed in said court within ten (10) days from and after receipt by licensee of notice of said cancellation, and provided further that the effect of said appeal by said licensee or licensee's agent shall not act to supersede the order of cancellation issued by the Commissioner, pursuant to final determination of the question of cancellation by said court.

[See Compact Edition, Volume 3 for text of 7 and 8]

Sec. 8a. The Commissioner may publish as often as he considers necessary a list in pamphlet form of all persons licensed under this Act.

[See Compact Edition, Volume 3 for text of 9 to 11]

Sec. 12. Any license issued hereunder will authorize the licensee, and none other, to engage in the business as a dealer for one year from date of issuance, at which time said license shall expire and become null and void. Any license issued to applicant under the provisions of this Act, which expires by its own terms, may be renewed upon completion of a renewal application and payment to the Commissioner of Agriculture of the proper license fee as provided for the original issuance thereof. Said license and the identification cards hereinafter provided shall not be assignable and any attempt to assign same shall void such license or identification card. Upon application to the Commissioner by any licensed dealer, a reasonable number of "buying agent" and "transporting agent" identification cards may be issued and accredited to such dealer, under such rules and regulations as said Commissioner may prescribe, and said Commissioner is hereby empowered to charge a fee not to exceed One Dollar (\$1) for each card so issued:

(a) Such cards shall bear the name of the licensee, dealer, and the number of his license, also the name of the dealer's agent, and shall state thereon that said licensed dealer, as the principal, has authorized the agent named on the card, the holder thereof, to act for and on behalf of said principal, either as "buying agent" or as "transporting agent" as above defined. "Buying agent" identification cards shall be of a different color from "transporting agent" cards. Such identification cards shall be at all times carried upon the persons of such agents who shall, upon demand, display such cards to the Commissioner or his agents or representatives, or to any person with whom said agent may be transacting business under this Act.

(b) If and when the holder of any identification card ceases to be the agent of the dealer by whom he was employed, it shall be the duty of said agent to return immediately such agent's card to the Commissioner for cancellation and failure to do so shall constitute a violation of this Act.

Regulations as to Purchase

Sec. 13. It shall be unlawful for any dealer, packer, processor or warehouseman to purchase or receive or handle any citrus fruit without requiring the person from whom such citrus fruit is purchased or received, to furnish a statement in writing of (a) the owner of said citrus fruit, (b) the grower of said

citrus fruit, together with the approximate location of the orchard where said fruit was grown, (c) the date said fruit was gathered and by whose authority same was gathered, and such records shall be kept in a permanent book or folder and shall be available to inspection by any interested party. The Commissioner or his authorized representatives may periodically investigate licensees or persons alleged to be selling citrus fruit in violation of this Act and, without notice, require evidence of purchase of any citrus fruit in their possession.

Sec. 14. (a) For the purpose of enforcing the provisions of this Act, the Commissioner is hereby vested with full power and authority and it shall be his duty, either upon his own initiative or upon the receipt of a properly verified complaint, to investigate all alleged violations of this Act and for the purpose of making such investigation, he shall have, at all times, free and unimpeded access to all books, records, buildings, yards, warehouses, storage, and transportation and other facilities or places in which any citrus fruit is kept, stored, handled, processed or transported, and in furtherance of such investigation either the Commissioner in person or through his authorized representatives, may examine any portion of the ledger, books, accounts, memorandum, documents, scales, measures, and other matters, objects or persons pertinent to such alleged violation under investigation. The Commissioner shall take such action and hold such public hearings as in his judgment are shown to be necessary after such investigations, and shall take the proper action with reference to the cancellation or suspension of the license of any dealer hereunder shown to have been guilty of a violation of the terms of this Act. Such hearings shall be held in the nearest city or town in the county where violations are alleged to have occurred. Any order made by the Commissioner with reference to the revocation or cancellation of any license granted under the provisions of this Act, shall be subject to review by a Court of competent jurisdiction.

(b) If a person who has received at least 15 days' notice of an order of the Commissioner refuses to comply with that order, the Commissioner may seek temporary or permanent relief to require compliance. The district court has jurisdiction to grant this relief.

[See Compact Edition, Volume 3 for text of 15 to 20]

Sec. 21. From and after the effective date of this Act any person who shall:

(a) Act as a dealer and/or handler, as the terms "dealer" and/or "handler" are in this Act defined, without first obtaining a license to act as such dealer and/or handler, shall be fined not to exceed Five

Hundred Dollars (\$500), and each day upon which any dealer or handler shall act or assume to act in violation of the requirements of this Act shall constitute a separate offense.

(b) Act or assume to act as a transporting agent or buying agent as the terms are herein defined, without first obtaining from the Commissioner of Agriculture of the State of Texas a license or a buying agent's or a transporting agent's card as by the terms and provisions of this Act required, shall be fined not to exceed Five Hundred Dollars (\$500), and each day upon which any buying agent or transporting agent shall act or assume to act in violation of the requirements of this Act shall constitute a separate offense.

(c) Any buying or transporting agent who ceases to be employed by a dealer or handler or the agent of any dealer or handler to whom such buying agent's or transporting agent's card was issued and who fails and refuses on the termination of such employment to turn over to the Commissioner of Agriculture the buying or transporting agent's card issued to such person shall be fined not to exceed Five Hundred Dollars (\$500).

(d) Any person who shall act or assume to act as a commission merchant and/or dealer or a contract dealer, as the terms "commission merchant" and/or "dealer" or "contract dealer" are used in this Act without first paying to the Commissioner of Agriculture of the State of Texas the fee required in Subsection (c) of Section 4 of this Act and obtaining a license to act as such commission merchant and/or dealer or contract dealer shall be fined not to exceed Five Hundred Dollars (\$500), and each day upon which such person shall act or assume to act as such commission merchant and/or dealer or contract dealer shall constitute a separate offense.

(e) Any licensee or any transporting or buying agent of any licensee under this Act who shall violate any of the terms and provisions of this Act shall be fined not to exceed Five Hundred Dollars (\$500).

(f) Fifty percent (50%) of all fines collected under this Section shall be deposited in the Produce Recovery Fund. The clerk of the county court or county court-at-law and the custodian of county treasury funds shall keep separate records of all fines collected under this Section. On the first day of each January, April, July, and October, the custodian of the funds in the county treasury shall remit this portion of the fines collected to the comptroller of public accounts, and the comptroller shall deposit that amount in the Produce Recovery Fund.

Sec. 22. The provisions of this Act shall not apply to a retailer of citrus fruit, except a retailer whose annual sales of citrus fruit and vegetables comprise seventy-five percent (75%) or more of his

total sales or who employs a buying agent who buys directly from producers, nor to any person shipping less than six (6) standard boxes of citrus fruit in any one separate shipment nor shall this Act apply to noncommercial shipments.

Sec. 23. Any citrus grower who handles and markets only citrus fruit grown by him, shall file an application for a license as a dealer in citrus fruit and upon so filing said application with the Commissioner of Agriculture of the State of Texas in the form prescribed, he shall be entitled to a license as a minimum dealer of citrus fruit; i. e., one handling not in excess of one thousand (1000) standard boxes, or the equivalent thereof, per twelve-month period and said license shall be issued to him without the payment of any fee and he shall thereupon be entitled to handle, market, sell, and dispose of his citrus fruit in accordance therewith subject to the pertinent provisions of this Act.

[See Compact Edition, Volume 3 for text of 24]

Sec. 25. Any person who purchases citrus fruit only from dealers duly qualified as such under this Act and receives said fruit at the dealer's place of business and pays therefor prior to or at the time of delivery or taking possession of such citrus fruit so purchased in current money of the United States shall be exempt from paying the fee provided for in Subsection (c) of Section 4 of this Act and such person shall indicate on his application for license that he desires to operate as a cash buyer, buying only from dealers duly qualified as such under this Act, in accordance with the provisions of this Section and thereupon such person shall be entitled to a license as a cash citrus dealer, purchasing only from dealers duly qualified under this Act, upon the payment by such applicant of the license fee as required under this Act. Such dealer shall be subject to all the pertinent provisions of this Act. Any violation of this Section shall be deemed a misdemeanor and be punishable, as provided in Section 21 of this Act.

[See Compact Edition, Volume 3 for text of 26 to 28]

[Amended by Acts 1975, 64th Leg., p. 993, ch. 382, §§ 1 and 2, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1048, ch. 386, §§ 11 to 19, eff. Sept. 1, 1977.]

Sections 20 to 22 of the 1977 amendatory act provide:

"Sec. 20. A bond of a commission merchant, dealer, or contract dealer required under Chapter 218, Acts of the 58th Legislature, 1963, as amended (Article 1287-3, Vernon's Texas Civil Statutes), or under Chapter 236, Acts of the 45th Legislature, Regular Session, 1937, as amended (Article 118b, Vernon's Texas Civil Statutes), and issued prior to the effective date of this Act continues in effect until the expiration of the liability provided for in the bonding contract. After the expiration of the license under which the commission merchant, dealer, or contract dealer is operating on the effective date of this Act, that merchant or dealer must pay the required fee to the Produce Recovery Fund in order to be licensed.

"Sec. 21. Notwithstanding any other provision of law, for the first fiscal year that this Act is in effect all license fees collected under the provisions of Chapter 218, Acts of the 58th Legislature, 1963, as amended (Article 1287-3, Vernon's Texas Civil Statutes), or of Chapter 236, Acts of the 45th Legislature, Regular Session, 1937, as amended (Article 118b, Vernon's Texas Civil Statutes), shall be deposited in the Produce Recovery Fund. Thereafter, license fees shall be deposited as provided for in those acts.

"Sec. 22. This Act takes effect September 1, 1977."

Art. 118b-1. Coloring Citrus Fruit

[See Compact Edition, Volume 3 for text of 1 to 5]

Standards for Fruit to be Colored

Sec. 6. It shall be unlawful for any person to use on citrus fruit, or apply thereto, any coloring matter unless such fruit passes the requirements of the State maturity tests, and in addition thereto, oranges shall pass the following minimum requirements for total soluble solids of the juice thereof and for ratio of total soluble solids of the juice thereof to anhydrous citric acid:

(a) When the total soluble solids of the juice is not less than nine (9) per cent, the minimum ratio of total soluble solids to the anhydrous citric acid shall not be less than nine to one.

(b) When the total soluble solids of the juice is not less than eight and one-half (8½) per cent, the minimum ratio of total soluble solids to the anhydrous citric acid shall be not less than ten to one.

(c) Coloring matter shall not in any case be applied to any oranges which do not meet the standards set out in subsections (a) and (b) above. Likewise, coloring matter shall not in any case be applied to any oranges unless the juice content thereof shall be at least four and one-half (4½) gallons to each standard packed box of one and two-fifths (1⅔) bushels capacity, the juice to be extracted by hand, without mechanical pressure.

(d) In determining the total soluble solids of citrus fruit within the purpose and meaning of this Act, the Brix hydrometer shall be used, and the reading of the hydrometer corrected for temperatures shall be considered as the per centum of the total soluble solids. Anhydrous citric acid shall be determined by titration of the juice, using standard alkali and phenolphthalein as the indicator, the total acidity being calculated as anhydrous citric acid.

[See Compact Edition, Volume 3 for text of 7]

Enforcement of Act, Chief of Maturity Division

Sec. 8. The enforcement of this Act and of the rules and regulations promulgated by the Commissioner shall be under the direction and control of the Commissioner, and shall be intrusted by him to the Chief of the Maturity Division. All employees, inspectors, and officers of the Commissioner authorized by Chapter 244, Acts of the Regular Session of the Forty-second Legislature, as amended,¹ shall also be charged with such duties hereunder as may be imposed by the Commissioner, or the Chief of the Maturity Division.

¹ Article 118c.

[See Compact Edition, Volume 3 for text of 9 and 10]

Marking or Branding Colored Fruit

Sec. 11. Each piece of fruit treated with coloring matter as provided herein shall be branded or marked with the words "Color Added" in letters at least three-sixteenths of an inch in height, but this provision shall be deemed to have been complied with if not more than forty-five (45) per cent of any such fruit is imperfectly or partially marked or branded. In the event such fruit is branded or marked with a trademark or name, or brand, by a two-line die in one operation, such words "Color Added" shall be placed above the trade-mark or name or brand.

Each package or container in which is sold, delivered, transported, or delivered for transportation any citrus fruit treated with coloring matter as provided herein, shall be marked, or branded, or have attached thereto securely a tag upon which is marked or branded the words "Color Added" in letters at least three-fourths of an inch in height, provided that the Commissioner may by regulation change the requirements of this Section to conform to any law or regulation promulgated under Federal authority.

[See Compact Edition, Volume 3 for text of 12 to 15]

[Amended by Acts 1975, 64th Leg., p. 991, ch. 381, §§ 1 to 3, eff. June 19, 1975.]

CHAPTER SEVEN A. PLANT DISEASES AND PESTS

Article 135b-5a. Pesticide Control Act.

Art. 135b-5. Repealed by Acts 1975, 64th Leg., p. 995, ch. 383, § 34, eff. Nov. 1, 1976

See, now, art. 135b-5a.

Art. 135b-5a. Pesticide Control Act

Short Title

Sec. 1. This Act may be cited as the Texas Pesticide Control Act.

Definitions

Sec. 2. In this Act:

(1) "Active ingredient" means:

(A) in the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient which prevents, destroys, repels, or mitigates any pest;

(B) in the case of a plant regulator, an ingredient which, through physiological action, accelerates or retards the rate of growth or rate of maturation or otherwise alters the behavior of

ornamental or crop plants or the products of them;

(C) in the case of a defoliant, an ingredient which causes leaves or foliage to drop from a plant; and

(D) in the case of a desiccant, an ingredient which artificially accelerates the drying of plant tissue.

(2) "Adulterated" applies to any pesticide:

(A) if its strength or purity falls below the professed standard or quality expressed on its labeling or under which it is sold;

(B) if any substance has been substituted wholly or in part for the pesticide;

(C) if any valuable constituent of the pesticide has been wholly or in part abstracted; or

(D) if any contaminant is present in an amount which is determined by the commissioner to be a hazard.

(3) "Animal" means any vertebrate or invertebrate species, including but not limited to man and other mammals, birds, fish, and shellfish.

(4) "Antidote" means a practical treatment used in preventing or lessening ill effects from poisoning and includes first-aid treatment.

(5) "Certified applicator" means an individual who is determined by an official regulating authority, as provided in this Act, to be competent to use and supervise the use of any restricted-use or state-limited-use pesticide covered by his valid current certified applicator's license.

(6) "Commercial applicator" means a person who owns or manages a pesticide application business engaged in the application of restricted-use or state-limited-use pesticides to the land of another.

(7) "Commissioner" means the Commissioner of Agriculture of the State of Texas or his authorized agent.

(8) "Competent" means properly qualified to perform functions associated with pesticide application, the degree of competency required being directly related to the nature of the activity and the associated responsibility.

(9) "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant, with or without causing abscission.

(10) "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissue.

(11) "Device" means any instrument or contrivance, other than a firearm, which is used to trap, destroy, repel, or mitigate any pest or any other form of plant or animal life (other than man and bacteria, viruses, or other microorganisms on or in

living man or other living animals), but not including equipment used for the application of pesticides when sold separately from the pesticides.

(12) "Direct supervision" means that, in the application of a restricted-use or state-limited-use pesticide, the application is made by an individual acting under the instructions and control of a certified applicator responsible for the actions of that individual and available if and when needed, although the certified applicator may not be physically present at the time and place of the pesticide application.

(13) "Distribute" means to offer for sale, hold for sale, sell, barter, or supply.

(14) "Due notice" means notice of the time and place at which a hearing is to occur, notice of the subject matter and a general statement of the proposed action, and notice of the class or group of persons to be directly affected, caused to be published by the commissioner in three newspapers of general circulation throughout the state not less than 10 days before the hearing.

(15) "Environment" includes water, air, land, all plants, and man and other animals living in or on water, air, or land, and the interrelationships that exist among them.

(16) "Equipment" means any type of ground, water, or aerial equipment or contrivance employing motorized, mechanical, or pressurized power and used to apply any pesticide to land or to anything that may be inhabiting or growing or stored on or in the land, but does not include any pressurized hand-sized household apparatus used to apply any pesticide, or any equipment or contrivance for which the person applying the pesticide is the source of power or energy used in making the pesticide application.

(17) "Fungus" means any non-chlorophyll-bearing thallophyte (any non-chlorophyll-bearing plant of a lower order than mosses and liverworts), such as rust, smut, mildew, mold, yeast, or bacteria, except a non-chlorophyll-bearing thallophyte on or in living man or other living animals and except one on or in processed foods, beverages, or pharmaceuticals.

(18) "Inert ingredient" means an ingredient that is not an active ingredient.

(19) "Ingredient statement" means a statement of the name and percentage of each active ingredient together with the total percentage of the inert ingredients in a pesticide.

(20) "Insect" means any of the numerous small invertebrate animals generally having a segmented body and for the most part belonging to the class Insecta, comprising six-legged, usually winged forms such as beetles, bugs, bees, and flies, and includes allied classes of arthropods, the mem-

bers of which are wingless and usually have more than six legs, such as spiders, mites, ticks, centipedes, and wood lice.

(21) "Label" means the written, printed, or graphic matter on, or attached to, a pesticide or device or any of its containers or wrappers.

(22) "Labeling" means a label and any other written, printed, or graphic matter prepared by a registrant:

(A) accompanying the pesticide or device at any time; or

(B) to which reference is made on a label or in literature accompanying or referring to a pesticide or device, except accurate, nonmisleading references made to current official publications of federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.

(23) "Land" means any land or water areas, including airspace, and any plant, animal, structure, building, contrivance, or machinery, whether fixed or mobile, appurtenant to or situated on a land or water area or airspace, including any used for transportation.

(24) "License use category" means a classification of pesticide use based on the subject, method, or place of pesticide application.

(25) "Nematode" means an invertebrate animal of the phylum Nematelminthes and class Nematoda (an unsegmented round worm with an elongated, fusiform, or sac-like body covered with cuticle), inhabiting soil, water, plants, or plant parts.

(26) "Noncommercial application" means a person or government agency or department which wants to use restricted-use or state-limited-use pesticides or the authority to demonstrate restricted-use or state-limited-use pesticides and does not qualify as a private applicator and is not required to have a commercial applicator's license.

(27) "Person" means an individual, firm, partnership, corporation, governmental entity, or association of individuals.

(28) "Pest" means any insect, snail, slug, rodent, bird, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism (except viruses, bacteria, or other microorganisms in living man or other living animals), which the commissioner declares to be a pest.

(29) "Pesticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any pest, or any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

(30) "Pesticide dealer" means a person who distributes restricted-use pesticides or state-limited-

use pesticides which by regulation are restricted to distribution only by licensed pesticide dealers, except manufacturers and formulators of pesticides who do not sell directly to the user.

(31) "Plant regulator" means any substance or mixture of substances intended through physiological action to accelerate or retard the rate of growth or rate of maturation, or otherwise to alter the behavior of ornamental or crop plants or the products of them, but does not include any substance to the extent that it is intended as a plant nutrient, trace element, nutritional chemical, plant inoculant, or soil amendment.

(32) "Private applicator" means a person who uses or supervises the use of any restricted-use or state-limited-use pesticide for the purpose of producing any agricultural commodity:

(A) on property owned or rented by him or his employer or under his general control; or

(B) if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.

(33) "Registered applicator" means a competent person working under the direct supervision of a certified applicator.

(34) "Regulatory agency" means a state agency with responsibility for certifying applicators of restricted-use or state-limited-use pesticides, as provided in Section 16 of this Act.

(35) "Restricted-use pesticide" means any pesticide classified as a restricted-use pesticide by the administrator of the federal Environmental Protection Agency.

(36) "State-limited-use pesticide" means any pesticide which, when used as directed or in accordance with widespread and commonly recognized practice, the commissioner determines, after a hearing, requires additional restrictions to prevent unreasonable adverse effects on the environment, including effects on man, land, crops, and animals other than pests.

(37) "Unreasonable adverse effects on the environment" means any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of use of a pesticide.

(38) "Weed" means any plant that grows where not wanted.

Misbranded

Sec. 3. The term "misbranded" applies:

(1) to any pesticide or device subject to this Act:

(A) if its labeling bears any statement, design, or graphic representation relating to the pesticide, device, or the ingredients of either which is false or misleading in any particular;

(B) if it is an imitation of or is distributed under the name of another pesticide or device; or

(C) if any word, statement, or other information required by this Act or regulations promulgated as provided in this Act to appear on a label or labeling, is not prominently placed on a label or labeling with such conspicuousness, as compared with other material on the label or labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(2) to any pesticide:

(A) if its labeling bears any reference to registration under the provisions of this Act unless the reference is required by regulations promulgated as provided in this Act;

(B) if the labeling does not contain a statement of the use classifications for which the product is registered;

(C) if the label does not bear:

(i) the name, brand, or trademark under which the pesticide is distributed;

(ii) an ingredient statement on that part of the immediate container which is presented or displayed under customary conditions of purchase, and on any outer container or wrapper of a retail package, if the ingredient statement on the immediate container cannot be clearly read without removing the outer wrapping;

(iii) directions for use which are necessary for effecting the purpose for which the product is intended, and if complied with, are adequate for the protection of health and the environment;

(iv) if the pesticide contains arsenic in any form, a statement of the percentages of total water-soluble arsenic, calculated as elementary arsenic;

(v) the name and address of the manufacturer, registrant, or person for whom the pesticide was manufactured; or

(vi) numbers or other symbols to identify the lot or batch of the manufacturer of the contents of the package;

(D) if the label does not clearly display appropriate warnings, symbols, and cautionary statements commensurate with the toxicity or use classification of the pesticide; or

(E) if the pesticide container does not bear a label or if the label does not contain all information required by this Act or regulations promulgated as provided in this Act.

Pesticide Advisory Committee

Sec. 4. (a) The Pesticide Advisory Committee is a committee consisting of the deans of the depart-

ments of agriculture of Texas A & M University and Texas Tech University, the executive director of the Parks and Wildlife Department, the commissioner of the State Department of Health, and the commissioner of agriculture, or their designated representatives. Members of the committee serve as ex officio members and receive no compensation as committee members but are entitled to reimbursement from the funds of their respective departments or agencies for actual expenses incurred in the performance of their duties.

(b) The committee meets at least once a year and at such other times as determined by the commissioner, for the purpose of advising the commissioner on the best use of pesticides for the protection of the public health and welfare, animal life, and property. The committee shall receive requested assistance from state universities and state agencies, including assistance from consultants retained by state universities or state agencies, to aid the committee in its recommendations to the commissioner regarding any pesticide program or any other related matter submitted by the commissioner for committee recommendations.

(c) The Pesticide Advisory Committee is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the committee is abolished effective September 1, 1979.

¹ Article 5429k.

Registration of Pesticides

Sec. 5. (a) Every pesticide which is distributed within this state or is delivered for transportation or transported in intrastate commerce or between points within this state through any point outside the state, must be registered with the commissioner by the manufacturer, or by any person whose name appears on the label of the pesticide, if not the manufacturer, before the pesticide may be distributed, delivered for transportation, or transported as provided in this subsection. However, registration is not required for the transportation of a pesticide from one plant or warehouse to another plant or warehouse operated by the same person and used solely at the second plant or warehouse as a constituent part of a pesticide registered under the provisions of this Act.

(b) A person who applies for registration of a pesticide shall file with the commissioner a statement including:

(1) the name and address of the applicant and the name and address of the person whose name will appear on the pesticide label, if not the applicant's;

(2) the name of the pesticide;

(3) a complete copy of all labeling to accompany the pesticide and a statement of all claims to be made for it, including the directions for use;

(4) the use classification, whether for restricted or general use, as provided in the federal Insecticide, Fungicide, and Rodenticide Act, as amended,¹ or in regulations promulgated as provided in the Act;

(5) the use classification proposed by the applicant, if the pesticide is not required by federal law to be registered under a use classification; and

(6) other information required by the commissioner for the determination of eligibility for registration.

(c) The commissioner may require the submission of the complete formula for a pesticide, including active and inert ingredients, as a prerequisite to registration. The commissioner may require a full description of the tests made and the results of the tests on which claims are based before approving registration of a pesticide not registered under federal law or a pesticide for which federal or state restrictions on use are being considered.

(d) A person located outside this state shall, as a condition to registration of a pesticide, file with the commissioner an instrument in writing designating a resident agent for service of process in actions taken in the administration or enforcement of this Act. In lieu of designating a resident agent, the person may designate in writing the secretary of state as the recipient of service of process for the person in this state.

(e) Registration expires annually on December 31. A person who applies for renewal of registration must include in his application only such information as is different from the information furnished at the time of the most recent registration or renewal of registration.

(f) As a condition to registration, an applicant shall pay to the commissioner an annual registration fee of \$30 for each pesticide to be registered as provided in this Act.

(g) Any pesticide registration in effect on December 31 for which a renewal application has been filed and a renewal registration fee paid continues in effect until the commissioner notifies the applicant that the registration has been renewed or denied renewal.

(h) A person who fails to apply for renewal of pesticide registration before March 1 of any year shall, as a condition to the renewal of registration, pay a late registration fee of \$5 for each brand to be renewed, to be added to the amount of the renewal registration fee.

(i) The commissioner may not approve an application for registration of a pesticide unless he finds that the composition of the pesticide warrants the proposed claims made for it and that the pesticide, its labeling, and other materials required to be submitted as provided in this Act comply with the requirements of this Act.

(j) The commissioner may register pesticides for additional uses and methods of application not covered by federal regulation but not inconsistent with federal law, for the purpose of meeting special local needs. Before approval of any registration for special local needs, the commissioner shall determine that the applicant meets other requirements of this section.

¹ 7 U.S.C.A. § 135 et seq.

Denial or Cancellation of Registration

Sec. 6. (a)¹ If the commissioner has reason to believe that any use of a registered pesticide is in violation of the provisions of this Act or is dangerous or harmful, he may issue to the registrant of the pesticide written notice of a hearing on denial or cancellation of registration. The notice must contain a statement of the time and place of the hearing, which may not be less than 10 days after issuance of notice. After opportunity at the hearing for presentation of evidence by interested parties, the commissioner may deny or cancel the registration of the pesticide if he finds that:

(1) use of the pesticide has demonstrated uncontrollable adverse environmental effects;

(2) use of the pesticide is a detriment to the environment which outweighs benefits received by its use;

(3) even when properly used, the pesticide is detrimental to vegetation, except weeds, or to domestic animals or the public health and safety;

(4) any false or misleading statement about the pesticide has been made or implied by the registrant or his agent, in writing, verbally, or through any form of advertising literature; or

(5) the registrant or the pesticide has not complied with a requirement of this Act or rule promulgated as provided in this Act.

¹ So in enrolled bill.

Experimental Use Permit

Sec. 7. (a) Any person may apply to the commissioner for an experimental use permit for a pesticide. The commissioner may issue an experimental use permit if the commissioner determines that the applicant needs the permit in order to accumulate data necessary to register a pesticide under this Act. An application for an experimental use permit may be filed before or after an application for registration is filed.

(b) Use of a pesticide under an experimental use permit is under the supervision of the commissioner and is subject to such terms and conditions and be for such period of time as the commissioner may prescribe in the permit.

(c) The commissioner may revoke any experimental use permit at any time if he finds that its terms

or conditions are being violated or that its terms and conditions are inadequate to avoid unreasonable adverse effects on the environment.

Rules and Regulations

Sec. 8. (a) The commissioner may, after due notice and a public hearing, make appropriate regulations for carrying out the provisions of this Act, including but not limited to regulations providing for:

- (1) the collection, examination, and reporting of records, devices, and samples of pesticides;
- (2) the safe handling, transportation, storage, display, distribution, and disposal of pesticides and their containers; and
- (3) labeling requirements for all pesticides and devices required to be registered under the provisions of this Act.

(b) After due notice and a public hearing, the commissioner may adopt from time to time lists of state-limited-use pesticides for the entire state or for designated areas within the state. If the commissioner determines that a pesticide requires restrictions or additional restrictions on distribution or use to prevent unreasonable adverse effects on the environment, he may include the pesticide on a list of state-limited-use pesticides. The commissioner may regulate the time and conditions of use of a state-limited-use pesticide and may require that it be purchased or used only with permission of the commissioner, only under his direct supervision in certain areas under certain conditions, and only in specified quantities and concentrations. The commissioner may require persons authorized to distribute or use state-limited-use pesticides to maintain records of their distribution and use of all state-limited-use pesticides and may require that the records be kept separately from other business records.

Pesticide Dealer License

Sec. 9. (a) No person may distribute in this state restricted-use or state-limited-use pesticides without having a valid current pesticide dealer license issued by the commissioner for each location in the state which is used for distribution. Any person licensed as a dealer under Chapter 349, Acts of the 53rd Legislature, Regular Session, 1953, as amended (Article 135b-4, Vernon's Texas Civil Statutes) shall not be required to pay an additional fee for the license prescribed in this section.

(b) Application for a pesticide dealer license is on forms prescribed by the commissioner, accompanied by a nonrefundable annual registration fee of not more than \$100, as determined by the commissioner. A pesticide dealer license expires on December 31 of each year.

(c) A person without a place of business in the state may obtain one pesticide dealer license for all of his out-of-state locations. As a condition to the issuance of a license, he shall file a statement as provided in Subsection (d), Section 5, of this Act.

(d) Each pesticide dealer license must be prominently displayed in the dealer's place of business. Failure to so display a license is a ground for revocation of the license.

(e) If an application for a renewal of a pesticide dealer license is not filed with the commissioner by March 1 of any year, a late license fee of \$5 is due in addition to the annual license fee and must be paid before issuance of the renewal license.

(f) Licensed pesticide dealers shall maintain for a period of two years records of each restricted-use and state-limited-use pesticide sold. Information included in the records shall be as prescribed by the commissioner. The commissioner may require submission of records to him. Failure to submit requested records is a ground for revocation of a license.

(g) This section does not apply to a licensed pesticide applicator who distributes restricted-use or state-limited-use pesticides only as an integral part of his pesticide application business and who dispenses the pesticides only through equipment used in his pesticide application business. This section does not apply to any federal, state, county, or municipal agency which provides pesticides only for its own programs.

Denial or Revocation of Pesticide Dealer License

Sec. 10. (a) If the commissioner has reason to believe that an applicant has failed to comply with requirements of Section 9 of this Act or regulations promulgated as provided in Section 9, or if the commissioner has reason to believe that a licensee has failed to comply with requirements of Section 9 or regulations promulgated as provided in Section 9, he may issue written notice to the applicant or licensee of the time and place of a hearing to be held by the commissioner on denial or revocation of license. The hearing may not be less than 10 days after issuance of notice.

(b) After opportunity at the hearing for presentation of evidence by the applicant or licensee, the commissioner may refuse to issue a pesticide dealer license or revoke a pesticide dealer license, if he finds that the applicant or licensee has failed to comply with applicable requirements of Section 9 of this Act or regulations promulgated as provided in Section 9.

Enforcement

Sec. 11. (a) The commissioner or his authorized agents may enter at reasonable hours any building or place owned, controlled, or operated by a regis-

trant or dealer, where from probable cause it appears that the building or place contains pesticides, for the purpose of inspection, examination of records, and sampling. The commissioner or his authorized agents may take a sample for official analysis from any package or lot of pesticides found within the state.

(b) The commissioner may issue and enforce a written or printed stop-sale order to the owner or custodian of any pesticide which he has reason to believe is in violation of any of the provisions of this Act, prohibiting further sale of the pesticide until the commissioner determines that the pesticide is no longer in violation of the Act.

(c) The owner or custodian of a pesticide to which a stop-sale order applies may appeal from the order to a court of competent jurisdiction in the county where the pesticide is found. Appeal is by trial de novo. This section does not limit the right of the commissioner to proceed as authorized by other sections of this Act.

(d) The commissioner may institute an action in his own name to enjoin any violation of a provision of this Act. Venue is in the county where the alleged violation occurred or is occurring.

Other Powers and Duties of the Commissioner

Sec. 12. (a) The commissioner may contract with state colleges and universities, state agencies, or commercial laboratories for examination of pesticides. Contracts with commercial laboratories may be let only on the basis of competitive bidding.

(b) The commissioner shall make or provide for sample tests of pesticides on request, and he may charge and collect fees for the tests necessary to cover expenses incurred in making or providing for the tests.

Prohibited Acts

Sec. 13. (a) No person may distribute within the state, or deliver for transportation or transport in intrastate commerce or between points within this state through any point outside this state, any of the following:

- (1) any pesticide which has not been registered as provided in this Act;
- (2) any pesticide if any of the claims made for it or any of the directions for its use or other labeling differs from the representations made in connection with its registration;
- (3) any pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container and there is affixed to the container, and to the outside container or wrapper of the retail package, if there is one through which the required information on the immediate container

cannot be clearly read, a label bearing the information required in this Act and the regulations adopted under this Act; provided that an applicator may after acquiring such an unbroken container, open and transport the open container to and from application and storage sites as necessary;

(4) any pesticide which has not been colored or discolored as required by the provisions of this Act;

(5) any pesticide which is adulterated or misbranded or any device which is misbranded; or

(6) any pesticide in a container which is unsafe due to damage.

(b) No person may:

(1) detach, alter, deface, or destroy, wholly or in part, any label or labeling provided for in this Act or regulations adopted under this Act, or to add any substance to or take any substance from a pesticide in a manner that may defeat the purpose of this Act or the regulations adopted thereunder;

(2) use or cause to be used any pesticide contrary to its labeling or to regulations of the commissioner limiting use of the pesticide;

(3) handle, transport, store, display, or distribute a pesticide in a manner that violates the provisions of this Act or rules promulgated by the commissioner as provided in this Act; or

(4) dispose of, discard, or store any pesticide or pesticide container in a manner that is calculated to cause injury to humans, vegetation, crops, livestock, wildlife, pollinating insects or to pollute any water supply or waterway.

(c) No person, except the person to whom a pesticide is registered, may use for his advantage or reveal, other than to properly designated state or federal officials or their employees, or to physicians or in emergencies to pharmacists and other qualified persons for use in the preparation of antidotes, any information relating to pesticide formulae, trade secrets, or commercial or financial information acquired by authority of this Act and marked as privileged or confidential by the registrant.

Exemptions

Sec. 14. (a) The penalties provided for violations of Section 13 of this Act do not apply to:

(1) any carrier while lawfully engaged in transporting a pesticide or device within this state if the carrier on request permits the commissioner to copy all records showing the transactions in and movement of the pesticides or devices;

(2) public officials of this state and the federal government while engaged in the performance of their official duties in administering state or federal pesticide statutes or regulations or while engaged in pesticide research;

(3) the manufacturer or shipper of a pesticide for experimental use only by or under the supervision of an agency of this state or of the federal government authorized by law to conduct research in the field of pesticides, if the manufacturer or shipper holds a valid experimental use permit as provided in this Act; and

(4) a pesticide or device manufactured or formulated solely for export to a foreign country and prepared or packed according to the specifications or directions of the purchaser. If not so exported, the provisions of this Act apply.

(b) Chemical compounds being used only to develop plot data as to the possible pesticidal action of the chemicals are exempt from registration requirements of this Act.

Regulation of Pesticide Use and Application

Sec. 15. (a) The Texas Department of Agriculture is the lead agency and is responsible for coordinating activities of state agencies in the regulation of pesticide use and application and is responsible for submitting a state plan for the certification of pesticide applicators to the administrator of the federal Environmental Protection Agency. This agency shall have the responsibility for coordinating, planning, and approving of training programs and shall utilize the resources of the state, both private and public, including but not limited to state universities, colleges, junior colleges, and community colleges as well as the Texas A & M Extension Service and Experiment Stations. The agency shall make all plans in this area on the basis of convenience to applicants, thoroughness of preparation and testing, and maximum economy in expenditures for this purpose. The agency may make full use of authorizations contained in Section 31 of this Act in carrying out these provisions.

(b) The commissioner shall certify pesticide applicators involved in agricultural pest control (except animal pest control), forest pest control, ornamental and turf pest control (except as provided in the Texas Structural Pest Control Act, as amended (Article 135b,¹ Vernon's Texas Civil Statutes)), seed treatments, right-of-way pest control, regulatory pest control, and demonstration pest control.

(c) The Texas Animal Health Commission shall certify, as provided in this Act, pesticide applicators involved in animal pest control.

(d) The Texas Water Quality Board shall certify, as provided in this Act, pesticide applicators involved in aquatic pest control.

(e) The State Department of Health shall certify, as provided in this Act, pesticide applicators involved in health-related pest control.

(f) Definitions of the license use categories described in Subsections (b), (c), (d), and (e) of this

section are as provided by federal statutes or regulations.

(g) A person who wants to be certified as a pesticide applicator under license use categories regulated by more than one agency may do so by paying a single license fee to the agency regulating his primary business and by meeting certification requirements for each category for which he desires certification. He must pay testing fees required by each agency.

(h) The licensing of certified commercial and noncommercial applicators is contingent on the availability of federal funds to pay costs of administering and enforcing the program. If federal funds and other funds made available for this program are not sufficient to pay all costs of administering and enforcing the program, the commissioner shall certify the fact and discontinue the licensing of certified commercial and noncommercial applicators. The commissioner shall cause notice of discontinuance of the program to be published in the Texas Register, and the effective date of discontinuance shall be determined by the commissioner but may not be before the date of publication of notice in the register. If sufficient federal funds become available after discontinuance, the commissioner shall certify the availability of sufficient funds to pay all costs of administration and enforcement of the program and shall resume licensing of certified commercial and noncommercial applicators. The commissioner shall cause notice of resumption of the program to be published in the Texas Register, and the effective date of resumption shall be determined by the commissioner but may not be before the date of publication of notice in the register. During any period of discontinuance, no person is required to have a license as provided in this Act to use pesticides but a person may be prosecuted for acts committed or omitted when the program was in effect.

¹ So in enrolled bill; should read "135b-6".

Regulations for Pesticide Application

Sec. 16. The head of each state agency with responsibility for certification of pesticide applicators, as provided in Section 15 of this Act, may, after due notice and a public hearing, promulgate regulations to carry out the provisions of this Act for which he is responsible. The regulations may prescribe methods to be used in the application of restricted-use and state-limited-use pesticides. Regulations may relate to the time, place, manner, methods, and amounts and concentrations of pesticide application and to the materials used in pesticide application, and may restrict or prohibit use of restricted-use and state-limited-use pesticides in designated areas during specified periods of time. Regulations shall be promulgated only after consideration of precautions or restrictions necessary to prevent unreasonable adverse effects on the environment.

Pesticide Use Without License or Certification

Sec. 17. No person, except an individual acting under the direct supervision of a certified applicator, or except a private applicator, may use or supervise the use of any restricted-use or state-limited-use pesticide, unless he is licensed as a certified commercial or noncommercial applicator and is authorized by his license to use restricted-use and state-limited-use pesticides in the license use categories covering his proposed pesticide use. Nothing in this Act shall be construed to prohibit any property owner from using in his house or on his lawn or in his garden any pesticide labeled for such use except one that may be registered and classified for use only by certified applicators.

Classification of Commercial and Noncommercial Licenses

Sec. 18. The head of each regulatory agency may classify commercial and noncommercial licenses under subcategories of license use categories, according to the subject, method, or place of pesticide application. An agency head shall establish separate testing requirements for licensing in each license use category for which his agency is responsible, and may establish separate testing requirements for licensing in subcategories within a license use category. Each regulatory agency may charge a non-refundable testing fee of not more than \$10 for testing in each license use category.

Commercial Applicator License

Sec. 19. (a) No person, except an individual working under the direct supervision of a certified applicator, may apply restricted-use or state-limited-use pesticides to the land of another for hire or compensation at any time without having a valid current commercial applicator license issued by a regulatory agency for the license use categories and subcategories, if any, in which the pesticide application is to be made.

(b) Application for an original or renewal license shall be on forms prescribed by the regulatory agency and shall be accompanied by an annual license fee of not more than \$100, as determined by the head of the regulatory agency. Each license application shall include such information as is prescribed by regulation of the head of the regulatory agency.

(c) Before issuance of an original commercial applicator license, an applicant must pass an examination demonstrating his competence and knowledge of the use and effects of restricted-use and state-limited-use pesticides in the license use categories or subcategories for which he has applied to be licensed. An individual to whom a commercial applicator license is issued is a certified applicator authorized to use and supervise the use of restricted-use and state-limited-use pesticides in the license use categories and any subcategories in which he is

licensed. If a license is issued in the name of a business, the business must have a certified applicator employed at all times. Failure to have a certified applicator employed is a ground for revocation of a business commercial applicator license.

(d) A regulatory agency may not issue a commercial applicator license until the license applicant files with the agency evidence of financial responsibility, consisting either of a bond executed by the applicant as principal and by a corporate surety licensed to do business in Texas as surety or a liability insurance policy or certification of a policy, protecting persons who may suffer damages as a result of the operations of the applicant. The bond or liability insurance policy, however, need not apply to damages or injury to agricultural crops, plants, or land being worked upon by the applicant. The surety bond or insurance must be approved by the regulatory agency and conditioned on compliance with the requirements of this Act and any regulations promulgated as provided in this Act.

(e) The amount of the bond or liability insurance required may not be less than \$5,000 nor more than \$100,000 for property damage insurance and may not be less than \$5,000 for bodily injury insurance. The head of the regulatory agency may, by regulation, require different amounts of bond or insurance coverage for different classifications of operations under this Act. The bond or liability insurance must be maintained at not less than the sum set by the agency head at all times during a period licensed. The head of the regulatory agency shall be notified by the party taking action at least 10 days prior to any reduction requested by a licensee or any cancellation of a bond or policy; otherwise, liability of the surety or insurer for all claims is limited to the face amount of the bond or liability insurance policy. The agency head may accept a liability insurance policy or bond in the proper sum which has a deductible clause in an amount of not more than \$1,000 for the total amount of liability insurance or bond required by this section. However, if the applicant has not satisfied the requirement of the deductible amount in any prior legal claim, a policy or bond with a deductible clause may not be accepted by an agency head unless the applicant furnishes the agency with a surety bond which satisfies the amount of the deductible clause as to all claims that may arise as a result of his operation. Should the surety furnished become insufficient or otherwise unsatisfactory, a licensee shall, on notice of the insufficiency or other defect, immediately file a new bond or policy of insurance. Failure to file a bond or policy of insurance and failure to maintain the security in the required amounts are grounds for suspension or revocation of a commercial applicator license.

(f) The head of a regulatory agency may not issue a commercial applicator license if it has been determined that:

(1) the applicant has been convicted of a felony involving moral turpitude in the last five years;

(2) the applicant has had a previous license, authorized by this Act to be issued, revoked within the last two years;

(3) the applicant, or his representative if the applicant is a business, has been unable to satisfactorily fulfill certification requirements; or

(4) the applicant for any other reason cannot be expected to be able to fulfill the provisions of this Act applicable to the license use category for which application has been made.

Noncommercial Applicator License

Sec. 20. (a) A person not engaged in the pesticide application business who is not a private applicator, except a person acting under the direct supervision of a certified or private applicator, may not use restricted-use or state-limited-use pesticides without having a valid current noncommercial applicator license issued by a regulatory agency for the license use categories and subcategories, if any, in which the pesticide application is to be made.

(b) Application for an original or renewal license shall be on forms prescribed by the regulatory agency. A nongovernmental applicant shall accompany his application with an annual license fee of not more than \$50, as determined by the head of the regulatory agency. No license fee may be charged a governmental entity applying for a license.

(c) Before issuance of an original noncommercial applicator license, an applicant must pass an examination demonstrating his competence and knowledge of the use and effects of restricted-use and state-limited-use pesticides in the license use categories or subcategories for which he has applied to be licensed. An individual to whom a noncommercial applicator license is issued is a certified applicator authorized to use and supervise the use of restricted-use and state-limited-use pesticides in the license use categories and any subcategories in which he is licensed. If a license is issued in the name of a governmental entity, the entity must have a certified applicator employed at all times. Failure to have a certified applicator employed is a ground for revocation of a governmental entity noncommercial applicator license.

Private Applicator Exemption

Sec. 21. A private applicator is not required to have a license or to be certified to use restricted-use or state-limited-use pesticides. The commissioner is authorized to establish a program to certify private applicators, on a voluntary basis, who wish to apply restricted use pesticides in compliance with federal law.

Reciprocal Agreements

Sec. 22. The head of a regulatory agency may waive part or all of any license examination requirements on a reciprocal basis with any other state or federal agency which has substantially the same examination standards.

License Renewal

Sec. 23. Each commercial applicator license and noncommercial applicator license expires on December 31 of the year in which it was issued. A person having a valid current license may renew the license for another year without retesting by paying to the regulatory agency an annual license fee, as provided in this Act, unless the head of the regulatory agency determines that additional knowledge is required in the license use categories or subcategories in which the licensee applies for license renewal, in which case the passing of a new examination is necessary for license renewal. However, if a certified applicator does not file with the regulatory agency by March 1 of any year his application for license renewal, accompanied by payment of the annual license fee, he must pass another examination before he may be recertified.

Maintenance of Records

Sec. 24. Each regulatory agency shall require its licensees except private applicators to maintain records of their use of pesticides. Information to be included in the records is as prescribed by regulation of the regulatory agency. A regulatory agency may require its licensees to keep records of their application of specific restricted-use and state-limited-use pesticides and may require the records to be kept separately from other business records. Records must be kept for a period of two years from the date of pesticide application. A licensee shall, on written request of the regulatory agency, furnish the agency a copy of any records requested pertaining to the application of pesticides.

Registration and Inspection of Equipment

Sec. 25. (a) Each regulatory agency shall provide for the registration and inspection of equipment used in the commercial application of restricted-use or state-limited-use pesticides and may require repairs or alterations of equipment before further use. The head of a regulatory agency shall by regulation promulgate standards that must be met before registration of equipment.

(b) Each piece of registered equipment shall be identified by a license plate or decal furnished by a regulatory agency at no cost to the licensee and attached to the equipment in a manner and location as prescribed by the regulatory agency.

Suspension and Revocation of a Certified Applicator License

Sec. 26. (a) The head of a regulatory agency which licensed a certified applicator may suspend temporarily for not more than 10 days, after written notice of noncompliance, and, after opportunity for a hearing not less than 10 days after issuance of written notice to the licensee of the time, place, and nature of the hearing, may suspend, modify, or revoke any provision in the license of a certified applicator, if he finds that the licensee has committed any of the following acts, each of which is a violation of this Act:

(1) made a pesticide recommendation or application inconsistent with the labeling or with the restrictions of the use of the pesticide imposed by the federal Environmental Protection Agency or the state;

(2) operated in a faulty, careless, or negligent manner;

(3) refused or, after notice, failed to comply with any applicable provision of this Act, the rules and regulations adopted as provided in this Act, or any lawful order of the head of a regulatory agency by which he is licensed;

(4) refused or neglected to keep and maintain the records required by this Act or to make reports when and as required;

(5) failed to maintain a bond or policy of insurance as required by this Act;

(6) made false or fraudulent records, invoices, or reports;

(7) used fraud or misrepresentation in making an application for, or renewal of, a license; or

(8) aided or abetted a licensed or an unlicensed person to evade the provisions of this Act, conspired with a licensed or an unlicensed person to evade the provisions of this Act, or allowed his license to be used by another person.

(b) In addition to revocation, modification, or suspension of a license, a licensee who violates Subsection (a) of this section is subject to the other penalty provisions of this Act. An unlicensed person who violates Subsection (a) of this section, to the extent that it is applicable to unlicensed persons, is subject to the penalty provisions of this Act.

Appeal

Sec. 27. (a) A person whose application for registration of a pesticide has been denied or whose registration for a pesticide has been cancelled may appeal the action of the commissioner by filing an appeal in the district court of Travis County within 30 days of the date of denial or cancellation by the commissioner. A copy of the notice of appeal shall be delivered to the commissioner.

(b) A person whose application for experimental use permit, pesticide dealer license, commercial applicator license, or noncommercial applicator license has been denied, or whose experimental use permit, pesticide dealer license, commercial applicator license, or noncommercial applicator license has been revoked, modified, or suspended for more than 10 days, may appeal the action of the commissioner or head of a regulatory agency by filing an appeal in the district court of the county of his residence or in the district court of Travis County, within 30 days of the date of denial, revocation, modification, or suspension. A copy of the notice of appeal shall be delivered to the person whose action has been appealed.

(c) Appeal is governed by the substantial evidence rule.

Reports of Pesticide Damage Claims

Sec. 28. (a) Any person claiming damages from a pesticide application may file with the regulatory agency which licensed the certified applicator whose action allegedly caused damage a written statement claiming that he has been damaged. To be eligible for consideration by the agency, the report must be filed within 30 days of the alleged occurrence, or if a growing crop is alleged to have been damaged, the report must be filed prior to the time that 25 percent of the crop has been harvested or within 30 days, whichever is less. The report must contain, but is not limited to, the name of the person allegedly responsible for the application of the pesticide, the name of the owner or lessee of the land on which the crop is grown and for which damage is alleged to have occurred. The regulatory agency shall prepare a form to be furnished to persons to be used in filing damage reports, and the form may contain such other information as is required by the head of the regulatory agency.

(b) The regulatory agency shall, on receipt of a report, notify the licensee and the owner or lessee of the land on which the alleged acts occurred, and any other person who may be charged with responsibility for the damages claimed. The regulatory agency shall furnish copies of the report to these people on request. The regulatory agency shall inspect damages whenever possible and shall report its findings to the person claiming damage and to the person alleged to have caused the damage.

(c) The failure to file a report is no bar to the maintenance of any criminal or civil action. However, if the person failing to file a report is the only person claiming injury from the particular use or application of a pesticide, the regulatory agency, when in the public interest, may refuse to hold a hearing for the denial, suspension, or revocation of a license issued under this Act to a person alleged to have caused damage.

(d) If damage is alleged to have occurred, the claimant shall permit representatives of the regulatory agency and the licensee to observe within reasonable hours the land or nontarget organism alleged to have been damaged, in order that the damage may be assessed.

Storage and Disposal of Pesticides

Sec. 29. (a) The commissioner may promulgate regulations governing the storing and disposal of pesticides and pesticide containers for the purpose of preventing injury from storage or disposal to man, vegetation, crops, or animals, and preventing pollution of any waterway in a way harmful to man or wildlife.

(b) No person may store or dispose of any pesticide in violation of regulations promulgated by the commissioner as provided in this section.

Inspection by Regulatory Agency

Sec. 30. (a) The head of a regulatory agency or his authorized representatives may enter any public or private premises at reasonable times:

- (1) to inspect any equipment authorized or required to be inspected under this Act, and to inspect the premises on which the equipment is kept or stored;
- (2) to inspect or sample land exposed or reported to be exposed to pesticides;
- (3) to inspect areas where pesticides are disposed of or stored; or
- (4) to observe the use and application of restricted-use or state-limited-use pesticides.

(b) If the head of a regulatory agency or his authorized representatives are denied access to any land where access was sought at a reasonable time for any of the purposes described in Subsection (a) of this section, the head of the regulatory agency may apply to a magistrate for a warrant authorizing access to the land for any of the above described purposes. On a showing of probable cause to believe that a violation of any regulation relating to a purpose of inspection described in Subsection (a) of this section has occurred, the magistrate shall issue the search warrant for the purposes requested.

(c) A regulatory agency may bring suit to enjoin violations or threatened violations of provisions of this Act within its responsibility and may request the appropriate prosecuting attorney to prosecute violations of the penal provisions of this Act.

Cooperative Agreements

Sec. 31. Each regulatory agency may receive grants-in-aid from any federal agency and may enter into cooperative agreements with a federal agency, an agency of this state or a subdivision of this state, or an agency of another state for the purpose

of obtaining assistance in the implementation of this Act.

Penalty

Sec. 32. A person who violates any provision of this Act is guilty of a Class C misdemeanor. Each violation is a separate offense.

Persons Regulated by the Texas Structural Pest Control Act

Sec. 33. Sections 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 30, and 31 of this Act do not apply to persons regulated by the Texas Structural Pest Control Act, as amended (Article 135b-6, Vernon's Texas Civil Statutes).

Repealer

Sec. 34. The Insecticide, Fungicide, and Rodenticide Act of Texas, as amended (Article 135b-5, Vernon's Texas Civil Statutes), is repealed.

Effective Date

Sec. 35. Sections 32 and 34 of this Act take effect November 1, 1976. All other sections of this Act take effect January 1, 1976.

[Acts 1975, 64th Leg., p. 995, ch. 383, §§ 1 to 31, 33 and 35, eff. Jan. 1, 1976. Amended by Acts 1975, 64th Leg., p. 995, ch. 383, §§ 32 and 34, eff. Nov. 1, 1976; Acts 1977, 65th Leg., p. 1833, ch. 735, § 2.008, eff. Aug. 29, 1977.]

Art. 135b-6. Structural Pest Control Act

[See Compact Edition, Volume 3 for text of 1]

Definitions

Sec. 2. (a) For purposes of this Act a person shall be deemed to be engaged in the business of structural pest control if he engages in, offers to engage in, advertises for, solicits, or performs any of the following services for compensation:

(1) identifying infestations or making inspections for the purpose of identifying or attempting to identify infestations of:

(A) arthropods (insects, spiders, mites, ticks, and related pests), wood-infesting organisms, rodents, weeds, nuisance birds, and any other obnoxious or undesirable animals which may infest households, railroad cars, ships, docks, trucks, airplanes, or other structures, or the contents thereof, or

(B) pests or diseases of trees, shrubs, or other plantings in a park or adjacent to a residence, business establishment, industrial plant, institutional building, or street;

(2) making inspection reports, recommendations, estimates, or bids, whether oral or written, with respect to such infestations; or

(3) making contracts, or submitting bids for, or performing services designed to prevent, control, or eliminate such infestations by the use of insecticides, pesticides, rodenticides, fumigants, or allied chemicals or substances or mechanical devices.

(b) As used in this Act:

(1) "Person" means an individual, firm, partnership, corporation, association, or other organiza-

tion, or any combination thereof, or any type of business entity.

(2) "Restricted-use pesticide" means a pesticide classified for restricted or limited use by the administrator of the federal Environmental Protection Agency.

(3) "State-limited-use pesticide" means a pesticide classified for restricted or limited use by the state commissioner of agriculture.

(4) "Certified applicator" means an individual who has been licensed and determined by the board to be competent to use or supervise the use of any restricted-use and state-limited-use pesticide covered by his currently valid certified applicator license.

(5) "Direct supervision" means that, in the application of a pesticide, the application is made by an individual acting under the instructions and control of a certified applicator responsible for the actions of that individual and available if and when needed for consultation or assistance although the certified applicator need not be physically present at the time and place of the pesticide application.

(6) "Branch office" means any place of business other than the primary office that has at least one (1) employee during normal business hours who is capable of answering customers' normal questions, scheduling normal inspections or work, or performing structural pest control functions; provided, however, that a facility serving solely as a telephone answering service shall not be a branch office.

(7) "Structural Pest Control Business License" means that license issued to a person entitling that person and his employees to engage in the business of structural pest control under the direct supervision of a certified applicator.

(8) "Device" means an instrument or contrivance, except a firearm, that is designed for trapping, destroying, repelling, or mitigating the effects of a pest or another form of plant or animal life, other than human beings or bacteria, viruses, or other microorganisms that live on or in human beings or animals. The term does not include any equipment used for the application of pesticides if the equipment is sold separately from a device as defined in this subdivision.

(9) "Endorsement of license" means an individual who establishes residence in Texas and who has been determined by the board to meet the qualifications of a certified applicator by taking the appropriate examination in a state other than Texas.

Board; Members; Chairman; Bylaws; Expenses; Executive Director; Application of Sunset Act

Sec. 3. (a) The Texas Structural Pest Control Board is created. The board is composed of nine members, six of whom shall be appointed. Four of the appointed members must be persons who have been engaged in the business of structural pest control for at least five years. No two members shall be representatives of the same business entity. Two members must be representatives of the general public who are not licensed under this Act. These appointments to the board shall be made by the Governor with the advice and consent of the Senate for staggered terms of two years. Appointments to the board shall be made without regard to the race, creed, sex, religion, or national origin of the appointees. The failure of an appointed member of the board to attend at least one-half of the regularly scheduled meetings held by the board each year automatically removes the member from the board and creates a vacancy on the board. In addition to the appointed members, the board shall also consist of the Commissioner of Agriculture, the Commissioner of Health, and the chairman of the Department of Entomology at Texas A & M University, or their designated representatives.

[See Compact Edition, Volume 3 for text of 3(b) and (c)]

(d) The board shall appoint an executive director who shall administer the provisions of this Act and the rules and regulations promulgated by the board. The executive director shall receive a salary as determined by the board which shall be paid from funds available to the board. A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9c, Vernon's Texas Civil Statutes), may not act as the general counsel to the board or serve as a member of the board.

(e) The Texas Structural Pest Control Board is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1991.

(f) A member of the board or an employee of the board who carries out the functions of the board may not:

(1) be an executive officer, employee, or paid consultant of a trade association in the structural pest control industry;

(2) be related within the second degree by affinity or within the third degree by consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the structural pest control industry; or

(3) communicate directly or indirectly with a party or the party's representative to a proceeding

pending before the board unless notice and an opportunity to participate are given to all parties to the proceeding, if the member or employee is assigned to make a decision, a finding of fact, or a conclusion of law in the proceeding.

(g) A member of the board, except those members who are duly licensed structural pest control operators, may not have personally, nor be related to persons within the second degree by affinity or third degree by consanguinity who have, except as consumers, financial interests in structural pest control businesses as officers, directors, partners, owners, employees, attorneys, or paid consultants of the structural pest control business or otherwise.

(h) The board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

Licensing Standards; Rules and Regulations; Coordination of Activities; Examinations; Complaints; Contracts of Licensee; Public Information Program

Sec. 4. (a) The board shall develop standards and criteria for licensing individuals engaged in the business of structural pest control. The board may require individuals to pass an examination demonstrating their competence in the field in order to qualify for a Certified Applicator's License. Not later than the 30th day after the day on which a person completes an examination administered by the board, the board shall send to the person his examination results. If requested in writing by a person who fails the examination, the board shall send to the person not later than the 30th day after the day on which the request is received by the board an analysis of the person's performance on the examination.

(b) The board shall develop standards and criteria for issuing Structural Pest Control Business Licenses to persons engaged in the business of structural pest control. Persons engaged in the business of structural pest control must possess a Structural Pest Control Business License for each place of said business, including each branch office. Each structural pest control business licensee shall have in his employment at all times a certified applicator.

(c) The board shall promulgate rules and regulations governing the methods and practices of structural pest control when it determines that the public's health and welfare necessitates such regulations in order to prevent adverse effects on human life and the environment. The rules and regulations relating to the use of economic poisons shall comply with applicable standards of the federal government and the state commissioner of agriculture governing the use of such substances.

(d) The board may waive all or part of any examination requirement on a reciprocal basis with any other state or federal agency which has substantially the same standards as those prescribed by the board.

(e) The board shall coordinate its computer, administrative, and licensing functions with the Department of Agriculture if the board determines that the coordination would result in the more practical and efficient performance of those functions.

(f) The board may not promulgate rules restricting advertising or competitive bidding by licensees except to prohibit false, deceptive, or misleading practices by the licensee.

(g) If a written complaint is filed with the board relating to a licensee under this Act, the board, at least as frequently as quarterly, shall notify the complainant of the status of the complaint until the complaint is finally resolved or until litigation has been initiated. All records of complaints shall be filed in the offices of the board.

(h) The board must within 31 days from the date of filing of the complaint determine whether a hearing shall be held on such complaint or whether such complaint shall be dismissed and shall notify both the person who filed the complaint and the person against whom the complaint has been filed of the board's decision.

(i) If the appropriate standing committees of both houses of the legislature acting under Subsection (g), Section 5, Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), transmit to the board statements opposing adoption of a rule under that section, the rule may not take effect, or if the rule has already taken effect, the rule is repealed effective on the date the board receives the committees' statements.

(j) In each written contract in which a licensee under this Act agrees to perform structural pest control services in this state, the licensee shall include the mailing address and telephone number of the board and a statement that the board has jurisdiction over individuals licensed under this Act.

(k) The board shall establish a public information program for the purpose of informing the public about the practice and regulation of structural pest control in this state. As part of the program, the board shall prescribe and distribute in a manner that it considers appropriate a standard complaint form and shall make available to the general public and other appropriate state agencies the information compiled as part of the program. The program shall inform prospective applicants for licensing under this Act about the qualifications and requirements for licensing.

Prohibited Acts; Work on Own or Employer's Premises

Sec. 5. (a) No person, except an individual under the direct supervision of a certified applicator, may engage in the business of structural pest control after the effective date of this Act unless he meets the standards set by the board and possesses a valid Structural Pest Control Business License issued by the board.

(b) A person without a license may, on his own premises or on the premises of an employer by whom he was hired primarily to perform other services, use insecticides, pesticides, rodenticides, fumigants, or allied chemicals or substances or mechanical devices designed to prevent, control, or eliminate pest infestations unless that use is prohibited by rule of the United States Environmental Protection Agency or unless the substance used is labeled as a restricted-use pesticide or a state-limited-use pesticide.

Application Forms; List of Study Materials and Seminars; Expiration and Renewal of Licenses; Nontransferability; Arrest and Conviction Records

Sec. 6. (a) All applications for licenses shall be made on forms prescribed and provided by the board, and each applicant shall furnish such information as the board may require for its determination of the applicant's qualifications. The board shall make public a list of study materials and educational seminars that are available to help applicants successfully complete any examination administered under this Act.

(b) All licenses issued by the board before 1981 shall expire on March 1 of each calendar year. Licenses issued by the board during or after 1981 expire on December 31 of each year or on various dates of the year as the board may determine as part of a staggered license renewal system. The board may issue a license for a period of less than one year if necessary to conform the license to a renewal system authorized by this subsection. If the board issues a license for a period of less than one year, the board shall prorate the fee for the license on a monthly basis. A person may renew a license by submitting an application to the board and paying the required renewal fees.

[See Compact Edition, Volume 3 for text of 6(c)]

(d) The Department of Public Safety shall, upon request, supply the board arrest and conviction records of individuals applying for or holding Structural Pest Control Business Licenses or Certified Applicator's Licenses.

Sec. 6A. Repealed by Acts 1979, 66th Leg., p. 1374, ch. 614, § 10, eff. Aug. 27, 1979.

Fees, New Developments; Proof of Study

Sec. 7. (a) An applicant for an initial or renewal Structural Pest Control Endorsement of License,

Business License, or a Certified Applicator's License shall accompany his application with a fee of not more than \$75 each, as determined by the board, and a fee of not more than \$20, as determined by the board, for each employee of the applicant who is engaged in structural pest control services.

(b) A licensee whose license has been lost or destroyed or whose name has been changed shall be issued a replacement license after application therefor and the payment of a fee set by the board not to exceed \$20.

(c) The board may retroactively grant a Structural Pest Control Business License or a Certified Applicator's License to the applicant for a renewal license if such applicant pays a late renewal fee of \$25 and if his application is filed with the board not more than 30 days after the expiration of his license. If such application is received between 30 and 60 days after the expiration of the applicant's license, the board may retroactively grant the renewal license when said application is accompanied by a renewal fee of \$50. An applicant who applies for a renewal license more than 60 days after the expiration of his license must be reexamined by the board to obtain a license.

(d) Each time an applicant takes a test for a license, he shall pay the board a testing fee of not more than \$25, as determined by the board, for each test taken.

(e) If the board determines that new developments in pest control have occurred that are so significant that their proper knowledge is necessary to protect the public, the board may require proof of study either by attendance of approved training courses or by taking additional examinations on the new developments only.

Security Insurance

Sec. 7A. (a) The board may not issue or renew a Structural Pest Control Business License until the license applicant:

(1) files with the board a policy or contract of insurance, approved as sufficient by the board, in an amount of not less than \$25,000 in bodily injury coverage and \$5,000 in property damage coverage insuring him against liability for damages to persons or property occurring as a result of operations performed in the course of the business of structural pest control to premises or any other property under his care, custody, or control; or

(2) files with the board a certificate or other evidence from an insurance company, in the case of an applicant who has an unexpired and uncanceled insurance policy or contract on file with the board, stating that the policy or contract insures the applicant against liability for acts and damage as described in Subdivision (1) of this subsection

and that the amount of insurance coverage is not less than \$25,000 in bodily injury coverage and \$5,000 in property damage coverage.

(b) The policy or contract shall be maintained at all times in an amount not less than \$25,000 in bodily injury coverage and \$5,000 in property damage coverage. Failure to renew the policy or contract or maintain it in the required amount is a ground for suspension or revocation of a Structural Pest Control Business License.

(c) The board by rule may require different amounts of insurance coverage for different classifications of operations under this Act.

Records by Licensee

Sec. 7B. The board may require each licensee to make records, as prescribed by the board, of his use of pesticides. Records required shall be maintained for at least two years on business premises of the licensee and shall be made available for inspection by the board and by its authorized agents during normal business hours.

Disposition of Fees; Report; Audit

Sec. 8. (a) The proceeds from the collection of the fees provided in this Act shall be deposited in a special fund in the State Treasury to be known as the Structural Pest Control Fund, and shall be used for the administration and enforcement of the provisions of this Act. Any balance in the special fund at the end of each State fiscal biennium in excess of appropriations out of that fund for the succeeding biennium shall be transferred to the general revenue fund.

(b) Before September 1 of each year, the board shall file a written report with the legislature and the governor in which the board accounts for all funds received and disbursed by the board during the preceding year.

(c) The state auditor shall audit the financial transactions of the board during each fiscal year.

License Suspension, Revocation and Refusal; Appeal

Sec. 9.

[See Compact Edition, Volume 3 for text of 9(a)]

(b) An applicant or licensee may appeal from an order or other action of the board by an action in the district court of Travis County. Notice of appeal must be filed within 30 days of issuance of the order by the board. The hearing in district court shall be governed by the substantial evidence rule.

Civil Penalties and Injunctive Relief

Sec. 10. (a) A person who violates any provision of this chapter or any rule, regulation, permit, or other order of the board is subject to a civil penalty of not less than \$50 nor more than \$1,000 for each

act of violation and for each day of violation to be recovered as provided in this chapter. Whenever it appears that a person has violated or is threatening to violate any provision of this chapter, or any rule, regulation, license, or other order of the board, then the board, or the executive director when authorized by the board, may have a civil suit instituted in a district court for injunctive relief to restrain the person from continuing the violation or threat of violation, or for the assessment and recovery of a civil penalty of not less than \$50 nor more than \$1,000 for each act of violation and for each day of violation, or for both injunctive relief and civil penalty.

(b) Upon application for injunctive relief and a finding that a person is violating or threatening to violate any provision of this chapter or any rule, regulation, license, or other order of the board, the district court shall grant the injunctive relief the facts may warrant.

(c) At the request of the board, or the executive director when authorized by the board, the attorney general shall institute and conduct a suit in the name of the State of Texas for injunctive relief or to recover the civil penalty or for both injunctive relief and penalty, as authorized in Subsection (a) of this section.

Criminal Offenses

Sec. 10A. (a) A person commits an offense if he:

- (1) violates any section of this Act;
- (2) violates regulations adopted under Section 4 of this Act; or
- (3) intentionally makes a false statement in an application for a license or otherwise fraudulently obtains or attempts to obtain a license.

(b) Each day of violation is a separate offense.

(c) An offense under this section is a Class C misdemeanor unless the person has been convicted previously of an offense under this section, in which event the offense is a Class B misdemeanor.

Exceptions

Sec. 11. The provisions of this Act shall not apply to nor shall the following persons be deemed to be engaging in the business of structural pest control:

- (1) an officer or employee of a governmental or educational agency who performs pest control services as part of his duties of employment;
- (2) a person who performs pest control work upon property which he owns, leases, or rents as his dwelling;
- (3) a nurseryman, holding a certificate from the commissioner of agriculture pursuant to Articles 126 and 126a, Revised Civil Statutes of Texas, 1925, as amended, when doing pest control work

on growing plants, trees, shrubs, grass, or other horticultural plants; and

(4) a person or his employee who is engaged in the business of agriculture or aerial application or custom application of pesticides to agricultural lands.

Board as Sole Licensing Authority

Sec. 11A. The Texas Structural Pest Control Board is the sole authority in this state for licensing persons engaged in the business of structural pest control.

Continuation Under Federal Law

Sec. 11B. The Texas Structural Pest Control Act, as amended (Article 135b-6, Vernon's Texas Civil Statutes), is to be continued in effect as improved and required under the United States Environmental Protection Agency Public Law # 92-516 (Federal Insecticide, Fungicide, and Rodenticide Act of October 21, 1972, and subsequently amended).¹

¹ 7 U.S.C.A. § 136 et seq.

[See Compact Edition, Volume 3 for text of 12]

[Amended by Acts 1975, 64th Leg., p. 2251, ch. 709, §§ 1 to 12, eff. June 21, 1975; Acts 1977, 65th Leg., p. 1452, ch. 590, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1835, ch. 735, § 2.022, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1369, ch. 614, §§ 1 to 10, eff. Aug. 27, 1979.]

Acts 1977, 65th Leg., ch. 590, amending § 5 of this article, provides in § 2 as follows:

"This Act takes effect on the date of publication of the United States Environmental Protection Agency's first list of restricted-use or prohibited-use pesticides."

Section 11 of the 1979 amendatory act provided:

"(a) A person holding office as a member of the Texas Structural Pest Control Board on the effective date of this Act continues to hold the office for the term for which the person was originally appointed.

"(b) After August 30, 1979, the governor shall appoint to the board a consumer member for a term expiring on August 30, 1980, and a consumer member for a term expiring on August 30, 1981. As the terms of the incumbent structural pest control members of the board expire, the governor shall appoint two structural pest control members to the board for terms expiring on August 30, 1980, and shall appoint two structural pest control members to the board for terms expiring on August 30, 1981."

CHAPTER SEVEN B. NOXIOUS WEEDS

Art. 135c. Districts for Control and Eradication of Noxious Weeds

Sec. 1. Repealed by Acts 1979, 66th Leg., p. 792, ch. 353, § 2, eff. Aug. 27, 1979.

Legislative Findings; Districts Authorized

Sec. 2. The Legislature hereby finds that noxious weeds are present in the state to such a degree as to constitute a menace to agriculture and to be deleterious to the proper utilization of the soil and other natural resources of the area; and reclamation of these lands from the damaging effects of noxious weeds is hereby recognized as a public right and duty in the interest of the conservation and development of the natural resources of the State, pursuant to Section 59 of Article XVI of the Constitution of Texas. Districts for the control and eradication of noxious weeds may be formed out of territory situ-

ated in one or more counties in the manner hereinafter prescribed.

[See Compact Edition, Volume 3 for text of 3 to 10]

Ballots

Sec. 11. The ballots for such election shall have printed thereon the following propositions: "For creation of the district and uniform assessment of benefits not to exceed Six Cents (6¢) per acre" and "Against creation of the district."

[See Compact Edition, Volume 3 for text of 12 and 13]

Maximum Uniform Assessment Rate; Election; District Embracing More than One County

Sec. 13a. (a) The Commissioners Court of jurisdiction in an existing Noxious Weed Control District may order an election for the purpose of submitting to the qualified property taxpaying voters residing in the district whether or not the maximum uniform assessment rate shall be increased to Six Cents (6¢) per acre. Notice of the election shall be given in accordance with Section 10 of this Act, and the election shall be conducted in accordance with the procedures set forth in Section 12 of this Act.

(b) The ballots for the election shall be printed to read as follows: "For increasing the maximum uniform assessment rate to Six Cents (6¢)" and "Against increasing the maximum uniform assessment rate."

(c) Immediately after the election, the election officers shall make returns of the result to the Commissioners Court of jurisdiction, which shall canvass the vote and declare the results of the election. If the district embraces more than one county, the Commissioners shall declare the maximum uniform assessment rate increased to Six Cents (6¢) only in the territory included in each county in which the majority of the votes cast were in favor of the increase.

[See Compact Edition, Volume 3 for text of 14 to 18]

Levy of Uniform Assessments; Assessor-Collector; Bond; Report of Chairman of Board

Sec. 19. The Board of Directors may levy an annual uniform assessment against the land within the district, not to exceed Six Cents (6¢) per acre, for the purpose of paying the expenses of the district. The Board may appoint an assessor-collector to assess and collect the assessments and may allow him as compensation an amount not to exceed five per cent (5%) of all money collected by him. He may be required to give bond in an amount to be fixed by the Board. If the Board of Directors prefers, it may contract with the county tax assessor-collector to

perform these services, and the county tax assessor-collector shall be entitled to retain five per cent (5%) of all money collected by him, which shall be accounted for as other fees of office; or the Board may appoint an assessor and contract with the county assessor-collector for collection of the tax, in which event the district assessor's compensation shall be fixed at an amount not to exceed two and one-half per cent (2½%) of the total assessments and the county assessor-collector may retain two and one-half per cent (2½%) of the amounts which he collects. The moneys collected shall be deposited in the district depository selected by the Board.

The chairman of the Board of Directors shall file an annual report with the county clerk of each county in which the district lies, before September 1 of each year, showing the total amount received and an itemized statement of the amounts expended during the preceding twelve (12) months ending June 30, together with the balance remaining on hand.

**Annual Report as to Money Received Through Assessment;
Disbursement**

*Text of § 19a added by Acts 1977, 65th Leg.,
p. 1375, ch. 547, § 4.*

Sec. 19a. (a) Before September 1 of each year, the chairman of the Board of Directors shall file a report with the Commissioner of Agriculture, specifying the total amount of money received through the assessment during the preceding 12-month period ending June 30. The Commissioner of Agriculture shall certify that amount to the Comptroller of Public Accounts.

(b) The Comptroller shall issue a warrant payable to each district in the amount certified by the Commissioner of Agriculture from funds appropriated by the Legislature for the control of noxious weeds. In the event that the funds appropriated are less than the total of all amounts certified by the Commissioner of Agriculture, each district is entitled to receive a share of the funds appropriated in proportion to the amount certified for that district.

Annual Review to Exclude Land in Crosby County

*Text of 19A added by Acts 1977, 65th Leg., p.
2017, ch. 805 § 1*

Sec. 19A. (a) The Commissioners Court of Crosby County shall establish a regular time once every calendar year to review petitions for excluding land from the district.

(b) The Commissioners Court of Crosby County shall publish notice of the hearing once a week for two consecutive weeks in one or more newspapers with general circulation in the district. The first publication shall appear at least 15 days and not more than 40 days before the date of the hearing.

(c) The notice shall advise all interested landowners of their right to present petitions for exclusions and offer evidence in support of the petition and their right to contest any proposed exclusions based on either a petition or the court's own conclusions.

(d) A landowner within the district may file a petition with the Commissioners Court requesting that land be excluded from the district. A petition for exclusion shall be filed with the court at least 10 days before the hearing and shall state clearly the reasons why the land will not benefit from inclusion in the district.

(e) After considering all evidence presented to it, if the Commissioners Court of Crosby County finds that the land described in a petition for exclusion does not benefit from inclusion in the district, the court shall declare the land excluded and shall redefine the boundaries of the district accordingly.

(f) The owner of the excluded land is not exempt from liability for any amounts due to the district prior to exclusion of the land.

(g) Land excluded from the district under this section may be included in the district at a later time after petition, notice, and hearing as provided in this section for exclusion of land from the district.

*[See Compact Edition, Volume 3 for text of 20
to 22]*

[Amended by Acts 1977, 65th Leg., p. 1375, ch. 547, §§ 1 to 4, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2017, ch. 805, § 1, eff. June 16, 1977; Acts 1979, 66th Leg., p. 792, ch. 353, §§ 1, 2, eff. Aug. 27, 1979.]

**CHAPTER NINE. SOIL AND WATER CON-
SERVATION AND PRESERVATION**

Art. 165a-4. State Soil and Water Conservation

*[See Compact Edition, Volume 3 for text of 1
to 3]*

State Soil and Water Conservation Board

Sec. 4. A. There is hereby established to serve as an agency of the State and to perform the functions conferred on it in this Act, the State Soil Conservation Board. The Board will consist of five (5) members. The five (5) elective members of the Board shall be selected as follows: The State of Texas is hereby divided into five (5) State Districts for the purpose of selecting five (5) members of the State Soil Conservation Board. These five (5) State Districts shall be composed as follows:

State District No. 1, comprising fifty-one (51) counties: Dallam, Dawson, Sherman, Hansford, Ochiltree, Lipscomb, Hartley, Moore, Hutchinson, Roberts, Hemphill, Oldham, Potter, Carson, Gray, Wheeler, Deaf Smith, Randall, Armstrong, Donley, Collingsworth, Parmer, Castro, Swisher, Briscoe, Hall, Childress, Bailey, Lamb, Hale, Floyd, Motley,

Cottle, Hardeman, Cochran, Hockley, Lubbock, Crosby, Dickens, King, Yoakum, Terry, Lynn, Garza, Kent, Stonewall, Gaines, Borden, Scurry, Fisher, Foard.

State District No. 2, comprising fifty-one (51) counties: Andrews, Martin, Howard, Mitchell, Nolan, Taylor, Runnels, Coke, Sterling, Glasscock, Midland, Ector, Winkler, Loving, Reeves, Culberson, Hudspeth, El Paso, Jeff Davis, Presidio, Brewster, Pecos, Terrell, Ward, Crane, Upton, Reagan, Irion, Tom Green, Concho, McCulloch, San Saba, Mason, Llano, Blanco, Gillespie, Crockett, Schleicher, Menard, Sutton, Kimble, Val Verde, Edwards, Real, Kerr, Kendall, Bandera, Uvalde, Medina, Kinney, Maverick.

State District No. 3, comprising fifty (50) counties: Burleson, Lee, Bastrop, Travis, Hays, Comal, Guadalupe, Caldwell, Fayette, Washington, Austin, Colorado, Lavaca, Gonzales, Wilson, Bexar, DeWitt, Jackson, Wharton, Fort Bend, Brazoria, Matagorda, Calhoun, Refugio, Bee, Karnes, Live Oak, Atascosa, McMullen, La Salle, Frio, Duval, Dimmit, Webb, Zapata, Jim Hogg, Starr, Brooks, Hidalgo, Cameron, Willacy, Kenedy, Kleberg, Nueces, San Patricio, Aransas, Jim Wells, Zavala, Goliad, Victoria.

State District No. 4, comprising fifty-one (51) counties: Lamar, Red River, Bowie, Delta, Hopkins, Franklin, Titus, Morris, Cass, Marion, Camp, Upshur, Wood, Rains, Van Zandt, Smith, Gregg, Harrison, Henderson, Cherokee, Rusk, Panola, Shelby, Nacogdoches, Anderson, Freestone, Leon, Robertson, Brazos, Madison, Grimes, Waller, Houston, Walker, Trinity, Angelina, San Augustine, Sabine, Newton, Jasper, Tyler, Polk, San Jacinto, Montgomery, Harris, Liberty, Hardin, Orange, Jefferson, Chambers, Galveston.

State District No. 5, comprising fifty-one (51) counties: Wilbarger, Wichita, Clay, Montague, Cooke, Grayson, Fannin, Hunt, Collin, Denton, Wise, Jack, Archer, Baylor, Knox, Haskell, Stephens, Throckmorton, Young, Jones, Shackelford, Palo Pinto, Rockwall, Kaufman, Ellis, Parker, Tarrant, Dallas, Johnson, Hood, Somervell, Erath, Eastland, Callahan, Coleman, Brown, Comanche, Mills, Hamilton, Bosque, Hill, Navarro, Limestone, McLennan, Falls, Milam, Bell, Williamson, Burnet, Lampasas, Coryell.

[See Compact Edition, Volume 3 for text of 4, B and C]

D. Each member of the State Soil and Water Conservation Board shall take the state constitutional oath of office, and said State Soil and Water Conservation Board shall designate one of its elective members to serve as chairman.

Vacancies upon such board shall be filled for an unexpired term or for a full term, by the same manner in which the retiring members were respec-

tively elected. Elective members of the board may receive compensation for their services on the board, not to exceed the sum of \$100 per diem for each day of actual service rendered, but each member shall be entitled to expenses, including traveling expenses, necessarily incurred in the discharge of his duties as a member of the board.

[See Compact Edition, Volume 3 for text of 4, E to H]

I. The State Soil Conservation Board is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1985.

¹ Article 5429k.

[See Compact Edition, Volume 3 for text of 5]

Method of Selection, Qualifications, Tenure and Compensation of Soil and Water Conservation District Directors

Sec. 6.

[See Compact Edition, Volume 3 for text of 6(a) to (g)]

(h) A majority of the directors shall constitute a quorum and the concurrence of a majority of the directors in any matter within their duties shall be required for its determination. A director may receive compensation for services not to exceed \$30 for each day he shall be in attendance at the meetings of the board of directors, and 18 cents per mile for travel each way between the residence of a director and the designated meeting place of the directors within the boundaries of the district. Directors shall be paid quarterly for their services, and may not receive compensation and mileage for any number of days in excess of five in any three-month period, except that two members of each board of directors shall be entitled to receive \$30 per day not to exceed two days, and one member shall be entitled to receive 18 cents per mile, while attending an annual state-wide meeting of directors to be held at a time and place to be determined by the State Soil Conservation Board. The delegate or the alternate, if the delegate does not attend, is entitled to a per diem allowance of \$30 a day for not more than two days and 18 cents per mile each way for travel to the district convention.

[See Compact Edition, Volume 3 for text of 6(i) to 13]

[Amended by Acts 1975, 64th Leg., p. 156, ch. 66, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1845, ch. 735, § 2.097, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 27, ch. 17, § 1, eff. March 15, 1979; Acts 1979, 66th Leg., p. 318, ch. 147, § 1, eff. May 11, 1979.]

Art. 165a-10. Funds; Powers and Duties of Supervisors; Discontinuance of Districts; Conventions

[See Compact Edition, Volume 3 for text of 1]

Deposit and Withdrawal of Funds

Sec. 2. The Soil Conservation Funds so appropriated to Conservation Districts shall be deposited in State or National Banks or Savings and Loan Associations in demand or time accounts, including interest-bearing accounts, or shall be used to purchase certificates of deposit at these financial institutions. The funds shall be withdrawn upon approval of the Board of Supervisors of a District by checks or orders signed by the Chairman and Secretary of the Board of Supervisors of the District.

[See Compact Edition, Volume 3 for text of 3 to 10]

[Amended by Acts 1979, 66th Leg., p. 1738, ch. 711, § 1, eff. Aug. 27, 1979.]

CHAPTER TEN. MILK PRODUCERS AND DISTRIBUTORS

Art. 165-3. Milk Grading and Pasteurization

Definitions

Sec. 1. The following definitions shall apply in the interpretation and enforcement of this Act:

A. Sanitization. Sanitization is the application of any effective method or substance to a clean surface for the destruction of pathogens, and of other organisms as far as is practicable. Such treatment shall not adversely affect the equipment, the milk or milk product or the health of consumers, and shall be acceptable to the health authority.

B. Milk Producer. A milk producer is any person who operates a dairy farm and provides, sells, or offers milk for sale to a milk plant, receiving station, or transfer station.

C. Milk Hauler. A milk hauler is any person who transports raw milk and/or raw milk products to or from a milk plant, a receiving or transfer station.

D. Milk Distributor. A milk distributor is any person who offers for sale or sells to another any milk or milk products.

E. State Health Officer. The term "State Health Officer" shall mean the Commissioner of Health of the State of Texas.

F. Health Authority. The health authority shall mean the State Health Officer or his representative. The term "Health Authority", wherever it appears in these specifications and requirements, shall mean the appropriate agency having jurisdiction and control over the matters embraced within these specifications and requirements.

G. Dairy Farm. A dairy farm is any place or premises where one or more cows or goats are kept, and from which a part or all of the milk or milk product(s) is provided, sold, or offered for sale to a milk plant, transfer station, or receiving station.

H. Milk Plant and/or Receiving Station. A milk plant and/or receiving station is any place, premises, or establishment where milk or milk products are collected, handled, processed, stored, pasteurized, bottled, or prepared for distribution.

I. Transfer Station. A transfer station is any place, premises, or establishment where milk or milk products are transferred directly from one transport tank to another.

J. Official Laboratory. An official laboratory is a biological, chemical, or physical laboratory which is under the direct supervision of the State Health Officer or of the officer's designated representative.

K. Officially Designated Laboratory. An officially designated laboratory is a commercial laboratory authorized to do official work by the supervising agency, or a milk industry laboratory officially designated by the supervising agency for the examination of producer samples of Grade "A" raw milk for pasteurization.

L. Person. The word "person" shall mean any individual, plant operator, partnership, corporation, company, firm, trustee, or association.

State Health Officer to Fix Specifications; Fees for Movement, Distribution or Sale; Tests or Inspections by Political Subdivisions

Sec. 2. (a) The State Health Officer is hereby authorized and empowered to define what shall constitute Grade "A" raw milk, Grade "A" raw milk products, Grade "A" pasteurized milk, and Grade "A" pasteurized milk products and to fix specifications, rules or regulations for the production and handling of such milk and milk products, according to the safety and food value of the same and the sanitary conditions under which the same are produced and handled. Such definitions, specifications, rules or regulations shall be based upon and shall be in general harmony with (but need not be identical to) the definitions, specifications, rules or regulations relating to such milk and milk products set forth in the most recent federal definitions, specifications, rules and regulations. Such definitions, specifications, rules or regulations shall be set forth in specifications, rules or regulations promulgated by the State Health Officer in accordance with the procedures prescribed by Section 2A hereof.

(b) No political subdivision or agency of this State other than the Texas Department of Health may impose a license fee on any milk or milk product or on any person for the movement, distribution, or sale

of any milk or milk product. The Texas Department of Health may impose only the following fees for the movement, distribution, or sale of milk or milk products:

- (1) a permit fee not to exceed \$25 a year for a producer dairy farm;
 - (2) a permit fee not to exceed \$100 a year for a processing or bottling plant;
 - (3) a permit fee not to exceed \$100 for a receiving and transfer station; and
 - (4) a permit fee not to exceed \$50 a year for a milk transport tanker.
- (c) A city, county, or other political subdivision may test or inspect milk or milk products, but the political subdivision shall bear the cost of any testing or inspection that it performs.

(d) The State Health Officer may contract with a county or incorporated city to inspect milk and milk products and, to the extent designated by the State Health Officer, to perform other regulatory functions necessary to enforce this Act. A county or incorporated city is the agent of the State Health Officer in performing duties under this subsection.

Notice and Hearing; Emergency Specifications; Advice;
Filing Copy; Effective Date

Sec. 2A. Prior to the adoption, amendment, or repeal of any specification, rule or regulation, the State Health Officer shall:

(1) give at least sixty (60) days notice of his intended action. The notice shall include a statement of either the expressed terms or an informative summary of the proposed action, and the time when, the place where, and the manner in which interested persons may present their views thereon. The notice shall be published not less than forty-five (45) nor more than sixty (60) days prior to such intended action in a newspaper of general circulation in Travis County and in each of the five most populous counties in Texas, according to the latest U. S. Census. In addition, the notice is to be mailed to all persons who have made timely written requests of the agency for advance notice of its specification, rule or regulation making proceedings; provided, however, that failure to mail such notice shall not invalidate any actions taken or specifications, rules or regulations adopted; and

(2) afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. Opportunity for oral argument must be granted if requested by twenty-five persons, by a governmental subdivision or agency, or by an association having not less than twenty-five members. The State Health Officer shall consider fully all written and oral submissions respecting the proposed specification, rule or regulation. Upon adoption of a specification, rule or

regulation, the State Health Officer, if requested to do so by an interested person either prior to adoption or within thirty (30) days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption.

(3) If the State Health Officer finds that an imminent peril to the public health, safety, or welfare requires adoption of a specification, rule or regulation upon fewer than sixty (60) days notice and states in writing his reasons for that find, he may proceed without prior notice or hearing or upon any abbreviated notice and hearing that he finds practicable, to adopt an emergency specification, rule or regulation. The specification, rule or regulation may be effective for a period of not longer than one hundred twenty (120) days renewable once for a period not exceeding sixty (60) days, but the adoption of an identical specification, rule or regulation under Subsections (a)(1) and (a)(2) of this section is not precluded.

(4) No specification, rule or regulation hereafter adopted is valid unless adopted in substantial compliance with this section. A proceeding to contest any specification, rule or regulation on the ground of noncompliance with the procedural requirements of this section must be commenced within two (2) years from the effective date of the specification, rule or regulation.

(5) The State Health Officer may use informal conferences and consultations as means of obtaining the viewpoints and advice of interested persons with respect to contemplated specification, rule or regulation making. The State Health Officer is also authorized to appoint committees of experts or interested persons or representatives of the general public to advise him with respect to contemplated specification, rule or regulation making. The powers of such committees shall be advisory only.

(6) The State Health Officer shall file with the Secretary of State a certified copy of each specification, rule or regulation adopted by him and shall mail a printed copy of each specification, rule or regulation adopted by him to all County and City Health Officers.

(7) Each specification, rule or regulation adopted is effective forty-five (45) days after filing except that: (1) a later date specified in the specification, rule or regulation shall be the effective date; and (2) subject to applicable constitutional or statutory provisions, an emergency specification, rule or regulation becomes effective immediately upon filing, or at a stated date after filing, if the State Health Officer finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare.

(8) Specifications, rules or regulations filed with the Secretary of State shall be made available upon request to any person at prices fixed by the Secretary of State to cover costs of mailing, publication and copying.

[See Compact Edition, Volume 3 for text of 2B and 2C]

Permits for Use of Labels in Advertising or Labeling Milk

Sec. 3. Any person, firm, association or corporation desiring to use Grade "A" labels in representing, publishing or advertising any milk or milk products offered for sale or to be sold within this State, shall make application for a permit to the State Health Officer or the officer's designated representative to use any such label in advertising, representing, or labeling such milk or milk products.

The State Health Officer or the officer's designated representative, after receiving such application as provided for in this section, is hereby authorized and empowered to take the necessary steps to determine and award the grade of the milk or milk products offered for sale by such applicant, according to the requirements of this Act for grade labels. The State Health Officer shall maintain a list of the name or names of all applicants to whom he has awarded permission to use Grade "A" labels, and shall remove from the list the names of persons whose permits have been revoked.

Milk to Conform to Marked Grades; Ordinances Allowing Only Pasteurized Milk and Milk Products

Sec. 4. (a) No milk or milk products sold, produced or offered for sale within this State by any person, firm, association or corporation shall carry a label, device or design marked "Grade A", or any other grade, statement, design or device, regarding the safety, sanitary quality or food value of the contents of the container which is misleading or which does not conform to the definitions and requirements of this Act.

(b) No milk or milk products, except those produced or processed by a person, firm, association or corporation having a permit to use a Grade "A" label under the provisions of this Act and which are produced, treated and handled in accordance with the specifications and requirements fixed and promulgated by the State Health Officer for Grade "A" milk and milk products, shall be represented, published, labeled or advertised as being Grade "A" milk or Grade "A" milk products.

(c) No person may sell to a consumer milk or a milk product labeled Grade "A" that has not been produced or processed by a person who has a Grade "A" permit from the State Health Officer.

(d) An incorporated city or town may by ordinance allow only pasteurized milk and pasteurized

milk products to be sold at retail within the city or town.

[See Compact Edition, Volume 3 for text of 5]

Regulation of Grading and Labeling by State Health Officer; Procedure for Review of Grievance

Sec. 6. (a) The State Health Officer is hereby authorized and empowered to supervise and regulate the grading and labeling of milk and milk products in conformity with the standards, specifications and requirements which he promulgates for such grades, and in conformity with the definitions of this Act; and he and his representatives shall have the power to revoke and re-grade permits when upon examination he or his representative shall find that such permit for the use of any grade label does not conform to the specifications or requirements promulgated by him in conformity to this Act.

(b) The State Health Officer shall establish a procedure by which a person aggrieved by the application of an agency rule or the denial of a license may receive a hearing on the action in question under the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

Sec. 7. Repealed by Acts 1979, 66th Leg., p. 364, ch. 161, § 3, eff. May 15, 1979.

Sampling, Testing and Inspection of Grade "A" Milk and Milk Products

Sec. 7A. It shall be the duty of the State Health Officer or his representative to sample, test, or inspect Grade "A" pasteurized milk and milk products, or Grade "A" raw milk and milk products for pasteurization delivered to any milk plant and/or receiving station, or other place of delivery. Grade "A" pasteurized milk or Grade "A" raw milk for pasteurization which comes from beyond the limits of inspection of this State shall be sampled, tested and/or inspected in order to determine if such Grade "A" pasteurized milk and milk products or Grade "A" raw milk and milk products for pasteurization meets the standards and requirements of the Texas State Department of Health relating to milk and milk products. Such sampling, testing, and inspection of Grade "A" pasteurized milk and milk products or Grade "A" raw milk and milk products for pasteurization shall include, in addition to any other tests that may be required, the following:

- (1) plate count or direct microscopic count;
- (2) antibiotics;
- (3) sediments;
- (4) phosphatase;
- (5) checks for water or any elements foreign to the natural contents of Grade "A" pasteurized milk or milk products or Grade "A" raw milk or milk products for pasteurization as defined in this Act.

[See Compact Edition, Volume 3 for text of 8]
 [Amended by Acts 1975, 64th Leg., p. 63, ch. 35, § 1, eff. April 3, 1975; Acts 1979, 66th Leg., p. 362, ch. 161, §§ 1 to 3, eff. May 15, 1979.]

CHAPTER ELEVEN. COTTON

Article

165-4c. Registration of Cotton Buyers.

Art. 165-4a. National Fibers and Food Protein Commission

[See Compact Edition, Volume 3 for text of 1]

Creation of Commission; Duties

Sec. 2. The Natural Fibers and Food Protein Commission, composed of the president or successor of The Texas A & M University System, the president of The University of Texas at Austin, the president of Texas Tech University, and the president of Texas Woman's University, is hereby created and established to cause surveys, research and investigations to be made relating to the utilization of the cotton fiber, cottonseed, wool, mohair, oilseed products, other textile products, and other products of the cotton plant, with authority to contract with any and all State and Federal Agricultural Agencies and Departments of the state, and all State Educational Institutions and State Agencies to perform any such services for the commission and for the use of their respective available facilities, as it may deem proper, and to compensate such Agencies, Departments and Institutions, to be paid from money appropriated by the Legislature for the purposes of this Act, which appropriations of moneys for research of cotton, wool, mohair, oilseed products and other products of the cotton plant or other textile products are hereby authorized; grants and gifts from the United States or private sources may be accepted for such purposes, and shall be subject only to limitations contained in such grants or gifts.

Sec. 2a. Repealed by Acts 1975, 64th Leg., p. 1935, ch. 632, § 2, eff. Sept. 1, 1975.

Application of Sunset Act

Sec. 2b. The Natural Fibers and Food Protein Commission is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1987.

¹ Article 5429k.

[See Compact Edition, Volume 3 for text of 3]

Chairman; Meetings; Liaison Officer; Executive Director

Sec. 4. The Natural Fibers and Food Protein Commission shall elect a chairman to serve for a period of two years. The commission shall meet at least once each year at a time specified by the chairman. Each member of the commission shall

designate a member of his staff as a liaison officer to work with committees and staff members of the commission and agencies, departments, and institutions consulting or contracting with the commission in the daily operations of the work of the commission. The commission may employ an executive director to coordinate the operations of committees and staff members and oversee the research being done for the commission by consulting and contracting agencies, departments, and institutions.

Natural Fibers Committee; Food Protein Committee

Sec. 5. (a) The chairman, with the approval of the commission, shall appoint not more than 25 persons to a natural fibers committee. Persons appointed to the committee must be representative of the interests of persons in the natural fibers industry. Members of the committee serve for two-year terms ending on the last day of the state fiscal year in each odd-numbered year. The committee annually shall elect a chairman. The committee shall meet in January and July of each year at a time specified by the committee chairman for the purposes of (1) reviewing research being done for the commission in areas involving natural fibers, and (2) making annual recommendations to the commission for implementation of programs and further research. A majority of the membership of the committee constitutes a quorum for the purpose of conducting a meeting.

(b) The chairman shall, with the approval of the commission, appoint not more than 25 persons to a food protein committee. Persons appointed to the committee must be representative of the interests of persons in the food protein industry. Members of the committee serve for two-year terms ending on the last day of the state fiscal year in each odd-numbered year. The committee annually shall elect a chairman. The committee shall meet in January and July of each year at a time specified by the committee chairman for the purposes of (1) reviewing research being done for the commission in areas involving food protein, and (2) making annual recommendations to the commission for implementation of programs and further research. A majority of the membership of the committee constitutes a quorum for the purpose of conducting a meeting.

Executive Committee

Sec. 6. The chairman shall, with the approval of the commission, appoint five persons to an executive committee. One person shall be representative of the wool industry; one of the mohair industry; two of the cotton industry; and one of the food protein industry. Appointed members of the committee serve for two-year terms ending on the last day of the state fiscal year in each odd-numbered year. In addition to the appointed members, the committee consists of the chairmen of the natural fibers and

food protein committees. The executive committee annually shall elect a chairman. The committee shall meet semiannually at a time specified by the committee chairman. Special meetings may be authorized or called by the chairman of the commission. At its meetings the committee shall review the work of the commission and advise the commission on matters relating to programs and budgets. A majority of the membership of the committee constitutes a quorum for the purpose of conducting a meeting.

[Amended by Acts 1975, 64th Leg., p. 1934, ch. 632, §§ 1 to 3, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1850, ch. 735, § 2.127, eff. Aug. 29, 1977.]

Art. 165-4c. Registration of Cotton Buyers

Definitions

Sec. 1. In this Act:

(1) "Commissioner" means the commissioner of agriculture.

(2) "Cotton producer" means a person who grows cotton.

(3) "Cotton buyer" means a person who buys cotton from a producer on a forward contract.

(4) "Person" means an individual, association, partnership, corporation, or other private entity.

Registration Required

Sec. 2. (a) No person may purchase cotton on a forward contract from a cotton producer without first having registered with the commissioner as a cotton buyer.

(b) A registration under this section is valid for a period of one year after the date of registration.

Applications

Sec. 3. (a) Each person who wants to engage in activities in this state which require registration under this Act shall file with the commissioner an application for registration.

(b) The application must include:

(1) the name and address of the applicant; and

(2) the name of each trade association relating to cotton producing and marketing of which the applicant is a member.

(c) The applicant shall submit with each application an application fee of \$25.

Registration Permitted

Sec. 4. No later than 30 days after the filing of an application for registration as a cotton buyer, the commissioner shall register the applicant.

Information

Sec. 5. The commissioner shall publish a list of all registered cotton buyers and shall provide a copy of the list to interested persons without charge. The list may include the number of years that the person has been registered in this state as a cotton buyer.

Penalty

Sec. 6. (a) It is an offense to violate Subsection (a), Section 2 of this Act.

(b) An offense under this section is a Class C misdemeanor.

Disposition of Funds

Sec. 7. All funds collected under this Act shall be deposited in the state treasury and shall be used for the purpose of administering and enforcing this Act.

Effective Date

Sec. 8. All provisions of this Act take effect January 1, 1976.

[Acts 1975, 64th Leg., p. 1863, ch. 584, §§ 1 to 8, eff. Jan. 1, 1976.]

CHAPTER FOURTEEN. POULTRY

Article

165-7a. Application of Sunset Act.

Art. 165-7a. Application of Sunset Act

The Poultry Improvement Board is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1987. [Added by Acts 1977, 65th Leg., p. 1849, ch. 735, § 2.123, eff. Aug. 29, 1977.]

¹ Article 5429k.

CHAPTER FIFTEEN. CHICKEN EGGS

Art. 165-8. Handling and Sale of Chicken Eggs

[See Compact Edition, Volume 3 for text of 1 to 17a]

Sec. 18. Repealed by Acts 1979, 66th Leg., p. 48, ch. 28, § 1, eff. April 3, 1979.

[See Compact Edition, Volume 3 for text of 19 and 20]

[Amended by Acts 1979, 66th Leg., p. 48, ch. 28, § 1, eff. April 3, 1979.]

CHAPTER SIXTEEN. FORESTS

Art. 165-9. Repealed by Acts 1977, 65th Leg., p. 2690, ch. 871, art. I, § 2(a)(4), eff. Sept. 1, 1977.

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Natural Resources Code.

TITLE 7

ANIMALS

1. CRUELTY TO ANIMALS

Article

182a. Disposition of Cruelly Treated Animals.

1. CRUELTY TO ANIMALS

Art. 182a. Disposition of Cruelly Treated Animals

Sec. 1. In this Act "cruelly treated" means tortured, seriously overworked, unreasonably abandoned, unreasonably deprived of necessary food, care, or shelter, cruelly confined, caused to fight with another animal, or otherwise cruelly treated.

Sec. 2. (a) If a county sheriff or an officer who has responsibility for animal control in an incorporated city or town has reason to believe that an animal has been or is being cruelly treated, he may apply to a justice court in the county where the animal is located for a warrant to seize the animal. On a showing of probable cause to believe that the animal has been or is being cruelly treated, the court shall issue the warrant and set a time within 10 days for a hearing in the court to determine whether the animal has been cruelly treated. The officer executing the warrant shall cause the animal to be impounded and shall give written notice to the owner of the animal of the time and place of the justice court hearing.

(b) If the owner of the animal is found guilty in county court of a violation of Section 42.11, Penal Code, involving the animal, this finding is prima facie evidence at the hearing that the animal has been cruelly treated. Statements of an owner made at a hearing provided for in this Act are not admissible in a trial of the owner for a violation of Section 42.11, Penal Code. After all interested parties have been given an opportunity to present evidence at the hearing, if the court finds that the owner of an animal has cruelly treated the animal, the court shall order a public sale of the animal by auction. If the court does not find that the owner of the animal has cruelly treated the animal, the court shall order the animal returned to the owner.

Sec. 3. (a) Notice of an auction ordered as provided in this Act must be posted on a public bulletin board where other public notices are posted for the city, town, or county. At the auction, a bid by the former owner of the animal or his representative may not be accepted.

(b) Proceeds from the sale of the animal shall be applied first to the expenses incurred in caring for the animal during impoundment and in conducting the auction. The officer conducting the auction shall pay any excess proceeds to the justice court ordering the auction. The court shall cause the excess proceeds to be returned to the former owner of the animal.

(c) If the officer is unable to sell the animal at auction, he may cause the animal to be destroyed or may give the animal to a nonprofit animal shelter, pound, or society for the protection of animals.

Sec. 4. An owner of an animal ordered sold at public auction as provided in this Act may appeal the ruling by giving notice of appeal in justice court within 10 days of the hearing. Appeal is by means of a hearing in county court in the county where the animal was impounded. At the hearing in county court, the court may assess costs of the hearing. During the pendency of an appeal under this section the animal shall not be sold, destroyed, or given away as provided in Sections 2 and 3 of this Act. [Acts 1975, 64th Leg., p. 197, ch. 77, §§ 1 to 4, eff. Sept. 1, 1975.]

Arts. 183 to 185. Repealed by Acts 1975, 64th Leg., p. 197, ch. 77, § 5, eff. Sept. 1, 1975

See, now, art. 182a.

Arts. 187 to 189. Repealed by Acts 1975, 64th Leg. p. 197, ch. 77, § 5, eff. Sept. 1, 1975

See, now, art. 182a.

TITLE 8

APPORTIONMENT

REPRESENTATIVE DISTRICTS

Article

- 195a-4. Representative Districts.
195a-5. Representative Districts 72A and 72B.
195a-6. Representative Districts 32C and 32D.

CONGRESSIONAL DISTRICTS

- 197e. Congressional Districts.

REPRESENTATIVE DISTRICTS

Arts. 195a to 195a-2. Repealed by Acts 1975, 64th Leg., p. 2368, ch. 727, § 4, eff. June 21, 1975

Section 5 of Acts 1971, 62nd Leg., p. 2980, ch. 981, also purported to repeal these articles. However, ch. 981 was held unconstitutional in its entirety by the Texas Supreme Court in Smith v. Craddick (Sup.1971) 471 S.W.2d 375. See, now, art. 195a-4.

Art. 195a-3. Unconstitutional

This article was held invalid as violative of Const. art. 3, § 26, in Smith v. Craddick (Sup.1971) 471 S.W.2d 375.

Art. 195a-4. Representative Districts

Sec. 1. The Representative Districts of the State of Texas shall be composed respectively of the following counties or defined areas, and each district shall be entitled to elect one representative except as otherwise provided herein:

1. Bowie County and that part of Red River County included in census enumeration districts 1, 2, 3, 4, 5, 6, 7, 8, 8B, 9, 9B, 10, 11, 14, and 23.
2. Cass, Marion, Morris, and Upshur counties and that part of Smith County included in census tracts 15 and 17 and census enumeration districts 124, 125, 126, 127, 128, 129, 130, 132, 133, and 134.
3. Harrison and Rusk counties.
4. Nacogdoches, Panola, and Shelby counties.
5. Hardin and Jasper counties and that part of Jefferson County included in census tracts 114 and 115, that part of census tract 1 west of Bi Canal, that part of census tract 3 included in block groups 6 and 7 and block tracts 503, 504, 505, 506, 507, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 521, 522, 523, 524, 525, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 812, 813, and 817, that part of census tract 113 west of Hillebrandt Bayou except enumeration district 210, that part of census tract 13 included in block group 5 and block tracts 422, 426, 601, 602, 603, 604, 605, 606, 607, 609, 610, 611, 622, 623, 624, 625, 901, 903, 904, 905, 906, 910, and 924 and enumeration district 204, and census tract 116 except enumeration district 229.

6. Angelina, Newton, Sabine, and San Augustine counties.

7A. That part of Jefferson County included in census tracts 2, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, and 108, that part of census tract 1 east of Bi Canal, that part of census tract 3 included in block group 1 and block tracts 201, 202, 203, 204, 205, 219, 220, 221, 222, 905, 906, and 908 and enumeration district 203, that part of census tract 4 included in block tracts 101, 103, 104, 105, 106, 108, 109, 111, 113, 114, 115, and 116, that part of census tract 24 east of Avenue "A," that part of census tract 25 not included in district 7B, that part of census tract 26 north of U. S. Highway 287, that part of census tract 112 not included in districts 7B or 7C, that part of census tract 110.02 east of State Highway 347, that part of census tract 111.02 east of State Highway 347, and that part of census tract 109 not included in district 7C.

7B. That part of Jefferson County included in census tracts 11, 12, 14, 20, 21, 22, 23, 69, 70, 71, 110.01, and 111.01, that part of census tract 3 not included in districts 5 or 7A, that part of census tract 4 not included in district 7A, that part of census tract 13 not included in district 5, that part of census tract 24 west of Avenue "A," that part of census tract 25 included in block tracts 117, 118, 119, 201, 202, 401, 402, 403, 404, 405, 406, 407, 411, 412, 413, 414, 419, and 426, that part of census tract 26 south of U. S. Highway 287, that part of census tract 110.02 west of State Highway 347, that part of census tract 111.02 west of U. S. Highway 347, that part of census tract 113 east of Hillebrandt Bayou and enumeration district 210, that part of census tract 116 included in enumeration district 229, and that part of census tract 112 west of U. S. Highway 347.

7C. That part of Jefferson County included in census tracts 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 101, 102, 103, 104, 105, 106, and 107, that part of census tract 109 included in block group 3, and that part of census tract 112 included in enumeration districts 212, 228, and 214, and block tracts 101, 102, 103, 104, 105, 106, 936, 937, 938, and 939, and the remaining part of enumeration district 215 south of Main Street.

8. Orange County.

9. Camp, Delta, Franklin, Lamar, and Titus counties and that part of Red River County included in census enumeration districts 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 24, and 25.

10. Hopkins, Hunt, and Rains counties.
11. Kaufman, Van Zandt, and Wood counties.
12. That part of Smith County included in census tracts 1, 2.01, 2.02, 3, 4, 5, 6, 7, 8, 9, 10, 11.01, 11.02, 12, 13, 14, 16 and census enumeration districts 63, 64, 97, 98, 99, 131, 135, 136, 137, 138, 147, 148, 149, 150, 151, 152, 153, and 154.
13. Gregg County.
14. Anderson, Freestone, and Henderson counties and that part of Smith County included in census tract 21 and census enumeration districts 139, 155, 156, 157, 158, 159, 160, 161, 162, 163, 163B, and 164.
15. Cherokee, Houston, Leon, and Limestone counties.
16. Liberty, Polk, San Jacinto, Trinity, and Tyler counties.
17. Chambers County, that part of Harris County included in census tracts 359, 360, 362, 363, 365, 366, 367, 368, 369, and 370, and that part of Galveston County included in census tracts 1205, 1206, 1208, 1209, 1210, 1211, and 1217, that part of census tract 1255 West of the Houston Ship Channel and North of the Texas City Dike and a line extending from the Texas City Dike to the Houston Ship Channel, that part of census tract 1216 included in census block tracts 101, 102, 103, 104, 105, 106, 107, 108, 109, 902, 913, 920, 921, 922, 923, 924, 925, and that part of census block tracts 914 and 919 East of the Galveston, Houston and Henderson Railroad, that part of census tract 1213 East of State Highway 3, that part of census tracts 1204 and 1207 not included in district 19B, and that part of census tract 1212 East of State Highway Highway 3 and South of Deats Road.
18. Montgomery and Walker counties.
- 19A. That part of Galveston County included in census tracts 1220, 1221, 1222, 1230, 1231, 1232, 1233, 1235, 1236, 1237, 1238, 1239, 1240, 1241, 1242, 1249 and 1254, that part of census tract 1216 included in census block groups 2 and 3 and census block tracts 110, 113, 114, 115, 116, 117, 118, 901, 903, and that part of census block tract 904 East of the Galveston, Houston and Henderson Railroad, that part of census tract 1219 included in that part of census block group 1 East of the Galveston, Houston and Henderson Railroad and census block tracts 201, 202, and 203, and that part of census block tract 204 East of the Galveston, Houston and Henderson Railroad, that part of census tract 1234 included in census block groups 1 and 2 and census block tracts 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 314, 315, 316, 317, 318, 319, and 320, and that part of census block tracts 321 and 313 East of the extension of 43rd Street South to the county line, that part of census tract 1243 included in census block tracts

101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, and 316, that part of census tract 1245 included in census block tracts 101, 102, 103, 104, 105, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 120, 121, 122, 123, and 124, that part of census tract 1247 included in census block group 1 and census block tracts 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, and 220, that part of census tract 1248 included in census block group 1, that part of census tract 1255 East of the Houston Ship Channel and South of the Texas City Dike and a line extending from the Texas City Dike to the Houston Ship Channel.

19B. That part of Galveston County included in census tracts 1201, 1202, 1203, 1214, 1215, 1218, 1223, 1224, 1225, 1226, 1227, 1228, 1229, 1244, 1246, 1250, 1251, 1252, and 1253, that part of census tract 1213 West of State Highway 3, that part of census tract 1216 included in census block tracts 905, 906, 907, 908, 909, 910, 911, 912, 915, 916, 917, and 918 and that part of census block tracts 904, 914, and 919 West of the Galveston, Houston and Henderson Railroad, that part of census tract 1219 included in census block groups 3, 4, 5, 6, and 9 and census block tracts 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, and 219 and that part of census block tracts 117 and 204 West of the Galveston, Houston and Henderson Railroad, that part of census tract 1243 included in census block tracts 117, 118, 119, 201, 202, 214, 215, and 301, that part of census tract 1245 included in census block group 2 and census block tracts 106, 107, 118, and 119, that part of census tract 1248 included in census block groups 2, 3, and 4, that part of census tract 1247 included in census block groups 3 and 4 and census block tracts 221 and 222, that part of census tract 1234 included in census block tracts 322, 323, 324, and that part of census block tracts 321 and 313 West of the extension of 43rd Street South to the county line, that part of census tract 1204 South and East of a line beginning with the intersection of U. S. Highway 75 and the South boundary line of the S. F. Austin League survey, then East and North along the S. F. Austin League survey to the boundary line of the Michael Muldoon survey, then East along the Michael Muldoon survey to a point where it intersects the Galveston, Houston and Henderson Railroad, and that part of census tract 1207 South of the South boundary line of the Michael Muldoon survey, and that part of census tract 1212 not included in district 17.

20. That part of Brazoria County not included in districts 21 and 31.

21. Fort Bend County and that part of Brazoria County included in census enumeration districts 1, 1B, 1C, 2, 2B, 3, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 47, 48, 50, 54, 78, 79, 86, 87, 88, 89, 90, 98, 99, and 102.

22. That part of Grayson County not included in district 23.

23. Cooke, Fannin, and Wise counties and that part of Grayson County included in census tracts 18 and 19.

24. Collin and Rockwall counties.

25. Denton County.

27. Ellis and Navarro counties.

28. Brazos and Robertson counties.

29. Austin, Burleson, Grimes, Madison, Waller, and Washington counties.

30. Bastrop, Colorado, Fayette, Gonzales, and Lee counties.

31. Matagorda and Wharton counties and that part of Brazoria County included in census enumeration districts 91, 92, 93, 94, 97, 100, 101, 103, 104A, 106, 107, 108, 160, and 160B.

32A. That part of Tarrant County included in census tracts 130, 131, 134.01, 134.02, 135.01, 135.02, 136.02, 137, 217.02, and 218, that part of census tract 65.05 East of the Handley-Ederville Road, and that part of census tract 136.01 included in census enumeration district 129 South of State Highway 121 and census block groups 3, 4, and 5.

32B. That part of Tarrant County included in census tracts 115.01, 115.02, 217.01, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, and 229.

32C.¹ That part of Tarrant County included in census tracts 42.02, 54.01, 54.02, 55.01, 55.02, 55.03, 55.04, 56, 57.01, 57.02, 58, 59, 60.01, 60.02, 111.01, and 111.02, that part of census tract 47 South of Gambrell Street, that part of census tract 109 South of U. S. Highway 377 and South of Old Benbrook Road, and that part of census tract 110.02 North of Sycamore School Road.

32D.¹ That part of Tarrant County included in census tracts 22, 23.01, 23.02, 24.01, 24.02, 25, 26, 27, 51, 52, 53, 106.02, 107.01, and 107.02 and that part of census tract 109 North of U. S. Highway 377 and North of Old Benbrook Road.

32E. That part of Tarrant County included in census tracts 2.01, 2.02, 3, 4, 5.01, 5.02, 6, 50.01, 50.02, 50.03, 66, 67, 104.01, 104.02, 106.01, 139, 140.01, and 140.02, that part of census tract 105 North of River Oaks Boulevard, that part of census tract 141 included in census enumeration district 47, that part of census tract 9 included in census block tracts 101, 102, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 119, 202, 203, 206, 306, 307, 308, 309, 310, 315, 316, 317, 318, 405,

406, 407, 414, 415, and 416, and that part of census tract 138 North of a line formed by Watauga-Smithfield County Line Road, Whitley Road, and Prewett Road.

32F. That part of Tarrant County included in census tracts 1.01, 1.02, 49, 101, 102, 132.01, 132.02, 133.01, and 133.02, that part of census tract 12.02 North of Galvez Street, that part of census tract 103 West of Haltom Road, that part of census tract 12.01 included in block groups 1 and 2, that part of census tract 136.01 included in census enumeration districts 9A, 9B, 9C, 12, 14, 39, and 39B and that part of census enumeration district 129 North of State Highway 121, and that part of census tract 138 South of a line formed by Watauga-Smithfield County Line Road, Whitley Road, and Prewett Road.

32G. That part of Tarrant County included in census tracts 11, 14.01, 14.02, 14.03, 15, 16, 17, 35, 37.01, 46.01, 64, 65.01, 65.02, 65.03, 65.04, 216.01, 216.02, and 216.03, that part of census tract 12.02 South of Galvez Street, that part of census tract 13 North of the Texas and Pacific Railway, that part of census tract 37.02 West of Miller Road, that part of census tract 65.05 West of Handley-Ederville Road, that part of census tract 103 East of Haltom Road, and that part of census tract 12.01 not included in district 32F.

32H. That part of Tarrant County included in census tracts 32, 33, 34, 36.01, 36.02, 38, 39, 45.01, 45.03, 46.02, 46.03, 46.04, 46.05, 61.01, 61.02, 62, and 63, that part of census tract 13 South of the Texas and Pacific Railway, that part of census tract 37.02 East of Miller Road, that part of census tract 45.02 East of Bryan Street, and that part of census tract 47 North of Gambrell Street.

32I. That part of Tarrant County included in census tracts 7, 8, 10, 18, 19, 20, 21, 28, 29, 30, 31, 40, 41, 42.01, 43, 44, 48.01, and 48.02, that part of census tract 45.02 West of Bryan Street, that part of census tract 105 East of River Oaks Boulevard, and that part of census tract 9 included in census block tracts 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 301, 302, 303, 304, 305, 319, 320, 321, 322, 323, 401, 402, 403, and 404.

33. Erath, Hood, Johnson, and Somervell counties.

33A. That part of Dallas County included in census tracts 145, 146, 147, 148, 149, 150, 151, 152, that part of census tract 143 not included in district 33B, and that part of census tract 144 not included in district 33J.

33B. That part of Dallas County included in census tracts 99, 136.01, 137.01, 137.02, 137.03, 137.04, 137.05, 138.01, 138.02, 139, 140.01, 140.02, 141.01, 141.02, 141.03, 141.04, 142, that part of census tract 77 included in census block groups 2 and 3,

that part of census tract 97 included in census block groups 3, 4, and 5, and that part of census tract 143 included in census block groups 7, 8, and 9.

33C. That part of Dallas County included in census tracts 4.01, 4.02, 4.03, 5, 16, 17.01, 17.02, 18, 19, 21, 22.01, 22.02, 23, 28, 29, 30, 31.01, 31.02, 32.01, 35, 71.02, 100, 102, that part of census tract 25 included in census block groups 3 and 4, and that part of census tract 36 included in census block group 1.

33D. That part of Dallas County included in census tracts 181.01, 181.02, 181.03, 182, 183, 184, 186, 187, 188, 189, and that part of census tract 190.05 not included in district 33P.

33E. That part of Dallas County included in census tracts 3, 6.01, 6.02, 10, 71.01, 73.01, 73.02, 75.02, 79.01, 193.01, 193.02, 194, 195.01, 195.02, 196, 197, 198, and that part of census tract 2.01 included in census block group 1.

33F. That part of Dallas County included in census tracts 43, 44, 45, 46, 52, 53, 64, 65, 67, 68, 69, 101, 103, 104, and 199.

33G. That part of Dallas County included in census tracts 56, 57, 59.01, 59.02, 60.01, 60.02, 61, 62, 63.01, 63.02, 108, that part of census tract 51 not included in district 330, and that part of census tract 87.02 included in census block groups 2, 3, 5, 6, and 7.

33H. That part of Dallas County included in census tracts 165.02, 165.03, 165.04, 165.05, 166.01, 166.02, 166.03, 166.04, 167.02, 168, 169.01, 169.02, 169.03, 169.04, 170, 171, 172, 173.01, and that part of census tract 116 not included in district 33L.

33I. That part of Dallas County included in census tracts 120, 121, 126, 127, 173.02, 174, 175, 176.01, 176.02, 177, 178.01, 178.02, 179, 180, and 181.04.

33J. That part of Dallas County included in census tracts 105, 106, 107, 153.01, 153.02, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165.01, and that part of census tract 144 included in census enumeration districts 69, 70, 82, and 82B.

33K. That part of Dallas County included in census tracts 7.01, 7.02, 8, 9, 11.01, 11.02, 12, 13.01, 13.02, 14, 15.01, 15.02, 24, 26, 27.01, 27.02, 39.01, that part of census tract 25 not included in district 33C, and that part of census tract 38 not included in district 33N.

33L. That part of Dallas County included in census tracts 84, 85, 90.01, 90.02, 91.01, 91.02, 92.01, 92.02, 93.01, 93.02, 115, 117, 118, 119, and that part of census tract 116 included in census block groups 1 and 2.

33M. That part of Dallas County included in census tracts 1, 2.02, 80, 81, 82, 83, 122.01, 122.02, 123, 124, 125, that part of census tract 2.01 not

included in district 33E, and that part of census tract 79.02 not included in district 33Q.

33N. That part of Dallas County included in census tracts 37, 39.02, 40, 86, 87.01, 109, 110, 111.01, 111.02, 112, 113, 114.01, 114.02, 167.01, that part of census tract 36 not included in district 33C, that part of census tract 87.02 not included in district 33G, and that part of census tract 38 included in census block group 5.

33O. That part of Dallas County included in census tracts 20, 32.02, 33, 34, 41, 42, 47, 48, 49, 50, 54, 55, 88, 89, and that part of census tract 51 included in census block group 1.

33P. That part of Dallas County included in census tracts 136.02, 190.01, 190.02, 190.04, 190.06, 190.07, 191, 192.01, 192.02, 192.03, 192.04, 192.05, 192.06, 192.07, that part of census tract 190.05 included in census enumeration district 220, and that part of census tract 136.03 not included in district 33R.

33Q. That part of Dallas County included in census tracts 77, 78.01, 78.02, 78.03, 128, 129, 130.01, 130.02, 131, 133, 185.01, 185.02, 190.03, and that part of census tract 79.02 included in census block group 6.

33R. That part of Dallas County included in census tracts 74, 75.01, 76.01, 76.02, 76.03, 76.04, 94, 95, 96.01, 96.02, 96.03, 96.04, 98, 132, 134.01, 134.02, 135, that part of census tract 136.03 included in census block group 2, and that part of census tracts 72 and 97 not included in district 33B.

34. Bosque, Coryell, Hamilton, and Hill counties.

35A. That part of McLennan County included in census tracts, 1, 2, 3, 4, 5, 6, 7, 12, 13, 14, 15, 16, 17, 18, 19, 21, 32, 33, 34, 35, 36, and 42.

35B. That part of McLennan County included in census tracts 8, 9, 10, 11, 20, 22, 23, 24, 25.01, 25.02, 26, 27, 28, 29, 30, 31, 37.01, 37.02, 38, 39, 40, and 41.

36. Falls, Milam, and Williamson counties.

37A. That part of Travis County included in census tracts 10, 13.02, 14, 23.01, 23.02, 23.03, and 24, that part of census tract 8 included in enumeration district 198, and block tracts 217, 218, 219, 220, and 221, that part of census tract 9 included in enumeration districts 202, 206, 207, 208, 209, and 210 and block tracts 113, 114, 115, 116, 117, 118, 119, 620, 621, 624, 625, and 628, that part of census tract 20 included in enumeration district 250 and block tracts 202, 203, 210, 211, 212, 213, 301, 302, 303, 304, 305, 306, and 307, that part of census tract 11 not included in district 37B, that part of census tract 21.02 included in enumeration districts 34 and 122 and census block tracts 201, 203, 204, 205, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413,

414, and 415, and that part of census tract 12 included in block tracts 118, 119, and 120.

37B. That part of Travis County included in census tracts 6, 7, 13.01, 16.02, 17.02, and 19, that part of census tract 20 not included in district 37A, that part of census tract 11 included in block tracts 101, 102, 103, 104, and 105, that part of census tract 2 included in block group 3 and block tracts 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, and 401, that part of census tract 16.01 not included in district 37C, that part of census tract 3 South of 45th Street and West of Duval Street, that part of census tract 5 West of Duval Street, and that part of census tract 12 not included in district 37A.

37C. That part of Travis County included in census tracts 1, 15.01, 15.02, 18.03, and 17.01, that part of census tract 15.03 included in block tracts 202, 203, 204, 205, 206, 207, 208, 219, 220, 221, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 403, 404, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, and 419, that part of census tract 3 West of Duval Street and North of 45th Street, that part of census tract 2 not included in district 37B, that part of census tract 16.01 included in enumeration districts 161 and 162 and block tracts 214, 215, 216, 217, 231, 202, 212, and 213, and that part of census tract 18.01 not included in district 37D.

37D. That part of Travis County included in census tracts 4, 18.02, 21.01, and 22, that part of census tract 21.02 not included in district 37A, that part of census tract 8 not included in district 37A, that part of census tract 9 not included in district 37A, that part of census tract 3 East of Duval Street, that part of census tract 5 East of Duval Street, that part of census tract 15.03 not included in district 37C, and that part of census tract 18.01 included in block tracts 428, 429, 430, and 431.

38. Caldwell, Comal, and Guadalupe counties.

39. DeWitt, Goliad, Jackson, Karnes, Lavaca, and Refugio counties.

40. Calhoun and Victoria counties.

41. Aransas and San Patricio counties and that part of Nueces County included in census tracts 36, 37, 58, 59, and 61.

42. Parker County and that part of Tarrant County included in census tracts 60.03, 108.01, 108.02, 108.03, 110.01, 112.01, 112.02, 113, 114, 115.-03, 115.04, and 142, that part of census tract 110.02 South of Sycamore School Road, and that part of census tract 141 included in census enumeration districts 30 and 46.

43. Burnet, Lampasas, and Mills counties and that part of Bell County included in census enumeration districts 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67,

67B, 68, 69, 70, 71, 72, 73, 74, 75, 75B, 75C, 78, 78B, 90, 93, 95, 97, 98, 99, 100, 101, 102, 103, 104, and 105.

44. That part of Bell County not included in district 43.

45. Bandera, Blanco, Frio, Hays, Kendall, and Medina counties and that part of Bexar County included in census tracts 1720, 1820, 1821, and 1916.

47. Atascosa, Bee, Dimmit, LaSalle, Live Oak, McMullen, and Wilson counties.

48A. That part of Nueces County included in census tracts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 17, 35, 50, 54, 56, 57, and 60, and that part of census tract 16 included in enumeration districts 110, 111, and 112 and block tracts 604, 605, 612, and 613, and that part of census tract 28 included in enumeration district 7.

48B. That part of Nueces County included in census tracts 15, 18, 19, 23, 24, 30, 31, 32, 33, and 34 and that part of census tract 16 not included in district 48A.

48C. That part of Nueces County included in census tracts 2.99, 12, 13, 14, 20, 21, 22, 25, 26, 27, 29, and 51, and that part of census tract 28 not included in district 48A.

49. Kenedy, Kleberg, and Willacy counties and that part of Hidalgo County included in census tracts 225, 226, 231, 232, 233, 234, and 243.

50. That part of Cameron County not included in district 51.

51. That part of Cameron County included in census tracts 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 115, 116, 117, 118, 119, 120, and 121, and that part of Hidalgo County included in census tracts 229 and 230.

52. That part of Wichita County not included in district 53.

53. Archer, Clay, and Young counties and that part of Wichita County included in census tracts 120, 121, 122, 123, 124, 125, 126, 128, 129, 130, 131, 136, 137, and 138.

54. Eastland Jack, Montague, Palo Pinto, and Stephens counties.

55. Brown, Callahan, Coleman, Comanche, McCulloch, and Runnels counties.

56. Gillespie, Kerr, Kimble, Llano, Mason, Menard, Real, San Saba, Schleicher, and Uvalde counties.

57. Webb and Zapata counties.

57A. That part of Bexar County included in census tracts 1511, 1521, 1608, 1609, 1610, 1611, 1613, 1614, 1615, 1617, 1618, 1619, and 1620.

57B. That part of Bexar County included in census tracts 1411, 1415, 1416, 1505, 1506, 1507, 1508, 1509, 1510, 1512, 1513, 1514, 1515, 1516, 1517, 1518, 1520, and 1612.

57C. That part of Bexar County included in census tracts 1205, 1213, 1214, 1215, 1216, 1217, 1310, 1312, 1313, 1314, 1315, 1316, 1317, 1318, 1413, 1417, 1418, 1419, 1519, and 1522.

57D. That part of Bexar County included in census tracts 1104, 1303, 1311, 1401, 1402, 1403, 1404, 1405, 1406, 1407, 1408, 1409, 1410, 1412, 1414, 1501, 1502, and 1503.

57E. That part of Bexar County included in census tracts 1101, 1102, 1103, 1109, 1110, 1201, 1202, 1301, 1302, 1304, 1305, 1306, 1307, 1308, and 1309.

57F. That part of Bexar County included in census tracts 1203, 1204, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1218, 1219, 1908, 1909, 1913, 1914, and 1917.

57G. That part of Bexar County included in census tracts 1802, 1809, 1810, 1906, 1907, 1910, 1911, and 1912.

57H. That part of Bexar County included in census tracts 1607, 1616, 1714, 1716, 1717, 1718, 1719, 1805, 1807, 1811, 1812, 1813, 1814, 1815, 1816, 1817, 1818, 1819, and 1915.

57I. That part of Bexar County included in census tracts 1706, 1707, 1708, 1709, 1710, 1711, 1712, 1713, 1715, 1803, 1804, 1806, and 1808.

57J. That part of Bexar County included in census tracts 1105, 1504, 1601, 1602, 1603, 1604, 1605, 1606, 1702, and 1703.

57K. That part of Bexar County included in census tracts 1106, 1107, 1108, 1701, 1704, 1705, 1801, 1901, 1902, 1903, 1904, and 1905.

58. Brooks, Duval, Jim Hogg, Jim Wells, and Starr counties.

59A. That part of Hidalgo County included in census tracts 201, 202, 203, 204, 207, 208, 209, 210, 235, 236, 237, 238, 239, 240, 241, and 242 and that part of census tract 211 north of U. S. Highway 83.

59B. That part of Hidalgo County included in census tracts 205, 206, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 227, and 228 and that part of census tract 211 south of U. S. Highway 83.

60. Concho, Irion, and Tom Green counties.

61. Fisher, Jones, Mitchell, and Nolan counties and that part of Taylor County included in census tracts 120, 121, 127, 128, 129, 130, 131, 132, 133, 134, 135, and 136, and that part of census tract 126 included in census enumeration district 79.

62. That part of Taylor County not included in district 61.

63. Borden, Coke, Dawson, Howard, Scurry, and Sterling counties.

64. Dallam, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Roberts, and Sherman counties.

65. Carson and Randall counties and that part of Potter County included in census tracts 101, 117, 121, 129, 130, 133, 134, 135, 138, 141, 142, and 143.

66. Armstrong, Briscoe, Childress, Collingsworth, Donley, Floyd, Gray, Hall, Motley, and Wheeler counties.

67. That part of Potter County not included in district 65.

68. Glasscock, Midland, Reagan, and Upton counties.

69. Crane, Loving, Pecos, Reeves, Ward, and Winkler counties and that part of Ector County included in census tracts 1, 20, 21, 22, 25, and 26.

70. Brewster, Crockett, Edwards, Kinney, Maverick, Sutton, Terrell, Val Verde, and Zavala counties.

71. Culberson, Hudspeth, Jeff Davis, and Presidio counties and that part of El Paso County included in census tracts 34.02, 41.02, 42.01, 42.02, 43.01, 43.02, 43.03, and 103.

72A.² That part of El Paso County included in census tracts 1.01, 1.02, 1.03, 2.01, 2.02, 3.01, 3.02, 11.01, 11.02, 12, 13, 14, and 102 and that part of census tract 101 West of the Southern Pacific Railroad.

72B.² That part of El Paso County included in census tracts 15, 16, 17, 18, 4.01, 4.02, 5, 6, 7, 8, 9, and 10, that part of census tract 22 not included in district 72C, that part of census tract 23 included in enumeration districts 107, 108, 111, and 112 and block tracts 401, 402, 407, 408, 409, 410, 414, and 416, that part of census tract 25 included in enumeration district 121 and block tracts 301, 716, 717, 718, 719, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, and 819, and that part of census tract 24 included in enumeration districts 115 and 116.

72C. That part of El Paso County included in census tracts 19, 20, 21, 26, 27, 28, 29, 30, 31, 36, and 37, that part of census tract 22 included in block tracts 107, 108, 109, 110, 112, and 113, that part of census tract 23 included in enumeration district 110 and block tracts 501, 502, 503, 504, 505, 506, 507, 508, 702, 703, 704, 705, 710, 711, 712, 713, 714, and 719, that part of census tract 24 included in enumeration districts 117 and 118, that part of census tract 25 included in enumeration districts 124 and 125, and that part of census tract 38 included in enumeration districts 258, 258B, and 259.

72D. That part of El Paso County included in census tracts 105, 104, 40, 41.01, 35.02, 35.01, 32, 33, 34.01, and 39, that part of census tract 38 included in enumeration districts 260, 261, 262, and 263, that part of census tract 101 East of the Southern Pacific Railroad, and that part of census tract 25

included in enumeration districts 119 and 123 and block tracts 113, 114, 115, 116, 117, 201, 202, 213, 214, 215, 216, 302, 303, 304, 305, 306, 307, 308, 309, and 311.

73. That part of Ector County not included in district 69.

74. Bailey, Castro, Cochran, Deaf Smith, Lamb, Oldham, and Parmer counties.

75A. That part of Lubbock County included in census tracts 4.01, 4.02, 4.03, 5, 6.01, 15, 16.01, 16.02, 17.01, 17.02, 17.03, 18.01, 18.02, 19.01, 19.02, 20, and 21.

75B. That part of Lubbock County included in census tracts 1, 2.01, 2.02, 3, 6.02, 7, 8, 9, 10, 11, 12.01, 12.02, 13, 14, 22, 23, 24, and 25.

76. Hale and Swisher counties and that part of Lubbock County included in census tracts 101, 102, 103, 104, 105, 106, and 107.

77. Andrews, Gaines, Hockley, Lynn, Martin, Terry, and Yoakum counties.

78. That part of Harris County included in census tracts 234, 249, 250, 251, 252, 253, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, and 364.

79. That part of Harris County included in census tracts 125, 126, 401, 402, 403, 404, 505, 506, 512, 513, and 514.

80. That part of Harris County included in census tracts 316, 331, 332, 333, 335, 338, 339, 412, 414, and 415.

81. That part of Harris County included in census tracts 327, 328, 334, 336, 337, 340, 341, 342, 343, 428, 429, 430, 431, and 432.

82. That part of Harris County included in census tracts 507, 510, 511, 517, 518, 519, and 520.

83. That part of Harris County included in census tracts 406, 420, 421, 442, 443, 515, and 516.

84. That part of Harris County included in census tracts 523, 524, 525, 526, 527, 530, 531, and 540.

85. That part of Harris County included in census tracts 314, 315, 317, 318, 319, 329, and 330.

86. That part of Harris County included in census tracts 124, 302, 304, 305, 306, 307, 308, and 309.

87. That part of Harris County included in census tracts 121, 122, 123, 201, 301, 303, 310, 311, 312, 501, 502, and 504, that part of census tract 203 South of Interstate Highway 10, and that part of census tract 202 not included in district 98.

88. That part of Harris County included in census tracts 204, 205, 206, 207, 208, 216, and 503.

89. That part of Harris County included in census tracts 214, 215, 217, 218, 219, 225, 226, and 227.

90. That part of Harris County included in census tracts 405, 407, 408, 409, 410, 411, 413, 416, and 417.

91. That part of Harris County included in census tracts 418, 419, 423, 424, 425, and 426.

92. That part of Harris County included in census tracts 422, 439, 440, 441, 444, and 445.

93. That part of Harris County included in census tracts 427, 433, 434, 435, 436, 437, 438, 446, 447, and 449.

94. That part of Harris County included in census tracts 222, 223, 240, 241, 242, 448, 450, 451, 452, 528, 529, 534, 535, 536, 537, 538, 539, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, and 558.

95. That part of Harris County included in census tracts 220, 221, 508, 509, 521, 522, 532, and 533.

96. That part of Harris County included in census tracts 224, 228, 229, 230, 231, 235, 236, 237, 238, 239, 243, 244, 245, 246, 247, 248, 254, and 559.

97. That part of Harris County included in census tracts 313, 320, 321, 323, 324, 325, and 326.

98. That part of Harris County included in census tracts 209, 210, 211, 212, 213, 322, and 350, that part of census tract 203 North of Interstate Highway 10, and that part of census tract 202 included in block tracts 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, and 222.

99. That part of Harris County included in census tracts 232, 233, 351, 352, 353, 354, 355, 356, 357, 358, and 361.

100. That part of Harris County included in census tracts 344, 345, 346, 347, 348, 349, 371, 372, 373, 374, and 375.

101. Baylor, Cottle, Crosby, Dickens, Foard, Garza, Hardeman, Haskell, Kent, King, Knox, Shackelford, Stonewall, Throckmorton, and Wilbarger counties.

Sec. 2. This Act shall become effective for the elections, primary and general, for all representatives from the places herein specified and described to the 65th Legislature, and continue in effect thereafter for succeeding legislatures; provided specifically that this Act shall not affect the membership, personnel, or districts of the 64th Legislature; and provided further, that in case a vacancy occurs in the office of any representative of the 64th Legislature by death, resignation, or otherwise, and a special election to fill such vacancy becomes necessary, said election shall be held in the district as it was constituted on January 1, 1975.

Sec. 3. The terms "census tract" and "census enumeration district," as used in this Act, mean those geographic areas outlined and identified as such on official place, county, and metropolitan map series maps prepared by the United States Department of Commerce Bureau of the Census for the Nineteenth Decennial Census of the United States, enumerated as of April 1, 1970. "Block groups" are subdivisions of census tracts as defined on census metropolitan maps which differentiate block groups by the first digit of the block numbers assigned to city blocks within each tract. "Block tracts" are subdivisions of "block groups" as defined on census metropolitan maps.

Sec. 4. Chapter 351, Acts of the 59th Legislature, Regular Session, 1965, as amended (Article 195a, Vernon's Texas Civil Statutes), and Chapters 733 and 808, Acts of the 61st Legislature, Regular Session, 1969 (Articles 195a-1 and 195a-2, Vernon's Texas Civil Statutes), are repealed.

Sec. 5. When this Act becomes effective, the Act of October 22, 1971, of the Legislative Redistricting Board of Texas apportioning the state into representative districts, as altered by decision of the United States District Court, Western District of Texas, is superseded.

[Acts 1975, 64th Leg., p. 2358, ch. 727, §§ 1 to 5, eff. June 21, 1975.]

¹ See, also, art. 195a-6.

² See, also, art. 195a-5.

Art. 195a-5. Representative Districts 72A and 72B

Sec. 1. Representative Districts 72A and 72B of the State of Texas shall be composed of the following defined areas and each shall be entitled to elect one representative:

72A. That part of El Paso County included in census tracts 1.01, 1.02, 1.03, 2.01, 2.02, 3.01, 3.02, 11.02, 12, 13, and 14, that part of census tract 101 West of the Southern Pacific Railroad, and those parts of census tracts 102 and 11.01 not included in District 72B.

72B. That part of El Paso County included in census tracts 15, 16, 17, 18, 4.01, 4.02, 5, 6, 7, 8, 9, and 10, that part of census tract 22 not included in district 72C, that part of census tract 23 included in enumeration districts 107, 108, 111, and 112 and block tracts 401, 402, 407, 408, 409, 410, 414, and 416, that part of census tract 25 included in enumeration district 121 and block tracts 301, 716, 717, 718, 719, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, and 819, that part of census tract 24 included in enumeration districts 115 and 116, that part of census tract 102 in the area bounded by the city limits of El Paso on the West line of Section 7, Block 81, tsp 2, T and P RR Surveys and the boundaries of census tract 4.01

and that part of census tract 11.01 included in the area bounded by the West line of survey F. W. Brown number 224, the North line of survey F. W. Brown number 224, the East line of survey F. W. Brown number 224 and the North line of census tract 15.

Sec. 2. This Act shall become effective for the elections, primary and general, for all representatives from the places herein specified and described to the 67th Legislature, and continue in effect thereafter for succeeding legislatures; provided specifically that this Act shall not affect the membership, personnel, or districts of the 66th Legislature; and provided further, that in case a vacancy occurs in the office of any representative of the 66th Legislature by death, resignation, or otherwise, and a special election to fill such vacancy becomes necessary, said election shall be held in the district as it was constituted on January 1, 1979.

[Acts 1979, 66th Leg., p. 1739, ch. 712, §§ 1, 2, eff. Aug. 27, 1979.]

Art. 195a-6. Representative Districts 32C and 32D

Sec. 1. Representative districts 32C and 32D shall be composed of the following defined areas and each shall be entitled to elect one representative:

32C. That part of Tarrant County included in census tracts 14.01, 14.02, 14.03, 65.01, 65.02, 65.03, 65.04, 132.02, 133.01, 133.02, 138, 216.01, 216.03, 225; that part of census tract 13 not included in block tracts 303, 307, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, and 320; that part of census tract 65.05 not included in block tracts 101, 103, 107, and 109; that part of census tract 134.02 included in block tracts 601, 622, and 624; that part of census tract 216.02 not included in block group 2; and that part of census tract 115.01 not included in district 32D.

32D. That part of Tarrant County included in census tracts 115.02, 130, 131, 217.01, 217.02, 218, 219, 220, 221, 222, 223, 224, 226, 227, 228, and 229; that part of census tract 115.01 included in block group 2 except block tracts 201 through 210, block group 3 except block tracts 316 through 326, and block tracts 907, 908, and 909; and that part of census tract 216.02 not included in district 32C.

Sec. 2. This Act shall become effective for the elections, primary and general, for all representatives from the places herein specified and described to the 67th Legislature, and continue in effect thereafter for succeeding legislatures; provided specifically that this Act shall not affect the membership, personnel, or districts of the 66th Legislature; and provided further, that in case a vacancy occurs in the office of any representative of the 66th Legislature by death, resignation, or otherwise, and a spe-

cial election to fill such vacancy becomes necessary, said election shall be held in the district as it was constituted on January 1, 1979.

[Acts 1979, 66th Leg., p. 1961, ch. 774, §§ 1, 2, eff. Aug. 27, 1979.]

CONGRESSIONAL DISTRICTS

Art. 197d. Repealed by Acts 1975, 64th Leg., p. 1393, § 27, eff. Sept. 1, 1975

See, now, art. 197e.

Art. 197e. Congressional Districts

Sec. 1. The State of Texas is apportioned into congressional districts as provided in the following sections. Each district is entitled to elect one member to the House of Representatives of the Congress of the United States.

Sec. 2. District 1 is composed of Bowie, Camp, Cass, Cherokee, Delta, Fannin, Franklin, Harrison, Henderson, Hopkins, Lamar, Marion, Morris, Panola, Red River, Rusk, San Augustine, Shelby, Titus, Upshur, and Wood counties; that part of Hunt County included in the Lone Oak census county division; and that part of Rains County included in the Emory census county division.

Sec. 3. District 2 is composed of Anderson, Angelina, Grimes, Hardin, Houston, Jasper, Leon, Liberty, Madison, Montgomery, Nacogdoches, Newton, Orange, Polk, Sabine, San Jacinto, Trinity, Tyler, and Walker counties; and that part of Freestone County not included in the Streetman Town part of the Wortham census county division.

Sec. 4. District 3 is composed of that part of Collin County included in the Nevada, Plano, and Wylie census county divisions; that part of Denton County included in the Lewisville census county division; and that part of Dallas County included in census tracts 1, 2.01, 2.02, 3, 6.01, 7.02, 9, 10, 11.01, 11.02, 71.01, 72, 73.01, 73.02, 74, 75.01, 75.02, 76.01, 76.02, 76.03, 76.04, 77, 78.01, 78.02, 78.03, 79.01, 79.02, 80, 81, 82, 94, 95, 96.01, 96.02, 96.03, 96.04, 97, 98, 99, 128, 129, 130.01, 130.02, 131, 132, 133, 134.01, 134.02, 135, 136.01, 136.02, 136.03, 137.01, 137.02, 137.03, 137.04, 137.05, 138.01, 138.02, 139, 140.01, 140.02, 141.01, 141.02, 141.03, 142, 143, 146, 147, 185.02, 190.02, 190.03, 190.04, 190.06, 191, 192.01, 192.02, 192.03, 192.04, 192.05, 192.06, 192.07, 193.01, 193.02, 194, 195.01, 195.02, 196, 197, and 198.

Sec. 5. District 4 is composed of Grayson, Gregg, Kaufman, Rockwall, Smith, and Van Zandt counties; that part of Collin County not included in District 3; that part of Cooke County included in the Gainesville North Callisburg census county division; that part of Denton County not included in District 3; that part of Hunt County not included in District 1; and that part of Rains County not included in District 1.

Sec. 6. District 5 is composed of that part of Dallas County not included in District 3 or 6 or 24.

Sec. 7. District 6 is composed of Brazos, Ellis, Hill, Johnson, Limestone, Navarro, and Robertson counties; that part of Freestone County not included in District 2; that part of Parker County included in the Weatherford Southeast and the Weatherford Southwest census county divisions; that part of Dallas County included in census tracts 60.01, 60.02, 61, 63.01, 108, 109, 110, 111.01, 111.02, 164, 165.01, 165.02, 165.03, 165.04, 165.05, 166.01, 166.02, 166.03, 166.04, 167.02, 168, 169.01, 169.02, 169.03, and 169.04; and that part of Tarrant County included in census tracts 60.03, 111.02, 112.01, 112.02, 108.03, 109, 54.01, 55.01, 54.02, 42.01, 43, 42.02, 48.01, 47, 56, 48.02, 55.02, 57.01, 58, 59, 60.02, 60.01, 110.02, 57.02, 55.03, 55.04, and 110.01.

Sec. 8. District 7 is composed of that part of Harris County included in census tracts 558, 557, 554, 553, 552, 556, 555, 551, 545, 550, 549, 548, 547, 546, 544, 537, 538, 541, 540, 452, 451, 543, 542, 529, 528, 527, 526, 519, 517, 443, 442, 441, 444, 447, 448, 450, 449, 446, 445, 440, 421, 406, 420, 422, 439, 438, 437, 436, 423, 419, 424, 435, 407, 409, 408, 411, 418, 417, 416, 425, 426, 434, 429, 428, 427, 433, 431, 432, 333, 413, 334, 536, and 430; and that part of census tract 405 included in census block group 5.

Sec. 9. District 8 is composed of that part of Harris County included in census tracts 559, 244, 245, 243, 242, 535, 241, 533, 240, 223, 531, 532, 222, 221, 224, 525, 524, 523, 522, 220, 218, 225, 217, 216, 215, 227, 521, 229, 228, 230, 214, 203, 209, 213, 231, 212, 202, 210, 211, 232, 233, 321, 320, 322, 350, 351, 352, 354, 234, 262, 261, 267, 268, 263, 265, 266, 270, 269, 271, 264, 361, 362, 273, 274, 272, 275, 364, 360, 363, 365, 530, 539, 534, 254, and 353.

Sec. 10. District 9 is composed of Chambers, Galveston and Jefferson counties and that part of Harris County included in census tracts 250, 249, 247, 238, 251, 248, 246, 252, 253, 237, 236, 256, 255, 257, 258, 235, 259, 260, 226 and 239.

Sec. 11. District 10 is composed of Austin, Bastrop, Blanco, Burleson, Fayette, Hays, Lee, Travis and Washington counties; that part of Caldwell County included in the Martindale census county division; that part of Colorado County not included in the Garwood census county division; that part of Gonzales County included in the Waelder census county division; that part of Lavaca County included in the Moulton and Shiner census county divisions; that part of Waller County not included in the Brookshire census county division; and that part of Williamson County included in the Florence, Georgetown, Jarrel, and Liberty Hill census county divisions.

Sec. 12. District 11 is composed of Bell, Bosque, Brown, Burnet, Coryell, Falls, Hamilton, Hood, Lampasas, McCulloch, McLennan, Milam, Mills, San Saba, and Somervell Counties; that part of Coleman County not included in the Coleman census county division; that part of Comanche County included in the Gustine census county division; that part of Erath County included in the Stephenville South census county division; and that part of Williamson County not included in District 10.

Sec. 13. District 12 is composed of that part of Tarrant County not included in District 6 or 24.

Sec. 14. District 13 is composed of Archer, Armstrong, Briscoe, Carson, Childress, Clay, Collingsworth, Cottle, Dallam, Dickens, Donley, Foard, Gray, Hall, Hansford, Hardeman, Hartley, Hemphill, Hutchinson, King, Lipscomb, Moore, Motley, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher, Wheeler, Wichita, and Wilbarger counties.

Sec. 15. District 14 is composed of Aransas, Calhoun, Jackson, Matagorda, Nueces, Refugio, San Patricio, Victoria, and Wharton counties; that part of Colorado County not included in District 10; and that part of Lavaca County not included in District 10.

Sec. 16. District 15 is composed of Brooks, Cameron, Duval, Hidalgo, Jim Hogg, Jim Wells, Kenedy, Kleberg, Live Oak, McMullen, Starr, Willacy, and Zapata counties; that part of Bee County included in the Pettus-Pawnee census county division; and that part of Karnes County included in the Kenedy census county division.

Sec. 17. District 16 is composed of Culberson, El Paso, Hudspeth, Loving, Presidio, Ward, and Winkler counties; that part of Jeff Davis County included in the Valentine census county division; that part of Reeves County included in the Pecos census county division; and that part of Ector County not included in District 19.

Sec. 18. District 17 is composed of Baylor, Borden, Callahan, Crosby, Eastland, Fisher, Floyd, Garza, Haskell, Howard, Jack, Jones, Kent, Knox, Lynn, Mitchell, Montague, Nolan, Palo Pinto, Scurry, Shackelford, Stephens, Stonewall, Taylor, Throckmorton, Wise, and Young counties; that part of Coleman County not included in District 11; that part of Comanche County not included in District 11; that part of Cooke County not included in District 4; that part of Dawson County included in the Lamesa Southeast census county division; that part of Erath County not included in District 11; and that part of Parker County not included in District 6.

Sec. 19. District 18 is composed of that part of Harris County not included in District 7 or 8 or 9 or 22.

Sec. 20. District 19 is composed of Andrews, Bailey, Castro, Cochran, Deaf Smith, Gaines, Hale, Hockley, Lamb, Lubbock, Martin, Midland, Parmer, Terry, and Yoakum counties; that part of Dawson County not included in District 17; and that part of Ector County included in census tracts 1, 2, 3, 5, 6, 7, 8, 9, 21, 24, and 25.

Sec. 21. District 20 is composed of that part of Bexar County not included in District 21 or 23.

Sec. 22. District 21 is composed of Bandera, Brewster, Coke, Comal, Concho, Crane, Crockett, Edwards, Gillespie, Glasscock, Irion, Kendall, Kerr, Kimble, Llano, Mason, Menard, Pecos, Reagan, Real, Runnels, Schleicher, Sterling, Sutton, Terrell, Tom Green, Upton, and Val Verde counties; that part of Jeff Davis County not included in District 16; that part of Medina County in the D'Hannis and Hondo census county divisions; that part of Reeves County not included in District 16; and that part of Bexar County included in census tracts 1719, 1720, 1816, 1817, 1806, 1807, 1815, 1821, 1820, 1819, 1915, 1916, 1914, 1818, 1814, 1809, 1810, 1811, 1813, 1812, 1911, 1912, 1909, 1913, 1207, 1210, 1209, 1208, 1206, 1203, 1204, 1803, 1808, 1802, 1908, 1718, 1717, 1714, 1805, 1917, 1211, 1212, 1213, 1617, 1219, 1218, and 1215.

Sec. 23. District 22 is composed of Brazoria and Fort Bend counties; that part of Waller County not included in District 10; and that part of Harris County included in census tracts 412, 414, 415, 331, 332, 329, 366, 339, 340, 335, 338, 336, 337, 341, 343, 342, 319, 325, 326, 324, 410, 355, 356, 349, 357, 358, 348, 359, 347, 346, 345, 370, 367, 369, 368, 373, 374, 371, 372, 375, 327, 323, and 344.

Sec. 24. District 23 is composed of Atascosa, DeWitt, Dimmit, Frio, Goliad, Guadalupe, Kinney, LaSalle, Maverick, Uvalde, Webb, Wilson, and Zavala counties; that part of Bee County not in District 15; that part of Caldwell County not in District 10; that part of Gonzales County not in District 10; that part of Karnes County not in District 15; that part of Medina County not in District 21; and that part of Bexar County included in census tracts 1619, 1620, 1612, 1613, 1610, 1611, 1512, 1520, 1521, 1513, 1511, 1514, 1516, 1518, 1519, 1522, 1416, 1415, 1418, 1417, 1414, 1413, 1419, 1312, 1313, 1314, 1310, 1309, 1315, 1205, 1214, 1217, 1216, 1317, 1316, 1318, 1517, 1615, 1618, and 1508.

Sec. 25. District 24 is composed of that part of Dallas County included in census tracts 20, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 59.01, 59.02, 62, 63.02, 64, 65, 67, 68, 69, 86, 87.01, 87.02, 88, 89, 101, 102, 103, 104, 105, 106, 107, 112, 113, 114.01, 114.02, 141.04, 144, 145, 151, 152, 153.01, 153.02, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 167.01, and 199; and that part of Tarrant County included in census tracts 135.01, 64, 65.05, 131, 130,

218, 217.02, 217.01, 216.02, 216.01, 65.04, 65.02, 65.03, 13, 216.03, 115.01, 115.02, 222, 223, 225, 224, 221, 220, 219, 229, 228, 227, 226, 115.03, 115.04, 114, and 113.

Sec. 26. The terms "census tract" and "census county division" mean those geographic areas outlined and identified as such on official place, county, and metropolitan map series maps prepared by the United States Department of Commerce Bureau of the Census for the Nineteenth Decennial Census of the United States, enumerated as of April 1, 1970. "Block groups" are subdivisions of census tracts as defined on census metropolitan maps which differentiate block groups by the first digit of the block numbers assigned to city blocks within each tract.

Sec. 27. Chapter 12, Acts of the 62nd Legislature, 1st Called Session, 1971 (Article 197d, Vernon's Texas Civil Statutes), is repealed.

Sec. 28. Nothing in this Act affects the tenure in office of the present delegation in Congress, but this Act takes effect for the general election in 1976. [Acts 1975, 64th Leg., p. 1390, ch. 537, §§ 1 to 28, eff. Sept. 1, 1975.]

JUDICIAL DISTRICTS

Art. 199. Judicial Districts

[See Compact Edition, Volume 3 for text of 1]

1A.—Jasper, Newton and Tyler. See Article 199a, Sec. 3.075

[See Compact Edition, Volume 3 for text of 2 to 9]

10, 56.—Galveston County

The terms of the 10th and 56th Judicial Districts, which shall be composed of Galveston County, shall be continuous commencing on the first Monday in January and on the first Monday in July. Each term of court continues until the next succeeding term begins.

In all suits, actions or proceedings, it shall be sufficient for the address or designation to be merely the "District Court of Galveston County." The District Clerk of Galveston County shall docket successively on the dockets of the District Courts of the 10th, 56th, 122nd, and 212th Judicial Districts in Galveston County all civil cases, actions, causes, petitions, applications, or other civil proceedings so that the first case or proceeding filed on or after the effective date of this Act and every fourth such case or proceeding thereafter filed shall be docketed in the 10th Judicial District; and the second case or proceeding filed on or after the effective date of this Act and every fourth such case or proceeding thereafter filed shall be docketed in the 56th Judicial District; and the third case or proceeding filed on or after the effective date of this Act and every fourth

such case or proceeding thereafter filed shall be docketed in the 122nd Judicial District; and the fourth case or proceeding filed on or after the effective date of this Act and every fourth such case or proceeding thereafter filed shall be docketed in the 212th Judicial District; and so on seriatim and in this manner all cases or proceedings filed shall be docketed in and divided equally among said four (4) Courts, one-fourth ($\frac{1}{4}$) in each Court. Any case pending in either of said Courts may, at the discretion of the Judge thereof, be transferred from one (1) of said District Courts to the other, and so from time to time.

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

The Clerk of the District Court of said County, also known as the District Clerk of Galveston County, shall perform the duties of the Clerk of each of said four (4) District Courts. Vacancies in the office of said Clerk shall be filled as provided by general law.

[Amended by Acts 1979, 66th Leg., p. 1127, ch. 539, § 1, eff. Aug. 27, 1979.]

[See Compact Edition, Volume 3 for text of 11 to 14]

15, 59.—Grayson and Collin

Grayson County shall constitute the Fifteenth Judicial District and the Fifty-ninth Judicial District. The District Courts shall be held therein as follows:

FIFTEENTH DISTRICT: On the first Monday in January and continuing until and including the last Saturday before the first Monday in April; on the first Monday in April and continuing until and including the last Saturday before the first Monday in July; on the first Monday in July and continuing until and including the last Saturday before the first Monday in October; on the first Monday in October and continuing until and including the last Saturday before the first Monday in January.

FIFTY-NINTH DISTRICT: On the second Monday in March and continuing until and including the last Saturday before the third Monday in June; on the third Monday in June and continuing until and including the last Saturday before the first Monday in December; and on the first Monday in December and continuing until and including the last Saturday before the second Monday in March.

The District Courts of the Fifteenth and Fifty-ninth Judicial Districts, in the County of Grayson, shall have concurrent jurisdiction with each other throughout the limits of Grayson County of all matters civil and criminal of which jurisdiction is given

to the District Courts by the Constitution and laws of this State, provided, that the Judge of the Fifty-ninth Judicial District may impanel the Grand Jury in Grayson County when, in the discretion of said Court, it is deemed by him proper so to do. He may draw and impanel such grand jury for any terms of his Court as provided by law for other District Courts for impaneling grand juries. Either of the Judges of District Court of Grayson County, may in his discretion, transfer any case or cases, civil or criminal, that may at any time be pending in his Court, to the other District Court in Grayson County, by order or orders entered upon the minutes of the Court making such transfer; and where such transfer or transfers are made, the Clerk of said Court shall enter such case or cases upon the dockets of the Court to which such transfer or transfers are made, and when so entered upon the docket, the Judge of said Court shall try and dispose of said cases in the same manner as if such cases were originally in said Court. The Clerk of the District Court of Grayson County, as heretofore constituted, and his successor in office shall be the Clerk of both the Fifteenth and Fifty-ninth District Courts in said Grayson County, and shall perform all the duties pertaining to the clerkship of both of said Courts. [Amended by Acts 1977, 65th Leg., p. 9, ch. 5, § 2, eff. April 1, 1977.]

[See Compact Edition, Volume 3 for text of 16 and 17]

18.—Somervell and Johnson

(a). The 18th Judicial District of Texas shall be composed of Somervell and Johnson Counties and the terms of the District Court shall be held each year in both the County of Somervell and the County of Johnson on the first Mondays in January and July.

Each term of court in each of such counties may continue until the date herein fixed for the beginning of the next succeeding term therein.

[See Compact Edition, Volume 3 for text of 18(b) to (d)]

[Amended by Acts 1979, 66th Leg., p. 105, ch. 65, § 1, eff. April 19, 1979.]

[See Compact Edition, Volume 3 for text of 19 to 21]

22, 207.—Hays, Caldwell and Comal

Sec. 1. The 22nd Judicial District and the 207th Judicial District shall be composed of the counties of Hays, Caldwell, and Comal, and the terms of the district courts are hereby designated and shall be held there in each year as follows:

In the County of Hays on the first Mondays in February, May, August, and November;

In the County of Caldwell on the first Mondays in March, June, September, and December; and

In the County of Comal on the first Mondays in April, July, October, and January.

[See Compact Edition, Volume 3 for text of 2]

[Amended by Acts 1979, 66th Leg., p. 263, ch. 137, § 1, eff. Aug. 27, 1979.]

[See Compact Edition, Volume 3 for text of 23 to 26]

27.—Bell and Lampasas

(a) The 27th Judicial District shall be composed of the Counties of Bell and Lampasas, and the terms of the District Court shall be held therein each year as follows:

In the County of Bell on the first Mondays in January, April, July, and October of each year, and each term of court continues until the next succeeding term begins.

In the County of Lampasas on the first Mondays in March and September and may continue in session until the Saturday night immediately preceding the Monday for convening the next regular term of such court in such County.

See Compact Edition, Volume 3 for text of (b) to (d)]

[Amended by Acts 1975, 64th Leg., p. 224, ch. 83, §§ 1 & 2, eff. April 30, 1975; Acts 1977, 65th Leg., p. 321, ch. 154, § 2, eff. Aug. 29, 1977.]

[See Compact Edition, Volume 3 for text of 28 to 32]

33.—Mason, Blanco, San Saba, Llano and Burnet

The Thirty-third Judicial District shall be composed of the Counties of Mason, Blanco, San Saba, Llano and Burnet, and the terms of the district court shall be held therein as follows:

In Mason County, beginning on the second Monday in January and June.

In Blanco County, beginning on the first Monday in February and September.

In San Saba County, beginning on the second Monday in March and October.

In Llano County, beginning on the first Monday in April and November.

In Burnet County, beginning on the fourth Monday in April and November.

Each term of court in each of such counties shall continue until the date herein fixed for the beginning of the next succeeding term. The judge of the district may hold as many sessions of court during each term as is deemed proper and expedient for the dispatch of business.

[Amended by Acts 1979, 66th Leg., p. 1163, ch. 563, § 1, eff. Sept. 1, 1979.]

Section 4 of the 1979 amendatory act provided:

"This Act takes effect only if the 66th Legislature, Regular Session, does not create two or more new judicial districts in the same Act. If no bill creating two or more new judicial districts by the 66th Legislature, Regular Session, becomes law, this Act takes effect September 1, 1979."

No such bill became law.

[See Compact Edition, Volume 3 for text of 34]

35.—Mills, Brown and Coleman

The 35th Judicial District is composed of the Counties of Mills, Brown and Coleman. The terms of said District Court shall be held in said counties each year as follows:

In the County of Mills on the first Mondays in January, May and October.

In the County of Brown on the first Mondays in February, June and November.

In the County of Coleman on the first Mondays in April and September.

Each term of court in each of such counties may continue in session until the date herein fixed for the beginning of the next succeeding term therein.

[Amended by Acts 1977, 65th Leg., p. 321, ch. 154, § 1, eff. Aug. 29, 1977.]

Section 2 of the 1977 Act amended subd. 27 of this article; § 3 thereof provided:

"All cases and proceedings pending on the effective date of this Act in McCulloch County in the 35th District Court shall be transferred to the 198th District Court. All process and writs issued from the 35th District Court are returnable to the 198th District Court. The obligees in all bonds and recognizances taken in and for the 35th District Court and all witnesses summoned to appear before the 35th District Court are required to appear before the 198th District Court but not at a time earlier than originally required. Each writ and process is as legal and valid as if it had been made returnable to the 198th District Court."

[See Compact Edition, Volume 3 for text of 36 to 42]

43.—Parker

[See Compact Edition, Volume 3 for text of (a)]

(b) The District Court for the 43rd Judicial District shall have and exercise all jurisdiction now or hereafter prescribed by the constitution and general laws of this State for district courts. All civil cases and all criminal cases originally filed and now pending on the docket of the 43rd District Court, over which original jurisdiction is assigned to county courts in this state by the constitution and general laws of this State are hereby transferred to the County Court of Parker County.

[See Compact Edition, Volume 3 for text of (c)]

(d) The District Clerk of Parker County shall perform all duties and functions prescribed by the constitution and general laws of this state for district clerks, and such other functions as may be prescribed by the judge of the 43rd District Court, for the efficient administration of the affairs of the district court. The district clerk shall, within 30 days after the effective date of this amendment transfer and deliver to the County Clerk of Parker County all papers in the cases transferred herein. The appellate mandates of any cases on appeal and transferred herein shall be returned to the County Court of Parker County. The judge of the 43rd District Court shall appoint an official shorthand reporter for the court. The reporter shall be a sworn official of the court, and all provisions of law relating to the appointment, qualifications, and

duties of official shorthand reporters in this State shall govern. In addition to transcript fees, fees for statements of facts, and other expenses necessary to the office authorized by law, the official shorthand reporter for the 43rd District Court shall be paid a salary set by order of the judge of the court as provided by the general law in Chapter 622, Acts of the 62nd Legislature, Regular Session, 1971 (Article 3912k, Vernon's Texas Civil Statutes). Court bailiffs, court clerks, and secretaries, probation officers and probation department employees shall be appointed by the judge of the 43rd District Court, as in his discretion are necessary for the efficient administration of the affairs of the district court, and paid salaries to be set as authorized by the general law of this State.

[See Compact Edition, Volume 3 for text of (e)]

(f) In addition to the compensation provided by law and paid by the state, the Judge of the 43rd Judicial District may receive additional compensation to be determined and fixed by the Commissioners Court in an amount not to exceed \$7,800 annually, to be paid in equal monthly installments out of the general fund or officers' salary fund of Parker County, as compensation for all judicial and administrative services performed by him. The Commissioners Court of Parker County shall make proper budget provisions for the payment of this salary. [Amended by Acts 1975, 64th Leg., p. 668, ch. 231, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 677, ch. 257, § 2, eff. May 25, 1977.]

[See Compact Edition, Volume 3 for text of 44 to 51]

52.—Coryell

The 52nd Judicial District of Texas shall be composed of Coryell County, and the terms of the District Court shall be held therein each year on the first Mondays in January and June.

Each term of court may continue until the date herein fixed for the beginning of the next succeeding term therein.

[Amended by Acts 1977, 65th Leg., p. 9, ch. 5, § 3, eff. April 1, 1977.]

[See Compact Edition, Volume 3 for text of 53 to 62]

63.—Val Verde, Terrell, Maverick, Kinney and Edwards

Sec. 1. The Sixty-third Judicial District shall be composed of the Counties of Val Verde, Terrell, Maverick, Kinney and Edwards, and the terms of the District Court are hereby designated and shall be held therein each year as follows:

In the County of Val Verde on the first Monday in January and the first Monday in June;

In the County of Terrell on the first Monday in February and the third Monday in August;

In the County of Maverick on the first Monday in March and the second Monday in September;

In the County of Kinney on the first Monday in April and the first Monday in October; and

In the County of Edwards on the first Monday in May and the third Monday in October.

Each term of Court in each of such counties may continue until the date herein fixed for the beginning of the next succeeding term therein.

[Amended by Acts 1975, 64th Leg., p. 1341, ch. 500, § 1, eff. Sept. 1, 1975.]

64.—Hale, Swisher and Castro

[See Compact Edition, Volume 3 for text of 2]

Sec. 6. The terms of the 64th Judicial District Court in each county of the district shall begin on the first Mondays in January and July of each year and be designated as the January and July Terms, respectively.

[See Compact Edition, Volume 3 for text of 7]

[Amended by Acts 1979, 66th Leg., p. 105, ch. 65, § 2, eff. April 19, 1979.]

[See Compact Edition, Volume 3 for text of 65 to 68]

69.—Moore, Hartley, Sherman and Dallam

The 69th Judicial District shall be composed of the Counties of Moore, Hartley, Sherman, and Dallam and the terms of the District Court as hereby designated and shall be held therein each year as follows:

In the County of Moore on the Tenth Monday after the Second Monday in January and July;

In the County of Hartley on the Twelfth Monday after the Second Monday in January and July;

In the County of Sherman, on the Fourteenth Monday after the Second Monday in January and July;

In the County of Dallam on the Sixteenth Monday after the Second Monday in January and July.

Each term of Court in each of such counties may continue until the date herein fixed for the beginning of the next succeeding term therein.

[Amended by Acts 1977, 65th Leg., p. 10, ch. 5, § 4, eff. April 1, 1977.]

[See Compact Edition, Volume 3 for text of 70 to 75]

76.—Titus, Camp, Morris and Marion

[See Compact Edition, Volume 3 for text of 1 to 5(c)]

(d) The County Attorney of Marion County shall represent the state in all criminal matters pending before the 76th District Court and the 115th District Court in Marion County. The District Attorney of the 76th Judicial District shall continue to represent the state in the other counties in the 76th Judicial District, and the provisions of this subsection do not

affect his powers and duties in the counties of Titus, Camp, and Morris. The duties of the District Attorney of the 76th Judicial District in Marion County are divested from him and invested in the County Attorney of Marion County. The present district attorney for the 76th Judicial District shall continue in office as the district attorney in the counties of Titus, Camp, and Morris until the general election in 1976 and until his successor is elected and has qualified. Beginning with the general election in 1976, the District Attorney of the 76th Judicial District shall only stand for election and be elected from the counties of Titus, Camp, and Morris.

[See Compact Edition, Volume 3 for text of 6]

[Amended by Acts 1975, 64th Leg., p. 1857, ch. 581, § 1, eff. Sept. 1, 1975.]

[See Compact Edition, Volume 3 for text of 77 to 81]

82.—Falls County

Sec. 1. The 82nd Judicial District of the State of Texas is composed of the County of Falls. The terms of the District Court shall be held on the first Monday in the months of January, March, May, September and November and each term may continue until and including the Saturday next preceding the beginning of the next succeeding term. Grand juries shall be organized at the May and November terms of said court, and at such other terms as the judge of said district may determine and order.

Sec. 2. The District Court of the 82nd Judicial District shall have all the jurisdiction prescribed by the constitution and laws of this state for district courts and also shall have and exercise original and appellate jurisdiction in all civil and criminal matters and causes over which the county courts have original or appellate jurisdiction.

[Amended by Acts 1975, 64th Leg., p. 84, ch. 39, § 2, eff. April 8, 1975.]

[See Compact Edition, Volume 3 for text of 83 to 89]

90.—Stephens and Young

The Counties of Stephens and Young shall hereafter constitute and be the 90th Judicial District of the State of Texas and the terms of the District Courts shall be held therein each as follows:

In the County of Stephens, on the first Monday in January, April, July and October of each year and may continue in session until the date herein fixed for the convening of the next regular term of such Court in Stephens County.

In the County of Young, on the first Monday in March, June, September and December of each year and may continue in session until the date herein fixed for convening the next regular term of such Court in Young County.

[Amended by Acts 1977, 65th Leg., p. 2158, ch. 860, § 7, eff. Sept. 1, 1977.]

[See Compact Edition, Volume 3 for text of 90 to 103]

104.—Taylor

Sec. 1. The 104th Judicial District of Texas is composed of Taylor County.

Sec. 2. The 104th District Court shall convene on the eleventh Monday after the first Monday in January of each year, and on the twenty-fourth Monday after the first Monday in January of each year and on the ninth Monday after the first Monday in September of each year, and each of said terms of Court in said County shall continue until the convening of the next succeeding term of Court in said County.

[See Compact Edition, Volume 3 for text of 3 to 5]

[Amended by Acts 1977, 65th Leg., p. 2158, ch. 860, § 8, eff. Sept. 1, 1977.]

[See Compact Edition, Volume 3 for text of 105 to 111]

112.—Pecos, Upton, Sutton, Reagan, and Crockett

Sec. 1. The One Hundred and Twelfth Judicial District shall be composed of the Counties of Pecos, Upton, Sutton, Reagan, and Crockett, and the terms of the district court shall be held therein as follows:

In Pecos County, beginning on the first Monday in January, May and November and second Monday in July.

In Upton County, beginning on the first Monday in February and the second Monday in June.

In Sutton County, beginning on the third Monday in March and the first Monday in September.

In Reagan County, beginning on the first Monday in March and the first Monday in October.

In Crockett County, beginning on the first Monday in April and the third Monday in September.

Each term of court in each of such counties shall continue until the date herein fixed for the beginning of the next succeeding term. The judge of the district may hold as many sessions of court during each term as is deemed proper and expedient for the dispatch of business.

[Amended by Acts 1979, 66th Leg., p. 888, ch. 408, § 1, eff. Sept. 1, 1979.]

Section 2 of the 1979 amendatory act provided:

"This Act takes effect only if the 66th Legislature, Regular Session, does not create two or more new judicial districts in the same Act. If no bill creating two or more new judicial districts by the 66th Legislature, Regular Session, becomes law, this Act takes effect September 1, 1979."

No such bill became law.

[See Compact Edition, Volume 3 for text of 113 and 114]

115.—Upshur, Wood and Marion Counties

[See Compact Edition, Volume 3 for text of (a) to (c)]

(d) The County Attorney of Marion County shall represent the state in all criminal matters pending before the 76th District Court and the 115th District Court in Marion County. The duties of the District Attorney of the 76th Judicial District in Marion County are divested from him and invested in the County Attorney of Marion County.

[Amended by Acts 1975, 64th Leg., p. 1857, ch. 581, § 2, eff. Sept. 1, 1975.]

[See Compact Edition, Volume 3 for text of 116 to 121]

122.—Galveston

[See Compact Edition, Volume 3 for text of 1 and 2]

Sec. 3. The terms of the District Court of the 122nd Judicial District in and for Galveston County shall be continuous commencing on the first Monday in January and the first Monday in July. Each term of the Court continues until the next succeeding term begins.

[See Compact Edition, Volume 3 for text of 4 to 9]

[Amended by Acts 1979, 66th Leg., p. 1128, ch. 539, § 2, eff. Aug. 27, 1979.]

[See Compact Edition, Volume 3 for text of 123 to 129]

130.—Brazoria, Fort Bend, Matagorda and Wharton

[See Compact Edition, Volume 3 for text of 1]

Sec. 1a. (a) Notwithstanding any other provision of this Act, from and after January 1, 1981, the 130th Judicial District shall be composed of the County of Matagorda.

(b) Beginning at the general election in 1980, the judge of the 130th Judicial District shall stand for election and be elected only from the County of Matagorda.

(c) From and after January 1, 1981, the provisions of this Act do not apply to the 130th District Court and the judge of the 130th District Court in the counties of Brazoria, Fort Bend and Wharton.

[See Compact Edition, Volume 3 for text of 2 to 9]

[Amended by Acts 1977, 65th Leg., p. 2158, ch. 860, § 6, eff. Sept. 1, 1977.]

[See Compact Edition, Volume 3 for text of 131 to 145]

146.—Bell

[See Compact Edition, Volume 3 for text of 1 and 2]

Sec. 3. The terms of the District Court of the 146th Judicial District shall be on the first Mondays in January, April, July, and October of each year, and each term of court continues until the next succeeding term begins.

[See Compact Edition, Volume 3 for text of 4 to 6]

[Amended by Acts 1975, 64th Leg., p. 224, ch. 83, §§ 1 & 2, eff. April 30, 1975.]

[See Compact Edition, Volume 3 for text of 147 to 215]

216.—Kerr, Bandera, Kendall, Kimble, Gillespie, and Sutton

The name of the Second Thirty-eighth Judicial District of Texas is changed to the 216th Judicial District of Texas.

The 216th Judicial District shall be composed of the Counties of Kerr, Bandera, Kendall, and Gillespie, and the terms of the district court shall be held therein as follows:

In Kerr County, beginning on the first Monday in January and June.

In Bandera County, beginning on the first Monday in February and September.

In Kendall County, beginning on the fourth Monday in February and September.

In Gillespie County, beginning on the second Monday in April and November.

Each term of court in each of such counties shall continue until the date herein fixed for the beginning of the next succeeding term. The judge of the district may hold as many sessions of court during each term as is deemed proper and expedient for the dispatch of business.

[Amended by Acts 1979, 66th Leg., p. 1163, ch. 563, § 2, eff. Sept. 1, 1979.]

Section 4 of the 1979 amendatory act provided:

"This Act takes effect only if the 66th Legislature, Regular Session, does not create two or more new judicial districts in the same Act. If no bill creating two or more new judicial districts by the 66th Legislature, Regular Session, becomes law, this Act takes effect September 1, 1979."

No such bill became law.

217.—Angelina. See Article 199a, Sec. 3.044

218.—Atascosa, Frio, Karnes, LaSalle and Wilson. See Article 199a, Sec. 3.045

219.—Collin. See Article 199a, Sec. 3.046

220.—Hamilton, Comanche and Bosque. See Article 199a, Sec. 3.047

221.—Montgomery. See Article 199a, Sec. 3.048

222.—Deaf Smith and Oldham. See Article 199a, Sec. 3.049

223.—Gray. See Article 199a, Sec. 3.050

224.—Bexar. See Article 199a, Sec. 3.051

225.—Bexar. See Article 199a, Sec. 3.052

226.—Bexar. See Article 199a, Sec. 3.053

227.—Bexar. See Article 199a, Sec. 3.054

228.—Harris. See Article 199a, Sec. 3.055

[See Compact Edition, Volume 3 for text of 229]

230.—Harris. See Article 199a, Sec. 3.056

231.—Tarrant. See Article 199a, Sec. 3.057

232.—Harris. See Article 199a, Sec. 3.058

233.—Tarrant. See Article 199a, Sec. 3.059

234.—Harris. See Article 199a, Sec. 3.060

236.—Tarrant. See Article 199a, Sec. 3.061

237.—Lubbock. See Article 199a, Sec. 3.062

238.—Midland. See Article 199a, Sec. 3.063

239.—Brazoria. See Article 199a, Sec. 3.064

240.—Fort Bend. See Article 199a, Sec. 3.065

241.—Smith. See Article 199a, Sec. 3.066

242.—Hale, Swisher and Castro. See Article 199a, Sec. 3.067

243.—El Paso. See Article 199a, Sec. 3.068

244.—Ector. See Article 199a, Sec. 3.069

245.—Harris. See Article 199a, Sec. 3.070

246.—Harris. See Article 199a, Sec. 3.071

247.—Harris. See Article 199a, Sec. 3.072

248.—Harris. See Article 199a, Sec. 3.073

249.—Johnson and Somervell. See Article 199a, Sec. 3.074

250.—Travis. See Article 199a, Sec. 3.076

251.—Potter and Randall. See Article 199a, Sec. 3.077

252.—Jefferson. See Article 199a, Sec. 3.078

253.—Chambers and Liberty. See Article 199a, Sec. 3.079

254.—Dallas. See Article 199a, Sec. 3.080

255.—Dallas. See Article 199a, Sec. 3.081

256.—Dallas. See Article 199a, Sec. 3.082

257.—Harris. See Article 199a, Sec. 3.083

258.—Polk, San Jacinto and Trinity. See Article 199a, Sec. 3.084

259.—Jones and Shackelford. See Article 199a, Sec. 3.085

260.—Orange. See Article 199a, Sec. 3.086

261.—Travis. See Article 199a, Sec. 3.087

262.—Harris. See Article 199a, Sec. 3.088

263.—Harris. See Article 199a, Sec. 3.089

264.—Bell. See Article 199a, Sec. 3.090

265.—Dallas. See Article 199a, Sec. 3.091

272.—Brazos. See Article 199a, Sec. 3.098

Art. 199a. Judicial Districts Act of 1969

[See Compact Edition, Volume 3 for text of Subchapters A and B]

SUBCHAPTER C. CREATION OF DISTRICTS

[See Compact Edition, Volume 3 for text of 3.001 and 3.002]

169.—Bell

[See Compact Edition, Volume 3 for text of 3.003(a)]

(b) The terms of the 169th District Court shall be on the first Mondays in January, April, July, and October of each year, and each term of court continues until the next succeeding term begins.

[See Compact Edition, Volume 3 for text of 3.004 to 3.013]

187.—Bexar

[See Compact Edition, Volume 3 for text of 3.014(a) and (b)]

(c) The term of court of the 187th District Court beginning on the first Monday in July, 1975, shall continue until the first Monday in September, 1975. Beginning on the first Monday in September, 1975, the court shall hold six terms each year for the trial of causes and the disposition of business coming before it, one term beginning on the first Monday in September, one term beginning on the first Monday in November, one term beginning on the first Monday in January, one term beginning on the first Monday in March, one term beginning on the first Monday in May, and one term beginning on the first Monday in July of each year. Each term shall continue until the business is disposed of.

[See Compact Edition, Volume 3 for text of 3.015 to 3.025]

198.—Kerr, Bandera, Menard, Concho, Kimble, and McCulloch

Sec. 3.026. (a) The 198th Judicial District, composed of the Counties of Kerr, Menard, Concho, Kimble, and McCulloch, is created.

[See Compact Edition, Volume 3 for text of 3.026(b) to 3.028]

199.—Collin

[See Compact Edition, Volume 3 for text of 3.028(a)]

Subsections (b), (c), (d), and (e), are repealed by Acts 1975, 64th Leg., p. 375, ch. 166, § 9, eff. Jan. 1, 1976.

[See Compact Edition, Volume 3 for text of 3.029 to 3.031]

205.—El Paso, Hudspeth and Culberson

Sec. 3.032. (a) The 205th Judicial District, composed of the Counties of El Paso, Hudspeth, and Culberson is created.

(b) The 205th District Court shall give preference to criminal cases.

[See Compact Edition, Volume 3 for text of 3.033 to 3.034]

207.—Comal, Hays and Caldwell

[See Compact Edition, Volume 3 for text of (a) and (b)]

(c) The courts shall hold four terms each year beginning on the first Mondays in February, May, August, and November in Hays County, beginning on the first Mondays in March, June, September, and December in Caldwell County, and beginning on the first Mondays in April, July, October, and January in Comal County. Each term of court continues in each county until the next succeeding term begins.

[Added by Acts 1979, 66th Leg., p. 263, ch. 137, § 2, eff. Aug. 27, 1979.]

208.—Harris

[See Compact Edition, Volume 3 for text of 3.036(a) and (b)]

(c) The term of court of the 208th District Court beginning on the first Monday in January, 1975, shall continue until the first Monday in August, 1975. Beginning on the first Monday in August, 1975, the court shall hold four terms each year for the trial of causes and the disposition of business coming before it, one term beginning on the first Monday in August, one term beginning on the first Monday in November, one term beginning on the first Monday in February, and one term beginning on the first Monday in May of each year. Each term shall continue until the business is disposed of.

209.—Harris

[See Compact Edition, Volume 1 for text of 3.037(a) and (b)]

(c) The term of court of the 209th District Court beginning on the first Monday in January, 1975, shall continue until the first Monday in August, 1975. Beginning on the first Monday in August, 1975, the court shall hold four terms each year for the trial of causes and the disposition of business coming before it, one term beginning on the first Monday in August, one term beginning on the first Monday in November, one term beginning on the first Monday in February, and one term beginning on the first Monday in May of each year. Each term shall continue until the business is disposed of.

210.—El Paso, Hudspeth and Culberson

Sec. 3.038. The 210th Judicial District, composed of the Counties of El Paso, Hudspeth, and Culberson, is created.

[See Compact Edition, Volume 3 for text of 3.039 to 3.043]

217.—Angelina

Sec. 3.044. The 217th Judicial District, composed of the County of Angelina, is hereby created.

218.—Atascosa, Frio, Karnes, LaSalle and Wilson

Sec. 3.045. (a) The 218th Judicial District, composed of the Counties of Atascosa, Frio, Karnes, LaSalle, and Wilson, is hereby created.

(b) The judge of the 218th District Court may elect grand jury commissioners and impanel grand juries in each county in the district but is not required to impanel a grand jury in any county except when he deems it necessary. The judge may alternate the impaneling of grand juries with the judge of any other district court in each county, or the judges may by agreement determine which one of the courts will impanel the grand juries. Indictments within each county may be returned to either court within that county. All grand and petit juries drawn for one district court in each county are interchangeable with any other district court in that county the same as if the jury had been drawn for the court in which it is used.

219.—Collin

Sec. 3.046. The 219th Judicial District, composed of the County of Collin, is hereby created.

220.—Hamilton, Comanche and Bosque

Sec. 3.047. The 220th Judicial District, composed of the Counties of Hamilton, Comanche, and Bosque, is hereby created.

221.—Montgomery

Sec. 3.048. The 221st Judicial District, composed of the County of Montgomery, is hereby created.

222.—Deaf Smith and Oldham

Sec. 3.049. (a) The 222nd Judicial District, composed of the Counties of Deaf Smith and Oldham, is hereby created.

(b) The commissioners court of Deaf Smith County and Oldham County by agreement or separately may supplement the district judge's state compensation.

(c) The salary of the official shorthand reporter shall be set by the district judge of this judicial district at a sum of not less than \$15,000 per annum. In addition to a salary, the reporter shall receive allowances for his actual and necessary travel and hotel expenses, if any, while actually engaged in the

discharge of his duties, not to exceed the amount allowed by the federal government while traveling by private conveyance and going to and returning from the place where such duties are discharged, traveling the nearest practical route. The expenses shall be paid by the respective counties of the judicial district for which they are incurred, each county paying the expense incidental to its own regular or special term of court. The expenses shall be paid to the official shorthand reporter by the commissioners court of the county out of the general fund of the county upon the sworn statement of the reporter, approved by the judge.

(d) The adult probation officer shall receive a salary of not less than \$15,000 per annum. In addition to a salary, the adult probation officer shall receive allowances for his actual and necessary travel and hotel expenses while actually engaged in the discharge of his duties, such travel allowances not to exceed the amount allowed by the federal government while traveling by private conveyance in going to and returning from the place where such duties are discharged, traveling the nearest practical route. The expenses shall be paid by the respective counties of the judicial district for which they are incurred out of the general fund of the county upon the sworn statement of the adult probation officer, approved by the judge. In lieu of travel allowances the commissioners court of each county by agreement may provide transportation under the same terms and conditions as provided for sheriffs.

223.—Gray

Sec. 3.050. The 223rd Judicial District, composed of the County of Gray, is hereby created.

224.—Bexar

Sec. 3.051. (a) The 224th Judicial District, composed of the County of Bexar, is hereby created.

(b) The 224th District Court shall give preference to civil cases.

225.—Bexar

Sec. 3.052. (a) The 225th Judicial District, composed of the County of Bexar, is hereby created.

(b) The 225th District Court shall give preference to civil cases.

226.—Bexar

Sec. 3.053. (a) The 226th Judicial District, composed of the County of Bexar, is hereby created.

(b) The 226th District Court shall give preference to criminal cases.

(c) The 226th District Court shall hold six terms each year for the trial of causes and the disposition of business coming before it, one term beginning the first Monday in January, one the first Monday in March, one the first Monday in May, one the first

Monday in July, one the first Monday in September, and one the first Monday in November of each year. Each term shall continue until the business is disposed of.

227.—Bexar

Sec. 3.054. (a) The 227th Judicial District, composed of the County of Bexar, is hereby created.

(b) The 227th District Court shall give preference to criminal cases.

(c) The 227th District Court shall hold six terms each year for the trial of causes and the disposition of business coming before it, one term beginning the first Monday in January, one the first Monday in March, one the first Monday in May, one the first Monday in July, one of the first Monday in September, and one the first Monday in November of each year. Each term shall continue until the business is disposed of.

228.—Harris

Sec. 3.055. (a) The 228th Judicial District, composed of the County of Harris, is hereby created.

(b) The 228th District Court shall give preference to criminal cases.

(c) The 228th District Court shall hold four terms each year for the trial of causes and the disposition of business coming before it, one term beginning on the first Monday in August, one term beginning on the first Monday in November, one term beginning on the first Monday in February, and one term beginning on the first Monday in May of each year. Each term shall continue until the business is disposed of.

230.—Harris

Sec. 3.056 (a) The 230th Judicial District, composed of the County of Harris, is hereby created.

(b) The 230th District Court shall give preference to criminal cases.

(c) The 230th District Court shall hold four terms each year for the trial of causes and the disposition of business coming before it, one term beginning on the first Monday in August, one term beginning on the first Monday in November, one term beginning on the first Monday in February, and one term beginning on the first Monday in May of each year. Each term shall continue until the business is disposed of.

231.—Tarrant

Sec. 3.057. (a) The 231st Judicial District, composed of the County of Tarrant, is hereby created.

(b) The 231st District Court shall give preference to family law matters.

232.—Harris

Sec. 3.058. (a) The 232nd Judicial District, composed of the County of Harris, is hereby created.

(b) The 232nd District Court shall give preference to criminal cases.

(c) The 232nd District Court shall hold four terms each year for the trial of causes and the disposition of business coming before it, one term beginning on the first Monday in August, one term beginning on the first Monday in November, one term beginning on the first Monday in February, and one term beginning on the first Monday in May of each year. Each term shall continue until the business is disposed of.

233.—Tarrant

Sec. 3.059. (a) The 233rd Judicial District, composed of the County of Tarrant, is hereby created.

(b) The 233rd District Court shall give preference to family law matters.

234.—Harris

Sec. 3.060. The 234th Judicial District, composed of the County of Harris, is hereby created.

236.—Tarrant

Sec. 3.061. The 236th Judicial District, composed of the County of Tarrant, is hereby created.

237.—Lubbock

Sec. 3.062. The 237th Judicial District, composed of the County of Lubbock, is hereby created.

238.—Midland

Sec. 3.063. The 238th Judicial District, composed of the County of Midland, is hereby created.

239.—Brazoria

Sec. 3.064. The 239th Judicial District, composed of the County of Brazoria, is hereby created.

240.—Fort Bend

Sec. 3.065. The 240th Judicial District, composed of the County of Fort Bend, is hereby created.

241.—Smith

Sec. 3.066. The 241st Judicial District, composed of the County of Smith, is hereby created.

242.—Hale, Swisher and Castro

Sec. 3.067. The 242nd Judicial District, composed of the Counties of Hale, Swisher, and Castro, is hereby created.

243.—El Paso

Sec. 3.068. The 243rd Judicial District, composed of the County of El Paso, is hereby created.

244.—Ector

Sec. 3.069. The 244th Judicial District, composed of the County of Ector, is hereby created.

245.—Harris

Sec. 3.070. (a) The 245th Judicial District, composed of the County of Harris, is hereby created.

(b) The 245th District Court shall give preference to family law matters.

246.—Harris

Sec. 3.071. (a) The 246th Judicial District, composed of the County of Harris, is hereby created.

(b) The 246th District Court shall give preference to family law matters.

247.—Harris

Sec. 3.072. (a) The 247th Judicial District, composed of the County of Harris, is hereby created.

(b) The 247th District Court shall give preference to family law matters.

248.—Harris

Sec. 3.073. (a) The 248th Judicial District, composed of the County of Harris, is hereby created.

(b) The 248th District Court shall give preference to criminal cases.

(c) The 248th District Court shall hold four terms each year for the trial of causes and the disposition of business coming before it, one term beginning on the first Monday in August, one term beginning on the first Monday in November, one term beginning on the first Monday in February, and one term beginning on the first Monday in May of each year. Each term shall continue until the business is disposed of.

249.—Johnson and Somervell

Sec. 3.074. The 249th Judicial District, composed of the counties of Johnson and Somervell, is hereby created.

1A.—Jasper, Newton and Tyler

Sec. 3.075. (a) There is hereby created a judicial district, composed of the counties of Jasper, Newton, and Tyler, to be known as Judicial District 1A.

(b) The jurisdiction of the court created in this section is concurrent with the jurisdiction of the other district courts in the counties of Jasper, Newton, and Tyler, which courts shall retain and continue to exercise the jurisdiction that is now or may be hereafter conferred by law on district courts.

250.—Travis

Sec. 3.076. The 250th Judicial District, composed of the County of Travis, is hereby created.

251.—Potter and Randall

Sec. 3.077. (a) The 251st Judicial District, composed of the counties of Potter and Randall, is hereby created.

(b) The 251st District Court may hear and determine, in whichever county in that district is convenient for the court, all preliminary or interlocutory matters in which a jury may not be demanded in any case pending in any county in the district, regardless of whether the cases were filed in the county in which the hearing is held. The 251st District Court may, unless there is some objection filed by a party to the suit, hear, in any county in the district which is convenient for the court, any nonjury case, including but not limited to divorces, adoptions, default judgments, and matters where there has been citation by publication, pending in any county in the district, regardless of whether the cases were filed in the county in which the hearing is held.

252.—Jefferson

Sec. 3.078. (a) The 252nd Judicial District, composed of the County of Jefferson, is hereby created.

(b) The 252nd District Court shall give preference to criminal cases.

(c) The 252nd District Court shall hold four terms each year for the trial of causes and the disposition of business coming before it, one term beginning the first Monday of April, one term beginning the first Monday of July, one term beginning the first Monday of October, one term beginning the first Monday of January. Each term shall continue until the term ends by operation of law or the business is disposed of.

253.—Chambers and Liberty

Sec. 3.079. (a) The 253rd Judicial District, composed of the counties of Chambers and Liberty, is hereby created.

(b) The 253rd District Court shall hold two terms of court each year beginning in Liberty County on the first Mondays in April and October of each year and beginning in Chambers County on the first Mondays in June and December of each year. Each term shall continue in each county until the beginning of the next succeeding term.

254.—Dallas

Sec. 3.080. (a) The 254th Judicial District, composed of the County of Dallas, is hereby created.

(b) The 254th District Court shall give preference to family law matters.

255.—Dallas

Sec. 3.081. (a) The 255th Judicial District, composed of the County of Dallas, is hereby created.

(b) The 255th District Court shall give preference to family law matters.

256.—Dallas

Sec. 3.082. (a) The 256th Judicial District, composed of the County of Dallas, is hereby created.

(b) The 256th District Court shall give preference to family law matters.

(c) The 256th Judicial District exists on the date of the general election in 1978 for purposes of the election of the judge, and at the general election in 1978 there shall be elected by the qualified voters of the 256th Judicial District, a judge of the 256th District Court for a four-year term beginning on January 1, 1979.

257.—Harris

Sec. 3.083. (a) The 257th Judicial District, composed of the County of Harris, is hereby created.

(b) The 257th District Court shall give preference to family law matters.

258.—Polk, San Jacinto and Trinity

Sec. 3.084. The 258th Judicial District, composed of the counties of Polk, San Jacinto, and Trinity is hereby created.

259.—Jones and Shackelford

Sec. 3.085. (a) The 259th Judicial District, composed of the counties of Jones and Shackelford, is hereby created.

(b) In addition to the jurisdiction prescribed by the constitution and general laws of the state for district courts, the 259th District Court in both of the counties of Jones and Shackelford shall have all original and appellate civil and criminal jurisdiction normally exercised by county courts under the constitution and general laws of this state.

260.—Orange

Sec. 3.086. The 260th Judicial District, composed of the County of Orange, is hereby created.

261.—Travis

Sec. 3.087. The 261st Judicial District, composed of the County of Travis, is hereby created.

262.—Harris

Sec. 3.088. (a) The 262nd Judicial District, composed of the County of Harris, is hereby created.

(b) The 262nd District Court shall give preference to criminal cases.

(c) The 262nd District Court shall hold four terms each year for the trial of causes and the disposition of business coming before it, one term beginning on the first Monday in August, one term beginning on the first Monday in November, one term beginning on the first Monday in February, and one term beginning on the first Monday in May of each year. Each term shall continue until the business is disposed of.

263.—Harris

Sec. 3.089. (a) The 263rd Judicial District, composed of the County of Harris, is hereby created.

(b) The 263rd District Court shall give preference to criminal cases.

(c) The 263rd District Court shall hold four terms each year for the trial of causes and the disposition of business coming before it, one term beginning on the first Monday in August, one term beginning on the first Monday in November, one term beginning on the first Monday in February, and one term beginning on the first Monday in May of each year. Each term shall continue until the business is disposed of.

264.—Bell

Sec. 3.090. (a) The 264th Judicial District, composed of the County of Bell, is hereby created.

(b) The 264th Judicial District exists on the date of the general election in 1978 for purposes of the election of the judge, and at the general election in 1978 there shall be elected by the qualified voters of the 264th Judicial District, a judge of the 264th District Court for a four-year term beginning on January 1, 1979.

265.—Dallas

Sec. 3.091. (a) The 265th Judicial District, composed of the County of Dallas, is hereby created.

(b) The 265th District Court shall give preference to criminal cases.

(c) The 265th Judicial District exists on the date of the general election in 1978 for purposes of the election of the judge, and at the general election in 1978 there shall be elected by the qualified voters of the 265th Judicial District, a judge of the 265th District Court for a four-year term beginning on January 1, 1979.

272.—Brazos

Sec. 3.098. (a) The 272nd Judicial District, composed of the County of Brazos, is hereby created.

(b) The terms of the 272nd District Court shall begin on the first Mondays in April and October of each year, and each term of court continues until the next succeeding term begins.

SUBCHAPTER D. DISTRICT ATTORNEYS

220th Judicial District

Sec. 4.005. (a) The office of district attorney for the 220th Judicial District is created.

(b) The district attorney shall perform within the 220th Judicial District all the duties imposed and have all the authority conferred on district attorneys by the general laws of this state.

(c) The district attorney shall receive from the state as salary the amount appropriated by the legislature for district attorneys.

259th Judicial District

Sec. 4.006. (a) The office of the district attorney for the 259th Judicial District is created.

(b) The district attorney shall represent the state in all felony cases before the 259th District Court in Jones and Shackelford counties and shall perform all the duties imposed and have all the authority conferred on district attorneys by the general laws of this state.

258th Judicial District

Sec. 4.007. (a) The office of district attorney for the 258th Judicial District is created.

(b) The district attorney shall represent the state in all felony cases before the 258th District Court in Polk, San Jacinto, and Trinity counties and shall perform all the duties imposed and have all the authority conferred on district attorneys by the general laws of this state.

[Amended by Acts 1975, 64th Leg., p. 224, ch. 83, § 3, eff. April 30, 1975; Acts 1975, 64th Leg., p. 342, ch. 144, §§ 1 and 2, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 375, ch. 166, § 9, eff. Jan. 1, 1975; Acts 1975, 64th Leg., p. 465, ch. 199, § 1, eff. May 15, 1975; Acts 1977, 65th Leg., p. 6, ch. 5, § 1, eff. April 1, 1977; Acts 1977, 65th Leg., p. 66, ch. 33, § 1, eff. March 29, 1977; Acts 1977, 65th Leg., p. 1314, ch. 519, § 1, eff. June 15, 1977; Acts 1977, 65th Leg., p. 2155, ch. 860, §§ 1 to 5, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 52, ch. 32, § 1, eff. April 6, 1979; Acts 1979, 66th Leg., p. 263, ch. 137, § 2, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 800, ch. 359, § 1, eff. June 6, 1979; Acts 1979, 66th Leg., p. 1112, ch. 528, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1164, ch. 563, § 3, eff. Sept. 1, 1979.]

Acts 1977, 65th Leg., ch. 5, which by §§ 1 to 4 added §§ 3.044 to 3.066 of this article and amended subs. 15, 52 and 69 of art. 199, provided in §§ 5 and 6:

"Sec. 5. There is hereby appropriated to the Judiciary Section, Comptroller's Department from the General Revenue Fund for the fiscal year ending August 31, 1977, the sum of \$400,000, or as much of that amount as is necessary, to pay the salaries and expenses of the judges of the district courts created by this Act. The salaries and expenses shall be paid at the same rate as is provided for district judges in Chapter 743, Acts of the 64th Legislature, Regular Session, 1975.

"Sec. 6. The provisions of this Act take effect on April 1, 1977."

Acts 1977, 65th Leg., ch. 33, which by § 1 added § 4.005 to this article, provided in §§ 2 and 3:

"Sec. 2. The person serving as district attorney of the 52nd Judicial District on February 24, 1977, shall continue to serve as district attorney of the 52nd Judicial District for the term to which he was elected.

"Sec. 3. There is appropriated out of the general revenue fund the sum of \$10,334 for the period beginning April 1, 1977, and ending August 31, 1977, for the salary of the district attorney as provided in Section 1 of this Act."

Acts 1977, 65th Leg., ch. 860, which by §§ 1 to 9 added §§ 3.067 to 3.091, 4.006, 4.007 to this article, and amended subs. 130, § 1a; 90; 104, §§ 1 and 2 of art. 199, and subsecs. (b) and (f) of art. 326k-62, provided in §§ 10 and 11:

"Sec. 10. (a) The County Court of Jones County and the County Court of Shackelford County shall each retain and exercise the general jurisdiction of a probate court and shall retain the power to issue all writs necessary to enforce its jurisdiction and to punish contempts. The County Court of Jones County and the County Court of Shackelford County shall have no civil or criminal jurisdiction except as to final judgments rendered prior to the effective date of this Act.

(b) The County Attorney of Jones County and the County Attorney of Shackelford County shall each represent the state in all misdemeanor cases before the district court in each of the respective counties.

(c) All pending civil and criminal cases in the county courts in Jones and Shackelford counties are transferred to the district court with jurisdiction in each of those counties. All writs and process issued by or out of the county courts in civil or criminal cases are returnable to the next term of the district court in each of those counties. The county court in each of those counties retains jurisdiction over judgments in civil or criminal cases rendered prior to the effective date of this Act for enforcement by execution, order of sale, or other appropriate process. If, in a civil or criminal case on appeal from the county court in either of those counties, a judgment is entered by the court of civil appeals, the supreme court, or the court of criminal appeals, remanding the case for a new trial or for further proceedings, it shall be remanded to the district court.

"(d) Within 20 days after the effective date of this section, the clerk of the county court in each of the counties of Jones and Shackelford shall file with the clerk of the district court in each of those counties all original papers in cases transferred to the district court and all Judges' dockets and certified copies of interlocutory judgments or other orders entered in the minutes of the county court in cases so transferred. The district clerk in each county shall immediately docket the cases on the docket of the district court in each county. All the transferred cases shall stand on the docket of the court to which they are transferred in the same manner and place as each stands on the docket of the county court. It is not necessary that the district clerk refill any papers previously filed by the county clerk. The county clerk shall accompany the papers with a certified bill of cost and shall charge accrued fees due him against all cost deposits, with the remainder of the deposit paid to the district court as a deposit in the particular case for which it was deposited. Credit shall be given the litigants for all jury fees paid in the county court."

"Sec. 11. The provisions of Sections 1, 5, 6, 7, 8, 9, and 10 of this Act take effect on September 1, 1977. The provisions of Section 2 of this Act take effect on January 1, 1978. The provisions of Section 3 of this Act take effect on September 1, 1978. Except as provided in Subsection (b) of Section 3.090, Subsection (c) of Section 3.091, and Subsection (c) of Section 3.082 the provisions of Section 4 of this Act take effect on January 1, 1979. The remaining sections of the Act take effect according to the provisions of the Act."

Acts 1979, 66th Leg., p. 1163, ch. 563, which by § 3 amended § 3.026(a) of this article, provided in § 4:

"This Act takes effect only if the 66th Legislature, Regular Session, does not create two or more new judicial districts in the same Act. If no bill creating two or more new judicial districts by the 66th Legislature, Regular Session, becomes law, this Act takes effect September 1, 1979."

No such bill became law.

ADMINISTRATIVE JUDICIAL DISTRICTS

Art. 200a. Administrative Judicial Districts

Numbers and Composition

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

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

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

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

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

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

Sixth—Maverick, Kinney, Edwards, Val Verde, Terrell, Kerr, Kendall, Bandera, Gillespie, Kimble,

Real, Medina, Uvalde, Zavala, Sutton, Crockett, Pecos, Brewster, Jeff Davis, Presidio, Culberson, Hudspeth, El Paso, Upton, Reagan.

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

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

Ninth—Wilbarger, Baylor, Knox, King, Dickens, Motley, Cottle, Crosby, Lubbock, Hockley, Cochran, Bailey, Lamb, Hale, Floyd, Castro, Swisher, Briscoe, Parmer, Deaf Smith, Oldham, Hartley, Dallam, Sherman, Moore, Potter, Randall, Armstrong, Hansford, Ochiltree, Lipscomb, Hutchinson, Roberts, Hemphill, Carson, Gray, Wheeler, Donley, Collingsworth, Hall, Childress, Hardeman, Foard, Yoakum, Terry.

Presiding Judge

Sec. 2. (a) It shall be the duty of the Governor, with the advice and consent of the Senate, to designate one of the regularly elected district judges, or a retired district judge, or an active or retired appellate judge with judicial experience on a district court, who, if retired, voluntarily retired from office, who resides within the district, and who has certified his willingness to serve, in each of said districts as Presiding Judge of the Administrative Judicial District. Adequate quarters for the operation of such District and preservation of records shall be provided in the courthouse of the county in which such Presiding Judge resides. Upon the death, resignation or expiration of the term of office of such Presiding Judge, the Governor shall thereafter immediately appoint or reappoint a Presiding Judge of the Administrative District, as in the first instances above. Presiding Judges of Administrative Judicial Districts shall serve for a term of four (4) years from date of qualification as such administrative judge.

(b) The Chief Justice of the Supreme Court is authorized to make assignments within an administrative judicial district and to otherwise perform the duties of the Presiding Judge of that district:

(1) on the death or resignation of the Presiding Judge, until a successor Presiding Judge is appointed; or

(2) on notification to the Chief Justice by the Presiding Judge, or other appropriate source, of the absence, disabling illness, or other incapacity of the Presiding Judge which prevents the performance of his official duties as Presiding Judge

for a period of time, until the Presiding Judge is again able to perform these duties; or

(3) in a particular matter where the Presiding Judge disqualifies himself from performing the duties of Presiding Judge in that matter.

Sec. 3. Repealed by Acts 1979, 66th Leg., p. 1357, ch. 608, § 4, eff. Aug. 27, 1979.

[See Compact Edition, Volume 3 for text of 4 to 5]

Assignment of Retired Regular, and Former Judges; Duty to Accept Assignment; Compensation

Sec. 5a. Retired district judges, as defined by Article 6228(b) of the Revised Civil Statutes of Texas, as amended, who have consented to be subject to assignment, all regular district judges in this state, and all former district judges who were elected at a general election or appointed by the governor; who have not been defeated for reelection; who have not been removed from office by impeachment, the Supreme Court, the governor upon address of the legislature, the State Judicial Qualifications Commission, or by the legislature's abolishment of the judge's court; who are not more than 70 years of age; and who certify to the presiding judge a willingness to serve and to comply with the same prohibitions relating to the practice of law that are imposed on a retired judge by Section 7, Article 6228(b) of the Revised Civil Statutes of Texas, 1925, as amended or hereafter amended, may be assigned under the provisions of this Act by the presiding judge of the administrative judicial district wherein such assigned judge resides, and while so assigned, shall have all the powers of a judge thereof. When such district judge is so assigned by the presiding judge of an administrative judicial district to a court in the same administrative district, or to a court in another administrative district upon call of the presiding judge of such other administrative district and then reassigned as provided for in Section 6 of this Act, as amended, it shall be the duty of such judge so assigned or reassigned to serve in such court or administrative district to which he may be assigned, or reassigned unless for good cause presented by him in writing to the presiding judge of his administrative district, he shall be relieved of such assignment by such presiding judge; provided, however, after the presentation of a written statement declining such duty for good cause by such district judge, if the presiding judge refuses to relieve the district judge from the assignment, the district judge may, within five days after such refusal, petition the Chief Justice of the Supreme Court of the State of Texas to be relieved from such assignment for good cause, which said Chief Justice may at his discretion grant or refuse.

The compensation, salaries and expenses of such judges while so assigned or reassigned shall be paid in accordance with the laws of the state, except that the salary of such retired judges shall be paid out of moneys appropriated from the General Revenue Fund for such purpose in an amount representing the difference between all of the retirement benefits of such judge as a retired district judge and the salary and compensation from all sources of the judge of the court wherein he is assigned, and determined pro-rata for the period of time he actually sits as such assigned judge. On certification of the presiding judge of the administrative judicial district that a former district judge has rendered services under the provisions of this Act, the former district judge shall be paid, out of county funds and out of money appropriated by the legislature for such purpose, for services actually performed, the same amount of compensation, salary, and expenses that the regular judge is entitled to receive from the county and from the state for such service.

Assignment of Retired District Judges to Domestic Relations or Juvenile Courts

Sec. 5b. A retired district judge, as defined by Chapter 99, Acts of the 51st Legislature, Regular Session, 1949, as amended (Article 6228b, Vernon's Texas Civil Statutes), may be assigned by the presiding judge of the administrative judicial district wherein the assigned judge resides to a domestic relations or juvenile court within the geographic limits of the respective administrative judicial district. A presiding judge may, with the consent of a retired district judge within his district, make an assignment outside of his judicial district with the specific authorization of the presiding judge of the district in which that assignment is made. The assignment shall be governed by all other provisions of this Act, except that the county wherein the domestic relations or juvenile court is located shall pay the salary stipulated in Section 5a of this Act.

Certification of State's Share of Compensation of Former Judges for Certain Services

Sec. 5c. It shall be the duty of the presiding judge of the administrative judicial district to certify the state's share to be paid former district judges for services authorized prior to, on, or after the effective date of this Act pursuant to Sections 5a and 5b of this article. The amount so certified shall be paid from an item in the Judiciary Section—Comptroller's Department—of the appropriations act providing for payment of salaries of district judges and criminal district judges.

Extended or Special Terms; Election Contests

Sec. 6. It shall be the duty of any district judge of any district within the Administrative District to diligently discharge the administrative responsibilities of office, to rule on a case within three months

after that case has been taken under advisement, to extend the regular terms of his court, and to call special terms, when necessary to carry out the purposes of this Act and dispose of pending litigation. It shall also be the duty of a district judge in whose court an election contest or suit brought for the removal of a local official is filed to request the Presiding Judge of the Administrative Judicial District to assign a judge of the Administrative District who is not a resident of the county to hold a special or regular term of court in that county in order to dispose of such suits. A district judge shall request the Presiding Judge to assign a judge of the Administrative District to hear any motions to recuse such district judge from a case pending in his court. If the term be extended as herein provided no other term of the court in such district shall fail because of said extension, but such other terms may be opened and held as usual. The Presiding Judge of one Administrative District may call upon the Presiding Judge of another Administrative District to furnish judges to aid in the disposition of litigation pending in any judicial district within the Administrative District in which such judge so making the request has been designated as the Presiding Judge. For the trial of cases and the entry of orders and the disposition of other business necessary, the judge of any district in this State, or any District Judge sent to any district in this State by the Presiding Judge of an Administrative District, shall have power, by entering an order on the minutes, to convene a special term of the court for the disposition of the business coming before the district court.

Administrative Assistant; Duties

Sec. 7. (a) The Presiding Judge may employ, directly or through a contract with another governmental entity, an administrative assistant, on a full- or part-time basis, to aid and assist the Presiding Judge in carrying out the judge's duties under this Act. The administrative assistant shall receive the compensation from the State provided by the General Appropriations Act.

(b) The administrative assistant must possess the qualifications established by rule of the Supreme Court.

(c) Each administrative assistant shall perform the duties that are required by the Presiding Judge and by rules of administration, and shall conduct the correspondence for the Presiding Judge of the Administrative District, keep a record of all its proceedings, and a complete and accurate record of all cases pending in the several courts of the Administrative District, the time of their filing, the style and purposes of the causes, and their final disposition, and such other matters as may be prescribed by the council of judges herein referred to. For such purposes he is authorized, with the approval of the

Presiding Judge, to purchase the necessary office equipment, stamps, stationery and supplies, and to employ additional personnel as authorized by the council of judges. Such cost shall be divided pro rata among the counties and paid by the counties on the certificate of the Presiding Judge. The administrative assistant shall, under the direction of the Presiding Judge of the Administrative District, make an annual report on the activities of the district and such special reports as may be provided by the rules of administration to the Supreme Court of Texas in the manner directed by that court.

[See Compact Edition, Volume 3 for text of 8]

Sec. 9. All of the aforesaid salaries, compensation, and expenses, and all other expenses authorized and incurred herein for the purpose of administering this Law, other than those provided by state appropriations, shall be paid by the several counties composing the Administrative District out of the General Fund of said counties. Said salaries, compensations, expenses, and expenditures herein authorized are to be paid in proportion to the number of weeks provided by Law for holding District Court in the respective counties, on certificates of approval of the Presiding Judge of the Administrative Judicial District.

[See Compact Edition, Volume 3 for text of 10 and 10a]

Compensation for Performing Duties as Presiding Judge of Administrative Judicial Districts

Sec. 11.

[See Compact Edition, Volume 3 for text of 11(a)]

(b) In addition to and cumulative of all other compensation, expenses, and perquisites authorized by law and this Act, the Presiding Judge of any

Administrative Judicial District in Texas which has forty or more district courts therein, when such Presiding Judge is a retired district judge or appellate judge, as provided in Section 2 of this Act, shall receive not less than \$5,000.00 nor more than \$15,000.00 per annum as compensation for performing duties as the Presiding Judge of such Administrative Judicial District. Biennially the Council of Judges of such Administrative Judicial District shall fix the amount of such compensation by a majority vote of the judges. Each county comprising such Administrative Judicial District shall pay out of the officers salary fund or the general fund of the county the amount of salary apportioned to it as herein provided. The aforesaid salary, or compensation, and all other expenses incidental thereto, shall be paid annually by the said counties in such Administrative Judicial District to the Presiding Judge of such Administrative Judicial District, and by said judge placed in an Administrative Fund, from which fund said salary, and other expenses incidental thereto, shall be paid. Said salary shall be paid in twelve equal monthly payments. Said salary shall be apportioned according to the assessed property valuation of each judicial district comprising such Administrative Judicial District and after so apportioned the amount apportioned shall be apportioned to each county comprising the judicial district according to the assessed property valuation of the county.

[Amended by Acts 1975, 64th Leg., p. 1193, ch. 450, §§ 1 and 2, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1911, ch. 614, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 248, ch. 115, § 1, eff. Aug. 29, 1975; Acts 1977, 65th Leg., p. 1060, ch. 389, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1194, ch. 460, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1988, ch. 794, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 192, ch. 101, § 1, eff. Sept. 1, 1979; Acts 1979, 66th Leg., p. 1126, ch. 538, § 1, eff. June 11, 1979; Acts 1979, 66th Leg., p. 1355, ch. 608, §§ 1 to 5, eff. Aug. 27, 1979.]

TITLE 10

ARBITRATION

1. TEXAS GENERAL ARBITRATION ACT

Article

224-1. Notice in Agreements.

Art. 224. Validity of Arbitration Agreements

A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract. A court shall refuse to enforce an agreement or contract provision to submit a controversy to arbitration if the court finds it was unconscionable at the time the agreement or contract was made. Provided, however, that none of the provisions of this Act shall apply to:

(a) any collective bargaining agreement between an employer and a labor union;

(b) any contract for the acquisition by an individual person or persons (as distinguished from a corporation, trust, partnership, association, or other legal entity) of real or personal property, or services, or

money or credit where the total consideration therefor to be paid or furnished by the individual is \$50,000 or less, unless said individual and the other party or parties agree in writing to submit to arbitration and such written agreement is signed by the parties to such agreement and their attorneys;

(c) any claim for personal injury except upon the advice of counsel to both parties as evidenced by a written agreement signed by counsel to both parties. A claim for workers' compensation shall not be submitted to arbitration under this Act.

[Amended by Acts 1979, 66th Leg., p. 1708, ch. 704, § 1, eff. Aug. 27, 1979.]

Art. 224-1. Notice in Agreements

No agreement described in Article 224 shall be arbitrated unless notice that a contract is subject to arbitration under this Act is typed in underlined capital letters, or is rubber-stamped prominently, on the first page of the contract.

[Added by Acts 1979, 66th Leg., p. 1708, ch. 704, § 2, eff. Aug. 27, 1979.]

TITLE 10A

ARCHITECTS

Art. 249a. Regulation of Practice of Architecture [See Compact Edition, Volume 3 for text of 1]

Board of Architectural Examiners Created; Qualifications;
Term of Office; Vacancies

Sec. 2. There is hereby created a Board of Architectural Examiners to be known as the Texas Board of Architectural Examiners, and such Board shall consist of four (4) reputable practicing architects who have resided in the State of Texas and have been actively engaged in the practice of architecture for five (5) years next preceding their appointment, two (2) members who are licensed landscape architects under the laws of this State, and three (3) members of the general public who are not registered architects or licensed landscape architects and who do not have, other than as consumers, financial interests in the practice of architecture or landscape architecture. Members of the Board are appointed by the Governor of this State. Members hold office for staggered terms of six years. The terms of office of the appointees who fill the offices of incumbent members whose terms expire June 21, 1981, 1983, and 1985, shall expire January 31, 1987, 1989, and 1991, respectively. All succeeding members shall serve until January 31 of odd-numbered years. All vacancies occurring in the membership of said Board shall be filled by appointment by the Governor of this State for the unexpired term of such membership. All appointments to said Board shall be subject to confirmation by the Texas Senate.

Not more than one (1) member of said Board shall be a stockholder or owner of any interest in, nor be a member of the faculty, or board of trustees, or other governing board of, nor be an officer of, any school or college which teaches architecture or landscape architecture.

A member of said Board shall not be disqualified for, nor prohibited from, performing any work or rendering any service on any State, county, municipal, or other public building or work for a fee or other direct compensation because of membership on said Board.

Appointments to the Board shall be made without regard to the race, creed, sex, religion, or national origin of the appointees.

Failure of a Board member to attend at least one-half of the regularly scheduled meetings held each year automatically removes the member and creates a vacancy on the Board.

A member or employee of the Board may not be an officer, employee, or paid consultant of a professional society in the architecture and landscape architecture professions.

A member or employee of the Board may not be related within the second degree by affinity or within the second degree by consanguinity to a person who is an officer, employee, or paid consultant of a professional society in the regulated profession.

Application of Sunset Act

Sec. 2a. The Board of Architectural Examiners is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1991.

¹ Article 5429k.

Oath; Organization of Board; Bond of Secretary-Treasurer;
Powers and Duties; Rules and Regulations; Open
Meetings; Procedure

Sec. 3. (a). The members of the Texas Board of Architectural Examiners shall, before entering upon the discharge of their duties, qualify by subscribing to, before a Notary Public or other officer authorized by law to administer oaths, and filing with the Secretary of State, the Constitutional oath of office. They shall, as soon as organized, and annually thereafter in the month of January, elect from their number a chairman and vice-chairman. A secretary-treasurer of this Board shall be appointed by the Board and shall hold office at the pleasure of the Board. The secretary-treasurer may, but need not, be a Member of the Board. The secretary-treasurer, before entering upon his duties, shall make and file a bond of not less than Five Thousand Dollars (\$5,000.00) with the State Comptroller. Said bond shall be payable to the Governor of this State for the benefit of said Board; shall be conditioned upon the faithful performance of the duties of such officer, and shall be in such form as may be approved by the Attorney General of this State; and shall be executed by a surety company, as surety, and be approved by the Texas Board of Architectural Examiners. The premium on the bond shall be paid from the Architects Registration Fund.

(b). The Board shall adopt all reasonable and necessary rules, regulations, and by-laws not inconsistent with the Texas Constitution, the laws of this State, and this Act for the performance of their

duties in administering this Act. If the appropriate standing committees of both houses of the legislature acting under Subsection (g), Section 5, Administrative Procedure and Texas Register Act, as added (Article 6252-13a, Vernon's Texas Civil Statutes), transmit to the Board statements opposing adoption of a rule under that section, the rule may not take effect, or if the rule has already taken effect, the rule is repealed effective on the date the Board receives the committees' statements. The Board shall adopt a seal, which shall be used on official documents. The design of the seal shall be similar to the seal of other departments of the State, in that it shall contain the five-pointed star with a circular border, and within the border shall contain the words, "Texas Board of Architectural Examiners".

[See Compact Edition, Volume 3 for text of (c) and (d)]

(e). The Board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

Fees; Architects Registration Fund; Office; Employees; Compensation

Sec. 4.

[See Compact Edition, Volume 3 for text of (a)]

(b). To aid the Board in performing its duties, the Board shall maintain an office in Austin, Travis County, Texas. The Board may employ an executive director to conduct the affairs of the Board under the Board's direction. The executive director shall receive a salary which the Board shall determine. The Board shall employ clerical help and assistants as are necessary for the proper performance of its work and may make expenditures for this purpose. A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9c, Vernon's Texas Civil Statutes), may not serve as a member of the Board or act as the general counsel to the Board.

[See Compact Edition, Volume 3 for text of (c)]

Quorum; Meetings; Rules and Regulations; Enforcement; Complaints

Sec. 5.

[See Compact Edition, Volume 3 for text of (a) to (c)]

(d). The Board may not promulgate rules restricting competitive bidding or advertising by licensees except to prohibit false, misleading, or deceptive practices.

(e). The Board shall keep an information file about each complaint filed with the Board relating to a licensee. If a written complaint is filed with the Board relating to a licensee, the Board, at least as frequently as quarterly, shall notify the complainant of the status of the complaint until the complaint is finally disposed of.

Meetings; Examinations; Fee; Certificate

Sec. 6.

[See Compact Edition, Volume 3 for text of (a) and (b)]

(c). A person shall be notified of the results of an examination taken by the person within 30 days after the testing date. However, if an examination given under this Act is graded or reviewed by a national testing service, the Board shall notify examinees of the results of the examination within two weeks after the Board's receipt of the results from the national testing service. In no event shall more than 90 days elapse between the testing date and notification of the results unless the Board notifies the examinees of the reason for the delay in notification. The Board shall send to the person not later than the 30th day after the day on which the request is received by the Board an analysis of the person's performance on the examination.

Qualifications of Applicants for Registration

Sec. 7. (a). An applicant for examination for registration as an architect in this State shall present a diploma from and be a graduate of a recognized university or college of architecture approved by the Board and shall also present evidence acceptable to the Board of such applicant's having had satisfactory experience in architecture, in the office or offices of one or more legally practicing architects, as prescribed in the rules and regulations adopted by the Board.

[See Compact Edition, Volume 3 for text of (b)]

(c). The Board shall accept for examination, an applicant, although not a graduate as above required, who possesses all of the other qualifications and furnishes evidence acceptable to the Board of his having completed not less than eight years' satisfactory experience in architecture in the office or offices of one or more legally practicing architects, or any combination of architectural schooling and experience totaling eight years; provided, however, in accordance with its rules and regulations, the Board may permit such applicant to take the qualifying test for the examination after five years of such experience.

Licensees from Other States or Countries; Fees

Sec. 8. (a). The Texas Board of Architectural Examiners may, in its discretion in each instance,

grant a certificate to practice architecture in this State to an architect who possesses a valid and current certificate or license to practice architecture in another State or territory of the United States of America or of another country, where the requirements and qualifications of such other jurisdiction were equal to or the equivalent of the requirements of the Texas Board of Architectural Examiners at the time of the granting of the certificate or license to practice architecture in the other jurisdiction. An applicant for a certificate under this section shall possess all of the other qualifications prescribed in this Act for other applicants and shall make application in the same manner and form as any other applicant; and such applicant shall furnish the Board such documents and other evidence concerning his application and qualifications as will substantiate his qualifications.

[See Compact Edition, Volume 3 for text of 8(b) to 11]

Annual Registration and Fee; Certificate of Renewal; Failure to Renew; Suspension and Revocation

Sec. 12. All certificates of registration shall expire annually on a date set by the Board as part of a staggered renewal system and shall become invalid on that date unless renewed. It shall be the duty of the secretary-treasurer of the Board to notify every person registered under this Act of the date of expiration of his certificate and the amount of the fee that shall be required for its renewal for one (1) year. The notice shall be mailed at least one (1) month in advance of the date of the expiration of said certificate. Renewal may be effected by the payment of a fee to be set by the Board, but not to exceed Fifty Dollars (\$50.00) for residents nor One Hundred Dollars (\$100.00) for nonresidents. Upon receipt of the required fee within the time and in the manner prescribed by the Board the designated officer or employee of the Board shall issue to the registered architect a certificate of renewal of his registration certificate for the term of one (1) year. Failure to renew a certificate of registration by the expiration date established by the Board shall result in an increase of the renewal fee by Twenty Dollars (\$20.00). If failure to renew shall continue for more than ninety (90) days after the date of expiration of the certificate of registration, such certificate to practice architecture in this State may be revoked and an entry of such revocation made in the official records of the Board; and thereafter the applicant may be required in the discretion of the Board in each case to take and satisfactorily pass such examination as may be prescribed by the Board, and if the applicant passes such examination successfully the fee to be paid upon the renewal of the registration certificate shall be, in such case, the sum not to

exceed One Hundred Dollars (\$100.00) as set by the Board. A registered architect, as herein defined, who is on active duty as a member of the Armed Forces of the United States of America subsequent to October 1, 1940, and who was at the time of his entry into said service or is now in good standing as a registered architect in this State, shall have his name continued on the list of registered architects and shall be exempt from the payment of any further fee during his service, as aforesaid, and until separated from the service; and when his active duty status ceases and he is separated from the service, he shall be exempt from payment of such fee for the then current fiscal year.

Expiration Dates of Registration; Proration of Fees

Sec. 12A. The board by rule shall adopt a system under which registrations expire on various dates during the year. The date for mailing notice of suspension and the period for reinstatement shall be adjusted accordingly. For the year in which the expiration date is changed, registration fees payable on September 30 shall be prorated on a monthly basis so that each registrant shall pay only that portion of the registration fee which is allocable to the number of months during which the registration is valid. On renewal of the registration on the new expiration date, the total registration fee is payable.

Contracts to Contain Certain Information; Public Information Program; Complaint Form

Sec. 12B. (a) In each written contract in which a licensee under this Act agrees to perform architectural services in this state, the licensee shall include the mailing address and telephone number of the board and a statement that the board has jurisdiction over individuals licensed under this Act.

(b) The board shall establish a public information program for the purpose of informing the public about the practice and regulation of architectural services in this state. As part of the program, the board shall prescribe and distribute in a manner that it considers appropriate a standard complaint form and shall make available to the general public and other appropriate state agencies the information compiled as part of the program. The program shall include information to inform prospective applicants for licensing under this Act about the qualifications and requirements for licensing.

Annual Financial Report by Board; Biennial Audit

Sec. 12C. (a) Before September 1 of each year, the board shall file a written report with the legislature and the governor in which the board accounts for all funds received and disbursed by the board during the preceding year.

(b) The state auditor shall audit the financial transactions of the board during each fiscal biennium.

[See Compact Edition, Volume 3 for text of 13 to 14]

[Amended by Acts 1975, 64th Leg., p. 792, ch. 305, § 1, eff. May 27, 1975; Acts 1977, 65th Leg., p. 1835, ch. 735, § 2.023, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1384, ch. 619, §§ 1 to 7, eff. Sept. 1, 1979.]

Section 10 of the 1979 amendatory act provides as follows:

"(a) A person holding office as a member of the Texas Board of Architectural Examiners on September 1, 1979, continues to hold the office for the term for which the member was originally appointed.

"(b) The offices of the two landscape architect members of the Texas State Board of Landscape Architects whose terms expire August 31, 1981, or August 31, 1983, are transferred to the Texas Board of Architectural Examiners. The persons holding these offices continue to hold office as the landscape architect members of the architectural examiners board. The landscape architect member whose term on the landscape architects board would expire August 31, 1981, serves on the architectural examiners board for a term expiring June 21, 1981. The landscape architect member whose term on the landscape architects board would expire August 31, 1983, serves on the architectural examiners board for a term expiring June 21, 1983.

"(c) The governor shall appoint to the Texas Board of Architectural Examiners a public member for a term expiring June 21, 1985. The governor shall appoint to the architectural examiners board a public member to fill the office of an incumbent architect member whose term expires June 21, 1981, and a public member to fill the office of an incumbent architect member whose term expires June 21, 1983."

Art. 249c. Regulation of Practice of Landscape Architecture

Definitions

Sec. 1. As used in this Act:

(a) "Landscape architect" means a person licensed to practice or teach landscape architecture in this state as provided herein.

(b) "Landscape architecture" means the performance of professional services such as consultation, investigation, research, preparation of general development and detailed design plans, studies, specifications, and responsible supervision in connection with the development of land areas where, and to the extent that, the principal purpose of such service is to arrange and modify the effects of natural scenery for aesthetic effect, considering the use to which the land is to be put. Such services concern the arrangement of natural forms, features, and plantings, including the ground and water forms, vegetation, circulation, walks, and other landscape features to fulfill aesthetic and functional requirements but shall not include any services or functions within the definition of the practice of engineering, public surveying, or architecture as defined by the laws of this state.

(c) "Board" means the Texas Board of Architectural Examiners.

(d) "Person" means a natural person except where otherwise specifically indicated.

(e) "Secretary" means the secretary-treasurer of the board as herein provided.

Exemptions

Sec. 2. (a) The provisions of this Act do not apply to nor affect laws relating to a professional engineer, building designer, land surveyor, nurseryman, or an architect (except landscape architect), respectively.

(b) Every agriculturist, agronomist, horticulturist, forester, gardener, contract gardener, garden or lawn caretaker, nurseryman, grader or cultivator of land and any person making plans for property owned by himself is exempt from registration under the provisions of this Act, provided however, none of the foregoing shall use the title or term "landscape architect" in any sign, card, listing, or advertisement or represent himself to be a "landscape architect" without complying with the provisions of this Act.

Staff

Sec. 3. The board may employ staff necessary to administer this Act.

Rules

Sec. 4. The board may adopt rules and prescribe forms necessary to administer this Act. If the appropriate standing committees of both houses of the legislature acting under Subsection (g), Section 5, Administrative Procedure and Texas Register Act, as added (Article 6252-13a, Vernon's Texas Civil Statutes), transmit to the board statements opposing adoption of a rule under that section, the rule may not take effect, or if the rule has already taken effect, the rule is repealed effective on the date the board receives the committees' statements.

Qualifications for Registration

Sec. 5. (a) From and after the effective date of this Act, no person shall represent himself as a landscape architect, as defined herein, unless such person has previously qualified to be licensed under this Act or satisfactorily passes the examination as may be prescribed by the board to be licensed as provided herein. The following persons shall be qualified for registration and receive a license: any person who is over the age 18 years and having or holding a degree from a school whose study of landscape architecture is approved by the board, or shall have had not less than seven years' actual experience in the office of a licensed landscape architect, may apply for examination and such application shall be accompanied by a fee not to exceed \$100 as set by the board. The examination to be approved by the members of the board and given by the board at its office in Austin, Travis County, Texas, or such other place as the board may determine or designate.¹ The scope of the examination and the methods of procedure shall be prescribed by the board with special reference to the applicant's ability which will insure safety to the public welfare and the property rights.

(b) A person shall be notified of the results of an examination taken by the person within 30 days after the testing date. However, if an examination given under this Act is graded or reviewed by a national testing service, the board shall notify examinees of the results of the examination within two

weeks after the board's receipt of the results from the national testing service. In no event shall more than 90 days elapse between the testing date and notification of the results unless the board notifies the examinees of the reason for the delay in notification. If requested in writing by a person who fails the examination, the board shall send to the person not later than the 30th day after the day on which the request is received by the board an analysis of the person's performance on the examination.

¹ So in enrolled bill.

Reciprocal Provisions

Sec. 6. The board shall certify for registration without examination an applicant who is legally registered as a landscape architect in any state or country whose requirements for registration are at least substantially equivalent to the requirements of this state. Such application shall be accompanied by a fee to be determined by the board.

Certificates of Registration

Sec. 7. All certificates of registration shall expire each year on the day set by the board as part of a staggered renewal system and shall become invalid on that date unless renewed. It shall be the duty of the secretary-treasurer of the board to notify every person registered under this Act of that date of expiration of his certificate and the amount of the fee that shall be required for its renewal for one year; such notice shall be mailed at least one month in advance of the date of the expiration of said certificate. Renewal may be effected by payment of the fee as prescribed and set by the board. Upon receipt of the required fee within the time and in the manner prescribed by the board, the designated officer or employee of the board shall issue to the licensed landscape architect a certificate of renewal of his registration certificate for the term of one year. Failure to renew a certificate of registration by the expiration date established by the board shall result in an increase of the renewal fee by \$20. If failure to renew shall continue for more than 90 days after the date of expiration of the certificate of registration, the applicant must reapply for registration and must qualify under Section 5 of this Act. All renewal certificates shall carry the same registration number as the original certificate.

Expiration Dates of Certificates of Registration; Proration of Fee

Sec. 7A. The board by rule shall adopt a system under which certificates of registration expire on various dates during the year. The date for mailing notice of expiration and the period for renewal shall be adjusted if necessary. For the year in which the expiration date is changed, registration fees payable on August 31 shall be prorated on a monthly basis so that each registrant shall pay only that portion of the registration fee which is allocable to the number of months during which the registration is valid. On

renewal of the registration on the new expiration date, the total of the registration fee is payable.

Revocation and Reissuance of Certificates

Sec. 8. (a) The board has the power to revoke the certificate of registration of any registrant who is charged with and found guilty of:

- (1) Violations of provisions of this Act;
- (2) The practice of any fraud or deceit in obtaining a certificate of registration;
- (3) Any gross negligence, incompetency, or misconduct in the practice of landscape architecture;
- (4) Holding himself out to the public or any member thereof as an engineer or making use of the words "engineer," "engineered," "professional engineer," "P.E.," or any other terms tending to create the impression that such registrant is authorized to practice engineering or any other profession unless he is licensed under provisions of Texas Engineering Practice Act or the other applicable licensing law of this state.

(5) Holding himself out to the public or any member thereof as a surveyor or making use of the words "surveyor," "surveyed," "registered public surveyor," "R.P.S.," or any other terms tending to create the impression that such registrant is authorized to practice surveying or any other profession unless he is licensed under the provisions of the Registered Public Surveyors Act or the other applicable licensing law of this state.

(b) In determining the truth of any such charges the board shall proceed upon sworn information furnished it by any reliable resident of this state; such information shall be in writing and shall be duly verified by the person familiar with the facts therein charged, and three copies of the same shall be filed with the secretary of the board. Upon receipt of such information the board, if it deems the information sufficient to support further action on its part, shall make an order setting the charges therein contained for hearing at a specified time and place, and the secretary of the board shall cause a copy of the board's order and of the information contained in the written charges to be served upon the accused at least 30 days before the date appointed in the order for the hearing. The accused may appear in person or by counsel or both, at the time and place named in the order and make his defense to the same. The board shall have the power, through its chairman or secretary, to administer oaths and compel the attendance of witnesses before it as in civil cases in the district court, by subpoena issued over the signature of the secretary and the seal of the board.

Any person who may feel himself aggrieved by reason of the revocation of his certificate of registration of the board, as hereinabove authorized, shall

have the right to file suit within 30 days of receiving notice of the board's order revoking his certificate or registration in the district court in the county of his residence or the county in which the alleged events relied upon, and grounds for revocation, took place, to annul or vacate the order of the board revoking the certificates of registration; said suit to be filed against the board as defendant, and service of process may be had upon its chairman or secretary. The only issues to be tried in such cause shall be whether such person has been guilty as originally found by the board, which issue shall be by trial de novo, as that term is commonly used in connection with an appeal from the justice of the peace court to the county court, and the substantial evidence rule shall not apply.

Restrictions on Advertising and Competitive Bidding

Sec. 8A. The board may not adopt rules restricting advertising or competitive bidding by licensees except to prohibit false, misleading, or deceptive practices by licensees.

Complaints

Sec. 8B. The board shall keep an information file about each complaint filed with the board relating to a licensee. If a written complaint is filed with the board relating to a licensee, the board, at least as frequently as quarterly, shall inform the complainant of the status of the complaint until the complaint is finally disposed of.

Consumer Information

Sec. 8C. (a) In each written contract in which a licensee under this Act agrees to perform landscape architecture in this state, the licensee shall include the mailing address and telephone number of the board and a statement that the board has jurisdiction over individuals licensed under this Act.

(b) The board shall establish a public information program for the purpose of informing the public about the practice and regulation of landscape architecture in this state. As part of the program, the board shall prescribe and distribute in a manner that it considers appropriate a standard complaint form and shall make available to the general public and other appropriate state agencies the information compiled as part of the program. The program shall include information to inform prospective applicants

for licensing under this Act about the qualifications and requirements for licensing.

Violations and Penalties

Sec. 9. After the effective date of this Act any person who represents himself to be a landscape architect in this state without being registered or exempted in accordance with the provisions of this Act, or any person presenting or attempting to use as his own, the certificate of registration or the seal of another, or any person who shall give any false or forged evidence of any kind to the board or to any member thereof in obtaining or assisting in attaining for another a certificate of registration, or any person who shall violate any of the provisions of this Act, shall be fined not less than \$25 nor more than \$200. Each day of such violation shall be a separate offense.

The attorney general or his assistants shall act as legal advisor of the board and shall render such legal assistance as may be necessary in enforcing and making effective the provisions of this Act, provided that this shall not relieve the local prosecuting officers of any of their duties under the law as such.

Fees

Sec. 10. Every landscape architect shall pay an annual fee as set by the board as provided in Section 7 hereof. The fee shall be due and payable each year on the day set by the board.

All sums of money paid to the board under the provisions of this Act, shall be deposited in the treasury of the State of Texas, and placed in a special fund to be known as the Landscape Architects Fund, formerly known as the Texas State Board of Landscape Architect's and Irrigator's Fund, and may be used only for the administration of this Act.

[Amended by Acts 1977, 65th Leg., p. 1835, ch. 735, § 2.024, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1388, ch. 619, § 8, eff. Sept. 1, 1979.]

Section 9 of the 1979 amendatory act provides as follows:

"The Texas State Board of Landscape Architects is consolidated with the Texas Board of Architectural Examiners. The functions of and the records and other property in the custody of the landscape architects board are transferred to the architectural examiners board. Except as provided by Subsection (b), Section 10 of this Act [see note under art. 249a], the offices of the members of the landscape architects board are abolished."

TITLE 14

ATTORNEYS AT LAW

Article

304a. Application of Sunset Act.

305c. District Committee on Admissions.

320c. Liability of Attorney for Costs in Civil Proceeding.

Art. 304. Board of Examiners

(a) The Board of Law Examiners shall consist of nine lawyers having the qualifications required of members of the Supreme Court. Members shall be biennially appointed by the Supreme Court and shall each hold office for two years and be subject to removal by the Supreme Court for incompetency or inattention to duty. Any appointment made shall be without regard to race, creed, sex, religion, or national origin.

(b) If a member of the Board has a financial interest, other than a remote financial interest, in a decision pending before the Board, the member is disqualified from participating in the decision.

(c) A person holding office as a member of the Board of Law Examiners on September 1, 1979, continues to hold office for the term for which the member was originally appointed. The terms of office of all succeeding members expire September 30 of odd-numbered years.

(d) No Board member or employee of the Board shall be an employee or paid consultant of a trade association in the field of Board interest.

(e) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9c, Vernon's Texas Civil Statutes), may not act as the general counsel to the Board or serve as a member of the Board.

(f) The Board is subject to the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-17a, Vernon's Texas Civil Statutes), the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes).

Examination questions that may be used in the future, examinations other than the one taken by the person requesting it, and deliberations and records relating to the moral character and fitness of applicant shall be exempted from the open meetings law and the open records law. Such records, however, shall be disclosed to individual applicants upon written request, unless the person supplying the information requests that it not be disclosed; pro-

vided, however, that the Board shall not inquire whether the person objects to disclosure or inform him of his right to do so.

[Amended by Acts 1977, 65th Leg., p. 320, ch. 153, § 1, eff. May 13, 1977; Acts 1979, 66th Leg., p. 1253, ch. 594, § 1, eff. Sept. 1, 1979.]

Art. 304a. Application of Sunset Act

The Board of Law Examiners is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished effective September 1, 1991.

[Added by Acts 1977, 65th Leg., p. 1834, ch. 735, § 2.018, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1253, ch. 594, § 1, eff. Sept. 1, 1979.]

¹ Article 5429k.

Art. 305. Duties of Board

(a) Such Board, acting under instructions of the Supreme Court as hereinafter provided, shall pass upon the eligibility of all candidates for examination for license to practice law within this State, and examine such of these as may show themselves eligible therefor, as to their qualifications to practice law. Such Board shall not recommend any person for license to practice law unless such person shall show to the Board, in the manner to be prescribed by the Supreme Court, that he is of such moral character and of such capacity and attainment that it would be proper for him to be licensed.

(b) If requested in writing by any applicant for a license who takes and fails an examination administered by the Board, the Board shall furnish to the applicant an oral or written analysis of the applicant's performance on the examination. An oral analysis may be recorded by the applicant.

[Amended by Acts 1979, 66th Leg., p. 1253, ch. 594, § 1, eff. Sept. 1, 1979.]

Art. 305a. Moral Character and Fitness of Applicants

(a) The Board may conduct an investigation of the moral character and fitness of an applicant for a license.

(b) The Board may contract with public or private entities for investigative services relating to the moral character and fitness of applicants for licenses.

(c) The Board may not recommend the denial of a license and the Supreme Court may not deny a

license to an applicant on the ground of a deficiency in the applicant's moral character or fitness unless:

(1) the Board finds a clear and rational connection between a character trait of the applicant and the likelihood that the applicant would injure a client or obstruct the administration of justice if the applicant is licensed to practice law; or

(2) the Board finds a clear and rational connection between the applicant's present mental or emotional condition and the likelihood that the applicant will not discharge properly the applicant's responsibilities to a client, a court, or the legal profession if the applicant is licensed to practice law.

(d) Each person intending to apply for admission to the bar of this state shall file with the secretary of the Board a Declaration of Intention to Study Law. The declaration shall be filed on a form provided by the Board. Forms provided by the Board for the filing of a Declaration of Intention to Study Law shall clearly identify those conditions of character and fitness provided in Subsection (e) of this article that may be investigated by the Board and that may result in the denial of the declarant's application to sit for the bar examination. Within 180 days after the filing of the declaration the Board shall notify the declarant whether or not it has determined he has acceptable character and fitness. If the Board determines he does not have acceptable character and fitness, the notice shall be accompanied by an analysis of the character investigation which specifies the results of that investigation in detail. The Board shall limit its investigation of the moral character and fitness of an applicant to those areas clearly related to the applicant's moral character and present fitness to practice law.

(e) All candidates to take the bar examination must file an application to take the examination with the secretary of the Board. Applications shall be filed not less than 180 days prior to the first day of the examination in which the applicant wishes to participate. The requirements of the application shall be limited to an affidavit, duly verified, setting forth the following statements that since the filing of his or her original declaration:

(1) the applicant has not been formally charged of any violation of law, excluding cases which have been dismissed for reasons other than technical defects in the charging instrument or in which he has been found not guilty, minor traffic violations, records of arrests or convictions expunged by court order, pardoned offenses, and records of arrests for and convictions of Class C misdemeanors;

(2) the applicant is not mentally ill;

(3) the applicant has not been charged with fraud in any legal proceeding; and

(4) the applicant has not been involved in civil litigation or bankruptcy proceedings that reasonably bear on the applicant's fitness to practice law.

(f) Based on the investigation of the preceding conditions of character and fitness performed after the filing of a Declaration of Intention to Study Law, the filing of an affidavit attesting to the preceding statements on application to take the bar exam, and its investigation into the accuracy of the statements in, or truth of statements omitted from the affidavit required by Subsection (e) of this section, the Board shall assess the applicant's fitness and moral character. If the Board determines the applicant does not possess the requisite good moral character and fitness, the Board shall furnish to the applicant an analysis of the character investigation that specifies the results of that investigation in detail within 150 days after the filing of the application.

[Added by Acts 1979, 66th Leg., p. 1253, ch. 594, § 2, eff. Sept. 1, 1979.]

Former art. 305a was repealed by Acts 1979, 66th Leg., p. 1253, ch. 594, § 2, effective September 1, 1979.

Art. 305c. District Committee on Admissions

(a) For the purpose of aiding the Board in determining the good moral character and the fitness of each declarant to become a member of the profession, there is created a District Committee on Admissions in each of the state bar districts to investigate qualifications for admission to the bar at the time of filing the Declaration of Intention to Study Law only.

(b) A district committee is composed of at least 15 members appointed by the Supreme Court.

(c) Three members of a district committee must be at the time of their appointments representatives of the general public who do not have, other than as consumers, financial interests in the practice of law, three members must be at the time of their appointments lawyers who are licensed to practice law in the state, and the remaining members must be similarly qualified representatives of the general public or lawyers. In a bar district in which a law school approved by the Supreme Court is located, three members of the committee must be at the time of their appointments law students who are enrolled in a law school in the bar district that is approved by the Supreme Court.

(d) Except for the initial appointees, members of a district committee hold office for two-year terms expiring on January 21 of each odd-numbered year. The initial appointees serve for terms expiring on January 31, 1983.

(e) The Supreme Court shall appoint the chairman of each district committee.

(f) Five members of a district committee constitute a quorum.

(g) The district committee shall aid the Board in investigating the moral character and fitness of a person filing a Declaration of Intent to Study Law.

(h) The Supreme Court shall adopt rules requiring that persons filing Declaration of Intent to Study Law be treated uniformly and impartially by the district committees.

[Added by Acts 1979, 66th Leg., p. 1253, ch. 594, § 2, eff. Sept. 1, 1979.]

Art. 306. Authority of Supreme Court

(a) The Supreme Court is hereby authorized to make such rules as in its judgment may be proper to govern eligibility for such examination and the manner of conducting the same, covering, among other points, proper guarantee to insure:

1. Good moral character on the part of each candidate for license;
2. Adequate pre-legal study and attainment;
3. Adequate study of the law for at least two years, covering the course of study prescribed by the Supreme Court, or the equivalent of such course;
4. The legal topics to be covered by such study and by the examination given;
5. The times and places for holding the examination, the manner of conducting same, and the grades to be made by the candidates to entitle them to be licensed;
6. Any other such matters consistent with this Act as shall be desirable in order to make the issuance of a license to practice law evidence of good character, and fair capacity and real attainment and proficiency in the knowledge of law.

The completion of prescribed study in an approved law school as herein defined shall satisfy the law study requirements for taking the aforesaid examination. An approved law school is hereby defined as one which is approved by the Supreme Court for the period of time designated by such Court, and as maintaining the additional standards prescribed by the Court. No license to practice law in this state shall be issued by any court or authority except by the Supreme Court of this state, under the provisions of this title. The power granted to the Supreme Court by this Act shall not be delegated.

(b) The Supreme Court shall adopt rules necessary to administer its functions and to govern the administration of the Board's functions relating to the licensing of lawyers.

[Amended by Acts 1979, 66th Leg., p. 1253, ch. 594, § 1, eff. Sept. 1, 1979.]

Art. 308. Foreign Attorneys

(a) The Board shall recommend to the Supreme Court that it license and the Supreme Court shall issue a license to an applicant if the applicant has

practiced law for three years and has a license to practice law issued by another state or territory or by the District of Columbia, and the licensing standards of the other state or territory or the District of Columbia are equivalent to or exceed those of this state.

(b) If the licensing standards of the other state or territory or the District of Columbia are not equivalent to or do not exceed those of this state, the Board may require that the applicant take the examination for a license to practice law. All such immigrant attorneys shall be required to furnish satisfactory proof as to good moral character and fitness. [Amended by Acts 1979, 66th Leg., p. 1253, ch. 594, § 1, eff. Sept. 1, 1979.]

Art. 310. Fees

(a) The fee for any examination given by the Board shall be fixed by the Supreme Court, not to exceed \$75 for each candidate, which shall be paid to the clerk of said court at the time the application for examination is made. The money thus obtained shall be used to pay all legitimate expenses incurred in holding the examination; and as compensation to the members of the Board, under such regulations as shall be determined by the Supreme Court. Provided that the compensation, not including reasonable and necessary actual expenses paid to any member of the Board, shall not exceed Fifteen Thousand Dollars (\$15,000.00) per annum.

(b) The fee for an investigation of the moral character and fitness of each candidate is set by the Supreme Court, not to exceed \$75. The candidate must pay the investigation fee to the Board at the time it is requested by the Board. If the fees collected from individuals for the investigation of moral character and fitness are in excess of the cost to the Board of conducting the investigation, the fees shall be proportionately decreased to insure that excessive fees are not collected by the Board.

(c) Fees received by the clerk or the Board shall be deposited in a fund established by the Supreme Court and may be used only to administer the functions of the Supreme Court and the Board relating to the licensing of lawyers as directed by the Court.

(d) The financial transactions of the board shall be audited annually by the State Auditor.

[Amended by Acts 1977, 65th Leg., p. 320, ch. 153, § 1, eff. May 13, 1977; Acts 1979, 66th Leg., p. 1253, ch. 594, § 1, eff. Sept. 1, 1979.]

Art. 311. Repealed by Acts 1979, 66th Leg., p. 1257, ch. 594, § 3, eff. Sept. 1, 1979

Art. 320a-1. State Bar Act

Short Title

Sec. 1. This Act may be cited as the State Bar Act.

General Powers

Sec. 2. The State Bar of Texas established under the laws of this state is continued as a public corporation and an administrative agency of the judicial department of government. It is designated as the State Bar. This legislation is in aid of the judicial department's powers under the constitution to regulate the practice of law and not to the exclusion of those powers. The Supreme Court of Texas, on behalf of the judicial department, shall exercise administrative control over the State Bar under this Act.

Purposes

Sec. 3. The purposes of the State Bar shall be to aid the courts in carrying on and improving the administration of justice; to advance the quality of legal services to the public; to foster and maintain on the part of those engaged in the practice of law high ideals and integrity, learning, competence in public service, and high standards of conduct; to provide proper professional services to the members of the State Bar; to encourage the formation and activities of the local bar associations; to provide forums for the discussion of subjects pertaining to the practice of law, the science of jurisprudence and law reform, and the relationship of the State Bar to the public and to publish information relating thereto; to the end that the public responsibilities of the legal profession may be more effectively discharged.

Seal; Suits and Contracts; Gifts

Sec. 4. The State Bar has an official seal which shall not be used for private purposes.

The State Bar may sue and be sued in its own name. For the purposes of carrying into effect and promoting objectives of this Act, the State Bar may enter into contracts and do all other acts incidental to the foregoing that are necessary or expedient for the administration of its affairs and the attainment of its purposes.

The State Bar may acquire by gift, bequest, devise, or otherwise any real or personal property or any interest in that property. The State Bar may acquire, hold, lease, encumber, and dispose of real and personal property in the exercise of its powers and the performance of its duties under this Act.

Property

Sec. 5. All property of the State Bar is declared to be held by the State Bar for the purposes expressed in Section 3 of this Act.

Indebtedness, Liability, or Obligation

Sec. 6. No indebtedness, liability, or obligation of the State Bar shall:

(1) create a debt or other liability of the state nor of any entity other than the State Bar or any successor public corporation;

(2) create any personal liability on the part of the members of the State Bar or the members of the board of directors or any authorized person issuing, executing, or delivering any evidence of the indebtedness, liability, or obligation;

(3) be created that cannot be paid from the receipts for the current year, except with the approval obtained by referendum of all members of the State Bar as provided in Section 8 of this Act.

Fiscal Powers

Sec. 7. (a) The executive director of the State Bar shall confer with the clerk of the Supreme Court and shall supervise the administrative staff of the State Bar in preparation of the annual budget.

The proposed budget shall be presented annually at a public hearing. Any member of the public may participate in the discussion of any item proposed to be included in the budget. The executive director of the State Bar shall preside at the hearing, or if unable to do so, the executive director may authorize any employee of the administrative staff or any officer or director of the state bar to represent him or her.

No less than 30 days prior to the time the hearing is held, the proposed budget as well as the time and place of the budget hearing shall be disseminated to the membership of the State Bar and to the public.

After the public hearing, the proposed budget shall be submitted to the board of directors for their consideration. The budget which is adopted by the board of directors shall be submitted to the Supreme Court for final review and approval. By action of the board of directors at a regular or special meeting, the budget may be amended subject to approval by the Supreme Court.

(b) The state auditor shall audit the financial transactions of the State Bar during each fiscal year with the expense of the audit to be borne by the State Bar. The auditors' report shall be published in the *Bar Journal*.

Rulemaking Powers

Sec. 8. (a) From time to time, either as the Supreme Court considers necessary or pursuant to a resolution of the board of directors of the State Bar or pursuant to a petition signed by at least 10 percent of the registered members of the State Bar, the Supreme Court may prepare and propose and adopt rules and regulations or amendments to the rules or regulations for the operation, maintenance, and conduct of the State Bar and the discipline of its members.

(b) When the Supreme Court has prepared and proposed the rules, regulations, or amendments to the rules or regulations, as set out above in Subsection (a), it shall submit by mail a copy of each rule and regulation in ballot form to each registered member of the State Bar for a vote. At the end of 30 days from the time the ballots are mailed, the court shall count the ballots that have been returned, provided that no election shall be valid unless a minimum of 51 percent of the members registered shall have voted at the election at which the rules, regulations, or amendments are adopted; and each of the rules and regulations that has received a majority of the votes cast shall be by the court declared and adopted and shall be promulgated by the court and shall become immediately effective. The vote shall be open to inspection by any member of the bar or public. No rule or regulation shall be promulgated that has not received a majority of votes cast in the manner provided above.

Administrative Provisions

Sec. 9. (a) The governing body of the State Bar shall be its board of directors on whom shall rest the duty of enforcing the provisions of this Act. Board of directors' meetings shall be conducted in compliance with the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes).

The board shall be composed of the officers of the State Bar, the president, president-elect, and immediate past president of the Texas Young Lawyers Association, not more than 30 members of the State Bar elected by the membership from their district as may be determined by the board, and six persons who are not licensed attorneys, who do not have, other than as consumers, a financial interest in the practice of law. Three of these six nonlawyer members shall be appointed by the Supreme Court of Texas and confirmed by the senate and the other three of the six nonlawyer members shall be appointed by the Supreme Court from a list of not less than 15 names to be submitted by the Governor of Texas, and these appointees shall be confirmed by the senate. The nonattorney members shall serve for staggered terms of the same duration as those of elected members of the board. An individual who has served more than half of a full term is not eligible again to be appointed to the board. In making the initial appointments, the Supreme Court of Texas shall appoint two of the persons for a term expiring in June, 1980, two of the persons for a term expiring in June, 1981, and two of the persons for a term expiring in June, 1982. Beginning with June, 1980, and annually thereafter, the Supreme Court shall appoint two nonlawyer directors for a term of the same duration as those of the elected members

of the board, one of whom must be from a list of not less than five names submitted by the Governor of Texas. In making their appointments of these non-lawyer members, the Supreme Court and the governor shall endeavor to assure full and fair representation of the general public, including women, ethnic minorities, and retired persons. Any appointment made shall be without regard to race, creed, sex, religion, or national origin.

The officers of the State Bar shall consist of the president, president-elect, and immediate past president. The officers shall be elected in accordance with rules and regulations governing the election of State Bar officers and directors which the Supreme Court shall prepare and propose in accordance with Subsection (b) of Section 8 of this Act; provided, however, the election rules shall include a provision that permits any member's name to be printed on the ballot as a candidate for president-elect whenever a written petition, signed by at least one percent of the membership of the State Bar requesting the action, is filed with the executive director at least 30 days before the election ballots are to be mailed to the membership.

For purposes of electing directors or for the fulfillment of any other duty imposed on the State Bar by this Act or the State Bar Rules, the board shall from time to time reapportion the state into bar districts as conditions require, taking into account the purposes of the State Bar as defined in Section 3 of this Act. The reapportionment shall be subject to the Supreme Court's approval.

If any director should, as determined by the board of directors, become incapacitated from performing his duties as director, or if any director should be absent from any two consecutive regular meetings of the board of directors or from a total of four meetings, without cause deemed adequate by the board of directors, he may be removed by the board of directors at any regular meeting by resolution declaring his position vacant.

No board member or employee of the board shall be an employee or paid consultant of a trade association in the field of board interest.

(b) The executive director of the State Bar shall be elected by a majority vote of the board of directors and shall hold office during the pleasure of the board. The executive director may be elected as many times as the board of directors may choose. The executive director shall be responsible for the execution of the policies and directives of the board with reference to all activities of the State Bar, except the activities that may be made the responsibility of the general counsel by this Act or by the board. The executive director shall perform all duties usually required of a corporate secretary, including other duties as may be assigned to him or

her by the board of directors. The executive director shall also act as the treasurer of the State Bar and shall receive from the clerk of the Supreme Court funds of the State Bar as provided by this Act. In this regard, the executive director shall be audited annually as provided in Subsection (b) of Section 7 of this Act. The executive director shall maintain the membership files and supervise the administrative staff of the State Bar in preparing the annual budget. He or she shall be required to execute a corporate surety bond in such amount as the board may direct, conditioned on faithful performance of his or her duties, the premium for which shall be paid by the State Bar. The executive director shall have no vote on matters presented to the board of directors.

(c) The general counsel of the State Bar shall be elected by a majority vote of the board of directors and shall hold office during the pleasure of the board. The general counsel may be reelected as many times as the board may choose. He or she shall be a member of the State Bar.

The duties of the general counsel shall include all of those duties usually expected of and performed by a general counsel. It shall be the duty of the general counsel to standardize throughout all grievance districts the procedure, method, and practice for the processing of grievance complaints. It shall also be the duty of the general counsel to receive and maintain on behalf of the State Bar the files and records of the grievance committees that pertain to discipline. The general counsel shall expedite and coordinate the State Bar's grievance duties which are made mandatory by this Act. The general counsel on request of any grievance committee may investigate and prosecute grievance actions as provided in Section 12 of this Act. The general counsel on request of any unauthorized practice of law committee or by a grievance committee may investigate and prosecute suits to enjoin members, nonlicensees, and nonmembers of the State Bar from the practice of law. The general counsel's duties shall also include those matters delegated from time to time by the board of directors of the State Bar.

The general counsel may not be a lobbyist registered with the secretary of state.

(d) The executive director and the general counsel of the State Bar shall be subject to the Texas conflict of interest law, Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9b, Vernon's Texas Civil Statutes).

(e) The executive director of the State Bar shall confer with the clerk of the Supreme Court as to the maintenance of correct membership files and in preparing the annual budget for review as provided in Subsection (a) of Section 7 of this Act. All membership fees shall be collected by the clerk of the

Supreme Court and held by him or her until distributed to the State Bar for expenditure under the direction of the Supreme Court for the purpose of administering this Act.

The clerk of the Supreme Court, with the permission of the court, may employ a deputy to assist in discharging the duties imposed on him or her by this Act and any rules promulgated to administer this Act. The salary of the deputy shall be fixed by the board of directors and paid from the funds of the State Bar.

(f) All records of the State Bar, except for records pertaining to grievances and records pertaining to the Texas Board of Legal Specialization, shall be subject to the Texas open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-17a, Vernon's Texas Civil Statutes).

Membership; Fees

Sec. 10. (a) All persons who are enrolled as members of the State Bar on the effective date of this Act and any person who after the effective date of this Act shall be licensed to practice law in this state, shall constitute and be members of the State Bar, and shall be subject to the provisions of this Act and the rules adopted by the Supreme Court of Texas. All persons not members of the State Bar are prohibited from practicing law in this state except that the Supreme Court may promulgate rules and regulations prescribing the procedure for limited practice of law by attorneys licensed in another jurisdiction, bona fide law students, or nonlicensed graduate students who are attending or have attended a law school approved by the Supreme Court.

(b) Every person who after the effective date of this Act becomes licensed to practice law in this state shall enroll in the State Bar by registering his or her name with the clerk of the Supreme Court within 10 days of his or her admission to practice. Membership of the State Bar shall consist of four classes: active, inactive, emeritus, and associate.

Every licensed member of the State Bar is an active member until he or she requests to be enrolled as an inactive member.

The class of "inactive members" shall include those persons who are eligible for active membership but are not engaged in the practice of law in this state and have filed with the executive director and the clerk of the Supreme Court written notice requesting enrollment in the class of inactive members.

Inactive members are not entitled to hold office or vote in any election conducted by the State Bar or

practice law. Those who are enrolled as inactive members at their request may on application and payment of fees required become active members.

The class of "emeritus members" shall include those persons who are either active or inactive members in good standing but who are at least 70 years of age and have filed a written notice requesting enrollment in the class of emeritus members. An emeritus member shall enjoy all the privileges of membership in the State Bar and shall not be required to pay membership dues for the years following the year in which he or she attains the age of 70.

The class of "associate members" may include those persons who are enrolled in law school in this state. Enrollment as an associate member shall be voluntary on the part of the enrollee. Associate members are not entitled to hold office or vote in any election conducted by the State Bar or practice law, except as provided by rule promulgated by the Supreme Court. Dues for associate members shall be set by the board of directors.

(c) The Supreme Court is empowered and it shall be its duty to prescribe fees for members of the State Bar to be paid to the clerk of the court until distributed to the executive director as provided in Subsection (e) of Section 9 of this Act and expended by the board of directors under the direction of the Supreme Court for the purposes of administering this Act. Fees, except those fixed by the board for associate members, shall be prescribed in accordance with Subsections (a) and (b) of Section 8 rulemaking provisions of this Act. The fees shall be used exclusively for administering the public purposes provided by this Act.

Exclusive Jurisdiction of Supreme Court

Sec. 11. Rules and regulations governing the admission to the practice of law shall be within the exclusive jurisdiction of the Supreme Court. The officers and directors of the State Bar of Texas have no authority to approve or disapprove of any rule or regulation which governs admissions to the practice of law nor to regulate or administer said admissions standards.

Discipline

Sec. 12. (a) Any attorney admitted to practice in this state and any attorney specially admitted by a court of this state for a particular proceeding is subject to the disciplinary jurisdiction of the Supreme Court of Texas and its administrative agent, the State Bar of Texas.

(b) In furtherance of the court's powers to supervise the conduct of attorneys at law, the following grievance procedures are established. The Supreme Court shall, in accordance with Section 8 of this Act, prepare, propose, and adopt rules and regulations for disciplining, suspending, disbaring, and accepting

resignations of attorneys as it considers necessary in addition to the minimum standards and procedures provided in this Act.

(c) Disciplinary jurisdiction shall be divided into grievance districts. Each bar district shall have one or more grievance committee districts. The board of directors, with the advice of the director of each bar district, shall determine whether the State Bar's grievance duties can be performed effectively by one committee for the entire bar district or whether the same should be divided into more than one grievance committee district. When a bar district contains more than one grievance committee, all the grievance committees within the district shall have concurrent jurisdiction of any complaint docketed by any of the committees within the district. The committee which originally docketed a complaint may, with the consent of another committee within the district, transfer a complaint to the other committee. The district director, in order to equalize the dockets, or for other good cause, may transfer complaints from one committee to another within the district.

(d) Each grievance committee shall consist of as many members as are deemed necessary by the board of directors for the expeditious transaction of its business.

(e) The president shall on recommendation of the director or directors for the district appoint the members of the grievance committee. Each member of the committee shall be a resident of the grievance committee district for which he or she is appointed. One-third of the total membership of each grievance committee shall be representative of the general public who are not licensed attorneys and who do not have, other than as consumers, a financial interest in the practice of law.

Annually the committee shall select its own chairperson.

Powers of Grievance Committees

Sec. 13. (a) The grievance committee shall exercise the powers and perform the duties conferred on it by this Act as well as any other powers and duties imposed by rules or regulations promulgated as provided herein by the Supreme Court.

The grievance committee shall consider and investigate any alleged ground for discipline or alleged incapacity of any attorney called to its attention or on its own motion and take action with respect thereto as shall be appropriate under the disciplinary rules in effect from time to time in this state.

(b) The committee shall maintain records of all matters processed and the disposition thereof. Committee records are confidential and are not subject to the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973, as amended

(Article 6252-17a, Vernon's Texas Civil Statutes). The final action of a committee resulting in a vote to publicly reprimand, suspend, or seek disbarment shall be made public; provided, however, that proceedings which result in a private reprimand shall remain confidential. Nothing shall prohibit the committee, with the consent of the accused attorney, from disclosing final action which clears the attorney of misconduct or which finds no jurisdiction or lack of probable cause to proceed. All records shall be forwarded to the general counsel and he shall maintain a permanent record of such actions, which will be public records for statistical purposes but which are subject to the provisions above concerning privacy.

(c) A "complaint" is defined as an allegation of attorney misconduct or attorney mental incompetency which, if established in fact, could subject the attorney to disciplinary action. Inquiries which do not allege an offense cognizable under the Code of Professional Responsibility or under this Act or which do not show probable cause of professional misconduct shall not be classified as complaints and are not within the disciplinary jurisdiction of the grievance committee.

(d) Every inquiry which the committee determines to be a complaint as defined in this Act shall be docketed by the grievance committee. When docketed, the committee shall notify the general counsel of the State Bar, the complainant, and the accused attorney that the complaint has been scheduled for action by the committee, and the committee shall report periodically to the general counsel its progress in the matter.

(e) Every complaint as defined in this Act shall be acted on expeditiously by the grievance committee and the action shall be reported to the general counsel, the complainant, and the accused attorney. If the committee fails to take action on a complaint within a reasonable time, the general counsel shall report the committee's inaction to the president of the State Bar and the director or directors for the bar district which encompasses the grievance committee.

When notified by the general counsel of a committee's inaction, the president of the State Bar, with the advice of the board director for the district concerned, may transfer the complaint to another grievance committee in the bar district if there is one. The president may discharge a committee and appoint new members, if after consulting the board director for the district concerned the president determines that the committee should be reconstituted to assure the expeditious transaction of disciplinary business. Failure to report grievance matters to the general counsel shall be grounds for the discharge of a committee.

Grievance Oversight Committee

Sec. 14. There shall be created a grievance oversight committee which shall be responsible for reviewing the structure, function, and effectiveness of the grievance procedures which are implemented pursuant to this Act. It shall be composed of nine members to be appointed by the Supreme Court, six of whom shall be licensed members of the State Bar and three of whom shall not be licensed members of the State Bar of Texas. Of the six licensed members of the State Bar, three shall be members or former members of grievance committees. This committee shall report its findings annually to the Supreme Court, including any recommendations concerning needed changes in grievance procedures or structures.

The members of this committee shall serve staggered terms of three years each and the initial terms of office of the committee shall be as follows: three members for a term of one year, three members for a term of two years, and three members for a term of three years. The Supreme Court shall designate a chairperson of the committee who shall serve as chairperson for a period of one year. A majority of the total membership shall constitute a quorum of the committee. All necessary and actual expenses of the committee shall be provided for and paid out of the budget of the State Bar.

Disbarment Proceedings

Sec. 15. (a) The Supreme Court of Texas shall not adopt or promulgate any rule or regulation abrogating the right of trial by jury to either party to a disbarment action in the county of the residence of the accused attorney.

(b) Disbarment proceedings shall be instituted against a resident attorney in a district court located in the county of the attorney's residence; provided, however, that the accused attorney may make application for change of venue pursuant to Texas Rule of Civil Procedure 257. Nothing in this Act shall be construed to prohibit a grievance committee from investigating complaints of professional misconduct alleged to have occurred within the geographical area served by the committee, but any action must be filed in the county of that attorney's residence.

(c) All nonresident attorneys licensed by the Supreme Court are subject to the disciplinary rules and regulations governing resident members of the State Bar; provided, however, that venue in disbarment proceedings against nonresident members of the State Bar shall be in a district court located in Travis County, Texas, or in any county where the alleged misconduct occurred.

Disciplinary Proceedings

Sec. 16. (a) No attorney shall be suspended from practice, except by the attorney's concurrence under an order of suspension entered by the grievance committee, until such attorney has been convicted of the charge or charges for disbarment pending against him or her in a court of competent jurisdiction. Provided, however, that on proof of conviction of an attorney in any trial court of competent jurisdiction of any felony involving moral turpitude or of any misdemeanor involving the theft, embezzlement, or fraudulent misappropriation of money or other property, the district court of the county of the residence of the convicted attorney shall enter an order suspending the attorney from the practice of law during the pendency of any appeals from the conviction. An attorney who has been given probation after the conviction, whether adjudicated or unadjudicated, shall be suspended from the practice of law during the probation. On proof of final conviction of any felony involving moral turpitude or any misdemeanor involving theft, embezzlement, or fraudulent misappropriation of money or other property, the district court of the county of the residence of the convicted attorney shall enter a judgment disbaring him or her.

Either the grievance committee for the bar district or the general counsel shall have the authority to seek the enforcement of this section.

(b) In any action seeking to disbar an attorney for acts made the basis of a conviction for a felony involving moral turpitude or a misdemeanor involving theft, embezzlement, a fraudulent misappropriation of money or other property, the record of conviction shall be conclusive evidence of the guilt of the attorney for the crime of which he or she was convicted.

(c) Nothing in this Act shall be construed to prevent an attorney from being prosecuted in a disciplinary action after conviction for a criminal act based either on the weight of the conviction or on conduct by the attorney which led to his or her conviction.

Committees and Sections

Sec. 17. The board shall create from time to time committees and sections as it considers advisable and necessary to carry out the purposes of this Act. Nothing in this Act shall prevent the appointment of nonlawyers to the State Bar committees.

Committee on Professional Ethics

Sec. 18. (a) A professional ethics committee consisting of nine members of the State Bar to be appointed by the Supreme Court for a term of three years each is established. The initial terms of office of the committee shall be as follows: three members for terms of one year, three members for terms of two years, and three members for terms of three

years. The Supreme Court shall designate a chairperson of the committee who shall serve as chairperson for a period of one year. A majority of the total membership shall constitute a quorum of the committee. All necessary and actual expenses of the committee shall be provided for and paid out of the budget of the State Bar. Nothing in this Act shall prevent the court from appointing members of the judicial department to the professional ethics committee.

(b) The standing committee on professional ethics shall:

(1) by the concurrence of a quorum of its members, express its opinion on the propriety of professional conduct, either on its own initiative or when requested to do so by a member of the State Bar of Texas, except that an opinion may not be issued on a question that is pending before a court of this state;

(2) the foregoing provision notwithstanding, the committee may meet in three member panels to express its opinion on behalf of the whole committee; provided, however, if the inquirer is dissatisfied with the panel's opinion, he or she may appeal it to the full committee for review;

(3) periodically publish its issued opinions to the legal profession in summary or complete form and on request provide copies of the opinions to members of the bar or public;

(4) on request advise or otherwise assist State Bar committees or local bar associations relating to the Code of Professional Responsibility;

(5) recommend appropriate amendments or clarifications of the Code of Professional Responsibility, if it considers them advisable; and

(6) adopt such rules as it considers appropriate relating to the procedures to be used in expressing opinions, effective when approved by the Supreme Court. Insofar as it is possible to do so, the committee shall disclose the rationale for its opinion and shall indicate whether it is based on ethical considerations or upon the disciplinary rules.

Opinions of the committee shall not be binding on the Supreme Court.

Unauthorized Practice of Law

Sec. 19. (a) For purposes of this Act, the practice of law embraces the preparation of pleadings and other papers incident to actions of special proceedings and the management of the actions and proceedings on behalf of clients before judges in courts as well as services rendered out of court, including the giving of advice or the rendering of any service requiring the use of legal skill or knowledge, such as preparing a will, contract, or other instrument, the legal effect of which under the facts

and conclusions involved must be carefully determined. This definition is not exclusive and does not deprive the judicial branch of the power and authority both under this Act and the adjudicated cases to determine whether other services and acts not enumerated in this Act may constitute the practice of law.

(b) The Supreme Court shall appoint an unauthorized practice of law committee for the State Bar to consist of nine members, three of whom shall be nonlawyers. Except as provided in this Act, members of the committee shall serve for a term of three years beginning with the effective date of this Act. All members of the committee shall be eligible for reappointment. The court shall designate each year which member shall act as chairperson. A majority of the committee shall constitute a quorum. All necessary and actual expenses of the committee should be provided for and paid out of the budget of the State Bar.

The court in making the first appointment shall appoint three members to serve an initial term of one year, three members to serve an initial term of two years, and three members to serve an initial term of three years. Thereafter, each appointed member shall serve a term of three years.

The unauthorized practice of law committee shall keep the court and the State Bar informed with respect to the unauthorized practice of law by lay persons and lay agencies and the participation of attorneys therein and concerning methods for the prevention thereof. The committee shall seek the elimination of the unauthorized practice by action and methods as may be appropriate for that purpose, including the filing of suits in the name of the committee. Nothing in this Act shall prohibit the establishment of local Unauthorized Practice of Law committees to aid and assist this committee in carrying out its purpose.

Carry-over Clause

Sec. 20. (a) All rules and regulations adopted and promulgated by the Supreme Court relating to the State Bar which are in force on the effective date of this Act shall constitute the rules governing the State Bar of Texas until and unless amended pursuant to Section 8 of this Act.

The foregoing provision notwithstanding, any rules and regulations which are in force on the effective date of this Act and which are in conflict with the provisions of this Act are repealed to the extent of the conflict.

(b) The officers and directors of the State Bar who have been elected and are serving on the effective date of this Act shall continue in office for the balance of their term.

(c) All dues and fees assessed and in effect on the effective date of this Act shall remain in force and effect until and unless amended pursuant to Section 8 of this Act.

(d) All bonds, notes, debentures, evidences of indebtedness, mortgages, deeds of trust, assignments, pledges, contracts, leases, agreements, or other contractual obligations owed to or by the State Bar of Texas on the effective date of this Act shall remain in force and effect in accordance with the terms of the obligation.

Application of Sunset Act

Sec. 21. The State Bar is subject to the Texas Sunset Act,¹ and unless continued in existence as provided by that Act the State Bar is abolished, and this Act expires effective September 1, 1991.

¹ Article 5429k.

[Amended by Acts 1975, 64th Leg., p. 120, ch. 56, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1834, ch. 735, § 2.019, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1081, ch. 510, § 1, eff. June 11, 1979.]

SUPREME COURT OF TEXAS

SENATE BILL 287

ORDER

Effective June 11, 1979

On June 11, 1979, the Governor signed into law, effective immediately, Senate Bill 287 which had passed the Senate by a vote of thirty of its members to one, and had passed the House by a vote of one hundred nineteen of its members to twenty-two. This statute continued the State Bar of Texas "as a public corporation and an administrative agency of the Judicial Department of government." The Legislature in Section Two of the statute stated that:

"This legislation is in aid of the Judicial Department's powers under the Constitution to regulate the practice of law and not to the exclusion of those powers. The Supreme Court of Texas, on behalf of the Judicial Department, shall exercise administrative control over the State Bar under this Act."

The Legislature has thus recognized that this Court is the primary responsibility for the administration of justice in the constitutional separation of powers between the three governmental branches.

This Court recognizes the actions of the Legislative and Executive Departments in aid of this Court's responsibilities regarding the legal profession, in declining any attempt to place funds of the Judicial Branch under control of the Legislative or Executive Branch, and in enacting Senate Bill 287 of the 66th Texas Legislative Session. The Court agrees that a unified Bar is the best method of regulating the legal profession and in assisting this Court in the administration of justice.

It is, however, the duty of this Court in the exercise of its own inherent power to regulate and control the practice of law and to provide for the proper administration of justice. It is therefore ordered:

1. The State Bar Act, Acts 1979, 66th Leg. Reg. Sess., ch. 510, p. 1081, Article 320a-1 Vernon's Texas Statutes, as supplemented by this order and subsequent orders, and all prior orders of this Court not in conflict herewith, shall govern the State Bar of Texas;

2. All rules, regulations and supplemental orders of this Court relating thereto, including the Rules Governing the State Bar of Texas and the Code of Professional Responsibility, which on the effective date of this order are in force, and which are not in conflict with the State Bar Act, as amended, shall continue to be the rules, regulations and orders governing the State Bar;

3. All officers and directors of the State Bar of Texas who are serving on the effective date hereof shall continue in office for their terms of office and until their successors are elected or appointed and qualified in accordance with the rules and regulations governing the State Bar of Texas;

4. All committees, sections and organizations of the State Bar in existence on the effective date of this order shall continue as they presently exist, until reconstituted in accordance with provisions of the State Bar Act as amended;

5. All dues and fees assessed and in effect on the effective date of this order, shall remain in full force and effect and the budget heretofore adopted for the Bar's fiscal year 1979-80 shall remain in full force and effect;

6. All persons who are enrolled as members of the State Bar on the date hereof and any person who, after the date hereof, shall be licensed to practice law in this State shall be members of the State Bar and subject to the rules and orders of this Court;

7. All persons not members of the State Bar are prohibited from practicing law in this State except for limited practice of law by attorneys licensed in other jurisdictions, law students and nonlicensed graduates of approved law schools in accordance with rules heretofore promulgated by this Court;

8. All property and contractual rights, titles, interests and obligations heretofore existing in the name of the State Bar of Texas are hereby continued and are confirmed;

9. The State Bar of Texas as a unified or integrated Bar is hereby continued and confirmed as an administrative agency of this Court and as a public corporation;

10. All complaints being investigated, all formal complaints voted by district grievance committees, all prosecutions begun and all appeals pending involving attorney misconduct, mental incompetency or the unauthorized practice of law shall proceed and shall not be abated or dismissed on account of the promulgation of this order or the passage of the State Bar Act.

This order is effective as of June 11, 1979, until further order of the Court. IN CHAMBERS, on this the 19th day of June, 1979.

JOE R. GREENHILL
Chief Justice

ZOLLIE STEAKLEY
JACK POPE
SEARS MCGEE

JAMES G. DENTON
SAM D. JOHNSON
CHARLES W. BARROW
ROBERT M. CAMPBELL
FRANKLIN SPEARS
Justices

Art. 320c. Liability of Attorney for Costs in Civil Proceeding

Regardless of any law or rule to the contrary, an attorney who is not a party to a civil proceeding is not liable for payment of costs incurred by any party to the proceeding.

[Acts 1975, 64th Leg., p. 1335, ch. 498, § 1, eff. Sept. 1, 1975.]

TITLE 14—APPENDIX

A. RULES GOVERNING THE STATE BAR OF TEXAS

ARTICLE V. OFFICERS

Sec. 1. Officers Named

The Officers of the State Bar of Texas shall be a President, a President-Elect, a General Counsel, and an Executive Director. The President and President-Elect shall each serve for a term of one year, and neither shall succeed himself in office.
[Feb. 8, 1977.]

Sec. 2. How President and President-Elect Elected

The State Bar shall elect annually from its membership a President-Elect in the manner and form provided in Article VI, Section 3, for the election of Directors, except that the election shall be for the entire state instead of by districts. The ballots cast at any such election shall be marked and returned by the voting members and thereafter canvassed and the results declared, as prescribed in said Section 3.

At its regular January meeting each year, the Board of Directors shall nominate by majority vote not fewer than two members of the State Bar as candidates for President-Elect for the ensuing year, which nominations shall be published in the Bar Journal and by all practicable means. All such names shall be printed on the official ballot.

Any other member's name shall be printed also on the ballot as a candidate for President-Elect when a petition in writing, signed by not fewer than 175 members requesting such action, is filed with the Executive Director on or before March 15th.

Every ballot for President-Elect shall be designated as "Official Ballot, State Bar of Texas." The ballots shall be mailed to members at the same time as ballots for the election of Directors are mailed, or a combined ballot may be used for both Officers and Directors.

The President-Elect shall automatically become President at the conclusion of his term as President-Elect.

[Feb. 8, 1977.]

Sec. 3. When Officers Assume Duties

The President-Elect and Directors shall take office immediately upon the adjournment of the annual meeting next after their election. The President shall take office immediately upon the adjournment

of the annual meeting held at the close of his term as President-Elect.

[Feb. 8, 1977.]

Sec. 5. Duties of President and President-Elect

The President shall preside at all meetings of the State Bar, and in his absence or inability to act, or at his request, the President-Elect shall preside. Each shall perform such other duties as usually belong to his office. The President-Elect shall be an ex-officio member of all standing and special committees and shall have responsibility for coordinating the work of the various committees and sections.

[Feb. 8, 1977.]

ARTICLE VI. BOARD OF DIRECTORS

Sec. 1. How Comprised

The Board shall consist of one Director elected from each of the Bar Districts of this State and any additional districts hereafter created. The President and President-Elect of the State Bar shall be ex-officio members of the Board with the same powers and duties as those of elected members.

At the first meeting after the Directors assume office, the Board shall elect one of its own number as Chairman. He shall serve for one year and shall preside at all meetings of the Board.

[Feb. 8, 1977.]

ARTICLE VIII. MEETINGS OF STATE BAR

Sec. 1. Time and Place of Annual Meeting

The annual meeting of the State Bar shall be held between June 1st and July 15th of each year at a time and place to be determined by vote of the Board of Directors at its regular January meeting preceding. The Board of Directors may at any regular or special meeting prior to the holding of an annual meeting change the date (within the above period of time) or the place of, or cancel, such annual meeting for that year.

[Feb. 8, 1977.]

ARTICLE X. FISCAL

Sec. 1. Budget Committee

There is hereby created a Budget Committee, and its membership shall consist of the President of the State Bar, who shall be ex-officio Chairman, the President-Elect, the Chairman of the Board, and two

A. RULES GOVERNING THE STATE BAR OF TEXAS

members of the Board of Directors to be appointed by the President, and who shall serve for one year. [Feb. 8, 1977.]

Sec. 3. Bar Warrants; How and for What Purposes Drawn

No warrant on account of the State Bar of Texas shall be drawn against State Bar funds, nor paid out of the funds, unless the warrant is countersigned by the Executive Director or the President. The Executive Director shall see that no warrant is so drawn and issued except to pay some item of expense authorized in the annual budget, or some amendment thereto; and that no warrant is drawn, if its payment shall overdraw the amount allocated by the budget or its amendments to the payment of that

item. Each warrant shall specify thereon what item of expenditure it is drawn to pay.

The Board of Directors and Officers of the State Bar shall be without authority to make any contract or incur any debt that cannot be paid from the receipts for the current year, except with the concurrent approval obtained by referendum of all members of the State Bar and the Supreme Court.

Any violation by the Executive Director of the terms of this Section, or neglect by him to perform the duties imposed by this Section, shall constitute a breach of trust and he shall be liable therefor on his bond to the State Bar.

[Feb. 8, 1977.]

B. CODE OF JUDICIAL CONDUCT

Adopted July 25, 1974

Effective September 1, 1974

Amended to November 9, 1976

Canon

1. A Judge Should Uphold the Integrity and Independence of the Judiciary.
2. A Judge Should Avoid Impropriety and the Appearance of Impropriety in All his Activities.
3. A Judge Should Perform the Duties of his Office Impartially and Diligently.
4. A Judge May Engage in Activities to Improve the Law, the Legal System, and the Administration of Justice.
5. A Judge Should Regulate his Extra-Judicial Activities to Minimize the Risk of Conflict with his Judicial Duties.
6. A Judge Should Regularly File Reports of Compensation Received for Quasi-Judicial and Extra-Judicial Activities.
7. A Judge Should Refrain from Political Activity Inappropriate to his Judicial Office.

Compliance With The Code of Judicial Conduct.
Effective Date of Compliance.

Canon 1

A Judge Should Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

Canon 2

A Judge Should Avoid Impropriety and the Appearance of Impropriety in all his Activities

A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge should not allow his family, social, or other relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interests of others; nor should he convey or permit others to convey the impression that they are in a special position to influence him. He should not testify voluntarily in an adjudicative proceeding as a character witness.

Canon 3

A Judge Should Perform the Duties of his Office Impartially and Diligently

The judicial duties of a judge take precedence over all his other activities. His judicial duties include all the duties of his office prescribed by law. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities.

(1) A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge should maintain order and decorum in proceedings before him.

(3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity, and should require similar conduct of lawyers, and of his staff, court officials, and others subject to his direction and control.

(4) A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider *ex parte* or other private communications concerning a pending or impending proceeding.

(5) A judge should dispose promptly of the business of the court.

(6) A judge should abstain from public comment about a pending or impending proceeding in any court, and should require similar abstention on the part of court personnel subject to his direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

(7) A judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas adjacent thereto during sessions of court or recesses between sessions (*Estes vs. Texas*, 381 U.S. 532; *Sheppard vs. Maxwell*, 384 U.S. 333), except that a judge may authorize:

B. CODE OF JUDICIAL CONDUCT

(a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record, or for other purposes of judicial administration;

(b) the broadcasting, televising, recording, or photographing of investitive, or ceremonial proceedings;

(c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

(i) the means of recording will not distract participants or impair the dignity of the proceedings;

(ii) the parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;

(iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and

(iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

(d) Oral arguments by the parties in the appellate courts may be recorded by electronic means upon the prior consent obtained from the court, or the chief justice or presiding judge as the case may be, where the means of recording will not distract the participants or impair the dignity of the proceedings.

Amended Nov. 9, 1976.

B. Administrative Responsibilities.

(1) A judge should diligently discharge his administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

(2) A judge should require his staff and court officials subject to his direction and control to observe the standards of fidelity and diligence that apply to him.

(3) A judge should take or initiate appropriate disciplinary measures against a lawyer for unprofessional conduct of which the judge may become aware.

(4) A judge should not make unnecessary appointments. He should exercise his power of appointment only on the basis of merit, avoiding nepotism and favoritism. He should not approve compensation of appointees beyond the fair value of services rendered.

C. Disqualification. (Art. V, Sec. 11 Texas Constitution; Art. 15 V.A.T.S.; C.C.P. Art. 30.01).

(1) A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including, but not limited to, instances where:

(a) he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(c) he knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(2) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

(3) For the purposes of this section:

(a) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

(b) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:

(i) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;

(ii) an office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;

(iii) the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

Canon 4**A Judge May Engage in Activities to Improve the Law, the Legal System, and the Administration of Justice**

A judge, subject to the proper performance of his judicial duties, may engage in the following quasi-judicial activities, if in doing so he does not cast doubt on his capacity to decide impartially any issue that may come before him:

A. He may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.

B. He may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and he may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

C. He may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. He may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fund raising activities. He may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

Canon 5**A Judge Should Regulate his Extra-Judicial Activities to Minimize the Risk of Conflict with his Judicial Duties**

A. **Avocational Activities.** A judge may write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of his office or interfere with the performance of his judicial duties.

B. **Civic and Charitable Activities.** A judge may participate in civic and charitable activities that do not reflect adversely upon his impartiality or interfere with the performance of his judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before him or will be regularly engaged in adversary proceedings in any court.

(2) A judge should not solicit funds for any educational, religious, charitable, fraternal, political, or civic organization, or use or permit the use of the prestige of his office for that purpose, but he may be listed as an officer, director, delegate, or trustee of such an organization. He should not be a speaker or the guest of honor at an organization's fund raising events, but he may attend such events.

(3) A judge should not give investment advice to such an organization, but he may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

Amended Nov. 9, 1976.

C. Financial Activities.

(1) A judge should refrain from financial and business dealings that tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, exploit his judicial position, or involve him in frequent transactions with lawyers or persons likely to come before the court on which he serves.

(2) Subject to the requirement of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity including the operation of a business. A judge should not be an officer, director or manager of a publicly owned business. For purposes of this Canon, a "publicly owned business" is a business having more than ten owners.

(3) A judge should manage his investments and other financial interests to minimize the number of cases in which he is disqualified. As soon as he can do so without serious financial detriment, he should divest himself of investments and other financial interests that might require frequent disqualification.

(4) Neither a judge nor a member of his family residing in his household should accept a gift, bequest, favor, or loan from anyone except as follows:

(a) a judge may accept a gift incident to a public testimonial to him; books supplied by publishers on a complimentary basis for official use; or an invitation to the judge and his spouse to attend a bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice;

(b) a judge or a member of his family residing in his household may accept ordinary social hospitality; a gift, bequest, favor, or loan from a relative; a wedding or engagement gift; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants;

(c) a judge or a member of his family residing in his household may accept any other gift, bequest, favor, or loan only if the donor is not a party or other person whose interests have come or are likely to come before him, and, if its value exceeds \$100, the judge reports it in the same manner as he reports compensation in Canon 6C.

(5) For the purposes of this section "member of his family residing in his household" means any relative of a judge by blood or marriage, or a person treated by a judge as a member of his family, who resides in his household.

(6) A judge is not required by this Code to disclose his income, debts, or investments, except as provided in this Canon and Canons 3 and 6.

(7) Information acquired by a judge in his judicial capacity should not be used or disclosed by him in financial dealings or for any other purpose not related to his judicial duties.

D. Fiduciary Activities. A judge should not serve as the executor, administrator, trustee, guardian, or other fiduciary, except for the estate, trust, or person of a member of his family; and then only if such service will not interfere with the proper performance of his judicial duties. "Member of his family" includes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. As a family fiduciary a judge is subject to the following restrictions:

(1) He should not serve if it is likely that as a fiduciary he will be engaged in proceedings that would ordinarily come before him, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which he serves or one under its appellate jurisdiction.

(2) While acting as a fiduciary a judge is subject to the same restrictions on financial activities that apply to him in his personal capacity.

E. Arbitration. A judge should not act as an arbitrator or mediator.

F. Practice of Law. A judge should not practice law.

G. Extra-judicial Appointments. A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

Canon 6

A Judge Should Regularly File Reports of Compensation Received for Quasi-Judicial and Extra-Judicial Activities

A judge may receive compensation and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge in his judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

A. Compensation. Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.

B. Expense Reimbursement. Expense reimbursement should be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by his family. Any payment in excess of such an amount is compensation.

C. A judge shall file with the Judicial Qualifications Commission of this State on or before the last Friday of April of each year a financial report consisting of the following documents:

(a) A true copy of the most recent Federal income tax return filed by him.

(b) An affidavit which asserts compliance with Article 6252-9b, Vernon's Texas Civil Statutes, the financial disclosure law.

(c) A verified list of the names of the corporations, businesses or other financial undertakings in which he has an interest. If any of the above have no name, then a description of their nature shall be given.

(d) At the expiration of two years from the time a judge by reason of death, disability or other reason is no longer subject to recall to judicial service, the Commission shall destroy the documents filed by a judge in compliance with this Canon.

The copy of income tax return called for in subparagraph (a) above shall be transmitted in a sealed envelope, placed by the Commission in safekeeping, and shall be opened only during an investigation and pursuant to a majority vote of the full Commission duly assembled.

If the federal government has granted an extension of time for the filing of an income tax return, that fact shall be made known to the Judicial Qualifications Commission on or before the last Friday of April of the year in which the tax return is due. The judge shall in that case file the copy of his income tax return with the Judicial Qualifications Commission within ten days after he files his income tax return with the government.

The list of corporations and businesses in which the judge has a financial interest called for in subparagraph (c) above shall be transmitted in a separate sealed envelope, placed by the Commission in safekeeping, and shall not be opened or the contents thereof disclosed except in the manner hereinabove providing for the opening and examination of the documents called for in subparagraph (a) above, or as hereinafter provided.

At any time during or after the pendency of a cause, any party may request information as to whether the most recent list filed by the judge or judges before whom the cause is or was pending contains the name of any specific person or corporation or other business which is a party to the cause or which has a substantial, direct, or indirect financial interest in its outcome. Neither the making of the request nor the contents thereof shall be revealed by the Chairman to any judge or other person except at the instance of the individual making the request. If the request meets the requirements hereinabove set forth, the Chairman shall render a prompt answer thereto and thereupon return the report to safekeeping for retention in accordance with the provisions hereinabove stated. All such requests shall be verified and transmitted to the Chairman of the Commission on forms to be approved by it.

Canon 7

A Judge Should Refrain from Political Activity Inappropriate to his Judicial Office

A. Political Conduct in General. Any candidate for judicial office, including an incumbent judge, and others acting on his behalf, should refrain from all conduct which might tend to arouse reasonable belief that he is using the power or prestige of his judicial position to promote his own candidacy.

B. Campaign Conduct:

(1) A candidate, including an incumbent judge, for a judicial office that is filled by public election between competing candidates:

(a) should maintain the dignity appropriate to judicial office, and should encourage members of his family to adhere to the same standards of political conduct that apply to him;

(b) should prohibit others subject to his direction or control from doing for him what he is prohibited from doing under this Canon;

(c) should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office. Any statement of qualifications, record, or performance in office should be such as can withstand the closest scrutiny as to accuracy, candor and fairness.

Amended Nov. 9, 1976.

Compliance with the Code of Judicial Conduct

A. The following judges shall comply with this Code:

Those elected in a statewide election.

Justices of courts of civil appeals.

Commissioners of any appellate court.

District judges.

Judges of domestic relations courts.

Judges of juvenile courts.

Judges of county courts at law.

Provided, however, that Canon 6C(b) shall apply only to those judges who are subject to Article 6252-9b, Vernon's Texas Civil Statutes.

The Code shall not apply to county judges whether they are also judges of juvenile courts or not.

B. Part-time Judge. A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge. A part-time judge:

(1) is not required to comply with Canon 5C(2), D, E, F, G, and Canon 6C(a) and 6C(e).

(2) should not practice law in the court on which he serves or in any court subject to the appellate jurisdiction of the court on which he serves, or act as a lawyer in a proceeding in which he has served as a judge or in any other proceeding related thereto.

C. Judge Pro Tempore. A judge *pro tempore* is a person who is appointed to act temporarily as a judge.

(1) While acting as such, a judge *pro tempore* is not required to comply with Canon 5C(2), (3), D, E, F, G, Canon 6C(a) and 6C(e).

(2) A person who has been a judge *pro tempore* should not act as a lawyer in a proceeding in which he has served as a judge or in any other proceeding related thereto.

D. Retired Judge. A retired judge who is eligible for recall to judicial service should comply with all the provisions of this Code except Canon 5C(2), D, E, F, G, and Canon 6C(a) and 6C(e), but he should refrain from judicial service during the period of an extra-judicial appointment not sanctioned by Canon 5G. A retired judge who is not subject to recall for judicial service or who by reason of disability does not perform such services, which facts are shown to the satisfaction of the Judicial Qualifications Commission is excused from compliance with Canon 5C(2), D, E, F, G, Canon 6C(a) and 6C(e).

Amended Sept. 24, 1974; Nov. 9, 1976.

B. CODE OF JUDICIAL CONDUCT**Effective Date of Compliance**

A person to whom this Code become applicable should arrange his affairs as soon as reasonably possible to comply with it. If, however, the demands on his time and the possibility of conflicts of interest are not substantial, a person who holds judicial office on the date this Code becomes effective may:

A. continue to act as an officer or director of a publicly owned business for a period not to exceed four (4) years from the effective date of this Code;

B. continue to act as an executor, administrator, trustee, or other fiduciary for the estate or person of one who is not a member of his family.

TITLE 15

ATTORNEYS—DISTRICT AND COUNTY

1. DISTRICT ATTORNEYS

Article

- 326k-38b. 49th Judicial District Attorney.
326k-47a. 23rd Judicial District; Duties of District Attorney.
326k-64a. Representation of State in Oldham County District Court.
326k-75. Hays County Criminal District Attorney.
326k-76. Ford Bend County Criminal District Attorney.
326k-77. Rockwall County Criminal District Attorney.
326k-78. Van Zandt County Criminal District Attorney.
326k-79. Wood County Criminal District Attorney.
326k-80. Walker County Criminal District Attorney.
326k-81. Bastrop County Criminal District Attorney.
326k-82. 97th Judicial District Attorney.
326k-83. Jasper County Criminal District Attorney.
326k-84. Denton County Criminal District Attorney.

3. GENERAL PROVISIONS

- 332b-1. Brazoria, Ellis, Limestone, Hidalgo and Rusk Counties, Compensation of Criminal District or County Attorney.
332b-2. County Attorney of Castro County; District Attorney of 64th Judicial District.
332b-3. County Attorney of Ochiltree County; District Attorney of 84th Judicial District.
332b-4. Professional Prosecutors Act.
332d. Prosecutors Coordinating Council.

4. PUBLIC DEFENDERS

- 341-2. Counties Having Four County and Four District Courts; Appointment and Compensation; Entitlement of Indigents.

1. DISTRICT ATTORNEYS

Art. 322. Districts Shall Elect.

Sec. 1. The following Judicial Districts in this state shall each respectively elect a District Attorney, viz.: 1st, 2nd, 3rd, 5th, 7th, 8th, 9th, 12th, 21st, 22nd, 23rd, 24th, 25th, 27th, 29th, 30th, 31st, 32nd, 33rd, 34th, 35th, 36th, 38th, 39th, 46th, 47th, 49th, 50th, 51st, 52nd, 53rd, 63rd, 64th, 69th, 70th, 72nd, 75th, 76th, 79th, 81st, 83rd, 90th, 100th, and 106th.

Sec. 2. There shall also be elected a Criminal District Attorney for Dallas County, a Criminal District Attorney for Tarrant County, and one Criminal District Attorney for the Counties of Callahan and Taylor.

[Amended by Acts 1975, 64th Leg., p. 983, ch. 378, §§ 1 and 2, eff. June 19, 1975; Acts 1979, 66th Leg., p. 1129, ch. 540, § 2, eff. Aug. 27, 1979.]

Art. 326k-28. Galveston County Criminal District Attorney

[See Compact Edition, Volume 3 for text of 1 to 3]

Representation of County Employees

Sec. 3a. The Criminal District Attorney of Galveston County may represent any county official or

employee other than members of the commissioners court of Galveston County in any civil matter pending in any district court in Galveston County or in any inferior court in Galveston County which arises out of the performance of official duties by such official or employee.

[See Compact Edition, Volume 3 for text of 4 to 8]

[Amended by Acts 1979, 66th Leg., p. 1637, ch. 684, § 1, eff. Aug. 27, 1979.]

Art. 326k-29. Repealed by Acts 1979, 66th Leg., p. 1129, ch. 540, § 3, eff. Aug. 27, 1979

Art. 326k-29a. 105th Judicial District; Compensation of District Attorney

[See Compact Edition, Volume 3 for text of 1]

Supplemental Salary

Sec. 2. The supplemental salary to be paid the District Attorney of the 105th Judicial District shall be the sum of not more than \$12,000, to be paid by the Commissioners Courts of the counties comprising the 105th Judicial District, which sum shall be paid to the District Attorney in addition to all compensation which he is authorized to receive by law from the State of Texas.

[See Compact Edition, Volume 3 for text of 3]

[Amended by Acts 1979, 66th Leg., p. 1129, ch. 540, § 1, eff. Aug. 27, 1979.]

Art. 326k-33. Harrison County Criminal District Attorney

[See Compact Edition, Volume 3 for text of 1 to 3]

Commission and Compensation; Private Practice of Law

Sec. 4. (a) The Criminal District Attorney of Harrison County, Texas, shall be commissioned by the Governor and shall be compensated for his services by the state in such manner and in such amount as may be fixed by the general law relating to the salary to be paid to district attorneys by the state. The Commissioners Court may pay the criminal district attorney any compensation it deems advisable but shall pay the criminal district attorney at least an amount necessary to provide him a total salary from the county and the state of not less than \$16,000 per annum.

[See Compact Edition, Volume 3 for text of
4(b) to 8]

[Amended by Acts 1975, 64th Leg., p. 1385, ch. 533, § 1, eff. Sept. 1, 1975.]

Art. 326k-36a. 47th Judicial District Attorney

Representation of State

Sec. 1. The District Attorney of the 47th Judicial District shall represent the State of Texas in all criminal cases before all the district courts of Potter and Armstrong counties.

Appointment of Assistants, Investigators, Secretaries and Office Personnel

Sec. 2. The District Attorney of the 47th Judicial District may appoint such assistant district attorneys, investigators, secretaries, and other office personnel as necessary to the proper performance of his official duties. The number of assistants, investigators, secretaries, and other office personnel and the compensation paid are subject to the approval of the Commissioners Court of Potter County.

Salary

Sec. 3. The District Attorney of the 47th Judicial District may be paid a salary in an amount equal to the total salary paid from state and county funds to the Judge of the 47th Judicial District Court.

Payment of Salaries

Sec. 4. The Commissioners Court of Potter County is authorized to pay the salaries of the District Attorney of the 47th Judicial District and his office personnel from the officers salary fund, the general fund, any other available fund, or any combination thereof at the discretion of the commissioners court. [Amended by Acts 1975, 64th Leg., p. 1874, ch. 590, § 1, eff. Sept. 1, 1975.]

Art. 326k-38a. Repealed by Acts 1975, 64th Leg., p. 251, ch. 100, § 6, eff. April 30, 1975

See, now, art. 326k-38b.

Art. 326k-38b. 49th Judicial District Attorney

Representation of State; Duties of Webb County Attorney

Sec. 1. The District Attorney of the 49th Judicial District shall represent the state in all criminal cases in the district court for the 49th Judicial District and shall represent the state in all criminal cases in Webb County. The County Attorney of Webb County shall continue to handle and prosecute all juvenile, child welfare, and mental health cases in Webb County and the other civil cases in Webb County where the State of Texas is a party, in addition to the other duties imposed by law on the office of county attorney.

Compensation

Sec. 2. The district attorney shall be compensated in such amount as may be fixed by general law relating to salaries paid to district attorneys by the state and, in addition, his compensation may be supplemented by the commissioners court of any one or more of the counties composing the 49th Judicial District in an amount to be fixed by the commissioners court. Also, the commissioners court of any county in the district may supplement the salary of the district attorney for the prosecution of misdemeanor cases in the county.

Assistants, Investigators and Secretaries; Compensation

Sec. 3. The commissioners court of any county in the district may provide the salary of any assistant district attorney, investigator, or secretary and may prescribe as a qualification for retaining the job that such personnel reside in the county. Assistant district attorneys and investigators, in addition to their salaries, may be allowed actual and necessary travel expenses incurred in the discharge of their duties, not to exceed the amount fixed by the district attorney and approved by the commissioners court. All claims for travel expenses may be paid from the general fund or any other available funds of the county.

Office Equipment and Expenses; Automobiles

Sec. 4. The commissioners court of any county in the district may furnish telephone service, typewriters, office furniture, office space, supplies, and such other items and equipment as are necessary to carry out the official duties of the district attorney's office, and to pay the expenses incident to the operation of the district attorney's office. The commissioners courts are further authorized to furnish automobiles for the use of the district attorney's office for the purpose of conducting the official duties of the office, and to provide the maintenance thereof.

Gifts and Grants

Sec. 5. The commissioners court of the county or the counties composing the district may accept gifts and grants from any foundation or association for the purpose of financing adequate and effective prosecution programs within the county or district. [Acts 1975, 64th Leg., p. 251, ch. 100, §§ 1 to 5, eff. April 30, 1975; Acts 1979, 66th Leg., p. 389, ch. 180, § 1, eff. May 15, 1979.]

Art. 326k-41. 121st Judicial District Attorney

(a) There is created the office of District Attorney for the 121st Judicial District of Texas. In the Counties of Cochran, Hockley, and Yoakum, the District Attorney shall represent the State of Texas in all criminal cases in the District Court and shall perform such other duties as are or may be provided by General Law governing District Attorneys, and he shall receive such compensation as allowed other District Attorneys under the Laws of this State.

(b) The duties of the District Attorney for the 121st Judicial District in the County of Terry are divested from him and invested in the County Attorney upon the expiration of the term of office of the present County Attorney of Terry County. The District Attorney for the 121st Judicial District shall be elected only from the Counties of Cochran, Hockley, and Yoakum.

(c) The present District Attorney for the 121st Judicial District shall continue in office as the District Attorney in the Counties of Cochran, Hockley, Terry, and Yoakum until the general election in 1980 and until his successor is duly elected and has qualified.

[Amended by Acts 1979, 66th Leg., p. 854, ch. 380, § 2, eff. Aug. 27, 1979.]

Art. 326k-47a. 23rd Judicial District; Duties of District Attorney

Sec. 1. The district attorney of the 23rd Judicial District shall represent the state and perform the duties of district attorney in all the district courts in Matagorda and Wharton Counties.

[See Compact Edition, Volume 3 for text of 2 and 3]

[Amended by Acts 1979, 66th Leg., p. 1021, ch. 453, § 1, eff. June 7, 1979.]

Art. 326k-59. Victoria County Criminal District Attorney

[See Compact Edition, Volume 3 for text of 1 to 3]

Salary; Payment

Sec. 4. The criminal district attorney shall receive as compensation an annual salary from the State of Texas in such amount as may be fixed by the general laws of this state relating to the salary to be paid to the district attorneys of this state. In addition, the commissioners court may, in its discretion, supplement the salary paid by the state. The sum paid by the county shall be paid out of the officers' salary fund of Victoria County, if adequate; if inadequate, the commissioners court shall transfer the necessary funds from the general fund of the county to the officers' salary fund.

[See Compact Edition, Volume 3 for text of 5 to 8]

[Amended by Acts 1975, 64th Leg., p. 1951, ch. 642, § 1, eff. Sept. 1, 1975.]

Art. 326k-61. 85th Judicial District; District Attorney, Assistants and Personnel

[See Compact Edition, Volume 3 for text of 1 to 3]

Sec. 4. The district attorney is entitled to compensation for his services in an amount as may be

fixed by the general law relating to the salary paid to district attorneys by the state. In addition to the salary paid the district attorney by the state, the Commissioners Court of Brazos County may supplement the salary of the district attorney in an amount to be fixed by the commissioners court.

Sec. 5. (a) The district attorney, with the approval of the Commissioners Court of Brazos County, may appoint such assistant district attorneys, investigators, stenographers, secretaries, clerks, and other personnel as he deems necessary to carry out the duties of his office.

(b) An assistant district attorney shall be licensed to practice law in this state and may perform for the state and the county all duties conferred and imposed by law on the district attorney. An investigator need not be licensed to practice law. An investigator shall have authority, under the direction of the district attorney, to make arrests and execute process in criminal cases and shall have all the rights and duties of a peace officer in criminal cases and in cases growing out of the enforcement of all laws.

(c) Each assistant district attorney, investigator, stenographer, secretary, clerk, and other personnel may be required by the district attorney to make bond in such amount as the district attorney may direct, and all personnel are subject to removal at the will of the district attorney. Each assistant district attorney and investigator, when appointed, shall take the constitutional oath of office.

(d) Salaries of the assistant district attorneys, investigators, stenographers, secretaries, clerks, and other personnel shall be fixed by the district attorney, subject to the approval of the Commissioners Court of Brazos County. In addition to their salaries, the district attorney and each assistant district attorney, investigator, stenographer, secretary, clerk, and other personnel shall be allowed the actual and necessary travel expenses incurred in the proper discharge of their duties, and other necessary expenses incident to carrying out the official duties of the district attorney and his office, subject to the approval of the district attorney and the commissioners court. The salaries and expenses may be paid by the county from county funds or from a grant or funds from other sources available for this purpose.

(e) The Commissioners Court of Brazos County is authorized to furnish telephone service, typewriters, office furniture, office space, law library, supplies, and such other items and equipment as are necessary to carry out the official duties of the district attorney's office and to pay the expenses incident to the operation of the district attorney's office. The commissioners court is further authorized to furnish automobiles for the use of the district attorney's office for the purpose of conducting the official

duties of the office and to provide the maintenance thereof. The commissioners court is further authorized to pay an automobile expense allowance to the district attorney, assistant district attorneys, investigators, stenographers, secretaries, clerks, and other personnel.

(f) The Commissioners Court of Brazos County may accept gifts and grants from any individual, partnership, corporation, trust, foundation, association, or political subdivision for the purpose of financing adequate and effective prosecution, crime prevention, or rehabilitation programs within the county or district, approved and administered by the district attorney.

[Amended by Acts 1975, 64th Leg., p. 364, ch. 156, §§ 1 and 2, eff. Sept. 1, 1975.]

Art. 326k-62. 42nd and 104th Judicial Districts; Criminal District Attorney

[See Compact Edition, Volume 3 for text of (a)]

Election and Term

(b) At the general election in November 1970, and every four years thereafter, the qualified electors of Callahan and Taylor counties shall elect a criminal district attorney.

[See Compact Edition, Volume 3 for text of (c) to (e)]

Compensation and Expenses

(f) The criminal district attorney is entitled to the compensation paid district attorneys by the state which is provided in the general appropriations act. The Commissioners Court of Taylor County shall supplement his state compensation in an amount not less than \$4,000 a year. The commissioners court shall also determine and pay the salaries of all employees of the criminal district attorney. The commissioners court may reimburse the criminal district attorney and his employees for their reasonable and necessary expenses incurred while performing the duties of the office. The Commissioners Court of Callahan County shall reimburse Taylor County for a part of the salaries, office and travel expense as may be agreed upon by and between the commissioners courts.

[Amended by Acts 1977, 65th Leg., p. 2158, ch. 860, § 9, eff. Sept. 1, 1977.]

Art. 326k-64. Deaf Smith County Criminal District Attorney

[See Compact Edition, Volume 3 for text of 1 to 6]

Compensation and Expenses

Sec. 7. The criminal district attorney is entitled to the compensation paid district attorneys by the state which is provided for in the General Appropriations Act. The Commissioners Court of Deaf Smith

County may supplement his state compensation. In addition, the District Attorney of Deaf Smith County, Texas, shall receive the same travel, office, and other necessary expenses as provided for district attorneys in the General Appropriations Act from the State of Texas.

[See Compact Edition, Volume 3 for text of 8 to 12]

[Amended by Acts 1975, 64th Leg., p. 578, ch. 234, § 1, eff. May 20, 1975.]

Art. 326k-64a. Representation of State in Oldham County District Court

Sec. 1. The County Attorney of Oldham County shall represent the State of Texas in all matters pending before the district court in Oldham County. The Criminal District Attorney of Deaf Smith County shall assist the county attorney in Oldham County on his request or, in the event of his inability to act, on appointment by the judge of the district court in Oldham County. If there is no county attorney in Oldham County, the Criminal District Attorney of Deaf Smith County shall represent the State of Texas in all matters pending before the district court in Oldham County on appointment by the judge of the district court in Oldham County.

Sec. 2. The Criminal District Attorney of Deaf Smith County shall be entitled to the expenses and allowances as provided in the General Appropriations Act for district attorneys who serve more than one county. The state shall pay Oldham County a sum equal to 30 percent of the salary paid to district attorneys by the state.

[Acts 1975, 64th Leg., p. 1965, ch. 649, §§ 1 and 2, eff. Sept. 1, 1975.]

Section 3 of the 1975 Act provided:

"There is appropriated out of the General Revenue Fund the sum of \$7,000 for the fiscal year ending August 31, 1976, and the sum of \$7,000 for the fiscal year ending August 31, 1977, for expenses and allowances to the Criminal District Attorney of Deaf Smith County as provided in Section 2 of this Act. There is appropriated out of the General Revenue Fund the sum of \$6,990 for the fiscal year ending August 31, 1976, and the sum of \$7,440 for the fiscal year ending August 31, 1977, as payment to Oldham County as provided in Section 2 of this Act."

Art. 326k-66. 69th Judicial District; Compensation of District Attorney; Assistants, Investigators and Stenographers

[See Compact Edition, Volume 3 for text of 1 and 2]

Compensation of Assistants, Investigators and Stenographers; Qualifications and Duties

Sec. 3. Each stenographer of the district attorney in the 69th Judicial District shall be paid an annual salary of not less than \$2,400 and not more than \$8,250 as determined by the commissioners courts affected thereby.

Each assistant and each investigator of the district attorney of the 69th Judicial District shall be paid an

annual salary of not less than \$4,800 and not more than \$15,000, as determined by the commissioners courts affected thereby.

The assistants to the district attorney of the 69th Judicial District shall be duly and legally licensed to practice law in the State of Texas and shall be authorized to perform all duties imposed upon the district attorney provided by law. The investigators need not be duly and legally licensed to practice law in the State of Texas.

[See Compact Edition, Volume 3 for text of 4 to 6]

[Amended by Acts 1977, 65th Leg., p. 1457, ch. 595, § 1, eff. Aug. 29, 1977.]

Art. 326k-67. Collin County Criminal District Attorney

[See Compact Edition, Volume 3 for text of 1]

Qualifications; Oath; Bond; Private Practice of Law

Sec. 2. (a) The criminal district attorney shall possess the qualifications, take the oath, and give the bond required by the Constitution and laws of this state of district attorneys.

(b) The criminal district attorney shall not, after January 1, 1979, actively engage in the private practice of law while serving as criminal district attorney in and for Collin County.

[See Compact Edition, Volume 3 for text of 3 to 7]

[Amended by Acts 1975, 64th Leg., p. 1355, ch. 512, § 1, eff. Sept. 1, 1975.]

Art. 326k-68. Eastland County Criminal District Attorney

[See Compact Edition, Volume 3 for text of 1 to 6]

Commission; Compensation; Payment

Sec. 7. The Criminal District Attorney of Eastland County, Texas, shall be commissioned by the Governor. The Criminal District Attorney is entitled to the compensation paid district attorneys by the state as provided in the General Appropriations Act. The Commissioners Court of Eastland County may supplement his state compensation in an amount not to exceed \$9,700 a year. The sum paid by the county shall be paid out to the Officers Salary Fund of Eastland County, if adequate; if inadequate, the Commissioners Court shall transfer the necessary funds from the General Fund of the county to the Officers Salary Fund.

[See Compact Edition, Volume 3 for text of 8 to 12]

[Amended by Acts 1975, 64th Leg., p. 393, ch. 172, § 1, eff. Sept. 1, 1975.]

Art. 326k-75. Hays County Criminal District Attorney

Creation of Office

Sec. 1. The constitutional office of Criminal District Attorney of Hays County is created.

Qualifications; Oath; Bond; Residence

Sec. 2. The Criminal District Attorney of Hays County shall be at least 25 years of age, a practicing attorney in this state for five years, and a resident of Hays County. He shall possess all the qualifications, take the oath of office, and give the bond required of district attorneys by the constitution and general laws of this state. He shall reside in Hays County during his term of office.

Duties; Fees, Commissions and Perquisites; District Attorney of 22nd Judicial District; Application of Act

Sec. 3. (a) It is the duty of the Criminal District Attorney of Hays County or his assistants to be in attendance on each term and all sessions of the district courts in Hays County and all sessions and terms of the inferior courts of Hays County held for the transaction of criminal business, and exclusively to represent the State of Texas in all criminal matters pending before those courts and perform such other duties as may be conferred by law on the district and county attorneys in the various counties and judicial districts of this state. He shall collect such fees, commissions, and perquisites as are provided by law for similar services rendered by district and county attorneys of this state.

(b) From and after the effective date of this Act, the District Attorney of the 22nd Judicial District shall only represent the State of Texas in the counties of Caldwell and Comal. The provisions of this Act apply only to Hays County and do not affect the office of district attorney or the duties and powers of the district attorney in the counties of Caldwell and Comal. The District Attorney of the 22nd Judicial District shall continue to fulfill the duties of district attorney in the counties of Caldwell and Comal, but his duties in the County of Hays are divested from him and invested in the Criminal District Attorney of Hays County.

Appointment; Election and Term

Sec. 4. (a) On the effective date of this Act, the governor shall appoint a criminal district attorney for Hays County, who shall hold office until the general election in 1976 and until his successor is duly elected and has qualified. At the general election in 1976, there shall be elected a criminal district attorney for Hays County for a term ending on December 31, 1978. At the general election in 1978 and every four years thereafter, this officer shall be elected for a regular four-year term as provided in Article V, Section 30, and Article XVI, Section 65 of the Texas Constitution.

(b) A vacancy occurring in the office of Criminal District Attorney of Hays County shall be filled by appointment by the governor, and the appointee shall hold office until the next general election and until his successor is elected and has qualified.

(c) From and after the effective date of this Act, the District Attorney of the 22nd Judicial District shall only stand for election and be elected from the counties of Caldwell and Comal. The present district attorney for the 22nd Judicial District shall continue in office as the district attorney in the counties of Caldwell and Comal until the general election in 1976 and until his successor is elected and qualified.

Compensation

Sec. 5. The Criminal District Attorney of Hays County shall be compensated for his services by the state in such a manner and in such amount as may be fixed by the general law relating to the salary to be paid to district attorneys by the state, and in addition his salary may be supplemented by the commissioners court in such amount as it deems advisable.

Abolition of County Attorney's Office

Sec. 6. The office of County Attorney of Hays County is abolished from and after the effective date of this Act.

[Acts 1975, 64th Leg., p. 1038, ch. 402, §§ 1 to 6, eff. June 19, 1975.]

Art. 326k-76. Fort Bend County Criminal District Attorney

Creation of Office

Sec. 1. The constitutional office of Criminal District Attorney of Fort Bend County is created.

Powers and Duties

Sec. 2. The criminal district attorney or his assistants shall be in attendance on each term and all sessions of any district court in Fort Bend County. The criminal district attorney and his assistants shall represent the state in criminal and civil cases, unless otherwise provided by law, pending in the district courts and inferior courts having jurisdiction in Fort Bend County. He shall have and exercise, in addition to the specific powers given and duties imposed on him and his assistants by this Act, all powers, duties, and privileges within Fort Bend County conferred on district attorneys and county attorneys in the various counties and judicial districts of this state relative to criminal and civil matters for and in behalf of the county and the State of Texas.

Qualifications; Oath; Bond

Sec. 3. The criminal district attorney shall possess the qualifications, take the oath, and give the bond required by the constitution and laws of this state of district attorneys.

Assistants; Appointment; Compensation; Removal

Sec. 4. The criminal district attorney shall appoint assistant criminal district attorneys and other assistants necessary to the proper performance of his official duties, with the approval of the commissioners court. The assistants shall be paid a salary to be set and approved by the commissioners court and paid out of the general fund of the county. The assistants are subject to removal at the will of the criminal district attorney and are authorized to perform any duty conferred by law on the criminal district attorney.

Stenographers; Appointment; Compensation; Removal

Sec. 5. The criminal district attorney may appoint stenographers, who may or may not possess the qualifications prescribed by law for district and county attorneys, who shall perform the necessary stenographic work assigned by the criminal district attorney, and who shall receive as compensation a salary set by the commissioners court payable out of the county funds. The stenographers are subject to removal at the will of the criminal district attorney.

Offices Expenses

Sec. 6. Fort Bend County is authorized to set aside each year a sum of money to be expended by the criminal district attorney in the preparation and conduct of criminal affairs of the office.

Compensation

Sec. 7. The criminal district attorney shall be compensated for his services by the state in such manner and amount as may be fixed by the general law relating to the salary to be paid to district attorneys by the state, and in addition, his salary may be supplemented by the commissioners court in such amount as it deems advisable.

Abolition of County Attorney's Office

Sec. 8. The office of County Attorney of Fort Bend County is abolished from and after the effective date of this Act.

Appointment; Election and Term; Vacancy; Private Practice of Law

Sec. 9. (a) On the effective date of this Act, the governor shall appoint a criminal district attorney for Fort Bend County, who shall hold office until the general election in 1976 and until his successor is duly elected and has qualified. At the general election in 1976, there shall be elected a criminal district attorney for Fort Bend County for a term ending on December 31, 1978. At the general election in 1978 and every four years thereafter, this officer shall be elected for a regular four year term as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution.

(b) Any vacancy occurring in the office of the Criminal District Attorney of Fort Bend County

shall be filled by the Commissioners Court of Fort Bend County, and the appointee shall hold office until the next general election and until his successor is elected and has qualified.

(c) After January 1, 1977, the Criminal District Attorney of Fort Bend County and any assistant criminal district attorneys may not actively engage in the private practice of law while serving as criminal district attorney or assistant criminal district attorney in and for Fort Bend County.

District Attorney of 23rd Judicial District

Sec. 10. (a) On the effective date of this Act the District Attorney of the 23rd Judicial District of Texas shall only represent the State of Texas in the counties of Wharton and Matagorda.

The provisions of this Act shall not affect the office of district attorney or the duties and powers of the district attorney in the counties of Wharton and Matagorda, and the District Attorney of the 23rd Judicial District shall continue to perform his duties in the counties of Wharton and Matagorda. This Act applies only to Fort Bend County. From the effective date of this Act, the duties of the District Attorney of the 23rd Judicial District in Fort Bend County are divested from him and invested in the Criminal District Attorney of Fort Bend County, who shall represent the state in all district courts having jurisdiction in Fort Bend County.

(b) From and after the effective date of this Act, the District Attorney of the 23rd Judicial District shall only stand for election and be elected from the counties of Wharton and Matagorda. The present district attorney of the 23rd Judicial District shall continue in office as the district attorney in the counties of Wharton and Matagorda until the general election in 1976 and until his successor is elected and has qualified.

Effective Date

Sec. 11. The effective date of this Act is September 1, 1975.

[Acts 1975, 64th Leg., p. 1333, ch. 497, §§ 1 to 11, eff. Sept. 1, 1975.]

Art. 326k-77. Rockwall County Criminal District Attorney

Creation of Office

Sec. 1. The constitutional office of Criminal District Attorney of Rockwall County is created.

Qualifications; Oath; Bond; Residence

Sec. 2. The Criminal District Attorney of Rockwall County shall be a practicing attorney in this state and a resident of Rockwall County. He shall possess all the qualifications, take the oath of office, and give the bond required of district attorneys by the constitution and general laws of this state. He

shall reside in Rockwall County during his term of office.

Duties; Fees; Commissions and Perquisites

Sec. 3. It is the duty of the Criminal District Attorney of Rockwall County or his assistants to be in attendance on each term and all sessions of the district courts in Rockwall County and all sessions and terms of the inferior courts of Rockwall County held for the transaction of criminal business, and exclusively to represent the State of Texas in all criminal matters pending before those courts and perform such other duties as may be conferred by law on the district and county attorneys in the various counties and judicial districts of this state. He shall collect such fees, commissions, and perquisites as are provided by law for similar services rendered by district and county attorneys of this state.

Commission; Compensation; Payment; Private Practice of Law

Sec. 4. (a) The Criminal District Attorney of Rockwall County shall be commissioned by the governor and shall receive as compensation an annual salary payable in equal monthly installments. The salary shall include the amount equal to the amount paid district attorneys by the State of Texas and shall be paid by the comptroller of public accounts as appropriated by the legislature. In addition, the Criminal District Attorney of Rockwall County may be paid in equal bimonthly installments out of the officers' salary fund of Rockwall County an amount which, when added to the amount paid by the State of Texas, equals an amount not to exceed 90 percent of the total salaries paid to the Judge of the 86th Judicial District by the State of Texas and Rockwall, Kaufman, and Van Zandt counties.

(b) The Criminal District Attorney of Rockwall County shall not engage in the private practice of law.

Assistants, Investigators, etc.; Appointment and Compensation; Expenses

Sec. 5. The Criminal District Attorney of Rockwall County may appoint a staff composed of assistant criminal district attorneys, investigators, stenographers, clerks, and other personnel as are required for the proper and efficient operation and administration of the office. All salaries of assistant criminal district attorneys, investigators, stenographers, clerks, and other personnel shall be an amount set by the criminal district attorney with the advice and consent of the commissioners court and shall be paid by the commissioners court in equal bimonthly installments from the officers' salary fund of Rockwall County. In addition to the salary provided the criminal district attorney, his assistants, investigators, stenographers, clerks, and other personnel, the Commissioners Court of Rockwall County may allow

the criminal district attorney, his assistants, and investigators such necessary expenses as the commissioners court deems reasonable. The expenses shall be paid as provided by law for other such claims of expenses.

Oath of Assistants; Powers and Duties

Sec. 6. The assistant criminal district attorneys of Rockwall County shall take, on appointment, the constitutional oath of office. The assistant criminal district attorneys of Rockwall County are authorized to administer oaths, file information, examine witnesses before the grand jury, and generally perform any duty devolving on the Criminal District Attorney of Rockwall County and exercise any power and perform any duty conferred by law on the Criminal District Attorney of Rockwall County.

Abolition of County Attorney's Office

Sec. 7. The office of County Attorney of Rockwall County is abolished from and after the effective date of this Act.

Election and Term; Vacancy

Sec. 8. (a) At the general election in 1976, there shall be elected by the qualified voters of Rockwall County a Criminal District Attorney for Rockwall County for a two-year term beginning on January 1, 1977.

(b) At the general election in 1978 and every four years thereafter, the criminal district attorney shall be elected for a regular four-year term, as provided by the Texas Constitution.

(c) A vacancy occurring in the office of criminal district attorney shall be filled by appointment by the governor, and the appointee shall hold office until the next general election and until his successor is elected and has qualified.

Effective Date

Sec. 9. Except as provided by Section 8 of this Act, the provisions of this Act take effect on January 1, 1977.

[Acts 1975, 64th Leg., p. 1923, ch. 625, §§ 1 to 9, eff. Jan. 1, 1977.]

Art. 326k-78. Van Zandt County Criminal District Attorney

Creation of Office

Sec. 1. The constitutional office of Criminal District Attorney of Van Zandt County is created to become effective on September 1, 1975.

Qualifications; Oath; Bond; Residence

Sec. 2. (a) The Criminal District Attorney of Van Zandt County shall be at least 25 years of age, a practicing attorney in this state for two years, and a resident of Van Zandt County. He shall possess all

the qualifications, take the oath of office, and give the bond required of district attorneys by the constitution and general laws of this state. He shall reside in Van Zandt County during his term of office.

(b) If no person with the qualifications of age and experience required in Subsection (a) has filed for this office 30 days prior to the filing deadline these qualifications of age and experience will be waived for the election involved only.

Duties; Fees, Commissions and Perquisites

Sec. 3. It is the duty of the Criminal District Attorney of Van Zandt County or his assistants to be in attendance on each term and all sessions of the district courts in Van Zandt County and all sessions and terms of the inferior courts of Van Zandt County held for the transaction of criminal business and exclusively to represent the State of Texas in all criminal matters pending before those courts and perform such other duties as may be conferred by law on the district and county attorneys in the various counties and judicial districts of this state. He shall collect such fees, commissions, and perquisites as are provided by law for similar services rendered by district and county attorneys of this state.

Commission; Compensation; Payment

Sec. 4. The Criminal District Attorney of Van Zandt County shall be commissioned by the governor and shall receive as compensation an annual salary payable in equal monthly installments. The salary shall include the amount equal to the amount paid district attorneys by the State of Texas and shall be paid by the comptroller of public accounts, as appropriated by the legislature. In addition, the Criminal District Attorney of Van Zandt County shall be paid in equal monthly or bimonthly installments, as determined by the Commissioners Court of Van Zandt County, out of the officers' salary fund of Van Zandt County an amount which, when added to the amount paid by the State of Texas, equals an amount not less than 90 percent of the total salaries paid to the Judge of the 86th Judicial District by the State of Texas and Kaufman, Van Zandt, and Rockwall counties.

Assistants; Investigators, etc.; Appointment and Compensation; Expenses

Sec. 5. The Criminal District Attorney of Van Zandt County, for the purpose of conducting the affairs of his office, may appoint a staff composed of assistant criminal district attorneys, investigators, stenographers, clerks, and other personnel as the Commissioners Court of Van Zandt County may authorize. All salaries of assistant criminal district attorneys, investigators, stenographers, clerks, and other personnel shall be an amount set by the crimi-

nal district attorney with the approval of the commissioners court and shall be paid by the commissioners court in equal monthly or bimonthly installments from the officers' salary fund of Van Zandt County. In addition to the salary provided the criminal district attorney, his assistants, investigators, stenographers, clerks, and other personnel, the Commissioners Court of Van Zandt County may allow the criminal district attorney, his assistants and investigators such necessary expenses as the commissioners court deems reasonable. The expenses shall be paid as provided by law for other such claims of expenses.

Oath of Assistants; Powers and Duties

Sec. 6. The assistant criminal district attorneys of Van Zandt County shall take, on appointment, the constitutional oath of office. The criminal district attorney and his assistants shall have the exclusive right and duty to represent the State of Texas in all criminal cases pending in any court of Van Zandt County, as well as perform other statutory or constitutional duties imposed on district and county attorneys of this state. The assistant criminal district attorneys of Van Zandt County are authorized to administer oaths, file information, examine witnesses before the grand jury, and generally perform any duty devolving upon the Criminal District Attorney of Van Zandt County and exercise any power and perform any duty conferred by law on the Criminal District Attorney of Van Zandt County.

Private Practice of Law

Sec. 7. The Criminal District Attorney of Van Zandt County and his assistants shall not engage in the private practice of law while serving as criminal district attorney or assistant criminal district attorney of Van Zandt County. This section becomes effective on September 1, 1975.

Abolition of County Attorney's Office

Sec. 8. The office of County Attorney of Van Zandt County is abolished from and after the effective date of this Act.

County Attorney Commissioned; Election and Term; Vacancy

Sec. 9. (a) On the effective date of this Act, the County Attorney of Van Zandt County shall be commissioned as the Criminal District Attorney of Van Zandt County. He shall fill the office of criminal district attorney until the general election in 1976 and until his successor is lawfully elected and has qualified. The person elected at the general election in 1976 shall fill the office of criminal district attorney until the general election in 1978 and until his successor is lawfully elected and has qualified.

(b) At the general election in 1978 and every four years thereafter, this officer shall be elected for a

regular four-year term as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution.

(c) Any vacancy occurring in the office of Criminal District Attorney of Van Zandt County after the office is filled initially by the County Attorney of Van Zandt County, as provided in Subsection (a) of this section, shall be filled by appointment by the governor, and the appointee shall hold office until the next general election and until his successor is elected and has qualified.

[Acts 1975, 64th Leg., p. 1959, ch. 646, §§ 1 to 9, eff. Sept. 1, 1975.]

Section 10 of the 1975 Act provided:

"If any paragraph, phrase, clause, or section of this statute be held invalid, it shall not affect the balance of this statute, but it is expressly declared to be the intention of the legislature that it would have passed the balance of the Act without such portion as may be held invalid."

Art. 326k-79. Wood County Criminal District Attorney

Creation of Office

Sec. 1. The constitutional office of Criminal District Attorney of Wood County is created to become effective on September 1, 1977.

Justifications; Oath; Bond; Residence

Sec. 2. (a) The Criminal District Attorney of Wood County shall be at least 25 years of age, a practicing attorney in this state for five years, and a resident of Wood County. He shall possess all the qualifications, take the oath of office, and give the bond required of district attorneys by the constitution and general laws of this state. He shall reside in Wood County during his term of office.

(b) If no person with the qualifications of age and experience required in Subsection (a) has filed for this office 30 days prior to the filing deadline, these qualifications of age and experience will be waived for the election involved only.

Duties; Fees, Commissions and Perquisites

Sec. 3. It is the duty of the Criminal District Attorney of Wood County or his assistants to be in attendance on each term and all sessions of the district courts in Wood County and all sessions and terms of the inferior courts of Wood County held for the transaction of criminal business and exclusively to represent the State of Texas in all criminal matters pending before those courts and perform such other duties as may be conferred by law on the district and county attorneys in the various counties and judicial districts of this state. He shall collect such fees, commissions, and perquisites as are provided by law for similar services rendered by district and county attorneys of this state.

Commission; Compensation; Payment

Sec. 4. The Criminal District Attorney of Wood County shall be commissioned by the governor and

shall receive as compensation an annual salary payable in equal monthly installments. The salary shall include the amount equal to the amount paid district attorneys by the State of Texas and shall be paid by the comptroller of public accounts, as appropriated by the legislature. In addition, the Criminal District Attorney of Wood County shall be paid in equal monthly or bimonthly installments, as determined by the Commissioners Court of Wood County, out of the officers' salary fund of Wood County an amount which, when added to the amount paid by the State of Texas, equals an amount not less than 90 percent of the total salaries paid to the Judge of the 115th Judicial District by the State of Texas and Marion, Wood, and Upshur counties.

Assistants, Investigators, etc.; Appointment and Compensation; Expenses

Sec. 5. The Criminal District Attorney of Wood County, for the purpose of conducting the affairs of his office, may appoint a staff composed of assistant criminal district attorneys, investigators, stenographers, clerks, and other personnel as the Commissioners Court of Wood County may authorize. All salaries of assistant criminal district attorneys, investigators, stenographers, clerks, and other personnel shall be an amount set by the criminal district attorney with the approval of the commissioners court and shall be paid by the commissioners court in equal monthly or bimonthly installments from the officers' salary fund of Wood County. In addition to the salary provided the criminal district attorney, his assistants, investigators, stenographers, clerks, and other personnel, the Commissioners Court of Wood County may allow the criminal district attorney, his assistants and investigators such necessary expenses as the commissioners court deems reasonable. The expenses shall be paid as provided by law for other such claims of expenses. The provisions contained in this section shall in no way limit the authority of the legislature to provide for assistant district attorneys, investigators, stenographers, secretaries, or any other staff out of state funds when the legislature deems such supplementation of staff to be necessary.

Oath of Assistants; Powers and Duties

Sec. 6. The assistant criminal district attorneys of Wood County shall take, on appointment, the constitutional oath of office. The criminal district attorney and his assistants shall have the exclusive right and duty to represent the State of Texas in all criminal cases pending in any court of Wood County, as well as perform other statutory or constitutional duties imposed on district and county attorneys of this state. The assistant criminal district attorneys of Wood County are authorized to administer oaths, file information, examine witnesses before the grand jury, and generally perform any duty devolving on the Criminal District Attorney of Wood County and exercise any power and perform any duty conferred

by law on the Criminal District Attorney of Wood County.

Private Practice of Law

Sec. 7. The Criminal District Attorney of Wood County and his assistants shall not engage in the private practice of law while serving as criminal district attorney or assistant criminal district attorney of Wood County. This section becomes effective on January 1, 1978.

Abolition of County Attorney's Office

Sec. 8. The office of County Attorney of Wood County is abolished from and after September 1, 1977.

County Attorney Commissioned; Election and Term; Vacancy

Sec. 9. (a) On September 1, 1977, the County Attorney of Wood County shall be commissioned as the Criminal District Attorney of Wood County. He shall fill the office of criminal district attorney until the general election in 1978 and until his successor is lawfully elected and has qualified.

(b) At the general election in 1978 and every four years thereafter, this officer shall be elected for a regular four-year term as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution.

(c) Any vacancy occurring in the office of Criminal District Attorney of Wood County after the office is filled initially by the County Attorney of Wood County, as provided in Subsection (a) of this section, shall be filled by appointment by the governor, and the appointee shall hold office until the next general election and until his successor is elected and has qualified.

[Acts 1977, 65th Leg., p. 244, ch. 113, §§ 1 to 9, eff. Sept. 1, 1977.]

Section 10 of the 1977 Act provided:

"If any paragraph, phrase, clause, or section of this statute be held invalid, it is expressly declared to be the intention of the legislature that it would not have passed the balance of the Act without such portion and the provisions of this Act are not severable."

Art. 326k-80. Walker County Criminal District Attorney

Creation of Office; Qualifications; Oath; Bond; Residence

Sec. 1. (a) The constitutional office of Criminal District Attorney of Walker County is created.

(b) The Criminal District Attorney of Walker County shall be at least 25 years of age, a practicing attorney in this state for three years, and a resident of Walker County for two years prior to his appointment or election. He shall possess all the qualifications, take the oath of office, and give the bond required of district attorney by the constitution and general laws of this state. He shall reside in Walker County during his term of office.

Powers and Duties; Private Practice of Law

Sec. 2. (a) The criminal district attorney or his assistants shall be in attendance on each term and all sessions of any district court in Walker County held for the transaction of criminal business and in attendance on each term and all sessions of the inferior courts of Walker County held for the transaction of criminal business, except the city court of an incorporated city. The criminal district attorney or his assistants shall exclusively represent the State of Texas in all criminal matters before such courts and shall represent Walker County in all matters before such courts or any other court where Walker County has pending business of any kind, matter, or interest. However, nothing in this Act shall be construed as requiring the criminal district attorney to represent the county in delinquent tax suits or condemnation proceedings or as preventing Walker County from retaining other legal counsel in civil matters at any time it sees fit to do so.

(b) The criminal district attorney shall have and exercise, in addition to the specific powers given and duties imposed on him and his assistants by this Act, all powers, duties, and privileges within Walker County conferred on district attorneys and county attorneys in the various counties and judicial districts of this state relative to criminal and civil matters for and in behalf of the county and State of Texas.

(c) The criminal district attorney shall not engage in the private practice of law while serving as criminal district attorney.

Commission; Compensation; Payment

Sec. 3. The Criminal District Attorney of Walker County shall be commissioned by the governor. The Criminal District Attorney of Walker County shall receive as compensation an annual salary from the State of Texas in such amount as may be fixed by the general laws of this state relating to the salary to be paid to the district attorneys of this state. In addition, the commissioners court may, in its discretion, supplement the salary paid by the state. The sum paid by the county shall be paid out of the general fund of the county.

Assistants, Investigators, etc.; Appointment and Compensation; Expenses

Sec. 4. The Criminal District Attorney of Walker County, for the purpose of conducting the affairs of his office, may appoint a staff composed of assistant criminal district attorneys, investigators, stenographers, clerks, and other personnel as the Commissioners Court of Walker County may authorize. The assistants, investigators, stenographers, clerks, and other personnel shall serve at the will of the criminal district attorney. All salaries of assistant criminal district attorneys, investigators, stenographers, clerks, and other personnel shall be an amount set by

the criminal district attorney with the approval of the commissioners court and shall be paid by the commissioners court in equal monthly installments from the general fund of Walker County. In addition to the salary provided the criminal district attorney, his assistants, investigators, stenographers, clerks and other personnel, the Commissioners Court of Walker County may allow the criminal district attorney, his assistants and investigators such necessary expenses as the commissioners court deems reasonable. The expenses shall be paid as provided by law for other such claims of expenses.

Oath of Assistants; Duties

Sec. 5. An assistant criminal district attorney appointed under the provisions of this Act shall take the constitutional oath of office, shall be a person licensed to practice law in this state, and may perform any duty devolving on the Criminal District Attorney of Walker County.

Abolition of County Attorney's Office

Sec. 6. The office of County Attorney of Walker County is abolished from and after the effective date of this Act.

Appointment; Election and Term; Vacancy

Sec. 7. (a) On the effective date of this Act, the governor shall appoint a Criminal District Attorney of Walker County, who shall hold office until the next general election and until his successor is duly elected and has qualified.

(b) At the general election in 1978 and every four years thereafter, this officer shall be elected to a regular four-year term as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution.

(c) Any vacancy occurring in the office of criminal district attorney for Walker County shall be filled by appointment by the governor, and the appointee shall hold office until the next general election and until his successor is elected and has qualified.

District Attorney of 12th Judicial District

Sec. 8. (a) From and after the effective date of this Act, the District Attorney of the 12th Judicial District shall only represent the State of Texas in the counties of Grimes, Madison, Leon, and Trinity. The provisions of this Act apply only to Walker County and do not affect the office of district attorney or the duties and powers of the district attorney in the counties of Grimes, Madison, Leon, and Trinity. The District Attorney of the 12th Judicial District shall continue to fulfill the duties of the district attorney in the counties of Grimes, Madison, Leon and Trinity, but his duties in the county of Walker are divested from him and invested in the Criminal District Attorney of Walker County.

(b) From and after the effective date of this Act, the District Attorney of the 12th Judicial District shall only stand for election and be elected from the counties of Grimes, Madison, Leon, and Trinity.

Effective Date

Sec. 9. The effective date of this Act is September 1, 1977.

[Acts 1977, 65th Leg., p. 857, ch. 323, §§ 1 to 9, eff. Sept. 1, 1977.]

Art. 326k-81. Bastrop County Criminal District Attorney

Creation of Office; Qualifications; Oath; Bond

Sec. 1. The constitutional office of Criminal District Attorney of Bastrop County is hereby created. The Criminal District Attorney of Bastrop County shall possess all the qualifications, take the oath, and give the bond required by the constitution and laws of this state of other district attorneys.

Appointment; Election and Term; Abolition of County Attorney's Office

Sec. 2. On the effective date of this Act, the Governor of Texas shall appoint a Criminal District Attorney of Bastrop County, who shall hold office until the next general election and until his successor is duly elected and has qualified. The Criminal District Attorney of Bastrop County shall be elected by the qualified voters of Bastrop County at the general election in November, 1978, and every four years thereafter. The office of County Attorney of Bastrop County is abolished from and after the effective date of this Act.

Duties; Fees, Commissions and Perquisites

Sec. 3. It shall be the duty of the Criminal District Attorney of Bastrop County or his assistants as herein provided to be in attendance on each term and all sessions of the district court in Bastrop County and all of the sessions and terms of the inferior courts of Bastrop County held for the transaction of criminal business and to exclusively represent the State of Texas in all criminal matters pending before such courts and any other court where Bastrop County has pending business of any kind, matter, or interest. In addition to the specified powers given and duties imposed upon him by this Act, he shall have all powers, duties, and privileges within Bastrop County as are now by law conferred, or which may hereafter be conferred, on the district and county attorneys in the various counties and judicial districts of this state. He shall collect such fees, commissions, and perquisites as are now or may hereafter be provided by law for similar services rendered by the district and county attorneys of this state.

Compensation; Payment; Private Practice of Law

Sec. 4. The Criminal District Attorney of Bastrop County shall receive as compensation an annual salary from the State of Texas in such amount as may be fixed by the general laws of this state relating to the salary to be paid to the district attorneys of this state. In addition, the commissioners court may, in its discretion, supplement the salary paid by the state. The sum paid by the county shall be paid out of the officers' salary fund of the county, if adequate, and if inadequate, the commissioners court shall transfer the necessary funds from the general fund of the county to the officers' salary fund. The criminal district attorney is prohibited from any private practice of law without regard to whether or not he receives any compensation therefor.

Assistants and Stenographers; Appointment and Compensation; Expenses

Sec. 5. (a) The criminal district attorney may appoint such assistant criminal district attorneys as the commissioners court may authorize. An assistant criminal district attorney shall be paid a salary fixed by the criminal district attorney with the approval of the commissioners court. In addition to the salaries paid the criminal district attorney and his assistants, the commissioners court may allow the criminal district attorney and his assistants such expenses as within the discretion of the court seem reasonable, which expenses shall be paid as provided by law for other such claims of expenses.

(b) The criminal district attorney may employ such stenographers as the commissioners court may authorize and fix their salaries, with the approval of the commissioners court.

(c) The salaries provided for in this section shall be paid by the county out of the officers' salary fund, if adequate, and, if inadequate, the commissioners court shall transfer the necessary funds from the general revenue fund to the officers' salary fund.

Oath of Assistants; Duties

Sec. 6. An assistant criminal district attorney shall take the constitutional oath of office, shall be licensed to practice law in this state, and may perform any duty devolving on the criminal district attorney.

District Attorney of 21st Judicial District

Sec. 7. (a) From and after the effective date of this Act, the District Attorney of the 21st Judicial District shall represent the State of Texas only in the counties of Washington, Lee, and Burleson. The provisions of this Act apply only to Bastrop County and do not affect the office of district attorney or the duties or powers of the district attorney in the counties of Washington, Lee, and Burleson. The

District Attorney of the 21st Judicial District shall continue to fulfill the duties of the district attorney in the counties of Washington, Lee, and Burleson, but his duties in the County of Bastrop are divested from him and invested in the Criminal District Attorney of Bastrop County.

(b) From and after the effective date of this Act, the District Attorney of the 21st Judicial District shall only stand for election and be elected from the counties of Washington, Lee, and Burleson. The present district attorney for the 21st Judicial District shall continue in office as the district attorney in the counties of Washington, Lee, and Burleson until the general election in 1980 and until his successor is duly elected and has qualified.

[Acts 1977, 65th Leg., p. 1743, ch. 695, §§ 1 to 7, eff. Aug. 29, 1977.]

Art. 326k-82. 97th Judicial District Attorney

Creation of Office

Sec. 1. There is hereby created the office of district attorney in the 97th Judicial District composed of Archer, Clay, and Montague Counties.

Duties

Sec. 2. The district attorney for the 97th Judicial District shall represent the state in all criminal cases in the district court for the 97th Judicial District and perform other duties provided by law governing district attorneys.

Qualifications; Oath; Bond

Sec. 3. The district attorney of the 97th Judicial District shall be a practicing attorney in this state and a resident of any county included in the 97th Judicial District from the time of appointment or filing for election until the end of his term of office. He shall possess all the qualifications, take the oath of office, and give the bond required of district attorneys by the constitution and general laws of this state.

Compensation

Sec. 4. The district attorney shall receive compensation for his services in an amount as may be fixed by the general law relating to the salaries paid to district attorneys by the state.

Election; Term of Office

Sec. 5. On the effective date of this Act, the Governor of Texas shall appoint a district attorney of the 97th Judicial District, who shall serve until January 1 following the general election in 1980 and until his successor is duly elected and has qualified. Thereafter, beginning with the general election in 1980, he shall be elected every four years for a four-year term beginning January 1 following his election.

Staff; Appointment and Compensation

Sec. 6. The district attorney, with the approval of the commissioners courts of Archer, Clay, and Montague Counties, may appoint assistants, investigators, and office personnel as he deems necessary. The salary of each person appointed shall be set by the district attorney with the approval of the commissioners courts of Archer, Clay, and Montague Counties.

Payment of Compensation of Staff and Operating Expenses from County Funds

Sec. 7. The salary of each person appointed by the district attorney and the other operating expenses of the office of district attorney shall be paid from county funds by the commissioners courts of Archer, Clay, and Montague Counties.

[Acts 1979, 66th Leg., p. 729, ch. 322, §§ 1 to 7, eff. June 6, 1979.]

Section 8 of the 1979 Act provided:

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

Art. 326k-83. Jasper County Criminal District Attorney

Creation

Sec. 1. The constitutional office of criminal district attorney of Jasper County is created.

Qualifications

Sec. 2. The criminal district attorney shall be at least 25 years of age, a practicing attorney in this state for five years, and a resident of Jasper County. The criminal district attorney shall possess all the qualifications, take the oath of office, and give the bond required of district attorneys by the constitution and general laws of this state. The criminal district attorney shall reside in Jasper County during his or her term of office.

Duties

Sec. 3. It is the duty of the criminal district attorney or his or her assistants to be in attendance on each term and all sessions of the district courts in Jasper County and all sessions and terms of the inferior courts of Jasper County held for the transaction of criminal business and exclusively to represent the State of Texas in all criminal matters pending before those courts and perform such other duties as may be conferred by law on the district and county attorneys in the various counties and judicial districts of this state. The criminal district attorney shall collect the fees, commissions, and perquisites that are provided by law for similar services rendered by district and county attorneys of this state.

Compensation

Sec. 4. The criminal district attorney shall be commissioned by the governor and shall receive as compensation an annual salary payable in equal monthly installments. The salary shall include the amount equal to the amount paid district attorneys by the State of Texas and shall be paid by the comptroller of public accounts, as appropriated by the legislature. In addition, the criminal district attorney shall be paid in equal monthly or bimonthly installments, as determined by the Commissioners Court of Jasper County, an amount which, when added to the amount paid by the state, equals at least 90 percent of the total salary paid to each of the judges of the district courts in Jasper County.

Staff

Sec. 5. The criminal district attorney, for the purpose of conducting the affairs of the office, may appoint a staff composed of assistant criminal district attorneys, investigators, stenographers, clerks, and other personnel that the commissioners court may authorize. All salaries of assistant criminal district attorneys, investigators, stenographers, clerks, and other personnel shall be an amount recommended by the criminal district attorney and approved by the commissioners court and shall be paid by the commissioners court in equal monthly or bimonthly installments from the funds of the county. In addition to the salary provided the criminal district attorney, the assistants, investigators, stenographers, clerks, and other personnel, the commissioners court may allow the criminal district attorney and the assistants and investigators the necessary expenses that the commissioners court deems reasonable. The expenses shall be paid as provided by law for other such claims of expenses. The provisions of this section do not limit the authority of the legislature to provide for assistant district attorneys, investigators, stenographers, secretaries, or other staff out of state funds when the legislature deems such supplementation of staff to be necessary.

Assistant Criminal District Attorneys

Sec. 6. The assistant criminal district attorneys shall take, on appointment, the constitutional oath of office. The criminal district attorney and his or her assistants shall have the exclusive right and duty to represent the State of Texas in all criminal cases pending in any court of Jasper County, as well as to perform other statutory or constitutional duties imposed on district and county attorneys of this state. The assistant criminal district attorneys are authorized to administer oaths, file informations, examine witnesses before the grand jury, and generally perform any duty devolving on the criminal district attorney and exercise any power and perform any duty conferred by law on the criminal district attorney.

Practice of Law Prohibited

Sec. 7. The criminal district attorney shall not engage in the private practice of law or receive a fee for the referral of a case while serving as criminal district attorney.

Election; Vacancies

Sec. 8. (a) On the effective date of this Act, the governor shall appoint a criminal district attorney for Jasper County, with the advice and consent of the senate, who shall hold office until the next general election and until his or her successor is duly elected and has qualified. At the general election in 1982 and every four years thereafter, there shall be elected a criminal district attorney for a regular four-year term as provided by Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution.

(b) A vacancy occurring in the office of criminal district attorney shall be filled by appointment by the governor, with the advice and consent of the senate, and the appointee shall hold office until the next general election and until his or her successor is elected and has qualified.

County Attorney Abolished

Sec. 9. The office of county attorney of Jasper County is abolished.

Duties of District Attorney

Sec. 10. On and after the effective date of this Act, the district attorney of the 1st Judicial District shall represent the state only in the counties of Newton, Sabine, and San Augustine and shall be elected only from the counties of Newton, Sabine, and San Augustine. The present district attorney shall continue in office as the district attorney in the counties of Newton, Sabine, and San Augustine until the general election in 1980 and until his or her successor is elected and has qualified.

[Acts 1979, 66th Leg., p. 1031, ch. 462, §§ 1 to 10, eff. Sept. 1, 1979.]

Art. 326k-84. Denton County Criminal District Attorney

Text of article effective January 1, 1981

Creation of Office; Qualifications; Oath; Bond

Sec. 1. (a) The constitutional office of criminal district attorney of Denton County is created.

(b) The criminal district attorney shall be at least 28 years of age, a practicing attorney in this state for five years, and a resident of Denton County for three years prior to his or her appointment or election. The criminal district attorney shall possess all of the qualifications, take the oath of office, and give the bond required of district attorneys by the constitution and general laws of this state. The

criminal district attorney shall reside in Denton County during his or her term of office.

Powers and Duties

Sec. 2. (a) The criminal district attorney or his or her assistants shall be in attendance on each term and all sessions of any district court in Denton County held for the transaction of criminal business and in attendance on each term and all sessions of the inferior courts of Denton County held for the transaction of criminal business, except the city court of an incorporated city. The criminal district attorney or his or her assistants shall exclusively represent the State of Texas in all criminal matters before these courts and shall represent Denton County in all matters before these courts or any other court where Denton County has pending business of any nature, matter, or interest. This Act does not prevent Denton County from obtaining other legal counsel in civil matters at any time it sees fit to do so.

(b) The criminal district attorney shall have and exercise, in addition to the specific powers given and duties imposed by this Act, all powers, duties, and privileges within Denton County that are conferred on district attorneys and county attorneys in various counties and judicial districts of this state relative to criminal and civil matters for and in behalf of the county and the state.

(c) The criminal district attorney shall collect the fees, commissions, and perquisites that are provided by law for similar services rendered by district and county attorneys of this state.

Compensation

Sec. 3. The criminal district attorney shall receive as compensation an annual salary from the state in the amount fixed by the general laws of this state relating to the salary to be paid to the district attorneys of this state. In addition, the commissioners court may, in its discretion, supplement the salary paid by the state. The sum paid by the county shall be paid out of the officer's salary fund of the county, if adequate, and if inadequate, the commissioners court shall transfer the necessary funds from the general funds of the county to the officer's salary fund. The criminal district attorney is prohibited from the private practice of law without regard to whether or not he or she receives compensation therefor.

Staff

Sec. 4. (a) The criminal district attorney, for the purpose of conducting the affairs of the office, may appoint the assistant criminal district attorneys, investigators, stenographers, clerks, and other personnel that the Denton County Commissioners Court may authorize. All salaries of assistant criminal district attorneys, investigators, stenographers,

clerks, and other personnel shall be an amount set by the criminal district attorney with the approval of the commissioners court and shall be paid by the commissioners court in equal monthly or bi-monthly installments from the officer's salary fund of Denton County.

(b) In addition to the salary provided the criminal district attorney and the assistants, investigators, stenographers, clerks, and other personnel, the commissioners court may allow the criminal district attorney and the assistants and investigators the necessary expenses that the commissioners court deems reasonable. The expenses shall be paid as provided by law for other claims of expenses. This section does not limit supplementation provided by the legislature for assistant district attorneys, investigators, stenographers, secretaries, or other staff out of state funds if the legislature deems such supplementation of staff to be necessary.

Assistant Criminal District Attorneys

Sec. 5. An assistant criminal district attorney will take the constitutional oath of office, shall be a person licensed to practice law in this state, and may perform any duty devolving on the criminal district attorney of Denton County.

Election and Terms; Vacancy

Sec. 6. (a) At the primary and general elections in 1980, there shall be elected, by the qualified voters of Denton County, a criminal district attorney for Denton County for a two-year term beginning January 1, 1981.

(b) At the general election in 1982 and every four years thereafter, the criminal district attorney shall be elected for a regular four-year term, as provided by Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution.

(c) A vacancy occurring in the office of criminal district attorney shall be filled by appointment by the governor and the appointee shall hold office until the next general election and until his or her successor is elected and has qualified.

County Attorney Abolished

Sec. 7. The office of county attorney of Denton County is abolished from and after the effective date of this Act.

Sec. 8. [Amends § 1 of art. 332b]

Effective date

Sec. 9. Except as provided by Subsection (a), Section 6, this Act takes effect on January 1, 1981. [Acts 1979, 66th Leg., p. 1148, ch. 553, §§ 1 to 7, 9, eff. Jan. 1, 1981.]

2. COUNTY ATTORNEYS

Art. 331m. County Attorney of Terry County

The County Attorney of Terry County shall represent the State of Texas in all matters pending before the district court in Terry County.

[Amended by Acts 1979, 66th Leg., p. 854, ch. 380, § 1, eff. Aug. 27, 1979.]

3. GENERAL PROVISIONS

Art. 332b. Collin and Orange Counties; Compensation of Criminal District or County Attorney

Sec. 1. Collin County and Orange County, in all of which counties there is either the office of criminal district attorney or the office of county attorney performing the duties of a district attorney, shall receive annually from the state an amount equal to the compensation paid by the state to district attorneys as authorized by Article V, Section 21, Constitution of Texas. Such compensation shall be paid into the salary fund of each county in 12 equal monthly installments.

Sec. 1a. Repealed by Acts 1977, 65th Leg., p. 1866, ch. 742, § 3, eff. June 16, 1977.

[See Compact Edition, Volume 3 for text of 2 and 3]

[Amended by Acts 1975, 64th Leg., p. 1899, ch. 606, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1951, ch. 642, § 2, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1866, ch. 742, §§ 2, 3, eff. June 16, 1977; Acts 1979, 66th Leg., p. 1148, ch. 553, § 8, eff. Jan. 1, 1981; Acts 1979, 66th Leg., p. 1710, ch. 705, § 8, eff. Aug. 27, 1979.]

Sections 2 and 3 of Acts 1975, 64th Leg., ch. 606, provided:

"Sec. 2. There is hereby appropriated out of the general revenue fund the sum of \$5,000 for each fiscal year of the biennium for each county attorney, beginning September 1, 1975, to fund the state's cost under this Act.

"Sec. 3. This Act shall become effective on September 1, 1975."

Repealed § 1a related to state compensation for Lamar and Fannin county attorneys.

Art. 332b-1. Marion, Terry, Cass, Lamar, Red River, Crosby, Robertson, Falls, and Ellis Counties; Compensation of Criminal District or County Attorney

In Marion County, Terry County, Cass County, Lamar County, Red River County, Crosby County, Robertson County, Falls County, and Ellis County, in all of which counties there is either the office of criminal district attorney or the office of county attorney performing the duties of a district attorney, the official performing such services shall be compensated for his services by the State in such manner and in such amount as may be fixed by the general law relating to the salary to be paid to district attorneys by the State. The Commissioners Court may pay such official any compensation it deems advisable and shall pay such official sufficient compensation to insure that his total compensation is not less than the total compensation received by

such official on the effective date of this amendment.

[Acts 1975, 64th Leg., p. 1853, ch. 578, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 1866, ch. 742, § 1, eff. June 16, 1977; Acts 1979, 66th Leg., p. 1711, ch. 705, § 9, eff. Aug. 27, 1979.]

Art. 332b-2. County Attorney of Castro County; District Attorney of 64th Judicial District

(a) The County Attorney of Castro County shall represent the State of Texas in all matters pending before the district court in Castro County.

(b) On and after the effective date of this Act, the District Attorney of the 64th Judicial District shall represent the state only in the counties of Hale and Swisher. The district attorney shall continue to fulfill the duties of the district attorney in the counties of Hale and Swisher, but his duties in the county of Castro are divested from him and invested in the county attorney. On and after the effective date of this Act, the District Attorney of the 64th Judicial District shall stand for election and be elected only from the counties of Hale and Swisher.

(c) The present District Attorney of the 64th Judicial District shall continue in office as the district attorney in the counties of Hale and Swisher until the general election in 1980 and until his successor is duly elected and has qualified.

[Acts 1977, 65th Leg., p. 1866, ch. 742, § 4, eff. June 16, 1977.]

Art. 332b-3. County Attorney of Ochiltree County; District Attorney of 84th Judicial District

(a) The County Attorney of Ochiltree County shall represent the State of Texas in all matters pending before the district court in Ochiltree County.

(b) On and after the effective date of this Act, the District Attorney of the 84th Judicial District shall represent the state only in the counties of Hansford and Hutchinson. The district attorney shall continue to fulfill the duties of the district attorney in the counties of Hansford and Hutchinson, but his duties in the county of Ochiltree are divested from him and invested in the county attorney. On and after the effective date of this Act, the District Attorney of the 84th Judicial District shall stand for election and be elected only from the counties of Hansford and Hutchinson.

(c) The present District Attorney of the 84th Judicial District shall continue in office as the district attorney in the counties of Hansford and Hutchinson until the general election in 1980 and until his successor is duly elected and has qualified.

[Acts 1977, 65th Leg., p. 1867, ch. 742, § 5, eff. June 16, 1977.]

Art. 332b-4. Professional Prosecutors Act**Purpose and Title**

Sec. 1. This Act shall be known as the Professional Prosecutors Act and is enacted for the purpose of increasing the effectiveness of law enforcement in the State of Texas.

Definition

Sec. 2. In this Act, "district attorney" means each of the district attorneys for the 2nd, 3rd, 9th, 12th, 21st, 26th, 27th, 30th, 36th, 38th, 39th, 43rd, 51st, 52nd, 63rd, 66th, 75th, 76th, 81st, 105th, 106th, 118th, 119th, 143rd, 145th, 155th, 159th, 196th, 198th, 220th, and 235th Judicial Districts; the criminal district attorney in each of the counties of Bastrop, Bexar, Brazoria, Fort Bend, Galveston, Gregg, Harrison, Hays, Hidalgo, Kaufman, McLennan, Navarro, Randall, Rockwall, Smith, Tarrant, Taylor, Van Zandt, Walker, and Wood; the county attorney performing the duties of the district attorney in each of the counties of Cameron, Castro, Fannin, Freestone, Grayson, Limestone, Ochiltree, Rusk, and Willacy; and the county attorney or criminal district attorney, as the case may be, of Denton County.

Compensation

Sec. 3. Each district attorney governed by this Act shall receive from the state compensation equal to 90 percent of the compensation that is provided for a district judge in the General Appropriations Act. Each commissioners court may supplement the district attorney's state salary, but shall in no event pay the district attorney an amount less than the compensation it provides its highest paid district judge.

Expenses and Allowances

Sec. 4. Each district attorney governed by this Act shall receive not less than \$22,500 per annum from the state to be used by the district attorney to help defray the salaries and expenses of the office but not to be used to supplement the district attorney's salary. Each district attorney shall submit annually a sworn account to the comptroller of public accounts showing how this money was spent during the year.

Limitations on Law Practice

Sec. 5. (a) A district attorney governed by this Act may not engage in the private practice of law, but may complete all civil cases that are not in conflict with the interest of any of the counties of the district in which the district attorney serves and that are pending in court on the effective date of this Act or are pending in court before the district attorney takes office. A district attorney may not accept a fee from an attorney to whom the district attorney has referred a case.

(b) Subsection (a) of this section also applies to an assistant of a district attorney governed by this Act if, from all funds received, the assistant district attorney receives a salary that is equal to or greater than 80 percent of the salary paid by the state to the district attorney under this Act.

Construction

Sec. 6. It is the purpose of this Act to increase funds available for use in prosecution. The commissioners court in each county that has a district attorney governed by this Act shall provide the funds necessary to effectuate the purpose of this Act and shall continue to provide funds for the office of the district attorney in an amount that is equal to or greater than the amount of funds provided for the office by the county on the effective date of this Act. This provision does not apply to local supplementation to the salary of the district attorney.

Effect on Art. 3912e

Sec. 7. Subsection (b), Section 13, Chapter 465, Acts of the 44th Legislature, 2nd Called Session, 1935 (Article 3912e, Vernon's Texas Civil Statutes), continues in force only as to those counties and those district attorneys that are not subject to this Act. [Acts 1979, 66th Leg., p. 1709, ch. 705, §§ 1 to 7, eff. Aug. 27, 1979.]

Art. 332c. Representation of County Officials and Employees by District, County or Private Attorneys

Sec. 1. In this Act, "nonpolitical entity" means any person, firm, corporation, association, or other private entity, and does not include the state, a political subdivision of the state, a city, a special district, or other public entity.

Sec. 2. In any suit instituted by a nonpolitical entity against an official or employee of a county, the district attorney of the district in which the county is situated or the county attorney, or both, shall, subject to the provisions contained in Section 3, represent the official or employee of the county if the suit involves any act of the official or employee while in the performance of public duties.

Sec. 3. If additional counsel is necessary or proper for an official or employee provided legal counsel by Section 2 of this Act or if it reasonably appears that the act complained of may form the basis for the filing of a criminal charge against the official or employee, the county commissioners court shall employ and pay private counsel.

Sec. 4. Nothing in this Act requires a county official or employee to accept the legal counsel provided for him in this Act.

[Amended by Acts 1977, 65th Leg., p. 1116, ch. 414, § 1, eff. Aug. 29, 1977.]

Art. 332d. Prosecutors Coordinating Council**Purpose of Act**

Sec. 1. The Legislature of the State of Texas finds and declares that a uniform quality of prosecution will aid in improving the efficiency and effectiveness of the state's criminal justice system. The legislature recognizes that the prosecutor performs an executive function which has a significant effect on the judicial branch and on law enforcement. To this end, it is the purpose of this Act to provide a centralized agency capable of delivering technical assistance, educational services, and professional development training to the prosecutors of Texas and their assistants and to improve the administration of criminal justice through professionalization of the prosecuting attorney's office.

Creation

Sec. 2. There is hereby created the Texas Prosecutors Coordinating Council, hereinafter referred to as the "council."

Membership; "Prosecuting Attorney" Defined

Sec. 3. (a) The council shall be composed of nine members, selected as follows:

(1) four citizens of the State of Texas, who are not licensed to practice law, appointed by the Governor of Texas, with the advice and consent of the senate. In making such appointments, the governor shall give due consideration to geographical areas of the state and their population diversities;

(2) the president of the Texas District and County Attorneys Association; and

(3) four incumbent, elected prosecuting attorneys to be selected by the membership of the Texas District and County Attorneys Association; at least one each of whom shall be a county attorney, a district attorney, and a criminal district attorney.

(b) For purposes of this Act, "prosecuting attorney" means the person who holds the office of county attorney, district attorney, or criminal district attorney, and represents the State of Texas in criminal cases. The duties of prosecuting attorneys who are members of the council shall be additional to those of their elected position, and membership on the council shall not constitute dual officeholding.

Terms

Sec. 4. Each member of the council, other than the president of the Texas District and County Attorneys Association, shall serve overlapping four-year terms. Initially, two of the citizens appointed by the governor and two of the prosecuting attorneys shall serve a two-year term. The terms of the members shall begin January 1 following the effective date of this Act, and each member shall continue to serve until his successor has been appointed.

Vacancies

Sec. 5. Vacancies on the council shall be filled in the same manner as the original appointment. A member appointed to fill a vacancy created other than by expiration of a term shall be appointed for the unexpired term of the member he is to succeed. Any member may be reappointed for additional terms. If a member who is a prosecuting attorney ceases to be a prosecuting attorney, a vacancy on the council shall exist.

Expenses

Sec. 6. Members of the council shall serve without compensation but may be entitled to their actual expenses in attending meetings and in the performance of their duties hereunder.

Meetings; Officers; Quorum; Executive Director

Sec. 7. (a) The council shall meet at least twice each year and shall hold such other meetings as may be necessary. The president of the Texas District and County Attorneys Association shall serve as chairman of the council, and the council shall designate from among its members a vice-chairman who shall serve a one-year term and who may be reelected. The chairman shall preside over the meetings, and in his absence the vice-chairman shall preside. The council shall establish its own procedures with respect to its meetings, and five members shall constitute a quorum for the transaction of business. A majority vote of the members present and voting shall be required for approval of any action authorized by this Act.

(b) The council shall appoint an executive director who shall be an attorney licensed by the Supreme Court of Texas. The executive director shall perform the functions and duties assigned him by the council and shall represent the council in all cases in the courts of the state or of the United States in which the council is a party.

Duties

Sec. 8. It shall be the duty of the council to:

(1) develop and adopt minimum standards for the operation of prosecuting attorneys' offices;

(2) approve courses for in-service training and professional development of prosecuting attorneys, their assistants, and staff;

(3) cooperate and coordinate with the Texas Judicial Council to improve the maintenance and reporting of criminal justice statistics;

(4) accept and investigate complaints of prosecuting attorney incompetency and misconduct;

(5) receive and consider suggestions to improve the administration of criminal justice and to investigate and report upon such matters as may be referred to the council by the governor or the legislature;

(6) coordinate with the Texas District and County Attorneys Association to carry out the provisions and purposes of this Act;

(7) respond to requests for technical assistance from the various prosecuting attorneys; and

(8) report to the governor and the legislature on or before December 1 of each year as to all its proceedings, recommended changes in jurisdictions, needed funding for local offices, and other matters to improve local prosecution within the state.

Powers

Sec. 9. The council may:

(1) respond to the request of a judge for recommendations regarding the appointment of a special prosecutor in case of disqualification of the prosecuting attorney;

(2) enter into agreements with other public or private agencies or organizations to implement the intent and purpose of this Act;

(3) accept funds, grants, and gifts from any public or private source to implement this Act;

(4) employ such staff and clerical assistants as necessary to fulfill its duties and responsibilities; and

(5) take such other action as may be appropriate for the improvement and more efficient administration of criminal justice.

Reprimand, Disqualification, or Removal from Office

Sec. 10. (a) A prosecuting attorney may be reprimanded, disqualified, or removed from office as hereinafter provided.

(b) For purposes of this Act:

(1) "incompetency" means:

(A) gross ignorance or neglect of official duty;

(B) physical or mental defect which prohibits the prompt or proper discharge of official duties; or

(C) failure to maintain the qualifications required by law for election to the office.

(2) "misconduct" means:

(A) any unlawful behavior defined in Chapter 39 of the Penal Code;

(B) any act which is a felony or a misdemeanor involving moral turpitude; or

(C) willful or persistent conduct which is clearly inconsistent with the proper performance of official duties.

(c) A prosecuting attorney is disqualified from performing the duties and functions or exercising the privileges of his office when a petition for removal from office has been filed against him as provided in this Act.

(d) A prosecuting attorney shall be suspended from office when:

(1) he has been disbarred or suspended from the practice of law in the State of Texas, whether through trial or upon agreement;

(2) he has been found guilty in a court of competent jurisdiction of any felony or any misdemeanor involving moral turpitude;

(3) a finding of incompetency or misconduct following a trial on the merits of a petition for removal.

(e) A prosecuting attorney shall be removed from office upon final adjudication or conviction for any cause of action which was the basis for his suspension.

(f)(1) During a period of disqualification, the prosecuting attorney shall be entitled to receive the compensation provided by law for such office but shall be disqualified from the performance of any official duties imposed upon his office by law or exercising any privilege incident thereto.

(2) During a period of suspension, the prosecuting attorney shall not be entitled to any compensation provided by law for his office and shall be disqualified from the performance of any official duties imposed upon his office by law or exercising any privilege incident thereto. If the trial court judgment which causes a suspension is upon final determination overturned, then he shall be entitled to receive as compensation an amount equal to the total compensation he would have received during the period of such suspension.

(g)(1) After investigation of a complaint of prosecutor incompetency or misconduct, the council may, in its discretion, issue a private reprimand, order a hearing to be held before the council, or request the supreme court to appoint a master to hold a hearing.

(2) The supreme court shall by rule provide for the procedure before the council and masters in hearings relating to the investigation of complaints of prosecuting attorney incompetency or misconduct, consistent with this Act and due process of law.

(3) In the conduct of investigations or hearings, any member of the council or the master may administer oaths and issue subpoenas for the attendance of witnesses and to compel testimony and the production of books, records, papers, accounts, and documents relevant to any investigation or hearing. Orders for attendance of witnesses, testimony, or production of evidence shall be enforceable by contempt proceedings in the district court.

(4) It shall be the duty of all law enforcement officers to serve process and execute all lawful orders of the council or master. Such process and orders may also be served by any other person designated by the master, the council, or their authorized representative.

(5) In any investigation or hearing, process shall extend to all parts of the state, and each witness, other than an officer or employee of the state or a political subdivision, shall receive the same fees and mileage as allowed witnesses in civil cases.

(6) In any investigation or hearing, the council or master may order the deposition of any person be taken in accordance with the Texas Rules of Civil Procedure.

(h) Upon the appointment of a master, notice shall be given to the prosecuting attorney who is the subject of any complaint or investigation, specifying the matters under investigation and the complaint against him and setting a formal hearing for the first Monday next after the expiration of 10 days after the service thereof.

(i) After the conclusion of the hearing, the master shall file with the council a statement of his findings of fact, together with a complete transcript of all proceedings had in the cause. Such findings and transcripts shall be filed with the council not later than 30 days after the date set for the hearing to commence. For good cause shown, the council may, in its discretion, extend the time for filing such findings and transcripts.

(j) All proceedings and records before the council or a master shall be confidential and privileged until such time as they are introduced in evidence in any proceeding for removal.

(k) If, after examining the records and proceedings before it, the council finds by majority vote of the council membership good cause therefor, it shall cause to be filed in the district court of the county in which the prosecuting attorney resides a petition for removal. Such petition shall be filed in the name of the State of Texas and docketed on the civil docket of the court. Such petition shall allege incompetency or misconduct, together with the facts which form the basis of the allegations. The trial on a petition for removal shall proceed in accordance with the Texas Rules of Civil Procedure and shall have priority on the docket of the court.

(l) When a petition for removal is filed pursuant to this section, the judge of the court in which it is filed shall request the appointment of a special judge who shall hear the case. Upon appointment, the special judge shall appoint an attorney to prosecute the case, such counsel to be selected from a list of not less than five qualified attorneys submitted by the council.

(m) Upon disqualification or suspension of a prosecuting attorney, the duties of his office shall be performed by a prosecuting attorney pro tem as otherwise provided by law.

Severability

Sec. 11. If any provision of this Act or the application thereof to any person or circumstance is held

invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end, the provisions of this Act are declared to be severable.

Effect of Constitutional Amendment

Sec. 12. Should the voters of Texas approve a constitutional amendment giving the Judicial Qualifications Commission jurisdiction over prosecuting attorneys covered by this Act, then the powers, duties, and authority granted by this Act to the Texas Prosecutors Coordinating Council shall be vested in the Judicial Qualifications Commission to the extent that said powers, duties, and authority do not conflict with the powers, duties, and authorities of the commission established by law and the Texas Constitution. If such powers, duties, and authority are transferred from the Texas Prosecutors Coordinating Council to the Judicial Qualifications Commission, then the existence of the Texas Prosecutors Coordinating Council shall terminate.

[Acts 1977, 65th Leg., p. 917, ch. 345, §§ 1 to 12, eff. Aug. 29, 1977.]

4. PUBLIC DEFENDERS

Art. 341-2. Counties Having Four County and Four District Courts; Appointment and Compensation; Entitlement of Indigents

Findings and Purpose

Sec. 1. (a) Recent federal and state court decisions have emphasized the constitutional obligation of the state to afford needy persons the effective assistance of counsel in criminal actions. In some counties, the bar has partially met this obligation through creation of a nonprofit organization, primarily financed by federal grants, which provides counsel; in others, volunteers from the bar donate their services to defend needy persons. And in still other counties, the courts concerned appoint counsel under Articles 26.04 and 26.05, Code of Criminal Procedure, 1965, as amended.

(b) The obligation to furnish competent counsel imposes a substantial burden on county financial resources. None of the alternative methods presently employed to furnish counsel has proved entirely satisfactory and the legislature finds that a county-wide public defender system, functioning either alone or in a combination with other methods, may better satisfy the constitutional and statutory obligations for providing counsel for the needy accused.

Appointment of Public Defender

Sec. 2. (a) The commissioners court of any county having four county courts and four district courts may appoint one or more attorneys to serve as a public defender to serve at its pleasure.

(b) To be eligible for appointment as a public defender, a person must:

- (1) be a member of the State Bar of Texas;
- (2) have practiced law at least three years; and
- (3) be experienced in the practice of criminal law.

Compensation

Sec. 3. (a) The public defenders shall receive an annual salary to be fixed by the commissioners court and paid from the appropriate county fund.

(b) The provisions of Article 26.05, Code of Criminal Procedure, 1965, as amended, regarding daily appearance fees shall not apply to public defenders; however, all other provisions of Article 26.05, Code of Criminal Procedure, 1965, as amended, regarding fees and allowances shall apply to public defenders.

(c) A public defender may not engage in any criminal law practice other than that authorized in this Act and shall accept nothing of value, except as authorized in this Act, for any services rendered in connection with a criminal case.

(d) A violation of Subsection (c), Section 3 of this Act shall be cause for removal of the public defender by the judge who appointed him.

Entitlement to Representation

Sec. 4. (a) Any indigent person charged with a criminal offense or any indigent person who is a party in a juvenile delinquency proceeding shall be represented by a public defender in a county having at least four county courts and at least four district courts, if one has been appointed, or other practicing attorneys appointed by a court of competent jurisdiction. If an attorney, other than a public defender, is appointed, he shall be compensated as provided in Article 26.05, Code of Criminal Procedure, 1965, as amended.

(b) A public defender may inquire into the financial condition of any person whom he is appointed to represent and shall report any findings of the investigation to the court appointing him. The court may hold a hearing into the financial condition of the defendant and shall make a determination as to his indigency and to his entitlement to representation by a public defender.

Substitute Defender

Sec. 5. At any stage, including appeal or other postconviction proceedings, the court concerned may assign a substitute attorney. The substitute attorney shall be entitled to compensation as provided in Article 26.05, Code of Criminal Procedure, 1965, as amended.

[Acts 1979, 66th Leg., p. 1357, ch. 609, §§ 1 to 5, eff. Aug. 27, 1979.]

TITLE 16

BANKS AND BANKING

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

Article

342-103a. Application of Sunset Act.

Art. 342-102. Definitions

As used in this code the following terms, unless otherwise clearly indicated by the context, have the meanings specified below:

"Code"—The Texas Banking Code of 1943.

"Banking Department"—The Banking Department of Texas.

"Finance Commission" or "Commission"—The Finance Commission of Texas.

"Banking Section"—The Banking Section of The Finance Commission of Texas.

"Building and Loan Section"—The Building and Loan Section of The Finance Commission of Texas.

"Commissioner"—The Banking Commissioner of Texas.

"Deputy Commissioner"—The Deputy Banking Commissioner of Texas.

"Departmental Examiner"—The Departmental Bank Examiner of The Banking Department of Texas.

"Examiner"—Bank Examiner of The Banking Department of Texas.

"Assistant Examiner"—Assistant Bank Examiner of The Banking Department of Texas.

"State Bank"—Any corporation hereafter organized under this Code, and any corporation heretofore organized under the laws of the State of Texas, and which was, prior to the effective date of this Act,¹ subject to the provisions of Title 16 of the Revised Civil Statutes of Texas, 1925, as amended,² including banks, trust companies, bank and trust companies, savings banks and corporations subject to the provisions of Chapter 9, Title 16 of the Revised Civil Statutes of Texas, 1925, as amended.³

"Director, officer or employee"—Director, officer or employee of a state bank.

"Board"—Board of directors of a state bank.

"National Bank"—Any banking corporation organized under the provisions of Title 12, United

States Code, Section 21 (U.S.Rev.Statutes, Section 5133) and the amendments thereto.⁴

"State Building and Loan Association" or "State Association"—Any building and loan or savings and loan association heretofore or hereafter organized under the laws of this State.

"Federal Savings and Loan Association"—Any savings and loan association heretofore or hereafter organized under the laws of the United States of America.

"District Court"—A district court of the county in which the bank involved is domiciled.

"City"—City, village, town, or similar community.

"Capital"—The common capital stock.

"Chapters and Articles"—Chapters and articles of this Code.

"Bank Holding Company"—A company defined as a bank holding company by Section 2 of the Bank Holding Company Act of 1956 (12 U.S.C., Sec. 1841).⁵

"Bank Holding Company Act of 1956"—The Federal Bank Holding Company Act of 1956, as amended, P.L. 84-511 (12 U.S.C., Sec. 1841 et seq.).⁶

[Amended by Acts 1977, 65th Leg., p. 1614, ch. 631, § 1, eff. June 15, 1977.]

¹ Effective 90 days after May 11, 1943, date of adjournment.

² Former art. 342 et seq.

³ Former art. 542 et seq.

⁴ 12 U.S.C.A. § 21.

⁵ 12 U.S.C.A. § 1841.

⁶ 12 U.S.C.A. § 1841 et seq.

Art. 342-103a. Application of Sunset Act

The Finance Commission of Texas is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished effective September 1, 1983.

[Added by Acts 1977, 65th Leg., p. 1841, ch. 735, § 2.065, eff. Aug. 29, 1977.]

¹ Article 5429k.

Art. 342-115. State Banking Board—Members—Duties—Rules of Practice—Appeal

[See Compact Edition, Volume 3 for text of 1 to 4]

5. The State Banking Board is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished effective September 1, 1983.

[Amended by Acts 1977, 65th Leg., p. 1842, ch. 735, § 2.071, eff. Aug. 29, 1977.]

¹ Article 5429k.

**CHAPTER TWO. THE BANKING
DEPARTMENT OF TEXAS**

Article

342-201a. Application of Sunset Act.

342-208a. Examination of Nonbanking Affiliates.

Art. 342-201a. Application of Sunset Act

The office of Banking Commissioner is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the office is abolished effective September 1, 1983.

[Added by Acts 1977, 65th Leg., p. 1842, ch. 735, § 2.070, eff. Aug. 29, 1977.]

¹ Article 5429k.

**Art. 342-205. Savings and Loan Department—
Savings and Loan Commissioner
—Powers and Duties**

*[See Compact Edition, Volume 2 for text of (a)
to (i)]*

(j) The office of Savings and Loan Commissioner is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the office is abolished effective September 1, 1983.

[Amended by Acts 1977, 65th Leg., p. 1841, ch. 735, § 2.067, eff. Aug. 29, 1977.]

¹ Article 5429k.

Art. 342-208a. Examination of Nonbanking Affiliates

The Commissioner may examine the affiliates of a state bank to the extent it is necessary to safeguard the interest of depositors, creditors, and stockholders of the bank and to enforce the provisions of The Texas Banking Code of 1943. The Commissioner may conduct the examination in conjunction with any examination of the state bank or affiliate conducted by any other state or federal regulatory authority. For the purpose of this Article, "affiliate" means any bank holding company of which the state bank is a subsidiary and any nonbanking subsidiary of that bank holding company, as "subsidiary" is defined by Section 2 of the federal Bank Holding Company Act of 1956 (12 U.S.C., Sec. 1841(d), as amended).

[Added by Acts 1977, 65th Leg., p. 1617, ch. 632, § 1, eff. Aug. 29, 1977.]

**CHAPTER THREE. INCORPORATION, MERG-
ER, REORGANIZATION, PURCHASE OF
ASSETS OF ANOTHER BANK, DISBURS-
ING AGENT, AMENDMENT OF ARTI-
CLES OF ASSOCIATION OF STATE
BANKS, AND CONVERSION**

Art. 342-304. Articles of Association

The articles of association of a state bank shall be signed and acknowledged by each incorporator and shall contain:

1. The name of the corporation.
2. The city or town and the county of its domicile.
3. Such of the powers listed in Article 1 of this Chapter as it shall choose to exercise.
4. The capital and the denomination and number of shares.
5. The number of directors.
6. The period of duration, which may be perpetual.

[Amended by Acts 1977, 65th Leg., p. 1965, ch. 784, § 1, eff. Aug. 29, 1977.]

**Art. 342-305. Application for and Granting of
Charters—Approval**

[See Compact Edition, Volume 3 for text of A]

B. Applicants desiring to incorporate a State bank shall file with the Banking Commissioner an application for charter, the proposed Articles of Association, a list of shareholders, and a written list of information as may tend to establish the above conditions of incorporation, all upon official forms prepared and prescribed by the Commissioner. All persons subscribing to the capital stock of the proposed bank shall sign and verify under oath a statement of such stock subscribed, and which statement shall truly report the number of shares and the amount to be paid in consideration; the names, identity, title and address of any other persons who will be beneficial owners of such stock or otherwise share an interest or ownership in said stock, or who will pay any portion of the consideration; whether said stock is to be pledged as security for any loan; whether a loan has been committed or is intended for the subscription and purchase of said stock, and if so, the name and address of such person or corporation which is intended to loan funds for said purchase; the names of any cosigners, guarantors, partners or other persons liable for the repayment of any loan financing the purchase of such stock. Provided, however, that the verified statement of subscribers to stock shall be confidential and privileged from public disclosure prior to the final determination by the Board of the application for a charter, unless the Board shall find that public disclosure prior to public hearing and final determination of the charter application is necessary to a full development of the factual record. Subject to the above qualification, the list of incorporators and proposed officers and directors who support the application for a charter shall be available to public inspection.

C. The Commissioner shall require deposit of such charter fees as are required by law and shall proceed to conduct a thorough investigation of the application, the applicants and their personnel, and the charter conditions alleged. The actual expense of such investigation and report shall be paid by the

applicants, and the Commissioner may require a deposit in an estimated amount, the balance to be paid in full prior to hearing of the application. A written report of the investigation shall be furnished to the State Banking Board and shall be made available to all interested parties at their request.

D. Upon filing of the application, the Commissioner shall promptly set the time and place for public hearing of the application for charter, giving the applicants and such other banks in the same trade area reasonable notice thereof. After full and public hearing the Board shall vote and determine whether the necessary conditions set out in Section A above have been established. Should the Board, or a majority of the Board, determine all of the said conditions affirmatively, then the application shall be approved; if not, then the application shall be denied. If approved, and when the Commissioner receives satisfactory evidence that the capital has been paid in full in cash, the Commissioner shall deliver to the incorporators a certified copy of the Articles of Association, and the bank shall come into corporate existence. Provided however, that the State Banking Board may make its approval of any application conditional, and in such event shall set out such condition in the resolution granting the charter, and the Commissioner shall not deliver the certified copy of the Articles of Association until such condition has been met, after which the Commissioner shall in writing inform the State Banking Board as to compliance with such condition and delivery of the Articles of Association.

E. The provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) governing contested cases do not apply to charter applications filed for the purpose of assuming the assets and liabilities of any bank deemed by the Commissioner to be in an unsafe condition.

[Amended by Acts 1977, 65th Leg., p. 1965, ch. 784, § 2, eff. Aug. 29, 1977.]

Art. 342-312. Amendment of Articles of Association—Rights of Stockholders upon Increase in Capital—Stock Option Plans

Subject to the provisions of this Code, any state bank may amend its articles of association for any lawful purpose.

If the owners of record of two-thirds of the capital stock, at any regular meeting of stockholders, or any special meeting called for that purpose, vote to amend the charter, the board of directors shall prepare, execute in the manner provided for the execution of articles of association, and file with the Commissioner an amendment to the articles of association. If the Commissioner finds that the amendment is not violative of law and does not prejudice the interest of depositors and creditors or the public,

he shall approve such amendment and deliver to the bank a certified copy thereof, and said amendment shall thereupon become effective; provided, however, that if a state bank does not have the power to receive demand deposits, no amendments of its articles of association adopting any power provided under Subsections (a), (b), (c), (d), or (f) of Article 1 of this Chapter and no amendment changing the domicile of any state bank shall be effective until approved by the State Banking Board in the manner provided for the approval of an original application for charter. Any state bank may amend its articles of association to extend its corporate existence for a perpetual period or for any period of years.

Each stockholder of a state bank shall be entitled to his proportionate part of any increase of stock effected out of surplus funds or undivided profits, and shall be entitled to subscribe for his proportionate share of any capital increase to be paid in cash; provided, however, that each stockholder or his assignee, in event he elects to assign such rights of subscription, shall subscribe for and pay the amount of such subscription to the corporation within ten (10) days after the stockholders have adopted such amendment, otherwise the board of directors may allocate the unsubscribed or unpaid portion of the increase among the other stockholders or otherwise as they deem to the best interest of the bank.

With prior approval of the owners of record of two-thirds of the capital stock, shares of stock in a bank, which are created by a capital increase, may be allocated to and purchased by the bank out of its surplus which is not certified or out of its undivided profits to be held by the bank for fulfilling the requirements of an officer or employee stock option or bonus plan, whereby officers or employees, or both, of the bank are given options to purchase or a bonus of shares of the bank's capital stock at a specified price, subject to the following requirements and restrictions:

The number of shares so held shall not, at any time, exceed five percent (5%) of the total number of shares outstanding in the hands of other stockholders. Employee benefit plans, including employee stock option plans, stock bonus plans, restricted stock option or bonus plans, or any other plans, the sole purpose of which is to compensate employees of the bank for services rendered to the bank, authorized under this Article, may not extend beyond a period of ten years from the date of issuance. No officer or employee who owns or controls more than five percent (5%) of the bank's capital stock shall be eligible to participate or to continue participation in a stock option plan authorized by this Article. [Amended by Acts 1979, 66th Leg., p. 624, ch. 289, § 1, eff. May 24, 1979.]

Art. 342-314. Change of Domicile

No state bank may change its domicile to a location outside the county where it is located. No state bank may change its domicile to another location in the same county without first having received approval for such change from the State Banking Board in the manner provided for the approval of an original application for a charter. Notwithstanding the above provisions, a bank which is domiciled in an incorporated or unincorporated city located in two or more counties may change its domicile to any place located within the county of its domicile or within the same city after receiving the approval of the State Banking Board as above provided.

[Amended by Acts 1977, 65th Leg., p. 25, ch. 10, § 1, eff. March 10, 1977.]

**CHAPTER FOUR. STOCK, STOCKHOLDERS,
BY-LAWS, DIRECTORS, OFFICERS,
EMPLOYEES**

Article

342-401a. Transfer of Stock—Review by Commissioner.

342-411a. Exemption from Securities Law.

Art. 342-401a. Transfer of Stock—Review by Commissioner

A. No person may acquire any voting security of a state bank or of any corporation or other entity owning voting securities of a state bank if, after the acquisition, the person would own or possess the power to vote twenty-five per cent (25%) or more of the voting securities of the bank unless an application is filed with the Commissioner for his review of the proposed transaction and for his action, if any, as provided in this Article.

B. The application shall be on a form prescribed by the Commissioner and shall be made under oath. The application shall, except to the extent expressly waived by the Commissioner, contain the following information:

(1) the identity, personal history, business background and experience, and financial condition of each person by whom or on whose behalf the acquisition is to be made, including a description of the managerial resources and future prospects of each acquiring party and a description of any material pending legal or administrative proceedings in which he is a party;

(2) the terms and conditions of any proposed acquisition and the manner in which the acquisition is to be made;

(3) the identity, source, and amount of the funds or other consideration used or to be used in making the acquisition, and if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition, a description of the trans-

action, the names of the parties, and arrangements, agreements, or understandings with such persons;

(4) any plans or proposals which any acquiring party making the acquisition may have to liquidate the bank, to sell its assets or merge it with any company, or to make any other major changes in its business or corporate structure or management;

(5) the terms and conditions of any offer, invitation, agreement, or arrangement under which any voting security will be acquired and any contract affecting such security or its financing after it is acquired; and

(6) such other information that the Commissioner by rule shall require to be furnished in an application as well as any information that the Commissioner orders to be included in the particular application being filed.

The applicant shall pay the appropriate filing fee when he files the application. A "person" proposing to acquire voting securities subject to the provisions of this Article includes an individual, two (2) or more individuals acting in concert, any type of partnership, corporation, syndicate, trust, or any other organization, or any combination of the foregoing, and the information required by the Commissioner may be required of each member of the group, as directed by the Commissioner. Information obtained by the Commissioner under this Article is confidential and may not be disclosed by the Commissioner or any officer or employee of the Banking Department, except that the Commissioner may in his discretion, if he deems it necessary or proper to the enforcement of the laws of this state or the United States and to the best interest of the public, divulge such information to any department, agency, or instrumentality of the state or federal government, and provided that notice of the application, its date of filing, and the identity of all parties thereto shall be submitted to the Texas Register by the Commissioner upon receipt of the said application and shall be published in the next issue thereof following the date such information is received.

C. The Commissioner shall issue an order denying an application if he finds that:

(1) the acquisition would substantially lessen competition or would in any manner be in restraint of trade and would result in a monopoly or would be in furtherance of a combination or conspiracy to monopolize or attempt to monopolize the banking industry in any part of the State, unless he also finds that the anticompetitive effects of the proposed acquisition are clearly outweighed in the public interest by the probable effect of acquisition in meeting the convenience and needs of the community to be served and that the proposed acquisition is not in violation of any law of this State or the United States;

(2) the poor financial condition of any acquiring party might jeopardize the financial stability of the bank being acquired;

(3) plans or proposals to liquidate or sell the bank or its assets are not in the best interest of the bank;

(4) the experience, ability, standing, competence, trustworthiness, or integrity of the applicant is such that the acquisition would not be in the best interest of the bank;

(5) the bank will not be solvent, have adequate capital structure, or be in compliance with the laws of this State after the acquisition;

(6) the applicant has failed to furnish all of the information pertinent to the application reasonably requested by the Commissioner; or

(7) the applicant is not acting in good faith.

D. If an application filed under this Article is not denied by the Commissioner within thirty (30) days after it is filed, the transaction may be consummated. The Commissioner may, before the expiration of the thirty-day period, give the applicant written notice that the application will not be denied, in which case the transaction may be consummated. Any agreement entered into by the applicants and the Commissioner as a condition that the application will not be denied is enforceable against the bank and is considered for all purposes an agreement under the provisions of this Code.

E. If the Commissioner issues an order denying an application, the applicant is entitled to a hearing if he requests one in writing no later than the thirtieth (30th) day after the day the application is filed or the fifteenth (15th) day after the day the application is denied, whichever date is later. After hearing the matter, the Commissioner shall, within thirty (30) days, enter a final order either affirming his denial or withdrawing his denial of the application. An applicant may not appeal the Commissioner's denial of an application or order affirming his denial until a final order is entered. Any applicant herein shall have the right to appeal such final order to the district court of Travis County, Texas, and not elsewhere, against the Banking Commissioner of Texas as defendant. Said action shall have precedence over all other causes on the docket of a different nature. The action shall not be limited to questions of law and the substantial evidence rule shall not apply, but such action shall be tried and determined upon a trial de novo to the same extent as now provided for in the case of an appeal from the justice court to the county court. Either party to said action may appeal to the appellate court having jurisdiction of said cause and said appeal shall be at once returnable to said appellate court having jurisdiction of said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending.

The Commissioner shall not be required to give any appeal bond in any cause arising hereunder. The filing of an appeal pursuant to this Article shall not stay the order of the Commissioner adverse to the applicant.

F. This Article does not apply to:

(1) the acquisition of securities in connection with the exercise of a security interest or otherwise by way of foreclosure on default in the payment of a debt previously contracted for in good faith, provided that the person acquiring such securities does not vote the securities so acquired without having given written notice of such foreclosure to the Commissioner;

(2) transactions governed by Article 8, 9, or 10 of Chapter III of this Code;¹

(3) transactions requiring the prior approval of the Board of Governors of the Federal Reserve System under the Bank Holding Company Act of 1956 (12 U.S.C.A., Sec. 1841, et seq., and 26 U.S.C.A., Sec. 1101, et seq.);

(4) acquisitions by the owner of more than fifty per cent (50%) of the voting securities of the bank; or acquisitions of less than ten per cent (10%) of the voting securities of the bank in any one (1) year by the owner of twenty-five per cent (25%) or more, but not more than fifty per cent (50%), of those voting securities, provided that such acquisition does not result in the owner of twenty-five per cent (25%) or more acquiring fifty per cent (50%) or more of the voting securities;

(5) acquisitions or transfers by operation of law or by will or intestate succession, provided that the person acquiring such securities does not vote the securities so acquired without having given written notice of acquisition to the Commissioner; or

(6) any transaction which the Commissioner by rule or order may exempt as not being contemplated by the purposes of this Article or the regulation of which is not necessary or appropriate to achieve the objectives of this Article.

No provision of this Section shall excuse or diminish the notice requirements provided elsewhere in this Code.

G. No provision of this Article shall be construed to prevent the Commissioner from investigating, commenting upon, or seeking to enjoin or set aside any transfer of voting securities, whether the transfer is included within this Article or not, if the Commissioner deems the transfer to be against the public interest.

H. If it appears to the Commissioner that any person has committed or is about to commit a violation of this Article or any rule or order of the Commissioner adopted under it, the Attorney General on behalf of the Commissioner may apply to the

district court of Travis County for an order enjoining the violation and for any other equitable relief as the nature of the case may require.

I. Any person who willfully and knowingly makes a materially false or misleading statement to the Commissioner with respect to the information required herein may be fined in an amount not exceeding Two Thousand Dollars (\$2,000), or be confined in jail for a period not to exceed one (1) year, or both. This provision is cumulative of other remedies contained herein.

J. The Commissioner by rule shall adopt a schedule of fees for the filing of applications and the holding of hearings. The schedule may be graduated so that those applications and hearings that are more difficult to review or administer will require a larger fee. An application fee is not refundable on denial of the application, but the Commissioner may refund a portion of the fee if the application is withdrawn before he completes review of it. Fees collected under this Article shall be retained by the Department and may be used only for expenses of the Department.

[Added by Acts 1977, 65th Leg., p. 664, ch. 250, § 1, eff. May 25, 1977.]

¹ Articles 342-308, 342-309, 342-310.

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

The stockholders of each state bank shall hold one regular meeting each year at the time prescribed in its bylaws and such special meetings as may be deemed necessary after notice as prescribed in the bylaws. At all stockholders' meetings the owners of a majority of the capital stock, present in person or by proxy, shall constitute a quorum. In the absence of a quorum, a stockholders' meeting may be adjourned from time to time without notice to the stockholders. Each stockholder of record shall be entitled to one vote for each share of stock owned by such stockholder, which vote may be cast in person or by proxy duly authorized in writing filed among the records of the bank. Stock owned of record by an estate shall be voted by its personal representative, and stock held in a fiduciary capacity shall be voted by the fiduciary, provided, however, that in the election of directors, shares of its own stock held solely by a state bank in any such capacity, whether registered in its own name in such capacity or in the name of its nominee, shall not be voted by the bank unless under the terms of the will or trust, the manner in which such shares shall be voted may be determined by a donor or beneficiary of the will or trust and unless such donor or beneficiary actually directs how such shares shall be voted, and shares of its own stock held by state bank and one or more persons in any such capacities may be voted by such other person or persons in the same manner as if such person or persons were the sole personal repre-

sentative or sole trustee. Whenever shares of stock cannot be voted by reason of being held by the bank as sole personal representative or sole trustee, such shares shall be excluded in determining whether matters voted upon by the shareholders were adopted by the requisite percentage of shares.

[Amended by Acts 1977, 65th Leg., p. 1169, ch. 447, § 1, eff. Aug. 29, 1977.]

Section 2 of the 1977 Act provided as follows:

"Any provision or part of a provision in the Texas Banking Code of 1943, as amended (Article 342-101 et seq., Vernon's Texas Civil Statutes), which is in conflict with the provisions of this Act is hereby repealed to the extent of the conflict only."

Art. 342-410. Directors, Officers and Employees—Liability—Reimbursement for Expenses

Except as otherwise provided by statute, directors and officers of state banks shall be liable for financial losses sustained by state banks to the extent that directors and officers of other corporations are now responsible for such losses in equity and common law. Any officer or director who does not approve of any act or omission of the board, and desires to relieve himself from any personal liability for such act or omission shall promptly announce his opposition to such act or omission and cause such opposition to be spread upon the minutes of the directors' meeting. If for any reason such opposition is not spread upon the minutes of the directors' meeting, he shall promptly report the facts to the Commissioner.

Any person may be indemnified or reimbursed by a state bank, through action of its board, for reasonable expenses actually incurred by him in connection with any action, suit or proceeding to which he is a party by reason of his being or having been a director, officer or employee of said bank. The board may authorize the purchase by the bank of insurance covering the indemnification of directors, officers or employees. If there is a compromise of such an action or threatened action, there shall be no indemnification or reimbursement for the amount paid to settle the claim or for reasonable expenses incurred in connection with such claim without the vote, or the written consent, of the owners of record of a majority of the stock of the bank. No such person shall be indemnified or reimbursed if he has been finally adjudged to have been guilty of, or liable for, willful misconduct, gross neglect of duty, or a criminal act. This article shall not bar any right or action to which such person would be entitled at common law or any other statute of this State.

[Amended by Acts 1975, 64th Leg., p. 650, ch. 270, § 1, eff. Sept. 1, 1975.]

Art. 342-411a. Exemption from Securities Law

A person who is an officer, director, or employee of a state bank or national bank domiciled in the

state with less than five hundred (500) shareholders is exempt from the registration and licensing provisions of The Securities Act, as amended (Article 581-1 et seq., Vernon's Texas Civil Statutes), with respect to that person's participation in a sale or other transaction involving securities issued by the bank of which that person is an officer, director, or employee. An officer, director, or employee may not be compensated for services provided under this Article.

[Added by Acts 1977, 65th Leg., p. 1033, ch. 378, § 1, eff. June 10, 1977.]

Acts 1979, 66th Leg., p. 348, ch. 160, amending various provisions of The Securities Act (art. 581-1 et seq.), provided in § 10:

"This Act does not affect Section 11.01, Texas Savings and Loan Act, as amended (Article 852a, Vernon's Texas Civil Statutes), or Article 11a, Chapter IV, The Texas Banking Code of 1943, as added (Article 342-411a, Vernon's Texas Civil Statutes)."

CHAPTER FIVE. LOANS AND INVESTMENTS

Article

342-512. Investment in a Bank.

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

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

1. Liability as endorser or guarantor of commercial or business paper discounted by or assigned to the bank by the actual owner thereof who has acquired it in the ordinary course of business.
2. Indebtedness evidenced by bills of exchange or drafts drawn against actually existing values and secured by a lien upon goods in transit with shippers' order bills of lading or comparable instruments attached.
3. Indebtedness evidenced by notes or other paper secured by liens upon agricultural products, manufactured goods, or other chattels in storage in bonded warehouses or elevators with warehouse or elevator receipts attached, cotton yard tickets, signed by a bonded weigher, when the value of the security is not less than one hundred twenty-five per cent (125%) of the indebtedness, and the bank's interest therein is adequately insured against loss, with insurance policies or certificates of insurance attached.
4. Deposit in a reserve depository, or a Federal Reserve Bank.
5. Indebtedness of another state or national bank arising out of short-term loans when such

loans are made out of the excess cash reserve funds of the lending bank and have settlement periods of less than one week.

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

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

8. Any portion of any indebtedness which the United States Government or any agency or instrumentality of the United States Government has unconditionally agreed to purchase or has unconditionally guaranteed as to payment of both principal and interest.

9. Liability under an agreement by a third party to repurchase from the bank an indebtedness that the United States Government or any agency or instrumentality of the United States Government has unconditionally agreed to purchase or has unconditionally guaranteed as to payment of both principal and interest, to the extent that the agreed repurchase price does not exceed the purchase price agreed to or value guaranteed by the United States, its agency or instrumentality.

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

Any officer, director or employee of a state bank who knowingly violates or participates in the violation of any provision of this Article shall upon conviction be fined not more than Five Thousand Dollars (\$5,000) or confined in the State penitentiary not more than five (5) years, or both.

[Amended by Acts 1977, 65th Leg., p. 1167, ch. 446, § 1, eff. Aug. 29, 1977.]

Art. 342-508. Loan Fees Prohibited—Exception

No bank shall charge or collect any loan fee or any other charge, by whatever name called, for the granting of a loan unless authorized by law. Provided, however, a bank may require an applicant for a loan or discount to pay the cost of any abstract, attorney's opinion or title insurance policy, or other form of insurance, and filing or recording fees or appraisal fees. Expenses necessary or proper for the protection of the lender, and actually incurred in connection with the making of the loan may be charged. In all loan transactions in which the amount loaned is \$100 or more and the loan period is one month or more, a bank may charge any borrower the reasonable value of services rendered in connection with the making of any loan, including the drawing of notes, the taking of acknowledgments and affidavits, the preparation of financial statements, and the investigation or analysis of the financial responsibility of the borrower or any endorser, surety or co-signer, in an amount agreed upon, but not to exceed \$15 for each loan transaction, which shall be in lieu of all interest and other charges which could otherwise be collected in connection with the loan. No bank shall induce or permit any person, or husband and wife, to be obligated directly or indirectly under more than one loan contract under this article at the same time for the purpose, or with the effect, of obtaining a higher authorized charge than would otherwise be permitted. The charge authorized herein shall not apply to any renewal or extension of an obligation on which the charge has been previously imposed; provided, however, that such renewal or extension may bear interest at the rate that is otherwise provided by law. The charge shall not apply to a loan transaction wherein the borrower applies all or a portion of the loan proceeds to discharge a prior loan made by the same lender to the same borrower and in connection with which the above charge was imposed.

[Amended by Acts 1977, 65th Leg., p. 1003, ch. 370, § 1, eff. Aug. 29, 1977.]

Art. 342-512. Investment in a Bank

A state bank may invest its capital and certified surplus in another bank, except that:

(1) the investing bank may not acquire or retain ownership, control, or power to vote more than five percent of any class of voting securities of the other bank; and

(2) the investing bank may not invest more than five percent of its capital and certified surplus in the other bank.

[Added by Acts 1979, 66th Leg., p. 104, ch. 64, § 1, eff. April 19, 1979.]

CHAPTER NINE. GENERAL PROVISIONS**Article**

342-903a. Unmanned Teller Machines.

342-912. Acquisition of Bank or Holding Company under Federal Law—Notice to Commissioner—Recommendations of Commissioners.

342-913. Acquisition of Nonbanking Institution under Federal Law—Notice to Commissioner—Order and Appeal.

Art. 342-903. Branch Banking Prohibited

No State, national or private bank shall engage in business in more than one place, maintain any branch office, or cash checks or receive deposits except in its own banking house. For purposes of this article "banking house" means the building in whose offices the business of the bank is conducted and which is functionally one place of business, including (a) office facilities whose nearest wall is located within five hundred (500) feet of the nearest wall of the central building and is physically connected to the central building by tunnel, passageway or hallway providing direct access between the central building and the connected office facility or by closed circuit television or pneumatic tube or other physically connected delivery device, and (b) in addition, if authorized in the manner hereinafter provided, not more than one (1) automobile drive-in facility whose nearest boundary is located within two thousand (2,000) feet of the nearest wall of the central building but more than five hundred (500) feet therefrom and is connected to the central building by tunnel, passageway or hallway providing direct access between the central building and the connected automobile drive-in facility or by closed circuit television, pneumatic tube or other physically connected delivery device. The entire banking house shall for all purposes under the law be considered one integral banking house. The term "automobile drive-in facility" as herein used shall mean a facility offering banking services solely to persons who arrive at such facility in an automobile and remain therein during the transaction of business with the bank.

An automobile drive-in facility whose nearest boundary is located within two thousand (2,000) feet of the nearest wall of the central building but more than five hundred (500) feet therefrom shall be authorized only in the following manner: Written application for authority to operate the same shall be filed with the Commissioner by the bank proposing such facility, which application shall specify the location of the proposed facility. Promptly upon the filing of such written application the Commissioner shall, by registered United States mail, postage prepaid, notify each bank, if any, whose central building is situated within a one (1) mile radius of said proposed facility, hereinafter called the "Interested Banks," of the filing of such application, transmitting with such notice a true copy of said application.

If within thirty (30) days following the mailing of such notice no written protest to the operation of the said proposed facility has been filed with the Commissioner by an Interested Bank, or, if there are no Interested Banks, said proposed facility shall thereupon be fully authorized without the necessity of any further action by the applying bank or by the Commissioner. However, if a written protest to the operation of said proposed facility is filed with the Commissioner during said thirty (30) day period by one or more of the Interested Banks, said application shall be promptly considered by the State Banking Board at a public hearing duly called, noticed and held in the same manner as hearings to consider applications for the granting of bank charters, and authorization to operate said proposed facility shall be granted at such hearing unless the State Banking Board shall find that the operation thereof will substantially and adversely affect one or more of the Interested Banks, in which case authorization shall be denied. National banks and private banks doing business in this State shall voluntarily submit to the jurisdiction of the State Banking Board, and abide by the determination of the Board as to whether or not permission should be granted to establish and operate an additional drive-in facility authorized under this article, provided that any national bank which does not abide by the determination of the Board shall immediately forfeit all rights it may have under State law to act as reserve depository for any State chartered bank and to act as depository for the public funds of the State and any county, city, municipality, school district or any other political subdivision of the State, and such funds shall be immediately withdrawn by the depositor and shall not be deposited thereafter in said national bank unless and until the Commissioner certifies to the depositor that said national bank is conducting its business in compliance with the Board's determinations and orders. In addition the Attorney General shall seek an injunction against any violation of the Board's orders under this article by any national bank or private bank. Any bank adversely affected by a violation of this article may, and the Attorney General, upon request of the Commissioner, shall bring suit in a court of competent jurisdiction to enjoin a violation of this article. The party who prevails in such proceeding shall recover costs of suit and reasonable attorney's fees.

[Amended by Acts 1975, 64th Leg., p. 531, ch. 215, § 1, eff. Sept. 1, 1975.]

Art. 342-903a. Unmanned Teller Machines

Text of section conditioned on 1980 constitutional amendment

Sec. 1. Subject to the provisions of this article, a bank or group of banks, for the convenience of customers, may install, maintain, operate, or utilize one or more unmanned teller machines at locations

separate and apart from the banking house within the county or the city of the bank's domicile.

Sec. 2. As used in this article, the following terms shall have these meanings, unless otherwise clearly indicated by the context in which they are used:

(a) "Unmanned teller machine" means a machine, other than a telephone, capable of being operated solely by a customer, by which a customer may communicate to the bank:

(1) a request to withdraw money directly from the customer's account or from the customer's account pursuant to a line of credit previously authorized by the bank for the customer;

(2) an instruction to deposit funds into the customer's account with the bank;

(3) an instruction to transfer funds between one or more accounts maintained by the customer with the bank but not as between the customer's account and an account maintained in the bank or in some other financial institution by some other customer;

(4) an instruction to apply funds against an indebtedness of the customer to the bank; or

(5) a request for information concerning the balance of the account of the customer with the bank.

(b) "Bank" means a state, national, or private bank domiciled in this state.

Sec. 3. Authorization under this article for a bank to install, maintain, operate, or utilize one or more unmanned teller machines within the county or city of the bank's domicile does not preclude the use of bank or other personnel for the following purposes:

(a) to attend an unmanned teller machine on a temporary basis to instruct customers in the use of the machines; or

(b) to collect deposits or other funds placed in the machine, to replenish money dispensed by the machine, or to otherwise service, repair, or attend to the needs of an unmanned teller machine at frequent intervals.

Sec. 4. Banks shall have the right to share, under a written agreement, in the use of any unmanned teller machine that is located within the county or the city of the bank's domicile on a reasonable, nondiscriminatory basis and on the following conditions:

(a) any bank utilizing one or more unmanned teller machines may be required to meet necessary and reasonable technical standards and to pay charges

for the use of the machines. The standards or charges imposed shall be reasonable, fair, equitable, and nondiscriminatory among banks. Any charges imposed shall not exceed an equitable proportion of both the cost of establishing the unmanned teller machines, including provisions for amortization of development costs and capital expenditures over a reasonable period of time, and the cost of operation and maintenance of the machine, plus a reasonable return on those costs, and those charges shall be related to the services provided to the bank or its customers.

(b) where more than one bank utilizes an unmanned teller machine and any bank uses, allows the use, or is allowed to use visual or oral data identifying itself, each bank sharing the machine shall receive equal prominence in the visual and oral data available to the public at or adjacent to the machine, and no advertising with regard to the machine shall suggest, imply, or claim that any particular bank has exclusive control over the use of the machine.

Sec. 5. Where the city in which a bank is domiciled lies in more than one county, the bank may install, maintain, operate, utilize, or share one or more unmanned teller machines within the corporate limits of the city in addition to machines in the county of its domicile.

Sec. 6. On written complaint by a bank that is utilizing or that seeks to utilize on unmanned teller machine that it is being denied the use of the machine on a reasonable, nondiscriminatory basis and that the machine is, therefore, not being operated in the best interests of the public, the State Banking Board shall have jurisdiction to determine whether or not the bank has been denied the right to utilize the machine under this article. After a hearing conducted by the board in accordance with the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), the board may enter an order directing compliance with this article and prescribing the manner and means of complying with this article.

Sec. 7. In the event that operation of an unmanned teller machine is to be discontinued, notice of intent to discontinue shall be given to the State Banking Board not less than 60 days before the date on which operation of the machine is to be discontinued, and a copy of that notice shall be sent to all institutions using the machine. The State Banking Board, on complaint by an affected bank or on its own motion, may delay discontinuance of an unmanned teller machine for a period of not more than 60 days past the proposed date of discontinuance if it finds that the banks sharing the unmanned teller machine would be unfairly prejudiced by discontinuance on the proposed date.

Sec. 8. Any person who violates this article or any order of the board issued pursuant to this article is subject to a civil penalty of not less than \$50 nor more than \$1,000 for each day of violation and for each act of violation. All civil penalties recovered under this article shall be paid to the Banking Department under Article 12, Chapter I of this code, as amended (Article 342-112, Vernon's Texas Civil Statutes), for the use of the State Banking Board in enforcing this article.

Sec. 9. Whenever it appears that a person has violated or is violating or is threatening to violate this article or any order of the State Banking Board issued pursuant to this article, the board may cause a civil suit to be instituted in a district court for injunctive relief to restrain the person from continuing the violation or threat or for the assessment and recovery of the civil penalty provided by this article, or for both injunctive relief, and civil penalty. At the request of the board, the attorney general shall institute and conduct a suit in the name of the state for injunctive relief or for the recovery and receipt of a civil penalty, or for both injunctive relief and penalty.

A suit for injunctive relief or for recovery of a civil penalty, or for both, may be brought either in the county where the defendant resides, or in the county where the violation or threat of violation occurs. In any suit to enjoin a violation or threat of violation of this article or of any order of the board, the court may grant the State Banking Board, without bond or other undertaking, any prohibitory or mandatory injunction as the facts may warrant, including temporary restraining orders after notice and hearing, temporary injunctions, and permanent injunctions.

Sec. 10. Banks, under a written agreement, may share unmanned teller machines with savings and loan associations or credit unions on the following conditions:

(1) only those functions permitted for banks under Section 2 of this article are available to the customers of any savings and loan association or credit union using the unmanned teller machine or machines; and

(2) the unmanned teller machine or machines may be utilized by a savings and loan association or credit union for the use of their customers only within the county and the city where the savings and loan association or credit union is domiciled and has its principal place of business.

Sec. 11. Nothing in this article abridges, modifies, affects, or expands any authority under existing law for any savings and loan association or credit union to operate unmanned teller machines

separate and apart from their principal places of business.

Sec. 12. This article does not apply to:

- (1) an unmanned teller machine located at a bank's banking house; or
- (2) the use of an unmanned teller machine, wherever located, solely to withdraw cash.

Sec. 13. The legislature finds that the Congress of the United States has amended the Consumer Protection Act, as amended (15 U.S.C. 1601 et seq.), through passage of the Electronic Fund Transfer Act¹ and that the Consumer Protection Act is sufficiently comprehensive to provide for the full and complete protection of the rights of consumers using unmanned teller machines in this state. The legislature further finds that it would not be in the best interest of the public of this state to have separate regulation of the consumer protection aspects of unmanned teller machines by both the state and federal governments. To ensure the continuing protection of consumers using the unmanned teller machines authorized by this article, the State Banking Board and the attorney general are directed to make a continuing study of the substantive and procedural provisions of the Consumer Protection Act of the regulations promulgated under that Act, and of the effectiveness of enforcement of that Act in this state and to report their findings and recommendations to the legislature on or before June 30, 1981, and on the same date every fourth year after 1981.

¹ U.S.C.A. § 1693 et seq.

[Added by Acts 1979, 66th Leg., p. 1187, ch. 578, § 1, eff. upon adoption of S.J.R.No.35.]

Section 2 of the 1979 Act provided:

"This Act takes effect on the later of:

- (1) the 270th day after approval by the qualified voters of this state of an amendment to the Texas Constitution providing that the legislature may authorize banks to use unmanned teller machines within the county and the city of their domicile, on a shared basis, to serve the public convenience; or
- (2) December 31, 1980. If the constitutional amendment is not adopted, this Act has no effect."

Art. 342-910a. Legal Holidays for Banks or Trust Companies—Alternative Legal Holidays for Banks or Trust Companies—Discrimination Prohibited

Sec. 1. Legal Holidays For Banks Or Trust Companies. Notwithstanding any existing provisions of law relative to negotiable or nonnegotiable instruments or commercial paper, but subject to the provisions of Section 2 of this article, only the following enumerated days are declared to be legal holidays for banking purposes on which each bank or trust company in Texas shall remain closed: Saturdays, Sundays, January 1, the third Monday in February, the last Monday in May, July 4, the first Monday in September, the second Monday in October, the 11th day of November, the fourth Thursday in November, and December 25.

When the dates July 4, November 11, or December 25 fall on Saturday, then the Friday immediately preceding such Saturday shall also be a legal holiday for banking purposes on which each bank or trust company in Texas shall remain closed. When the dates January 1, July 4, November 11, or December 25 fall on Sunday, then the Monday next following such Sunday shall also be a legal holiday for banking purposes on which each bank or trust company in Texas shall remain closed.

All such legal holidays shall be neither business days nor banking days under the laws of this State or the United States, and any act authorized, required or permitted to be performed at or by any bank or trust company on such days may be performed on the next succeeding business day and no liability or loss of right of any kind shall result therefrom to any bank or trust company.

Sec. 2. Alternative Legal Holidays For Banks Or Trust Companies. Any bank or trust company may elect to designate days on which it may close for general banking purposes pursuant to the provisions of this section, instead of Section 1 of this article, provided that any bank or trust company which has elected to be governed by this section shall remain closed on the following enumerated days, which days are declared to be legal holidays for banking purposes: Sundays, January 1, the third Monday in February, the last Monday in May, July 4, the first Monday in September, the second Monday in October, the 11th day of November, the fourth Thursday in November, and December 25. When the dates July 4, November 11, or December 25 fall on Saturday, then the Friday immediately preceding such Saturday shall also be a legal holiday for all banking purposes on which each bank or trust company shall remain closed. When the dates January 1, July 4, November 11, or December 25 fall on Sunday, then the Monday next following each Sunday shall also be a mandatory legal holiday for banking purposes on which each bank or trust company shall remain closed. Except as herein provided, any bank or trust company doing business in this state may, at its option, elect to be governed by this section and close for general banking purposes either on Saturday or on any other weekday of any week in the year in addition to mandatory legal holidays, provided:

- (a) such day is designated at least 15 days in advance by adoption of a resolution concurred in by a majority of the board of directors thereof (or, if an unincorporated bank or trust company, by its owner or a majority of its owners, if there be more than one owner); and
- (b) notice of the day or days designated in such resolution is posted in a conspicuous place in such bank or trust company for at least 15 days in advance of the day or days designated; and

(c) a copy of such resolution certified by the president or cashier of such bank or trust company is filed with the Banking Department of Texas.

The filing of such copy of resolution as aforesaid with the Banking Department of Texas shall be deemed to be proof in all courts in this state that such bank or trust company has duly complied with the provisions of this section. Any such election to so close shall remain in effect until a subsequent resolution shall be adopted and notice thereof posted and a copy thereof filed in the manner above provided.

If any bank or trust company elects to close for general banking purposes on Saturday or any other weekday as herein provided, it may, at its option, remain open on such day for the purpose of performing limited banking services. Notice of election to perform limited banking services shall be contained in the resolution and notices, above provided, with respect to closing for general banking purposes. Limited banking services may include such of the ordinary and usual services provided by the bank as the board of directors may determine, except the following: making loans, renewing or extending loans, certifying checks, and issuing cashier's checks.

Such day upon which such bank or trust company may elect to close for general banking purposes shall with respect to such institution be treated as a legal holiday for all purposes and not a business day; provided that if such bank shall elect to perform limited banking services on such day, the same shall not be deemed a legal holiday for the performance of limited banking services. Any bank or trust company which elects to close for general banking purposes on Saturday or any other weekday but which elects to perform limited banking services shall not be subjected to any liability or loss of rights for performing limited banking services or refusing to perform any other banking services on such day.

[See *Compact Edition, Volume 3 for text of 3*]

[Amended by Acts 1975, 64th Leg., p. 14, ch. 11, § 2, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 210, ch. 103, §§ 1, 2, eff. Aug. 29, 1977.]

Art. 342-912. Acquisition of Bank or Holding Company under Federal Law—Notice to Commissioner—Recommendations of Commissioner

Sec. 1. A state bank, a national bank in the state, or a bank holding company seeking to acquire a state bank or national bank within the state, that submits an application for approval to the Board of Governors of the Federal Reserve System pursuant to Section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. Sec. 1842), shall transmit a copy of the application, as and when finally accepted for filing by the board of governors, to the commissioner.

Sec. 2. If the application is made by a state bank or involves the acquisition of the voting shares or assets of a state bank, the commissioner, on receipt of the notice prescribed by Subsection (b) of Section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. Sec. 1842(b)), shall respond in writing within the time limit prescribed by that subsection. The response shall set forth the views and recommendations of the commissioner concerning the application. If the commissioner disapproves the application, he shall, with the assistance of the attorney general, present evidence at the hearing held pursuant to Subsection (b) of Section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. Sec. 1842(b)).

Sec. 3. If the application is made by a national bank in the state or involves the acquisition of the voting shares or assets of a national bank in the state, the commissioner shall advise the Board of Governors of the Federal Reserve System of any views and recommendations he may have concerning the application and other material before the board of governors in connection with the application. If the commissioner recommends to the board of governors that the application be denied, he shall request that a hearing pursuant to Subsection (b) of Section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. Sec. 1842(b)) be held. If the board of governors should grant such request, the commissioner shall, with the assistance of the attorney general, present evidence at the hearing as hereinabove provided. If the board of governors should deny such request, the commissioner is authorized and directed to pursue the remedies available to him as an aggrieved party in accordance with the provisions of Section 9 of the Bank Holding Company Act of 1956 (12 U.S.C. Section 1848).

[Added by Acts 1977, 65th Leg., p. 1615, ch. 631, § 2, eff. June 15, 1977.]

Art. 342-913. Acquisition of Nonbanking Institution under Federal Law—Notice to Commissioner—Order and Appeal

Sec. 1. A bank holding company doing business in the state that submits an application or notice to the Board of Governors of the Federal Reserve System concerning an acquisition or activity regulated by Section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. Sec. 1843), other than an application or notice concerning an activity initiated prior to the effective date of this article, shall transmit a copy of the application or notice, as and when finally accepted for filing by the board of governors, to the commissioner. The commissioner may on his own motion order a public hearing on the matter. The commissioner shall order a hearing if the holding company requests a hearing in writing at the time it transmits the application or notice to the commissioner.

Sec. 2. After the close of the hearing, if one is held, the commissioner shall disapprove the acquisition or activity unless he finds that it can reasonably be expected to produce benefits to the public, such as greater convenience or increased competition, that outweigh possible adverse effects such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices.

Sec. 3. An acquisition or activity is approved if:

(1) the applicant does not request a hearing and the commissioner does not, within 30 days after the application or notice is filed, order that a hearing be held; or

(2) a hearing is held and the commissioner's final order approves the acquisition or activity.

Sec. 4. The Administrative Procedure and Texas Register Act¹ governs proceedings under this article, except that the final order of the commissioner approving or disapproving the acquisition or activity shall be rendered within 30 days after the hearing is closed.

Sec. 5. If it appears to the commissioner that any person has engaged in or is about to engage in an acquisition or activity subject to this article without complying with the provisions of this article or in violation of an order of the commissioner entered pursuant to this article, the attorney general on behalf of the commissioner may apply to the district court of Travis County for an order enjoining the acquisition or activity and for any other equitable relief the nature of the case may require. A "person" subject to the provisions of this section shall include an individual, two or more individuals acting in concert, any type of partnership, corporation, as-

sociation, syndicate, trust, or any other organization, or any combination thereof.

[Added by Acts 1977, 65th Leg., p. 1615, ch. 631, § 2, eff. June 15, 1977.]

¹Article 6252-13a.

Art. 342-951. Mortgage Banking Institutions— Supervision by Commissioner

[See Compact Edition, Volume 3 for text of 1]

Sec. 2. On or before February 1 of each year, any mortgage banking institution that meets the requirements of Section 1 shall file with the Banking Commissioner of Texas a statement of its condition as of the previous December 31. The statement of condition shall be filed in the form prescribed by the banking commissioner and shall be accompanied by a filing fee of \$50. The statement of condition is for the information of the banking commissioner and his employees only and its contents shall not be made public except in the course of some judicial proceeding in this state.

Sec. 3. The banking commissioner shall annually examine or cause to be examined the books and accounts of any mortgage banking institution which meets the requirements of Section 1. The institution being examined shall pay the actual expenses incident to the examination and a fee of not more than \$50 per day per person engaged in the examination. Such fees, together with all other fees, penalties and revenues collected by the banking department, shall be retained by the department and shall be expended only for the expenses of the department.

[See Compact Edition, Volume 3 for text of 4
and 5]

[Amended by Acts 1975, 64th Leg., p. 1369, ch. 523, §§ 3 and 4, eff. Sept. 1, 1975.]

TITLE 17

BEES

Article

549a. Application of Sunset Act.

565b. Labeling and Sale of Honey, Honey Products and Imitation Honey.

Art. 549a. Application of Sunset Act

The office of State Entomologist is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the office is abolished effective September 1, 1985.

[Added by Acts 1977, 65th Leg., p. 1844, ch. 735, § 2.089, eff. Aug. 29, 1977.]

¹ Article 5429k.

Art. 565b. Labeling and Sale of Honey, Honey Products and Imitation Honey

Sec. 1. In this Act:

(1) "Pure honey" means the nectar of plants which has been transformed by, and is the natural product of, honeybees, and is either in a honeycomb or has been taken from a honeycomb and packaged in a liquid, crystallized, or granular condition.

(2) "Label" means, as a noun, written or printed material accompanying a product and furnishing identification or description, including material attached to a product or its immediate container, material attached to packaging containing a product in its immediate container, and material inserted in an immediate container or other packaging of a product.

(3) "Label" means, as a verb, to attach or insert a label.

(4) "Person" means an individual, firm, partnership, corporation, or association of individuals.

Sec. 2. (a) No person may label, sell, keep, expose, or offer for sale a product identified on its label as "honey," "liquid or extracted honey," "strained honey," or "pure honey," unless the product consists exclusively of pure honey.

(b) No person may label or sell, or keep, expose, or offer for sale, any product that resembles honey and that has on its label a picture or drawing of a bee, beehive, or honeycomb, unless the product consists exclusively of pure honey.

(c) No person may label or sell, or keep, expose, or offer for sale, any product that resembles honey and is identified on its label as "imitation honey" in any form.

(d) No person may label or sell, or keep, expose, or offer for sale, any product consisting of honey mixed with any other ingredient, unless the product bears a label with a list of ingredients, and unless the word "honey" appears in the list of ingredients in the same size type or print as the other ingredients.

(e) No person may label or sell, or keep, expose, or offer for sale, any product consisting of honey mixed with any other ingredient and containing the word "honey" in the product name in a larger size of type or print or in a more prominent position than the other words in the product name.

Sec. 3. A person who violates the provisions of this Act is guilty of a Class B misdemeanor.

[Acts 1975, 64th Leg., p. 1872, ch. 588, §§ 1 to 3, eff. Sept. 1, 1975.]

TITLE 19

BLUE SKY LAW—SECURITIES

Article

581-25-1. Receivership of Persons or Assets of Persons Acting as Dealers.

581-28-1. Adoption of Rules and Regulations.

581-35-1. Sale of Securities in Excess of Amount Registered; Fees.

Art. 581-2. Creating the State Securities Board and Providing for Appointment of Securities Commissioner

[See Compact Edition, Volume 3 for text of A to E]

F. The State Securities Board is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1983. [Amended by Acts 1977, 65th Leg., p. 1841, ch. 735, § 2.066, eff. Aug. 29, 1977.]

¹ Article 5429k.

Art. 581-4. Definitions

The following terms shall, unless the context otherwise indicates, have the following respective meanings:

[See Compact Edition, Volume 3 for text of A to D]

E. The terms "sale" or "offer for sale" or "sell" shall include every disposition, or attempt to dispose of a security for value. The term "sale" means and includes contracts and agreements whereby securities are sold, traded or exchanged for money, property or other things of value, or any transfer or agreement to transfer, in trust or otherwise. Any security given or delivered with or as a bonus on account of any purchase of securities or other thing of value, shall be conclusively presumed to constitute a part of the subject of such purchase and to have been sold for value. The term "sell" means any act by which a sale is made, and the term "sale" or "offer for sale" shall include a subscription, an option for sale, a solicitation of sale, a solicitation of an offer to buy, an attempt to sell, or an offer to sell, directly or by an agent or salesman, by a circular, letter, or advertisement or otherwise, including the deposit in a United States Post Office or mail box or in any manner in the United States mails within this State of a letter, circular or other advertising matter. Nothing herein shall limit or diminish the full meaning of the terms "sale," "sell" or "offer for sale" as used by or accepted in courts of law or

equity. The sale of a security under conditions which entitle the purchaser or subsequent holder to exchange the same for, or to purchase some other security, shall not be deemed a sale or offer for sale of such other security; but no exchange for or sale of such other security shall ever be made unless and until the sale thereof shall have been first authorized in Texas under this Act, if not exempt hereunder, or by other provisions of law.

[See Compact Edition, Volume 3 for text of F to M]

[Amended by Acts 1979, 66th Leg., p. 348, ch. 160, § 1, eff. May 15, 1979.]

Section 10 of the 1979 amendatory act provided: "This Act does not affect Section 11.01, Texas Savings and Loan Act, as amended (Article 852a, Vernon's Texas Civil Statutes), or Article 11a, Chapter IV, The Texas Banking Code of 1943, as added (Article 342-411a, Vernon's Texas Civil Statutes)."

Art. 581-5. Exempt Transactions

Except as hereinafter in this Act specifically provided, the provisions of this Act shall not apply to the sale of any security when made in any of the following transactions and under any of the following conditions, and the company or person engaged therein shall not be deemed a dealer within the meaning of this Act; that is to say, the provisions of this Act shall not apply to any sale, offer for sale, solicitation, subscription, dealing in or delivery of any security under any of the following transactions or conditions:

A. At any judicial, executor's, administrator's, guardian's or conservator's sale, or any sale by a receiver or trustee in insolvency or bankruptcy.

B. The sale by or for the account of a pledge holder or mortgagee, selling or offering for sale or delivery in the ordinary course of business to liquidate a bona fide debt, of a security pledged in good faith as security for such debt.

C. (1) Sales of securities made by or in behalf of a vendor, whether by dealer or other agent, in the ordinary course of bona fide personal investment of the personal holdings of such vendor, or change in such investment, if such vendor is not engaged in the business of selling securities and the sale or sales are isolated transactions not made in the course of repeated and successive transactions of a like character; provided, that in no event shall such sales or offerings be exempt from the provisions of this Act when made or intended

by the vendor or his agent, for the benefit, either directly or indirectly, of any company or corporation except the individual vendor (other than a usual commission to said agent), and provided further, that any person acting as agent for said vendor shall be registered pursuant to this Act;

(2) Sales by or on behalf of any insurance company subject to the supervision or control of the Board of Insurance Commissioners of any security owned by such company as a legal and bona fide investment, provided that in no event shall any such sale or offering be exempt from the provisions of this Act when made or intended, either directly or indirectly, for the benefit of any other company as that term is defined in this Act.

D. The distribution by a corporation of securities direct to its stockholders as a stock dividend or other distribution paid out of earnings or surplus.

E. Any offer and any transaction pursuant to any offer by the issuer of its securities to its existing security holders (including persons who at the time of the transaction are holders of convertible securities or nontransferable warrants) if no commission or other remuneration (other than a stand-by commission) is paid or given directly or indirectly for soliciting any security holder in this State.

F. The issue in good faith of securities by a company to its security holders, or creditors, in the process of a bona fide reorganization of the company made in good faith, or the issue in good faith of securities by a company, organized solely for the purpose of taking over the assets and continuing the business of a predecessor company, to the security holders or creditors of such predecessor company, provided that in either such case such securities are issued in exchange for the securities of such holders or claims of such creditors, or both, and in either such case security holders or creditors do not pay or give or promise and are not obligated to pay or give any consideration for the securities so issued other than the securities of or claims against said company or its predecessor then held or owned by them.

G. The issue or sale of securities (a) by one corporation to another corporation or the security holders thereof pursuant to a vote by one or more classes of such security holders, as required by the certificate of incorporation or the applicable corporation statute, in connection with a merger, consolidation or sale of corporate assets, or (b) by one corporation to its own stockholders in connection with the change of par value stock to no par value stock or vice versa, or the exchange of outstanding shares for the same or a greater or smaller number of shares; provided that in any such case such security holders do not pay or give or promise and are not obligated to pay or give any consideration

for the securities so issued or sold other than the securities of the corporation then held by them.

H. The sale of any security to any bank, trust company, building and loan association, insurance company, surety or guaranty company, savings institution, investment company as defined in the Investment Company Act of 1940,¹ small business investment company as defined in the Small Business Investment Act of 1958, as amended,² or to any registered dealer actually engaged in buying and selling securities; or the issue or sale of any investment contract in connection with an employees' stock bonus, annuity, pension, profit-sharing or similar employee benefit plan provided the securities purchased under the plan either would be exempt if sold by a registered dealer under Section 6 hereof or shall be qualified under Section 7 hereof or purchased in a transaction exempt under Section 5 hereof.

I. Provided such sale is made without any public solicitation or advertisements, (a) the sale of any security by the issuer thereof so long as the total number of security holders of the issuer thereof does not exceed thirty-five (35) persons after taking such sale into account; (b) the sale of shares of stock pursuant to the grant of an employees' restricted stock option as defined in the Internal Revenue Laws of the United States; or (c) the sale by an issuer of its securities during the period of twelve (12) months ending with the date of the sale in question to not more than fifteen (15) persons (excluding, in determining such fifteen (15) persons, purchasers of securities in transactions exempt under other provisions of this Section 5, purchasers of securities exempt under Section 6 hereof and purchasers of securities which are part of an offering registered under Section 7 hereof), provided such persons purchased such securities for their own account and not for distribution.

The issuer shall file a notice not less than five (5) days prior to the date of consummation of any sale claimed to be exempt under the provisions of clause (c), of this Subsection I, setting forth the name and address of the issuer, the total amount of the securities to be sold under this clause, the price at which the securities are to be sold, the date on which the securities are to be sold, the names and addresses of the proposed purchasers, and such other information as the commissioner may reasonably require, including a certificate of a principal officer of the issuer that reasonable information concerning the plan of business and the financial condition of the issuer has been furnished to the proposed purchasers. The commissioner may by order revoke or suspend the exemption under this clause (c) with respect to any security if he has reasonable cause to believe that

the plan of business of the issuer of such security, the security, or the sale thereof would tend to work a fraud or deceit upon the purchaser or purchasers thereof, such order to be subject to review in the manner provided by Section 24 of this Act. The revocation or suspension of this exemption shall be inapplicable to the issuer until such issuer shall have received actual notice from the commissioner of such revocation or suspension.

J. Wherein the securities disposed of consist exclusively of notes or bonds secured by mortgage or vendor's lien upon real estate or tangible personal property, and the entire mortgage is sold or transferred with all of the notes or bonds secured thereby in a single transaction.

K. Any security or membership issued by a corporation or association, organized exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit, and no part of the net earnings of which inures to the benefit of any stockholder, shareholder, or individual members, and where no commission or remuneration is paid or given or is to be paid or given in connection with the disposition thereof.

L. The sale by the issuer itself, or by a registered dealer, of any security issued or guaranteed by any bank organized and subject to regulation under the laws of the United States or under the laws of any State or territory of the United States, or any insular possession thereof, or by any savings and loan association organized and subject to regulation under the laws of this State, or the sale by the issuer itself of any security issued by any federal savings and loan association.

M. The sale by the issuer itself, or by a registered dealer, of any security either issued or guaranteed by the United States or by any territory or insular possession thereof, or by the District of Columbia, or by any state of the United States, or political subdivision thereof (including but not limited to any county, city, municipal corporation, district, or authority), or by any public or governmental agency or instrumentality of any of the foregoing.

N. The sale and issuance of any securities issued by any farmers' cooperative association organized under Chapter 8 of Title 93, Articles 5737-5764, inclusive, Revised Civil Statutes of Texas as amended; and the sale of any securities issued by any farmers' cooperative society organized under Chapter 5 of Title 46, Articles 2514-2524, inclusive, Revised Civil Statutes of Texas as amended. Provided, however, this exemption shall not be applicable to agents and salesmen of any farmers' cooperative association or farmers' cooperative society when the sale of such securities is made to non-members, or when the sale of

such securities is made to members or non-members and a commission is paid or contracted to be paid to the said agents or salesmen.

O. The sale by a registered dealer of outstanding securities provided that:

(1) Such securities form no part of an unsold allotment to or subscription by such dealer as a participant in the distribution of such securities by the issuer thereof; and

(2) Securities of the same class, of the same issuer, are outstanding in the hands of the public; and

(3) Such securities are offered for sale, in good faith, at prices reasonably related to the current market price of such securities at the time of such sale; and

(4) No part of the proceeds of such sale are paid directly or indirectly to the issuer of such securities; and

(5) Such sale is not directly or indirectly for the purposes of providing or furthering any scheme to violate or evade any provision of this Act; and

(6) The right to sell or resell such securities has not been enjoined by any court of competent jurisdiction in this State by proceedings instituted by an officer or agency of this State charged with enforcement of this Act; and

(7) The right to sell such securities has not been revoked or suspended by the commissioner under any of the provisions of this Act, or, if so, revocation or suspension is not in force and effect; and

(8) At the time of such sale, the issuer of such securities shall be a going concern actually engaged in business and shall then be neither in an organization stage nor in receivership or bankruptcy; and

(9) Such securities or other securities of the issuer of the same class have been registered by qualification, notification or coordination under Section 7 of this Act; or at the time of such sale at least the following information about the issuer shall appear in a recognized securities manual or in a statement, in form and extent acceptable to the commissioner, filed with the commissioner by the issuer or by a registered dealer:

(a) A statement of the issuer's principal business;

(b) A balance sheet as of a date within eighteen (18) months of the date of such sale; and

(c) Profit and loss statements and a record of the dividends paid, if any, for a period of not less than three (3) years prior to the date of such balance sheet or for the period of existence

of the issuer, if such period of existence is less than three (3) years.

The term "recognized securities manual" shall include the manuals published by Moody's Investment Service, Standard & Poor's Corporation, Best's Life Insurance Reports, and such other nationally distributed manuals of securities as may be approved for use hereunder by the commissioner.

The commissioner may issue a stop order or by order prohibit, revoke or suspend the exemption under this Subsection O with respect to any security if he has reasonable cause to believe that the plan of business of the issuer of such security, the security, or the sale thereof would tend to work a fraud or deceit upon any purchaser or purchasers thereof, such order to be subject to review in the manner provided by Section 24 of this Act. Notice of any court injunction enjoining the sale, or resale, of any such security, or of an order revoking or suspending the exemption under this subdivision with respect to any security, shall be delivered or shall be mailed by certified or registered mail with return receipt requested, to any dealers believed to be selling, or offering for sale, securities of the type referred to in the notice; and the prohibitions of (6) and (7) above of this Subsection O shall be inapplicable to any dealer until he has received actual notice from the commissioner of such revocation or suspension.

Except for the manuals published by Moody's Investment Service, Standard & Poor's Corporation, and Best's Life Insurance Reports, the commissioner may for cause shown revoke or suspend the recognition hereunder of any manuals previously approved by the commissioner under this Subsection but no such action may be taken by the commissioner unless upon notice and opportunity for hearing as provided by Section 24 of this Act. Any interested party aggrieved by any decision of the commissioner pursuant to such hearing may appeal to the district court of Travis County, Texas, in the manner provided by Section 27 of this Act. A judgment sustaining the commissioner in the action complained of shall not bar after one year an application by the plaintiff for approval of its manual or manuals hereunder, nor shall a judgment in favor of the plaintiff prevent the commissioner from thereafter revoking such recognition for any proper cause which may thereafter accrue or be discovered.

P. The execution by a dealer of an unsolicited order for the purchase of securities, where the initial offering of such securities has been completed and provided that the dealer acts solely as an agent for the purchaser, has no direct or indirect interest in the sale or distribution of the security ordered, and receives no commission, prof-

it, or other compensation from any source other than the purchaser.

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

R. The sale by the issuer itself, or by a subsidiary of such issuer, of any securities which would be exempt if sold by a registered dealer under Section 6 (other than Subsection 6-E) of this Act.

S. The sale by or through a registered dealer of any option if at the time of the sale of the option

(1) the performance of the terms of the option is guaranteed by any broker-dealer registered under the federal Securities Exchange Act of 1934, as amended,³ which guaranty and broker-dealer are in compliance with such requirements or regulations as may be approved or adopted by the board;

(2) the option is not sold by or for the benefit of the issuer of the security which may be purchased or sold upon exercise of the option;

(3) the security which may be purchased or sold upon exercise of the option is either (a) exempted under Subsection F of Section 6 of this Act or (b) quoted on the National Association of Securities Dealers Automated Quotation system and meets the requirements of Paragraphs (1), (6), (7), and (8) of Subsection O of Section 5 of this Act; and

(4) such sale is not directly or indirectly for the purposes of providing or furthering any scheme to violate or evade any provisions of this Act.

For purposes of this subsection the term "option" shall mean and include any put, call, straddle, or other option or privilege of buying or selling a specified number of securities at a specified price from or to another person, without being bound to do so, on or prior to a specified date, but such term shall not include any option or privilege which by its terms may terminate prior to such specified date upon the occurrence of a specified event.

T. Such other transactions or conditions as the board by rule, regulation, or order may define or prescribe, conditionally or unconditionally.

[Amended by Acts 1975, 64th Leg., p. 199, ch. 78, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 865, ch. 327, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 349, ch. 160, § 2, eff. May 15, 1979.]

¹ 15 U.S.C.A. § 80a-1 et seq.

² 15 U.S.C.A. § 631 et seq.

³ 15 U.S.C.A. § 78a et seq.

For effect of the 1979 amendatory act on arts. 852a, § 11.01, and 342-411a, see note under art. 581-4.

Art. 581-6. Exempt Securities

Except as hereinafter in this Act expressly provided, the provisions of this Act shall not apply to any of the following securities when offered for sale, or sold, or dealt in by a registered dealer or salesman of a registered dealer:

A to C. [Deleted]

D. Any security issued or guaranteed either as to principal, interest, or dividend, by a corporation owning or operating a railroad or any other public service utility; provided, that such corporation is subject to regulation or supervision either as to its rates and charges or as to the issue of its own securities by the Railroad Commission of Texas, or by a public commission, agency, board or officers of the Government of the United States, or of any territory or insular possession thereof, or of any state or municipal corporation, or of the District of Columbia, or of the Dominion of Canada, or any province thereof; also equipment trust certificates or equipment notes or bonds based on chattel mortgages, leases or agreements for conditional sale of cars, motive power or other rolling stock mortgages, leased or sold to or furnished for the use of or upon a railroad or other public service utility corporation, provided that such corporation is subject to regulation or supervision as above; or equipment trust certificates, or equipment notes or bonds where the ownership or title of such equipment is pledged or retained in accordance with the provisions of the laws of the United States, or of any state, territory or insular possession thereof, or of the District of Columbia, or the Dominion of Canada, or any province thereof, to secure the payment of such equipment trust certificates, bonds or notes.

E. Any security issued and sold by a domestic corporation without capital stock and not organized and not engaged in business for profit.

F. Securities which at the time of sale have been fully listed upon the American Stock Exchange, the Boston Stock Exchange, the Midwest Stock Exchange or the New York Stock Exchange, or upon any recognized and responsible stock exchange approved by the Commissioner as hereinafter in this section provided, and also all securities senior to, or if of the same issues, upon a

parity with, any securities so listed or represented by subscription rights which have been so listed, or evidence of indebtedness guaranteed by any company, any stock of which is so listed, such securities to be exempt only so long as the exchange upon which such securities are so listed remains approved under the provisions of this Section. Application for approval by the Commissioner may be made by any organized stock exchange in such manner and upon such forms as may be prescribed by the Commissioner, but no approval of any exchange shall be given unless the facts and data supplied with the application shall be found to establish:

(1) That the requirements for the listing of securities upon the exchange so seeking approval are such as to effect reasonable protection to the public;

(2) That the governing constitution, by-laws or regulations of such exchange shall require:

1st: An adequate examination into the affairs of the issuer of the securities which are to be listed before permitting trading therein;

2nd: That the issuer of such securities, so long as they be listed, shall periodically prepare, make public and furnish promptly to the exchange, appropriate financial, income, and profit and loss statements;

3rd: Securities listed and traded in on such exchange to be restricted to those of ascertained, sound asset or income value;

4th: A reasonable surveillance of its members, including a requirement for periodical financial statements and a determination of the financial responsibility of its members and the right and obligation in the governing body of such exchange to suspend or expel any member found to be financially embarrassed or irresponsible or found to have been guilty of misconduct in his business dealings, or conduct prejudicial of the rights and interests of his customers;

The approval of any such exchange by the Commissioner shall be made only after a reasonable investigation and hearing, and shall be by a written order of approval upon a finding of fact substantially in accordance with the requirements hereinabove provided. The Commissioner, upon ten (10) days notice and hearing, shall have power at any time to withdraw approval theretofore granted by him to any such stock exchange which does not at the time of hearing meet the standards of approval under this Act, and thereupon securities so listed upon such exchange shall be no longer entitled to the benefit of such exemption except upon the further order of said Commissioner approving such exchange.

G. [Deleted]

H. Negotiable promissory notes or commercial paper issued in good faith and in the usual course of carrying on and conducting the business of the issuer, provided that such notes or commercial paper mature in not more than twenty-four (24) months from the date of issue.

I. Notes, bonds, or other evidence of indebtedness or certificates of ownership which are equally and proportionately secured without reference of priority of one over another, and which, by the terms of the instrument creating the lien, shall continue to be so secured by the deposit with a trustee of recognized responsibility approved by the Commissioner of any of the securities specified in Subsection M of Section 5 or Subsection D of Section 6; such deposited securities, if of the classes described in Subsection M of Section 5, having an aggregate par value of not less than one hundred and ten per cent (110%) of the par value of the securities thereby secured, and if of class specified in Subsection D of Section 6, having an aggregate par value of not less than one hundred and twenty five per cent (125%) of the par value of the securities thereby secured.

J. Notes, bonds or other evidence of indebtedness of religious, charitable or benevolent corporations.

K. [Deleted]

[Amended by Acts 1979, 66th Leg., p. 354, ch. 160, § 3, eff. May 15, 1979.]

For effect of the 1979 amendatory act on arts. 852a, § 11.01, and 342-411a, see note under art. 581-4.

Art. 581-7. Permit or Registration for Issue by Commissioner; Information for Issuance of Permit or Registration

A. Qualification of Securities.

(1) No dealer, agent or salesman shall sell or offer for sale any securities issued after September 6, 1955, except those which shall have been registered by Notification under subdivision B or by Coordination under subdivision C of this Section 7 and except those which come within the classes enumerated in Section 5 or Section 6 of this Act, until the issuer of such securities or a dealer registered under the provisions of this Act shall have been granted a permit by the Commissioner; and no such permit shall be granted by the Commissioner until the issuer of such securities or a dealer registered under the provisions of this Act shall have filed with the Commissioner a sworn statement verified under the oath of an executive officer or partner of the issuer, or of such registered dealer, and attested by the secretary or partner thereof, setting forth the following information:

a. The names, residences and post office addresses of the officers and directors of the company;

b. The location of its principal office and of all branch offices in this State, if any;

c. A copy if its articles of incorporation or partnership or association, as the case may be, and of any amendments thereto, if any; if a corporation, a copy of all minutes of any proceedings of its directors, stockholders or members relating to or affecting the issue of said security; if a corporation, a copy of its bylaws and of any amendments thereto; if a trustee, a copy of all instruments by which the trust is created and in which it is accepted, acknowledged or declared;

d. A statement showing the amount of capital stock, if any, and if no capital stock, the amount of capital of the issuer that is contemplated to be employed; the number of shares into which such stock is divided, or if not divided into shares of stock, what division is to be made or is contemplated; the par value of each share, or if no par stock, the price at which such security is proposed to be sold; the promotional fees or commissions to be paid for the sale of same, including any and all compensations of every nature that are in any way to be allowed the promoters or allowed for the sale of same; and how such compensation is to be paid, whether in cash, securities, service or otherwise, or partly of either or both; also, the amount of cash to be paid, or securities to be issued, given, transferred or sold to promoters for promotion or organization services and expenses, and the amount of promotion or organization services and expenses which will be assumed or in any way paid by the issuer;

e. Copies of certificates of the stock and all other securities to be sold, or offered for sale, together with application blanks therefor; a copy of any contract it proposes to make concerning such security; a copy of any prospectus or advertisement or other description of security prepared by or for it for distribution or publication;

f. A detailed statement prepared in accordance with generally accepted auditing standards and procedures and generally accepted accounting principles, showing all the assets and all the liabilities of the issuer, said statement to reflect the financial condition of the issuer on a day not more than ninety (90) days prior to the date such statement is filed. Such statement shall list all assets in detail and shall show how the value of such assets was determined, that is, whether the value set forth in said statement represents the actual cost in money of such assets, or whether such value represents their

present market value, or some other value than the actual cost in money, and shall show the present actual value of said assets; also, whether the value set forth in the statement is greater or less than the actual cost value in money and greater or less than the present market value of such assets. If any of the assets consist of real estate, then said statement shall show the amount for which said real estate is rendered for State and county taxes, or assessed for taxes. If any such assets listed shall consist of anything other than cash and real estate, same shall be set out in detail so as to give the Commissioner the fullest possible information concerning same, and the Commissioner shall have the power to require the filing of such additional information as he may deem necessary to determine whether or not the true value of said assets are reflected in the statement filed. Should any of the assets listed in said statement be subject to any repurchase agreement, or any other agreement of like character, by the terms of which the absolute ownership of, or title to said assets is qualified or limited in any way, then the terms and conditions of said agreement by which the absolute ownership of, or title to said assets is qualified or limited, as well as the amount and character of the assets subject thereto shall be fully stated. Said statement shall list all current liabilities, that is, all liabilities which will mature and become due within one year from the date of such application, and shall list separately from such current liabilities, all other liabilities, contingent or otherwise, showing the amount of those which are secured by mortgage or otherwise, the assets of the issuer which are subject to such mortgage, and the dates of maturity of any such mortgage indebtedness. Such application shall also include a detailed profit and loss statement, prepared in accordance with generally accepted auditing standards and procedures and generally accepted accounting principles, which shall cover the last three (3) years' operations of the issuer, if such issuer has been in operation for three (3) years, but if not, said profit and loss statement shall cover the time that said issuer has been operating. If said issuer has not been operating, but is taking over a concern of any kind which has been previously operating, then a financial and profit and loss statement showing the operations of the concern thus taken over for a period of the last three (3) years next preceding the taking over of said concern shall be included in said statement; said profit and loss statement shall clearly reflect the amount of net profit or net loss incurred during each of the years shown.

B. Registration by Notification.

[See Compact Edition, Volume 3 for text of B(1)]

(2) Securities entitled to registration by notification shall be registered by the filing with the Commissioner by the issuer or by a registered dealer of a registration statement as required by subsection (a), and completion of the procedures outlined in subsection b hereof:

a. A registration statement in a form prescribed by the Commissioner signed by the applicant filing such statement and containing the following information:

1. Name and business address of main office of issuer and address of issuer's principal office, if any, in this state;

2. Title of securities being registered and total amount of securities to be offered;

3. Price at which securities are to be offered for sale to the public, amount of securities to be offered in this state, and amount of registration fee, computed as hereinafter provided;

4. A brief statement of the facts which show that the securities are entitled to be registered by notification;

5. Name and business address of the applicant filing statement;

6. Financial statements to include a certified profit and loss statement, a certified balance sheet, and certified statements of surplus, each to be for a period of not less than three (3) years prior to the date of registration. These financial statements shall reflect the financial condition of the issuer as of a date not more than ninety (90) days prior to the date of such filing with the Commissioner;

7. A copy of the prospectus, if any, describing such securities;

8. Filing of a consent to service of process conforming to the requirements of Section 8 of this Act, if the issuer is registering the securities and is not a resident of this state or is not incorporated under the laws of this state.

b. Such filing with the Commissioner shall constitute the registration of securities by notification and such registration shall become effective five (5) days after receipt of the registration statement and all accompanying papers by the Commissioner; provided that the Commissioner may in his discretion waive or reduce the five (5) days waiting period in any case where he finds no injury to the public will result therefrom. Upon such registration by notification, securities may be sold in this state by registered dealers and registered salesmen. Upon the receipt of a registration statement, prospectus, if any, payment of the filing fee and registration fee, and, if required, a consent to service of process, the Commissioner shall record

the registration by notification of the securities described. Such registration shall be effective for a period of one (1) year and may be renewed for additional periods of one (1) year, if the securities are entitled to registration under this subsection at the time of renewal, by a new filing under this section together with the payment of the renewal fee of Ten Dollars (\$10.00).

c. If at any time, before or after registration of securities under this section, in the opinion of the Commissioner the information in a registration statement filed with him is insufficient to establish the fact that the securities described therein are, or were, entitled to registration by notification under this section, or that the registration information contains, or contained, false, misleading or fraudulent facts, he may order the applicant who filed such statement to cease and desist from selling, or offering for sale, such securities registered, or proposed to be registered, under provisions of this section, until there is filed with the Commissioner such further information as may in his judgment be necessary to establish the fact that such securities are, or were, entitled to registration under this section. The provisions of Section 24 of this Act as to hearing shall be applicable to an order issued hereunder.

C. Registration by Coordination.

(1) Any security for which a registration statement has been filed under the Federal Securities Act of 1933, as amended,¹ in connection with the same offering, may be registered by coordination. A registration statement under this section shall be filed with the Commissioner by the issuer or any registered dealer and shall contain the following information and be accompanied by the following documents:

a. Three copies of the prospectus filed under the Federal Securities Act together with all amendments thereto;

b. The amount of securities to be offered in this state;

c. The states in which a registration statement or similar document in connection with the offering has been or is expected to be filed;

d. Any adverse order, judgment or decree previously entered in connection with the offering by any court or the Securities and Exchange Commission;

e. A copy of the articles of incorporation and by-laws (or their substantial equivalents) currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

f. If the Commissioner requests any other information, or copies of any other documents, filed under the Federal Securities Act of 1933;

g. An undertaking to forward promptly all amendments to the federal registration statement, other than an amendment which merely delays the effective date; and

h. If the registration statement is filed by the issuer, or by a dealer who will offer such securities for sale as the agent of the issuer, and the issuer is not a resident of this state or is not incorporated under the laws of this state, a consent to service of process conforming to the requirements of Section 8.

[See Compact Edition, Volume 3 for text of C(2) to D]

[Amended by Acts 1977, 65th Leg., p. 870, ch. 327, §§ 2 to 4, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 356, ch. 160, § 4, eff. May 15, 1979.]

¹ 15 U.S.C.A. § 77a et seq.
For effect of the 1979 amendatory act on arts. 852a, § 11.01, and 342-411a, see note under art. 581-4.

Art. 581-22. Regulation of Offers

A. Permitted Written, Pictorial, or Broadcast Offers. A written or printed offer (including a pictorial demonstration with any accompanying script) or a broadcast offer (i. e., an offer disseminated by radio, television, recorded telephone presentation, or other mass media) to sell a security may be made in this State if:

(1) a copy of the offer is filed with the Commissioner prior to its use in this State; and

(2) the person making or distributing the offer in this State is a registered dealer or a registered salesman of a registered dealer, as required by this Act; and

(3) either:

(a) the security is registered under Subsection B or C of Section 7 or a permit has been granted for the security under Section 10, or

(b) an application for registration under Subsection B or C of Section 7 or for a permit under Section 10 has been filed with the Commissioner; and

(4) if registration has not become effective under Subsection B or C of Section 7 or a permit has not been granted under Section 10, the offer prominently states on the first page of a written or printed offer or as a preface to any pictorial or broadcast offer either:

(a)

INFORMATIONAL ADVERTISING ONLY.

THE SECURITIES HEREIN DESCRIBED
HAVE NOT BEEN QUALIFIED OR REGISTERED
FOR SALE IN TEXAS. ANY

REPRESENTATION TO THE CONTRARY OR CONSUMMATION OF SALE OF THESE SECURITIES IN TEXAS PRIOR TO QUALIFICATION OR REGISTRATION THEREOF IS A CRIMINAL OFFENSE.

or

(b) other language required by the United States Securities and Exchange Commission that in the Commissioner's opinion will inform investors that the securities may not yet be sold; and

(5) the person making or distributing the offer in this State;

(a) has not received notice in writing of an order prohibiting the offer under Subsection A or B of Section 23, or

(b) has received such notice but the order is no longer in effect; and

(6) payment is not accepted from the offeree and no contract of sale is made before registration is effective under Subsection B or C of Section 7 or a permit is granted under Section 10.

B. Permitted Oral Offers. An oral offer (not broadcast, i. e., not disseminated by radio, television, recorded telephone presentation, or other mass media) to sell a security may be made in this State in person, by telephone, or by other direct individual communication if:

(1) the person making the offer in this State is a registered dealer or a registered salesman of a registered dealer, as required by this Act; and

(2) either:

(a) the security is registered under Subsection B or C of Section 7 or a permit has been granted for the security under Section 10, or

(b) an application for registration under Subsection B or C of Section 7 or for a permit under Section 10 has been filed with the Commissioner; and

(3) the person making or distributing the offer in this State:

(a) has not received notice in writing of an order prohibiting the offer under Subsection A or B of Section 23, or

(b) has received such notice but the order is no longer in effect; and

(4) payment is not accepted from the offeree and no contract of sale is made before registration is effective under Subsection B or C of Section 7 or before a permit is granted under Section 10.

C. Effect of Compliance. An offer in compliance with Subsection A or B of Section 22 is not a violation of Section 7.

D. Effect of Noncompliance. An offer not in compliance with Subsection A or B of Section 22 is unlawful and a violation of this Act.

E. Applicability. Section 22 does not apply to transactions or securities exempt under Section 5 or Section 6.

F. Dealers Named in Offer. A dealer whose name is included in a written or printed or broadcast offer along with the name of a registered dealer is not deemed to make an offer in this State by that fact alone.

[Amended by Acts 1977, 65th Leg., p. 873, ch. 327, § 5, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 357, ch. 160, § 5, eff. May 15, 1979.]

For effect of the 1979 amendatory act on arts. 852a, § 11.01, and 342-411a, see note under art. 581-4.

Art. 581-23. Cease-Desist Orders; Stop-Order Notices; List of Securities Offered

Anything in this Act to the contrary notwithstanding,

A. If it appears to the commissioner at any time that the sale or proposed sale or method of sale of any securities, whether exempt or not, would not be in compliance with this Act or would tend to work a fraud on any purchaser thereof or would not be fair, just or equitable to any purchaser thereof, the commissioner may, after notice to the issuer, the registrant and the person on whose behalf such securities are being or are to be offered, by personal service or the sending of a confirmed telegraphic notice, and after opportunity for a hearing (at a time fixed by the commissioner) within 15 days after such notice by personal service or the sending of such telegraphic notice, if the commissioner shall determine at such hearing that such sale would not be in compliance with the Act or would tend to work a fraud on any purchaser thereof or would not be fair, just or equitable to any purchaser thereof, issue a written cease and desist order, prohibiting or suspending the sale of such securities or denying or revoking the registration of such securities. No dealer, agent or salesman shall thereafter knowingly sell or offer for sale any security named in such cease and desist order.

B. No person shall make an offer within this State after notice in writing has been given him by the commissioner that, in the commissioner's opinion, the same contains any statement that is false or misleading or otherwise likely to deceive a reader thereof.

C. The commissioner may, in the exercise of reasonable discretion hereunder, at any time, require a dealer to file with the commissioner a list of securities which he has offered for sale or has advertised for sale within this State during the preceding six months, or which he is at the time offering for sale or advertising, or any portion thereof.

[Amended by Acts 1979, 66th Leg., p. 359, ch. 160, § 6, eff. May 15, 1979.]

For effect of the 1979 amendatory act on arts. 852a, § 11.01, and 342-411a, see note under art. 581-4.

Art. 581-25-1. Receiverships of Persons or Assets of Persons Acting as Dealers

A. Whenever it shall appear to the commissioner, either upon complaint or otherwise, that:

(1) any person or company, a substantial portion of whose business consists of acting as a dealer (as defined in Subsection C of Section 4 of this Act), whether or not duly registered by the commissioner as in this Act provided, shall have engaged in any act, transaction, practice, or course of business declared by Section 32 of this Act to be a fraudulent practice;

(2) such person or company shall have acted as a dealer in connection with such fraudulent practice; and

(3) the appointment of a receiver for such person or company, or the assets of such person or company, is necessary in order to conserve and protect the assets of such person or company for the benefit of customers, security holders, and other actual and potential claimants of such person or company the commissioner may request the attorney general to bring an action for the appointment of a receiver for such person or company or the assets of such person or company.

B. Upon request by the commissioner pursuant to Subsection A of this Section 25-1, and if it appears to the attorney general that the facts enumerated in Paragraphs (1) through (3) of Subsection A of this Section 25-1 exist with respect to any person or company, the attorney general may bring an action in the name and on behalf of the State of Texas for the appointment of a receiver for such person or company. The facts set forth in the petition for such relief shall be verified by the commissioner upon information and belief. Such action may be brought in a district court of any county wherein the fraudulent practice complained of has been committed in whole or part, or of any county wherein any defendant with respect to whom appointment of a receiver is sought has its principal place of business, and such district court shall have jurisdiction and venue of such action; this provision shall be superior to any other provision of law fixing jurisdiction or venue with regard to suits for receivership. In any such action the attorney general may apply for and on due showing be entitled to have issued the court's subpoena requiring the forthwith appearance of any defendant and his employees, salesmen, or agents and the production of documents, books, and records as may appear necessary for any hearing, to testify and give evidence concerning matters relevant to the appointment of a receiver.

C. In any action brought by the attorney general pursuant to Subsection B of this Section 25-1, the court, upon a proper showing by the attorney general of the existence of the facts enumerated in Para-

graphs (1) through (3) of Subsection A of this Section 25-1 with respect to any person or company, may appoint a receiver for such person or company or the assets of such person or company. If such receiver is appointed without notice to and opportunity to be heard for such person or company, such person or company shall be entitled to apply in writing to the court for an order dissolving the receivership, and, if such application is made within 30 days after service upon such person or company of the court's order making such appointment, shall be entitled to a hearing thereon upon 10 days written notice to the attorney general.

D. No person shall be appointed a receiver pursuant to this Section 25-1 unless such person be found by the court, after hearing the views of the attorney general, the commissioner, and, if deemed by the court to be practicable, the person or company against whom such relief is sought, to be qualified to discharge the duties of receiver giving due consideration to the probable nature and magnitude of the duties of receiver in the particular case. No bond for receivership shall be required of the commissioner or attorney general in any proceeding under this Section 25-1 but the court shall require a bond of any receiver appointed hereunder, conditioned upon faithful discharge of the receiver's duties, in an amount found by the court to be sufficient giving due consideration to the probable nature and magnitude of the duties of receiver in the particular case.

E. The remedy of receivership provided by this Section 25-1 shall be in addition to any and all other remedies afforded the commissioner or the attorney general by other provisions of statutory or decisional law of this state, including, without limitation of the generality of the foregoing, any such provision authorizing receiverships.

[Acts 1975, 64th Leg., p. 199, ch. 78, § 4, eff. Sept. 1, 1975.]

Art. 581-28. Subpoenas or Other Process in Investigations by Commissioner

The Commissioner may require, by subpoena or summons issued by the Commissioner, the attendance and testimony of witnesses and the production of any books, accounts, records, papers and correspondence or other records or indices showing the names and addresses of the stockholders (except such books of account as are necessary to the continued conduct of the business, which books the Commissioner shall have the right to examine or cause to be examined at the office of the concern and to require copies of such portion thereof as may be deemed necessary touching the matter in question, which copies shall be verified by affidavit of an officer of such concern and shall be admissible in evidence as provided in Section 30 hereof), relating to any matter which the Commissioner has authority by this Act to consider or investigate, and for this

purpose the Commissioner may sign subpoenas, administer oaths and affirmations, examine witnesses and receive evidence; provided, however, that all information of every kind and nature contained therein shall be treated as confidential by the Commissioner and shall not be disclosed to the public except under order of court; but nothing in this section shall be interpreted to prohibit or limit the publication of rulings or decisions of the Commissioner nor shall this limitation apply to hearings provided for in Sections 24 and 25 of this Act. In case of disobedience of any subpoena, or of the contumacy of any witness appearing before the Commissioner, the Commissioner may invoke the aid of the District Court within whose jurisdiction any witness may be found, and such court may thereupon issue an order requiring the person subpoenaed to obey the subpoena or give evidence, or produce books, accounts, records, papers, and correspondence touching the matter in question. Any failure to obey such order of the court may be punished by such court as contempt thereof.

In the course of an investigation looking to the enforcement of this Act, or in connection with the application of a person or company for registration or to qualify securities, the Commissioner or Deputy Commissioner shall have free access to all records of the Board of Insurance Commissioners, including company examination reports to the Board and reports of special investigations made by personnel of the Board, as well as records and reports of and to any other department or agency of the state government. In the event, however, that the Commissioner or Deputy Commissioner should give out any information which the law makes confidential, the affected corporation, firm or person shall have a right of action on the official bond of the Commissioner or Deputy for his injuries, in a suit brought in the name of the state at the relation of the injured party.

The Commissioner may in any investigation cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed for depositions in civil actions under the laws of Texas.

Each witness required to attend before the Commissioner shall receive, for each day's attendance, the sum of Two Dollars (\$2.00), and shall receive in addition the sum of Ten Cents (10¢) for each mile traveled by such witness by the usual route going to and returning from the place where his presence is required. All disbursements made in the payment of such fees shall be included in and paid in the same manner as is provided for the payment of other expenses incident to the administration and enforcement of this Act as hereinafter provided.

The sheriff's or constable's fee for serving the subpoena shall be the same as those paid the sheriff or constable for similar services. The fees, expenses and costs incurred at or in connection with any hearing may be imposed by the Commissioner upon any party to the record, or may be divided between any and all parties to the record in such proportions as the Commissioner may determine.

Any subpoena, summons, or other process issued by the Commissioner may be served, at the Commissioner's discretion, by the Commissioner, his authorized agent, a sheriff, or a constable.

The Commissioner may, at his discretion, disclose any confidential information in his possession to any governmental authority approved by Board rule; or to any quasi-governmental authority charged with overseeing securities activities which is approved by Board rule. The disclosure does not violate any other provision of this Act or any provision of Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

[Amended by Acts 1977, 65th Leg., p. 873, ch. 327, § 6, eff. Aug. 29, 1977.]

Art. 581-28-1. Adoption of Rules and Regulations

A. For purposes of this Section 28-1, the term "rule and regulation" shall mean any statement by the board of general and future applicability that implements, interprets, or prescribes law or policy or describes the organization, procedure, or practice requirements of the board. The term includes the amendment or repeal of a prior rule or regulation, but does not include statements concerning only the internal management of the board not affecting private rights or procedures or forms or orders adopted or made by the board or the commissioner pursuant to other provisions of this Act.

B. The board may, from time to time, in accordance with the provisions of this Section 28-1, make or adopt such rules and regulations as may be necessary to carry out and implement the provisions of this Act, including rules and regulations governing registration statements, applications, notices, and reports, and defining any terms, whether or not used in this Act, insofar as the definitions are not inconsistent with the purposes fairly intended by the policy and provisions of this Act. For the purpose of adoption of rules and regulations, the board may classify securities, persons, and matters within its jurisdiction, and prescribe different requirements for different classes. The board may, in its discretion, waive any requirement of any rule or regulation in situations where, in its opinion, such requirement is not necessary in the public interest or for the protection of investors.

C. No rule or regulation may be made or adopted unless the board finds, after notice and opportunity

for comment in accordance with the provisions of this Section 28-1, that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this Act.

D. The board may, by rule or regulation adopted in accordance with this Section 28-1, delegate to the commissioner or the deputy commissioner such of the authority granted to the board under this Section 28-1 to hold hearings for adoption of rules and regulations and to make or adopt rules and regulations, or to waive the requirements thereof, as it may, from time to time, deem appropriate. All rules and regulations made or adopted by the commissioner or the deputy commissioner pursuant to such delegated authority shall be made or adopted in accordance with this Section 28-1.

E. No provision of this Act imposing any liability or penalty applies to any act done or omitted in good faith in conformity with any rule or regulation of the board, notwithstanding that the rule or regulation may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

F. In exercising the power granted by this Section 28-1 to make or adopt rules and regulations, the board shall be bound by and shall follow the provisions of any administrative procedure act or other like act of general applicability to state boards, commissions, or departments having statewide jurisdiction, heretofore or hereafter adopted by the legislature of this state, with respect to procedures for adoption, filing, and taking effect, availability, and declaratory judgments on the validity or applicability of rules and regulations; provided, however, that, if there is no such act of general applicability, the board shall be bound by and shall follow the provisions of Subsections G through L of this Section 28-1 with respect to such matters.

G. A notice of any proposed rule or regulation shall be published in a newspaper of general circulation in Travis County and shall set forth the full text of any proposed rule or regulation or a summary thereof indicating the place where copies of the full text of such proposed rule or regulation may be obtained, the date on which the board intends its action to be effective, the place or places to which any person may mail or at which any person may deposit written data, views or arguments relating to the proposed action and the final date by which such data, views or arguments must be received for consideration by the board, which date shall not be earlier than 30 days from the date on which notice was first published in accordance with this Section 28-1.

H. The board, at its discretion, may call a hearing to take public testimony concerning a proposed

rule or regulation. If the board calls a hearing, a notice setting forth the time, place, and nature of the hearing shall be published in a newspaper of general circulation in Travis County at least 20 days prior to the hearing date. All hearings shall be public.

I. After consideration of all relevant matters presented to the board, the board may make any modifications to the proposed rule or regulation that it shall find necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this Act and the rule or regulation as originally promulgated. The board may then promulgate the rule or regulation, as modified, provided that it shall not be effective until at least 45 days after the date the notice of proposed action was first published pursuant to Subsection G of this Section 28-1. Notice of the adoption of any proposed rule or regulation shall be published in a newspaper of general circulation in Travis County and shall set forth the full text of the rule or regulation, as adopted, or a summary thereof indicating the place where copies of the full text of the rule or regulation may be obtained.

J. At the time of publication of any notice published pursuant to Subsections G, H, or I of this Section 28-1, the board shall mail a copy of such notice to each person who has requested in writing that copies of such notices be mailed to him and who has paid to the board the fee, if any, prescribed by the board therefor. The failure of the board to mail a copy of any notice to any person or persons or the failure of any person or persons to receive any such copy shall not affect the validity of any rule or regulation adopted by the board pursuant to this Section 28-1 or of any proceedings in connection therewith or pursuant thereto.

K. The board shall maintain a copy of all rules and regulations in effect, for public inspection, at the principal office of the board.

L. The validity of any rule or regulation adopted pursuant to the power granted by Subsection B of this Section 28-1 may be determined in any proceeding brought pursuant to any other section of this Act to which the board or the commissioner is a party; otherwise, the validity of any such rule or regulation may be determined only in an action for declaratory judgment in the District Court of Travis County, and not elsewhere, and then only if it is alleged that the rule or regulation, or its threatened application, interferes with or impairs or threatens to interfere with or impair the legal rights or privileges of the plaintiff. The board shall be made a party to any such declaratory judgment action. A declaratory judgment may be rendered whether or not the plaintiff has requested the board to pass upon the validity or applicability of the rule or regulation in question.

[Acts 1975, 64th Leg., p. 199, ch. 78, § 2, eff. Sept. 1, 1975.]

Art. 581-29. Penal Provisions

Any person who shall:

A. Sell, offer for sale or delivery, solicit subscriptions or orders for, dispose of, invite offers for, or who shall deal in any other manner in any security or securities without being a registered dealer or salesman or agent as in this Act provided shall be deemed guilty of a felony, and upon conviction thereof shall be sentenced to pay a fine of not more than \$5,000 or imprisonment in the penitentiary for not more than 10 years, or by both such fine and imprisonment.

B. Sell, offer for sale or delivery, solicit subscriptions to and orders for, dispose of, invite orders for, or who shall deal in any other manner in any security or securities issued after September 6, 1955, unless said security or securities have been registered or granted a permit as provided in Section 7 of this Act, shall be deemed guilty of a felony, and upon conviction thereof shall be sentenced to pay a fine of not more than \$5,000 or imprisonment in the penitentiary for not more than 10 years, or by both such fine and imprisonment.

C. In connection with the sale, offering for sale or delivery of, the purchase, offer to purchase, invitation of offers to purchase, invitations of offers to sell, or dealing in any other manner in any security or securities, whether or not the transaction or security is exempt under Section 5 or 6 of this Act, directly or indirectly (1) engage in any fraud or fraudulent practice, or (2) employ any device, scheme, or artifice to defraud, or (3) knowingly make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or (4) engage in any act, practice or course of business which operates or will operate as a fraud or deceit upon any person, is guilty of a felony and upon conviction shall be imprisoned for not more than 10 years, or fined not more than \$5,000, or both.

D. Sell or offer for sale any security or securities named or listed in a notice in writing given him by the commissioner under the authority of Section 23A of this Act shall be deemed guilty of a felony, and upon conviction thereof shall be sentenced to pay a fine of not more than \$1,000 or imprisonment in the penitentiary for not more than two years, or by both such fine and imprisonment.

E. Knowingly make or cause to be made, in any document filed with the commissioner or in any proceeding under this Act, whether or not such document or proceeding relates to a transaction or security exempt under the provisions of Sections 5 or 6 of this Act, any statement which is,

at the time and in the light of the circumstances under which it is made, false or misleading in any material respect shall be deemed guilty of a felony, and upon conviction thereof shall be sentenced to pay a fine of not more than \$1,000 or imprisonment in the penitentiary for not more than two years, or by both such fine and imprisonment.

F. Knowingly make any false statement or representation concerning any registration made under the provisions of this Act shall be deemed guilty of a felony, and upon conviction thereof shall be sentenced to pay a fine of not more than \$1,000 or imprisonment in the penitentiary for not more than two years, or by both such fine and imprisonment.

G. Make an offer within this State as to any security that is not in compliance with the requirements set forth in Section 22 of this Act shall be deemed guilty of a felony, and upon conviction thereof, shall be sentenced to pay a fine of not more than \$1,000 or imprisonment in the penitentiary for not more than two years, or by both such fine and imprisonment.

[Amended by Acts 1979, 66th Leg., p. 359, ch. 160, § 7, eff. May 15, 1979.]

For effect of the 1979 amendatory act on arts. 852a, § 11.01, and 342-411a, see note under art. 581-4.

Art. 581-33. Civil Liabilities

A. Liability of Sellers.

(1) Registration and Related Violations. A person who offers or sells a security in violation of Section 7, 9 (or a requirement of the Commissioner thereunder), 12, 23B, or an order under 23A of this Act is liable to the person buying the security from him, who may sue either at law or in equity for rescission or for damages if the buyer no longer owns the security.

(2) Untruth or Omission. A person who offers or sells a security (whether or not the security or transaction is exempt under Section 5 or 6 of this Act) by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, is liable to the person buying the security from him, who may sue either at law or in equity for rescission, or for damages if the buyer no longer owns the security. However, a person is not liable if he sustains the burden of proof that either (a) the buyer knew of the untruth or omission or (b) he (the offeror or seller) did not know, and in the exercise of reasonable care could not have known, of the untruth or omission. The issuer of the security (other than a government issuer identified in Section 5M) is not entitled to the defense in clause (b) with respect to an untruth or omission (i) in a prospectus required in connection with a registration statement under Section 7A, 7B, or 7C, or (ii) in a writing prepared and delivered by the issuer in the sale of a security.

B. Liability of Buyers. A person who offers to buy or buys a security (whether or not the security or transaction is exempt under Section 5 or 6 of this Act) by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, is liable to the person selling the security to him, who may sue either at law or in equity for rescission or for damages if the buyer no longer owns the security. However, a person is not liable if he sustains the burden of proof that either (a) the seller knew of the untruth or omission, or (b) he (the offeror or buyer) did not know, and in the exercise of reasonable care could not have known, of the untruth or omission.

C. Liability of Nonselling Issuers Which Register.

(1) This Section 33C applies only to an issuer which registers under Section 7A, 7B, or 7C of this Act, or under Section 6 of the U.S. Securities Act of 1933,¹ its outstanding securities for offer and sale by or for the owner of the securities.

(2) If the prospectus required in connection with the registration contains, as of its effective date, an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, the issuer is liable to a person buying the registered security, who may sue either at law or in equity for rescission or for damages if the buyer no longer owns the securities. However, an issuer is not liable if it sustains the burden of proof that the buyer knew of the untruth or omission.

D. Rescission and Damages. For this Section 33:

(1) On rescission, a buyer shall recover (a) the consideration he paid for the security plus interest thereon at the legal rate from the date of payment by him, less (b) the amount of any income he received on the security, upon tender of the security (or a security of the same class and series).

(2) On rescission, a seller shall recover the security (or a security of the same class and series) upon tender of (a) the consideration he received for the security plus interest thereon at the legal rate from the date of receipt by him, less (b) the amount of any income the buyer received on the security.

(3) In damages, a buyer shall recover (a) the consideration he paid for the security plus interest thereon at the legal rate from the date of payment by him, less (b) the value of the security at the time he disposed of it plus the amount of any income he received on the security.

(4) In damages, a seller shall recover (a) the value of the security at the time of sale plus the amount of any income the buyer received on the security, less

(b) the consideration paid the seller for the security plus interest thereon at the legal rate from the date of payment to the seller.

(5) For a buyer suing under Section 33C, the consideration he paid shall be deemed the lesser of (a) the price he paid and (b) the price at which the security was offered to the public.

(6) On rescission or as a part of damages, a buyer or a seller shall also recover costs.

(7) On rescission or as a part of damages, a buyer or a seller may also recover reasonable attorney's fees if the court finds that the recovery would be equitable in the circumstances.

E. Time of Tender. Any tender specified in Section 33D may be made at any time before entry of judgment.

F. Liability of Control Persons and Aiders.

(1) A person who directly or indirectly controls a seller, buyer, or issuer of a security is liable under Section 33A, 33B, or 33C jointly and severally with the seller, buyer, or issuer, and to the same extent as if he were the seller, buyer, or issuer, unless the controlling person sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist.

(2) A person who directly or indirectly with intent to deceive or defraud or with reckless disregard for the truth or the law materially aids a seller, buyer, or issuer of a security is liable under Section 33A, 33B, or 33C jointly and severally with the seller, buyer, or issuer, and to the same extent as if he were the seller, buyer, or issuer.

(3) There is contribution as in cases of contract among the several persons so liable.

G. Survivability of Actions. Every cause of action under this Act survives the death of any person who might have been a plaintiff or defendant.

H. Statute of Limitations.

(1) No person may sue under Section 33A(1) or 33F so far as it relates to Section 33A(1):

(a) more than three years after the sale; or

(b) if he received a rescission offer (meeting the requirements of Section 33I) before suit unless he (i) rejected the offer in writing within 30 days of its receipt and (ii) expressly reserved in the rejection his right to sue; or

(c) more than one year after he so rejected a rescission offer meeting the requirements of Section 33I.

(2) No person may sue under Section 33A(2), 33C, or 33F so far as it relates to 33A(2) or 33C:

(a) more than three years after discovery of the untruth or omission, or after discovery should

have been made by the exercise of reasonable diligence; or

(b) more than five years after the sale; or

(c) if he received a rescission offer (meeting the requirements of Section 33I) before suit, unless he (i) rejected the offer in writing within 30 days of its receipt, and (ii) expressly reserved in the rejection his right to sue; or

(d) more than one year after he so rejected a rescission offer meeting the requirements of Section 33I.

(3) No person may sue under Section 33B or 33F so far as it relates to Section 33B:

(a) more than three years after discovery of the untruth or omission, or after discovery should have been made by the exercise of reasonable diligence; or

(b) more than five years after the purchase; or

(c) if he received a rescission offer (meeting the requirements of Section 33J) before suit unless he (i) rejected the offer in writing within 30 days of its receipt, and (ii) expressly reserved in the rejection his right to sue; or

(d) more than one year after he so rejected a rescission offer meeting the requirements of Section 33J.

I. Requirements of a Rescission Offer to Buyers. A rescission offer under Section 33H(1) or (2) shall meet the following requirements:

(1) The offer shall include financial and other information material to the offeree's decision whether to accept the offer, and shall not contain an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

(2) The offeror shall deposit funds in escrow in a state or national bank doing business in Texas (or in another bank approved by the commissioner) or receive an unqualified commitment from such a bank to furnish funds sufficient to pay the amount offered.

(3) The amount of the offer to a buyer who still owns the security shall be the amount (excluding costs and attorney's fees) he would recover on rescission under Section 33D(1).

(4) The amount of the offer to a buyer who no longer owns the security shall be the amount (excluding costs and attorney's fees) he would recover in damages under Section 33D(3).

(5) The offer shall state:

(a) the amount of the offer, as determined pursuant to Paragraph (3) or (4) above, which shall be given (i) so far as practicable in terms of a specified number of dollars and a specified rate of interest for a period starting at a specified date,

and (ii) so far as necessary, in terms of specified elements (such as the value of the security when it was disposed of by the offeree) known to the offeree but not to the offeror, which are subject to the furnishing of reasonable evidence by the offeree.

(b) the name and address of the bank where the amount of the offer will be paid.

(c) that the offeree will receive the amount of the offer within a specified number of days (not more than 30) after receipt by the bank, in form reasonably acceptable to the offeror, and in compliance with the instructions in the offer, of:

(i) the security, if the offeree still owns it, or evidence of the fact and date of disposition if he no longer owns it; and

(ii) evidence, if necessary, of elements referred to in Paragraph (a)(ii) above.

(d) conspicuously that the offeree may not sue on his purchase under Section 33 unless:

(i) he accepts the offer but does not receive the amount of the offer, in which case he may sue within the time allowed by Section 33H(1)(a) or 33H(2)(a) or (b), as applicable; or

(ii) he rejects the offer in writing within 30 days of its receipt and expressly reserves in the rejection his right to sue, in which case he may sue within one year after he so rejects.

(e) in reasonable detail, the nature of the violation of this Act that occurred or may have occurred.

(f) any other information the offeror wants to include.

J. Requirements of a Rescission Offer to Sellers. A rescission offer under Section 33H(3) shall meet the following requirements:

(1) The offer shall include financial and other information material to the offeree's decision whether to accept the offer, and shall not contain an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

(2) The offeror shall deposit the securities in escrow in a state or national bank doing business in Texas (or in another bank approved by the commissioner).

(3) The terms of the offer shall be the same (excluding costs and attorney's fees) as the seller would recover on rescission under Section 33D(2).

(4) The offer shall state:

(a) the terms of the offer, as determined pursuant to Paragraph (3) above, which shall be given (i) so far as practicable in terms of a specified number and kind of securities and a specified rate of interest for a period starting at a specified date,

and (ii) so far as necessary, in terms of specified elements known to the offeree but not the offeror, which are subject to the furnishing of reasonable evidence by the offeree.

(b) the name and address of the bank where the terms of the offer will be carried out.

(c) that the offeree will receive the securities within a specified number of days (not more than 30) after receipt by the bank, in form reasonably acceptable to the offeror, and in compliance with the instructions in the offer, of:

(i) the amount required by the terms of the offer; and

(ii) evidence, if necessary, of elements referred to in Paragraph (a)(ii) above.

(d) conspicuously that the offeree may not sue on his sale under Section 33 unless:

(i) he accepts the offer but does not receive the securities, in which case he may sue within the time allowed by Section 33H(3)(a) or (b), as applicable; or

(ii) he rejects the offer in writing within 30 days of its receipt and expressly reserves in the rejection his right to sue, in which case he may sue within one year after he so rejects.

(e) in reasonable detail, the nature of the violation of this Act that occurred or may have occurred.

(f) any other information the offeror wants to include.

K. Unenforceability of Illegal Contracts. No person who has made or engaged in the performance of any contract in violation of any provision of this Act or any rule or order or requirement hereunder, or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation, may base any suit on the contract.

L. Waivers Void. A condition, stipulation, or provision binding a buyer or seller of a security to waive compliance with a provision of this Act or a rule or order or requirement hereunder is void.

M. Saving of Existing Remedies. The rights and remedies provided by this Act are in addition to any other rights (including exemplary or punitive damages) or remedies that may exist at law or in equity. [Amended by Acts 1977, 65th Leg., p. 344, ch. 170, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 361, ch. 160, § 8, eff. May 15, 1979.]

¹ 15 U.S.C.A. § 77f.

Section 2 of the 1977 amendatory act provided:

"Prior law exclusively governs all suits which are pending or may be initiated on the basis of facts or circumstances occurring before the effective date of this Act, except that no suit may be maintained to enforce any liability under prior law unless brought within any period of limitation which applied when the cause of action accrued, and in any event within five years after the purchase or sale."

For effect of the 1979 amendatory act on arts. 852a, § 11.01, and 342-411a, see note under art. 581-4.

Art. 581-34. Actions for Commission; Allegations and Proof of Compliance

No person or company shall bring or maintain any action in the courts of this state for collection of a commission or compensation for services rendered in the sale or purchase of securities, as that term is herein defined, without alleging and proving that such person or company was duly licensed under the provisions hereof and the securities so sold were duly registered under the provisions hereof at the time the alleged cause of action arose; provided, however, that this section or provision of this Act shall not apply (1) to any transaction exempted by Section 5 of this Act, nor (2) to the sale or purchase of any security exempted by Section 6 of this Act.

[Amended by Acts 1975, 64th Leg., p. 199, ch. 78, § 3, eff. Sept. 1, 1975.]

Art. 581-35. Fees

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

A. For the filing of any original or renewal application of a dealer, Thirty-five Dollars (\$35.00);

B. For the filing of any original or renewal application for each salesman, Fifteen Dollars (\$15.00);

C. For any filing to amend the registration certificate of a dealer or salesman, or issue a duplicate certificate, Five Dollars (\$5.00);

D. For the filing of any original, amended or renewal application to sell or dispose of securities, Ten Dollars (\$10.00);

E. For the examination of any original or amended application filed under Subsection A, B, or C of Section 7 of this Act, regardless of whether the application is denied, abandoned, withdrawn, or approved, a fee of one-tenth ($\frac{1}{10}$) of one percent (1%) of the aggregate amount of securities described and proposed to be sold to persons located within this state based upon the price at which such securities are to be offered to the public;

F. For certified copies of any papers filed in the office of the Commissioner, the Commissioner shall charge such fees as are reasonably related to costs; however, in no event shall such fees be more than those which the Secretary of State is authorized to charge in similar cases; and

G. For the filing of any application for approval of a stock exchange so that securities fully listed thereon will be exempt, a fee of Two Hundred and Fifty Dollars (\$250.00).

[Amended by Acts 1977, 65th Leg., p. 875, ch. 327, § 7, eff. Aug. 29, 1977.]

Art. 581-35-1. Sale of Securities in Excess of Amount Registered; Fees

An offeror who sells securities in this State in excess of the aggregate amount of securities registered may, while such registration is still effective, apply to register the excess securities by paying three times the difference between the initial fee paid and the fee required under Subsection E of

Section 35 for the securities sold to persons within this State, plus the amendment fee prescribed by Subsection D of Section 35. Registration of the excess securities, if granted, shall be effective retroactively to the date of the existing registration. [Added by Acts 1979, 66th Leg., p. 361, ch. 160, § 9, eff. May 15, 1979.]

For effect of the 1979 Act on arts. 852a, § 11.01, and 342-411a, see note under art. 581-4.

TITLE 20

PURCHASING AND GENERAL SERVICES COMMISSION

CHAPTER ONE. GENERAL PROVISIONS

Article

601a. Repealed.

601b. State Purchasing and General Services Act.

606a. Repealed.

Arts. 601, 601a. Repealed by Acts 1979, 66th Leg., p. 1960, ch. 773, § 99.05, eff. Sept. 1, 1979

For subject matter of former art. 601, see, now, art. 601b, §§ 2.01 to 2.03 and 2.06.

Article 601a, relating to application of the Sunset Act, was added by Acts 1977, 65th Leg., p. 1852, ch. 735, § 2.144. See, now, art. 601b, § 2.07.

Art. 601b. State Purchasing and General Services Act

ARTICLE 1. GENERAL PROVISIONS

Short Title

Sec. 1.01. This Act may be cited as the State Purchasing and General Services Act.

Definitions

Sec. 1.02. In this Act:

(1) "Commission" means the State Purchasing and General Services Commission.

(2) "State agency" means:

(A) "any department, commission, board, office, or other agency in the executive branch of state government created by the constitution or a statute of this state;

(B) the Supreme Court of Texas, the Court of Criminal Appeals of Texas, a court of civil appeals, or the Texas Civil Judicial Council; or

(C) a university system or an institution of higher education as defined in Section 61.003, Texas Education Code, as amended, other than a public junior college.

ARTICLE 2. ADMINISTRATIVE PROVISIONS

Commission

Sec. 2.01. The State Purchasing and General Services Commission is established.

Membership

Sec. 2.02. The commission is composed of three members appointed by the governor with the advice and consent of the senate.

Terms

Sec. 2.03. Members of the commission hold office for staggered terms of six years, with a member's term expiring on January 31 of each odd-numbered year.

Officers; Meetings; Quorum

Sec. 2.04. (a) The governor annually shall appoint a chairman from among the commission members.

(b) The commission shall meet at least once each month. The commission may meet at other times at the call of the chairman or as provided by the commission's rules.

(c) Two members of the commission constitute a quorum.

Expenses

Sec. 2.05. A member of the commission is not entitled to compensation but is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a member of the commission.

Executive Director; Staff

Sec. 2.06. (a) The commission shall employ an executive director who shall serve at the pleasure of the commission. He shall execute a bond payable to the state in such sum as the commission may deem necessary, to be approved by the commission and conditioned upon the faithful performance of his duties. Premiums for said bond also shall be payable from such appropriations for the commission as are authorized by the legislature. The executive director must have demonstrated executive and organizational ability.

(b) The executive director shall manage the affairs of the commission subject to and under the direction of the commission. All direction of the commission to the executive director shall be made at an open meeting of the commission and made a part of the minutes of the commission. A member of the commission may not grant any authority to the executive director or any other employee by power of attorney.

(c) The executive director may employ a staff necessary to administer the functions of the commission.

Application of Sunset Act

Sec. 2.07. The commission is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes). Unless continued in existence as provided by that Act, the commission is abolished and this Act expires effective September 1, 1991.

ARTICLE 3. PURCHASING**Establishment of Purchasing System**

Sec. 3.01. (a) The commission shall purchase, lease, rent, or otherwise acquire all supplies, materials, services, and equipment for all state agencies, and shall institute and maintain an effective and economical system for purchasing all such supplies, materials, services, and equipment.

(b) "Services," as used in this article, means the furnishing of skilled or unskilled labor or professional work but does not include:

- (1) professional services covered by the Professional Services Procurement Act (Article 664-4, Vernon's Texas Civil Statutes);
- (2) services of an employee of a state agency;
- (3) consulting services or services of a private consultant as defined by Chapter 454, Acts of the 65th Legislature, Regular Session, 1977 (Article 6252-11c, Vernon's Texas Civil Statutes); or
- (4) services of public utilities.

Limits of Authority

Sec. 3.02. The commission's authority does not extend to purchases of supplies, materials, services, or equipment:

- (1) for resale;
- (2) for auxiliary enterprises;
- (3) for organized activities relating to instructional departments of institutions of higher learning and similar activities of other state agencies; or
- (4) from gifts or grants other than federal grants.

Purchase of Motor Vehicles for School Districts

Sec. 3.03. The commission shall purchase all motor vehicles used for transporting school children, including buses, bus chassis, and bus bodies, tires, and tubes, for school districts participating in the Foundation School Program as provided by Subchapter F, Chapter 21, Texas Education Code.¹

¹ Education Code, § 21.161 et seq.

Mental Health and Mental Retardation Community Centers

Sec. 3.04. Community centers for mental health and mental retardation services that are receiving state grants-in-aid under the provisions of Article 4 of the Texas Mental Health and Mental Retardation Act¹ may purchase drugs and medicines through the commission.

¹ Article 5547-201 et seq.

Purchases by the Legislature

Sec. 3.05. Either house of the legislature, or any agency, council, or committee of the legislature, including the Legislative Budget Board, the Texas Legislative Council, the State Auditor's Office, and the Legislative Reference Library, may utilize the purchasing services of the commission for purchasing supplies, materials, services, equipment, and those items covered by Article XVI, Section 21, of the Texas Constitution.

Delegation of Authority to State Agencies

Sec. 3.06. The commission may delegate purchasing functions to a state agency.

Emergency Purchases

Sec. 3.07. The commission shall provide for emergency purchases by a state agency and may set a monetary limit on the amount of each emergency purchase.

Purchases Less than a Specified Monetary Amount

Sec. 3.08. (a) The commission shall establish a procedure by which state agencies shall be delegated the authority to purchase supplies, materials, and equipment if the purchase is less than \$500 and shall provide in the procedure that formal competitive bidding is not required for purchases under \$100.

(b) Supplies or materials purchased under this section may not include:

- (1) items for which contracts have been awarded under the contract purchase procedure, unless the quantity purchased is less than the minimum quantity specified in the contract;
- (2) any item required by statute to be purchased from a particular source; or
- (3) scheduled items that have been designated for purchase by the commission.

(c) Large purchases may not be divided into small lot purchases in order to meet the specified dollar limits.

(d) Agencies making purchases under this section must attempt to obtain at least three competitive bids from sources which normally offer for sale the merchandise being purchased.

Review of Specifications

Sec. 3.09. (a) The commission shall review the specifications and conditions of purchase of any supplies, materials, equipment, or services desired to be purchased.

(b) If the commission finds that specifications and conditions of a purchase request have been drawn to describe a product which is proprietary to one vendor and does not include language which permits an equivalent product to be supplied, it shall require written justification of the requested specifications

or conditions, signed by the agency head or the chairman of the governing body. For an institution of higher education, the written justification may be signed by the person designated by the president or governing body as purchasing officer for the institution. The written justification shall contain the following:

- (1) explanation of the need for the specifications;
- (2) the reason competing products are not satisfactory; and
- (3) other information requested by the commission.

(c) If a resubmission with written justification is to be required by the commission, it shall notify the requesting state agency of that fact within 10 days after the date of receipt of the purchase request.

(d) If the commission, after considering all factors, takes exception to the justifications, it shall purchase the supplies, materials, services, or equipment as requested and report the reasons for its exceptions to the agency head or the chairman of the governing body, the state auditor, the Legislative Budget Board, and the governor.

(e) The commission shall issue an invitation to bid to vendors within 20 days after the date of receipt of the written justification required.

(f) The commission shall not delay processing a purchase requisition by submitting the specifications and conditions to the systems/administrative services division of the state auditor's office for comment or recommendation prior to issuing the invitation to bid to vendors.

Purchase Methods

Sec. 3.10. In purchasing supplies, materials, services, and equipment the commission may use, but is not limited to, the contract purchase procedure, the multiple award contract procedure, and the open market purchase procedure. The commission shall have the authority to combine orders in a system of schedule purchasing, and it shall at all times try to benefit from purchasing in bulk. All purchases of and contracts for supplies, materials, services, and equipment shall, except as provided herein, be based whenever possible on competitive bids.

Contract Purchase Procedure

Sec. 3.11. (a) Notice. Notice inviting bids shall be published at least once in at least one newspaper of general circulation in the state and at least seven days preceding the last day set for the receipt of bids. The newspaper notice shall include a general description of the articles to be purchased, and shall state where bid blanks and specifications may be secured, and the time and place for opening bids.

(b) Bidders List. The commission shall maintain a bidders list and shall add or delete names from the list by the application and utilization of applicable standards set forth in Subsection (e) of this section. Bid invitations shall be sent only to those who have expressed a desire to bid on the particular types of items which are the subject of the bid invitation. Use of the bidders list shall not be confined to contract purchases but it may be used by the commission as it may find desirable in making any purchase.

(c) Bid Deposits. When deemed necessary bid deposits in amounts to be set by the commission shall be prescribed in the public notices and the invitation to bid. The commission shall establish and maintain records of bid deposits and their disposition with the cooperation of the state auditor, and upon the award of bids or rejection of all bids, bid deposits shall be returned to unsuccessful bidders making bid deposits. The commission may accept a bid deposit in the form of a blanket bond from any bidder.

(d) Bid Opening Procedure. Bids shall be submitted to the commission, sealed, and identified as bids on the envelope. Bids shall be opened at the time and place stated in the public notices and the invitation to bid. The state auditor or a member of his staff may be present at any bid opening. A tabulation of all bids received shall be available for public inspection under regulations to be established by the commission.

(e) Award of Contract. The commission shall award contracts to the bidder submitting the lowest and best bid conforming to the specifications required. Complying with the specified time limit for submission of written data, samples, or models on or before bid opening time is essential to the materiality of a bid, provided, however, that the commission shall have the authority to waive this provision if the failure to comply is beyond control of the bidder. In determining who is the lowest and best bidder, in addition to price, the commission shall consider:

- (1) the quality, availability, and adaptability of the supplies, materials, equipment, or contractual services, to the particular use required;
- (2) the number and scope of conditions attached to the bid;
- (3) the ability, capacity, and skill of the bidder to perform the contract or provide the service required;
- (4) whether the bidder can perform the contract or provide the service promptly, or within the time required, without delay or interference;
- (5) the character, responsibility, integrity, reputation, and experience of the bidder;
- (6) the quality of performance of previous contracts or services;

(7) the previous and existing compliance by the bidder with laws relating to the contract or service;

(8) any previous or existing noncompliance by the bidder with specification requirements relating to time of submission of specified data such as samples, models, drawings, certificates, or other information;

(9) the sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service; and

(10) the ability of the bidder to provide future maintenance, repair parts, and service for the use of the subject of the contract.

(f) **Rejection of Bids.** If a bid is submitted in which there is a material failure to comply with the specification requirements, such bid shall be rejected and the contract awarded to the bidder submitting the lowest and best bid conforming to the specifications, provided, however, the commission shall in any event have the authority to reject all bids or parts of bids when the interest of the state will be served thereby.

(g) **Bid Record.** When an award is made, a statement of the basis for placing the order with the successful bidder and the factors considered in determining the lowest and best bid shall be prepared by the purchasing division and filed with other papers relating to the transaction.

(h) **Tie Bids.** In case of tie bids, quality and service being equal, the contract shall be awarded under rules and regulations to be adopted by the commission.

(i) **Performance Bonds.** The commission may require a performance bond before entering a contract in such amount as it finds reasonable and necessary to protect the interests of the state. Any bond required under this subsection shall be conditioned that the bidder will faithfully execute the terms of the contract into which he has entered. Any bond required shall be filed with the commission and recoveries may be had thereon until it is exhausted.

Open Market Purchase Procedure

Sec. 3.12. (a) When the commission determines that any purchases of supplies, materials, equipment, or services may be made most effectively in the open market, such purchases may be made without newspaper advertising.

(b) **Minimum Number of Bids.** All open market purchases shall, whenever possible, be based on at least three competitive bids, and shall be awarded to the lowest and best bidder in accordance with the standards set forth under this article.

(c) **Notice Inviting Bids.** The commission shall solicit bids by:

(1) direct mail request to prospective vendors; or

(2) telephone or telegraph.

(d) **Recording.** The commission shall keep a record of all open market orders and bids submitted thereon, and a tabulation of the bids shall, under rules and regulations to be established by the commission, be open to public inspection; provided, they shall always be open to inspection by the state auditor or his representatives.

(e) **Agency Review.** If a state agency requests that it be allowed to review the bids on a purchase request, the commission shall forward copies of the bids received or make the same available to the requesting agency along with the commission's recommended award. If, after review of the bids and evaluation of the quality of products offered in the bids, the state agency determines that the bid selected by the commission is not in its opinion the lowest and best bid, it may file with the commission a written recommendation, complete with justification, that the award be made to the bidder determined to be the lowest and best bid. The commission shall give consideration to, but is not bound by, the agency recommendation in making the award.

(f) **Statement of Award.** A statement of the basis for placing the order with the successful bidder and the factors considered in determining the lowest and best bid shall be prepared by the purchasing division and filed with other papers relating to the transaction.

Compliance with Antitrust Laws

Sec. 3.13. A bidder offering to sell supplies, materials, services, or equipment to the state shall certify on each bid submitted that neither the bidder nor the firm, corporation, partnership, or institution represented by the bidder, or anyone acting for such firm, corporation, or institution has violated the antitrust laws of this state codified in Section 15.01, et seq., Business & Commerce Code, or the federal antitrust laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business. The attorney general shall prepare the certification statement which is to be made a part of the bid form.

Invoice

Sec. 3.14. The contractor or seller of supplies and/or services contracted for by the commission shall render an invoice to the ordering agency at the address shown on the purchase order. The invoice shall be prepared and submitted under such rules and regulations as the commission shall provide.

Invoice; Check of Goods or Services

Sec. 3.15. (a) As soon as supplies, materials, or equipment are received by a state agency they shall be inspected by the agency to see if they correspond

in every particular with those covered by the contract under which they were purchased, and if the invoice is correct, the agency shall certify that such is true and transmit to the commission the original invoice and appropriate purchase voucher forms. As soon as an invoice is received for services rendered to any state agency, the agency shall determine if such services correspond in every particular with those services contracted for and that the invoice is correct, and shall certify that such is true and transmit to the commission the original invoice and appropriate purchase voucher forms. The state agency shall complete the procedures for transmittal of the invoice and purchase voucher to the commission promptly after receipt of the supplies, materials, or equipment or performance of the services or receipt of the invoice for the supplies, materials, equipment, or services, whichever is later.

(b) If the commission finds such invoice and purchase voucher forms correct, it shall approve and transmit same to the state comptroller. The commission shall complete the procedures for transmittal of the invoice and purchase voucher to the state comptroller within eight days after receipt of the invoice and purchase voucher. The commission is not required to process vouchers in payment of telephone service within eight days but shall process them as expeditiously as possible.

Invoice; Payment

Sec. 3.16. When an invoice and purchase voucher have been approved by the agency and the commission, and have been approved by the comptroller, the comptroller shall draw a warrant upon the state treasury for the amount due on the invoice or for so much thereof as has been allowed, and it shall be charged against the state agency. The comptroller shall complete the procedures for drawing the warrant within eight days after receipt of the invoice and purchase voucher.

Specifications and Standards Program; Test and Inspection Program

Sec. 3.17. The commission shall have the authority to establish and maintain a specifications and standards program to coordinate the establishment and maintenance of uniform standards and specifications for materials, supplies, and equipment purchased by the commission. The commission shall enlist the cooperation of other state agencies in the establishment, maintenance, and revision of uniform standards and specifications and shall encourage and foster the use of standard specifications in order that the most efficient purchase of materials, supplies, and equipment may be continuously accomplished. The commission may also establish and maintain a program of testing and inspecting to ensure that materials, supplies, services, and equipment meet specifications, and may make contracts

for testing. If any state agency determines that any supplies, materials, services, or equipment received do not meet specifications, it shall promptly notify the commission in writing detailing the reasons why the supplies, materials, services, or equipment do not meet the specifications of the contract. The commission shall immediately determine whether or not the reported supplies, materials, services, or equipment meet specifications. The sole power to determine whether materials, supplies, services, and equipment meet specifications shall rest with the commission. When the commission finds that contract specifications or conditions have not been complied with, it shall take action, with the assistance of the attorney general, if necessary, against the defaulting contractor.

Usage Figures

Sec. 3.18. The commission shall maintain usage figures on the consumption and use of supplies, materials, services, and equipment purchased for state agencies, institutions, boards, and commissions, and shall furnish using agencies upon request usage and consumption figures maintained. The commission is directed to cooperate with the state budget officers and the state auditor in the preparation of usage and consumption figures of supplies, materials, services, and equipment.

Conflict of Interest

Sec. 3.19. No member of the commission or any employee or appointee of the commission shall be interested in, or in any manner connected with, any contract or bid for furnishing supplies, materials, services, and equipment of any kind to any agency of the State of Texas. Neither shall any member or employee or appointee, under penalty of dismissal, accept or receive from any person, firm, or corporation to whom any contract may be awarded, directly or indirectly, by rebate, gift, or otherwise, any money or other thing of value whatever, nor shall he receive any promise, obligation, or contract for future reward or compensation from any such party.

Preference for Products of Retarded or Handicapped Persons

Sec. 3.20. The products of workshops, organizations, or corporations whose primary purpose is training and employing mentally retarded or physically handicapped persons shall be given preference if they meet state specifications as to quantity, quality, and price.

Purchase and Use of Paper Containing Recycled Fibers

Sec. 3.21. The commission shall contract for paper containing the highest percent of recycled fibers for all purposes for which paper with recycled fibers may be used and to the extent that such paper is available at a reasonable price through normal commercial channels to supply the needs of the state. All agencies which purchase through the commission

are directed to place orders for papers containing recycled fibers to the highest extent of their needs and to the extent that such paper is available through purchasing procedures of the commission.

Exemption of Goods or Services of Blind Persons

Sec. 3.22. The provisions of this article with respect to competitive bids are not applicable to state purchases of blind-made goods or services offered for sale to state agencies as a result of efforts made by the Texas Committee on Purchases of Blind-Made Goods and Services acting in accordance with legislation applicable to the committee if the goods or services meet state specifications as to quantity and quality and the cost is not in excess of the fair market price of like items.

Contracts with Department of Corrections

Sec. 3.23. The commission is hereby authorized to make contracts with the Texas Department of Corrections for the purchase of supplies, equipment, services, and materials for use by other state agencies.

Advance Payments to State or Federal Agencies

Sec. 3.24. All state agencies are authorized to make advance payments to federal and other state agencies for merchandise purchased from such agencies when advance payments will expedite the delivery of the merchandise.

Contracts for Printing Laws

Sec. 3.25. (a) The commission shall, at the opening of each regular session of the Texas legislature, award a special contract for printing the general and special laws and resolutions to be passed by each regular or special session of the current legislature, the contract to be separate and apart from all other contracts for public printing. The general and special laws shall be printed in separate volumes upon order of the commission. The contracts for the printing shall be prepared by the commission and shall provide such penalties as will assure the delivery of the laws within the contract time limit. The printer shall be required to begin delivery of completed books within a reasonable time after the printing is completed and binding commenced, which limit shall be set out in the call for bids made by the commission. An appropriation shall be made by the legislature to pay the cost of compiling, indexing, and printing all such laws and resolutions.

(b) There shall also be placed in the contract a stipulation requiring the printer to have the proof read and corrected before submitting such proof to the state. The comptroller shall not issue a warrant to the printer in payment for the printing of such laws and resolutions unless and until the printer, if an individual, or if a corporation, partnership, or association, the vice-president, secretary, or manager

of same has made a sworn affidavit that he has complied with this section.

(c) Such laws and resolutions shall be compiled and printed under the direction of the secretary of state, who shall within 26 days, excluding Sundays, after adjournment of the legislature furnish the printer all copy therefor, the delivery of the first copy to the printer to begin as the bills are signed by the governor; provided that copy for the index shall be given to the printer within five days after the printer has furnished all page proofs of the laws to the secretary of state.

(d) The secretary of state shall distribute the printed laws of each session of the legislature as follows: (1) one copy to the governor, (2) one copy to the lieutenant governor, (3) three copies to each of the heads of all departments, (4) one copy to each of the judges of the several courts throughout the state, (5) one copy to each district and county attorney in the state, and (6) one copy to each member of the legislature.

Prohibition of Reproduction or Disposition of Matter Printed Under Public Contract

Sec. 3.26. (a) Except under contract or agreement with the state as hereinafter provided authorizing them so to do, it shall be unlawful for any person, firm, corporation, or association of persons doing any printing, under contract, for the State of Texas, to reproduce, print, or prepare or to sell or furnish any such printing or printed matter or any reprint, reproduction, or copy of same, or plate, type, mat, cut, or engraving from which such printing contract was executed, except the amount and number of copies contracted to be printed and furnished to the State of Texas under such contract.

(b) Any printing done under contract for any department, the legislature, or either branch thereof, any board, commission, court, officer or agent of the State of Texas, as well as any such work done directly for the state, shall for the purposes of this article be deemed to have been done for the State of Texas.

(c) With the consent of the commission and the governor, any person, firm, corporation, or association may print extra copies and sell them at a price fixed by the commission, whenever in the opinion of the commission and the governor the printed matter should be distributed in such manner for the benefit of the public. Any such contract for the printing and sale of such extra copies shall be approved by the attorney general.

(d) Any person, firm, corporation, or association of persons violating any provision of this section shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$100 nor more than \$1,000, and in the event the violation is by a natural person or the agent or employee of a

person, corporation, firm, or association, the punishment may be by jail sentence not to exceed 30 days in addition to such fine. The conviction of an agent or employee shall not bar conviction of the principal also.

Surplus War Materials

Sec. 3.27. The commission is authorized and directed to purchase for any county or any other political subdivision of this state such surplus war materials or surplus goods, merchandise, equipment, or other wares from the federal government or its agencies as may be offered for sale by them, provided the county or other political subdivision shall request the commission to make such purchase, and provided it shall deposit with the commission sufficient funds to cover payment therefor.

Preference to Texas and United States Products

Sec. 3.28. (a) The commission and all state agencies making purchases of supplies, materials, or equipment shall give preference to those produced in Texas or offered by Texas citizens, the cost to the state and quality being substantially equal.

(b) If supplies, materials, or equipment produced in Texas or offered by Texas citizens are not substantially equal in cost and quality, then supplies, materials, or equipment produced in other states of the United States of America shall be given preference over foreign-made products, the cost to the state and quality being substantially equal.

Purchase of Passenger Vehicles

Sec. 3.29. A state agency may not purchase or lease a vehicle designed or used primarily for the transportation of persons, including a station wagon, that has a wheel base longer than 113 inches or that has more than 145 SAE horsepower. This provision does not apply to the purchase or lease of a vehicle to be used primarily for criminal law enforcement or a bus, motorcycle, pickup, van, truck, three-wheel vehicle, tractor, or ambulance.

ARTICLE 4. PUBLIC BUILDINGS AND GROUNDS

Custodianship of State Property

Sec. 4.01. (a) The commission shall have charge and control of all public buildings, grounds and property of the state, and is the custodian of all public personal property, and is responsible for the proper care and protection of such property from damage, intrusion, or improper usage. The commission is expressly directed to take any steps necessary to protect public buildings against any existing or threatened fire hazards. The commission is authorized to provide for the allocation of space in any of the public buildings to the departments of the state government for the uses authorized by law, and is

authorized to make any repairs to any such buildings or parts thereof necessary to the serviceable accommodation of the uses to which such buildings or space therein may be allotted.

(b) The allocation of any space affecting the quarters of either house of the legislature must have the approval of the speaker of the house of representatives or the lieutenant governor, the approval being for the quarters allocated to the particular house affected.

(c) The provisions of Subsection (a) of this section pertaining to charge and control of public buildings and grounds do not apply to buildings and grounds of:

- (1) institutions of higher education, as defined by Section 61.003, Texas Education Code, as amended;
- (2) state agencies to which control has been specifically committed by law; and
- (3) state agencies that have demonstrated ability and competence to maintain and control their buildings and grounds and to which the commission delegates that authority.

Lease of Public Grounds

Sec. 4.02. (a) All public grounds belonging to the State of Texas under the charge and control of the commission may be leased for agricultural or commercial purposes. Lease proposals shall be advertised once a week for four consecutive weeks in at least two newspapers, one of which shall be published in the city where the property is located, or the nearest daily paper thereto, and the other in some paper with state-wide circulation. Each lease shall be subject to the approval of the attorney general of Texas, both as to substance and as to form. The money derived from the lease of such property, less the expense for advertising and leasing, shall be deposited in the state treasury to the credit of the General Revenue Fund except that if land leased belongs to any eleemosynary institution, that money must be deposited to the credit of said institution in the same manner that the special fund is now deposited or may hereafter be ordered deposited by the legislature.

(b) The commission shall adopt proper forms and regulations, rules, and contracts, as will, in its best judgment, protect the interest of the state. The commission may reject any and all bids.

Charge of Capitol

Sec. 4.03. The commission during the recess of the legislature shall have charge and control of the halls, chambers, and committee rooms of the state capitol building except as hereinafter provided. Before the assembling of each session of the legislature, the commission shall prepare the different rooms for the use of the legislature.

Use of Rooms in Capitol for Private Purposes

Sec. 4.04. No room, apartment, or office in the state capitol building shall be used at any time by any person as a bedroom or for any private purposes whatever. This section shall not apply to the offices and living quarters occupied by the lieutenant governor and the speaker of the house of representatives.

Inspection of State Property

Sec. 4.05. The commission shall frequently inspect all the public buildings and property of the state at the capitol, and all other buildings and property of the state at such regular intervals as may be necessary to keep constantly informed of the condition of the same.

Repair and Improvement of State Buildings

Sec. 4.06. When needed improvements or repairs of buildings and offices are called to the attention of the commission by the heads of departments or offices, the commission shall provide for such repairs or improvements, and they shall be made under its direction.

Maintenance of Sewers and Utility Conduits

Sec. 4.07. The commission shall give special attention to the effective maintenance of sewers and utility conduits.

Plans of Public Buildings

Sec. 4.08. The commission shall prepare and keep in its offices a copy of the plans of all public buildings and improvements thereto under its charge showing the exact location of all water, gas, and sewerage pipes and electrical wiring.

Report about Improvements and Repairs

Sec. 4.09. The commission shall biennially on December 1st make a report to the governor showing all improvements and repairs that have been made with an itemized account of receipts and expenditures, and showing the condition of all property under its control with an estimate of needed improvements and repairs.

State Cemetery

Sec. 4.10. (a) The commission shall control, superintend, and beautify the grounds of the State Cemetery and shall preserve the grounds and everything pertaining thereto and protect the property from depreciation and injury. The commission shall procure and erect, at the head of each grave which has no permanent monument, an obelisk of marble upon which shall be engraved the name of the dead therein buried.

(b) The persons eligible for burial in the State Cemetery are as follows:

(1) present and former members of the Texas Legislature;

(2) present and former elective state officials;

(3) present and former state officials who have been appointed by the governor and confirmed by the senate;

(4) persons specified by a governor's proclamation; and

(5) persons specified in a concurrent resolution adopted by the legislature.

(c) Grave spaces shall be allotted for a person eligible for burial and for his or her spouse, together with his or her unmarried child or children, which child or children shall be buried alongside his, her, or their parent or parents, provided that such child on the effective date of this Act or at the time of his or her death is a resident in any state eleemosynary institution. Children other than those hereinabove made eligible for burial may not be included. The size of a grave plot may not be longer than eight feet nor wider than five feet times the number of persons of one family authorized hereunder to be buried alongside one another.

(d) No monument or statue may be erected that is taller than any existing monument or statue in the State Cemetery on the effective date of this Act.

(e) No trees, shrubs, or flowers may be planted in the State Cemetery without written permission from the commission.

(f) Burial of persons on state property may take place only in the State Cemetery or in a cemetery maintained by a state eleemosynary institution, and no other state property, including the capitol grounds, may be used as an interment site.

(g) Allotment and location of the necessary number of grave plots authorized shall be made by the commission upon application of the person primarily eligible hereunder or by his or her spouse, or by the executor or administrator of his or her estate.

French Embassy

Sec. 4.11. The property known as the French Embassy is set aside for the uses and purposes of the Daughters of the Republic of Texas and they are authorized to take full charge of said building and use it as they may see proper. The French Embassy shall be the property of the state, and the title of said property shall remain in custody of the commission.

Protection of State Buildings and Grounds; Regulation of Parking

Sec. 4.12. (a) It shall be unlawful for any person to trespass upon the grass plots or flowerbeds, or to damage or deface any of the buildings, or cut down, deface, mutilate, or otherwise injure any of the statues, monuments, memorials, trees, shrubs, grasses, or flowers on the grounds or commit any other trespass upon any property of the state, real or personal, located on the grounds of the state capitol,

the governor's mansion, or other property owned by the State of Texas known as the capitol complex, in the area bounded on the south by Eleventh Street, on the north by Nineteenth Street, on the west by Lavaca Street, and on the east by Trinity Street in the City of Austin; or on state properties located on Block No. 109, Block No. 122, Block No. 123, and Block No. 124 in the original city of Austin; or on the State Cemetery grounds bounded by Seventh Street, Comal Street, Eleventh Street and Navasota Street in the city of Austin; or on the Board of Control warehouse and storage area bounded by First Street, Trinity Street, Waller Creek, and the alley in Block No. 183 in the city of Austin. The performance of construction, landscaping, and gardening work authorized by the legislature or the commission shall not be construed to be prohibited under the provisions of this Act.

(b) It is an offense to park a vehicle in a place other than a space marked and designated for parking by the commission or to block or impede traffic on the driveways of property owned or leased by the state in the area described in Subsection (a) of this section. The commission may regulate the flow and direction of traffic in the capitol complex and may erect the structures necessary to implement this authority.

(c)(1) When the legislature is in session, the commission shall assign and mark, for unrestricted use by members and administrative staff of the legislature, the reserved parking spaces in the capitol complex requested by the respective houses of the legislature. A request for parking spaces reserved pursuant to this subsection shall be limited to spaces in the capitol driveways and the additional spaces in state parking lots proximately located to the capitol.

(2) When the legislature is not in session, the commission shall, at the request of the respective legislative bodies, assign and mark the spaces requested for use by members and administrative staff of the legislature, in the areas described in Subsection (c)(1) of this section.

(3) The commission shall assign and mark reserved parking spaces on the capitol driveways for the governor, lieutenant governor, speaker of the house, and secretary of state for their unrestricted use.

(4) The commission may assign parking spaces to elected state officials and appointed heads of state agencies who occupy space in state buildings located within the bounds set forth in Subsection (a) of this section.

(5) If spaces are available, the commission may assign parking spaces to handicapped state employees and other state employees of state agencies occupying space in state buildings located in the area described in Subsection (a) of this section.

(6) The commission may designate and mark parking spaces for state-owned vehicles and visitor and business parking within the bounds set forth in Subsection (a) of this section.

(7) The commission may establish and collect a reasonable monthly parking charge for each assigned parking space within the bounds set forth in Subsection (a) of this section, except those parking spaces assigned to the respective houses of the legislature on the capitol driveways.

(8) A person who parks an unauthorized vehicle in a space assigned under the provisions of this section commits an offense.

(9) The provisions of this subsection do not apply to the property or the parking facility under the management and control of the Texas Employment Commission and located within the bounds set forth in Subsection (a) of this section.

(d) The commission is hereby authorized to request the State Department of Highways and Public Transportation to assist it in the marking and designation of such parking spaces as the commission shall deem necessary and to maintain the painting of lines and curb markings and furnish such directional or informational signs as the commission shall deem necessary in the area described in Subsection (a) of this section. The Department of Public Safety shall provide advice and assistance to the commission when requested and shall at all times have at least one commissioned officer assigned to duty in the capitol area.

(e) It shall be unlawful to operate a motor vehicle upon any property owned by the State of Texas within the bounds set forth in Subsection (a) of this section at a speed in excess of 15 miles per hour. All laws regulating traffic upon highways and streets shall apply to the operation of motor vehicles within the prescribed areas, except as modified hereby.

(f) All of the general and criminal laws of the state are declared to be in full force and effect within the areas regulated by this section.

(g) The commission is authorized to employ security officers for the purpose of carrying out the provisions of this section and may commission such security officers as it deems necessary as peace officers. When so commissioned, said officers are hereby vested with all the powers, privileges, and immunities of peace officers; provided, that each security officer shall take and file the oath required of peace officers and shall execute and file with the commission a good and sufficient bond in the sum of \$1,000 payable to the governor of this state and his successors in office with two or more good and sufficient sureties conditioned that he will fairly and faithfully perform all of the duties as may be required of him by law, and that he will fairly and impartially enforce the law of this state and that he will pay over any and all money, or turn over any and all proper-

ty, to the proper person legally entitled to the same, that may come into his possession by virtue of such office. Said bond shall not be void for the first recovery but may be sued on from time to time in the name of any person injured until the whole amount thereof is recovered. It shall be unlawful and constitute a misdemeanor punishable as provided in this section for any person or persons to impersonate any of said officers.

(h) The powers and duties conferred on the commission by this section may, at the request of a state agency, be exercised on any property owned or leased by the state. The cost of any service performed by the commission under this subsection, for a requesting agency, when performed outside the areas described in Subsection (a) of this section, shall be reimbursed to the commission by that agency pursuant to a contract executed in accordance with The Interagency Cooperation Act (Article 4413(32), Vernon's Texas Civil Statutes).

(i) Any person who violates any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$200. The penalties for violation of any of the other criminal laws of the state shall be as now provided by law.

(j) In connection with traffic and parking violations only, the officers authorized to enforce the provisions of this section shall have the authority to issue and use traffic tickets and summons of the type now used by the city of Austin and/or the Texas Highway Patrol with such changes as are necessitated thereby to be prepared and furnished by the commission. Upon the issuance of any such traffic ticket or summons the same procedures shall be followed as now prevail in connection with the use of parking and traffic violation tickets by the city of Austin and the Texas Highway Patrol. Nothing herein shall restrict the application and use of regular arrest warrants.

(k) The primary responsibility for enforcing the provisions of this section shall be with the commission, which shall have authority to promulgate rules and regulations not inconsistent with this section or other provisions of law as it may deem necessary to carry out the provisions of this section. Whenever the commission shall have promulgated such a rule or regulation and has posted signs in any of the regulated areas giving notice thereof, it shall be unlawful for any person to violate any of the provisions of such signs and shall constitute a misdemeanor punishable as provided in this section.

(l) The judge of the municipal court and/or any justice of the peace in Austin are each hereby separately vested with all jurisdiction necessary to hear, try, and determine criminal cases involving violations hereof where punishment does not exceed a fine of \$200.

(m) Nothing herein contained shall be construed to abridge the authority of the commission to grant permission to use the capitol grounds and any grounds adjacent to any state building for such use as may be provided by preexisting law.

Pass Keys to Rooms in the Capitol

Sec. 4.13. Any person who shall make or have made or keep in his possession a pass or master key to the rooms and apartments in the state capitol, unless authorized to do so, shall be fined not exceeding \$100.

Consent of Legislature Required for Construction

Sec. 4.14. (a) It shall be unlawful, without the prior express consent of the legislature, for any officer of this state or any employee thereof or any other person to construct, build, erect, or maintain any building, structure, memorial, monument, statue, concession, or any other structure including creation of parking areas or the laying of additional paving on any of the grounds that surrounded the state capitol on January 1, 1955, and which grounds were then bounded by Eleventh, Brazos, Thirteenth and Colorado Streets, in the city of Austin, Texas, whether such land lay inside or outside the fence enclosing part of the grounds; provided, however, that paved access and underground utility installations may be constructed and maintained.

(b) Any officer or employee of this state, or other person violating Subsection (a) of this section, shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$100 nor more than \$1,000, or imprisoned in the county jail of Travis County for a period of time not to exceed one year, or by both such fine and imprisonment.

(c) Any officer of this state who is subject to removal from office by means of impeachment shall be subject to such removal for violation of Subsection (a) of this section and any other officer or any employee of the state who shall violate Subsection (a) of this section shall be dismissed immediately from any employment by the state.

ARTICLE 5. BUILDING CONSTRUCTION ADMINISTRATION

Acquisition, Construction, Etc.

Sec. 5.01. (a) Under such terms and conditions as may be provided by law, the commission may acquire necessary real and personal property, modernize, remodel, build, and equip buildings for state purposes, and make contracts necessary to carry out and effectuate the purposes herein mentioned in keeping with appropriations authorized by the legislature. The commission shall not sell or dispose of any real property of the state except by specific authority from the legislature.

(b) In acquiring real property for the use of state agencies, the commission shall give first consideration to any structures that have been designated Recorded Texas Historic Landmarks as provided by Section 12, Chapter 500, Acts of the 55th Legislature, Regular Session, 1957, as amended (Article 6145, Vernon's Texas Civil Statutes), or that have been listed in the National Register of Historic Places established by 16 U.S.C. Section 470a (1974), or that have been designated landmarks by the local governing authority, if the structure meets requirements and specifications and the cost is not substantially higher than other available structures that meet requirements and specifications.

Contracts; Analyses

Sec. 5.02. (a) The commission is authorized to take any action and enter into any contracts to obtain sites which it deems necessary in order to provide for the orderly future development of the state building program insofar as appropriations permit.

(b) The commission may call upon the State Department of Highways and Public Transportation to make appropriate tests and analyses of the natural materials at the site of each building constructed under the terms of this article to insure that foundations of said buildings will be adequate for the life of the buildings.

Eminent Domain

Sec. 5.03. The commission shall have and may exercise the power of eminent domain under the general laws to obtain sites for buildings.

Title, Initial Occupants

Sec. 5.04. The commission shall obtain title for the state and retain control of the real property acquired for sites and of the buildings located thereon. The initial occupants of buildings shall be those state agencies determined by the commission or the legislature. This section shall apply to all new state buildings constructed heretofore or that may be constructed hereafter in Austin by the commission.

Assistance from Agencies

Sec. 5.05. The commission shall have the authority to call on any department of state government to assist it in carrying out the provisions of this article.

Monuments, Memorials

Sec. 5.06. Monuments or memorials for the Texas heroes of the Confederate States of America and the Texas War for Independence, or to commemorate any other event or person of historical significance to Texans and the State of Texas may be erected on land owned or acquired by the state or, if suitable contracts can be made for permanent preservation of such monuments or memorials, on pri-

vate property or on land owned by the federal government or by other states. The locating and marking of graves of such Texans is hereby authorized. The commission is further authorized to maintain and shall be responsible for the continuing maintenance of the monuments and memorials erected by the State of Texas to commemorate the Centenary of Texas Independence. Before erection of any new monument or memorial the commission shall obtain the approval of the Texas Historical Commission as to the form, dimensions, substance of, and inscriptions or illustrations upon such monuments or memorials.

Contracts with Historical Commission

Sec. 5.07. The commission is authorized to negotiate and contract with the Texas Historical Commission for the purpose of assisting and advising the commission with regard to the proper memorials and monuments to be erected, repaired, and removed to new locations, the selection of sites therefor, and the locating and marking of graves.

Acquisition of Historic Buildings, Etc.

Sec. 5.08. The commission is authorized to acquire by gift, devise, purchase, or by its general power of eminent domain, any lands on which are situated historic buildings, sites, or landmarks of statewide historical significance associated with historic events or personalities, or prehistoric ruins, burial grounds, archaeological or vertebrate paleontological sites, sites including fossilized footprints, inscriptions made by human agency, or any other archaeological, paleontological, or historical feature, within the limits of the State of Texas. The right of eminent domain conferred above as relating to historical sites, buildings, and structures shall not be exercised except upon a proper showing that it is necessary to prevent destruction or deterioration of the historical site, building, or structure. The commission is authorized to request from the Texas Historical Commission a certification or authentication of the worthiness of preservation of the features listed above.

Archives

Sec. 5.09. The commission may, in its discretion, provide for the storage and display of the archives of Texas.

Construction in Other Cities

Sec. 5.10. (a) The commission is authorized and empowered to select and purchase sites in any of the cities of Texas on which to construct state office buildings and adjoining parking lots where such are deemed necessary to house state departments and agencies in said cities, and is further authorized and empowered to plan, construct, and initially equip state office buildings together with adjoining parking space on each such site selected and purchased.

(b) The commission is further authorized and empowered to enter into lease agreements with departments, commissions, boards, agencies, and other instrumentalities of the State of Texas, political subdivisions of the State of Texas, and the federal government or its instrumentalities concerning the space in the office building which is the subject of this article. The commission is specifically denied the power to lease space in said building to individuals, private corporations or associations, partnerships, or any other private interests.

Grant of Easements and Rights-of-way

Sec. 5.11. The commission is authorized and empowered to grant such permanent and temporary easements and rights-of-way over and on lands of any state agency on any project administered by the commission as shall be necessary to insure the efficient and expeditious construction, improvement, renovation, use, and operation of such state agency project building or facility.

Definitions

Sec. 5.12. The following terms whenever used or referred to in this article shall have the following meanings, except in those instances where the context clearly indicates otherwise:

(1) "Using agency" means any instrumentality of the state which shall occupy and make use of a state-owned or state-leased building, and for the purpose of this article the commission shall be considered as the using agency for the state capitol, the governor's mansion and for all other state-owned buildings maintained by the commission.

(2) "Commission" means the State Purchasing and General Services Commission.

(3) "Project" means any building construction project, other than those specifically excluded by Sections 5.13 and 5.14 of this article, which shall be financed in whole or in part by specific appropriation, bond issue or federal funds. The term "project" shall include the construction of any building or any structure or any facility or utility appurtenant thereto, including original equipment and original furnishings thereof, and of any addition to, alteration, rehabilitation, or repair of any existing building or any structure, or any facility or utility appurtenant thereto.

(4) "Project analysis" refers to work done prior to legislative appropriation for a project for the purpose of developing a reliable estimate of the cost of a project to be requested of the legislature.

(5) "Cost of a project" includes, but shall not be limited to, the cost of all real estate, properties, rights and easements acquired, utility services, site development, the cost of construction and the initial furnishing and equipment thereof, all architectural and engineering and legal expenses, the cost

of surveys and plans and specifications, and such other expenses, including those incurred by the commission, as are necessary or incident to determining the feasibility or practicability of any project.

(6) "Construction" means and includes acquisition, construction, and reconstruction.

(7) "Rehabilitation" means and includes renewal, restoration, extension, enlargement, and improvement.

(8) "Equipment" and "furnishings" mean and include any equipment and furnishings whatsoever as may be necessary and required for the use of a project.

(9) "Architect/engineer" means a person registered as an architect pursuant to Chapter 478, Acts of the 45th Legislature, Regular Session, 1937, as amended (compiled as Article 249a of Vernon's Texas Civil Statutes), and/or a person registered as a professional engineer pursuant to Chapter 404, Acts of the 45th Legislature, Regular Session, 1937, as amended (compiled as Article 3271a of Vernon's Texas Civil Statutes), employed to provide professional architectural or engineering services and having overall responsibility for the design of a project. The term "architect/engineer" standing by itself may, unless the context clearly indicates otherwise, mean either an architect/engineer employed by the commission on a salary basis or an architect/engineer in private practice retained for a specific project under a contractual agreement with the commission. The term "private architect/engineer" shall specifically and exclusively refer to a registered architect or a registered engineer in private practice retained for a specific project under a contractual agreement with the commission.

(10) "Stage construction" means the construction of a project in phases, each phase resulting in one or more buildings or structures which individually or together shall be capable of use regardless of whether subsequent phases of the project are authorized or not.

Application of Article

Sec. 5.13. (a) This article shall apply to all building construction projects as herein defined which may be undertaken by the state, with the following exceptions:

(1) all projects constructed by and for the State Department of Highways and Public Transportation;

(2) all projects constructed by and for state institutions of higher education;

(3) all projects constructed by and for the Texas Department of Corrections;

(4) pens, sheds, and ancillary buildings constructed by and for the Texas Department of Agriculture for the processing of livestock prior to export;

(5) all projects of repair and rehabilitation, except major renovations, of buildings and grounds on the commission inventory;

(6) all projects constructed by the Parks and Wildlife Department; and

(7) repair and rehabilitation projects of any other using agency, provided all labor for such projects is provided by the regular maintenance forces of the using agency under specific legislative authorization, and provided further, that such projects do not require the advance preparation of working plans and/or drawings.

(b) Nothing in this section shall be construed as prohibiting the commission from undertaking a project excluded by this section under an interagency agreement originated by the appropriate using agency, and provided further, that nothing in this section shall be construed as exempting any agency or institution from the requirements of Section 5.31 of this article.

(c) In addition to the exclusions enumerated in this section, the commission may, by regulation, exclude repair and rehabilitation projects involving the use of contract labor, provided such projects do not require the advance preparation of working plans and drawings.

Additional Exclusions

Sec. 5.14. In addition to the projects excluded by Section 5.13 of this article, it is specifically provided that nothing in this article shall apply to:

(1) projects constructed by or under the supervision of any public authorities created by the laws of this state; or

(2) state-aided local government projects of any character whatsoever.

Administration

Sec. 5.15. (a) The commission is designated as the administering agency and shall exercise the powers and duties conferred upon it by this article. The commission shall be the coordinating authority for the construction of any multiagency state office buildings which the legislature may authorize.

(b) The commission shall, subject to the provisions of the appropriations act and such general laws as may apply, employ professional, technical, and clerical personnel.

(c) The commission shall appoint a director of planning and construction who shall be a registered architect or a registered professional engineer and shall have proven administrative ability and experience in the fields of building design and construc-

tion. The director shall be the full-time executive and administrative officer of the commission which shall delegate to him such power, authority, and duties as it may deem necessary and proper.

(d) The commission may assign a qualified professional employee to any using agency where the volume of construction projects is such that the commission and the using agency agree that full-time coordination between the commission and the using agency is desirable. The commission and the using agency shall mutually agree upon the qualifications and duties of such assigned employees and the salary and related expenses of such assigned employees shall be charged against the projects of the using agency to which they are assigned. Such assignments shall be terminated whenever in the opinion of the commission they are no longer required.

(e) The commission may promulgate rules and regulations necessary to implement the powers, duties, and responsibilities imposed upon it by this article. The rules and regulations shall be binding on all state agencies upon being filed with the secretary of state. The commission shall prepare and publish a manual to assist using agencies in complying with the provisions of this article and the rules and regulations of the commission. Copies of the manual shall be distributed to all using agencies and shall be available to architects, engineers, contractors, and others who may need and request a copy of it.

(f) Legal representation of the commission shall be performed by the Attorney General of Texas. This provision shall not restrict the attorney general from employing special assistants to assist in the performance of duties arising by virtue of the provisions of this article in those instances where the attorney general deems such employment necessary.

(g) Venue of all suits for any breach of contract entered into pursuant to the provisions of this article shall be in Travis County, Texas.

(h) The commission may waive, suspend, or modify any provision of this article which shall be in conflict with any federal statute or any rule, regulation, or administrative procedure of any federal agency where such waiver, suspension, or modification shall be essential to the receipt of federal funds for any project. In the case of any project wholly financed from federal funds, any standards required by the enabling federal statute or required by the rules and regulations of the administering federal agency shall be controlling.

Project Analysis

Sec. 5.16. (a) Each using agency of the state which shall desire any project, other than those specifically excluded by Sections 5.13 and 5.14 of this article, shall prepare and submit to the commission a

general description of the project. The commission shall cause all such projects to be studied and shall initiate the preparation of a project analysis for all new construction projects and for all other projects where, in the opinion of the commission, the cost of preparing a project analysis is justified.

(b) A project analysis may be prepared by a private architect/engineer employed by the commission or, at its discretion, by the commission's staff. A private architect/engineer employed for the purpose of preparing a project analysis shall be selected by the method set forth in Section 5.22 of this article and shall be paid from the State Building Construction Planning Fund established by Section 5.24 of this article. The contract to prepare a project analysis shall specify that the analysis shall become the property of the commission.

(c) A project analysis shall consist of (1) a complete description of the facility or project together with a justification of such facility or project prepared by the using agency, (2) a detailed estimate of the amount of space needed to meet the needs of the using agency and to allow for realistic future growth, (3) a description of the proposed facility prepared by an architect/engineer and including schematic plans and outline specifications describing the type of construction and probable materials to be used, sufficient to establish the general scope and quality of construction, (4) an estimate of the probable cost of construction, (5) a description of the proposed site of the project and an estimate of the cost of site preparation, and (6) an overall estimate of the cost of the project. All estimates involved in the preparation of a project analysis shall be carefully and fully documented and incorporated into the project analysis.

Throughout the preparation of the project analysis, the commission and any private architect/engineer employed by the commission shall work closely and cooperatively with the using agency to the end that the project analysis shall fully reflect the needs of the using agency.

The using agency shall use the cost of the project as determined by such project analysis as the basis of its request to the budget offices of this state.

(d) In the case of projects where, in the opinion of the commission, the cost of a project analysis is not justified or required, the commission shall, in cooperation with the using agency, develop a realistic estimate of the cost of the project. When necessary, the commission shall arrange for an on-site inspection and analysis of the proposed project by a member of its staff. The using agency shall be informed of the cost estimate so developed and shall use such estimate as the basis of its request to the budget offices of this state.

(e) On or before a date to be specified by the budget agencies of this state in each year immediately preceding a regular session of the legislature, the commission shall submit to the budget agencies a report listing all projects requested pursuant to this section. The list shall contain (1) a brief and specific justification of each project as prepared by the using agency, (2) a summary of the project analysis where one was made or a statement briefly describing the cost-estimating method used for projects for which a project analysis was not made, (3) a project cost estimate developed in accordance with the provisions of this section, with sufficient detail given to afford the budget agencies, the governor, and the legislature the widest possible latitude in developing policy in regard to each such project request, (4) an estimate, prepared by the commission with the cooperation of the using agency and with the cooperation of the private architect/engineer employed, of the annual cost of maintaining the completed project including the estimated cost of utility services, and (5) an estimate, prepared by the using agency, of the annual cost of staffing and operating the completed project exclusive of maintenance cost. Where appropriate, the commission, with the approval of the using agency, may indicate the feasibility of stage construction of a requested project and may indicate the degree to which funds would be required in the next biennium if the project were undertaken in stages.

(f) Whenever any using agency shall request three or more projects, it shall designate its priority rating for each project. The budget agencies shall, with the cooperation of the commission, develop detailed instructions to implement this priority system and the commission's report shall show the designated priority of each project to which a priority rating has been assigned.

Legislative Authorizations and Appropriations

Sec. 5.17. (a) The legislature shall authorize and appropriate for such projects as it may approve. Project appropriations shall be made directly to the using agency except in those instances where the project is to be constructed by the commission in which case the appropriation shall be made to the commission.

(b) The appropriation of funds by the legislature for the construction of a project shall be construed by the commission and the using agency as an expression of legislative intent that the project be completed within the limits of the funds actually appropriated. In the event that the funds appropriated are less than the amount originally requested or if, for any reason, the funds appropriated are less than the amount required for the project as originally submitted to the budget agencies, the commission and the using agency shall jointly confer on ways

and means whereby the project cost can be brought within the bounds of the funds appropriated and shall, in such conferences, make every effort to comply with legislative intent with regard to modification of the project from the original request. In the event that it is impossible to modify the project to bring the cost within the amount appropriated, the commission shall notify the using agency that it considers such project as cancelled.

When authorized by the act appropriating funds for a project, the using agency may appeal the decision of the commission to the governor by submitting a request that the project be undertaken as stage construction or that the funds available for such project be supplemented by the transfer of funds appropriated to the same using agency for other projects of equal or lower priority or from the unused contingency reserves of any project of the same using agency. The governor shall, after obtaining the advice of the Legislative Budget Board, rule on such request and if the ruling shall favor the agency, the commission shall proceed with the project.

(c) The legislature may, by specific provision, provide for stage construction of a project and in such event the commission shall proceed with the project through the specifically authorized stage.

Fine Arts Projects

Sec. 5.18. (a) Any using agency which requests a project analysis by the commission, if the cost of the project is estimated to exceed \$250,000, may stipulate that a percentage of the original project cost estimate not to exceed one percent shall be used for fine arts projects at or near the site of the building construction project, such as murals, fountains, mosaics, and other aesthetic improvements.

(b) If the expenditures for fine arts are authorized and appropriated by the legislature, the commission shall consult and cooperate with the Texas Commission on the Arts and Humanities for advice in determining how to utilize the portion of the appropriation to be used for fine arts projects.

(c) It is the intent of the legislature that emphasis be placed on works by living Texas artists whenever feasible. Consideration shall be given to artists of all ethnic origins.

(d) Nothing in this section is intended to limit, restrict, or otherwise prohibit the commission from including expenditures for fine arts in its original project cost estimate.

Fine Arts Projects Exempt Agencies

Sec. 5.19. (a) Any using agency exempt under Section 5.13 of this article and any county, city, or other political subdivision of this state undertaking a public construction project estimated to cost in ex-

cess of \$250,000 may designate that a percentage not to exceed one percent of the cost of a public construction project shall be used for fine arts projects at or near the site of the construction project.

(b) The agency or the governing body of a political subdivision may consult and cooperate with the Texas Commission on the Arts and Humanities for advice in determining how to utilize the portion of the cost set aside for fine arts purposes.

(c) The Texas Commission on the Arts and Humanities shall place emphasis on works by living Texas artists whenever feasible, and when consulting with the governing body of a political subdivision, shall place emphasis on works by artists who reside in or near the political subdivision. Consideration shall be given to artists of all ethnic origins.

Preliminary Plans, Working Plans; Specifications

Sec. 5.20. (a) Preliminary plans and outline specifications and working plans and specifications for all projects shall be prepared either by a private architect/engineer selected and appointed by the commission in accordance with Section 5.22 of this article, or by the professional staff of the commission, provided, however, that a private architect/engineer shall be appointed for any new construction project estimated to cost in excess of \$100,000 and for any new construction project for which the using agency requests that a private architect/engineer be selected and appointed. In either case, plans and specifications shall be approved by the commission, and shall not be accepted or used by the using agency without such approval. The commission shall see that plans and specifications (1) are clear and complete; (2) permit execution of the project with appropriate economy and efficiency; and (3) conform with the requirements set forth in the project analysis previously prepared.

(b) The commission shall appoint a design advisory panel to advise the commission and the using agency on the design concept and aesthetic merits of plans submitted by an architect/engineer; provided, however, that the final decision on such matters shall rest with the commission. The design advisory panel shall consist of five persons, two of whom shall be selected from a list of nominees submitted by the Texas Society of Architects, two of whom (one a structural engineer and the other a mechanical-electrical engineer) shall be selected from a list of nominees submitted by the Texas Society of Professional Engineers, and one of whom shall be neither an architect nor an engineer and who shall serve as chairman of the panel. Members of the panel shall serve for two years and shall be eligible for reappointment and the commission shall promulgate regulations to provide for an orderly rotation of membership which may specify a shorter term of office

for the original appointees. The members of the panel shall serve without compensation, but may be reimbursed for their necessary and actual expenses out of the appropriations to the commission. No member of the panel shall, during the period of his service, advise on any project in which he is employed, retained, or in any manner financially interested. The panel shall have no responsibility for reviewing the plans and specifications other than to the extent set forth in this subsection.

(c) Following final approval of the working plans and specifications and their acceptance by the using agency, the commission shall cause to be advertised in not less than two newspapers of general circulation for bids or proposals for performance of the construction and related work on the project. Subject to the applicable provisions of other law respecting the award of state contracts, the contract or contracts shall be awarded to the qualified bidder making the lowest and best bid; but no contract shall be awarded for a sum in excess of the amount which the comptroller shall certify to be available for such project. The commission shall have the right to reject any and all bids.

(d) Before a contract is awarded for the major repair or renovation of a state structure which has been designated by the Texas Historical Commission as a Recorded Texas Historic Landmark, the commission shall forward to the Texas Historical Commission a copy of the bids received and an evaluation of the qualifications of the bidders. The Texas Historical Commission shall review the bids and qualifications of the bidders and recommend to the commission the bidder to which the award should be made. Based on the recommendation of the Texas Historical Commission, the commission may award the contract to a bidder other than the lowest bidder.

(e) Upon notice and on itemized statements by the commission:

(1) the comptroller shall transfer from each project appropriation to the State Building Construction Planning Fund created by Section 5.24 of this article an amount certified by the commission as sufficient to reimburse the planning fund for prior expenditures on behalf of the project; and

(2) the comptroller shall reserve from each project appropriation an amount estimated by the commission to be sufficient to cover contingencies over and above all amounts obligated by contract or otherwise, for planning, engineering, and architectural work, site acquisition and development, and construction, equipment, and furnishings contracts. The amount so reserved shall be used only upon the following conditions:

(A) that the architect/engineer or the contractor recommend and justify the proposed contingency expenditures by submitting a change order request;

(B) that the proposed change order request be approved by the architect/engineer;

(C) that the proposed change order request be approved by the using agency which shall make formal request for the allocation of funds from the contingency reserve; and

(D) that the director of planning and construction shall investigate the nature of the change order and concur in the necessity of the proposed expenditure or refuse same within 15 days after receiving the request.

In the event the director shall refuse to concur in a proposed contingency expenditure, the using agency may appeal to the commission and the findings of the commission shall be final. The commission shall promulgate regulations setting forth the procedures for such appeals.

If an approved change order shall result in a reduction of construction cost, the contingency reserve shall be increased by the amount of such reduction.

(f) The comptroller of public accounts shall issue warrants in payment of progress payments as well as final payments on construction under this article upon the written approval of the commission.

(g) Any equipment and furnishings not constructed or installed under the construction contract or contracts shall be acquired through regular purchasing channels of the state.

Project Construction Inspection

Sec. 5.21. The commission shall be responsible for protecting the interests of the state during the actual construction of each project covered by the provisions of this article. Construction inspection shall fall into three categories: detailed inspection, general inspection, and professional inspection, as defined and provided for in this section.

(1) Detailed inspection shall mean the close, technical, on-site examination of the materials, structure, and equipment, and surveillance of the workmanship and methods used to insure reasonably that the project is accomplished in compliance with information given by the contract documents and good construction practices by one or more full-time personnel at the project site. The commission shall be the sole judge of when detailed inspection is required and shall base its decision on the size and complexity of the project.

The full cost of detailed inspection shall be a charge against the project.

Detailed inspection shall be exercised by a project construction inspector who shall be appointed by the architect/engineer with the approval of the commission.

The project construction inspector shall:

(A) become thoroughly conversant with the drawings, specifications, details, and general conditions for executing the work;

(B) keep such records of the work as the architect/engineer and the commission may specify and require and make such reports to the architect/engineer with copies to the commission and the using agency as the architect/engineer and the commission may specify and require and maintain copies of these records and reports at the site of construction together with the plans, specifications, shop drawings, change orders, and correspondence dealing with the project;

(C) endeavor to see that the requirements of the contract documents are being carried out by the contractor;

(D) endeavor to see that all authorized changes are properly incorporated in the work and that no changes are made unless properly authorized;

(E) notify the architect/engineer if conditions encountered at the project are at variance with the contract documents and comply with the directives of the architect/engineer in endeavoring to correct these conditions;

(F) review shop drawings in relation to their adaptability to job conditions and advise the architect/engineer in respect thereto;

(G) endeavor to see that materials and equipment furnished are in accordance with the specifications;

(H) see that records are kept, on construction plans, of the principal elements of mechanical and electrical systems;

(I) see that accurate records are kept of all underground utility installations (including existing installations uncovered in the process of construction) at the project site so that the information may be recorded on site plans or drawings which may be established and maintained by the commission and/or the using agency;

(J) keep a daily written log of all significant happenings on the job, the log to include the number of workers that worked that particular day and weather conditions that existed during the day;

(K) observe and give prompt written notice to the construction contractor's representative and the architect/engineer of any noncompliance on the part of the contractor's representative with any contract documents and notify the architect/engineer and the commission of any failure to take corrective measures promptly;

(L) initiate, attend, and participate in progress meetings and inspections with the contractor;

(M) review every contractor's invoice against the value of partially completed or completed work and the materials stored at the project site prior to its being forwarded to the architect/engineer and promptly notify the architect/engineer of any discrepancy between his review of the work and the invoice; and

(N) be responsible to the architect/engineer for the proper administration of the duties enumerated herein and comply with other instructions and assignments of the architect/engineer.

(2) General inspection shall mean the examination and inspection of the project at periodic intervals by employees of the commission. On projects where a project construction inspector is employed by an architect/engineer, the general inspector shall work with and through the project construction inspector and the architect/engineer. On all other projects, the general inspector shall work with and through the architect/engineer and shall exercise such detailed inspection functions as the commission may require. The cost of general inspection shall be a charge against the project.

(3) Professional inspection shall mean the periodic examination of all elements of the project to reasonably insure that these meet the performance and design features and the technical and functional requirements of the contract documents. Professional inspection shall be exercised by the architect/engineer or his authorized representative who shall:

(A) assist the commission in obtaining proposals from contractors and in awarding and preparing construction contracts, be responsible for the interpretation of the contract documents and any changes made thereto, and provide such interpretation of the plans and specifications as may be required during the construction phase;

(B) check and approve samples, schedules, shop drawings, and other submissions only for conformance with the design concept of the project and for compliance with the information given by contract documents;

(C) approve or disapprove all change order requests and, subject to the provisions of Section 5.20 of this article, prepare all change orders;

(D) assemble all written guarantees required of the contractors;

(E) make periodic visits to the site of the project to become generally familiar with the progress and quality of the work and to determine in general if the work is proceeding in accordance with the contract documents, the amount of time that such on-site inspections shall entail to be determined by dividing the total compensation for professional services, exclusive of payments for detailed inspection, by 100 with the result being expressed as the number of hours to be devoted to on-site inspections, project conferences with the contractor and others, and travel to and from such inspections and conferences;

(F) make a written inspection report after each visit to the project and send a copy of such report to the contractor and to the commission;

(G) keep the commission informed of the progress of the work and endeavor to guard against defects and deficiencies in the work of contractors;

(H) determine periodically the amount owing to the contractors and recommend payment of such amounts to the commission, the recommendation to constitute a representation to the commission that, based upon observations and other pertinent data, the work has progressed to the point indicated and also to constitute a representation to the commission on the part of the architect/engineer that, to the best of his knowledge, information and belief, the quality of the work is in accordance with the plans, specifications, and contract documents; and

(I) conduct inspections to determine the dates of substantial and final completion and notify the commission and the using agency of findings in this respect.

(4) In the event that the commission requires full-time detailed inspection of the construction of a project, the architect/engineer shall select, subject to the commission's approval, the project construction inspector and shall be responsible for the proper administration of the duties enumerated under Subdivision (1) of this section. He shall pay the salary of the project construction inspector and shall be reimbursed for all such salary costs plus expenses of overhead directly applicable to such salary.

(5) Nothing in Subdivision (3) shall be construed as requiring the architect/engineer to assume responsibility for or to guarantee the complete adherence of the contractor to the plans and specifications and contract documents nor shall anything in Subdivision (3) be construed as requiring that the architect/engineer shall be liable for defects in construction.

(6) It is the responsibility of the architect/engineer to furnish the professional inspection of a project and when a private architect/engineer is employed, the fee paid such architect/engineer shall be deemed to cover professional inspection, provided, however, that such fee shall not be deemed to cover the additional cost of detailed inspection over and above the administrative duties specifically encompassed by Subdivision (4) of this section. In projects where the commission's staff serves as architect/engineer, the commission shall be responsible for professional supervision and the cost of such supervision shall be a charge against the project.

Selection of Architects/Engineers

Sec. 5.22. (a) The commission shall establish and maintain a file of all qualified private architects/engineers who express an interest in state building construction projects. The file shall contain such information as the commission shall deem essential

and desirable together with brochures and exhibits submitted by each private architect/engineer. Each private architect/engineer may submit additional brochures, exhibits, and information as he may deem necessary and that may be in accordance with his ethical practice in order that his file shall be current at all times. The files shall be open to the inspection of any using agency.

(b) Ultimate responsibility for the selection of a private architect/engineer employed for any project covered by the provisions of this article shall be vested in the commission. In recognition of the close working relationship which must exist between the architect/engineer and the using agency, the commission shall request the using agency to make recommendations regarding private architects/engineers and the using agency which desires to take advantage of such opportunity shall submit to the commission the names of three private architects/engineers designating its order of preference. The commission shall consider the using agency recommendations in order of preference and shall not reject such recommendations without good and sufficient reason set forth in writing to the using agency. In the event that the commission rejects all of the using agency recommendations, the using agency shall prepare and submit a new list.

(c) If the using agency does not choose to submit recommendations, it shall request the commission to proceed to select a private architect/engineer in accordance with the generally accepted standards for such selection and in conformity with the ethical standards of the professional societies of such architects/engineers.

Compensation of Architects/Engineers

Sec. 5.23. Private architects/engineers employed by the commission shall be compensated in accordance with the following provisions:

(1) the compensation for new projects and rehabilitation projects shall be established by the commission on the basis of studies of the compensation paid within the state by private clients for projects of comparable size and complexity, provided that such compensation shall not exceed the minimum recommended for similar projects by the Texas Society of Architects in instances where the private architect/engineer is an architect or the minimum recommended by the Texas Society of Professional Engineers in instances where the private architect/engineer is an engineer. The compensation established by the commission shall be deemed to cover all professional services to be rendered by the private architect/engineer including professional inspection as that term is defined in Section 5.21 of this article. On any project where the commission requires detailed inspection, as defined by Section 5.21 of this

article, the compensation shall be increased by the actual cost of providing such detailed inspection;

(2) the compensation for preparation of a project analysis as required by Section 5.16 of this article shall not exceed one percent of the estimated cost of construction. In the event the project is approved by the legislature in substantially the form originally requested and the same private architect/engineer is employed for the subsequent phases of design, the compensation paid under this subdivision shall be deducted from the compensation paid under the provisions of Subdivision (1) of this section; and

(3) the state shall furnish detailed information on space requirements and relationships and the justification for, use of, and general requirements to be met by the project. The state shall furnish a complete site survey and soil analysis.

Planning Fund

Sec. 5.24. There is hereby created in the state treasury a special fund to be known as the State Building Construction Planning Fund which shall be used to make payments for engineering, architectural, and other planning expenses necessary to make a project analysis in accordance with the provisions of Section 5.16 of this article. The commission shall authorize all payments made from the planning fund. The payments shall be a first charge against the project for which they were drawn and the amount so paid shall be credited to and transferred to the planning fund at such time as the legislature may approve the project and appropriate funds for its construction.

Final Inspection

Sec. 5.25. (a) The commission shall be responsible for directing final payment for work done on each project. If upon final inspection of any project it shall be found that the plans, specifications, contract, or change orders for the project shall not have been fully complied with, the commission shall, until such compliance shall have been effected or adjustments satisfactory to it shall have been made, refuse to direct such payment.

(b) The final inspection shall consist of an on-site inspection by the architect/engineer, a representative of the commission, a representative of the using agency, and a representative or representatives of the contractor or contractors. The final inspection shall be scheduled by the commission upon notification by the architect/engineer within 10 days after the architect/engineer has notified the commission that the contract has been performed according to the plans and specifications.

(c) Upon completion of the project the commission shall release the same to the using agency. The commission shall be responsible for making an inspection of the project prior to the expiration of the

guarantee period to observe any defects which may appear within one year after completion of the contract. The commission shall give prompt written notice to the contractor of defects which are due to faulty materials and workmanship. Nothing in this subsection shall be construed as requiring the contractor to assume responsibility for or guarantee any defects other than those due to faulty materials or workmanship or failure on his part to adhere to the contract documents.

Uniform General Conditions

Sec. 5.26. (a) The commission shall adopt and maintain a uniform set of general conditions to be incorporated into all building construction contracts executed by the State of Texas, including those pertaining to projects otherwise excluded from the provisions of this article by Section 5.13 but not including those excluded by Section 5.14 of this article.

(b) The commission shall cause the uniform general conditions of state building construction contracts to be reviewed whenever in its opinion such review is desirable, but in no event less frequently than once every five years. The review shall be made by a committee appointed by the commission consisting of the director of planning and construction who shall serve ex officio as chairman of the committee and who shall vote only in the event of a tie; two persons appointed by the commission from a list of nominees submitted to it by the President of the Texas Society of Architects; two persons appointed by the commission from a list of nominees submitted to it by the President of the Texas Society of Professional Engineers; and two persons appointed by the commission from a list of nominees submitted to it by the Chairman of the Executive Council of the Texas Associated General Contractors Chapters; and two persons appointed by the commission from the list of nominees submitted to it by the Executive Secretary of the Mechanical Contractors Associations of Texas, Incorporated. Members of any review committee appointed pursuant to this subsection shall serve without compensation but may be reimbursed for their necessary and actual expenses.

Energy Conservation Standards

Sec. 5.27. (a) In addition to the uniform set of general conditions provided for in Section 5.26 of this article, the commission shall adopt and publish energy conservation design standards that all new state buildings, including buildings of state-supported institutions of higher education, are required to meet. These standards shall include both performance and procedural standards for maximum energy conservation allowed by the latest and most effective technology consistent with the requirements of public health and safety regulations and economic considerations.

(b) The standards shall be promulgated in terms of energy consumption allotments and shall take into consideration the various classes of building uses. Performance standards shall allow for design flexibility since only the total allotment of energy is prescribed.

(c) Procedural standards shall be directed toward specific design and building practices that produce good thermal resistance and low air leakage and toward requiring practices in the design of mechanical and electrical systems which conserve energy. The procedural standards shall address, when applicable, the following items:

- (1) insulation;
- (2) lighting, according to the lighting necessary for the tasks for which each area is intended to be used;
- (3) ventilation;
- (4) the potential use of new systems for saving energy in ventilation, climate control, and other areas; and
- (5) any other item which the commission deems appropriate.

Energy Conservation Standards by Other Entities

Sec. 5.28. (a) The boards of regents and boards or governing bodies of state agencies, commissions, and institutions exempted by Section 5.13 of this article shall adopt and publish energy conservation design standards as provided in Section 5.27 of this article for all new buildings under their authority. The standards shall be consistent with those promulgated by the commission for other state buildings and be prepared in cooperation and consultation with the commission and the Governor's Energy Advisory Council.

(b) The commission shall assist the boards and governing bodies of state agencies, commissions, and institutions subject to the provisions of Subsection (a) of this section with the preparation of energy conservation standards by providing technical assistance and advice.

Model Energy Conservation Codes

Sec. 5.29. The commission, after consultation with the Governor's Energy Advisory Council and the Texas Department of Community Affairs, shall prepare model energy conservation building codes and make them available for use by cities in enacting or amending their ordinances.

Energy Conservation Manual

Sec. 5.30. (a) The commission shall produce and publish an energy conservation manual for potential use by designers, builders, and contractors of residential and nonresidential buildings. The manual shall be furnished on request at a reasonable price

sufficient to cover the costs of printing and help defray research costs in establishing design standards. The manual shall contain the following:

- (1) guidelines for energy conservation established by the commission;
- (2) forms, charts, tables, and other data to assist designers and builders in meeting the guidelines;
- (3) design suggestions for meeting or exceeding the guidelines; and
- (4) any other information which the commission finds will assist persons to become familiar with the latest technologies that they might use in meeting the guidelines.

(b) The manual shall be updated periodically as significant new energy conservation information becomes available.

Compilation of Construction and Maintenance Information

Sec. 5.31. (a) For the purpose of providing the governor, the legislature, and the budget offices of the state with current information on the status of state-owned buildings, and for the purpose of obtaining up-to-date information on construction costs, the commission shall biennially obtain from all using agencies a list of all state-owned buildings showing the year of completion, the general type of construction, size, usage, and general condition of each. In addition the commission shall, for all buildings completed from and after the effective date of this Act, obtain from all using agencies data showing the total cost of the project and the cost of construction together with such data as may be necessary to enable a meaningful comparison to be made on the cost of buildings of like nature.

(b) For the purpose of obtaining up-to-date information on maintenance data, the commission shall obtain biennially from all using agencies information on the cost of heating, cooling, and maintaining all buildings owned by the state.

(c) The commission shall summarize its findings in a report to be made available to the governor, the legislature, and the budget offices of this state. All state agencies, departments, and institutions shall cooperate with the commission in providing the information necessary for said report.

ARTICLE 6. LEASE OF SPACE FOR STATE AGENCIES

Definitions

Sec. 6.01. In this article:

- (1) "Commission" means the State Purchasing and General Services Commission.
- (2) "State agency" means a board, a commission, a department, an office, or other agency of the state government.

Determinations and Standards

Sec. 6.02. (a) When a state agency needs space to carry on its functions, the head of the agency or his or her designee shall submit a written request for the space to the commission.

(b) After consulting the state agency regarding the amount and type of space requested, the commission shall determine whether a need for the space exists and, if so, the specifications to be used in obtaining the space.

(c) The commission shall adopt standards regarding the uses of and the needs for space by state agencies and the types of space needed by state agencies.

Sharing Space

Sec. 6.03. The commission may consolidate the requests for space of two or more state agencies with similar needs and obtain space and allocate space so that it can be shared by the agencies.

Preference for State-owned Space

Sec. 6.04. In filling a request for space, the commission shall give a preference to available state-owned space.

Leasing Space from Other Sources

Sec. 6.05. (a) When state-owned space is not available and a state agency has verified that it has sufficient funds available to cover a lease of space, the commission may lease space for the agency from another source according to the provisions of this section and the specifications submitted by the state agency.

(b) The space may be leased from another state agency through an interagency contract or from the federal government or a political subdivision, including a county, a municipality, a school district, a water or irrigation district, a hospital district, a council of government, or a regional planning council, through a negotiated contract.

(c) The space may be leased from a private source through competitive bidding whenever possible, but the commission, with the approval of the state agency, may negotiate for the space when competition is not available.

(d) When competitive bidding is used, the commission shall take into consideration moving costs, the cost of time lost in moving, and other factors in determining the lowest and best bid.

The commission shall forward copies of all bids received to the leasing agency along with the commission's recommended award. If, after review of the bids and evaluation of all factors involved, the leasing agency determines that the bid selected by the commission is not in its opinion the lowest and best bid, it may file with the commission a written

recommendation, complete with justification and full explanation of all factors considered in arriving at the recommendation, that the award be made to a bidder other than the commission's recommended bidder.

The commission shall give full consideration to the agency recommendation and if it does not agree with the agency recommendation, it shall notify the agency in writing. The agency and the commission shall attempt to reach an agreement on the award.

If agreement is not reached within 30 days, all bids and pertinent documents shall be transmitted to the governor who shall designate the bidder to which the award shall be made.

(e) In any contract entered into by the commission for the lease of space under this article, the State of Texas, acting through the commission, is the lessee.

(f) The provisions of the lease contract shall reflect the provisions contained in the invitation for bids, the successful bid, and the award of the contract.

(g) The lease contract may provide for an original term not to exceed 10 years and may include options to renew for as many terms, not to exceed 10 years each, that the commission considers to be in the state's best interest, and when the contract contains no option to renew, the lease may be renewed once according to the same provisions that were in the original contract for a term not to exceed one year, on agreement of the parties.

(h) A lease contract is contingent on the availability of funds appropriated by the legislature to cover the provisions of the lease.

(i) The obligation of the lessor to provide lease space and of the commission to accept the space becomes binding on the award of the contract.

(j) In leasing space for the use of state agencies, the commission shall give first consideration to any structures that have been designated Recorded Texas Historic Landmarks as provided by Section 12, Chapter 500, Acts of the 55th Legislature, Regular Session, 1957, as amended (Article 6145, Vernon's Texas Civil Statutes), or that have been listed in the National Register of Historic Places established by 16 U.S.C. Section 470a (1974), or that have been designated landmarks by the local governing authority, if the structure meets requirements and specifications and the cost is not substantially higher than other available structures that meet requirements and specifications.

Elimination of Barriers to Handicapped Persons in State Buildings

Sec. 6.06. The commission may not enter a lease contract under this article unless it complies with the provisions of Article 7 of this Act.

Remedial Action against Lessor

Sec. 6.07. When a state agency occupies lease space and is aware of circumstances concerning the space which require remedial action against the lessor, the agency shall notify the commission, and the commission may investigate the circumstances and the lessor's performance under the contract. When the commission requests the assistance of the attorney general in protecting the state's interest under a lease contract, the attorney general shall assist the commission.

Certification of Funds

Sec. 6.08. At least 60 days before the beginning of each fiscal biennium during the term of a lease contract entered into under this article, the state agency occupying the leased space shall certify to the commission that funds are available to cover the lease.

Option to Purchase

Sec. 6.09. When the commission considers it advisable, the commission may lease space for a state agency by a contract which contains an option for the commission to purchase the space subject to the legislature's appropriation of funds for the purchase. A lease contract containing the option shall show the amount that will be accumulated by the commission and credited toward the purchase at various periods during the term of the lease and the purchase price of the property at the beginning of each fiscal biennium during the term of the lease.

Records

Sec. 6.10. In order to efficiently maintain a space management system, the commission shall maintain records of the amount and cost of space under lease by the commission and may collect other information that it considers necessary. All state agencies shall cooperate with the commission in securing this information.

Exemptions

Sec. 6.11. The provisions of this article do not apply to the acquisition of district office space for members of either house of the legislature or space to be used by the Texas Employment Commission.

Rules

Sec. 6.12. The commission shall promulgate rules necessary to administer its functions under this article.

ARTICLE 7. ARCHITECTURAL BARRIERS**Policy**

Sec. 7.01. The provisions of this article are to further the policy of the State of Texas to encourage and promote the rehabilitation of handicapped or disabled citizens and to eliminate, insofar as possible,

unnecessary barriers encountered by aged, handicapped, or disabled persons, whose ability to engage in gainful occupations or to achieve maximum personal independence is needlessly restricted when such persons cannot readily use public buildings.

Application

Sec. 7.02. (a) The standards and specifications adopted under this article shall apply to all buildings and facilities used by the public which are constructed in whole or in part by the use of state, county, or municipal funds, or the funds of any political subdivision of the state. To such extent as is not contraindicated by federal law or beyond the state's power of regulation, these standards shall also apply to buildings and facilities constructed in this state through partial or total use of federal funds. All buildings and facilities constructed in this state, or substantially renovated, modified, or altered, after the effective date of this article from any one of these funds or any combination thereof shall conform to each of the standards and specifications adopted under this article except where the governmental department, agency, or unit concerned shall determine, after taking all circumstances into consideration, that full compliance with any particular standard or specification is impracticable. Where it is determined that full compliance with any particular standard or specification is impractical, the reasons for such determination shall be set forth in written form by those making the determination and forwarded to the commission. If it is determined that full compliance is not practicable, there shall be substantial compliance with the standard or specification to the maximum extent practical, and the written record of the determination that it is impractical to comply fully with a particular standard or specification shall also set forth the extent to which an attempt will be made to comply substantially with the standard or specification.

(b) These standards and specifications shall be adhered to in those buildings and facilities under construction on the effective date of this article, unless the authority responsible for the construction shall determine that the construction has reached a state where compliance is impractical. This article shall apply to temporary or emergency construction as well as permanent buildings.

(c) These standards and specifications shall be adhered to in all buildings leased or rented in whole or in part for use by the state under any lease or rental agreement entered into on or after January 1, 1972. To such extent as is not contraindicated by federal law or beyond the power of the state's regulation, these standards shall also apply to buildings or facilities leased or rented for use by the state through partial or total use of federal funds. Facilities which are the subject of lease or rental agreements

on January 1, 1972, will not be required to meet standards and specifications for the term of the existing lease or rental agreement but must be brought into compliance before a lease or rental agreement is renewed. Where it is determined by the governmental department, agency, or unit concerned that full compliance with any particular standard is impractical, the reasons for such determination shall be set forth in written form by those making the determination and forwarded to the commission. If it is determined that full compliance is not practical, there shall be substantial compliance with the standard or specification to the maximum extent practical, and the written record of the determination that it is impractical to comply fully with a particular standard or specification shall also set forth the extent to which an attempt will be made to comply substantially with the standard or specification.

(d) These standards and specifications shall be adhered to in certain privately financed buildings, building elements, and improved areas which are open to public use for education, employment, transportation, or acquisition of goods and services, and which are constructed on or after January 1, 1978, in counties with a population of 50,000 or more. Such facilities include the following:

- (1) shopping centers which contain in excess of five separate mercantile establishments; compliance with accessibility standards and specifications relative to toilet rooms shall not apply unless the shopping center elects to have public toilet rooms;
- (2) transportation terminals;
- (3) theaters and auditoriums having a seating capacity for 200 or more patrons;
- (4) hospitals and related medical facilities which provide direct medical service to patients;
- (5) nursing homes and convalescent centers;
- (6) buildings or complexes containing an aggregate total of 20,000 or more square feet of recognizable office floor space;
- (7) funeral homes; and
- (8) commercial business and trade schools or colleges.

Scope

Sec. 7.03. (a) This article is concerned with non-ambulatory disabilities, semiambulatory disabilities, sight disabilities, hearing disabilities, disabilities of coordination, and aging.

(b) It is intended to make all buildings and facilities covered by this article accessible to, and functional for, the physically handicapped to, through, and within their doors, without loss of function, space, or facilities where the general public is concerned.

Definitions

Sec. 7.04. For the purpose of this article the following terms have the meanings as herein set forth:

(1) "Nonambulatory disabilities" means impairments that, regardless of cause or manifestation, for all practical purposes, confine individuals to wheelchairs.

(2) "Semiambulatory disabilities" means impairments that cause individuals to walk with difficulty or insecurity. Individuals using braces or crutches, amputees, arthritics, spastics, and those with pulmonary and cardiac ills may be semiambulatory. The listing here made is illustrative and shall not be construed as being exhaustive.

(3) "Sight disabilities" means total blindness or impairments affecting sight to the extent that the individual functioning in public areas is insecure or exposed to danger.

(4) "Hearing disabilities" means deafness or hearing handicaps that might make an individual insecure in a public area because he is unable to communicate or hear warning signals.

(5) "Disabilities of coordination" means faulty coordination or palsy from brain, spinal, or peripheral nerve injury.

(6) "Aging" means those manifestations of the aging processes that significantly reduce mobility, flexibility, coordination, and perceptiveness but are not accounted for in the aforementioned categories.

Responsibilities for Enforcement

Sec. 7.05. (a) The responsibility for administration and enforcement of this article shall reside primarily in the commission, but the commission shall have the assistance of appropriate state rehabilitation agencies in carrying out its responsibilities under this article. State agencies involved in extending direct services to disabled or handicapped persons are authorized to enter into interagency contracts with the commission to provide such additional funding as might be required to insure that service objectives and responsibilities of such agencies are achieved through the administration of this article. In enforcing this article the commission shall also receive the assistance of all appropriate elective or appointive state officials. The commission shall from time to time inform professional organizations and others of this law and its application.

(b) The commission shall have all necessary powers to require compliance with its rules and regulations and modifications thereof and substitutions therefor, including powers to institute and prosecute proceedings in the district court to compel such compliance, and shall not be required to pay any entry or filing fee in connection with the institution

of such proceedings. The commission or a handicapped person who seeks injunctive relief to obtain compliance with the rules and regulations shall first notify a person responsible for the building and allow that person 90 days to bring the building into compliance. The commission shall have the authority to extend the 90-day period when circumstances justify such extension.

(c) The commission is authorized to promulgate such rules and regulations as might reasonably be required to implement and enforce this article. The standards and specifications to be adopted by the commission under this article shall be consistent in effect to those adopted by the American National Standards Institute, Inc. (or its federally recognized successor in function), and the commission shall publish the standards and specifications in a readily accessible form for the use of interested parties.

(d) All plans and specifications for construction of buildings subject to the provisions of this article shall be submitted to the commission for review and approval prior to bidding and award of contract in accordance with rules and regulations adopted by the commission. Likewise, any substantial modification of approved plans shall be resubmitted to the commission for review and approval.

(e) The commission may review plans and specifications, make inspections, and issue certifications that privately owned structures are free of architectural barriers and in compliance with the provisions of this article. The commission is authorized to charge a fee, not to exceed \$100, for review of plans and specifications, inspection, and certification of each privately owned building or facility.

(f) With respect to buildings and facilities that are under the jurisdiction and control of The University of Texas Board of Regents, the responsibility for administration and enforcement of this article shall reside in such governing board, and in the discharge of such responsibility the governing board shall have the same responsibilities, duties, powers, and authority that are herein imposed on and delegated to the commission with respect to all other buildings and facilities covered by this article.

ARTICLE 8. PROPERTY ACCOUNTING

Property Accounting System

Sec. 8.01. (a) All real and personal property belonging to the state shall be accounted for by the head of the agency which has possession of the property.

(b) The commission shall administer the property accounting system. The state auditor shall administer the property responsibility system. The commission shall issue rules and regulations and a manual of instruction and prescribe such records, reports, and forms necessary to accomplish the objects of this

article subject to the approval of the state auditor. The state auditor is directed to cooperate with the commission in the exercise of the commission's rule-making powers herein granted by giving technical assistance and advice.

(c) The commission shall maintain a complete and accurate set of centralized records of state property. Where the commission finds that an agency has demonstrated its ability and competence to maintain complete and accurate detailed records of the property it possesses without the detailed supervision by the commission, it may direct that the detailed records be kept at the principal office of such agency. Where the commission issues such order, it shall keep only summary records of the property of such agency and the agency shall keep such detailed records as the commission directs and furnish the commission with such reports at such times as directed by the commission.

(d) Each agency head shall cause each item of state property possessed by his agency to be marked so as to identify it. The agency head shall follow the instructions issued by the commission in marking state property.

Responsibility for Property Accounting

Sec. 8.02. (a) All state agencies shall comply with the provisions of this article and keep the property records required.

(b) All real property owned by the state shall be accounted for by the agency which possesses the property. The real property administered by the General Land Office shall be accounted for by that office and not by the system prescribed herein, and the real property administered by the permanent funds established by the legislature and people shall be accounted for by the agency now charged with its administration and not by the system prescribed herein.

(c) All personal property owned by the state shall be accounted for by the agency that possesses the property. The commission shall by regulation define what is meant by personal property for the purposes of this article, but such definition shall not include nonconsumable personal property having a value of \$250 or less per unit. In promulgating such regulations, the commission shall take into account the value of the property, its expected useful life, and if the cost of record keeping bears a reasonable relationship to the cost of the property on which records are kept. The commission shall consult with the state auditor in making such regulations and the auditor shall cooperate with the commission in the exercise of this rulemaking power by giving technical assistance and advice.

(d) All medical, surgical, and technical equipment and supplies provided by the Texas Department of Health to local public health units, local public

health laboratories, state institutions, and nonprofit institutions, contributing to the promotion and maintenance of public health by the usage of such medical, surgical, and technical equipment and supplies shall be accounted for by that department and not by the system prescribed in this article. The Texas Department of Health shall maintain at all times a complete record of such medical, surgical, and technical equipment and supplies provided and such records shall be verified by the state auditor and available to the federal auditors for the agency of the federal government making such grants for assistance in the purchase of such medical, surgical, and technical equipment and supplies.

Property Manager; Property Inventory

Sec. 8.03. (a) Each agency head is responsible for the proper custody, care, maintenance, and safekeeping of the state property possessed by his agency.

(b) Each agency head shall designate either himself or one of his employees as property manager. The commission shall be informed in writing by the agency head of the name of the property manager and shall be informed of any changes. Where the commission finds that convenience and efficiency will be served, it may permit more than one property manager to be appointed by the agency head.

(c) The property manager shall maintain the required records on all property possessed by the agency and shall be the custodian of all such property.

(d) No person shall entrust state property to any state official or employee or to anyone else to be used for other than state purposes.

(e) When an agency's property is entrusted to some person other than the property manager, the property manager shall require a written receipt for such property executed by the person receiving custody of the property. When the possession of property of one agency is entrusted to another agency on loan, such transfer shall be done only when authorized in writing by the agency head who is lending such property and the written receipt shall be executed by the agency head who is borrowing such property. The property manager is relieved of the responsibility for property which is the subject of such a receipt.

(f) Each agency shall make a complete physical inventory of all property in its possession once a year. The inventory shall be taken on the date prescribed for the agency by the commission.

(g) The agency head shall forward a signed statement describing the method by which the inventory was verified, along with a copy of such inventory, within 45 days after the inventory date for the agency.

(h) The commission shall supervise the property records of each agency so that the records accurately

reflect the property currently possessed by the agency. The commission shall prescribe the methods whereby items of property are deleted from the property records of the agency. Property that has become surplus or obsolete and no longer serviceable and has been turned over to the commission for disposal under the laws relating thereto shall be deleted from the records of that agency upon the authorization of the commission. Property that is missing from the agency or property that is disposed of directly by the agency in a legal manner shall be deleted from the commission's records upon the authorization of the state auditor.

Change of Property Managers

Sec. 8.04. When there is a change in agency heads or property managers, the incoming agency head or property manager shall execute a receipt for all agency property accounted for to the outgoing agency head or property manager. A copy of such receipt shall be delivered to the commission, the state auditor, and the outgoing agency head or property manager. No further warrants in favor of the outgoing agency head or property manager shall be drawn or paid until the state auditor has certified that the agency property has been properly accounted for. The state auditor may make this certification without requiring that a physical inventory be taken.

Liability for Property Loss

Sec. 8.05. Where agency property disappears, whether through theft or other cause, as a result of the failure of the agency head, property manager, or agency employee entrusted with the property in writing to exercise reasonable care for its safekeeping, such person shall be pecuniarily liable to the state for the loss thus sustained by the state. Where agency property deteriorates as a result of the failure of the agency head, property manager, or agency employee entrusted with the property in writing to exercise reasonable care to maintain and service the property, such person shall be pecuniarily liable to the state for the loss thus sustained by the state. Where agency property is damaged or destroyed as a result of an intentional wrongful act or of a negligent act of any state official or employee, such person shall be pecuniarily liable to the state for the loss thus sustained by the state. The liability prescribed by this section may be found to attach to more than one person in a particular instance; in such cases, the liability shall be joint and several.

Reporting to State Auditor

Sec. 8.06. When any state property has been lost, destroyed, or damaged through the negligence or fault of any state official or employee, the agency head responsible for such property shall immediately report such loss, destruction, or damage to the state auditor. Upon learning in any manner of such prop-

erty loss, destruction, or damage, the state auditor shall investigate the matter. If the investigation discloses that an injury has been sustained by the state through the fault of a state official or employee, the state auditor shall make written demand upon such state official or employee for reimbursement to the state for the loss so sustained.

Legal Action to Recover Monetary Loss of Property

Sec. 8.07. In case the demand made by the state auditor for reimbursement for property loss, destruction, or damage is refused or disregarded by the state official or employee upon whom such demand is made, the state auditor shall report the facts to the attorney general. If, after an investigation of the facts, the attorney general finds that legal liability may be adjudged against the state official or employee, he shall take such legal action to recover the monetary loss of the state property occasioned by the loss, damage, or destruction as in his opinion may be deemed necessary. Venue for all such suits instituted against a state official or employee shall lie in the courts of appropriate jurisdiction of Travis County.

Failure to Keep Records

Sec. 8.08. When any agency fails to keep the records required under the provisions of this article or fails to take the annual physical inventory, the commission shall so inform the comptroller and the comptroller may refuse to draw any warrants on behalf of such agency.

Transfer of Personal Property

Sec. 8.09. (a) Any state agency is authorized to transfer any personal property of the state under its control or jurisdiction to any other state agency with or without reimbursement between the agencies; provided, however, that the provisions of this article shall not apply to any real property.

(b) When any personal property under the control or jurisdiction of one state agency is transferred to the control or jurisdiction of any other state agency, such transfers shall be immediately and simultaneously reported to the commission by the transferor and the transferee on forms prescribed by the commission, and it shall adjust the inventory records of the agencies involved in making the transfer. Whenever any transfer is made with reimbursement from funds deposited in the state treasury, the transferee shall issue a voucher payable to the transferor, and the comptroller of public accounts shall issue warrants for reimbursement.

Distribution of This Article

Sec. 8.10. Each agency head shall distribute a copy of this article to each official and employee of his agency and shall give a copy to each new employee of the agency.

ARTICLE 9. SURPLUS AND SALVAGE PROPERTY

Definitions

Sec. 9.01. As used in this article:

(1) "Comptroller" means the comptroller of public accounts.

(2) "Auditor" means the state auditor.

(3) "Property" means personal property, and does not mean real property, or any interest in real property. Personal property affixed to real property may be sold under this law if its removal and disposition is to carry out a lawful objective under this law or any other law.

(4) "Surplus property" means any personal property which is in excess of the needs of any state agency and which is not required for its foreseeable needs. Surplus property may be used or new but possesses some usefulness for the purpose for which it was intended or for some other purpose.

(5) "Salvage property" means any personal property which through use, time, or accident is so depleted, worn out, damaged, used, or consumed that it has no value for the purpose for which it was originally intended.

(6) "Political subdivision" means a county, municipality, school district, or junior college district.

Establishment of Procedures

Sec. 9.02. The commission shall establish and maintain procedures for the transfer, sale, or disposal of surplus and salvage property no longer needed by state agencies.

Mailing Lists of Political Subdivisions

Sec. 9.03. The commission shall maintain a mailing list, renewable annually, of political subdivision purchasing agents or other officers performing similar functions who have asked for information on surplus or salvage equipment or material the state may have available.

Disposition of Surplus or Salvage Property

Sec. 9.04. (a) All state agencies that determine they have surplus or salvage property shall inform the commission of the kind, number, location, condition, original cost or value, and date of acquisition of the property.

(b) When a state agency reports to the commission that it has surplus or salvage equipment or material, the commission shall inform other state agencies and political subdivisions of the existence, kind, number, location, and condition of the equipment or material.

(c) When notified of surplus or salvage property, a state agency may negotiate directly with the report-

ing state agency for an interagency transfer of the property at a mutually agreed upon value. If a transfer is made, the participating agencies shall report the transaction to the comptroller and the commission. The comptroller shall debit and credit the proper appropriations and the commission shall adjust the state inventory records if inventoried property is transferred.

(d) A political subdivision shall notify the commission within 30 days from the date of the notice if it desires to negotiate for surplus or salvage equipment or material.

(e) If no state agency negotiates an interagency transfer of the equipment or material within 30 days from the date of the notice, and if the commission determines that the equipment or material will not satisfy a state need, the commission may authorize the sale or transfer of surplus or salvaged equipment or material to any political subdivision which has expressed a desire to negotiate.

(f) The commission shall adopt rules and regulations to govern occasions when more than one political subdivision expresses a desire to negotiate for the same surplus or salvage equipment or material. The commission may adopt other necessary rules and regulations to govern the sale or transfer of surplus or salvage equipment and material to political subdivisions.

(g) If no state agency negotiates an interagency transfer of the equipment or material within 30 days from the date of the notice and no political subdivision has expressed a desire to negotiate, or if one or more political subdivisions has expressed a desire to negotiate but is unable to negotiate a sale or transfer of the equipment or material within 40 days from the date of the notice, the commission may offer the equipment or material to the organization known as the Texas Partners of the Alliance, a registered agency with the Advisory Committee on Voluntary Foreign Aid with the approval of the Partners of the Alliance office of the Agency for International Development. The equipment or material shall be offered at its fair market value as determined by mutual agreement between the commission and the Texas Partners of the Alliance.

(h) If the Texas Partners of the Alliance do not accept the offer within 60 days, or if the commission and the Texas Partners of the Alliance cannot agree on the fair market value of the equipment or material, the commission shall sell or dispose of the equipment or material as otherwise provided by this article.

Alternative Disposition of Surplus or Salvage Property

Sec. 9.05. (a) If surplus or salvage property is not disposed of under the provisions of Section 9.04 of this article, the commission shall sell the property by competitive bid or auction or delegate to the state

agency having possession of the property the authority to sell the property on a competitive bid basis.

(b) If the value of any property or lot of property to be sold is estimated to be over \$1,000, the sale shall be advertised at least one time in at least one newspaper of general circulation in the vicinity where the property is located by the commission or the state agency delegated authority to sell the property.

(c) When the commission sells any surplus or salvage property it shall report the item sold and the sale price to the agency that declared such property as surplus or salvage.

(d) All agencies for whom surplus or salvage property is sold or who sell surplus or salvage property under authorization of the commission shall report the sale together with the prices realized to the comptroller; and if the property is on the state inventory the commission shall remove it from the inventory.

(e) The proceeds from the sale of any surplus or salvage property less the cost of advertising the sale shall be deposited to the credit of the item of appropriation to the agency for whom the sale was made. A portion of the proceeds from the sale of any surplus or salvage property equal to the cost of advertising the sale shall be deposited in the state treasury to the credit of the item of appropriation to the commission from which such cost was expended.

Destruction of Surplus or Salvage Property

Sec. 9.06. If the commission cannot sell or dispose of any property reported to it as surplus or salvage it may order the property destroyed as worthless salvage and report the destruction to the declaring agency. The destruction of salvage shall authorize the commission to remove reported property from the state inventory if on the state inventory. Authorization by the commission to delete salvage items not its own from the state inventory shall not be required. It is not the intention of this section to alter, enlarge, or amend the law providing for the deletion from inventory upon the authorization of the auditor of property that is missing from any agency.

Maximum Return from Disposition of Surplus or Salvage Property

Sec. 9.07. The commission shall at all times try to realize the maximum return to the state in the sale and disposal of surplus and salvage property. It shall maintain a list of prospective buyers of surplus and salvage property and it may in all cases reject any or all offers if it finds rejection to be in the best interests of the state. It shall cooperate with all state agencies in a continuing program of surplus and salvage property evaluation to minimize losses from accumulations and it shall cooperate at all

times with the auditor in surplus and salvage property analysis.

Obtaining Good Title to Surplus or Salvage Property

Sec. 9.08. Any purchaser of surplus or salvage property at a sale made by the commission or by any agency under authorization of the commission shall obtain good title to any property purchased if the purchaser has in good faith complied with the conditions of the sale and the applicable rules and regulations of the commission.

Rules, Reports, Forms

Sec. 9.09. The commission is authorized to promulgate rules and regulations and prescribe reports and forms necessary to accomplish the purposes of this article subject to the approval of the state auditor.

Disposition of Property by Legislature

Sec. 9.10. The provisions of this article do not apply to the disposition of surplus property by either house of the legislature pursuant to a system of disposition provided for in the rules and regulations of the administration committee of each house. If surplus property of either house is sold, proceeds of the sale shall be deposited in the state treasury to the credit of the expense fund of that house.

Purchase of Legislative Chairs

Sec. 9.11. A legislator may purchase the executive chair used by the legislator on the floor of the legislature if:

- (1) the legislator has not been reelected; and
- (2) the legislator pays into the state treasury the commission's estimate of the fair market value of replacement equipment.

This section does not limit a legislator's right to purchase state-owned equipment in any other manner.

Property Used as Trade-in

Sec. 9.12. A state agency may offer surplus or salvage property as a trade-in on new property of the same general type when such exchange is in the best interests of the state.

Exemption

Sec. 9.13. For purposes of this article the terms "surplus" and "salvage" shall not apply to products and by-products of research, forestry, agricultural, livestock, and industrial enterprises in excess of that quantity required for consumption by the producing agency when such agencies have a continuing and adequate system of marketing research and sales, the efficiency of which shall be certified to the commission by the state auditor. A qualifying agency shall furnish the commission with a copy of the rules and regulations and latest revisions thereof

promulgated by the policy-making body of each agency or institution for the guidance and administration of the programs enumerated herein. When requested by such agency or institution to do so, the commission shall dispose of the property as provided for in this article.

Authorization of Agencies to Dispose of Property

Sec. 9.14. The commission may authorize an agency to dispose of surplus or salvage property where the agency demonstrates to the commission its ability to make such disposition under the rules and regulations set up by the commission, as provided for herein. State eleemosynary institutions and institutions and agencies of higher learning shall be excepted from the terms of this article.

Disposition of Wastepaper

Sec. 9.15. The commission shall establish and maintain in each public building under its control facilities for collecting separately from all other wastes all the wastepaper disposed of in that building. The commission shall sell the wastepaper for recycling purposes to the highest bidder.

ARTICLE 10. TELECOMMUNICATIONS SERVICES

Definitions

Sec. 10.01. In this article:

(1) "Telecommunications services" means intercity communications facilities or services, provided that any dedicated circuits included as part of the consolidated system are considered to begin and end at the main connecting frame. "Telecommunications services" does not include single agency point-to-point radio systems or facilities or services of criminal justice information communication systems.

(2) "Consolidated telecommunications systems" means the network of telecommunications services serving the government of the State of Texas.

(3) "Centrex System" means the centralized telephone service utilized for the capitol complex in Austin.

System of Telecommunications Services

Sec. 10.02. (a) The commission shall plan, establish, and manage the operation of a system of telecommunications services for all state agencies. Each agency shall identify its particular telecommunications services requirements and the site at which the service shall be provided.

(b) The commission shall fulfill the telecommunications requirements of each state agency to the extent possible and to the extent that funds are appropriated or available for this purpose.

(c) The commission may negotiate rates and execute contracts with telecommunications service utili-

ties for services, lease transmission facilities on a competitive bid basis if possible, and develop, establish, and maintain carrier systems necessary to the operation of the telecommunications system.

(d) All contracts with telecommunications carriers shall contain the provision that the commission or any participating agency may obtain any data relating to the costs to the state of parallel tolls.

Policies and Guidelines

Sec. 10.03. (a) In order to insure efficient utilization of telecommunications systems at minimum cost to the state, the commission shall promulgate and disseminate to all agencies appropriate policies, guidelines, operating procedures, and telephone directories.

(b) Each agency shall comply with the policies, guidelines, and operating procedures promulgated. The commission, with the advice of the state auditor, shall maintain records relating to the consolidated telecommunications system as necessary to enable the commission to analyze the cost effectiveness of the system to the state agencies, and shall advise the legislature at each session as to the cost effectiveness of the system. If, in the opinion of the commission, the total cost of the system reaches a level which would justify total state ownership and operation of the system, the commission shall recommend to the legislature the implementation of such action.

Balancing Technological Advancements and Existing Facilities

Sec. 10.04. In the planning, design, implementation, and operation of the telecommunications systems and facilities, the commission shall maintain an appropriate balance between the adoption of technological advancements and the efficient utilization of existing facilities and services in order to avoid misapplication of state funds and degradation or loss of the integrity of existing systems and facilities.

Sharing of Services or Facilities

Sec. 10.05. Telecommunications facilities and services, to the extent feasible and desirable, shall be provided on an integrated or shared basis, or both, to avoid waste of state funds and manpower.

Payment for Services

Sec. 10.06. (a) The commission shall develop a system of billings and charges for services provided in operating and administering the consolidated telecommunications system, which allocates the total state cost to each entity serviced based on proportionate usage.

(b) The comptroller of public accounts shall establish in the state treasury a revolving account for the administration of this article. The account shall be used as a depository for funds received from entities served and as a source of funds to purchase, lease, or

otherwise acquire services, supplies, and equipment, and to pay salaries, wages, and other costs directly attributable to the provisions and operations of the system.

(c) In order to provide an adequate cash flow as may be necessary for purposes of this article, using state agencies and other entities, upon proper notification, shall make monthly payments into the telecommunications revolving fund account from appropriated or other available funds. The legislature may appropriate funds for the operation of the system directly to the commission. In that case the revolving fund shall be used to receive funds due from local government entities and other agencies to the extent that their funds are not subject to legislative appropriation.

Contract with Entities Other than State Agencies

Sec. 10.07. The commission may contract with each house of the legislature, legislative agencies, counties, cities, districts, and other political subdivisions and agencies not within the definition of "state agency," for utilization of the state telecommunications system.

Designated Agent

Sec. 10.08. The commission is designated as the agency of this state responsible for obtaining telecommunications services.

Centrex System

Sec. 10.09. (a) The commission shall provide the centrex system for state agencies, each house of the legislature, and legislative agencies in the capitol complex and other state agencies which elect to subscribe to such service.

(b) Each using entity shall make monthly payments to the commission when assessed by the commission.

(c) Each using entity shall arrange for its telephone equipment directly with the supplying telephone company.

(d) The commission shall prepare and issue a revised centrex telephone directory in February of each year.

ARTICLE 11. MISCELLANEOUS PROVISIONS

Transfer of Powers and Duties; References

Sec. 11.01. (a) All powers, duties, and functions granted or assigned to the State Board of Control by laws not repealed by this Act, other than powers, duties, and functions previously transferred to other agencies, are transferred to the commission.

(b) Any reference in the statutes to the State Board of Control means the State Purchasing and General Services Commission.

(c) Any reference in the statutes to The State Purchasing Act of 1957 means Article 3 of this Act.

Messenger Service

Sec. 11.02. (a) The commission shall operate a messenger service for handling unstamped written communications between state agencies, including the legislature and legislative agencies, located in Austin. All such agencies in the capitol complex shall utilize the service, and other state agencies shall utilize the service to the maximum extent feasible.

(b) State warrants may be delivered upon agreement between the state comptroller, the commission, and the agency concerned.

(c) United States mail may be delivered to and from the post office located in the capitol complex on agreement of the commission and the agency concerned.

Business Machine Repair

Sec. 11.03. (a) The commission shall maintain a facility for the repair of office machines and shall offer the service to state agencies, including the legislature and legislative agencies, located in Austin.

(b) Using agencies shall make payment to the commission for repair services by vouchers prepared and submitted to the using agency by the commission.

(c) No privately-owned machines shall be serviced by the commission.

Central Supply Store

Sec. 11.04. (a) The commission shall operate a central supply store where state agencies, including the legislature and legislative agencies, can secure small supply items.

(b) The commission shall submit a purchase voucher to each using agency after the close of each month covering supply items purchased.

(c) Purchases from the central supply store may be made only by state agencies.

ARTICLE 98. AMENDMENTS

Secs. 98.01 to 98.04. [Amends art. 6252-11c]

ARTICLE 99. FINAL PROVISIONS**Board Abolished**

Sec. 99.01. The State Board of Control is abolished.

Transfer of Personnel, Property, Etc.

Sec. 99.02. All personnel, records, and property of the State Board of Control are transferred to the State Purchasing and General Services Commission.

Initial Appointments to Commission

Sec. 99.03. In making the initial appointments to the commission, the governor shall designate one member for a term expiring January 31, 1981, one for a term expiring January 31, 1983, and one for a term expiring January 31, 1985.

Application

Sec. 99.04. Chapter 454, Acts of the 65th Legislature, Regular Session, 1977 (Article 6252-11c, Vernon's Texas Civil Statutes), as amended by this Act, does not apply to any contract that a state agency entered or renewed before the effective date of this Act. A contract entered or renewed before the effective date of this Act is governed by Chapter 454, Acts of the 65th Legislature, Regular Session, 1977, as it existed when the contract was entered or renewed, and that law is continued in effect for this purpose as if this Act were not in force.

Repealer

Sec. 99.05. The following articles and acts, as compiled in Vernon's Texas Civil Statutes, are repealed: 601, 601a, 602, 606, 606a, 630, 630a, 630b, 630c, 634-½, 634a-1, 635, 655, 657, 658, 658a, 664-1, 664-2, 664-3, 665, 665a, 665b, 666, 666a, 666a-2, 666b, 667, 668, 669, 673, 674, 675, 676, 678, 678b, 678c, 678e, 678e-1, 678e-2, 678f, 678f-1, 678g, 678h, 678i, 678m, 678m.1, 678m-1, 678m-2, 678m-3, 678m-4, 678m-5, 688, 688a, 689, 689a, 690-695, 6252-6, and 6252-6a.

[Acts 1979, 66th Leg., p. 1908, ch. 773, §§ 1.01 to 99.05, eff. Sept. 1, 1979.]

Art. 602. Repealed by Acts 1979, 66th Leg., p. 1960, ch. 773, § 99.05, eff. Sept. 1, 1979

See, now, art. 601b, §§ 2.04 and 2.05.

Arts. 606, 606a. Repealed by Acts 1979, 66th Leg., p. 1960, ch. 773, § 99.05, eff. Sept. 1, 1979

Former art. 606a, the State Telecommunications Consolidation Act of 1975, was derived from Acts 1975, 64th Leg., p. 875, ch. 333. See, now, art. 601b, § 10.01 et seq.

CHAPTER TWO. DIVISION OF PUBLIC PRINTING

Arts. 630 to 630c. Repealed by Acts 1979, 66th Leg., p. 1960, ch. 773, § 99.05, eff. Sept. 1, 1979

For subject matter of former art. 630, see, now, art. 601b, § 3.25.
For subject matter of former art. 630c, see, now, art. 601b, § 3.26.

CHAPTER THREE. PURCHASING DIVISION**Article**

664-5. Repealed.

664-6. Repealed.

Art. 634½. Repealed by Acts 1979, 66th Leg., p. 1960, ch. 773, § 99.05, eff. Sept. 1, 1979

See, now, art. 601b, § 3.23.

Art. 634a-1. Repealed by Acts 1979, 66th Leg., p. 1960, ch. 773, § 99.05, eff. Sept. 1, 1979

See, now, art. 601b, § 3.03.

Art. 635. Repealed by Acts 1979, 66th Leg., p. 1960, ch. 773, § 99.05, eff. Sept. 1, 1979

See, now, art. 601b, § 3.13.

Art. 655. Repealed by Acts 1979, 66th Leg., p. 1960, ch. 773, § 99.05, eff. Sept. 1, 1979

See, now, art. 601b, § 3.14.

Arts. 657 to 658a. Repealed by Acts 1979, 66th Leg., p. 1960, ch. 773, § 99.05, eff. Sept. 1, 1979

For subject matter of former arts. 657 and 658, see, now, art. 601b, §§ 3.15 and 3.16.

For subject matter of former art. 658a, see, now, art. 601b, § 3.24.

Arts. 664-1 to 664-3. Repealed by Acts 1979, 66th Leg., p. 1960, ch. 773, § 99.05, eff. Sept. 1, 1979

Prior to repeal, art. 664-3 was amended by:

Acts 1975, 64th Leg., p. 1927, ch. 626, §§ 11, 12.

Acts 1975, 64th Leg., p. 2393, ch. 734, §§ 17, 18.

Acts 1977, 65th Leg., p. 707, ch. 266, § 1.

Acts 1979, 66th Leg., p. 2429, ch. 803, § 10.

For subject matter of former arts. 664-1 and 664-2, see, now, art. 601b, §§ 3.27 and 3.28.

For subject matter of former art. 664-3, see, now, art. 601b, § 3.01 et seq.

Art. 664-5. Repealed by Acts 1979, 66th Leg., p. 2429, ch. 842, art. 1, § 2(1), eff. Sept. 1, 1979

Acts 1979, 66th Leg., ch. 842, repealing this article, enacts the Human Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Human Resources Code.

The repealed article, relating to a pilot program for purchase of blind-made products and services was derived from:

Acts 1975, 64th Leg., p. 2391, ch. 734, § 16.

Acts 1977, 65th Leg., p. 1846, ch. 735, § 2.103.

Acts 1979, 66th Leg., p. 676, ch. 301, § 3.

Acts 1979, 66th Leg., p. 2429, ch. 803, §§ 1 to 9.

Art. 664-6. Repealed by Acts 1979, 66th Leg., p. 679, ch. 301, § 8(a), eff. May 31, 1979; Acts 1979, 66th Leg., p. 2052, ch. 803, § 10, eff. Aug. 27, 1979

Art. 664-7. Purchasing Program for Counties

Board of Control Purchasing Program

Sec. 1. (a) The State Board of Control¹ shall establish a program by which the board performs purchasing services for counties. The services shall include:

(1) the extension of state contract prices to participating counties when the board considers it feasible;

(2) solicitation of bids on items desired by counties if the solicitation is considered feasible by the board and is desired by the county; and

(3) provision of information and technical assistance to counties about the purchasing program.

(b) The board may charge a participating county an amount not to exceed the actual costs incurred by the board in providing purchasing services to the county under the program.

(c) The board may adopt rules and procedures necessary to administer the purchasing program.

County Participation

Sec. 2. (a) A county may participate in the purchasing program of the board by filing with the board a resolution adopted each year by the commissioners court of the county requesting that the county be allowed to participate and stating that the county:

(1) will designate an official to act for the county in all matters relating to the program, including the designation of specific contracts in which the county desires to participate, and that the commissioners court will direct the decisions of the representative;

(2) will purchase from the contracts made under this subsection, except in emergencies;

(3) will be responsible for payment directly to the vendor under each contract; and

(4) will be responsible for the vendor's compliance with all conditions of delivery and quality of the purchased item.

(b) A county that purchases an item under a state contract satisfies any state law requiring the county to seek competitive bids for the purchase of the item.

[Acts 1979, 66th Leg., p. 726, ch. 320, §§ 1, 2, eff. Aug. 27, 1979.]

¹ State Board of Control abolished; any reference to State Board of Control means State Purchasing and General Services Commission; see art. 601b, § 11.01(b).

CHAPTER FOUR. PUBLIC BUILDINGS AND GROUNDS DIVISION

Article 678i. Repealed.

Arts. 665 to 666. Repealed by Acts 1979, 66th Leg., p. 1960, ch. 773, § 99.05, eff. Sept. 1, 1979

For subject matter of former art. 665, see, now, art. 601b, § 4.01.

For subject matter of former art. 655b, see, now, art. 601b, § 9.15.

For subject matter of former art. 666, see, now, art. 601b, § 9.01 et seq.

Art. 666a. Repealed by Acts 1979, 66th Leg., p. 1960, ch. 773, § 99.05, eff. Sept. 1, 1979

See, now, art. 601b, § 4.02.

Arts. 666a-2 to 669. Repealed by Acts 1979, 66th Leg., p. 1960, ch. 773, § 99.05, eff. Sept. 1, 1979

Prior to repeal, art. 666b was amended by Acts 1977, 65th Leg., p. 1412, ch. 572, § 1. See, now, art. 601b, § 6.01 et seq.
For subject matter of former arts. 667 to 669, see, now, art. 601b, §§ 4.03 to 4.05, respectively.

Arts. 673 to 676. Repealed by Acts 1979, 66th Leg., p. 1960, ch. 773, § 99.05, eff. Sept. 1, 1979

For subject matter of former arts. 673 to 676, see, now, art. 601b, §§ 4.06 to 4.09, respectively.

Art. 678. Repealed by Acts 1979, 66th Leg., p. 1960, ch. 773, § 99.05, eff. Sept. 1, 1979

See, now, art. 601b, § 4.10.

Arts. 678b, 678c. Repealed by Acts 1979, 66th Leg., p. 1960, ch. 773, § 99.05, eff. Sept. 1, 1979

For subject matter of former art. 678b, see, now, art. 601b, § 4.11.

Art. 678d-1. Repealed by Acts 1979, 66th Leg., p. 2429, ch. 842, art. 1, § 2(1), eff. Sept. 1, 1979

Acts 1979, 66th Leg., ch. 842, repealing this article, enacts the Human Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Human Resources Code.

Arts. 678e to 678i. Repealed by Acts 1979, 66th Leg., p. 1960, ch. 773, § 99.05, eff. Sept. 1, 1979

Prior to repeal, art. 678e was amended by Acts 1975, 64th Leg., p. 861, ch. 329, §§ 1, 2; Acts 1977, 65th Leg., p. 1912, ch. 763, § 1. See, now, art. 601b, § 4.12.

For subject matter of former art. 678e-2, see, now, art. 601b, § 4.13.

For subject matter of former art. 678f, see, now, art. 601b, § 5.12 et seq.

For subject matter of former art. 678f-1, see, now, art. 601b, § 4.14.

Prior to repeal, art. 678g was amended by Acts 1975, 64th Leg., p. 1950, ch. 641, § 1; Acts 1977, 65th Leg., p. 1916, ch. 767, §§ 1, 2. See, now, art. 601b, § 7.01 et seq.

For subject matter of former art. 678h, see, now, art. 601b, §§ 5.18 and 5.19.

Former art. 678i, the Energy Conservation in Buildings Act, was derived from Acts 1975, 64th Leg., p. 235, ch. 89, §§ 1 to 7. See, now, art. 601b, §§ 5.27 to 5.30.

CHAPTER FOUR A. STATE BUILDING COMMISSION

Article

678m.1. Repealed.

Arts. 678m to 678-2. Repealed by Acts 1979, 66th Leg., p. 1960, ch. 773, § 99.05, eff. Sept. 1, 1979

Prior to repeal, art. 678m was amended by Acts 1977, 65th Leg., p. 1852, ch. 735, § 2.146. See, now, art. 601b, §§ 5.01 to 5.09.

Former art. 678m.1, relating to abolition of the State Building Commission and transfer of powers and duties to the State Board of Control, was derived from Acts 1977, 65th Leg., p. 1914, ch. 766.

Arts. 678m-3 to 678m-5. Repealed by Acts 1979, 66th Leg., p. 1960, ch. 773, § 99.05, eff. Sept. 1, 1979

For subject matter of former arts. 678m-4 and 678m-5, see, now, art. 601b, §§ 5.10 and 5.11.

CHAPTER SIX. DIVISION OF ESTIMATES AND APPROPRIATIONS

Arts. 688 to 689a. Repealed by Acts 1979, 66th Leg., p. 1960, ch. 773, § 99.05, eff. Sept. 1, 1979

Arts. 690 to 695. Repealed by Acts 1979, 66th Leg., p. 1960, ch. 773, § 99.05, eff. Sept. 1, 1979

CHAPTER SEVEN A. CHILD WELFARE

Article

695a-2 to 695a-5. Repealed.

Arts. 695a to 695a-5. Repealed by Acts 1979, 66th Leg., p. 2429, ch. 842, art. 1, § 2(1), eff. Sept. 1, 1979

Acts 1979, 66th Leg., ch. 842, repealing these articles, enacts the Human Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Human Resources Code.

Prior to repeal, art. 695a was amended by:

Acts 1975, 64th Leg., p. 403, ch. 179, § 1.

Acts 1975, 64th Leg., p. 2404, ch. 736, § 8.

Acts 1975, 64th Leg., p. 2407, ch. 739, § 1.

Former art. 695a-2, relating to the Interstate Compact on the Placement of Children, was derived from Acts 1975, 64th Leg., p. 2166, ch. 697.

Former art. 695a-3, the Child Care Licensing Act, was derived from Acts 1975, 64th Leg., p. 2240, ch. 708.

Former art. 695a-4, relating to administration of federally established day care programs, was derived from Acts 1975, 64th Leg., p. 2369, ch. 729.

Former art. 695a-5, relating to placement of children from another state, was derived from Acts 1975, 64th Leg., p. 2402, ch. 736.

TITLE 20A

BOARD AND DEPARTMENT OF PUBLIC WELFARE

Article

- 695m. Pilot Multipurpose Service Centers for Displaced Homemakers.
695n. Employment Incentive Act.
695o. AFDC Education and Employment Act.
695p. Shelter Centers for Victims of Family Violence.
695q. Repealed.

Arts. 695c, 695c-1. Repealed by Acts 1979, 66th Leg., p. 2429, ch. 842, art. 1, § 2(1), eff. Sept. 1, 1979

Acts 1979, 66th Leg., ch. 842, repealing these articles, enacts the Human Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Human Resources Code.

Prior to repeal, art. 695c was amended by:

- Acts 1975, 64th Leg., p. 746, ch. 292, § 1.
Acts 1975, 64th Leg., p. 1124, ch. 424, § 1.
Acts 1975, 64th Leg., p. 1273, ch. 476, § 56.
Acts 1975, 64th Leg., p. 1343, ch. 502, §§ 1 to 3.
Acts 1975, 64th Leg., p. 1937, ch. 634, § 1.
Acts 1975, 64th Leg., p. 2250, ch. 708, § 26.
Acts 1977, 65th Leg., p. 81, ch. 38, § 2.
Acts 1977, 65th Leg., p. 188, ch. 94, § 1.
Acts 1977, 65th Leg., p. 637, ch. 235, § 1.
Acts 1977, 65th Leg., p. 751, ch. 281, § 11.
Acts 1977, 65th Leg., p. 1371, ch. 543, §§ 1, 2.
Acts 1977, 65th Leg., p. 1847, ch. 735, § 2.109.
Acts 1979, 66th Leg., p. 1648, ch. 689, § 1.
Acts 1979, 66th Leg., p. 2010, ch. 787, § 1.

Section 1 of Acts 1979, 66th Leg., p. 1648, ch. 689, eff. June 13, 1979, amended former § 7-B of art. 695c. Section 2 of said Act provided:

"This Act does not affect offenses committed under Section 7-B, The Public Welfare Act of 1941, as added (Article 695c, Vernon's Texas Civil Statutes), before the effective date of this Act. Such an offense is covered by the law in effect on the date that the offense was committed, and the former law is continued in effect for the prosecution of the offense."

Art. 695c-2. Repealed by Acts 1973, 63rd Leg., p. 1458, ch. 543, § 3, eff. Jan. 1, 1974

Acts 1973, 63rd Leg., p. 881, ch. 398, § 1, added a § 9 to this article, providing a penalty for failure to report. Said § 9 was repealed by Acts 1975, 64th Leg., p. 1273, ch. 476, § 57. See, now, Family Code, § 34.07.

Art. 695c-3. Repealed by Acts 1979, 66th Leg., p. 2429, ch. 842, art. 1, § 2(1), eff. Sept. 1, 1979

Acts 1979, 66th Leg., ch. 842, repealing this article, enacts the Human Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Human Resources Code.

Art. 695f. Repealed by Acts 1979, 66th Leg., p. 2429, ch. 842, art. 1, § 2(1), eff. Sept. 1, 1979

Acts 1979, 66th Leg., ch. 842, repealing this article, enacts the Human Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Human Resources Code.

Art. 695g. Federal Old Age and Survivors Insurance Coverage for County and Municipal Employees

Definitions

Sec. 1. The following definitions of words and terms shall apply as used in this Act:

[See Compact Edition, Volume 3 for text of 1(a) to (c)]

(d) The term "State Agency" means the Employees Retirement System of Texas.

[See Compact Edition, Volume 3 for text of 1(e) to (h)]

(i) The term "State working days" includes all days of the year excluding weekends, and State or National holidays.

Administration of Act

Sec. 2. The Employees Retirement System of Texas is designated the State Agency to administer the provisions of this Act. The Executive Director of the department shall act for it and shall direct and administer its functions under this Act.

[See Compact Edition, Volume 3 for text of 3 and 4]

Rules and Regulations; Terms of Agreements

Sec. 5. The Employees Retirement System of Texas is authorized and directed to promulgate all reasonable rules and regulations it deems necessary to govern applications for and eligibility to participate in this program, and it shall prescribe the terms of the agreements necessary to carry out the provisions of this Act and to insure financial responsibility on the part of participating counties, municipalities or other political subdivisions of the State.

[See Compact Edition, Volume 3 for text of 6 to 7]

Contributions; Reports; Delinquencies

Sec. 8. (a) Each county, municipality or other political subdivision as to which a plan has been approved may and shall pay to the State Agency, with respect to employees' wages, contributions in the amounts and at the rates specified by the applicable agreement entered into pursuant to the Federal-State agreement. Counties, municipalities or other political subdivisions required to make such pay-

ments are authorized, in consideration of the employees' retention in or entry upon employment, to impose upon its employees as to services which are covered by an approved plan, a contribution with respect to wages in keeping with applicable State and Federal requirements. Contributions so collected shall be paid to the State Agency in partial discharge of the liability of the county, municipality or political subdivision, but failure to deduct contributions from employees' wages shall not relieve the employee or the employer of liability for the contribution. If more or less than the correct amount of any contribution is paid or deducted, adjustments or refunds shall be made in the manner and at the time prescribed by the State Agency. Matching contributions by the employing counties, municipalities or other political subdivisions as prescribed by the approved plan in keeping with Federal requirements shall be paid from the respective sources of funds from which covered employees receive their compensation.

(b) Monthly reports and contributions shall be received by the State Agency on or before the sixth State working day of the month in which the report and contributions are required to be submitted to the Federal Social Security Administration. Quarterly reports and contributions are due and must be received by the State Agency on or before the 15th State working day of the month preceding the month in which the report and contributions are due to the Federal Social Security Administration. Contributions received after the day payment is due and wage reports received after the due date are delinquent and the reporting entity shall pay interest for each and every calendar day of delinquency including the day the delinquent contributions and reports are received by the State Agency. The interest rate shall be at the same rate as the interest rate charged by the Federal Social Security Administration for delinquent payment of contributions. Interest on delinquent contributions shall be deposited in the Social Security Administration Fund.

[See Compact Edition, Volume 3 for text of 9 to 11]

Social Security Fund; Social Security Administration Fund

Sec. 12. (a) There is hereby established as a special fund, separate and apart from all public moneys or funds of this State, to be known as the Social Security Fund, which shall be administered as directed by the State Agency exclusively for the purposes of this Act. The State Treasurer shall be treasurer and custodian of the fund. He shall administer such fund in accordance with the directions of the State Agency, and the Comptroller shall issue warrants upon it in accordance with such regulations as the State Agency shall prescribe. The State Agency shall deposit all moneys collected under the

provisions of this Act, except moneys to defray administrative expenses at the State level, in the Social Security Fund. All moneys so deposited with the State Treasurer in the Social Security Fund shall be held in trust, separate and apart from all public moneys or funds of this State. The State Agency is vested with full power, authority, and jurisdiction over the fund and may perform any and all acts necessary to the administration thereof and to pay the amounts required to be paid to the appropriate Federal authorities and any refunds or adjustments necessary under this Act.

(b) The State Agency shall deposit all moneys collected under the provisions of this Act from participating counties, municipalities or other political subdivisions to defray the cost of administering this program at the State level in a special fund to be known as the Social Security Administration Fund. The State Treasurer shall be treasurer and custodian of the fund, which shall be held separate and apart from all public moneys or funds of this State. The State Treasurer shall administer this fund in accordance with the directions of the State Agency. Moneys deposited in either of these special funds shall be disbursed upon warrants issued by the Comptroller of Public Accounts pursuant to sworn vouchers executed by the State Agency acting through the executive director of personnel of the agency to whom he expressly delegates this function. These funds will not be State funds and will not be subject to legislative appropriation. This fund may be used to pay interest assessed as a penalty by the Federal Social Security Administration because of delinquent payment of contributions.

[See Compact Edition, Volume 3 for text of 13 and 13a]

[Amended by Acts 1975, 64th Leg., p. 965, ch. 366, § 1(a), eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1476, ch. 645, §§ 1 to 3, eff. Aug. 27, 1979.]

Art. 695h. Federal Old Age and Survivors Insurance Coverage for State Employees

Definitions

Sec. 1. The following definitions of words and terms shall apply as used in this Act:

[See Compact Edition, Volume 3 for text of 1(a) to (c)]

(d) The term "State Agency" means the Employees Retirement System of Texas.

[See Compact Edition, Volume 3 for text of 1(e) to (g)]

(h) The term "State working days" includes all days of the year excluding weekends, and State or National holidays.

Administration of Act

Sec. 2. The Employees Retirement System of Texas is designated the State Agency to administer the provisions of this Act. The Executive Director of the Department shall act for and shall direct and administer its functions under this Act. He is further instructed to negotiate the best possible contract for the employees of the State of Texas.

[See Compact Edition, Volume 3 for text of 3]

Contributions by State Agency from Social Security Trust Fund

Sec. 4. The State Agency is authorized to pay contributions as required by these agreements from the Social Security Trust Fund established by Chapter 500, Acts of the 52nd Legislature, Regular Session, 1951, as amended (Article 695g, Vernon's Texas Civil Statutes). The payment of contributions by the state under the program may not be considered compensation under any law of this State.

Contributions by State Employees

Sec. 5. (a) The State shall assume the obligation for all contributions under this program except that portion of the employee tax which would be imposed by the Federal Insurance Contributions Act¹ if such services constituted employment within the meaning of that Act that is in excess of 5.85 percent of wages, such wages not to exceed \$16,500 in a calendar year. Any contributions in excess of 5.85 percent of wages, such wages not to exceed \$16,500 in any calendar year, shall be the obligation of the employee.

(b) Notwithstanding the provisions of Subsection (a) of this Section, there is imposed on the services of State-paid judges which are covered by an agreement with the Secretary of Health, Education and Welfare a contribution with respect to wages (as defined in Section 1(a) of this Act) equal to the amount of the employee tax which would be imposed by the Federal Insurance Contributions Act if such services constituted employment within the meaning of that Act.

(c) Such contributions shall be paid to the Social Security Trust Fund from the respective funds from which covered employees receive their compensation.

¹26 U.S.C.A. § 3101 et seq.

Collection of Contributions

Sec. 6.

[See Compact Edition, Volume 3 for text of 6(a)]

(b) The collection of the State's contribution shall be made as follows:

(1) After September 1, 1978, and after the date of the establishment of Social Security coverage for State employees, there is hereby allocated and appropriated to the Social Security Trust Fund, in

accordance with this Act, from the several funds from which the employees benefited by this Act receive their respective salaries, a sum equal to the amount of the contribution to be paid by the State as provided in Sections 4 and 5 of this Act for employees whose compensation is paid from funds in the State Treasury. The State Agency shall certify to the State Comptroller of Public Accounts at the end of each month the total amount of the State's monthly contributions for employees whose salaries are paid from funds in the State Treasury. The State Comptroller after receipt of the certification shall pay the amount to the State Treasurer as custodian of the Social Security Trust Fund. The State Treasurer shall deposit the amounts so received in the Social Security Trust Fund.

(2) Thereafter, on or before the first day of November next preceding each Regular Session of the Legislature, the State Agency shall certify to the Governor for review and adoption the amount necessary to pay the contributions of the State of Texas for the ensuing biennium. This amount shall be included in the budget of the State which the Governor submits to the Legislature. The State Agency shall send a copy to the State Comptroller of Public Accounts of the certification to the Governor.

(3) All moneys hereby allocated and appropriated by the State to the Social Security Trust Fund shall be paid to the Fund in monthly installments.

(4) In those instances in which State employees are paid from funds not in the State Treasury, the department head at the end of each month shall certify to the proper disbursing officer the total amount of the State's contributions based upon compensation paid the employees. The disbursing officer shall pay that amount to the State Treasurer as custodian of the Social Security Trust Fund. The State Treasurer shall deposit the amounts in the Social Security Trust Fund. A copy of the department heads' certification in these instances shall be given to the State Agency at the same time the original is certified to the disbursing officer. These copies shall be on forms prescribed by the State Agency.

Monthly reports and contributions shall be received by the State Agency on or before the sixth State working day of the month in which the report and contributions are required to be submitted to the Federal Social Security Administration. Quarterly reports and contributions are due and must be received by the State Agency on or before the 15th State working day of the month preceding the month in which the report and contributions are due to the Federal Social Security Administration. Contributions received after the day payment is due and wage reports received

after the due date are delinquent and the reporting entity shall pay interest for each and every calendar day of delinquency including the day the delinquent contributions and reports are received by the State Agency. The interest rate shall be at the same rate as the interest rate charged by the Federal Social Security Administration for delinquent payment of contributions. Interest on delinquent contributions shall be deposited in the State Social Security Administration Fund.

[See Compact Edition, Volume 3 for text of 7]

State Social Security Administration Fund

Sec. 8. There is hereby created a special fund, separate and apart from all public moneys or funds of this State, to be known as the State Social Security Administration Fund. The State Treasurer shall be treasurer and custodian of the fund and shall administer it in accordance with directions from the State Agency. Money deposited in this fund shall be disbursed upon warrants issued by the Comptroller of Public Accounts pursuant to sworn vouchers executed by the State Agency acting through the executive director or personnel of the agency to whom he expressly delegates this function. This fund may be used to pay interest assessed as a penalty by the Federal Social Security Administration because of delinquent payment of contributions.

[See Compact Edition, Volume 3 for text of 9 to 11]

[Amended by Acts 1975, 64th Leg., p. 965, ch. 366, § 1(b), eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 907, ch. 341, §§ 1 to 3, eff. Aug. 29, 1977; Acts 1978, 65th Leg., 2nd C.S., p. 1, ch. 1, § 1, eff. Aug. 4, 1978; Acts 1979, 66th Leg., p. 1478, ch. 645, §§ 4 to 6, eff. Aug. 27, 1979.]

Arts. 695j to 695k. Repealed by Acts 1979, 66th Leg., p. 2429, ch. 842, art. 1, § 2(1), eff. Sept. 1, 1979

Acts 1979, 66th Leg., ch. 842, repealing these articles, enacts the Human Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Human Resources Code.

Prior to repeal, art. 695j-1 was amended by:

- Acts 1977, 65th Leg., p. 325, ch. 156, § 1.
- Acts 1977, 65th Leg., p. 641, ch. 238, § 1.
- Acts 1977, 65th Leg., p. 1139, ch. 430, § 1.
- Acts 1979, 66th Leg., p. 1987, ch. 783, §§ 1, 2.

Prior to repeal, art. 695k was amended by:

- Acts 1975, 64th Leg., p. 1817, ch. 553, § 1.
- Acts 1977, 65th Leg., p. 307, ch. 141, § 1.
- Acts 1977, 65th Leg., p. 1846, ch. 735, § 2.101.
- Acts 1979, 66th Leg., p. 1674, ch. 699, § 1.

Art. 695l. Uniform System of Accounting; Counties, Hospital Districts and Certain Cities; Quarterly Reports

[See Compact Edition, Volume 1 for text of 1 to 4]

Sec. 4a. Cities, counties, and hospital districts that do not participate in welfare assistance programs are not subject to the provisions of this Act. [Amended by Acts 1975, 64th Leg., p. 936, ch. 349, § 1, eff. June 19, 1975.]

2 West's Tex. Stats. & Codes '79 Supp.—49

Art. 695m. Pilot Multipurpose Service Centers for Displaced Homemakers

Text of article effective until August 31, 1981

Findings and Purpose

Sec. 1. (a) The legislature finds and declares that there is an increasing number of persons in this state who, having fulfilled a role as homemaker, find themselves "displaced" in their middle years through divorce, death of spouse, or other loss of family income. As a consequence, displaced homemakers are very often left with little or no income; they are ineligible for categorical welfare assistance; they are subject to the highest rate of unemployment of any sector of the work force; they face continuing discrimination in employment because of their age and lack of recent paid work experience; they are ineligible for unemployment insurance because they have been engaged in unpaid labor in the home; they are ineligible for social security benefits because they are too young, and many never qualify because they have been divorced from the family wage earner; they may have lost beneficiaries' rights under employers' pension and health plans through divorce or death of spouse; and they are often unacceptable to private health insurance plans because of their age. Homemakers are an unrecognized part of the work force who make an invaluable contribution to the strength, durability, and purpose of our state.

(b) It is the intention of the legislature in enacting this legislation to provide the counseling, training, and service programs for displaced homemakers necessary to promote the health and welfare of this growing group of citizens and to enable them to enjoy independence and economic security.

Definitions

Sec. 2. In this Act:

(1) "Displaced homemaker" is an individual who:

(A) is 40 years of age or older and has worked without pay as a homemaker for his or her family;

(B) is not gainfully employed on a full-time basis or has had, or would have, difficulty in finding adequate employment; and

(C) has depended for support on the income of a family member and has lost that income or has depended on and received income support primarily from another source while working as a homemaker or parent and has lost that support.

(2) "Department" means the Texas Rehabilitation Commission.

(3) "Commissioner" means the Commissioner of the Texas Rehabilitation Commission.

Establishment of Centers

Sec. 3. (a) The commissioner shall establish two multipurpose service centers for displaced homemakers, one which shall be in a reasonably central location within the largest federal Standard Metropolitan Statistical Area, as determined by the U.S. Bureau of the Census, in the state. The second pilot service center shall be established in a county with a population of 100,000 or less.

(b) The commissioner shall contract with a non-profit organization or a unit of local government, or both, to operate each center. Payment for the operation of each center for the first month shall be made in advance, but payments for subsequent months of operation shall be made on a billing basis under the terms of the contract. To the greatest extent possible, the staff of each service center, including supervisory, technical, and administrative personnel, shall be filled by displaced homemakers. If necessary, the center may provide for on-the-job training of potential staff members by independent contractors or volunteer agencies.

Job-Counseling Program

Sec. 4. Each multipurpose service center shall provide a job-counseling program for displaced homemakers. Job counseling shall be specifically designed for the person entering the job market after a number of years as a homemaker. Counseling shall take into account and build upon the skills and experiences of a homemaker and shall emphasize job readiness as well as skill development.

Job-Training Program

Sec. 5. Each multipurpose service center shall provide a job-training program for displaced homemakers. The job-training program shall utilize existing skills and be directed toward meeting community needs and creating new jobs, as well as filling available positions, in both public and private employment. Each center shall work with agencies of local government, nonprofit organizations, and private employers in developing job-training cooperative agreements for various vocations. Each center shall provide stipends for job trainees within the limits of available funds. The Texas Employment Commission shall assist each center in finding permanent employment for persons who have completed the job-training program conducted through each center.

Service Programs

Sec. 6. (a) Each multipurpose service center shall operate a health information service to disseminate information about preventive health care and nutrition. The service shall emphasize the health problems, including menopause, of older persons. The clinic service shall provide information, which may include lectures, discussions, and informal

courses, on alcohol and drug addiction and the causes of addiction in older persons. The service may, with the assistance of a county medical society or hospital staff, establish a referral service to direct displaced homemakers to physicians.

(b) Each service center shall provide information, which may include lectures, discussions, and informal courses, on money management, specifically including information about insurance, taxes, mortgages, loans and probate problems.

(c) Each service center may establish additional service programs designed to prepare the displaced homemaker to be a wage earner, to manage his or her own affairs, or to enable the displaced homemaker to provide for his or her physical or mental well-being and security.

Funding Sources

Sec. 7. In addition to legislative appropriation, the department shall explore all possible legal sources of funding for the pilot multipurpose service centers. The department may accept gifts, grants, and in-kind contributions from federal, local, and private sources and may use federal funds under Title 20, Social Security Act, 42 U.S.C. Section 1397 et seq. (1975), if they become available. The department shall seek contributions of building space, equipment, and services.

Fees and Regulations

Sec. 8. The local director of each service center may establish a schedule of fees, based on ability to pay, for various counseling and service programs offered by the center. Fees shall be designed to help defray the costs of operation of the centers. Each local director may also establish guidelines for participation in the job-training program, taking into account the degree of need of the displaced homemaker, the extent of existing agreements with training employers, and the limits of available funds. Each local director shall establish a schedule of stipends, based on need and the extent of any compensation by the training employer, for job trainees.

Reports

Sec. 9. The department is responsible for monitoring the operation of each service center four times each year. The local director of each service center shall prepare an annual report to the department, accounting for all funds provided the centers and describing in detail the services performed at and through the center during the preceding 12-month period and shall make records of the operation of the centers available to the commissioner at his request. The department shall prepare an annual evaluation of the performance of each center in meeting the needs of displaced homemakers in the area. The evaluation shall consider the effectiveness of the programs offered by each center in terms

of number of persons served, quality of services rendered, number of job placements, and degree of need for continuance of similar programs.

Expiration Date

Sec. 10. This Act expires on August 31, 1981.
[Acts 1977, 65th Leg., p. 280, ch. 135, eff. May 11, 1977.]

Art. 695n. Employment Incentive Act

Short Title

Sec. 1. This Act may be cited as the Employment Incentive Act.

Definitions

Sec. 2. In this Act:

(1) "AFDC" means aid to families with dependent children authorized by The Public Welfare Act of 1941.¹

(2) "AFDC recipient" means a person who receives or who the State Department of Public Welfare has determined is eligible to receive AFDC payments.

¹ Article 695c.

Employment Program

Sec. 3. The Texas Employment Commission, after consultation with the State Department of Public Welfare, shall establish an employment program designed to assist and encourage AFDC recipients in obtaining employment. The commission shall adopt the rules necessary to implement the employment program consistent with this Act and applicable federal law.

Registration

Sec. 4. (a) Except as provided in Subsection (b) of this section, each AFDC recipient shall register with the commission in the employment program established under Section 3 of this Act.

(b) An AFDC recipient is not required to register if he is in the class of individuals that is exempt from registering for manpower services, training, and employment under Section 402, Title IV-A of the federal Social Security Act (42 U.S.C. Section 602) and rules adopted pursuant to that law.

Duty of Registrant

Sec. 5. Each registrant shall:

- (1) report to the commission for interview at the reasonable request of the commission;
- (2) furnish the commission with information it requests that is reasonably related to placing the registrant in suitable employment;
- (3) apply for suitable employment as directed by the commission;
- (4) accept any offer of suitable employment; and

(5) continue in suitable employment obtained after registration until:

- (A) the work becomes unsuitable;
- (B) he becomes exempt from the registration requirement as provided in Section 4 of this Act; or
- (C) he is terminated from the employment due to circumstances beyond his control.

Review of Registrants; Notification of Welfare Department

Sec. 6. (a) The commission shall establish a system of periodic review to determine whether registrants comply with Section 5 of this Act. In each case reviewed, the commission shall determine whether the registrant without good cause failed to comply. Before making its decision, the commission shall give the registrant an opportunity for an adjudicative hearing.

(b) In determining suitability of employment, the commission shall consider the facts and circumstances relative to the particular registrant, including but not limited to his health, his training and education, the degree of risk to his health and safety, his experience and prior earnings, his prospects of securing work in his customary occupation, and the commuting distance and expense.

(c) Employment is not suitable if the commission determines that:

- (1) the compensation, work hours, or other conditions of work are substantially less favorable to the registrant than those prevailing for similar work in the locality;
- (2) as a condition of employment the registrant is required to join, resign from, or refrain from joining a labor organization;
- (3) the work site is subject to a strike or lockout at the time of the offer of employment;
- (4) the degree of risk to the registrant's health or safety is unreasonable;
- (5) the registrant is physically or mentally unfit to perform the work;
- (6) the commuting distance is unreasonable; or
- (7) the employment fails to satisfy standards established under applicable federal law.

(d) If the final decision of the commission is that a registrant failed to comply with Section 5 of this Act without good cause, the commission promptly shall give the Commissioner of Public Welfare written notice of the decision. However, if the registrant appeals the decision, the commission shall delay notification pending the final outcome of the appeal.

Loss of AFDC Eligibility; Reinstatement

Sec. 7. (a) If a registrant has failed to comply with Section 5 of this Act without good cause as determined by the commission, the registrant is inel-

igible to receive AFDC payments. The ineligibility takes effect on the date the commission's decision on the matter becomes final.

(b) AFDC ineligibility resulting from the application of Subsection (a) of this section continues until the registrant's eligibility is reinstated by the commission.

(c) On application by a registrant for reinstatement of AFDC eligibility in the manner prescribed by rule of the commission, the commission shall determine whether to reinstate eligibility.

(d) The commission shall reinstate AFDC eligibility if it finds that the registrant, after having lost eligibility under Subsection (a) of this section, obtained employment of at least 30 hours a week. Before making its decision, the commission shall give the registrant an opportunity for an adjudicative hearing.

(e) On reinstatement of a registrant's AFDC eligibility, the commission shall give the Commissioner of Public Welfare written notice of the reinstatement.

Deduction for Unsuccessful Appeal

Sec. 8. (a) If the final outcome of a registrant's appeal of a decision made by the commission under Section 6 of this Act upholds the commission's decision, the department of public welfare shall deduct the amount of AFDC payments made to the registrant during the pendency of the appeal from any future AFDC payments made to the registrant.

(b) In each case in which a deduction is required under Subsection (a) of this section, the commission shall give the Commissioner of Public Welfare written notice of the time elapsed between the rendering of the commission's decision and the reviewing court's judgment.

Hearings

Sec. 9. The commission, a hearing examiner appointed by the commission, or an appeal tribunal established under the Texas Unemployment Compensation Act (Article 5221b-22b, Vernon's Texas Civil Statutes) may conduct an adjudicative hearing held under this Act.

Venue of Appeal

Sec. 10. Venue in an appeal of a decision made by the commission under this Act is in the district court of the county in which the registrant resides.

Sec. 11. [Adds § 19-B to art. 695c]

Delayed Effective Date

Sec. 12. Sections 5 through 11 of this Act take effect March 1, 1978. Otherwise, this Act takes effect September 1, 1977.

Sunset Provision

Sec. 13. Unless reenacted, the provisions of this Act shall be without effect after August 31, 1987. [Acts 1977, 65th Leg., p. 749, ch. 281, §§ 1 to 4, 12, 13, eff. Sept. 1, 1977. Amended by §§ 5 to 11, eff. March 1, 1978.]

Art. 695o. AFDC Education and Employment Act

Text of article effective until August 31, 1983

Short Title

Sec. 1. This Act may be cited as the AFDC Education and Employment Act.

Findings and Purposes

Sec. 2. The legislature finds and declares as follows:

(1) There are more than 90,000 households receiving assistance through the AFDC program. More than 9 of the 10 (96%) AFDC households are headed by women. The State of Texas spends more than substantial funds in providing approximately \$3,600 annually in assistance and services, which include: financial grants, food stamps, day care, medical services, and administrative overhead. Past efforts directed at assisting AFDC heads of families to be economically self-sufficient have had limited effect in reducing the welfare rolls.

(2) AFDC caretakers have many handicaps when entering the job market. Lacking marketable skills, they are relegated to low-paying jobs. Thus, there is often an economic disincentive to go to work. The vast majority of AFDC caretakers are unable to earn enough income to offset child-care and transportation expenses. Because of sexual and racial discrimination, job availability is limited to a narrow range of career choices, many of which do not offer as much as the federally established minimum wage. A majority of AFDC caretakers have not attained an adequate education. Chances of effective employment are reduced.

(3) A viable solution is a Texas AFDC Employment and Education Pilot Project established by this Act. This pilot project will provide the necessary experience and basis to give new direction to Texas and national AFDC welfare policies. It is the intention of this legislation to provide assistance to AFDC recipients in obtaining employment experience and skills training from postsecondary vocational training institutions, community colleges, universities, C.E.T.A. (the federal Comprehensive Employment and Training Act), skills centers, industry, on-the-job training, and other related employment, education, and social service agencies.

AFDC Education and Employment Pilot Project

Sec. 3. (a) The AFDC Education and Employment Pilot Project is established. The pilot project is administered by the State Department of Public Welfare, and the department shall adopt the rules necessary for its implementation consistent with this Act.

(b) The purpose of the pilot project is to develop an effective means of assisting and encouraging persons who are receiving AFDC assistance to become self-sufficient members of society by providing them with vocational and general educational opportunities and with assistance in obtaining and retaining employment. In this Act, "AFDC" means aid to families with dependent children authorized under The Public Welfare Act of 1941, as amended (Article 695c, Vernon's Texas Civil Statutes).

(c) The pilot project is financed with state money, to the extent provided by legislative appropriation, and with any federal money obtained for the purpose. The department may also accept private grants and donations for the pilot project.

(d) To qualify for participation in the pilot project, a person must be eligible to receive AFDC assistance from the department.

Education Component

Sec. 4. (a) As a component of the pilot project, the department shall develop an education program designed to provide occupational and general education for persons participating in the pilot project, using, to the extent practicable, community colleges, colleges, universities, and other educational institutions in this state that elect to participate in the education program. Participation of an educational institution in the education program is subject to the approval of the department. The department shall consult with participating educational institutions in developing curricula for the education program.

(b) The department may reimburse participating educational institutions for all or any part of the costs of providing educational services under the program established by this section.

(c) In developing the education program, the department shall emphasize training in skills or trades that offer the opportunity for earning power in excess of the federal minimum wage, as illustrated by, but not limited to, welding, carpentry, electronics, data processing, paraprofessional work, and machinist trades.

Employment Component

Sec. 5. (a) As a component of the pilot project, the department, after consultation with the Texas Employment Commission, shall develop an employment program designed to assist persons participating in the pilot project in obtaining and retaining

employment and to provide them with on-the-job training.

(b) The department shall establish a number of pilot sites in both rural and urban areas of the state to administer the program on a local level. The department may contract with private nonprofit corporations to administer the site offices.

(c) The site offices may contract with employers, prospective employers, or labor unions to provide on-the-job training or apprenticeships for project participants. In placing project participants in positions in which they receive on-the-job training, the site offices shall emphasize training in the kind of skills and trades specified in Section 4(c) of this Act.

(d) The site offices may contract or enter into cooperative agreements with other publicly financed employment programs to provide job-placement services.

(e) In staffing the site offices, the department or nonprofit corporation shall employ, to the greatest extent practicable, persons who are eligible to receive AFDC assistance from the department and who have the knowledge and experience required for the positions.

(f) Each site office shall attempt to place each participant in employment commensurate with his ability, training, and experience.

Welfare Services Continued

Sec. 6. Within any limitations imposed under federal law, child care, health services, transportation, and other welfare services to which a person was entitled at the time he became a participant in the pilot project are continued after he obtains employment for the period of time and to the extent the department determines necessary to allow the person to adjust to the demands of a self-sufficient life. The department by rule shall establish standards for determining when and to what extent the services are discontinued.

Advisory Committee

Sec. 7. (a) The Commissioner of Public Welfare, with approval of the State Board of Public Welfare, shall appoint eight persons to serve as members of an advisory committee for the pilot project. Vacancies on the advisory committee are filled in the same manner.

(b) In making the appointments to the advisory committee, the commissioner shall give consideration to the ethnic and sexual makeup of the state in an effort to achieve fair representation and shall attempt to appoint at least one person from business, labor, local government, and the general public.

(c) Advisory committee members serve for the duration of the pilot project and receive no compensation.

(d) The advisory committee shall elect a chairman from among its members. The commissioner shall designate one member to serve as chairman until the committee elects a chairman. The committee meets at the call of the chairman at the place specified in the call.

(e) Each member of the advisory committee is entitled to reimbursement for actual and necessary traveling and lodging expenses incurred in attending meetings of the committee.

(f) The advisory committee shall monitor and evaluate the pilot project and report to the department in the manner prescribed by department rule. The committee may include recommendations in its report.

(g) The department shall provide technical and administrative assistance to the advisory committee.

Annual Report

Sec. 8. The department shall prepare an annual report evaluating the pilot project.

Expiration

Sec. 9. This Act expires August 31, 1983.
[Acts 1977, 65th Leg., p. 1659, ch. 655, eff. Aug. 29, 1977.]

Art. 695p. Shelter Centers for Victims of Family Violence

Text of article effective until August 31, 1983

Purpose

Sec. 1. It is the purpose of this Act to provide protection and temporary shelter in a family-oriented environment for victims of family violence and members of their families until the victims may be properly assisted through counseling, medical care, legal assistance, and other forms of aid. The legislature also intends to reduce the high incidence of deaths and injuries sustained by law enforcement officers in handling family disturbances and to aid law enforcement officers in protecting victims of family violence from serious or fatal injuries.

Definitions

Sec. 2. In this Act:

(1) "Shelter center" means a facility that is operated by a public or private nonprofit organization and that provides shelter and services to victims of family violence.

(2) "Victim of family violence" means:

(A) an individual who is subjected to physical force or the threat of physical force by another who is related to the individual, who is a former spouse of the individual, or who resides in the same household with the individual; or

(B) an individual, other than an individual using physical force or the threat of physical force, who resides in the same household with a

victim of family violence as defined in Subdivision (A) of this subsection.

Contracts

Sec. 3. (a) The Texas Department of Human Resources shall contract for services with a maximum of 12 shelter centers that provide shelter and services to victims of family violence. The contracts are to expand existing shelter center services and may not result in reducing financial support a shelter center receives from another source.

(b) The department shall contract for services with at least one shelter center in a county with a population of less than 200,000 and with at least one shelter center in a county with a population of more than 1,000,000, according to the most recent federal census.

(c) The department's contracts are limited to:

- (1) a maximum of a \$50,000 payment a year for each center;
- (2) providing a maximum of 50 percent of the annual cost of the center for a year; and
- (3) no more than one shelter center in a county.

Contract Bids

Sec. 4. (a) To be eligible for a contract, a public or private nonprofit organization must operate a shelter center that provides temporary lodging and some social services for adults and children who have left or have been removed from the family home because of family violence. The contract application must be submitted on forms prescribed by the department.

(b) The department shall consider the following factors in awarding the contracts:

- (1) the shelter center's eligibility for and use of funds from the federal government, philanthropic organizations, and voluntary sources;
- (2) community support for the shelter center as evidenced by financial contributions from civic organizations, local governments, and individuals;
- (3) evidence that the shelter center provides services that encourage rehabilitation and decrease dependence on other public and private social service agencies;
- (4) the shelter center's use of a sliding fee scale under which charges for services are based on the recipient's ability to pay;
- (5) the endorsement and involvement of local law enforcement officials;
- (6) support for the shelter center through volunteer work, especially volunteer effort by persons who have been victims of family violence; and

(7) the shelter center's efforts to provide services to violent family members and to encourage family reconciliation if rehabilitation occurs.

Contract Specifications

Sec. 5. (a) The department shall offer contracts to the shelter centers that fulfill the requirements of this Act and provide the most evidence of the program characteristics listed in Subsection (b) of Section 4 of this Act.

(b) The contracts shall require the persons operating a shelter center to:

(1) make a quarterly and an annual financial report on a form prescribed by the department;

(2) cooperate with inspections the department makes to insure services standards and fiscal responsibility; and

(3) expand the services provided by the shelter center by expanding the center's facilities or contracting for services to include one or more of the following services:

- (A) 24-hour-a-day shelter;
- (B) a crisis call hotline available 24 hours a day;
- (C) emergency medical care;
- (D) counseling or psychotherapy;
- (E) emergency transportation;
- (F) legal assistance;
- (G) educational arrangements for children;
- (H) information about training for and seeking employment;
- (I) cooperation with law enforcement officials;
- (J) treatment for violent family members; and
- (K) a referral system to existing community services.

(c) The contracts may require the persons operating a shelter center to use intake and case study forms prescribed by the department and to submit

case data and other information as the department determines necessary.

Report

Sec. 6. The department shall publish a report that summarizes reports from shelter centers under contract with the department and that analyzes the effectiveness of the contracts authorized by this Act. The report may recommend methods for preventing or treating the problem of family violence.

Confidentiality

Sec. 7. The department may not disclose any information gained through reports, collected case data, or inspections that would identify a particular center or a person working at or receiving services at a shelter center.

Consultations

Sec. 8. In implementing this Act, the department shall consult with individuals and groups having knowledge of and experience in the problems of family violence.

Grants and Funds

Sec. 9. The department shall seek federal funds that may be available for the contracts authorized by this Act and may receive grants and donations to provide the necessary funds.

Rules

Sec. 10. The department may adopt rules necessary to implement this Act.

[Acts 1979, 66th Leg., p. 182, ch. 98, §§ 1 to 10, eff. Sept. 1, 1979.]

Section 11 of the 1979 Act added Title 4 to the Family Code, Family Code § 71.01 et seq. Section 12 provided that §§ 1 to 10 (this article) expire on August 31, 1983.

Art. 695q. Repealed by Acts 1979, 66th Leg., p. 2443, ch. 842, art. 2, § 24, eff. Sept. 1, 1979

The repealed article, relating to foster care payments, was derived from Acts 1979, 66th Leg., p. 1199, ch. 583, §§ 1 to 5.

Acts 1979, 66th Leg., ch. 842, repealing this article, enacts the Human Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Human Resources Code.

TITLE 22

BONDS—COUNTY, MUNICIPAL, ETC.

CHAPTER ONE. GENERAL PROVISIONS AND REGULATIONS

Article

715b. Bond Registration Act.

717k-5. Validation of Contracts, Warrants and Refunding Bonds Authorized by Counties, Cities or Towns.

717m-1. Declaratory Judgment Concerning Validity of Securities.

717n-1. Counties over 1,000,000; Issuance of Certificates of Indebtedness for Certain Purposes.

717o. Local Government Sport Centers.

Art. 704. Time of Election; Notice of Election

The time and place or places of holding said election shall be designated in the election order, and such election shall be held not less than fifteen (15) nor more than ninety (90) days from the date of such order. Notice of said election shall be given by posting a substantial copy of the election order at three (3) public places in such county, city, or town, and also at the county courthouse if for a county election and at the city hall if for a city or town election. Such notice shall also be published on the same day in each of two (2) successive weeks in a newspaper of general circulation published within said county, city, or town, the date of the first publication to be not less than fourteen (14) days prior to the date set for said election. The provisions of this Article shall control over any city charter provisions to the contrary. Except as herein provided, the manner of holding said election shall be governed by the laws governing general elections.

[Amended by Acts 1977, 65th Leg., p. 1395, ch. 561, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 58, ch. 36, § 1, eff. Aug. 27, 1979.]

Art. 715b. Bond Registration Act

Citation of Act

Sec. 1. This Act may be cited as the "Bond Registration Act."

Definitions

Sec. 2. As used in this Act:

(1) "Comptroller" means the comptroller of public accounts.

(2) "Fully registrable" means, with reference to the public securities, that the principal of and interest on such securities are payable only to the registered owner thereof, the principal thereof being payable upon presentation of the securities at the place of payment and the interest thereon

being payable to the registered owner at the most recent address of said registered owner shown on the books of the registrar.

(3) "Issuer" means the State of Texas, any department, board, agency, or instrumentality of the State of Texas, any municipal corporation, any political subdivision, any district, authority, or any other political corporation of the State of Texas having the authority to issue public securities.

(4) "Public securities" means bonds, notes, certificates of obligation, certificates of indebtedness, or other obligations for the payment of money lawfully issued by an issuer.

(5) "Registered owner" means the payee named in a fully registrable public security, his legal representative or successor.

(6) "Registrar" means the comptroller of public accounts or a commercial bank meeting the requirements of this Act which is named as registrar in the proceedings authorizing public securities.

Form of Public Securities; Denomination

Sec. 3. (a) Any issuer may provide in the proceedings authorizing the issuance of public securities that such public securities may be in a form:

(1) having appertaining thereto coupons and being unregistrable;

(2) having appertaining thereto coupons and being registrable as to principal only; or

(3) being fully registrable. Such proceedings may provide that public securities of the same issue or series may be of one or more of such types and may be exchangeable in whole or in part for one or more of such types.

(b) Any issuer may also provide in the proceedings authorizing the issuance of public securities that such public securities shall be in a form having initially appertaining thereto coupons and being permitted to become fully registrable in accordance with Section 5 of this Act.

(c) Public securities may be issued in any denomination or denominations, provided that if such public securities are authorized to be in a denomination or denominations in excess of \$1,000, they shall be in a denomination or denominations that are multiples of \$1,000.

Registrar of Securities; Rules and Regulations

Sec. 4. If the proceedings authorizing public securities provide that such securities can be fully registrable, the registrar therefor shall be the comptroller or a banking corporation or association at which the principal of such public securities shall be payable. They may be registered under such reasonable rules and regulations not inconsistent herewith as such proceedings may provide.

Comptroller as Registrar: Attachment or Removal of Coupons

Sec. 5. If the comptroller of public accounts is named the registrar in proceedings authorizing the issuance of public securities, in accordance with such proceedings such public securities may be originally issued with coupons appertaining thereto and subsequently become fully registrable by the removal by the comptroller of the coupons appertaining thereto upon the presentation of the securities to the comptroller, and may be originally issued fully registrable and subsequently become public securities with coupons appertaining thereto by attachment of the coupons appertaining thereto by the comptroller upon presentation of such securities to the comptroller. Such attachment and removal may occur successively from time to time. No matured coupon will be attached or reattached by the comptroller.

Exchange or Change in Form of Securities

Sec. 6. (a) If the proceedings authorizing the issuance of public securities provide or have heretofore provided that such public securities having appertaining thereto coupons or being fully registrable may be exchanged or such public securities change form by attachment or removal of coupons in accordance with Section 5 hereof, and such public securities on initial issuance are approved by the attorney general in accordance with law and registered by the comptroller, upon exchange or their change in form by attachment or removal of coupons in accordance with this Act, it shall not be necessary for the attorney general to again approve and it shall not be necessary for the comptroller to again register such public securities, resulting from such exchange or change in form, but the public securities resulting from such exchange or change in form shall as a matter of law be considered as having been approved by the attorney general and registered by the comptroller.

(b) If such public securities are exchanged, the registrar shall cause to be placed on the public securities received in exchange an appropriate inscription manually signed verifying that the public securities received in exchange are in lieu of the public securities presented for exchange.

Change of Registered Owner or Address; Replacement for Damaged, Destroyed, Lost or Stolen Bonds: Form and Identity Changes

Sec. 7. (a) If the comptroller is named as registrar in the proceedings authorizing the issuance of public securities, upon the change on the registration books of the registrar of the registered owner or his address, the comptroller shall notify all places of payment with reference to such change or changes.

(b) In the event application is made to the comptroller for the replacement of damaged, destroyed, lost, or stolen bonds, pursuant to Chapter 334, Acts of the 59th Legislature, Regular Session, 1965 (Article 715a, Vernon's Texas Civil Statutes), and any such bond or bonds as described in said application do not appear in the comptroller's records in the form and bear the identity as originally registered by the comptroller, the applicant for such replacement shall furnish the comptroller a chronology of the changes from the original, registered form and identity as to enable the comptroller, under regulations promulgated by him to effect such purpose, to trace the changes in form and identity by such chronology, of such bond or bonds into the original, registered form and identity.

Cost and Expenses for Registration and Exchange of Securities

Sec. 8. Where the proceedings authorizing public securities provide for public securities to be fully registrable whether initially or through exchange or conversion, such proceedings shall provide to the extent the issuer is to pay the cost and expenses in connection with the registration and exchange of such public securities including the fees of the registrar therein named. The comptroller shall adopt reasonable regulations for his performing the services provided for herein, and shall publish a schedule of fees for performing such services.

Cumulative Effect; Conflicting Provisions

Sec. 9. (a) The provisions of this Act shall be cumulative of all laws or parts of laws, general or special, and specifically are not intended to qualify the Texas Uniform Commercial Code or limit the negotiability of public securities as provided therein.

(b) In the event of conflict between the provisions of this Act and the provisions of any city charter the provisions of this Act shall prevail.

Severability

Sec. 10. If any provision of this Act or the application thereof to any person, political subdivision, or circumstances is held invalid, such invalidity shall not affect any other provision or application of this Act, which can be given effect without the invalid provisions or application, and to this end the provisions of the Act are declared to be severable. [Acts 1975, 64th Leg., p. 1132, ch. 431, § 1, eff. June 19, 1975.]

Art. 717k. State, County, Municipality or Political Subdivision; Issuer of Bonds, Notes, etc.

[See Compact Edition, Volume 3 for text of 1 to 7]

Alternate Procedures; Issuance and Sale of Refunding Bonds; Deposits in Connection with Payment or Redemption of Revenue Obligations

Sec. 7A. Notwithstanding any provision of this Act or any other law to the contrary, any issuer may, at its option, in lieu of making any deposit with the State Treasurer hereunder, deposit proceeds from the sale of refunding bonds issued hereunder, and/or any other available funds or resources, directly with any place of payment (paying agent) for any obligations payable from revenues (other than ad valorem tax revenues) which it wishes to refund, or to pay or redeem in whole or in part without the issuance of refunding bonds, or with the trustee under any trust indenture, deed of trust, or similar instrument securing such revenue obligations, in an amount sufficient to provide for the payment and/or redemption of any such revenue obligations of the issuer, including assumed obligations, which are to be refunded, or to be paid or redeemed in whole or in part without the issuance of refunding bonds; and such deposit, if made on or before such payment and/or redemption date, shall constitute the making of firm banking and financial arrangements for the discharge and final payment or redemption of the revenue obligations being refunded, or being paid or redeemed in whole or in part without the issuance of refunding bonds; and any issuer is authorized to enter into an escrow or similar agreement with any such place of payment (paying agent) or trustee with respect to the safekeeping, investment, reinvestment, administration, and disposition of any such deposit, upon such terms and conditions as the parties may agree, provided that such deposits may be invested and reinvested only in direct obligations of the United States of America, including obligations the principal of and interest on which are unconditionally guaranteed by the United States of America, and which may be in book entry form, and which shall mature and/or bear interest payable at such times and in such amounts as will be sufficient to provide for the scheduled payment and/or redemption of such revenue obligations, and further provided that if any such revenue obligations are scheduled to be paid and/or redeemed on a date later than the next succeeding scheduled interest payment date thereon, the issuer shall be required to enter into an appropriate escrow or similar agreement as described above. Notwithstanding any provisions of this Act or any other law to the contrary, refunding bonds may be issued under this Act to refund any revenue obligations which are scheduled to mature, or which are subject to redemption prior to maturity, not more than 20 years from the date of

the refunding bonds, and refunding bonds issued under this Act may be sold at public or private sale, under such procedures, at any price (at a premium, at par, or at a discount), upon such terms, and bear interest at such rate or rates, and mature not more than 40 years after their date, all as shall be determined within the discretion of the governing body of the issuer; provided that Chapter 3, Acts of the 61st Legislature, Regular Session, 1969, as now or hereafter amended (Article 717k-2, Vernon's Texas Civil Statutes), which pertains generally to the sale price and interest rates of all public securities, shall be applicable to said refunding bonds; and any issuer is further authorized to pledge to the payment of any refunding bonds issued hereunder (i) any surplus income to be available from the investment or reinvestment of any deposit made as authorized in this Section 7A and/or (ii) any other available revenues, income, or resources. The refunding bonds also may be issued in an additional amount sufficient to pay the costs and expenses of issuing said bonds and sufficient to fund any debt service reserve, contingency, or other similar fund deemed necessary or advisable by the issuer.

[See Compact Edition, Volume 3 for text of 8 and 9]

[Amended by Acts 1979, 66th Leg., p. 2182, ch. 832, § 1, eff. June 14, 1979.]

Art. 717k-2. Public Securities; Issuance by Public Agencies; Interest Rate

Sec. 1. As used in this Act, unless the context otherwise requires:

(a) The term "public agency" shall mean and include the State of Texas, any department, board, agency, or instrumentality of the State of Texas, any municipal corporation, any political subdivision, any district, any body politic and corporate of the State of Texas, and solely for the purposes of this Act and not for any other purposes of law, any nonprofit corporation or other not-for-profit entity that has been determined to be an instrumentality of or is acting on behalf of any of the foregoing.

(b) The term "public securities" shall mean any bonds, notes, or other obligations payable from taxes, or revenues, or both, which any public agency is now or hereafter may be authorized to issue pursuant to provisions of law other than this Act.

(c) The term "net interest cost" with reference to an issue or series of public securities shall mean the total of all interest to accrue and come due thereon through the final scheduled maturity date thereof, plus any discount or minus any premium included in the price paid therefor. The term "discount" with reference to an issue or series of public securities shall mean the principal amount (par value) of such issue or series plus any accrued interest to the date

of delivery minus the total sum of money paid to the issuer. The term "premium" with reference to an issue or series of public securities shall mean the total sum of money paid to the issuer for such an issue or series minus the principal amount (par value) thereof, and also minus any accrued interest to the date of delivery. The term "bond years" with reference to each separate bond, note, or other obligation constituting part of an issue or series of public securities shall mean the figure obtained by dividing the principal amount (par value) of each such bond, note, or other obligation by one-thousand (1000) and multiplying such quotient by the number of years from the date interest commences to accrue thereon to its scheduled maturity date. If any portion of an issue or series of public securities is subject to a mandatory redemption prior to scheduled maturity which at the time of delivery of such public securities is scheduled to occur on a date or dates certain, net interest cost and bond years shall be calculated as if the face amount of bonds, notes, or other obligations required to be redeemed on each such earlier date were scheduled to mature on such earlier date and net interest cost shall include any premium required to be paid on any such mandatory redemption date.

(d) The term "net effective interest rate" with reference to an issue or series of public securities shall mean the figure obtained by dividing the amount of the net interest cost of such issue or series by the aggregate total number of bond years of all bonds, notes, or other obligations constituting such issue or series, and then dividing such quotient by ten (10) and expressing the result as a rate of interest in per cent per annum.

Sec. 2. The maximum rate of interest for any issue or series of public securities shall be a net effective interest rate of ten per cent (10%), and any public agency is hereby authorized to issue and sell any issue or series of its public securities at any price or prices and bearing interest at any rate or rates (provided that the net effective interest rate does not exceed ten per cent (10%)), as shall be determined within the discretion of the governing body of the public agency, subject to the exceptions hereinafter provided. Any public securities heretofore authorized by an election may be issued, sold, and bear interest as provided in this Act, except that public securities heretofore authorized by an election required by the Constitution of Texas shall not be issued at an interest rate greater than authorized at such election unless a further election is held resulting favorably to the issuance of such previously voted public securities at a price and at a rate authorized by this Act. Elections for that purpose shall be called and held, and notice thereof given, in the same manner as provided by law applicable to the previous election authorizing such public securities.

Sec. 3. The provisions of this Act concerning sale price and the maximum rates of interest which public securities may bear shall apply to all public securities notwithstanding the provisions or restrictions of any general or special law or charter to the contrary, but shall not apply to any public securities whose maximum rate of interest or maximum net effective interest rate is, at the time of issuance thereof, otherwise specifically fixed by the Constitution.

Sec. 4. If an issue or series of public securities is issued in exchange for property, labor, services, materials, or equipment pursuant to provisions of law other than this Act, such public securities may bear interest at any rate or rates, as shall be determined within the discretion of the governing body of the public agency, subject to the exceptions hereinafter provided, provided that the maximum interest rate shall not exceed ten per cent (10%).

[Amended by Acts 1977, 65th Leg., p. 1951, ch. 776, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1439, ch. 631, §§ 1, 2, eff. June 13, 1979.]

Art. 717k-5. Validation of Contracts, Warrants and Refunding Bonds Authorized by Counties, Cities or Towns

Sec. 1. In every instance where the commissioners court of a county or the governing board of a city, including home-rule cities, or town in this state has entered into contracts for, or has determined the advisability thereof by giving notice of intention to issue interest-bearing time warrants in payment therefor, the construction of public works or improvements, the purchase of land or interests in land, or for the purchase of materials, supplies, equipment, labor, supervision, wages, salaries, or professional or personal services, and has heretofore adopted orders or ordinances to authorize the issuance of scrip or time warrants to pay or evidence the indebtedness of such county or city, including home-rule cities, or town for the cost of such public works or improvements, land, material, supplies, equipment, labor, supervision, wages, salaries, or professional or personal services, all such contracts, scrip and time warrants, and the proceedings adopted by the commissioners court or governing body, as the case may be, relating thereto are hereby in all things validated, ratified, confirmed, and approved. All scrip warrants and time warrants heretofore issued by the commissioners court or governing body, as the case may be, in payment of work done by such county or city, including home-rule cities, or town and paid for by the day as the work progressed, and for materials and supplies purchased in connection with such work and for professional or personal services rendered to the county, city, or town, and each of these are hereby in all things validated, ratified, confirmed, and approved and all

such warrants shall be payable in accordance with their respective terms. It is expressly provided, however, that this Act shall neither apply to nor validate, ratify, or confirm any contract, scrip warrant, or time warrant executed or issued by any county with a population in excess of 350,000, according to the last preceding federal census, or any contract, scrip warrant, or time warrant, the validity of which is involved in litigation at the time this Act becomes effective if the question is ultimately determined against the validity thereof.

Sec. 2. All proceedings, governmental acts, orders, ordinances, resolutions, and other instruments heretofore adopted or executed by a commissioners court or governing body of a city, including home-rule cities, or town, and of all officers and officials thereof authorizing the issuance of or pertaining to refunding bonds for the purpose of refunding scrip or time warrants issued by any county or city, including home-rule cities, or town and all such warrants and all refunding bonds, heretofore issued for such purpose, and each of these are hereby in all things validated, ratified, approved, and confirmed. Such refunding bonds now in process of being issued and authorized by proceedings, ordinances, and resolutions heretofore adopted may be issued, irrespective of the fact that the commissioners court or governing body in giving the notice of intention to issue refunding bonds may not have in all respects complied with statutory provisions. It is expressly provided, however, that this Act shall neither apply to nor validate, ratify, or confirm any proceedings, governmental acts, orders, resolutions, or other instruments, or bonds executed, adopted, or issued by any county with a population in excess of 350,000, according to the last preceding federal census, or any proceedings, governmental acts, orders, ordinances, resolutions, or other instruments, or bonds, the validity of which is involved in litigation at the time this Act becomes effective if the question is ultimately determined against the validity thereof; nor shall this Act be construed as validating any proceedings which may have been nullified by a final judgment of a court of competent jurisdiction.

Sec. 3. If any section, subsection, paragraph, sentence, clause, phrase, or word in this Act or application thereof to any person or circumstance is held invalid such holding shall not affect the validity of the remaining portions of this Act, and the legislature hereby declares it would have passed such remaining portions despite such invalidity.

[Acts 1975, 64th Leg., p. 1195, ch. 452, §§ 1 to 3, eff. June 19, 1975.]

Art. 717m. Repealed by Acts 1979, 66th Leg., p. 881, ch. 400, § 14(a), eff. June 6, 1979

Section 14(b) of the 1979 repealing act provided:

"Subsection (a) of this section does not affect any proceeding under the repealed law pending on the effective date of this Act. Such a proceeding is covered by the law under which it was instituted, and the repealed law is continued in effect for that purpose."

Art. 717m-1. Declaratory Judgment Concerning Validity of Securities

Definitions

Sec. 1. The following words, as used in this Act, shall have the following meanings unless the context clearly requires otherwise:

(1) "Public agency" means any board, authority, agency, department, commission, political subdivision, municipal corporation, district, public corporation, body politic, or instrumentality of the State of Texas including, without limitation, any county, home-rule charter city, general law city, town, or village, any state-supported educational institution of higher learning, any school, junior college, hospital, water, sewerage, waste disposal, pollution, road, navigation, levee, drainage, conservation, reclamation, or other district or authority, and any other type of political or governmental entity of the State of Texas.

(2) "Securities" means all interest-bearing obligations, including, without limitation, any bonds, notes, bond anticipation notes, warrants, certificates, or other evidences of indebtedness, whether general or special, whether negotiable or nonnegotiable in form, whether in bearer or registered form, whether in temporary or permanent form, whether with or without interest coupons, and regardless of the source of payment, whether from taxes, revenues, or both, or otherwise.

Declaratory Judgment

Sec. 2. Any public agency may, prior to or after the issuance and delivery of any securities, institute a proceeding in rem in district court by filing a petition as provided by this Act, for the purpose of obtaining a declaratory judgment as to the authority of the public agency to issue and deliver the securities and as to the legality and validity of all proceedings, including all actions and expenditures of funds, taken or made and/or proposed to be taken or made in connection with or affecting any securities, including, in appropriate cases, the validity of the election, if any, at which the securities were authorized, and the organization or boundaries, if any, of the public agency, any assessments or taxes levied or to be levied, and the lien of the taxes, the validity of any contract or contracts executed or proposed to be executed with respect to the securities, the levy of rates, fees, charges, or tolls, and of proceedings or other remedies for the collection of such taxes, rates, fees, charges, or tolls, the legality and validity of the pledge of any taxes, revenues, receipts, or property, or encumbrance thereon to secure said securities, and as to the legality and validity of the securities and proceedings. The petition may be filed in any district court of Travis County, Texas, or, at the option of the public agency, in any district court of

the county in which the public agency maintains its principal office, as a class action against the taxpayers, property owners, and residents, if any, of the public agency, and all nonresidents, if any, owning property therein, and/or all others having or claiming any right, title, or interest in any property or funds to be affected by the proceedings and/or the issuance of the securities, or interested or affected in any way thereby, or by the proceedings, including all actions and expenditures of funds, taken or made and/or proposed to be taken or made in connection with or affecting the securities.

Content of Petition

Sec. 3. The petition for declaratory judgment shall briefly set out, by proper allegations, references, or exhibits, the public agency's authority for issuing the securities, the holding of an election and the results of the election where an election is required, copies of or pertinent excerpts from any proceedings, including any essential actions and expenditure of funds, taken or made and/or proposed to be taken or made in connection with the securities, the amount or proposed maximum amount and purpose of the securities, the rate or rates of interest or proposed maximum rate of interest they are to bear, and, in case it is desired to adjudicate the organization or validity of the public agency, the authority for and proceedings had in the creation of the public agency, or in changing its boundaries, if any, or any other pertinent matters.

Notice to Taxpayers and Attorney General, etc.

Sec. 4. The judge of the district court where the petition is filed shall, on filing and presentation of the petition, immediately make and issue an order in general terms in the form of a notice directed to all taxpayers, property owners, and residents, if any, of the public agency, and all nonresidents, if any, owning property therein, and all others having or claiming any right, title, or interest in any property or funds to be affected by the proceedings and/or the issuance of the securities, or interested or affected in any way thereby, or by the proceedings, including all actions and expenditure of funds, taken or made and/or proposed to be taken or made in connection with or affecting the securities, requiring, in general terms and without naming them, all the persons and the Attorney General of Texas to appear for hearing and trial at 10 a. m. on the first Monday after the expiration of 20 days from the date of issue of the order, and show cause why the prayers of the petition should not be granted and the proceedings and the securities validated and confirmed as therein prayed. The notice shall give a general description of the nature of the petition but need not set forth the entire petition or the attached exhibits. A copy of the petition, together with any exhibits attached, and a copy of said order, shall be served on the

attorney general at least 20 days before the time fixed in the order for hearing and trial as aforesaid; provided, that the attorney general may waive the service when he has been furnished a certified copy of the petition, order, and a transcript of all pertinent proceedings relating to the matters set forth in the petition. The attorney general shall carefully examine the petition, and if it appears or there is reason to believe that the petition is defective, insufficient, or untrue, or, if, in his opinion, the proceedings or the securities are or will be invalid or unauthorized, the defense shall be made thereto as he may deem proper. The records of the public agency pertaining to the proceedings or the securities shall be open to inspection at reasonable times to any party to the suit. Any officer, agent, or employee having charge, possession, custody, or control of any of the books, papers, or records of the public agency shall, on demand of the attorney general, exhibit for examination the books, papers, or records and shall, without cost, furnish duly authenticated copies which pertain to the proceedings or the securities, or which may affect the legality of the same, as may be demanded of him. It is specifically provided, however, that if the attorney general does not question the validity of the proceedings or the securities or the security or provisions for the payment thereof, the attorney general may so allege, and on a finding by the court to that effect, the attorney general may be dismissed as a party and the court shall proceed to a final determination of the cause. If the cause is filed in any court other than in Travis County, the public agency shall pay any mileage and travel expenses of the attorney general or his assistant in the same amount as is allowable by the state to officials for travel on other official business. The claim for the expenses shall be filed in duplicate with the clerk of the court in which the cause is pending and shall be taxed as costs against the public agency.

May Enjoin Other Proceedings

Sec. 5. On motion of the petitioner, whether before or after the date set for hearing as provided in Section 4 of this Act, the judge may enjoin the commencement, prosecution, or maintenance by any person or entity of any other action or proceeding contesting the validity of the organizational proceedings or boundary changes of the public agency, or the validity of the securities described in the petition or the validity of any proceedings, including all actions and expenditures of funds, taken or made and/or proposed to be taken or made in connection with or affecting the securities, or the validity of the taxes, assessments, tolls, fees, rates, or other levies authorized to be imposed or made for the payment of the securities or the interest on the securities, or the validity of any pledge of any revenues, receipts, or property, or encumbrances thereon, to secure payment, and may order a joint hearing or trial before

him of all issues then pending in any other action, cause, or proceedings in any court in the State of Texas, and may order all actions or proceedings consolidated with the suit for declaratory judgment pending before him as authorized by this Act, and may enter orders as are necessary or proper to effect the consolidation, and which will avoid unnecessary costs or delays or multiplicity of suits, and all interlocutory orders shall be final and not be appealable.

Published Notice

Sec. 6. Prior to the date set for hearing and trial as provided in Section 4 of this Act, the clerk of the court where the petition is filed shall give notice by causing a substantial copy of the order issued pursuant to Section 4 of this Act to be published in a newspaper of general circulation in Travis County, and in a newspaper of general circulation in the county where the public agency maintains its principal office, and if any public agency, other than the State of Texas, has defined boundaries, in a newspaper of general circulation in each county in which the public agency has territory. The notice shall be so published once in each of two consecutive calendar weeks, with the date of the first publication to be not less than 14 days prior to the date set for hearing and trial. On the giving of the notice and the publication of the order, all taxpayers, property owners, and residents, if any, of the public agency, and all nonresidents, if any, owning property therein, and all others having or claiming any right, title, or interest in any property or funds to be affected in any way by the securities, or the proceedings, including all actions and expenditures of funds, taken or made and/or proposed to be taken or made in connection with or affecting the securities, shall be considered as and are thereby made parties defendant to the proceedings, and the court shall have jurisdiction of them to the same extent as if individually named as defendants in the petition and personally served with process in the cause.

Admission of Parties

Sec. 7. Any property owner, taxpayer, citizen, or person affected by or interested in the proceedings or the issuance of the securities may become a named party to the proceedings by pleading to the petition on or before the time set for hearing and trial as provided in Section 4 of this Act, or thereafter by intervention on leave of court. At or after the time and at the place designated in the order for hearing and trial, the judge shall proceed to hear and determine all questions of law and fact in the proceedings and may enter orders as to the proceedings, and as to any necessary adjournments as will enable him properly to try and determine the questions and to render a final judgment with the least possible delay. Any party to the proceedings shall be entitled to a jury trial on any issue of fact where

required by the Texas Constitution. The proceedings, hearings, and trials shall take priority over all other cases, causes, or matters pending in the court, except habeas corpus, and it shall be mandatory that the judge of the court assure the priority and act thereon and make the necessary orders and render final judgment with the least possible delay. Rule 254 of the Texas Rules of Civil Procedure and Section 1, Chapter 7, Acts of the 41st Legislature, Regular Session, 1929, as amended (Article 2168a, Vernon's Texas Civil Statutes), shall not apply to any proceedings or appeals authorized by this Act. Except as otherwise provided in this Act, the applicable Texas Rules of Civil Procedure and all applicable statutes shall govern the proceedings and appeals held and conducted pursuant to this Act.

Bond

Sec. 8. At any time prior to entry of final judgment in the proceedings, the public agency may ask the court for an order that any opposing party or intervenor, except the attorney general, be dismissed unless the opposing party or intervenor shall post a bond with sufficient surety, approved by the court, payable to the public agency for the payment of all damages and costs which may accrue by reason of the delay as will be occasioned by the continued participation of the opposing party or intervenor in the proceedings in the event that the public agency finally prevails and obtains substantially the judgment prayed for in its petition. The court shall then issue an order directed to the opposing party or intervenor, which order, together with a copy of the motion, shall be served on the opposing party or intervenor, or on his attorney of record, personally or by registered mail, requiring the opposing party or intervenor to appear at the time and place, not sooner than 5 nor later than 10 days after entry of the order, as the court may direct, and show cause why the motion should not be granted. Motions with respect to more than one opposing party or intervenor may be heard together if so directed by the court. Unless at the hearing on the motion the opposing party or intervenor establishes facts which, in the judgment of the court would entitle him to a temporary injunction against the issuance of the securities, the court shall grant the motion of the public agency and in its order the court shall fix the amount of the bond to be posted by the opposing party or intervenor in an amount found by the court to be sufficient to cover all damages and costs which may accrue by reason of the delay as will be occasioned by the continued participation of the opposing party or intervenor in the proceedings in the event that the public agency finally prevails and obtains substantially the judgment prayed for in its petition. The court in its discretion may receive evidence at the hearing or any adjournment with respect to the amount of the damages and costs, which shall in-

clude but not be limited to anticipated increases in interest rates and in construction and financing costs. If more than one opposing party or intervenor is a participant in the proceedings, the court in its discretion may allocate the amount of the bond among the opposing parties or intervenors according to the extent or degree of their participation in the proceedings, but may fix the amount of the bond to be posted by a particular opposing party or intervenor only if a motion as described in this section was made and granted as to the opposing party or intervenor. In the event a bond with sufficient surety is not filed by the opposing party or intervenor within 10 days after entry of the order of the court fixing the amount of the bond, the opposing party or intervenor shall be dismissed by the court. The dismissal shall constitute a final judgment of the court, unless an appeal was taken as provided by this Act. No court shall have further jurisdiction of any action to the extent the action involves any issue which was or could have been raised in the proceedings, except to the extent that the issue may have been raised by an opposing party or intervenor as to whom no motion was made hereunder. An order of the court fixing the amount of the bond to be posted by an opposing party or intervenor or denying the motion of a public agency or dismissing a party for failure to file a bond may be appealed as provided in Section 9 of this Act. The court to which any appeal is taken may modify the order of the lower court and may enter the modified order as the final order. In the event no appeal is taken or if the appeal is taken and the order of the lower court is affirmed or affirmed as modified, and no bond is posted pursuant to this section within 10 days after entry of the appropriate order, no court shall have further jurisdiction of any action to the extent it shall involve any issue which was or could have been raised in the proceedings, except to the extent that the issue may have been raised in the proceedings by an opposing party or intervenor as to whom no motion was made hereunder. It is further provided that, on motion of the public agency, the court shall proceed without delay to hearing and trial on the merits of the public agency's petition, regardless of the pendency of an appeal from any order entered pursuant to this section.

Appeal

Sec. 9. Any party to the cause, whether the public agency, a defendant, intervenor, or otherwise, dissatisfied with any order entered paramount to Section 8 of this Act, or with the judgment in the declaratory judgment action, may appeal therefrom to the appropriate court of civil appeals after the entry of the order or judgment, or the order or judgment shall become final. The appeal shall take priority over all other cases, causes, or matters pending in the court of civil appeals, except habeas

corpus, and it shall be mandatory that the court of civil appeals assure the priority and act thereon and render its final order or judgment therein with the least possible delay. The Supreme Court shall have authority to review, by writ of error or other authorized procedure, all questions of law arising out of the orders and judgments of the courts of civil appeals in the cases, in the manner, time, and form applicable in other civil causes where a decision of the court of civil appeals is not final, but any such review shall take priority over all other cases, causes, or matters pending in the Supreme Court, except habeas corpus, and it shall be mandatory that the Supreme Court assure the priority and review and act thereon and render its final order or judgment therein with the least possible delay. Also, Rule 499a, Texas Rules of Civil Procedure, shall apply to proceedings in the district court, but any direct appeal thereunder shall take priority over all others cases, causes, and matters pending in the Supreme Court, except habeas corpus, and it shall be mandatory that the Supreme Court assure the priority and review and act thereon and render its final order or judgment with the least possible delay.

Effect of Judgment

Sec. 10. In the event the judgment of the district court determines that the public agency has or had authority to undertake the proceedings and/or to issue the securities upon the terms set forth in the petition for declaratory judgment hereunder, and adjudicates the legality of all proceedings, including all actions and expenditures of funds, taken or made and/or proposed to be taken or made in connection with or relating to the securities, and no appeal is taken within the time above prescribed, or if taken and the judgment of the district court is affirmed, the judgment shall, as to all matters adjudicated, or which could have been raised in the proceedings, be forever binding and conclusive against the public agency, the attorney general, the comptroller of public accounts, and all parties to the cause, whether mentioned in and served with the notice of the proceedings, or included in the description, "all taxpayers, property owners, and residents, if any, of the public agency, and all nonresidents, if any, owning property therein, and all others having or claiming any right, title, or interest in any properties or funds to be affected by the proceedings and/or the issuance of the securities, or interested or affected in any way thereby, or by the proceedings, including all actions and expenditures of funds, taken or made and/or proposed to be taken or made in connection with or affecting the securities," and shall constitute a permanent injunction against the institution by any person or entity of any action or proceedings contesting the validity of the proceedings and/or securities described in the petition, or the validity of provisions made for the payment of the same, or of

interest thereon, or any matters adjudicated by the judgment, or which could have been raised in the proceedings.

Securities: Printed Statement

Sec. 11. Securities adjudged valid as provided by this Act may, at the option of the public agency, have stamped, printed, or written on the securities the following statement:

“This obligation was validated and confirmed by a judgment entered _____ (date when the judgment was entered and the court in which it was entered and the style and number of the cause in said court), which perpetually enjoins the institution of any suit, action, or proceeding involving the validity of this obligation, or the provision made for the payment of the principal thereof and interest thereon.”

The certificate may be signed by the clerk, secretary, or other official of the public agency, and the signature may be by facsimile if authorized by the governing body of the public agency.

Costs

Sec. 12. The costs in each proceeding under this Act shall be paid by the public agency, except that in cases where a taxpayer, citizen, or other person or entity appears and contests the proceedings or intervenes therein, the court may tax the whole or any part of the costs against such party or parties as the court shall determine to be equitable and just; provided, that in no event shall any costs be taxed against the attorney general.

Cumulative Effect

Sec. 13. The procedure prescribed in this Act is cumulative of all other methods permitted under law for declaratory judgments and for approval and validation of proceedings and/or securities and shall not have the effect of repealing any such laws; but this Act shall be wholly sufficient authority within itself for the acts and procedures authorized in this Act, without reference to any other laws or any restrictions or limitations contained therein, except as specifically provided in this Act. To the extent of any conflict or inconsistency between any provisions of this Act and any provisions of any other law, the provisions of this Act shall prevail and control. The procedures authorized by this Act may be invoked only by a public agency, and when so invoked may be employed concurrently with, or after use of other means of declaratory judgment, approval, or validation, and may be invoked before or after the attorney general has approved the securities and/or before or after the securities are authorized or delivered and outstanding, and may be invoked regardless of the pendency of any other suit, action, cause, or proceeding in any court pertaining to the matters sought to be adjudicated. This Act shall not have

the effect of repealing the existing right of a public agency to apply for, and of the Supreme Court to issue, writs of mandamus to the attorney general for the approval of bonds, in appropriate cases, and the Supreme Court is specifically authorized to consider and issue such writs when appropriate, and it is declared that the remedy is necessary and desirable in the public interest as a matter of public policy of the State of Texas.

[Amended by Acts 1979, 66th Leg., p. 874, ch. 400, §§ 1 to 13, eff. June 6, 1979.]

Art. 717n-1. Counties over 1,000,000; Issuance of Certificates of Indebtedness for Certain Purposes

Authorization

Sec. 1. Any county having a population in excess of 1,000,000, according to the most recent Federal Census, is authorized, subject to the limitations contained in this Act, to issue certificates of indebtedness:

(1) in the amount of not more than \$2,000,000 for the purpose of constructing, enlarging, furnishing, equipping and repairing county buildings and other permanent improvements; and

(2) in the amount of not more than \$3,500,000 for the purchase of right-of-way in participation with the Texas Highway Department in connection with designated state highways and for the construction of curbs, gutters and drainage facilities for such designated highways.

(3) If bonds are not issued under this Act by January 1, 1980, this Act will no longer be in effect.

Maturity; Interest; Negotiability; County Registration; Amount

Sec. 2. Such certificates shall be authorized by order of the commissioners court and shall mature in not to exceed 35 years from their date. Interest may be evidenced by coupons. Said certificates shall be sold for cash, and they shall be fully negotiable. Said certificates shall be signed by the county judge, attested by the county clerk, and registered by the county treasurer. Certificates shall not be issued under this Act in excess of \$5,500,000.

Tax Levy and Assessment

Sec. 3. When such certificates are issued, it shall be the duty of the commissioners court to levy and have assessed and collected a tax under Article VIII, Section 9 of the Constitution, sufficient to pay the principal of and the interest on the certificates as such principal and interest become due.

Approved by Attorney General; Registration

Sec. 4. The certificates and the record relating to their issuance shall be submitted to the Attorney General of Texas for examination, and if they have

been issued in accordance with the constitution and this Act, he shall approve them, and thereupon they shall be registered by the Comptroller of Public Accounts of the State of Texas, who shall endorse his certificate of registration thereon, and thereafter they shall be incontestable.

Legal and Authorized Investments; Security for Deposits

Sec. 5. The certificates of indebtedness shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, insurance companies, savings and loan associations, fiduciaries, trustees, guardians, and for the sinking funds of cities, towns, villages, counties, school districts, and other political corporations or subdivisions of the State of Texas. Such certificates shall be eligible to secure the deposit of any and all public funds of the State of Texas, and of any and all public funds of cities, towns, villages, counties, school districts, and other political subdivisions of the State of Texas; and such certificates shall be lawful and sufficient security for said deposits to the extent of their face value or to the extent of their market value, whichever value is the smaller, when accompanied by all unmatured coupons appurtenant thereto.

[Acts 1975, 64th Leg., p. 1873, ch. 589, §§ 1 to 5, eff. Sept. 1, 1975.]

Art. 717o. Local Government Sport Centers

Definitions

Sec. 1. In this Act:

(1) "Local government" means a county, an incorporated city or town, or an independent school district.

(2) "Ordinance," in the case of an independent school district, means "resolution," and in the case of a county means "order."

(3) "Sport center" means a facility used for sporting activities and events, including auxiliary facilities such as parking areas and restaurants.

Application of Act

Sec. 2. A local government may take advantage of this Act only if all or most of its territory is located in a county that has a population of more than 650,000, according to the last preceding federal census.

General Authority

Sec. 3. (a) A local government may construct, acquire, lease, improve, enlarge, and operate one or more sport centers under this Act.

(b) Two or more local governments acting jointly may do anything authorized by this Act to be done by a single local government. When two or more local governments act jointly, joint action by all local

governments involved is necessary to perform any official act. Two or more local governments may act jointly under this subsection only if each of them is authorized individually to take advantage of this Act and all or most of the territory of each of them is located in the same county or in adjacent counties.

(c) A local government or combination of them acting under this Act may contract with any public or private entity including a coliseum advisory board or similar body, for the performance of any function authorized under this Act other than the performance of an official governmental act that is required to be done by the governing body of a local government.

Issuance of Revenue Bonds

Sec. 4. For any purpose authorized under Section 3 of this Act, the governing body of a local government may issue revenue bonds from time to time in one or more series to be payable from and secured by liens on all or part of the revenue derived from a facility authorized under this Act.

Terms and Conditions of Bonds

Sec. 5. (a) The bonds may be issued to mature serially or otherwise within not to exceed 40 years from their date, and provision may be made for the subsequent issuance of additional parity bonds, or subordinate lien bonds, under any terms or conditions that may be set forth in the resolution authorizing the issuance of the bonds.

(b) The bonds, and any interest coupons appertaining thereto, are negotiable instruments within the meaning and for all purposes of the Texas Uniform Commercial Code. The bonds may be issued registrable as to principal alone or as to both principal and interest, and shall be executed, and may be made redeemable prior to maturity, and may be issued in such form, denominations, and manner, and under such terms, conditions, and details, and may be sold in such manner, at such price, and under such terms, and said bonds shall bear interest at such rates, all as shall be determined and provided in the ordinance authorizing the issuance of the bonds.

(c) If so provided in the bond ordinance, the proceeds from the sale of the bonds may be used for paying interest on the bonds during and after the period of the acquisition or construction of any facilities to be provided through the issuance of the bonds, for paying expenses of operation and maintenance of facilities authorized under this Act, for creating a reserve fund for the payment of the principal of and interest on the bonds, and for creating any other funds. The proceeds of the bonds may be placed on time deposit or invested, until needed, all to the extent, and in the manner provided, in the bond ordinance.

Rentals, Rates, and Charges

Sec. 6. The local government is authorized to fix and collect fees, rentals, rates, and charges for the occupancy, use, or availability of all or any of its property, buildings, structures, or other facilities authorized under this Act in such amounts and in such manner as may be determined by the governing body of the local government.

Pledges

Sec. 7. (a) The local government may pledge all or any part of the revenues, income, or receipts from such fees, rentals, rates, and charges to the payment of the bonds, including the payment of principal, interest, and any other amounts required or permitted in connection with the bonds. The pledged fees, rentals, rates, and charges shall be fixed and collected in amounts that will be at least sufficient, together with any other pledged resources, to provide for all payments of principal, interest, and any other amounts required in connection with the bonds, and, to the extent required by the ordinance authorizing the issuance of the bonds, to provide for the payment of expenses in connection with the bonds, and for the payment of operation, maintenance, and other expenses in connection with the facilities authorized under this Act.

(b) The bonds may be additionally secured by mortgages or deeds of trust on any real property relating to the facilities authorized under this Act owned or to be acquired by the local government, and by chattel mortgages, liens, or security interests on any personal property appurtenant to that real property. The governing body of the local government may authorize the execution of trust indentures, mortgages, deeds of trust, or other forms of encumbrances to evidence the indebtedness.

(c) The local government may also pledge to the payment of the bonds all or any part of any grant, donation, revenues, or income received or to be received from the United States government or any other public or private source, whether pursuant to an agreement or otherwise.

(d) No holder of any bond or bonds issued under this Act shall ever have the right to demand payment thereof out of any funds raised or to be raised by taxation.

Public Purpose

Sec. 8. The acquisition, purchase, construction, improvement, enlargement, equipment, operation, and maintenance of any property, buildings, structures, or other facilities authorized under this Act are public purposes and proper functions of local governments.

Refunding Bonds

Sec. 9. (a) Any bonds issued pursuant to this Act may be refunded or otherwise refinanced by the issuance of refunding bonds for that purpose, under any terms or conditions, as are determined by ordinance of the governing body of the local government. All appropriate provisions of this Act are applicable to refunding bonds, and the refunding bonds shall be issued in the manner provided in this Act for other bonds. The refunding bonds may be sold and delivered in amounts necessary to pay the principal, interest, and redemption premium, if any, of bonds to be refunded, at maturity or on any redemption date.

(b) The refunding bonds may be issued to be exchanged for the bonds being refunded by them. In that case, the comptroller of public accounts shall register the refunding bonds and deliver them to the holder or holders of the bonds being refunded in accordance with the provisions of the ordinance authorizing the refunding bonds. The exchange may be made in one delivery or in several installment deliveries.

(c) Bonds issued at any time by a local government under this Act also may be refunded in the manner provided by any other applicable law.

Approval and Registration of Bonds

Sec. 10. All bonds issued under this Act and the appropriate proceedings authorizing their issuance shall be submitted to the attorney general for examination. If the bonds recite that they are secured by a pledge of revenues or rentals from a contract or lease, a copy of the contract or lease and the proceedings relating to it shall be submitted to the attorney general also. If he finds that the bonds have been authorized and any contract or lease has been made in accordance with law, he shall approve the bonds and the contract or lease, and thereupon the bonds shall be registered by the comptroller of public accounts. After approval and registration the bonds and any contract or lease relating to them are incontestable in any court or other forum for any reason, and are valid and binding obligations for all purposes in accordance with their terms.

Authorized Investments and Security for Deposits

Sec. 11. All bonds issued under this Act are legal and authorized investments for all banks, trust companies, building and loan associations, savings and loan associations, insurance companies of all kinds and types, fiduciaries, trustees, and guardians, and for all interest and sinking funds and other public funds of the state and all agencies, subdivisions, and instrumentalities of the state, including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic. The bonds also are eligible and lawful

security for all deposits of public funds of the state and all agencies, subdivisions, and instrumentalities of it, including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic, to the extent of the market value of the bonds, when accompanied by any unmatured interest coupons appurtenant thereto.

Cumulative Effect

Sec. 12. This Act is cumulative of all other law on the subject, but this Act shall be wholly sufficient authority within itself for the issuance of the bonds and the performance of the other acts and procedures authorized by it without reference to any other law or any restrictions or limitations contained therein, except as herein specifically provided. When any bonds are issued under this Act, then to the extent of any conflict or inconsistency between any provisions of this Act and any provision of any other law, the provisions of this Act shall prevail and control. A local government has the right to use the provisions of any other laws, not in conflict with the provisions of this Act, to the extent convenient or necessary to carry out any power or authority, express or implied; granted by this Act.

[Acts 1975, 64th Leg., p. 1198, ch. 454, §§ 1 to 12, eff. June 19, 1975.]

2. COMPENSATION BONDS

Art. 767g. Commissioners' Court Authorized to Levy Tax to Pay Road District Bonds

Text of article effective January 1, 1982

That taxes, in an amount sufficient to pay the principal of, and interest upon, any such bonds now outstanding, or hereafter issued, as aforesaid, shall be annually assessed and collected by the County Commissioners' Court of each County in which any such district, subdivision or precinct is situated, and express authority so to do is hereby delegated and granted to such Commissioners' Courts.

[Amended by Acts 1979, 66th Leg., p. 2315, ch. 841, § 4(d), eff. Jan. 1, 1982.]

For text of article effective until January 1, 1982, see Compact Edition, Volume 3

CHAPTER SEVEN. MUNICIPAL BONDS

Art. 835l. Harbor, Wharf and Dock Facilities; Cities and Towns of 5,000 or Less on Gulf or Connecting Waters

Sec. 1. Any city or town in this State, having five thousand (5,000) or less inhabitants, located on the coast of the Gulf of Mexico, or on any channel, canal, bay, or inlet connected with the Gulf of Mexico, organized and operating under the general law, shall have the authority to purchase, by condemnation or otherwise, construct, own, maintain, improve, repair, operate, or lease any wharf, pier, pavilion, dock, harbor or boat basin, and such other facilities as may be deemed advisable in connection therewith, including ferries, marinas, elevated platforms, parking facilities, restaurants, hotels, motels, clubs, or other commercial establishments and municipal buildings.

Sec. 2. Any such city or town may issue its negotiable bonds for the purposes above enumerated and may provide for the payment of the principal of and interest on such bonds from the income of such facilities including income from leasing any or all of such facilities or land after deducting the reasonable cost of the operation and maintenance thereof, or such city or town may issue its negotiable bonds for such purposes in the manner now provided for the issuance of other municipal bonds payable from an ad valorem tax levied on all the taxable property within such city or town.

[See Compact Edition, Volume 3 for text of 3 and 4]

[Amended by Acts 1979, 66th Leg., p. 1907, ch. 772, § 7, eff. June 13, 1979.]

Art. 852a. Savings and Loan Act

[See Compact Edition, Volume 3 for text of 1.01 to 3.07]

TITLE 24

BUILDING—SAVINGS AND LOAN ASSOCIATIONS

CHAPTER FOUR. CORPORATE POWERS OF ASSOCIATES

*[See Compact Edition, Volume 3 for text of
4.01 to 4.04]*

Power to Act Under Federal Self-Employed Retirement Plans

Sec. 4.05. Any association and any Federal association (insofar as its charter and applicable Federal rules and regulations permit) may exercise all powers necessary to qualify as a trustee or custodian for retirement plans meeting the requirements of 26 U.S.C. sec. 401(d) or sec. 408 or any similar plans permitted or recognized by Federal law and may invest any funds held in such capacities in the savings accounts of the institution if the trust or custodial retirement plan does not prohibit such investment.

*[See Compact Edition, Volume 3 for text of 5.01
to 7.05]*

CHAPTER EIGHT. SUPERVISION AND REGULATION, BOOKS AND RECORDS, ACCOUNTING PRACTICES, STATEMENTS, REPORTS, AUDITS, EXAMINATIONS, VIOLATIONS, RECEIVERSHIP

*[See Compact Edition, Volume 3 for text of
8.01 to 8.12]*

Commissioner Shall Order Discontinuance of Violations

Sec. 8.13. If the Commissioner as a result of any examination or investigation of the affairs of an association finds that such association is violating or has violated or is about to violate any provision of its charter or bylaws or any law, or willfully violates any rule or regulation governing its operations to an extent which would tend to cause a substantial reduction in net worth or is engaging in, or has engaged in, or if the Commissioner has reasonable cause to believe that the association is about to engage in an unsafe and unsound practice or practices, he shall deliver a formal written order to the board of directors of the association in which the facts known to the Commissioner are set forth with an order to cease and desist from any such violation or practice. Such order may, by provisions which may be mandatory or otherwise, require the associa-

tion, its directors, officers, employees, or agents to take affirmative action to correct the conditions resulting from any such violation or practice. Such order shall become final 10 days after the same has been delivered unless the association shall within such time request a hearing before the Commissioner in regard to such order, at which hearing any pertinent evidence relating to said order or the facts stated therein may be presented. Such hearing shall be promptly held, and the Commissioner, on the basis of the evidence presented and any matters of record in his office, shall thereupon either continue such order in effect, modify the same, or set it aside. An unsafe and unsound practice with respect to an association is such action or inaction as is likely to cause insolvency or substantial dissipation of assets or earnings or to otherwise prejudice its ability to timely satisfy withdrawal requests of savings account holders.

Commissioner May Remove Directors and Officers Participating in Violations

Sec. 8.14. Whenever in the opinion of the Commissioner, any director or officer of an association has committed any violation of law, rule, or regulation, or refused to comply with a cease and desist order which has become final, or has engaged or participated in any unsafe or unsound practice or practices in connection with the association, or has committed or engaged in any act, omission, or practice which constitutes a breach of his fiduciary duty as such director or officer, and it appears that the association has suffered or probably will suffer substantial financial loss or other damage or that its ability to timely satisfy withdrawal requests of savings account holders could be seriously prejudiced thereby, the Commissioner may require that any such director or officer be removed from the office. Prior to entering an order of removal, the Commissioner shall deliver a full statement of the acts and conduct to which he objects to the board of directors of the association and the person or persons concerned and of his intention to enter a removal order. Such order shall become final within 10 days after such delivery unless within such time a hearing is requested. The Commissioner shall promptly hold a hearing if timely request is made at which any pertinent evidence relating to the matters set forth in such statement may be presented. After such hearing the Commissioner, on the basis of the evi-

dence presented at such hearing, may proceed to enter an order for the immediate removal of the director or officer affected, a reprimand of the individuals and association concerned or a dismissal of the entire matter. If no hearing is requested within the time specified, the Commissioner may proceed to enter an order of removal on the basis of the facts set forth in his original statement.

Enforcement of Cease and Desist and Removal Orders

Sec. 8.15. In the case of violation or threatened violation of or failure or refusal to obey a final cease and desist order or a removal order, the Commissioner may apply to a district court of Travis County for an order enjoining the association, its directors, officers, employees, or agents from violating, failing or refusing to obey such order. The court shall grant such injunction upon a showing of substantial evidence to support the findings of fact in the Commissioner's order. No bond for injunction shall be required of the Commissioner.

Receivership

Sec. 8.16. If, in the judgment of the Commissioner, the public interest requires it, he may apply to a district court of the county in which the home office of the association is located for the appointment of a receiver for such association. Such court shall appoint a receiver as applied for if it finds substantial evidence to support any one or more of the following circumstances or conditions alleged to exist by the Commissioner in his application:

- (1) that the association is insolvent in that the cash value of its assets realizable in a reasonable time is less than the total of its obligations to its creditors and the amount of its savings liability;
- (2) that there has been a substantial dissipation of assets or earnings due to any violation or violations of applicable law, rules, or regulations, or to any unsafe or unsound practice or practices;
- (3) that the association is in an unsafe and unsound condition to transact business in that there has been a substantial reduction of its net worth over the preceding 36 months (for this purpose, net worth shall be computed after the establishment of such valuation reserves and other reserves against possible losses as have been required by any supervisory authority having jurisdiction over the association or would be required under generally accepted accounting principles applicable to savings and loan associations) and has failed to restore such net worth reduction as ordered by the Commissioner;
- (4) that the association and its directors and officers have violated any material conditions of its charter or bylaws, the terms of any final cease and desist order issued by the Commissioner, or any agreement between the association and the Commissioner;

(5) that the association, its directors, and officers have concealed or refused to permit examination of the books, papers, accounts, records, and affairs of the association by the Commissioner or other duly authorized personnel of the Savings and Loan Department.

All proceedings in regard to such applications shall be governed by the laws of this State applicable to receiverships generally. The Commissioner, or his deputy or a Savings and Loan Examiner shall be appointed by the court as a receiver. The receiver, upon appointment by the court, shall immediately take charge of the affairs of the association, subject to the direction of the court, and proceed to conduct the business of the association or to take such steps as may be necessary to conserve the assets and protect the rights of the creditors of the association and its members as may be ordered by the court. The official who is appointed receiver shall receive no additional compensation for such service. If the association is an institution insured by the Federal Savings and Loan Insurance Corporation, said corporation may be tendered appointment as receiver or co-receiver. If it accepts such appointment, it may, nevertheless, make loans on the security of or purchase at public or private sale any part or all of the assets of the association of which it is receiver or co-receiver, provided such loan or purchase is approved by such court. The directors, officers and attorneys of an association in office at the time of the initiation of any proceeding under this Section are expressly authorized to contest any such proceedings and shall be reimbursed for reasonable expenses and attorney's fees by the association or from its assets, the amount of which shall be fixed by the court.

[See Compact Edition, Volume 3 for text of 8.17]

Voluntary Supervisory Control

Sec. 8.18. If in connection with any cease and desist order the Commissioner requests the consent of the board of directors of the association to the placing of the association under supervisory control of the Commissioner, and a majority of such board affirmatively consents to such request, the Commissioner may appoint a supervisory agent to supervise and monitor the operations of the association during the period of supervision to which consent was given. During the period of supervision, the association, its directors, and officers shall act in accordance with such instructions and directions as may be given by the Commissioner through the supervisory agent and shall not act or fail to act except in compliance with such cease and desist order without the prior approval of the supervisor or the Commissioner. The cost incident to such supervision shall be fixed by the Commissioner and paid by the association.

[See Compact Edition, Volume 3 for text of 9.01 to 9.06]

CHAPTER TEN. CONVERSION, REORGANIZATION, MERGER AND CONSOLIDATION, VOLUNTARY LIQUIDATION

[See Compact Edition, Volume 3 for text of 10.01 and 10.02]

Reorganization, Merger, and Consolidation

Sec. 10.03. Pursuant to a plan adopted by the board of directors and approved by the Commissioner as equitable to the members of the association and as not impairing the usefulness and success of other properly conducted associations, an association shall have power to reorganize or to merge or consolidate with another association or Federal association; provided, that the plan of such reorganization, merger or consolidation shall be approved by a majority of the total vote the members are entitled to cast. Approval may be voted at either an annual meeting or at a special meeting called to consider such action. In all cases the corporate continuity of the resulting corporation shall possess the same incidents as that of an association which has converted in accordance with this Act. In the case of prior common ownership, the association in the proposed merger possessing the largest assets shall be designated as the home office. Any order of the Commissioner approving the reorganization, merger, or consolidation of any association with another association or Federal association shall become final 10 days after the same has been delivered unless an association within the vicinity of the reorganizing, merging, or consolidating associations shall within such time request a public hearing before the Commissioner in regard to such order, objecting to such order on the basis that the reorganization, merger, or consolidation would materially constrict the ability of the objecting association to compete in its vicinity. Such hearing shall be promptly held, and the Commissioner on the basis of the evidence presented shall thereupon either continue such order in effect, modify the same, or set it aside.

[See Compact Edition, Volume 3 for text of 10.04]

CHAPTER ELEVEN. MISCELLANEOUS

Exemption from Securities Laws

Sec. 11.01. Savings accounts, certificates, and other evidences of interests in the savings liability of associations subject to this Act and of Federal associations are not "securities" for any purpose under The Securities Act, as amended (Article 581-1, et seq., Vernon's Texas Civil Statutes). Securities of these associations other than interests in the savings liability of the associations are not subject to the registration requirements of The Securities Act, as

amended. Any person whose principal occupation is that of an officer of an association is exempt from the registration and licensing provisions of The Securities Act, as amended, with respect to that person's participation in a sale or other transaction involving securities of the association of which the person is an officer.

[See Compact Edition, Volume 3 for text of 11.02 to 11.17]

Disclosure of Examiners—Penalty

Sec. 11.18. The Commissioner and any examiner, inspector, deputy, assistant or clerk, appointed or acting under the provisions of this Act, failing to keep secret any facts or information regarding an association obtained in the course of an examination or by reason of his official position, except when the public duty of such officer required him to report upon or take official action regarding the affairs of the association so examined, or who wilfully makes a false official report as to the condition of such association, shall be removed from his position or office and shall be fined not more than Five Hundred Dollars (\$500), or imprisoned in the county jail for not more than one (1) year, or both. Reports of examinations made to the Commissioner shall be regarded as confidential and not for public record or inspection, except that for good reason same may be made public by the Commissioner, but copies thereof may, upon request of the association, be furnished to the Federal Home Loan Bank Board or to the Federal Home Loan Bank for the purpose of meeting the requirements of the Federal Home Loan Bank Act. Nothing herein shall prevent the proper exchange of information relating to associations and the business thereof with the representatives of savings and loan departments of other states, but in no case shall the private business or affairs of any individual association be disclosed. Any official violating any provision of this Section, in addition to the penalties herein provided, shall be liable, with his bondsmen, to the person or corporation injured by the disclosure of such secrets. The foregoing provisions shall not apply to any facts or information or to any reports of investigations obtained or made by the Commissioner or his staff in connection with any applications for a charter under this Act or in connection with any hearing held by the Commissioner under this Act, and any such facts, information or reports may be included in the record of the appropriate hearing. Notwithstanding the foregoing, the Commissioner shall report promptly to the Savings and Loan Section of the Finance Commission when either a cease and desist or removal order under Sections 8.13 and 8.14 of this article has been issued to an association. The Commissioner shall furnish such information about the association as the section members shall require in executive session.

Permanent Reserve Fund Stock to be Called Capital Stock

Sec. 11.19. The stock issued by an association under the authority of Section 2.02 shall hereafter be called "Capital" stock rather than "Permanent Reserve Fund" stock and the term "Permanent Reserve Fund" wherever such term appears in the Texas Savings and Loan Act, as amended (Article 852a, Vernon's Texas Civil Statutes), is hereby changed to "Capital."

Savings and Loan Section to Adopt Rules and Regulations for Reporting Change of Control of Associations

Sec. 11.20. The Savings and Loan Section of the Finance Commission shall adopt and promulgate such rules and regulations as may be required to effectively cause the timely reporting to the Commissioner of any change in the control of an association occurring by reason of change in ownership of voting stock or holdings of voting rights in the association. A report shall be required whenever any person, partnership, trust, or group of associated persons acquires, receives, or becomes holder of:

(a) 25 percent or more of the outstanding shares of any class of voting stock of an association or of the voting rights thereto;

(b) 25 percent or more of the outstanding voting rights of an association; or

(c) any appointment, designation, or right or substitution with respect to 25 percent or more of the outstanding voting rights of the institution.

[Amended by Acts 1975, 64th Leg., p. 54, ch. 30, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 401, ch. 177, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 642, ch. 239, §§ 1 to 5, eff. May 25, 1977.]

Section 6 of the 1977 amendatory act provided:

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

Acts 1979, 66th Leg., p. 348, ch. 160, eff. May 15, 1979, amended various provisions of The Securities Act (art. 581-1 et seq.).

Section 10 of the 1979 Act provided:

"This Act does not affect Section 11.01, Texas Savings and Loan Act, as amended (Article 852a, Vernon's Texas Civil Statutes), or Article 11a, Chapter IV, The Texas Banking Code of 1943, as added (Article 342-411a, Vernon's Texas Civil Statutes)."

TITLE 25

CARRIERS

6. REGULATION OF MOTOR CARRIERS

Art. 911b. Motor Carriers and Regulation by Railroad Commission

[See Compact Edition, Volume 3 for text of 1]

Exceptions to Definition of Terms "Motor Carrier", "Contract Carrier" and "Transporting Property for Compensation or Hire"

Sec. 1a.

[See Compact Edition, Volume 3 for text of 1a(1) and (2)]

(3) The term "transporting property for compensation or hire" defined in Section 1(j) of this Act does not include furnishing of equipment and drivers during the same period of time by separate persons to a person who is not a common carrier, contract carrier, or specialized motor carrier for his use in bona fide private carriage in furtherance of a primary nontransportation business, provided that the person furnishing the equipment is in the bona fide business of leasing or renting motor vehicle equipment without drivers for compensation to the general public and has complied with the provisions of Section 2(a), (b), and (c) of Chapter 209, Acts of the 53rd Legislature, Regular Session, 1953, as amended (Article 6701c-1, Vernon's Texas Civil Statutes), and provided further that said equipment is furnished under a bona fide written lease or rental agreement providing for the exclusive use and possession of said equipment for a minimum of seven consecutive days, and provided further that the person to whom the equipment and drivers are furnished directs, supervises, and controls the drivers and the use of the equipment, including maintaining all dispatch records and maintaining and filing all safety records and reports required by the United States Department of Transportation, the Texas Department of Public Safety, and the commission. The person to whom the drivers are furnished may pay the drivers' compensation or any required taxes or workman's compensation insurance payments directly to the person furnishing the drivers.

[See Compact Edition, Volume 3 for text of 1b and 1c]

Transportation of Cornish Hens or Commercial Broilers

Sec. 1d. Provided, however, that in any proceeding in which or in connection with which the Commission specifically finds that the public interest

requires that specialized motor carriers of Cornish hens and/or commercial broilers or other specified special commodities should be permitted to commence new certificated operations or to perform new certificated services under existing conditions and without prior approval by the Commission of rates, fares and charges for such new service, then, in such event, and pursuant to such finding, such new certificated operations or new certificated services may be commenced and performed under existing conditions and absent prior approval by the Commission of applicable rates, fares and charges. The term "Cornish hen" means a chicken which is approximately five weeks of age and the term "commercial broiler" means a chicken which is seven to eight weeks of age.

[See Compact Edition, Volume 3 for text of 2 to 5a]

Seasonal Agricultural License

Sec. 5b. (a) A person transporting eligible agricultural commodities in their natural state for compensation or hire is not required to obtain a certificate of convenience and necessity if he holds a seasonal agricultural license issued by the Commission. A person holding a seasonal agricultural license may transport eligible agricultural commodities only from the place where the commodities are produced and harvested to the first processor. A holder of a seasonal agricultural license may also transport cotton and cottonseed from a cotton gin to the next processor or point of storage. This transportation may not exceed a distance of seventy-five (75) miles, and must be in intrastate commerce. Agricultural commodities in their natural state include those commodities produced and harvested on a farm which must be transported to storage or a first processor, but do not include the manufactured products of agricultural commodities, nor do they include livestock, milk, wool, mohair, or timber in its natural state.

(b) The Commission may issue a seasonal agricultural license to a person who files an application meeting the requirements of this Act if the motor vehicles to be used in the transportation are not used for carrying any other property or passengers for compensation.

(c) The Commission may issue seasonal agricultural licenses without notice, hearing, or proof of public

convenience and necessity. Each license is valid for one hundred twenty (120) days from the date of issuance unless a shorter period is requested by the applicant.

(d) An application for a seasonal agricultural license must include:

(1) the applicant's full name and address;

(2) a complete list of all motor vehicles proposed to be used, including the make, unit number, and identification number of each vehicle; and

(3) a sworn statement by the applicant that he will transport under the license only those agricultural commodities eligible to be transported under this section and will transport them only in intrastate commerce.

(e) A seasonal agricultural license may not be sold, assigned, inherited, or otherwise transferred.

(f) An application for a seasonal agricultural license must be accompanied by a Twenty-five Dollar (\$25) filing fee, which shall be retained by the Commission whether or not the license is granted. This fee covers up to five (5) motor vehicles. If the license is to cover more than five (5) motor vehicles, the applicant shall pay at the time the license is issued an additional fee of Five Dollars (\$5) for each motor vehicle in excess of five (5) to be operated under the license.

(g) The issuance of seasonal agricultural licenses is exempt from the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and from the requirements of Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes).

(h) The Commission shall issue to each licensee an identification card for each motor vehicle covered by the license. The card must be displayed within the cab of the vehicle. The card shall include the license number and the name and address of the owner of the license. A person may not use an identification card after the license has expired. The Commission shall prescribe the form for the identification card and may include additional information on the card.

(i) This section does not apply to any person transporting in the person's own vehicle agricultural commodities in their natural state, which that person owns, to and from the area of production and to and from the market or place of storage thereof.

Identification Plate on Motor Vehicles

Sec. 18. It shall be unlawful for any motor carrier as hereinbefore defined to operate any motor vehicle within this State unless there shall be displayed and firmly fixed upon the front of such vehicle an identification plate to be furnished by the Commission. Each plate shall be designed so as to identify the vehicle on which the same is attached as being a vehicle authorized to operate under the terms of this law; said plate shall bear the number given to the vehicle by the Commission and such other marks of identification as may be necessary. The plate for common carrier vehicles and the plate for contract carrier vehicles shall be different in design. The identification plate provided for herein shall be in addition to the regular license plates required by law. It shall be the duty of the Commission to provide the plate and each motor vehicle operating in this State shall display such plate as soon as the same is received and such plate shall be issued annually thereafter and attached to each motor vehicle not later than September 1st of each year, or as soon thereafter as possible. The Commission shall be authorized to collect from the applicant a fee of one dollar (\$1) for each plate so issued, and all fees for such plates shall be deposited in the State Treasury to the credit of the "Motor Carrier Fund."

[See Compact Edition, Volume 3 for text of 18a to 23]

[Amended by Acts 1975, 64th Leg., p. 1976, ch. 657, § 1, eff. June 19, 1975; Acts 1977, 65th Leg., p. 598, ch. 215, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2038, ch. 816, § 1, eff. July 16, 1977; Acts 1979, 66th Leg., p. 1874, ch. 757, § 1, eff. June 13, 1979.]

TITLE 26

CEMETERIES

Art. 912a-1. Definitions

Words used in this Act in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural the singular; "writing" includes "printing" and "typewriting"; "oath" includes "affirmation." When used in this Act, the following terms shall, unless the context otherwise indicates, have the following respective meanings:

The term "cemetery", within the meaning of this title, is hereby defined as a place dedicated to and used and intended to be used for the permanent interment of the human dead. It may be either a burial park, for earth interments; a mausoleum for vault or crypt interments, a crematory, or crematory and columbarium for cinerary interments, or a combination of one or more thereof.

The term "perpetual care cemetery" shall mean a cemetery for the benefit of which a perpetual care fund shall have been established in accordance with the provisions of this Act.

The term "nonperpetual care cemetery" shall mean a cemetery for the benefit of which no perpetual care fund has been established in accordance with the provisions of this Act.

The term "perpetual care" shall mean to keep the sod in repair, to keep all places where interments have been made in proper order, and to care for trees and shrubs, providing for the administration of perpetual care funds in instances wherein those administering such funds fail or refuse to act.

"Burial Park" means a tract of land which has been dedicated to the purposes of and used, and intended to be used, for the interment of the human dead in graves.

"Grave" means a space of ground in a burial park intended to be used for the permanent interment in the ground of the remains of a deceased person.

"Mausoleum" means a structure or building of most durable and lasting fireproof construction used, or intended to be used, for the permanent interment in crypts and vaults therein of the remains of deceased persons.

"Crypt" or "Vault" as herein used means the chamber in a mausoleum of sufficient size to inter the uncremated remains of a deceased person.

"Lawn Crypts" or "Garden Crypts," sometimes called cryptoriums, means subsurface concrete and reinforced steel receptacles installed in multiple units, for burial of the remains of a deceased person in a casket.

"Columbarium" means a structure or room or other space in a building or structure of most durable and lasting fireproof construction or a plot of earth, containing niches, used, or intended to be used, to contain cremated human remains.

"Crematory" means a building or structure containing one or more furnaces used, or intended to be used, for the reduction of bodies of deceased persons for cremated remains.

"Crematory and columbarium" means a building or structure of most durable and lasting fireproof construction containing both a crematory and columbarium, used, or intended to be used, for the permanent interment therein by inurnment of the remains of deceased persons.

"Niche" is a recess in a columbarium, used, or intended to be used, for the permanent interment of the cremated remains of one or more deceased persons.

"Lot" or "plot" or "burial space" means space in a cemetery owned by one or more individuals, an association, or fraternal or other organization and used, or intended to be used, for the permanent interment therein of the remains of one or more deceased persons. Such terms include and shall apply with like effect to one, or more than one, adjoining graves; one, or more than one, adjoining crypts or vaults; or one, or more than one, adjoining niches.

"Temporary receiving vault" as herein used means a vault in a structure of most durable and lasting construction used and intended to be used for the temporary deposit therein for a reasonable time only of the remains of a deceased person.

"Interment" means the permanent disposition of the remains of a deceased person by cremation, inurnment, entombment or burial.

"Cremation" as herein used means the interment of a body of a deceased person by reduction to cremated remains in a crematory and the deposit of the cremated remains in a grave, vault, crypt, or niche.

"Inurnment" means placing the cremated remains in an urn and permanently depositing the same in a niche.

"Entombment" means the permanent interment of the remains of a deceased person in a crypt or vault.

"Remains" means the body of a deceased person.

"Cremated remains" means remains of a deceased person after incineration in a crematory.

"Cemetery business," "cemetery businesses" and "cemetery purposes" are herein used interchangeably and shall mean any and all business and purposes requisite or necessary for or incident to establishing, maintaining, managing, operating, improving, and conducting a cemetery and the interring of the human dead, and the care, preservation and embellishment of cemetery property.

The terms "cemetery association" and "association" are herein used interchangeably and shall mean any corporation now or hereafter organized, or any association not operated for a profit, which is or shall be authorized by its articles to conduct any one or more or all of the businesses of a cemetery.

"Directors" as herein used, means the board of directors, board of trustees, or other governing body of the cemetery association.

The term "plot owner," "owner," or "lot proprietor" as used herein means any person in whose name a burial plot stands, as owner of the exclusive right of sepulture therein, in the office of the association, or who holds from such association a conveyance of the exclusive right of sepulture, or a certificate of ownership of the exclusive right of sepulture, in a particular lot, plot, or space.

[Amended by Acts 1975, 64th Leg., p. 86, ch. 40, § 1, eff. Sept. 1, 1975.]

Art. 912a-3. Receipt and Disbursement of Filing Fees, Examination Fees, Penalties and Revenues

At the time of the filing of the statement of its perpetual care fund each cemetery filing same which serves a city the population of which is twenty-five thousand (25,000) inhabitants or less according to the last preceding Federal Census shall pay to the Banking Commissioner of Texas each year a filing fee of Fifty Dollars (\$50.00), and each cemetery filing same which serves a city the population of which is greater than twenty-five thousand (25,000) inhabitants according to the last preceding Federal Census shall pay to the Banking Commissioner of Texas each year a filing fee of One Hundred Dollars (\$100.00). Filing fees, examination fees, penalties and other revenues collected under this Act shall be received and disbursed by the Banking Department of Texas as provided by and in accordance with Article 12 of Chapter I, the Texas Banking Code of 1943, as amended,¹ in the administration and enforcement of the laws relating to the operation of perpetual care

cemeteries and to the creation, investment, and expenditure of cemetery perpetual care funds and for investigations either on its own initiative or on complaints made by others with reference to the operation of perpetual care cemeteries and the creation, investment, and expenditure of cemetery perpetual care funds; provided, that a reasonable part of the amount transferred each year of the biennium by the Banking Department to the General Revenue Fund, to cover the cost of governmental service rendered by other departments, may be made up from fees, penalties and other revenues collected under the provision of this Act.

[Amended by Acts 1975, 64th Leg., p. 86, ch. 40, § 2, eff. Sept. 1, 1975.]

¹ Article 342-112.

Art. 912a-15. Establishment and Maintenance of Perpetual Care

Every cemetery association which has established and is now maintaining, operating or conducting a perpetual care cemetery and every association which shall hereafter establish, maintain, operate or conduct a perpetual care cemetery within this state, pursuant to this Act, shall establish with a trust company or a bank with trust powers, no two (2) of the directors of which shall be directors of the cemetery association for the benefit of which such fund is established, an endowment fund of which the income only can be used for the general perpetual care of its cemetery and to place its cemetery under perpetual care; provided, however, that if there is no such trust company or bank with trust powers, qualified and willing to accept such trust funds at the regular fees established by the Texas Trust Act,¹ located within the county within which such cemetery association is located, then and only then, such endowment fund may be established with a Board of Trustees composed of three (3) or more persons, no two (2) of the trustees of which shall be directors of such cemetery association. The principal of such fund for perpetual care shall never be voluntarily reduced, but shall remain inviolable and shall forever be maintained separate and distinct by the trustee or trustees from all other funds. Any such trustee or trustees and the perpetual care trust operated by them shall in all respects be governed by the provisions of the Texas Trust Act. The principal of such fund shall be invested, from time to time reinvested, and kept invested as required by law for the investment of such funds, and the net income arising therefrom shall be used solely for the general care and maintenance of the property entitled to perpetual care in the cemetery for which the fund is established, and shall be applied in such manner as the Board of Directors may from time to time determine to be for the best interest of the cemetery for which such fund is established, but shall never be used for improvement or embellishment of unsold property to

be offered for sale. In the event the Board of Directors shall fail to generally care for and maintain that portion of the cemetery entitled to perpetual care, as hereinbefore provided, any five (5) or more lot owners in said cemetery whose lots are entitled to perpetual care shall have the right by suit for mandatory injunction or for a Receiver to take charge of and expend said net income, filed in the District Court of the county in which the cemetery is located, to compel the expenditure either by the Board of Directors or by such Receiver of the net income from the perpetual care fund for the purpose hereinabove set forth.

If a cemetery association is operating a cemetery without provision for perpetual care, and if it is authorized by law and wishes to operate said cemetery as a perpetual care cemetery, it shall so notify the Banking Commission of the State of Texas and shall, in accordance with the foregoing provisions hereof, establish a perpetual care fund equal to the amount which would have theretofore have been paid into such a fund, in accordance with provisions of this Act, if such cemetery had been operated as a perpetual care cemetery from and after the date of the first sale of burial space therein, or the minimum amount provided in Section 29 of this Act,² whichever is the greater. If the amount of the perpetual care fund so established is the minimum amount provided in Section 29 of this Act, such cemetery association or corporation shall be entitled to a credit against amounts hereafter required by the provisions of this Act to be paid by it unto such perpetual care fund equal to the excess of the amount of such perpetual care fund, as originally established by it, over what would have been the amount thereof if its amount had been determined without regard to Section 29 of this Act.

In establishing its perpetual care trust fund the association may from time to time adopt plans for the general care, maintenance and embellishment of its cemetery.

A cemetery association which has established a perpetual care fund may also take, receive, and hold therefor and as a part thereof or as an incident thereto any property, real, personal or mixed, bequeathed, devised, granted, given or otherwise contributed to it therefor.

The perpetual care trust fund authorized by this Section and all sums paid therein or contributed thereto are, and each thereof is hereby, expressly permitted and shall be and be deemed to be for charitable and eleemosynary purposes. Such perpetual care shall be deemed to be a provision for the discharge of a duty due from the person or persons contributing thereto to the persons interred and to be interred in the cemetery and likewise a provision for the benefit and protection of the public by

preserving and keeping cemeteries from becoming places of disorder, reproach, and desolation in the communities in which they are situated. No payment, gift, grant, bequest, or other contribution for such general perpetual care shall be or be deemed to be invalid by reason of any indefiniteness or uncertainty of the persons designated as beneficiaries in the instruments creating said trust, nor shall said fund or any contribution thereto be or be deemed to be invalid as violating any law against perpetuities or the suspension of the power of alienation of title to property.

Each perpetual care cemetery shall deposit in its perpetual care trust fund an amount equivalent to such amount as may have been stipulated in any contract under which perpetual care property was sold prior to March 15, 1934, plus a minimum of twenty cents (20¢) per square foot of ground area sold or disposed of as perpetual care property after March 15, 1934, until such fund reaches a minimum of One Hundred Thousand Dollars (\$100,000.00), after which each such cemetery shall deposit an amount equivalent to a minimum of ten cents (10¢) per square foot of ground area sold or disposed of as perpetual care property after March 15, 1934, until September 3, 1945. Each such cemetery shall deposit in its perpetual care trust fund an amount equivalent to a minimum of twenty cents (20¢) per square foot of ground area sold or disposed of as perpetual care property after September 3, 1945, until July 1, 1963. A minimum of Fifteen Dollars (\$15.00) per each crypt interment right for mausoleum interment sold or disposed of as perpetual care property and a minimum of Five Dollars (\$5.00) per each niche interment right for columbarium interment sold or disposed of as perpetual care property between March 15, 1934, and July 1, 1963, shall also be placed in such perpetual care trust fund. From and after July 1, 1963, until September 1, 1975, each such cemetery shall deposit in its perpetual care trust fund an amount equivalent to a minimum of fifty cents (50¢) per square foot of ground area sold or disposed of as perpetual care property between said dates. A minimum of Forty Dollars (\$40.00) per each crypt interment right for mausoleum interment sold or disposed of as perpetual care property, except that on crypts accessible only through another crypt the minimum requirement shall be Twenty Dollars (\$20.00) per each such crypt, and a minimum of Ten Dollars (\$10.00) per each niche interment right for columbarium interment sold or disposed of subsequent to July 1, 1963, shall also be placed in such perpetual care trust fund. Such minimum requirements shall apply to all property in which the exclusive right of sepulture has been sold and paid for, whether used for interment purposes or not.

After July 1, 1963, each agreement for the sale of burial space in a perpetual care cemetery shall set

out separately the part of the aggregate amount agreed to be paid by the purchaser which is to be deposited in the perpetual care trust fund. If the aggregate amount agreed to be paid by the purchaser is payable in installments, all amounts paid thereon shall be applied, first, to the part thereof not required to be deposited in the perpetual care trust fund, to the extent thereof, and the remainder shall, when received by the seller, be deposited in the perpetual care trust fund. Any funds required to be deposited in its perpetual care trust fund by a seller of burial space shall be so deposited not later than ten (10) days after the end of the calendar month during which they are received. If the seller shall fail to so deposit such funds within the time required hereunder, it shall be liable for and the Banking Commissioner shall collect as a penalty the sum of Ten Dollars (\$10.00) per day for the period of such failure, and, upon the relation of the Banking Commissioner of the refusal of the seller to pay to the Banking Commissioner such penalty, the Attorney General shall institute a suit to recover said penalty and for costs and such other relief by the state as in the judgment of the Attorney General is proper and necessary. No cemetery shall hereafter operate as a perpetual care, permanent maintenance, or free care cemetery until the provisions hereof are complied with.

The amount to be deposited in the perpetual care trust fund shall be separately shown on the original purchase agreement and a copy thereof shall be delivered to the purchaser. In the sale of burial space, no commission shall be paid a broker or salesman on the amount to be deposited in the fund.

Notwithstanding any other provision of the laws of the State of Texas or any provision in a trust agreement executed for the purpose of providing perpetual care for a cemetery, such trust agreement may, by agreement entered into between the cemetery association and the trustee or trustees acting under such trust agreement, be amended so as to include any provision which is not inconsistent with any provision in this Act.

From and after September 1, 1975, each such cemetery shall deposit in its perpetual care trust fund an amount equivalent to a minimum of seventy-five cents (75¢) per square foot of ground area sold or disposed of as perpetual care property after said date. A minimum of Fifty Dollars (\$50.00) per each crypt interment right for mausoleum interment sold or disposed of as perpetual care property, except that on crypts accessible only through another crypt the minimum requirement shall be Twenty-Five Dollars (\$25.00) per each such crypt, and a minimum of Fifteen Dollars (\$15.00) per each niche interment right for columbarium interment sold or disposed of subsequent to September 1, 1975, shall also be placed in such perpetual care trust fund. The amount of money to be placed in the perpetual care trust fund

for lawn crypts shall be the same as crypts in an aboveground mausoleum.

[Amended by Acts 1975, 64th Leg., p. 86, ch. 40, § 3, eff. Sept. 1, 1975.]

¹ Article 7425b-1 et seq.

² Article 912a-29.

Art. 912a-28. Articles of Incorporation; Requisites and Contents

No perpetual care cemetery shall ever be organized without its Articles of Incorporation filed with the Secretary of State showing the subscriptions and payment in cash of its full Capital Stock, the designation of the location of its cemetery property, and a certificate showing the deposit of its Perpetual Care and Maintenance Guarantee Fund as provided in Section 29 of this Act.¹ The minimum amount of such Capital shall be in accordance with the following schedule: Those serving a town or city having a population of less than fifteen thousand (15,000), Fifteen Thousand Dollars (\$15,000); those serving a city having a population of fifteen thousand (15,000) but not more than twenty-five thousand (25,000) inhabitants, Thirty Thousand Dollars (\$30,000); those serving a city of twenty-five thousand (25,000) or more inhabitants, Fifty Thousand Dollars (\$50,000).

Nothing contained in this Section 28² shall apply to cemetery corporations chartered prior to the effective date of this Act, provided, however, that any corporation which amends its charter shall be required to comply with the minimum requirements set forth in this Section 28.

[Amended by Acts 1975, 64th Leg., p. 86, ch. 40, § 4, eff. Sept. 1, 1975.]

¹ Article 912a-29.

² This article.

Art. 912a-29. Perpetual Care and Maintenance Guarantee Fund; Minimum; Necessity and Requisites

Any Corporation chartered under this Act desiring to operate a Perpetual Care Cemetery, before being chartered must establish a minimum Perpetual Care and Maintenance Guarantee Fund, according to the following schedule:

Cemeteries with a Capital Stock of Fifteen Thousand Dollars (\$15,000) must deposit with the trustee, as provided by law, a Perpetual Care and Maintenance Guarantee Fund of Fifteen Thousand Dollars (\$15,000) in cash.

Those with a Capital Stock of Thirty Thousand Dollars (\$30,000), a Perpetual Care and Maintenance Guarantee Fund of Thirty Thousand Dollars (\$30,000) in cash; and,

Those with a Capital Stock of Fifty Thousand Dollars (\$50,000), or more, a Perpetual Care and Maintenance Guarantee Fund of Fifty Thousand Dollars (\$50,000) in cash.

The Perpetual Care and Maintenance Guarantee Fund shall be permanently set aside and deposited in trust with the Trustee, as is provided in Section 15

of the Perpetual Care Cemetery Code.¹ Upon all sales made of lots, spaces, crypts, mausoleum space and columbariums, the deposits as required by law, to be placed in trust for the Perpetual Care and Maintenance of the Cemetery, shall be allowed as a credit against the original Perpetual Care and Maintenance Guarantee Fund to the full amount of the original deposit. The Corporation thereafter shall continue to deposit in the Perpetual Care Fund, the minimum amount required by law, and such additional amount as may be required by the Rules and Regulations and/or the Trust Agreement or contract of said Cemetery Corporation or Association, for the Perpetual Care and Maintenance of the Cemetery.

Nothing contained in this Section 29² shall apply to cemetery corporations chartered prior to the effective date of this Act, provided, however, that any corporation which amends its charter shall be required to comply with the minimum requirements set forth in this Section 29.

[Amended by Acts 1975, 64th Leg., p. 86, ch. 40, § 5, eff. Sept. 1, 1975.]

¹ Article 912a-15.

² Article 912a-29.

Art. 912a-31. Examinations of Cemetery Associations' Perpetual Care Trust Funds and Records; Fees and Expenses

It shall be the duty of the Banking Commissioner to examine, or cause to be examined, each of such perpetual care cemetery associations annually or as often as necessary, for which the examined association shall pay to the Commissioner a fee not to exceed One Hundred Dollars (\$100.00) per day or fraction thereof, for each examiner, the total fee not to exceed Four Hundred Dollars (\$400.00) for any one regular examination.

If in any case the conditions existing in any such association are found to be such as to necessitate an additional examination or a prolonged audit to ascertain the true status of its affairs, the whole expense of such additional examination or such prolonged audit shall be defrayed by such association. [Amended by Acts 1975, 64th Leg., p. 86, ch. 40, § 6, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 2093, ch. 839, § 1, eff. Aug. 29, 1977.]

TITLE 28

CITIES, TOWNS AND VILLAGES

CHAPTER ONE. CITIES AND TOWNS

Article

- 966i. Incorporation of Certain Areas Containing 8,000 or More Inhabitants and at Least 10,000 Acres.
- 969c-2. Possession and Control of Unkept or Abandoned Cemeteries Within Home-Rule City in County of 500,000.
- 974d-20. Validation of Consolidation of Certain Cities.
- 974d-21. Validations of Incorporation, Boundary Lines and Governmental Proceedings; Exceptions.
- 974d-22. Validation of Incorporation, Charters and Amendments of Cities over 5,000; Boundary Lines; Governmental Proceedings; Revenue Bonds; Exceptions.
- 974d-23. Validation of Consolidation and Governmental Proceedings of Certain Cities.
- 974d-24. Validation of Annexations and other Proceedings of Municipalities of 20,000 or Less.
- 974d-25. Validation of Boundary Actions of Cities within Counties of 1,000,000 or More.
- 974d-26. Validation of Incorporation, Boundary Lines and Governmental Proceedings; Exceptions.
- 974d-27. Validation of Assumption of Municipal Control of Certain Schools.
- 974d-28. Validation of Incorporation and Boundary Lines.
- 974d-29. Validation of Incorporation, Boundary Lines and Governmental Proceedings; Cities and Towns of 1,000 or Less.
- 974d-30. Validation of Incorporation and Boundary Lines; Exceptions.

Art. 964. Cemetery Lots Exempt

Repeal

This article is repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Art. 966i. Incorporation of Certain Areas Containing 8,000 or More Inhabitants and at Least 10,000 Acres

Sec. 1. Any unincorporated area having a population, according to the last preceding federal census, of 8,000 inhabitants or more, and located wholly within boundaries of a district created pursuant to Article XVI, Section 59, of the Texas Constitution, which district furnishes water and sewer services to householders, contains at least 10,000 acres, and portions of which district are located within the corporate boundaries of two or more municipalities, may be incorporated as a city or town, with all of the powers, rights, immunities, and privileges mentioned and described in the provisions of this title relating to cities and towns, in the manner described in Article 966, Revised Civil Statutes of Texas, 1925, for incorporating cities and towns, provided, how-

ever, that the application to become incorporated shall be signed by at least 500 resident electors.

Sec. 2. The application to become incorporated shall be filed in the office of the county judge of the county in which the unincorporated area is located. Within 10 days after receipt of a map or plat of the boundaries of the unincorporated area, verification by the county tax assessor and collector that the requisite number of resident electors have signed the application to become incorporated, and certification by a registered professional engineer that the area described in the application contains at least 8,000 inhabitants and is located wholly within the boundaries of a district created pursuant to Article XVI, Section 59, of the Texas Constitution, which district furnishes water and sewer services to householders, contains at least 10,000 acres, and portions of which district are located within the corporate boundaries of two or more municipalities, the county judge shall order that an election be held for the purpose of submitting the question of incorporation to a vote of the people, in the manner prescribed by Article 966, Revised Civil Statutes of Texas, 1925.

Sec. 3. Notwithstanding any provision of this Act or any other law to the contrary, the application for incorporation, the order calling the incorporation election, the conduct and canvassing of said election, and, in the event of the passage of the election, the entry by the county judge upon the records of the commissioners court that the inhabitants of the city or town are incorporated within the boundaries thereof, and all subsequent actions of the incorporated city or town shall be valid, binding, and enforceable notwithstanding the absence of compliance with any requirement or requirements of the Municipal Annexation Act, as amended (Article 970a, Vernon's Texas Civil Statutes).

Sec. 4. The provisions of this Act shall not take effect until January 1, 1978. If, however, the unincorporated area described in Section 1 of this Act has been annexed by the principal city of the county wherein the unincorporated area lies or if annexation proceedings have been initiated by the principal city after January 1, 1977, then all provisions of this Act shall be held void.

Sec. 5. If any provision of this Act or its application to any person or circumstance is held to be invalid for any reason, the invalidity does not affect

any other provision or application of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

[Acts 1977, 65th Leg., p. 2077, ch. 828, §§ 1 to 5, eff. Jan. 1, 1978.]

Art. 969c. Cemeteries

[See *Compact Edition, Volume 3 for text of 1 and 2*]

Donation for Maintenance and Upkeep of Neglected and Unkept Cemeteries

Sec. 2A. A person, association, foundation, or corporation interested in the maintenance and upkeep of neglected and unkept cemeteries under the possession and control of a city may make donations to the permanent and perpetual trust fund to be used to beautify and maintain the whole cemetery or burial grounds generally.

[See *Compact Edition, Volume 3 for text of 3 to 8*]

[Amended by Acts 1977, 65th Leg., p. 1388, ch. 555, § 7, eff. Aug. 29, 1977.]

Art. 969c-2. Possession and Control of Unkept or Abandoned Cemeteries

Sec. 1. An incorporated city, town or village having a cemetery within its boundaries or within its extraterritorial jurisdiction which threatens or endangers the health, safety, comfort, or welfare of the public may, by resolution of its governing body, take possession and control of the cemetery on behalf of the public health, safety, comfort, and welfare of present and future generations.

Sec. 2. The resolution shall specify that 60 days after giving notice of a declaration of intent to take possession and control, the city in which the cemetery is located will remove or repair any fences, walls, or improvements, and will straighten and reset any memorial stones or embellishments that are found to be a threat or danger to the health, safety, comfort, or welfare of the public and take proper steps to restore and maintain the premises in orderly and decent condition. Notice shall be given by mail to all persons shown by the records in the county clerk's office to have an interest in the cemetery and to all interested persons by publication in a newspaper of general circulation in the city.

Sec. 3. Sixty days after giving notice, the city may remove or repair any fences, walls, or improvements, and will straighten and reset any memorial stones or embellishments that are found to be a threat or danger to the health, safety, comfort, or welfare of the public and restore the premises to decent condition. Thereafter, the city shall maintain the cemetery so that it will not endanger the health,

safety, comfort, or welfare of the public. Provided, however, no additional burial spaces will be offered for sale.

Sec. 4. A cemetery in the possession and control of a city under the provisions of this Act shall remain open to the public. A person who has an interest in a grave or burial lot or who has a kinship within the third degree of affinity or consanguinity to those interred may care for a grave or burial lot in the cemetery.

Sec. 5. No city nor officer or employee of the city shall be liable in civil damages or be criminally liable for acts performed in a good faith administration of this Act.

Sec. 6. The provisions of this Act are cumulative of all other remedies and provisions of the law relating to cemeteries, including the care, maintenance, ownership, operation, and control of cemeteries, perpetual trust funds to maintain cemeteries, and the abatement of nuisances and removal of cemeteries. The provisions of this Act do not apply to a perpetual care cemetery incorporated under the laws of this state or to a private family cemetery. [Acts 1977, 65th Leg., p. 1387, ch. 555, §§ 1 to 6, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 429, ch. 196, §§ 1, 2, eff. May 18, 1979.]

Art. 970a. Municipal Annexation Act

[See *Compact Edition, Volume 3 for text of 1 to 5*]

Fire Fighting Services in Industrial Districts

Sec. 5A. (a) A city may provide for adequate fire fighting services in that part of its extraterritorial jurisdiction designated under Section 5 of this Act as an industrial district. A city may provide for adequate fire fighting services by:

(1) directly furnishing fire fighting service which is paid for by the property owners of the district;

(2) contracting for the fire fighting service, whether or not all or part of the cost of the service is paid for by the property owners of the district; or

(3) the property owners providing for their own service under a contract with the city.

(b) A property owner who provides for his own fire fighting service under provisions of this Act shall not be required to pay any part of the cost of fire fighting services provided by the city to other property owners within the district.

[See Compact Edition, Volume 3 for text of 6]

Limitation on Annexations

Sec. 7.

[See Compact Edition, Volume 3 for text of 7, A and 7, B]

B-1.

Text of subd. (a) as amended by Acts 1977, 65th Leg., p. 1002, ch. 369, § 1

(a) No home rule or general law city may annex any area, whether publicly or privately owned, unless the width of such area at its narrowest point is at least 500 feet, except that a city having a population of twelve thousand (12,000) inhabitants or less may annex an area that is less than 500 feet in width if the corporate limits of the city are contiguous with the property on at least two sides; and except that adjacent cities may accomplish mutually agreeable adjustments in their boundaries of areas that are less than 500 feet in width.

Text of subd. (a) as amended by Acts 1977, 65th Leg., p. 1719, ch. 686, § 1

(a) No home rule or general law city may annex any area, whether publicly or privately owned, unless the width of such area at its narrowest point is at least 500 feet, except that a city having a population of twelve thousand (12,000) inhabitants or less may annex an area that is less than 500 feet in width if the corporate limits of the city are contiguous with the property on at least two sides, provided, however, that the provisions of this paragraph (a) shall not apply to any annexation initiated upon written petition of the owner or owners or of a majority of the qualified voters of the area to be annexed.

[See Compact Edition, Volume 3 for text of 7, B-1(b) to 7, D]

Annexation of Municipal Reservoir

Sec. 7a. A. A general law city may annex a reservoir owned by the city and used to supply water to the city, any land adjoining the reservoir that is subject to an easement for flood control purposes in favor of the city, and the right-of-way of any public roads or highways connecting the reservoir to the city by the most direct route, even though part of the annexed area is outside the city's extraterritorial jurisdiction or is narrower than five hundred (500) feet, if:

- (1) none of the annexed territory is more than five (5) miles from the city's corporate limits;
- (2) no part of the annexed territory is in another city's extraterritorial jurisdiction; and
- (3) the annexed area, excluding road or highway right-of-way, is less than six hundred (600) acres.

B. The provisions of this Act limiting the amount of territory a city may annex in a calendar year do not apply to an annexation covered by this section. Territory may be annexed under this section without the consent of the owners or residents of the annexed area.

Annexation of Municipal Airport

Sec. 7b. (a) A city may annex an airport owned by the city and the right-of-way of any public roads or highways connecting the airport to the city by the most direct route, even though the annexed area is outside the city's extraterritorial jurisdiction and within another city's extraterritorial jurisdiction or is narrower than five hundred (500) feet, if:

- (1) none of the annexed territory is more than eight (8) miles from the annexing city's corporate limits; and
- (2) the city within whose extraterritorial jurisdiction the airport to be annexed is located agrees to the annexation.

(b) The provisions of this Act limiting the amount of territory a city may annex in a calendar year do not apply to an annexation covered by this Section. Territory may be annexed under this Section without the consent of the owners or residents of the annexed area.

(c) The annexation of territory outside the extraterritorial jurisdiction of the annexing city under this Section does not expand the extraterritorial jurisdiction of the annexing city.

[See Compact Edition, Volume 3 for text of 8 to 10]

Annexation of Certain Political Subdivisions

Sec. 11. A. In this Section, "water or sewer district" means any district or authority created by authority of either Article III, Section 52, Subsection (b), Subdivisions (1) and (2), or Article XVI, Section 59, of the Texas Constitution, proposing to provide or actually providing water and sewer services or either of these services to household users as the principal function of the district, but does not include a district or authority if its primary function is the wholesale distribution of water.

B. A city may not annex territory within the boundaries of a water or sewer district unless it annexes the entire portion of the district that is outside the city's boundaries. This restriction does not apply to the annexation of territory in a water or sewer district if the water or sewer district is wholly or partly inside the extraterritorial jurisdiction of more than one city.

C. An annexation subject to Subsection B of this Section is exempt from the provisions of this Act limiting annexation authority to territory within a city's extraterritorial jurisdiction if:

(1) immediately before the annexation, at least half the area of the water or sewer district is inside the city's boundaries or its area of extraterritorial jurisdiction; and

(2) the city does not, in the annexation proceeding, annex any territory outside its extraterritorial jurisdiction except the part of the water or sewer district that is outside its extraterritorial jurisdiction.

D. Territory annexed in an annexation subject to Subsection B of this Section is included in computing the amount of territory the city may annex in a calendar year under Subsections B and C, Section 7 of this Act. If the area to be annexed exceeds the amount of territory the city otherwise would be permitted to annex, the city may nevertheless make the annexation, but it may make no other annexations in the remainder of the calendar year except annexations subject to Subsection B of this Section and annexations of territory that are excluded in the computation of territory a city may annex in a calendar year under Subsection B, Section 7 of this Act.

[Amended by Acts 1975, 64th Leg., p. 1865, ch. 585, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 313, ch. 147, § 1, eff. May 13, 1977; Acts 1977, 65th Leg., p. 1002, ch. 369, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1392, ch. 558, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1443, ch. 587, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1719, ch. 686, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1986, ch. 782, § 1, eff. Aug. 27, 1979.]

Art. 974a. Platting and Recording Subdivisions or Additions

[See Compact Edition, Volume 3 for text of 1 and 2]

Sec. 3. It shall be unlawful for the County Clerk of any county in which such land lies to receive or record any such plan, plat or replat, unless and until the same shall have been approved by the City Planning Commission of any city affected by this Act, if said city has a City Planning Commission and if it has no City Planning Commission, unless and until the said plan, plat, or replat shall have been approved by the governing body of such city. If a city has a City Planning Commission, the governing body may, by ordinance, additionally require approval of said plan, plat, or replat by the governing body. If such land lies outside of and within five (5) miles of more than one (1) city affected by this Act, then the requisite approval shall be by the City Planning Commission or governing body, or both, as the case may be, of such of said cities having the largest population; provided, however, that the governing

body of any city having the largest population may enter into an agreement with any other city or cities affected, or the governing body of the largest city may enter into an agreement with any other city within five (5) miles conferring the power of approval within stated portions of the area upon such other city; but any such agreement shall be revocable by either city at the end of twenty (20) years after the date of the agreement or at the end of such shorter period of time as may be agreed upon. A copy of any such agreement shall be filed with the County Clerk, and during the time the agreement continues in force he shall not receive or record any such plan, plat or replat unless it has been approved by the City Planning Commission or the governing body, or both, as the case may be, of the city or cities upon which the power of approval is conferred by the agreement. Any person desiring to have a plan, plat or replat approved as herein provided, shall apply therefor to and file a copy with the Commission, if there be one, or with the governing body if there is no Commission. The Commission, or governing body, as the case may be, shall act upon same within thirty (30) days from the filing date. If said plat be not disapproved within thirty (30) days from said filing date, it shall be deemed to have been approved by the Commission, or the governing body if there is no Commission. If a city with a Commission has required that approval be given by the governing body, then the governing body shall act upon the same within thirty (30) days after the approval by the Commission, or after the approval by reason of nonaction. If said plat be not disapproved by the governing body within said thirty (30) days, it shall be deemed to have been approved by the governing body. A certificate showing the filing dates hereunder and the failure to take actions thereon within the periods herein prescribed shall on demand be issued by the City Planning Commission or governing body, as the case may be, of such city, and said certificate shall be sufficient in lieu of the written endorsement or other evidence of approval herein required. If the plan, plat, or replat is approved, such Commission or governing body shall indicate such finding by certificate endorsed thereon, signed by the Chairman or presiding officer of said Commission or governing body and attested by its Secretary, or signed by a majority of the members of said Commission or of the Governing Body when appropriate under this Act. Such Commission or governing body shall keep a record of such applications and the action taken thereupon, and upon demand of the owners of any land affected, shall certify its reasons for the action taken in the matter.

[See Compact Edition, Volume 3 for text of 4 to 10]

[Amended by Acts 1975, 64th Leg., p. 1289, ch. 482, § 1, eff. Sept. 1, 1975.]

Art. 974d-20. Validation of Consolidation of Certain Cities

Sec. 1. In each instance where an election has heretofore been held in each of two adjoining incorporated cities within the same county in this state on the question of the consolidation or merger of the two cities under one government, and a majority of the voters of each city who participated in the election voted in favor of the proposition submitted to them, and thereafter the officers of the smaller city turned over to the officers of the larger city the record books and assets of the smaller city and the officers of the larger city entered upon the performance of their duties as officers of the consolidated city, and the consolidated city is now functioning or attempting to function as a validly constituted municipality, the consolidation is hereby validated in all respects as of the date of the consolidation or attempted consolidation. All proceedings involved in the consolidation are hereby validated, and the consolidation shall not be held invalid by reason of the fact that the election proceedings in either or both of the elections may not have been in accordance with law in regard to the prerequisites for ordering the election, the time of holding the election, the wording of the ballot proposition, the registration of the results, or any other procedure.

Sec. 2. All governmental proceedings performed by the governing body and other officers of a consolidated city which is within the terms of this Act are hereby validated as of the date of the proceedings against any claim of invalidity because of any defect in the consolidation proceedings or because of any purported authorization for or utilization of advisory services of former officers of the smaller city during a period following the consolidation.

Sec. 3. This Act does not apply to any proceedings or actions the validity of which is involved in litigation on the effective date of this Act if such litigation is ultimately determined against the validity thereof; nor does it apply to any proceedings which may have been nullified by a final judgment of a court of competent jurisdiction before the effective date.

[Acts 1975, 64th Leg., p. 373, ch. 164, §§ 1 to 3, eff. May 8, 1975.]

Art. 974d-21. Validations of Incorporation, Boundary Lines and Governmental Proceedings; Exceptions

Sec. 1. The incorporation proceedings of all cities and towns incorporated or attempted to be incorporated under the general laws before the effective date of this Act, which have functioned or attempted to function as incorporated cities or towns since their incorporation or attempted incorporation, are validated in all respects as of the date of the incorporation or attempted incorporation. The incorporation

proceedings may not be held invalid because they were not performed in accordance with law.

Sec. 2. The boundary lines of the cities and towns, including any extensions by annexation before June 3, 1975, are validated in all respects, except that the incorporation in or extension of a boundary line by annexation into the extraterritorial jurisdiction of another city or town, in violation of the Municipal Annexation Act, as amended (Article 970a, Vernon's Texas Civil Statutes), is not validated by this Act.

Sec. 3. All governmental proceedings performed by the governing bodies of the cities and towns since their incorporation are validated in all respects as of the date of the proceedings.

Sec. 4. The provisions of this Act shall not apply to any city or town now involved in litigation questioning any of the acts or proceedings, other than incorporation proceedings or boundary extensions, hereby validated if such litigation is ultimately determined against the legality thereof; nor shall this Act be construed as validating any proceeding which may have been nullified by a final judgment of a court of competent jurisdiction.

[Acts 1975, 64th Leg., p. 1848, ch. 576, §§ 1 to 4, eff. Sept. 1, 1975.]

Art. 974d-22. Validation of Incorporation, Charters and Amendments of Cities over 5,000; Boundary Lines; Governmental Proceedings; Revenue Bonds; Exceptions

Sec. 1. The incorporation proceedings of cities and towns (including home-rule cities) heretofore incorporated or attempted to be incorporated under the general laws of the State of Texas, and which have functioned or attempted to function as incorporated cities or towns since the date of such incorporation or attempted incorporation, are hereby in all respects validated as of the date of such incorporation or attempted incorporation; and the incorporation of such cities and towns shall not be held invalid by reason of the fact that the election proceedings or incorporation proceedings may not have been in accordance with law.

Sec. 2. That each charter, and amendment to a charter adopted by any city of more than 5,000 inhabitants in this state, or where such city has amended or attempted to amend or adopt such charter, since the enactment of Chapter 147, Acts of the Regular Session of the 33rd Legislature of the State of Texas, 1913, and as thereafter amended, relating to home rule, and all of the amendments and proceedings had under same, and that all bonds issued under any amendment where said bonds issued under any amendment have been approved by the attorney general and registered with the comptroller

of public accounts are hereby fully validated, ratified, and confirmed and are hereby declared to be in full force and effect as is adopted in strict compliance with all of the requirements of said Chapter 147, Acts of the 33rd Legislature, and as thereafter amended, and the general laws of Texas relating thereto.

Sec. 3. The boundary lines of all such cities and towns, including both the boundary lines covered by the original incorporation proceedings and any subsequent extensions thereof, are hereby in all things validated.

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

Sec. 5. Where any city in the state which operated under the general law or pursuant to a home-rule charter has heretofore at an election submitted to the qualified electors who own taxable property in said city and who have duly rendered the same for taxation propositions for the issuance of the bonds of such city for the purposes stated in such propositions, such bonds being payable from the revenues stated in such proposition or payable from ad valorem taxes to be levied therefor, and such propositions having carried by the vote of a majority of the persons voting in such election, all of the proceedings heretofore had by such city, including all proceedings had and acts done in connection with the calling and holding of the election, despite any failure or failures in such proceedings to comply with the pertinent statutes and all proceedings heretofore had by any such city to authorize the issuance of revenue bonds under the provisions of Section 11 of Article 2368a, Vernon's Texas Civil Statutes (irrespective of the location of the improvements to be constructed or acquired with bond proceeds), are hereby ratified, validated, and confirmed. The governing body of each such city is authorized to adopt all proceedings necessary or desirable to complete the issuance of such bonds. All of such proceedings relating to the authorization of bonds shall be submitted to the Attorney General of Texas, and when such bonds have been or are hereafter approved by the Attorney General of Texas and registered by the Comptroller of Public Accounts, they shall be incontestable.

Sec. 6. The provisions of this Act shall not apply to any city or town now involved in litigation questioning the legality of the incorporation or extension of boundaries or any of the acts or proceedings hereby validated if such litigation is ultimately determined against the legality thereof; nor shall this Act be construed as validating any proceeding which may have been nullified by a final judgment of a court of competent jurisdiction.

[Acts 1975, 64th Leg., p. 1897, ch. 605, §§ 1 to 6, eff. Sept. 1, 1975.]

Art. 974d-23. Validation of Consolidation and Governmental Proceedings of Certain Cities

Sec. 1. In each instance where an election has heretofore been held in each of two incorporated cities adjoining at a place within the same county in this state on the question of the consolidation or merger of the two cities under one government, and a majority of the voters in each city who participated in the election voted in favor of the proposition submitted to them, and thereafter the officers of the smaller city turned over to the officers of the larger city the record books and assets of the smaller city and the officers of the larger city entered upon the performance of their duties as officers of the consolidated city, and the consolidated city is now functioning or attempting to function as a validly constituted municipality, the consolidation is hereby validated in all respects as of the date of the consolidation or attempted consolidation. All proceedings involved in the consolidation are hereby validated, and the consolidation shall not be held invalid by reason of the fact that the election proceedings in either or both of the elections may not have been in accordance with law in regard to the prerequisites for ordering the election, the time of holding the election, the wording of the ballot proposition, the registration of the results, or any other procedure.

Sec. 2. All governmental proceedings performed by the governing body and other officers of a consolidated city which is within the terms of this Act are hereby validated as of the date of the proceedings against any claim of invalidity because of any defect in the consolidation proceedings or because of any purported authorization for or utilization of advisory services of former officers of the smaller city during a period following the consolidation.

Sec. 3. Nothing in this Act shall relieve the consolidated city from legal claims or actions which may have existed against the smaller city prior to consolidation.

Sec. 4. This Act does not apply to any proceedings or actions the validity of which is involved in litigation on the effective date of this Act if such litigation is ultimately determined against the validity thereof, nor does it apply to any proceedings which may have been nullified by a final judgment of a court of competent jurisdiction before the effective date.

[Acts 1977, 65th Leg., p. 1010, ch. 374, §§ 1 to 4, eff. June 10, 1977.]

Art. 974d-24. Validation of Annexations and Other Proceedings of Municipalities of 20,000 or Less

Sec. 1. This Act applies only to incorporated cities, towns, or villages operating under general law

or under a home-rule charter and having a population of 20,000 or less, according to the last preceding federal census.

Sec. 2. In any case where a city, town, or village covered by this Act extended its boundaries by annexing adjacent territory, the annexation and boundary lines and all related proceedings are validated, without regard to any procedural irregularity that may have occurred. All governmental acts and proceedings of the city, town, or village since the annexation are validated.

Sec. 3. This Act does not apply to any matter that on the effective date of this Act:

- (1) is involved in litigation, if the litigation ultimately results in the matter being held invalid; or
- (2) has been held invalid by a final judgment of a court of competent jurisdiction.

[Acts 1977, 65th Leg., p. 1229, ch. 475, §§ 1 to 3, eff. Aug. 29, 1977.]

Art. 974d-25. Validation of Boundary Actions of Cities within Counties of 1,000,000 or More

Sec. 1. This Act shall apply to all incorporated cities and towns within the boundaries of any county of this state with a population of 1,000,000 persons or more, according to the last preceding federal census.

Sec. 2. All elections, election orders, election proceedings, ordinances, resolutions, petitions, and agreed court judgments heretofore held, ordered, enacted, or completed involving annexation or the relinquishment of extraterritorial jurisdiction by cities within counties having a population of 1,000,000 persons or more, according to the last preceding federal census, are hereby in all things fully validated, confirmed, and approved, regardless of any irregularities or omissions in such ordinances, petitions, resolutions, elections, or other proceedings.

Sec. 3. The ordinances of all cities and towns in the class described in Section 1 of this Act fixing and prescribing the corporate limits extended by the annexation or attempted annexation of adjacent territory are hereby validated and confirmed.

Sec. 4. The boundary lines of all cities and towns within the classification described in Section 1 of this Act, including both the boundary lines covered by the original incorporation proceedings and any subsequent extensions thereof, are hereby in all things validated.

Sec. 5. The provisions of this Act shall not apply to any city or town now involved in litigation questioning the legality of the incorporation or extension of boundaries hereby validated if such litigation is ultimately determined against the legality thereof;

nor shall this Act be construed as validating any proceedings which may have been nullified by a final judgment of a court of competent jurisdiction.

[Acts 1977, 65th Leg., p. 1882, ch. 748, §§ 1 to 5, eff. June 16, 1977.]

Art. 974d-26. Validation of Incorporation, Boundary Lines and Governmental Proceedings; Exceptions

Sec. 1. The incorporation proceedings of all cities and towns incorporated or attempted to be incorporated under the general laws before the effective date of this Act, which have functioned or attempted to function as incorporated cities or towns since their incorporation or attempted incorporation, are validated in all respects as of the date of the incorporation or attempted incorporation. The incorporation proceedings may not be held invalid because they were not performed in accordance with law.

Sec. 2. The boundary lines of such cities and towns, including any subsequent extensions of such boundaries by annexation, and the reduction or contraction of such boundaries by the discontinuation and disannexation of territory are validated in all respects, except that the extension of a boundary line by annexation into the extraterritorial jurisdiction of another city or town or the incorporation of a city or town in the extraterritorial jurisdiction of another city or town without that city's or town's consent, in violation of the Municipal Annexation Act, as amended (Article 970a, Vernon's Texas Civil Statutes), is not validated by this Act.

Sec. 3. All governmental proceedings performed by the governing bodies of the cities and towns since their incorporation including annexations, disannexations, and apportionment of extraterritorial jurisdiction and notices and attempted notices required therefor are validated in all respects as of the date of the proceedings.

Sec. 4. This Act does not apply to any matter involved in litigation on the date this Act takes effect if the litigation ultimately results against the legality of the matter. This Act does not apply to any matter that has been nullified by a final judgment of a court of competent jurisdiction.

[Acts 1977, 65th Leg., p. 2075, ch. 826, §§ 1 to 4, eff. Aug. 29, 1977.]

Art. 974d-27. Validation of Assumption of Municipal Control of Certain Schools

Sec. 1. If an incorporated city or town has assumed control of the public free schools within its corporate limits and if that assumption was approved by a majority of the property taxpaying voters of the city or town voting at an election held for that purpose, the election, the assumption, and all governmental acts and proceedings performed in

the election and assumption and in governing the municipal school district are validated in all respects as of the date of the act or proceeding. The acts and proceedings may not be held invalid by reason of the fact that they may not have been performed in accordance with law.

Sec. 2. This Act does not apply to any matter involved in litigation on the date this Act takes effect if the litigation is ultimately resolved against the legality of the matter. This Act does not apply to any matter that has been nullified by a final judgment of a court of competent jurisdiction.

[Acts 1977, 65th Leg., p. 2081, ch. 831, §§ 1, 2, eff. June 16, 1977.]

Art. 974d-28. Validation of Incorporation and Boundary Lines

Purpose; Construction of Act

Sec. 1. This Act is to protect the public interest in confirmed and dependable boundaries and jurisdictions of municipalities. It shall be given the most comprehensive and liberal construction possible to achieve its remedial purpose.

Applicability

Sec. 2. This Act applies to any city, town, or village that incorporated or attempted to incorporate under general law before January 1, 1975, and that has functioned or attempted to function as an incorporated municipality since the date of the incorporation or attempted incorporation, including such a municipality that has adopted a home-rule charter.

Incorporation Proceedings

Sec. 3. The incorporation proceedings of each municipality covered by this Act are validated in all respects as of the date on which they occurred. The proceedings may not be held invalid because the election or other proceedings related to the incorporation were not in accordance with law.

Boundary Lines

Sec. 4. (a) The original boundary lines of each municipality covered by this Act and any extension of those boundaries adopted before January 1, 1975, are validated in all respects, even though the action adopting the original boundaries or an extension of them was not in accordance with law.

(b) Without limiting the generality of Subsection (a) of this section, it is expressly provided that an attempted annexation that occurred before January 1, 1975, may not be held invalid because it did not comply with the Municipal Annexation Act, as amended (Article 970a, Vernon's Texas Civil Statutes), or any other applicable law, or because the territory the municipality attempted to annex was not contiguous or adjacent to the then existing boundaries of the municipality, or because the mu-

nicipality was not petitioned for annexation by the owners or residents of the annexed territory.

Exceptions

Sec. 5. This Act does not apply to:

(1) any matter that on the effective date of this Act is involved in litigation if the litigation ultimately results in the matter being held invalid by a final judgment of a court of competent jurisdiction; or

(2) any matter that on the effective date of this Act has been held invalid by a final judgment of a court of competent jurisdiction.

[Acts 1979, 66th Leg., p. 1043, ch. 473, §§ 1 to 5, eff. Aug. 27, 1979.]

Art. 974d-29. Validation of Incorporation, Boundary Lines and Governmental Proceedings; Cities and Towns of 1,000 or Less

Validation of the Incorporation of Certain Cities and Towns

Sec. 1. If any city or town with a population of 1,000 or less, according to the most recent federal census, that previously incorporated or attempted to incorporate under general law with the aldermanic form of government is now functioning or attempting to function as an incorporated city or town within three or more counties, its incorporation or attempted incorporation is in all respects validated as of the date that it occurred. The incorporation may not be held invalid because the incorporation election or other incorporation proceedings were not in accordance with law or because of a failure to properly define the limits of the city or town.

Validation of Boundary Lines

Sec. 2. The areas and boundary lines of each city and town covered by this Act, including the boundary lines and any subsequent extension of them, are validated in all respects. The incorporation of the city or town or any subsequent extension of its corporate limits may not be held invalid because of the inclusion in the limits of more territory than is authorized by the Municipal Annexation Act, as amended (Article 970a, Vernon's Texas Civil Statutes).

Validation of Proceedings and Acts

Sec. 3. All governmental proceedings and acts performed since the incorporation or attempted incorporation by the governing bodies or other officers of the cities and towns covered by this Act are in all respects validated as of the date of each proceeding and act.

Quo Warranto Proceedings

Sec. 4. This Act does not apply to any city or town now involved in quo warranto proceedings

questioning the legality of its incorporation or extension of boundaries or the legality of any of the acts or proceedings validated by this Act if the litigation is ultimately determined against the legality of the matter.

[Acts 1979, 66th Leg., p. 1191, ch. 579, §§ 1 to 4, eff. June 13, 1979.]

Art. 974d-30. Validation of Incorporation and Boundary Lines; Exceptions

Incorporation Proceedings

Sec. 1. The incorporation proceedings of all cities and towns incorporated or attempted to be incorporated under the general laws before the effective date of this Act, which have functioned or attempted to function as incorporated cities or towns since their incorporation or attempted incorporation, are validated in all respects as of the date of the incorporation or attempted incorporation. The incorporation proceedings may not be held invalid because they were not performed in accordance with law.

Boundaries

Sec. 2. The boundary lines of the cities and towns, including any subsequent extensions of the boundaries by annexation, and the reduction or contraction of the boundaries by the discontinuation and disannexation of territory are validated in all respects, except that the extension of a boundary line by annexation into the extraterritorial jurisdiction of another city or town or the incorporation of a city or town in the extraterritorial jurisdiction of another city or town without that city's or town's consent, in violation of the Municipal Annexation Act, as amended (Article 970a, Vernon's Texas Civil Statutes), is not validated by this Act.

Pending and Completed Litigation

Sec. 3. This Act does not apply to any matter involved in litigation on the date this Act takes effect if the litigation ultimately results against the legality of the matter. This Act does not apply to any matter that has been nullified by a final judgment of a court of competent jurisdiction.

[Acts 1979, 66th Leg., p. 1897, ch. 767, §§ 1 to 3, eff. June 13, 1979.]

Art. 976a. Zoning Ordinances Upon Annexation

[See Compact Edition, Volume 3 for text of 1]

Sec. 2. Repealed by Acts 1977, 65th Leg., p. 2000, ch. 798, § 1, eff. June 16, 1977.

[See Compact Edition, Volume 3 for text of 3 and 4]

[Amended by Acts 1977, 65th Leg., p. 2000, ch. 798, § 1, eff. June 16, 1977.]

CHAPTER THREE. DUTIES AND POWERS OF OFFICERS

Article

- 999d. Purchase of Liability Insurance for Certain Municipal Employees.
- 999e. Automobile Liability Coverage for Peace Officers and Fire Fighters.
- 999f. Salary Continuation Payments to Municipal Employees; Subrogation.

Art. 999d. Purchase of Liability Insurance for Certain Municipal Employees

A municipality may insure the officers and employees of the fire and police departments and other municipal employees who drive emergency vehicles against liability to third persons arising from and out of the use and operation of automobiles, motor trucks, and other motor vehicles used as municipal emergency medical, fire, or police vehicles in the line of duty by procuring policies for that purpose with insurance companies authorized to do business in this state. All insurance taken out by a municipality shall be on forms approved by the State Board of Insurance. No municipality may purchase liability insurance in excess of \$20,000 because of bodily injury to or death of one person in any one accident, \$100,000 because of bodily injury to or death of two or more persons in any one accident, and \$5,000 because of injury to or destruction of property of others in any one accident.

[Acts 1975, 64th Leg., p. 970, ch. 369, § 1, eff. June 19, 1975.]

Art. 999e. Automobile Liability Coverage for Peace Officers and Fire Fighters

Sec. 1. (a) Every incorporated city or town shall provide for insuring peace officers and fire fighters in its employ against liability to third persons arising out of the operation, maintenance, or use of any motor vehicle owned or leased by such city or town.

(b) Any incorporated city or town may elect to reimburse the actual cost of extended automobile liability insurance endorsements obtained by its peace officers and fire fighters on the individually owned automobile liability insurance policies of such peace officers and fire fighters. Such extended endorsement shall be in amounts not less than those required under this Act and shall extend the coverage to include the operation and use of city vehicles by such peace officers or fire fighters in the scope of their employment. Provided, however, that any incorporated city or town which elects to use the reimbursement method authorized under this subsection may require that all peace officers and fire fighters who operate and use motor vehicles present proof that an extended coverage endorsement has been purchased and that such extended coverage is current.

Sec. 2. Liability coverage provided pursuant to the requirements of this Act shall be in amounts not less than the amounts required by the Texas Motor Vehicle Safety-Responsibility Act, as amended (Article 6701h, Vernon's Texas Civil Statutes), to provide proof of financial responsibility.

Sec. 3. "Motor vehicle" means any motor vehicle for which motor vehicle automobile insurance is written under the provisions of Subchapter A, Chapter 5, Insurance Code, as amended.

[Acts 1977, 65th Leg., p. 1394, ch. 560, §§ 1 to 3, eff. Aug. 29, 1977.]

Art. 999f. Salary Continuation Payments to Municipal Employees; Subrogation

If an incorporated city, town, or village pays benefits to a municipal employee under a salary continuation program when the employee is injured, the municipality is subrogated to the employee's right of recovery for personal injuries caused by the tortious conduct of a third party other than another employee of the same municipality. The subrogation extends only to the extent of payments made by the municipality. That a municipal employee has a cause of action against a third party for personal injuries is not a ground for the municipality to deny benefits under a salary continuation program.

[Acts 1977, 65th Leg., p. 1129, ch. 423, § 1, eff. June 15, 1977.]

Art. 1001. Treasurer, Duties, etc.

The treasurer shall give bond in favor of the city in such amount, and in such form as the city council may require, with sufficient security to be approved by the city council, conditioned for the faithful discharge of his duties. He shall receive and securely keep all moneys belonging to the city, and make all payments for the same upon the order of the mayor, attested by the secretary under the seal of the corporation. No order shall be paid unless the said order shall show upon its face that the city council has directed its issuance, and for what purpose. He shall render a full and correct statement of his receipts and payments to the city council, at their first regular meeting in every quarter and whensoever, at other times, he may be required by them so to do. He shall do and perform such other acts and duties as the city council may require. He shall receive such compensation as the city council shall fix.

[Amended by Acts 1977, 65th Leg., p. 1716, ch. 683, § 2, eff. Aug. 29, 1977.]

Art. 1003. Qualifications of Appointee

No person other than an elector resident of the city shall be appointed to any office by the city council. This article does not apply to the appointment of a city health officer appointed under Article

4425, Revised Civil Statutes of Texas, 1925, as amended, by the board of aldermen of an incorporated town or village containing fewer than 10,000 inhabitants.

[Amended by Acts 1977, 65th Leg., p. 891, ch. 335, § 1, eff. May 30, 1977.]

CHAPTER FOUR. THE CITY COUNCIL

Article

- 1010a. Cities of 1,200,000 or More, Salary and Expenses of Elected Officials.
- 1015g-5. Eligible City Operating International Toll Bridge over Rio Grande; Acquisition, Construction, Operation, and Financing.
- 1015n. Dilapidated Structures; Authority of Certain Cities and Towns.
- 1023a. Auditing of Records and Accounts; Annual Statements.

Art. 1010a. Cities of 1,200,000 or More; Salary and Expenses of Elected Officials

Sec. 1. The city council of an incorporated city having a population of 1,200,000 or more, according to the last preceding or any future federal census, may set the salary and expenses to be paid elected city officials. Said ordinance shall not take effect until the succeeding term, and the salary of a state district court judge of the county in which the city is located shall be the comparative salary; provided that a councilman's salary shall not exceed 40 percent of the comparative salary; the comptroller's salary shall not exceed the comparative salary; and the mayor's salary shall not exceed 150 percent of the comparative salary.

Sec. 2. (a) The city council may not adopt an ordinance under this Act unless the procedures prescribed by this section are followed.

(b) Before adopting an ordinance the city council shall publish notice in a newspaper of general circulation in the city. Notice must be published for two consecutive weeks immediately preceding the week in which the meeting is to be held and at which the proposed ordinance is to be considered. The notice must include a general description of the proposed ordinance, a statement that a public hearing will be held before the ordinance is adopted, a statement of the time and place of the hearing, and a statement that any interested person may appear and testify at the hearing.

(c) The city council must hold a public hearing before taking up an ordinance for consideration.

(d) An ordinance must be approved by a majority vote of the membership of the city council.

(e) A certified copy of an ordinance must be filed with the city secretary within 10 days after enactment, and it is effective on the first day of the succeeding term unless the ordinance prescribes a later effective date.

Sec. 3. (a) The city council may submit an ordinance adopted under this Act to the voters for their approval in the same fashion as charter amendments as provided in Article 1170, Revised Civil Statutes of Texas, 1925, as amended.

(b) After an election held under this Act, a two-year period of time must elapse prior to the calling of another election on the same proposition.

[Acts 1977, 65th Leg., p. 2079, ch. 829, §§ 1 to 3, eff. Aug. 29, 1977.]

Art. 1011e. Changes

(a) Such regulations, restrictions, and boundaries may from time to time be amended, supplemented, changed, modified, or repealed. In case, however, of a written protest against such change, signed by the owners of 20 per cent or more either of the area of the lots or land included in such proposed change, or of the lots or land immediately adjoining the same and extending 200 feet therefrom, such amendment shall not become effective except by the favorable vote of three-fourths of all members of the legislative body of such municipality. The legislative body of a municipality may also provide by ordinance that a vote of three-fourths of all its members is required to overrule a recommendation of the zoning commission that a proposed amendment, supplement, or change be denied.

(b) The provisions of the previous section relative to public hearing and official notice shall apply equally to all changes or amendments.

(c) In addition to the notice required by Subsection (b) of this section, a general law municipality without a Zoning Commission must provide notice of a proposed change to each property owner who would be entitled to notice under Section 6 of this Act if the municipality had a Zoning Commission. Notice must be given in the same manner as is required for notice to property owners under Section 6 of this Act. The legislative body may not adopt a change until after the 30th day after the day that notice required by this subsection is given.

[Amended by Acts 1977, 65th Leg., p. 1308, ch. 516, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1869, ch. 754, § 1, eff. Aug. 27, 1979.]

Art. 1011f. Zoning Commission

(a) In order to avail itself of the powers conferred by this Act, the legislative body of a home-rule city shall, and the legislative body of a general law municipality may, appoint a commission, to be known as the Zoning Commission.

(b) If a Zoning Commission is appointed, it shall recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. Such Commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and such legislative body

shall not hold its public hearings or take action until it has received the final report of such Commission; provided, however, that any city or town, by ordinance, may provide for the holding of any public hearing of the legislative body, after published notice required by Section 4 of this Act, jointly with any public hearing required to be held by the Zoning Commission, but such legislative body shall not take action until it has received the final report of such Zoning Commission. Where a City Plan Commission already exists, it may be appointed as the Zoning Commission. Written notice of all public hearings before the Zoning Commission on proposed changes in classification shall be sent to owners of real property lying within two hundred (200) feet of the property on which the change in classification is proposed, such notice to be given, not less than ten (10) days before the date set for hearing, to all such owners who have rendered their said property for city taxes as the ownership appears on the last approved city tax roll. Such notice may be served by depositing the same, properly addressed and postage paid, in the city post office. Where property lying within two hundred (200) feet of the property proposed to be changed is located in territory which was annexed to the city after the final date for making the renditions which are included on the last approved city tax roll, notice to such owners shall be given by publication in the manner provided in Section 4 of this Act.

(c) Any other law that refers to a municipal Zoning Commission or Planning Commission shall be construed as referring to the legislative body in the case of a general law municipality that exercises zoning power without appointment of a Zoning Commission.

[Amended by Acts 1979, 66th Leg., p. 1869, ch. 754, § 1, eff. Aug. 27, 1979.]

Art. 1011i. Repealed by Acts 1975, 64th Leg., p. 2352, ch. 721, § 90, eff. Sept. 1, 1976

See, now, the Public Utility Regulatory Act, classified as art. 1446c.

Art. 1015g. Toll Bridges Over International Boundary Rivers, Powers Respecting

[See Compact Edition, Volume 3 for text of 1 and 2]

Tolls and Charges

Sec. 3. Any such city or town thus acquiring any such toll bridge shall have power, to be exercised by its Governing Body as expressed by Ordinance, to fix and to enforce and collect tolls and charges for the use thereof, and for the passage or transportation of persons or property, passengers, vehicles, freight and commodities, over and across such toll bridge. Such tolls and charges shall be fixed from time to time by the Governing Body of any such city or town, and

collected under its direction, in accordance with the provisions and requirements of any permits or franchises granted or extended by any governmental authority in respect of or applicable thereto; and, subject to the provisions and requirements of any such permits or franchises, shall be just and reasonable and non-discriminatory, as determined by such Governing Body of any such city or town, and with no free service until the bonds herein provided to be issued to acquire such properties, together with the interest thereon, and all duties and obligations incident thereto or arising therefrom are first fully paid, met, and discharged; and, subject to the provisions and requirements of any such permits and franchises, shall be sufficient to produce revenues adequate:

(a) to pay all expenses necessary to the maintenance and operation of such toll bridge, and to comply with the requirements and make all payments necessary under the provisions of any such permits and franchises therefor;

(b) to pay the interest on and the principal of all bonds and/or warrants issued under this Act when and as the same shall become due and payable;

(c) to pay all sinking fund and/or reserve fund payments agreed to be made in respect of any such bonds and/or warrants, and payable out of such revenues, when and as the same shall become due and payable; and

(d) to fulfill the terms of any agreements made with the holders of such bonds and/or warrants and/or with any person in their behalf;

(d-1) to recover a reasonable rate of return on invested capital;

(e) out of the revenues which may be received in excess of those required for the purposes specified in subparagraphs (a), (b), (c), (d), and (d-1) above, the Governing Body of any such city or town may in its discretion use such excess revenues for any or all of the following:

(1) to establish a reasonable depreciation and emergency fund;

(2) to retire by purchase and cancellation or redemption any outstanding bonds or outstanding warrants issued under the authority of this Act and amendments thereto;

(3) to provide needed budgetary support to local government for legitimate public purposes and for the general welfare;

(4) to apply the same to accomplish the purposes of this Act and amendments thereto.

(f) it is the intention of this Act that the tolls and charges herein provided for shall be those necessary to fulfill all obligations imposed by this Act and amendments thereto, and shall be sufficient to produce revenues to comply with the

above subparagraphs (a), (b), (c), (d), (d-1), and (e). Nothing herein shall be construed as depriving the State of Texas or the United States of America, or other appropriate agencies having jurisdiction, of power to regulate and control tolls and charges to be collected for such purposes, or to provide for bridges over any such river to be used free of any tolls or charges, provided that the State of Texas does hereby pledge to and agree with the purchasers and successive holders of the bonds and/or warrants issued hereunder that the State will not limit or alter the power hereby vested in any such city or town or the Governing Body thereof to establish and collect such tolls and charges as will produce revenues sufficient to pay the items specified in subparagraphs (a), (b), (c), (d), (d-1), and (e) of this Section 3 of this Act, or exercise its powers in any way to impair the rights or remedies of the holders of the bonds and/or warrants, or of any person in their behalf, until the bonds and/or warrants, together with the interest thereon, with interest on unpaid installments of interest and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders and/or warrant holders and all other obligations of any such city or town in connection with such bonds and/or warrants are fully met and discharged.

(g) this section shall apply to international toll bridges now in existence and owned by a city or that may be acquired or controlled by a city in the future.

[See Compact Edition, Volume 3 for text of 4 to 19]

[Amended by Acts 1977, 65th Leg., p. 366, ch. 180, § 1, eff. Aug. 29, 1977.]

Art. 1015g-5. Eligible City Operating International Toll Bridge over Rio Grande; Acquisition, Construction, Operation, and Financing

Applicability of Act

Sec. 1. This Act applies only to incorporated cities and towns whose corporate limits are at any point within 15 miles from the part of the Rio Grande that forms the border between Texas and the Republic of Mexico. In this Act, "eligible city" means a city to which this Act applies.

Acquisition of Toll Bridge, etc.; Contracts

Sec. 2. (a) Each eligible city is authorized for any public purpose to acquire, purchase, construct, improve, enlarge, equip, operate, and maintain one or more toll bridges over the part of the Rio Grande that forms the border between Texas and the Republic of Mexico.

(b) In this Act, "toll bridge" includes:

(1) the physical properties constituting all or part of a toll bridge;

(2) the permits, grants, franchises, rights, and privileges of every kind granted or extended by the United States, the Republic of Mexico, or any state or political subdivision of those nations for or in regard to the construction, maintenance, or operation of a toll bridge or for the collection of tolls or other charges for use of the toll bridge;

(3) the lands, rights-of-way, easements, leaseholds, and contractual or other interests of any kind in lands in either of those nations held or used for or in any manner incident to the construction, maintenance, or operation of a toll bridge or approaches to a toll bridge or for the use or occupancy of any buildings, structures, appurtenances, appliances, roads, streets, railroads, parks, grounds, or conveniences or facilities of any kind related or in any manner incident to a toll bridge;

(4) the buildings, structures, appurtenances, appliances, equipment, conveniences, and facilities of any kind held or used for or in any manner incident to the construction, maintenance, and operation of a toll bridge and the leases and contracts of any kind for the use or occupancy of those lands, buildings, structures, conveniences, appliances, and facilities; and

(5) the rights and properties of any kind incident to or used for the construction, maintenance, or operation of a toll bridge.

(c) An eligible city may make and enter into, carry out, observe, and perform any and all contracts, agreements, and undertakings required by the United States or the Republic of Mexico or any departments, officers, governmental agencies, or public authorities of either nation for the purpose of engaging in the activities authorized by this Act.

Revenue Bonds Authorized; Interim Financing

Sec. 3. (a) For the purpose of providing funds to acquire, purchase, construct, improve, enlarge, or equip a toll bridge or a part of a toll bridge or related buildings, structures, or other facilities for any public purpose, the governing body of an eligible city may issue revenue bonds from time to time in one or more issues or series to be payable from and secured by liens on and pledges of all or any part of any of the revenues, income, or receipts derived by the eligible city from its ownership and operation of any portion of a toll bridge or bridges over the Rio Grande and from its ownership and operation of any other property, buildings, structures, activities, operations, or facilities.

(b) Pending the issuance of revenue bonds pursuant to this Act, an eligible city may use money that is not required by law to be used for other purposes for expenditures in connection with a toll bridge or bridges or may issue notes for those expenditures. If an eligible city uses its money for this purpose, the money may be repaid out of proceeds of the

revenue bonds issued under this Act. If notes of the city are issued for this purpose, the notes shall have the characteristics deemed appropriate by the governing body of the city, may bear the rate or rates of interest, may be payable from sources available to pay, and may be secured in the same manner as revenue bonds issued under this Act or payable from the proceeds of refunding bonds issued under this Act or from both revenue bonds and refunding bonds.

Issuance of Bonds and Notes; Negotiability

Sec. 4. (a) The bonds issued pursuant to this Act may be issued to mature serially or otherwise not more than 50 years from the date of issue, and provision may be made for the subsequent issuance of additional parity bonds or subordinate lien bonds under any terms or conditions that may be set forth in the ordinance authorizing the issuance of the bonds.

(b) The bonds and notes and interest coupons appertaining to the bonds or notes are negotiable instruments within the meaning of and for the purposes provided by the Texas Uniform Commercial Code; however, the bonds may be issued registrable as to principal alone or as to both principal and interest. The bonds and notes shall be executed; may be made redeemable prior to maturity; may be issued in the form, denominations, and manner and under the terms, conditions, and details; may be sold in the manner, at the price, and under the terms; and shall bear interest at the rates provided by the ordinance authorizing issuance of the bonds or notes.

(c) If provided in the bond ordinance, the proceeds from the sale of the bonds may be used for paying interest on the bonds during the period of the acquisition or construction of any facilities to be provided through the issuance of bonds, paying expenses of operation and maintenance of any facilities, creating a reserve fund for the payment of the principal of and interest on the bonds, and creating any other funds and may be placed on time deposit or invested, until needed, all to the extent and in the manner provided by the bond ordinance.

Tolls and Charges

Sec. 5. Each eligible city may fix and collect tolls, rentals, rates, and charges for the occupancy, use, and availability of all or any of its toll bridges in the amounts and in the manner as may be determined by the city's governing body.

Security for Bonds

Sec. 6. (a) An eligible city may pledge all or any part of its revenues, incomes, or receipts from tolls, rentals, rates, and charges, or other resources to the payment of bonds issued pursuant to this Act, including the payment of principal, interest, and any other amounts required or permitted in connection

with the bonds. The pledged tolls, rentals, rates, and charges shall be fixed and collected in amounts that will be at least sufficient, together with any other pledged resources, to provide for all payments of principal, interest, and any other amounts required in connection with the bonds and to the extent required by the ordinance authorizing issuance of the bonds to provide for the payment of expenses in connection with the bonds and for the payment of operation, maintenance, and other expenses in connection with the toll bridge or bridges.

(b) The bonds may be additionally secured by mortgages or deeds of trust on any real property owned by the eligible city and by chattel mortgages or liens on any personal property appurtenant to the real property. The governing body of the eligible city may authorize the execution of trust indentures, mortgages, deeds of trust, or other forms of encumbrances to evidence the debt.

(c) An eligible city may pledge to the payment of the bonds all or any part of any grant, donation, revenue, or income received or to be received from the United States or any other public or private source whether pursuant to an agreement or otherwise.

Use of Property by Federal Government

Sec. 7. It is hereby found, determined, and declared that the acquisition, purchase, construction, improvement, enlargement, or equipping by an eligible city of any property, buildings, structures, or other facilities for lease to the United States government for use in performing federal governmental functions in the city or in performing federal governmental functions at or near and relating to its toll bridge, even though the toll bridge and the federal facilities relating to the toll bridge are not located in the city, is and constitutes a public purpose and a proper municipal function. Any property, buildings, structures, or other facilities acquired, purchased, constructed, improved, enlarged, or equipped in whole or in part with proceeds from the sale of bonds issued pursuant to this Act may be leased or rented by an eligible city to the United States under the terms and conditions and for the period agreed to by the parties.

Payment of Bonds and Notes; Taxability

Sec. 8. Bonds and notes issued pursuant to this Act are payable solely from the revenues, income, receipts, or other resources of the issuing city, as provided in this Act, and the bonds and notes are not tax obligations of the eligible city.

Refinancing

Sec. 9. (a) Bonds or notes issued pursuant to this Act may be refunded or otherwise refinanced by the issuance of refunding bonds for the purpose and under the terms, conditions, and details prescribed

by ordinance of the governing body of the eligible city. All pertinent and appropriate provisions of this Act are applicable to refunding bonds, and they shall be issued in the manner provided for other bonds authorized under this Act. Refunding bonds may be sold and delivered in amounts sufficient to pay the principal, interest, and redemption premium, if any, of bonds and notes to be refunded at maturity or on any redemption date.

(b) Refunding bonds may be issued to be exchanged for the bonds and notes being refunded. If refunding bonds are issued under this subsection, the comptroller of public accounts shall register the refunding bonds and deliver them to the holder or holders of the bonds or notes being refunded in accordance with the ordinance authorizing the refunding bonds. An exchange may be made in one delivery or in several installment deliveries.

(c) Bonds and notes issued at any time pursuant to this Act may be refunded in the manner provided by any other applicable law in addition to that provided by this section.

Approval and Registration

Sec. 10. All bonds and notes issued pursuant to this Act and the appropriate proceedings authorizing their issuance shall be submitted to the attorney general for examination. If he finds that the bonds and notes have been authorized in accordance with law, he shall approve them, and on approval the bonds and notes shall be registered by the comptroller of public accounts. After approval and registration, the bonds and notes are incontestable in any court or other forum for any reason and shall be valid and binding obligations in accordance with their terms for all purposes.

Bonds and Notes as Lawful Investments and Deposit Security

Sec. 11. (a) Bonds and notes issued pursuant to this Act are legal and authorized investments for all banks, trust companies, building and loan associations, savings and loan associations, insurance companies of all kinds and types, fiduciaries, and trustees, and for all interest and sinking funds and other public funds of the State of Texas and all agencies, subdivisions, and instrumentalities of the state, including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic.

(b) The bonds and notes when accompanied by any unmatured interest coupons appurtenant to them are eligible and lawful security to the extent of their market value for any deposits of public funds of the state or any agency, subdivision, or instrumentality of the state, including a county, city, town, village, school district or other type of district, public agency, or body politic.

Act Cumulative and Wholly Sufficient

Sec. 12. This Act is cumulative of all other law on the subject, and this Act is wholly sufficient authority within itself for the issuance of the bonds and notes and the performance of the other acts and procedures authorized hereby without reference to any other law or any restrictions or limitations contained therein, except as herein specifically provided; and when any bonds or notes are being issued under this Act, then to the extent of any conflict or inconsistency between any provisions of this Act and any provision of any other law, the provisions of this Act shall prevail and control; provided, however, that any eligible city shall have the right to use the provisions of any other laws not in conflict with the provisions hereof to the extent convenient or necessary to carry out any power or authority, express or implied, granted by this Act.

[Acts 1979, 66th Leg., p. 759, ch. 332, §§ 1 to 12, eff. Aug. 27, 1979.]

Art. 1015j-1. Promotional Advertising for Growth and Development in Cities of Not More Than 500,000; Board of Development; Appropriations and Expenditures Authorized; Appointment of Manager

[See Compact Edition, Volume 3 for text of 1 to 3]

Sec. 3a. To assist it in carrying out the provisions of this Act, the governing body may appoint a person to manage the promotion, development, tourism, and convention activities of the city, or it may designate a city official to carry out that function. The person appointed or designated shall serve ex officio as the secretary of the board of development.

[See Compact Edition, Volume 3 for text of 4]

[Amended by Acts 1975, 64th Leg., p. 1988, ch. 661, § 1, eff. June 19, 1975.]

Art. 1015m. Repealed by Acts 1977, 65th Leg., p. 2087, ch. 835, § 9, eff. Aug. 29, 1977

See, now, art. 6701g-2.

Art. 1015n. Dilapidated Structures; Authority of Certain Cities and Towns

(a) A city or town incorporated or operating under Chapters 1-10, Title 28, Revised Civil Statutes of Texas, 1925, as amended, may adopt an ordinance that requires the demolition or repair of a building that is dilapidated, substandard, unfit for human habitation, or a hazard to the health, safety, and welfare of the citizens.

(b) The ordinance must:

(1) establish minimum standards for continued use and occupancy that apply to all buildings regardless of date of construction;

(2) provide for proper notice to the owner; and

(3) provide for a public hearing.

(c) After a hearing, if the building is found to be in violation of the standards set out in the ordinance, the city may direct that the building be repaired or removed within a reasonable time.

(d) After the expiration of the allotted time, the city may remove the building at its own expense. If a city incurs removal expenses under this Act, it has a lien against the property to which the building was attached. The lien is extinguished if the property owner reimburses the city for the removal expenses. The lien may not be enforced by forced sale.

[Acts 1977, 65th Leg., p. 1402, ch. 566, § 1, eff. Aug. 29, 1977.]

Art. 1016. Streets and Alleys, etc.

Any city or town incorporated under the general laws of this State shall have the exclusive control and power over the streets, alleys, and public grounds and highways of the city or town, and to abate and remove encroachments or obstructions thereon; to open, alter, widen, extend, establish, regulate, grade, clean and otherwise improve said streets; to put drains or sewers therein, and prevent encumbering thereof in any manner, and to protect same from encroachment or injury; and to regulate and alter the grade of premises; to require the filling up and raising of same; and, upon submission of a petition signed by all of the owners of real property abutting a street or alley, the governing body of any such city or town shall also have the power, by ordinance, to vacate and abandon and close any such street or alley.

[Amended by Acts 1979, 66th Leg., p. 477, ch. 218, § 1, eff. Aug. 27, 1979.]

Section 3 of the 1979 amendatory act provided:

"The amendment of Articles 1016 and 1019, Revised Civil Statutes of Texas, 1925, as amended, by this Act does not apply to a petition submitted to a municipal governing body under Article 1016 before the effective date of this Act. Such a petition and all action taken with respect to it are subject to those statutes as they existed when the petition was submitted. The former law is continued in effect for purposes of this section."

Art. 1019. Special Election

No public square or park shall be sold until the question of such sale has been submitted to a vote of the qualified voters of the city or town, and approved by a majority of the votes cast at such election.

[Amended by Acts 1979, 66th Leg., p. 477, ch. 218, § 2, eff. Aug. 27, 1979.]

Section 3 of the 1979 amendatory act provided:

"The amendment of Articles 1016 and 1019, Revised Civil Statutes of Texas, 1925, as amended, by this Act does not apply to a petition submitted to a municipal governing body under Article 1016 before the effective date of this Act. Such a petition and all action taken with respect to it are subject to those statutes as they existed when the petition was submitted. The former law is continued in effect for purposes of this section."

Arts. 1022, 1023. Repealed by Acts 1977, 65th Leg., p. 1716, ch. 683, § 3, eff. Aug. 29, 1977

See, now, art. 1023a.

Art. 1023a. Auditing of Records and Accounts; Annual Statements

(a) Each incorporated city, town, and village in this state, hereinafter referred to as "city," including any city operating under a special charter, or home-rule city operating under a charter adopted or amended pursuant to Article XI, Section 5, of the Texas Constitution, or city operating under the general laws of this state, shall have its records and accounts audited and a financial statement based on such audit prepared annually. Any such city whose records and accounts are not audited annually by a person or officer prescribed by statute or charter provision, or by a person in the regular employ of such city, must engage at its own expense a Texas Certified Public Accountant or a public accountant holding a permit to practice from the Texas State Board of Public Accountancy to conduct the audit and to prepare the financial statement required herein.

(b) The annual financial statement of such city, together with the auditor's opinion thereon, shall be filed in the office of the city secretary or clerk of such city within 120 days of the close of the city's fiscal year and shall be a public record.

Amendment

(c) A city that provides a continuing, organized program of service retirement, disability retirement, or death benefits for any of its officers or employees shall include in its annual financial statement a valuation of the financial assets and liabilities of the program as shown in the most recent actuarial valuation of the program. This subsection does not apply to a program for which the only funding agency is a life insurance company, a program providing only workers' compensation benefits, or a program administered by the city as a member of the Texas Municipal Retirement System.

[Acts 1977, 65th Leg., p. 1716, ch. 683, § 1, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 2113, ch. 817, § 15, eff. Sept. 1, 1979.]

Section 4 of the 1977 Act provided as follows:

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

CHAPTER FIVE. TAXATION

Article

1066d. Rehabilitation and Development of Blighted Areas; Tax Incremental Districts; Bonds and Notes.

Arts. 1027a to 1027k.

Repeal

These articles are repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Art. 1028a. Validation of Levies of Ad Valorem Taxes in Certain Cities, Towns, and School Districts

Repeal

This article is repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Arts. 1036 to 1038.

Repeal

These articles are repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Art. 1041. Powers of Council

Text of article effective January 1, 1982

The city council may provide, by ordinance, for the prompt collection of all taxes, except ad valorem taxes, that are assessed, levied and imposed under this title, and is authorized to sell or cause to be sold real as well as personal property, and may make such rules and regulations, and pass all ordinances as they may deem necessary to the levying, laying, imposing, assessing and collecting of any tax herein provided.

[Amended by Acts 1979, 66th Leg., p. 2315, ch. 841, § 4(e), eff. Jan. 1, 1982.]

For text of article effective until January 1, 1982, see Compact Edition, Volume 3

Arts. 1042, 1042a.

Repeal

These articles are repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Art. 1042b. Assessment and Collection of Taxes in Cities, Towns, Villages, Drainage Districts, and Other Districts

[See Compact Edition, Volume 3 for text of 1 to 3]

Valuation

Sec. 4. The property situated within and subject to taxation in said incorporated cities, towns or villages, drainage districts, water control and improvement districts, water improvement districts, fresh water supply districts, navigation districts or hospital districts taking advantage of this Act shall be assessed at the same value as it is assessed for county and state purposes, except that real property in all incorporated cities in counties of 830,460 population or greater, according to the last preceding

federal census, by ordinance of the city government may be assessed at a greater rate of value than the same property is assessed for state and county purposes.

[See Compact Edition, Volume 3 for text of 5]
[Amended by Acts 1975, 64th Leg., p. 663, ch. 278, § 1, Sept. 1, 1975.]

Repeal

This article is repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Arts. 1043, 1044.

Repeal

These articles are repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Arts. 1045 to 1066.

Repeal

These articles are repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Art. 1066b. Assessor, Collector, and Equalization Board Acting for Included Municipality or District

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

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

When the ordinance or resolution is passed making available their services, said Assessor shall assess the taxes for and perform the duties of Tax Assessor for the municipality or district so availing itself of his

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

In all matters pertaining to such assessments and collections the said Tax Assessor, Board of Equalization and Tax Collector shall be, and hereby are, authorized to act as and shall perform respectively the duties of Tax Assessor, Board of Equalization and Tax Collector of, and according to the ordinances and resolutions of the municipality or district so availing itself of their services, and according to law.

[See Compact Edition, Volume 3 for text of 1a to 5]

[Amended by Acts 1977, 65th Leg., p. 1679, ch. 662, § 1, eff. Aug. 29, 1977.]

Repeal

This article is repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

The 1977 Act provides in § 2 as follows:
"Ordinances and resolutions adopted by a district in accordance with Section 1, Chapter 351, Acts of the 49th Legislature, 1945, as amended (Article 1066b, Vernon's Texas Civil Statutes), before the effective date of this Act are validated."

Art. 1066c. Local Sales and Use Tax Act

[See Compact Edition, Volume 3 for text of 1]

Authority to Adopt Tax; Imposition and Rate; Election and Bal-
lots; Canvass of Returns; Results of Election; City Boundaries;
Tax Schedule and Bracket System Formula for Joint Collection of
Taxes; Standards

Sec. 2.

[See Compact Edition, Volume 3 for text of 2A]

B. The sales tax portion of any local sales and use tax adopted under this Section is hereby imposed at the rate of one percent (1%) on the receipts from the sale at retail of all taxable items within any city adopting such tax which items are subject to taxation by the State of Texas under the provisions of the Limited Sales, Excise and Use Tax Act, as enacted, and as heretofore or hereafter amended, and at the rate of one percent (1%) on the receipts from the sale at retail within the city of gas and electricity for residential use as defined by the State Limited Sales, Excise and Use Tax Act.

[See Compact Edition, Volume 3 for text of 2C to 2K]

L. In each city in which a local sales and use tax has been imposed in the manner provided by this Act, every retailer selling gas or electricity for residential use shall add the tax imposed by this Act to his sales price and when added the tax shall constitute a part of the price, shall be a debt of the purchaser to the retailer until paid, and shall be recoverable at law in the same manner as the purchase price. The amount of the tax on the sale at retail of gas and electricity for residential use shall be calculated by multiplying the amount of the tax by the sales price. Any fraction of one cent (\$.01) which is less than one-half of one cent (\$.005) shall not be collected. Any fraction of one cent (\$.01) of tax equal to one-half of one cent (\$.005) or more shall be collected by the retailer as a whole cent (\$.01) of tax. The Comptroller may publish a schedule based on the above formula for cities imposing a tax on the sale at retail of gas and electricity for residential use.

[See Compact Edition, Volume 3 for text of 3]

Excise Tax; Combined Rate of Excise Tax; Imposition, Rate and Collection of Tax

Sec. 4. A. Except as provided in Subsection D of this Section, in every city where the local sales and use tax has been adopted pursuant to the provisions of this Act, there is hereby imposed an excise tax on the storage, use, or other consumption within such city of tangible personal property purchased, leased, or rented from any retailer on or after the effective date for collection of the sales tax portion of the local sales and use tax for storage, use or other consumption in such city at the rate of one percent (1%) of the sales price of the property or, in the case of leases or rentals, of said lease or rental price. Except as provided in Subsection E of this Section, the local use tax is not owed to and may not be collected by, for, or in behalf of a city if no excise tax on the storage, use, or other consumption of an item of tangible personal property is owed to or collected by the State under the Limited Sales, Excise and Use Tax Act, Chapter 20, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended or if the tangible personal property is first stored, used, or consumed within a city or area that has not adopted the local sales or use tax.

B. Except as provided in Subsection D of this Section, in each city where the local sales and use tax has been imposed as provided in Section 2 of this Act, the excise tax imposed under the State Limited Sales, Excise and Use Tax Act on the storage, use, or other consumption of tangible personal property and the excise tax imposed by this Section of this Act shall be added together to form a combined rate of excise tax which is equal to the sum of the two taxes. The tax imposed by this Section of this Act

shall be collected by the Comptroller on behalf of and for the benefit of such city. The bracket system formula prescribed in Subsection K of Section 2 of this Act shall be applicable to the collection of the excise tax imposed under this Section.

C. The provisions of Article 20.031, Title 122A, shall be applicable to the collection of the tax imposed by this Section, provided that the name of the city where the local sales and use tax has been adopted shall be substituted for that of the State where the words "this State" are used to designate the taxing authority or to delimit the tax imposed; and provided further that the effective date for commencing the collection of the sales tax portion of the tax imposed by this Act in any city shall be substituted for the phrase "the effective date of this Chapter."

D. In every city where the local sales and use tax has been adopted under this Act, there is imposed an excise tax on the storage, use or other consumption within the city of gas and electricity for residential use purchased, leased or rented from any retailer on or after the effective date for collection of the sales tax portion of the local sales and use tax for storage, use or other consumption within the city at the rate of one percent (1%) of the sales price of the gas and electricity for residential use, or in the case of leases or rentals, of the lease or rental price. In every city where the local sales and use tax has been adopted under this Act, the excise tax imposed by this Section shall be calculated as provided in Subsection L, Section 2 of this Act and shall be collected by the Comptroller on behalf of and for the benefit of the city in the same manner as if the use, storage or other consumption of gas and electricity for residential use were not exempt under the Limited Sales, Excise and Use Tax Act.

E. If a sale of tangible personal property is consummated within the State but not within a city that has adopted the taxes imposed by this Act and the tangible personal property is shipped directly into or brought by the purchaser or lessee directly into a city that has adopted the taxes imposed by this Act, the tangible personal property is subject to the local use tax imposed by the city under Subsection A of this Section. The use is considered consummated at the location where the item is first stored, used, or otherwise consumed after the intra-state transit has ceased.

F. If the tangible personal property is shipped from outside this State to a customer within this State, the tangible personal property is subject to the use tax imposed by Subsection A of this Section and not the sales tax imposed by Subsection B, Section 2 of this Act. The use is consummated at the first point in this State where the property is stored, used, or otherwise consumed after interstate transit has ceased. Tangible personal property de-

livered to a point in this State is presumed to be for storage, use, or other consumption at that point until the contrary is established.

Residential Gas and Electricity; Exemption and Reimposition of Tax

Sec. 4A. Effective October 1, 1979, there are exempted from the taxes imposed by this Act the receipts from the sale, production, distribution, lease or rental of, and the use, storage, or other consumption within the city of gas and electricity for residential use within a city adopting the taxes imposed by this Act unless prior to May 1, 1979, the governing body of the city, by a majority vote of the membership of the governing body, votes to continue the taxes authorized by this Act on the sale, production, distribution, lease or rental of, and the use, storage, or other consumption of gas and electricity for residential use. At any time before or after October 1, 1979, the governing body of a city that has adopted the tax authorized by this Act may, by a majority vote of the membership of the governing body, exempt from the taxes imposed by this Act the receipts from the sale, production, distribution, lease or rental of, and the use, storage, or other consumption within the city of gas and electricity for residential use. The governing body of a city that has adopted the tax authorized by this Act and provided for the exemption authorized or required by this section may, by a majority vote of the governing body, reimpose the taxes on the sale, production, distribution, lease or rental of, and the use, storage, or other consumption in the city of gas and electricity for residential use. If a majority of the governing body votes for the exemption authorized by this section or for the reimposition of the tax under this section, the results of the vote must be entered in the minutes of the city. Thereafter the city secretary shall forward to the comptroller by United States Registered or Certified Mail a copy of the ordinance. On actual receipt by the comptroller of the notification, there shall elapse one whole calendar quarter prior to the exemption or reimposition becoming effective. The exemption or reimposition shall take effect beginning on the first day of the calendar quarter next succeeding the elapsed quarter. If the governing body of a city, by a majority vote of the governing body, votes to exempt from the taxes authorized by this Act the receipts from the sale, production, distribution, lease, or rental of, and the use, storage, or other consumption of gas and electricity for residential use and forwards to the comptroller by United States Registered or Certified Mail postmarked on or before September 10, 1978, a certified copy of the ordinance, the exemption is effective on October 1, 1978, except that the exemption does not apply to sales of gas and electricity for residential use made during a retailer's regular monthly billing period for a consumer if the regular monthly billing period for the consumer

begins before October 1, 1978, but shall apply to each regular monthly billing period beginning on or after October 1, 1978.

Comptroller; Administration, Collection, Enforcement and Operation of Tax; Reports

Sec. 5. (a) On and after the effective date of any tax imposed under the provisions of this Act, the Comptroller shall perform all functions incident to the administration, collection, enforcement, and operation of the tax, and the Comptroller shall collect, in addition to the Limited Sales, Excise and Use Tax for the State of Texas, an additional tax under the authority of this Act of one percent (1%) on the receipts from the sale at retail or on the sale price or lease or rental price on the storage, use, or other consumption of all taxable items within such city which property is subject to the State Limited Sales, Excise and Use Tax Act, and an additional tax of one percent (1%) on the receipts on the sale at retail or on the sale price or lease or rental price on the storage, use, or other consumption of gas and electricity for residential use within the city as provided in this Act unless exempted as provided in Section 4A of this Act. The tax imposed hereunder and the tax imposed under the Limited Sales, Excise and Use Tax Act shall be collected together, if both are imposed, and reported upon such forms and under such administrative rules and regulations as may be prescribed by the Comptroller not inconsistent with the provisions of this Act. On and after the effective date of any proposition to abolish such local sales and use tax in any city, the Comptroller shall comply therewith as provided in this Act.

[See Compact Edition, Volume 3 for text of 5(b) to 5(d)]

Provisions Governing Collection of Tax

Sec. 6. The following provisions shall govern the collection by the Comptroller of the tax imposed by this Act:

A. All applicable provisions contained in Chapters 1 and 20 of Title 122A shall apply to the collection of the tax imposed by this Act, except as modified in this Act.

B.

Text of paragraph (1) effective until August 31, 1981

(1) For the purposes of the local sales and use tax, "place of business of the retailer" means an established outlet, office, or location operated by the retailer, his agent, or employee for the purpose of receiving orders for taxable items. The term "place of business of the retailer" includes any location at which three or more orders are received by the retailer in a calendar year. A warehouse, storage yard, or manufacturing plant

may not be considered a "place of business of the retailer" unless three or more orders are received by the retailer in a calendar year at such warehouse, storage yard, or manufacturing plant. Each "place of business of the retailer" must have a permit issued by the Comptroller in accordance with Article 20.021, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended. For the purpose of determining the proper local sales tax imposed by this Act, a retail sale, lease, or rental is consummated as provided in Paragraphs (a), (b), (c), and (d) of this subdivision, regardless of where transfer of title or possession or segregation in contemplation of transfer of title or possession of the taxable item occurs unless the tangible personal property sold, leased, or rented is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination.

(a) If a retailer has only one place of business within this State, all retail sales, leases, and rentals of the retailer are consummated at that place of business, except as provided in Subdivision (d) of this Subsection.

(b) If a retailer has more than one place of business in this State, the retailer's place of business where the purchaser or lessee takes possession of and removes an item of tangible personal property is the place of business where the sale, lease, or rental of that item is consummated. If, however, the retailer ships or delivers the tangible personal property to a point designated by the purchaser or lessee, then the retailer's place of business from which the tangible personal property is shipped or delivered to the purchaser or lessee is the place of business where the sale, lease, or rental is consummated.

(c) If neither possession of tangible personal property is taken at nor shipment or delivery of the tangible personal property is made from the retailer's place of business within this State, the sale, lease, or rental is consummated at the retailer's place of business within the State where the order is received or if the order is not received at a place of business of the retailer, at the place of business from which the retailer's salesman who took the order operates.

(d) When transfer of possession of tangible personal property occurs at or shipment or delivery originates from a location within the State other than a place of business of the retailer, the sale, lease, or rental is consummated at the location within this State to which the tangible personal property is shipped or delivered or at which possession is taken by the customer when:

(i) the retailer is an itinerant vendor and has no place of business, or

(ii) the retailer's place of business where the purchase order is initially received or from which the retailer's salesman who took the order operates is outside the State, or

(iii) the purchaser places the order directly with the retailer's supplier and the property is shipped or delivered directly to the purchaser by the supplier.

(e) The sale of natural gas or electricity is consummated at the point of delivery to the consumer.

Text of paragraph (1) effective September 1, 1981

(1) For the purposes of the local sales tax imposed by this Act, all retail sales, leases, and rentals, except sales of natural gas or electricity, are consummated at the place of business of the retailer unless the tangible personal property sold, leased, or rented is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination or the taxable service is to be performed at an out-of-state location. In the event the retailer has no permanent place of business in the state, the place or places at which the retail sales, leases, or rentals are consummated for the purposes of the tax imposed by this Act shall be determined under rules and regulations prescribed by the comptroller. If the retailer has more than one place of business in the state, the place or places at which retail sales, leases, and rentals are consummated shall be the retailer's place or places where the purchaser or lessee takes possession and removes from the retailer's premises the articles of tangible personal property, or if the retailer delivers the tangible personal property to a point designated by the purchaser or lessee, then the sales, leases, or rentals are consummated at the retailer's place or places of business from which tangible personal property is delivered to the purchaser or lessee. The sale of natural gas or electricity is consummated at the point of delivery to the consumer.

(2) For the purpose of the excise tax imposed by this Act on any retailer holding tangible personal property purchased on a resale certificate and which property becomes subject to the excise tax by reason of use or other consumption of the property, the use or other consumption of the property is consummated at the place where the property is stored or kept at the time of or just prior to its use or consumption, unless the tangible personal property is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination.

(3) For the purpose of determining the proper local use tax imposed by this Act, a holder of a

direct payment permit issued by the Comptroller under Section (K) of Article 20.05, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended, who becomes liable for local use tax by reason of storage, use, or other consumption of taxable items purchased in this State under a direct payment exemption certificate, shall allocate the tax to the city in which the taxable item was first removed from the permit holder's storage, or if not stored, the place at which the items are first used or consumed by the permit holder after transportation. As used in this paragraph, storage, use, or other consumption may not include a temporary delay or interruption necessary and incident to the transportation or further fabrication, processing, or assembling of taxable items within this State for delivery to the permit holder. A charge for processing, fabrication, or further assembly in a city that has adopted the local use tax shall be subject to the local use tax. If a taxable item is first stored, used, or consumed within a city that has not adopted the tax imposed by this Act or outside of a city, no local use tax is due.

C. (1) All exemptions granted to agencies of government, organizations, persons, and to the sale, storage, use, and other consumption of certain articles and items taxable under the provisions of Article 20.04, Chapter 20, Title 122A, are hereby made applicable to the imposition and collection of the tax imposed by this Act, except as specifically provided in Section (R) of Article 20.04, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended.

[See Compact Edition, Volume 3 for text of 6C(2) to 11]

Delinquent Taxes; Collection Suits; Notice and Limitations; Parties; Seizure and Sale of Property

Sec. 12. A. In any city where the Local Sales and Use Tax has been imposed, if any person is delinquent in the payment of the amount required to be paid by him under this Act or in the event a determination has been made against him for taxes and penalty under this Act, the limitation for bringing suit for the collection of such delinquent tax and penalty shall be the same as that provided in Article 20.09, Chapter 20, Title 122A. Where any person is delinquent in payment of taxes under this Act, the Comptroller shall notify the Tax Collector of the city to which delinquent taxes are due under this Act by United States Registered Mail or Certified Mail and shall send a copy of the notice to the Attorney General. The city, acting through its attorney, may join in any suit brought by the Attorney General as a party plaintiff to seek a judgment for the delinquent taxes and penalty due such city. The notice sent by the Comptroller to the tax collector of the city showing the delinquency of a taxpayer for the

local sales and use tax constitutes a certification of the amount owed and is prima facie evidence of the determination of the tax and of the delinquency of the amounts of local sales and use tax set forth in the notice.

[See Compact Edition, Volume 3 for text of 12B]

C. (1) A city that has adopted the tax authorized by this Act may bring suit for the collection of sales, excise, or use taxes imposed by this Act which have been certified as provided in Subsection A of this Section and are owed to the city under this Act if at least 60 days before the filing of the suit, written notice by certified mail of the tax delinquency and of the intention to file suit is given to the taxpayer, the Comptroller, and the Attorney General and if neither the Comptroller nor the Attorney General disapproves the suit by written notice to the city.

(2) The Comptroller or Attorney General may disapprove the institution of tax suit by a city if:

(i) negotiations between the State and the taxpayer are being conducted for the purpose of the collection of delinquent taxes owed to the State and the city seeking to bring suit;

(ii) the taxpayer owes substantial taxes to the State and there is a reasonable possibility that the taxpayer may be unable to pay the total amount owed in full;

(iii) the State will bring suit against the taxpayer for the collection of all sales, excise, and use taxes due under Chapter 20, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended, and this Act; or

(iv) the suit involves a critical legal question relating to the interpretation of State law or a provision of the Texas or United States Constitution in which the State has an overriding interest.

(3) A notice of disapproval to a city must give the reason for the determination of the Comptroller or Attorney General. A disapproval is final and not subject to review. A city, after one (1) year from the date of the disapproval, may proceed again as provided in paragraph (1) of Subsection C of this Section, even though the liability of the taxpayer includes taxes for which the city has previously given notice and the Comptroller or Attorney General has previously disapproved the suit.

(4) In any suit under this Subsection for the collection of city tax, a judgment for or against the taxpayer does not affect any claim against the taxpayer by another city or the State unless the State is a party to the action.

(5) A copy of the final judgment in favor of a city in a case in which the State is not a party shall be abstracted by the city and a copy of the judgment together with a copy of the abstract shall be sent to the Comptroller. The city shall collect the taxes

awarded to it under the judgment as provided by Article 20.09(G)(4), Chapter 20, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, and is responsible for the renewal of the judgment before the expiration of the 10-year period. If a collection is made by a city on a judgment, notice of the amount collected shall be sent by certified mail to the Comptroller. The Comptroller may prescribe a form for the notice to be used by cities.

[See Compact Edition, Volume 3 for text of 13 and 14]

[Amended by Acts 1975, 64th Leg., p. 44, ch. 23, § 1, eff. March 20, 1975; Acts 1978, 65th Leg., 2nd C.S. p. 5, ch. 2, art. 2, §§ 3 to 8, eff. Oct. 1, 1978; Acts 1979, 66th Leg., p. 98, ch. 59, § 6, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1400, ch. 624, art. 1, §§ 1 to 3, eff. June 13, 1979; Acts 1979, 66th Leg., p. 1404, ch. 624, art. 2, § 1, eff. Sept. 1, 1981.]

Section 6 of art. 1 of the 1979 amendatory act provided:

"Paragraph (1), Subsection B, Section 6, Local Sales and Use Tax Act, as amended (Article 1066c, Vernon's Texas Civil Statutes), as amended by this article, expires August 31, 1981."

Art. 1066d. Rehabilitation and Development of Blighted Areas; Tax Incremental District; Bonds and Notes

Definitions

Sec. 1. In this Act:

(1) "Blighted area" means:

(A) any area which by reason of the presence of a substantial number of substandard, slum, deteriorated, or deteriorating structures, predominance of defective or inadequate sidewalk or street layout, inadequate parking facilities, faulty lot layout in relation to size, adequacy, accessibility, or usefulness, insanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, or the existence of conditions which endanger life or property by fire and other cause, or any combination substantially impairs or arrests the sound growth of a city, retards the provision of housing accommodations, or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use; or

(B) any area which is predominantly open and which because of obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or otherwise substantially impairs or arrests the sound growth of the community.

(2) "City" means any incorporated city or town.

(3) "Project costs" means any expenditures made or estimated to be made or monetary obliga-

tions incurred or estimated to be incurred by the city which are listed in a project plan as costs of public works or improvements within a tax incremental district, plus any costs incidental thereto, diminished by any income, special assessments, or other revenues, other than tax increments, received or reasonably expected to be received by the city in connection with the implementation of the plan. Project costs include but are not limited to:

(A) capital costs, including the actual costs of the construction of public works or improvements, new buildings, structures, and fixtures; the demolition, alteration, remodeling, repair, or reconstruction of existing buildings, structures, and fixtures; the acquisition of equipment; and the clearing and grading of land;

(B) financing costs, including all interest paid to holders of evidences of indebtedness issued to pay for project costs and any premium paid over the principal amount thereof because of the redemption of such obligations prior to maturity;

(C) real property assembly costs, meaning any deficit incurred resulting from the sale or lease as lessor by the city of property within a tax incremental district for consideration which is less than its cost to the city;

(D) professional service costs, including those costs incurred for architectural, planning, engineering, and legal advice and services;

(E) imputed administrative costs, including reasonable charges for the time spent by city employees in connection with the implementation of a project plan;

(F) relocation costs;

(G) organizational costs, including the costs of conducting environmental impact and other studies and the costs of informing the public with respect to the creation of tax incremental districts and the implementation of project plans;

(H) the amount of any contributions made in connection with the implementation of the project plan; and

(I) payments made at the discretion of the city governing body which are found to be necessary or convenient to the creation of tax incremental districts or the implementation of project plans.

(4) "Project plan" means the properly approved plan for the development or redevelopment of a tax incremental district, including all properly approved amendments thereto.

(5) "Tax increment" means that amount obtained by multiplying the total ad valorem taxes levied by the city on property within a tax incremental district in any year by a fraction having a

numerator equal to that year's assessed value of all property in the district on which the city levies taxes minus the tax incremental base of the city and a denominator equal to that year's assessed value of property in the district on which the city levies taxes. In any year, a tax increment is "positive" if the tax incremental base is less than the aggregate assessed value of taxable property and is "negative" if the base exceeds such value.

(6) "Tax incremental base" means the total assessed value of the property located within a tax incremental district on the date the district is created on which the city levies ad valorem taxes.

(7) "Tax incremental district" means a contiguous geographic area within a city defined and created by ordinance of the city governing body in accordance with this Act.

Powers of Cities

Sec. 2. In addition to any other powers conferred by law, a city may exercise any powers necessary and convenient to carry out the purposes of this Act, including the power to:

(1) create tax incremental districts and to define the boundaries of the districts;

(2) cause project plans to be prepared, to approve the plans, and to implement the provisions and effectuate the purposes of the plan;

(3) acquire real property by purchase, condemnation, or otherwise to implement a project plan;

(4) issue tax incremental bonds and notes;

(5) deposit money into the special fund of any tax incremental district; and

(6) enter into any contracts or agreements, including agreements with bondholders, determined by the city governing body to be necessary or convenient to implement the provisions and effectuate the purposes of project plans. The contracts or agreements may include conditions, restrictions, or covenants which either run with the land or otherwise regulate the use of land.

Creation of Tax Incremental Districts and Approval of Project Plans

Sec. 3. (a) In order to implement the provisions of this Act, the following steps and plans are required:

(1) holding of a public hearing by the governing body of the city at which interested parties are afforded a reasonable opportunity to express their views on the proposed creation of a tax incremental district and its proposed boundaries; notice of the hearing shall be published in a newspaper;

(2) adoption by the city governing body of an ordinance that:

(A) describes the boundaries of a tax incremental district with sufficient definiteness to

identify with ordinary and reasonable certainty the territory included;

(B) provides for the establishment of a board of directors for the district as provided by Section 5 of this Act;

(C) creates the district on January 1 of the year following the year in which the ordinance becomes effective;

(D) assigns a name to the district for identification purposes; the first district created shall be known as "Tax Incremental District Number One, City of []"; each subsequently created district shall be assigned the next consecutive number; and

(E) contains findings that:

(i) not less than 25 percent by area of the real property within the district is a blighted area;

(ii) the improvement of the area is likely to enhance significantly the value of substantially all of the other real property in the district; it is not necessary to identify the specific parcels meeting the criteria; and

(iii) the aggregate assessed value of taxable property in the district according to the city's assessment plus all existing districts does not exceed 15 percent of the total assessed value of taxable property within the city according to the city's assessment roll;

(3) preparation and adoption by the board of directors of each tax incremental district of a project plan for the district and submission of the plan to the city governing body; the plan must include a statement listing the kind, number, and location of all proposed public works or improvements within the district; an economic feasibility study; a detailed list of estimated project costs; and a description of the methods of financing all estimated project costs and the time when related costs or monetary obligations are to be incurred; the plan must also include a map showing existing uses and conditions of real property in the district; a map showing proposed improvements and uses therein; proposed changes of zoning ordinances, master plan, map, building codes, and city ordinances; a list of estimated nonproject costs; and a statement of a proposed method for the relocation of persons to be displaced; and

(4) approval by the city governing body of a project plan; the approval must be by resolution which contains findings that the plan is feasible and in conformity with the master plan, if any, of the city.

(b) Not later than the 30th day after the adoption of an ordinance under Subsection (a) of this section, the governing body shall make the initial appointments of members of the board of directors of the proposed district.

(c) The board of directors of a district at any time may adopt an amendment to a project plan. The amendment is effective on approval by the governing body.

Residential Property

Sec. 4. (a) A tax incremental district may not be created if before redevelopment under this Act more than 10 percent of the real property in the district, excluding that dedicated to public use, is used for residential purposes.

(b) The boundaries of a district may not be changed to include within the district territory more than 10 percent of which, excluding property dedicated to public use, is used for residential purposes.

Board of Directors

Sec. 5. (a) The ordinance creating a tax incremental district must provide for the establishment of a board of directors for the district. The ordinance must specify the number of members of the board of directors, which may not be fewer than five nor more than 15.

(b) Members of the board of directors are appointed by the governing body. They serve terms of two years unless longer terms are provided pursuant to Article XI, Section 11, Texas Constitution. The ordinance may provide for staggering of terms so that all terms do not expire in the same year, and if the ordinance so provides, it may also provide for some of the initial appointees serving terms shorter than is otherwise provided in order to establish the staggering. Vacancies are filled for the unexpired term by appointment of the governing body.

(c) An individual is eligible for appointment to the board of directors of a district only if he or she:

- (1) is a qualified voter of the city; or
- (2) is at least 18 years old and owns real property in the district, without regard to whether he or she resides in the city.

(d) After the board of directors has been in existence for at least one year, the governing body by ordinance may abolish the board and assume the board's powers, duties, and functions. An ordinance under this subsection may be adopted only on the affirmative vote of at least three-fourths of the members of the governing body.

(e) Each year the governing body shall appoint one member of the board of directors to serve as chairman of the board for a one-year term that begins on January 1 of the following year. The board of directors may elect a vice-chairman to preside in the absence of the chairman or when there is a vacancy in the position of chairman and may elect other officers.

Powers and Duties of the Board

Sec. 6. The board of directors shall make recommendations to the governing body concerning administration of this Act in the district. In addition to the powers delegated to the board of directors under other provisions of this Act, the governing body by ordinance may delegate to the board any powers and duties with regard to the implementation of a project plan that the governing body considers advisable.

Determination of Tax Increment and Tax Incremental Base

Sec. 7. (a) On the creation of a tax incremental district or adoption of any amendment subject to Subsection (c) of this section, the tax incremental base for the city shall be determined forthwith.

(b) The tax assessor for the city shall determine the aggregate assessed value of the property in the district that appears on the city's assessment roll on the date the tax incremental district is created. The tax assessor shall certify that value to the governing body of the city and the board of directors of the district. That value is the tax incremental base of the taxing unit.

(c) If the governing body approves an amendment to the original project plan for any district which includes additional project costs for which tax increments may be used, the tax incremental base for the city shall be redetermined pursuant to Subsection (b) of this section as of January 1 following the effective date of the amendment, except that if the effective date of the amendment is January 1 of any year, the redetermination shall be made on that date. A tax incremental base as redetermined under this subsection is effective for the purposes of this Act only if it exceeds the corresponding original tax incremental base determined under Subsection (b) of this section.

(d) It is presumed that any property within a tax incremental district acquired or leased as lessee by the city within the year preceding the date of the creation of the district was acquired or leased in contemplation of the creation of the district. The presumption may be rebutted by the city with proof that the property was leased or acquired primarily for a purpose other than to reduce the tax incremental base. If the presumption is not rebutted, in determining the tax incremental base of the district but for no other purpose the taxable status of the property shall be determined as though such lease or acquisition had not occurred.

(e) The tax assessor for the city shall identify on the assessment roll of the city those parcels of property which are within each existing tax incremental district, specifying the name of each district.

Allocation of Positive Tax Increments

Sec. 8. (a) Positive tax increments of a tax incremental district are allocated to the applicable tax increment fund each year from the date when the district is created until the earlier of:

(1) that time, after the completion of all public improvements specified in the plan or amendments, when the city has received aggregate tax increments of the district in an amount equal to the aggregate of all expenditures previously made or monetary obligations previously incurred for project costs for the district; or

(2) 15 years after the last expenditure identified in the plan is made. No expenditure may be provided for in the plan more than five years after the district is created unless an amendment is adopted by the city governing body under Subsection (c) of Section 7 of this Act.

(b) All tax increments received in a tax incremental district shall be deposited in a special fund for the district. The city may deposit additional money into the fund pursuant to an appropriation by the city governing body. If bonds or notes issued under Section 11 of this Act are repayable in whole or in part from revenue produced by a facility acquired, improved, or constructed pursuant to a project, the city shall deposit the pledged revenues in the fund.

Money shall be paid out of the fund only to pay project costs of the district, to reimburse the city for the payments, or to satisfy claims of holders of tax incremental bonds or notes issued for the district. Subject to any agreement with bondholders, money in the fund may be temporarily invested in the same manner as other city funds. After all project costs and all tax incremental bonds and notes of the district have been paid or provided for, subject to any agreement with bondholders, if there remains in the fund any money, it shall be paid over to the general fund of the city.

Termination of Tax Incremental Districts

Sec. 9. The existence of a tax incremental district shall terminate when:

(1) positive tax increments are no longer allocable to a district under Subsection (a) of Section 8 of this Act; or

(2) the city governing body by resolution dissolves the district.

Financing of Project Costs

Sec. 10. Payment of project costs may be made by any of the following methods or combination thereof:

(1) payment by the city from the special fund of the tax incremental district;

(2) payment out of the city's general funds; or

(3) payment out of the proceeds of the sale of tax incremental bonds or notes issued by the city under Section 11 of this Act.

Tax Incremental Bonds and Notes

Sec. 11. (a) The city governing body may issue tax incremental bonds or notes payable out of positive tax increments or payable out of a combination of positive tax increments and all or part of the net revenue produced by a facility acquired, improved, or constructed pursuant to a project. Each bond or note and all interest coupons appurtenant thereto are declared to be negotiable instruments.

(b) Tax incremental bonds or notes may be authorized by resolution of the city governing body without the necessity of a referendum or any voter approval, but the governing body may submit the question of issuing bonds or notes to the voters for their approval as provided by Chapter 1, Title 22, Revised Civil Statutes of Texas, 1925, as amended.¹ The resolution must state the name of the tax incremental district, the amount of bonds or notes authorized, and the interest rate or rates to be borne by the bonds or notes. The resolution may prescribe the terms, form, and content of the bonds or notes and other matters the city governing body considers useful.

(c) Tax incremental bonds or notes may not be issued in an amount exceeding the aggregate project costs. The bonds or notes shall mature over a period not exceeding 20 years from the date thereof. The bonds or notes may contain a provision authorizing the redemption thereof in whole or in part at stipulated prices at the option of the city on any interest payment date and shall provide the method of selecting the bonds or notes to be redeemed. The principal and interest on the bonds and notes may be payable at any time and at any place. The bonds or notes may be payable to the bearer or may be registered as to the principal or principal and interest. The bonds or notes may be in any denominations. The bonds or notes may be sold at public or private sale. To the extent consistent with this section, the provisions of Chapter 1, Title 22, Revised Civil Statutes of Texas, 1925, as amended, are applicable to bonds issued under this section.

(d) Tax incremental bonds or notes are payable only out of the special fund created under Subsection (b) of Section 8 of this Act. Each bond or note shall contain recitals necessary to show that it is only so payable and that it does not constitute an indebtedness of the city or a charge against its general taxing power. The city governing body shall irrevocably pledge all or a part of the special fund to the payment of the bonds or notes. The special fund or designated part of it may thereafter be used only for the payment of the bonds or notes and interest until they have been fully paid, and a

holder of the bonds or notes or of any coupons appertaining thereto shall have a lien against the special fund for payment of the bonds or notes and interest and may either at law or in equity protect and enforce the lien.

(e) To increase the security and marketability of tax incremental bonds or notes, the city may:

(1) create a lien for the benefit of the bondholders on any public improvements or public works financed thereby or the revenues therefrom if the revenues are not otherwise pledged; or

(2) make covenants and do any and all acts necessary or convenient or desirable in order to additionally secure bonds or notes or tend to make the bonds or notes more marketable according to the best judgment of the city governing body.

¹ Article 701 et seq.

Overlapping Tax Incremental Districts

Sec. 12. (a) Subject to any agreement with bondholders, a tax incremental district may be created, the boundaries of which overlap one or more existing districts, except that districts created on the same date may not have overlapping boundaries.

(b) If the boundaries of two or more tax incremental districts overlap, in determining how positive tax increments generated by that area which is within two or more districts are allocated among the districts but for no other purpose the property constituting the overlapping area is considered part of the more recently created tax incremental district.

[Acts 1979, 66th Leg., p. 1661, ch. 695, §§ 1 to 12, eff. June 13, 1979.]

CHAPTER NINE. STREET IMPROVEMENTS

Article

1105b-4. Validation of Assessments and Reassessments for Street, Sewer and Water Improvements.

1105b-5. Validation of Certain Governmental Acts and Proceedings Regarding Paving Contracts.

Art. 1105b-4. Validation of Assessments and Reassessments for Street, Sewer and Water Improvements

Sec. 1. In this Act, "highway" has the meaning given it in Section 2, Chapter 106, Acts of the 40th Legislature, 1st Called Session, 1927, as amended (Article 1105b, Vernon's Texas Civil Statutes).

Sec. 2. This Act applies to:

(1) the levy of assessments or reassessments against property abutting a highway or portion of one and against the owners of the property for improvements to the highway or portion of it, where the city acted or purported to act under the authority of Chapter 106, Acts of the 40th Legisla-

ture, 1st Called Session, 1927, as amended (Article 1105b, Vernon's Texas Civil Statutes);

(2) the levy of assessments or reassessments against benefitted property and the owners of the property for improvements to a sanitary sewer system or water system or both within the limits of the city levying the assessments or reassessments, where the city acted or purported to act under the authority of Chapter 192, Acts of the 58th Legislature, 1963, as amended (Article 1110c, Vernon's Texas Civil Statutes); and

(3) the levy or purported levy of assessments or reassessments as described in Subdivision (1) of this section in conjunction with the levy of assessments or reassessments as described in Subdivision (2) of this section, in a joint proceeding where the city has acted or purported to act under the authority of Section 18, Chapter 192, Acts of the 58th Legislature, 1963 (Article 1110c, Vernon's Texas Civil Statutes).

Sec. 3. Where a city acting through its governing body before the effective date of this Act levied or purported to levy an assessment or reassessment against property and the owners of property as described in Section 2 of this Act, all proceedings of the city relating to the levy or purported levy are validated, ratified, and confirmed as of the time they took place and in accordance with their terms, and the proceedings shall have the full force and effect as is provided under the law under which the city acted or purported to act. The liens created or purported to be created by the levies or purported levies are also validated, ratified, and confirmed, and they shall be effective from and after the respective times provided by the assessment proceedings, except a lien purported to be created against property that at the time was exempt under the Texas Constitution from a lien of special assessment or reassessment for local improvements is not validated, ratified, or confirmed by this Act.

Sec. 4. All assignable certificates of special assessment relating to a proceeding validated by this Act are also validated.

Sec. 5. This Act does not apply to a matter that on the effective date of this Act is involved in litigation in a court of competent jurisdiction instituted for the purpose of attacking the validity of the matter if the litigation is ultimately determined against the validity of the matter.

[Acts 1975, 64th Leg., p. 1306, ch. 490, §§ 1 to 5, eff. Sept. 1, 1975.]

Art. 1105b-5. Validation of Certain Governmental Acts and Proceedings Regarding Paving Contracts

Sec. 1. In any case where an incorporated city or town has contracted on behalf of itself and an

independent school district and the county in which the city or town is located for the seal coating of roads or parking areas of the governmental entities by a private contractor, all governmental acts and proceedings and all transactions relating to the contract are validated, notwithstanding the failure of any one or more of the governmental entities to comply with all legal requirements concerning the awarding of the contract.

Sec. 2. This Act does not apply to:

(1) any act, transaction, or proceeding that occurred before September 1, 1975;

(2) any matter that on the effective date of this Act has been declared invalid by a final judgment of a court of competent jurisdiction; or

(3) any matter involved in litigation on the effective date of this Act if the litigation ultimately results in the matter being held invalid by a final judgment of a court of competent jurisdiction.

[Acts 1977, 65th Leg., p. 1820, ch. 729, §§ 1, 2, eff. Aug. 29, 1977.]

CHAPTER TEN. PUBLIC UTILITIES

1. CITY OWNED UTILITIES

Article

1110f. Sewage; Joint Collection, Transportation, Treatment, and Disposal; Public Utility Agencies.

2. ENCUMBERED CITY SYSTEM

1111d. Payment of Principal and Interest.

1118n-12. Refunding Certain Bonds and Other Obligations of Cities, Towns, and Villages.

1118y. Regional Transportation Authorities.

1. CITY OWNED UTILITIES

Art. 1109j. Contracts with Water Districts or Non-profit Corporations for Water, Sewer or Drainage Services

Authorization

Sec. 1. Any city or town, whether operating under the General Law or under its special or home rule charter, is authorized to enter into a contract with a district organized under the authority of Article XVI, Section 59 of the Constitution of Texas or any corporation or corporations organized to be operated without profit, and any such district or corporation is authorized to enter into a contract with any such city or town, under the terms of which such district, corporation or corporations will acquire for the benefit of and convey to the city or town one or more water supply or treatment systems, water distribution systems, sanitary sewer collection or treatment systems or works or improvements necessary for the drainage of lands in the city, either singularly or together, and in connection with such acquisition make such improvements, en-

largements and extensions of and additions to the existing facilities of such city or town as may be provided for in such contract.

Payments for Water, Sewer or Drainage Services; Purchase of Systems; Pledge of Revenues

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

[See Compact Edition, Volume 3 for text of 3 to 5]

[Amended by Acts 1977, 65th Leg., p. 1307, ch. 515, §§ 1, 2, eff. Aug. 29, 1977.]

Art. 1110f. Sewage; Joint Collection, Transportation, Treatment, and Disposal; Public Utility Agencies

Purpose

Sec. 1. The purpose of this Act is to clarify the authority of public entities that are lawfully authorized to engage in the collection, transportation, treatment, and disposal of sewage, to join together as cotenants or coowners, or by concurrent resolution or ordinance, to create a public utility agency, to engage in the planning, financing, acquiring, constructing, owning, operating, and maintaining of facilities so that each public entity will owe all of the duties, will have and be secure in all of the rights, powers, and liabilities, and shall be entitled to all of the privileges and exemptions attributable to its undivided interest as a cotenant or coowner should the entities elect not to create a public utility agency, as provided by law with respect to an entire interest in facilities planned, financed, acquired, constructed, owned, operated, and maintained by it

alone. These alternatives are to serve as a means of achieving economies of scale by providing essential sewage systems to the public and promoting the orderly economic development of the state while providing environmentally sound protection of future wastewater needs of the state and its inhabitants. The provisions of this Act shall be liberally construed to effectuate these purposes but shall not be construed to otherwise enlarge, change, or modify in any way the rights, powers, or authority of any public or private entity under existing law. Nothing in this Act shall be construed to alter, change, abrogate, or otherwise affect the existing contracts in force at the time this Act takes effect.

Definitions

Sec. 2. As used in this Act:

(1) "Public entity" means any county, city, or other body politic or corporate of the state, including any district or authority created under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution.

(2) "Private entity" means any entity other than a public entity solely involved in financing, constructing, operating, and maintaining sewer facilities.

(3) "Facilities" means facilities necessary or incidental to the collection, transportation, treatment, or disposal of sewage, including plant sites, rights-of-way, and real and personal property and equipment and rights of every kind useful in connection with collection, transportation, treatment, or disposal of sewage.

(4) "Public utility agency" or "agency" means any agency created under this Act by two or more public entities for the purpose of planning, financing, constructing, owning, operating, and maintaining facilities for the purpose of achieving economies of scale in providing sewer services.

Public Utility Agency

Sec. 3. (a) To more readily accomplish the purposes of this Act, two or more public entities, by concurrent ordinances, may create an agency to be known as a public utility agency. The agency shall be without taxing power, and shall be a separate agency, a political subdivision of the state, and body politic and corporate exercising all of the powers that are conferred by Chapter 10, Title 28, Revised Civil Statutes of Texas, 1925, as amended,¹ and this Act on a public entity. No agency is authorized to engage in any utility business other than the collection, transportation, treatment, or disposal of sewage for the participating public entities that are joint owners with the agency of a facility located within the state. A public entity, at the time

of the passage of the concurrent ordinance, must be one that has the authority to engage in the collection, transportation, treatment, or disposal of sewage, but the entity may subsequently dispose of its facilities. Before the passage of a concurrent ordinance to create a public utility agency, the governing body of each public entity shall have notice of its intention to adopt the ordinance published in a newspaper of general circulation within the county in which the public entity is domiciled once a week for two consecutive weeks, the date of the first publication to be at least 14 days before the date set for the passage of the concurrent ordinance. The notice shall state the date, time, and place that the governing body proposes to pass the ordinance and that on the effective date of the concurrent ordinances the public entities adopting them shall have created a public utility agency. If, prior to the day set for the passage of a concurrent ordinance, 10 percent of the qualified electors of the particular public entity present a petition to the governing body requesting that a referendum election be called, the ordinance shall not become effective until a majority of the qualified electors of the entity voting in the election have approved the ordinance. The election shall be called and held in conformity with the Texas Election Code, as amended, Chapter 1, Title 22, Revised Civil Statutes of Texas, 1925, as amended,² and this Act. Except as provided in this Act, a concurrent ordinance shall not be subject to a referendum election.

(b) Public entities that establish a public utility agency may, by concurrent ordinances, provide for the re-creation of the agency by the addition or deletion or both of a public entity so long as there is no impairment of obligation of any existing obligation of the agency.

(c) Concurrent ordinances are ordinances or resolutions adopted by the governing bodies of more than one public entity that contain identical provisions with respect to the creation or re-creation of a public utility agency.

¹ Article 1106 et seq.

² Article 701 et seq.

Rights and Powers of Participating Public Entities

Sec. 4. (a) Each participating public entity may use its funds in planning, acquiring, constructing, owning, operating, and maintaining its undivided interest and may share in the facilities and may issue bonds and other securities to raise funds for these purposes in the same manner and to the same extent and subject to the same conditions that would apply if the undivided interest of the public entity were an entire interest in the facilities.

(b) Each participating public entity may acquire for the use and benefit of all participating public entities by purchase or through the exercise of the power of eminent domain, land, easements, and

property for the purpose of jointly owned facilities and may transfer or convey the land, easements, and property, or interests in it, or may otherwise have the land, easements, and property, or interests in it, become vested in other participating public entities to the extent and in the manner agreed between those entities. In all cases in which a participating public entity exercises the power of eminent domain conferred by this Act, the public entity shall be controlled by the law governing the condemnation of property by incorporated cities and towns in this state, and the power of eminent domain conferred by this Act shall include the power to take the fee title in land condemned, excluding mineral interests, except that no participating public entity has the right or power to take by the exercise of the power of eminent domain any facilities or interest in any facilities belonging to any other public or private entity.

(c) Each participating public entity is entitled to the same constitutional and statutory exemption from ad valorem taxes and other taxes, including but not limited to excise, sales, and use taxes, attributable to the participating public entity's interest in the ownership of the jointly owned facilities and the purchase, sale, lease, or use of properties or services in connection with the construction, maintenance, repair, or operation of the jointly owned facilities to the extent that the public entity would have been exempt from the tax of its undivided interest were an entire interest in the facilities and in property and services used or acquired in connection therewith. Each exempt public entity shall be entitled to exemption certificates and other certificates and statements as provided by law to evidence or make effective the exemption.

(d) Public entities that create a public utility agency or provide for re-creation by addition or deletion of a public entity shall by concurrent ordinances:

(1) define the boundaries of the agency to include the territory within the jurisdictional limits of the public entities as changed from time to time;

(2) designate the name of the agency;

(3) designate the number of directors that will constitute the board of directors of the agency and their initial term; and

(4) specify the manner in which the directors shall be appointed, provided that each public entity is entitled to appoint at least one director.

(e) Directors shall serve by places, and the concurrent ordinances shall specify the director for each place and his successors that the governing body of the particular public entity may appoint and the method of each appointment. Directors shall serve without compensation but are entitled to \$50 a day

for each day spent in attending meetings of the board and a like amount per diem when authorized by resolution of the board, plus actual expenses incurred in attending the meetings. An employee, officer, or member of the governing body of a public entity may serve as a director of the agency, but directors, officers, and employees may have no personal interest, other than may exist as an employee, officer, or member of the governing body of a public entity, in any contract executed by the agency.

(f) The agency may make contracts, leases, and agreements with and accept grants and loans from the United States of America, its departments and agencies, the State of Texas, its agencies, counties, municipalities, and political subdivisions, and public or private corporations and persons and may generally perform all acts necessary for the full exercise of the powers vested in the agency. Each agency may contract with those public entities creating the agency for the collection, transportation, treatment, and disposal of sewage, and the authority to contract for these services shall also extend to private entities under terms and conditions the agency's board of directors may consider appropriate. The agency may sell, lease, convey, or otherwise dispose of any right, interest, or property that is, in its judgment, not needed for the efficient operation and maintenance of its facilities. The responsibility of the management, operation, and control of the properties belonging to the agency shall be vested in the board of directors.

(g) The agency, in contracting with any public or private entity for wastewater collection, transmission, treatment, or disposal services, must charge rates sufficient to produce revenues adequate:

(1) to pay all expenses of operation and maintenance;

(2) to pay all interest and principal due on bonds issued as they become due and payable;

(3) to pay the principal of and interest on any legal debt of the agency;

(4) to pay all sinking and reserve fund payments as they become due and payable; and

(5) to fulfill the terms of any agreements made with the holders of any bonds.

The agency may also establish a reasonable depreciation and emergency fund. Payments made pursuant to contracts with the agencies are to constitute an operating expense of the public or private entity served as a result of the contracts unless otherwise prohibited by a previously outstanding obligation of the purchasing entity.

(h) The State of Texas reserves its power to regulate and control the rates and charges by the agency, but pledges and agrees with the purchasers and successive holders of the obligations issued under this Act that the state will not limit or alter the

powers vested in the agency to establish and collect rates and charges that will produce revenues sufficient to pay for those items set forth in Subsection (g) of this section, as well as any other obligations of the agency in connection therewith, until they are fully met and discharged.

(i) To the payment of obligations issued by it, the agency may pledge the revenues of all or part of its facilities, including or not including those facilities later acquired, as the agency may determine, but the expense of operation and maintenance, including salaries, labor, materials, and repairs necessary to render efficient service, of the facilities whose revenues are encumbered and pledged shall be a first lien on and charge against the revenues.

(j) The agency may issue revenue bonds or notes, also referred to as obligations in this Act, from time to time, for the accomplishment of its purposes within the interest rate limitations of Chapter 3, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 717k-2, Vernon's Texas Civil Statutes).

(k) From the proceeds of the sale of obligations of the agency, the agency may set aside amounts for payments into the interest and sinking fund and reserve funds, and for interest and operating expenses during construction and development, as may be specified in the authorizing proceedings. Bond proceeds may be invested, pending their use for the purpose for which issued, in securities or interest-bearing certificates or in time deposits specified in the authorizing proceedings.

(l) Prior to delivery, obligations authorized to be issued under this Act and the records relating to their issuance shall be submitted to the attorney general for examination, and if he finds that they have been issued in accordance with the constitution and this Act and that they will be binding special obligations of the agency issuing them, he shall approve them, and they shall be registered by the state comptroller. After their approval, registration, sale, and delivery to the purchaser, the bonds are incontestable.

(m) Refunding bonds or notes may be issued for the purpose and in the manner provided by general law, including without limitation Chapter 503, Acts of the 54th Legislature, Regular Session, 1955, as amended (Article 717k, Vernon's Texas Civil Statutes), and Chapter 784, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-3, Vernon's Texas Civil Statutes), as amended.

(n) All obligations issued by an agency pursuant to this Act shall be and are declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, savings and loan associations, and insurance companies and shall be eligible to secure the deposit of any and all public funds of the State of Texas and any and

all public funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas, and the obligations shall be lawful and sufficient security for those deposits to the extent of the principal amount of the obligations or their value on the market, whichever is the lesser, when accompanied by all unmatured coupons, if any, appurtenant thereto.

(o) The agency may adopt and from time to time amend rules to govern the operation of the agency, its employees, facilities, and service, but contracts for the construction of improvements that involve the expenditure of more than \$20,000 shall be awarded by the agency only after notice of intent to receive competitive bids has been published once a week for two consecutive weeks in a newspaper of general circulation within the county in which the agency is domiciled. The date of the first publication shall be at least 14 days before the date set for the receipt of bids.

(p) The bonds or notes shall be signed by the presiding officer or the assistant presiding officer of the agency, shall be attested by its secretary, and shall bear the seal of the agency. The signatures may be printed or lithographed on the bonds and notes if authorized by the agency, and the seal may be impressed on the bonds or notes or may be printed or lithographed on the bonds or notes. The agency may adopt or use for any purpose the signature of any person who has been an officer, notwithstanding the fact that he may have ceased to be an officer at the time that bonds or notes are delivered to a purchaser or purchasers. The bonds or notes shall mature serially or otherwise in not to exceed 40 years from their respective dates of issuance and may be sold, within interest rate limitations provided in this Act, at a public or private sale at a price or under terms determined by the agency to be the most advantageous reasonably obtainable, within the discretion of the agency. The bonds may be made callable prior to maturity at times and prices approved by the agency and may be in coupon form with or without provisions for registration as to principal or may be registrable as to both principal and interest.

(q) Bonds and notes issued under the provisions of this Act and coupons, if any, representing interest on bonds and notes shall, when delivered, be deemed and construed to be a security within the meaning of Chapter 8, Investment Securities, Uniform Commercial Code.

(r) The provisions of this section do not limit the general scope and application of Section 3 of this Act.

Interpretation and Construction of Act

Sec. 5. (a) This Act shall be liberally construed to carry out its purposes and shall be the full and

complete authority for the creation and operation of public utility agencies and the performance of the public duties imposed on them. Insofar as this Act is inconsistent with any other laws, including Chapter 10, Title 28, Revised Civil Statutes of Texas, 1925, as amended, or other laws regulating the affairs of municipal corporations, or with any home-rule charter provisions, this Act shall control.

(b) This Act shall be liberally construed to effectuate its purposes, but nothing in this Act shall have the effect of or be construed as altering, amending, or repealing the statutory purposes provided by any statute enacted by the Texas Legislature pertaining to the creation, establishment, or operation or regulation under the Water Code, as amended, or other applicable law, of a public entity that may become a coowner of a public utility agency under the provisions of this Act.

[Acts 1979, 66th Leg., p. 411, ch. 190, §§ 1 to 5, eff. Aug. 27, 1979.]

2. ENCUMBERED CITY SYSTEM

Art. 1111d. Payment of Principal and Interest

Sec. 1. An incorporated city with a population of 75,000 or more according to the last preceding federal census, in issuing revenue bonds under Articles 1111 through 1118 of this chapter, as part of the cost of constructing new electric utility plan facilities may set aside and use a portion of the proceeds from the sale of the bonds, to the extent provided in the ordinance authorizing their issuance:

1. to pay interest on bonds, the proceeds of which are for the construction of the facilities, to the first interest payment date following the date the new electric utility facilities are estimated to become operational; and

2. to establish or supplement a reserve fund created for the benefit of the holders of the bonds.

Sec. 2. Bond proceeds, interest and sinking funds, and reserve funds, pending their use for their intended purposes, may be invested in any securities, interest-bearing certificates, or time deposits as are specified in the proceedings authorizing the issuance of the bonds.

Sec. 3. This article is full authority for the exercise of the powers granted. It controls over any other state law or any provision of a city charter. [Added by Acts 1977, 65th Leg., p. 1273, ch. 495, § 1, eff. Aug. 29, 1977.]

Art. 1112. Vote, etc.

Sec. 1. Except as provided in Section 2 of this article, no such light, water, sewer or natural gas systems, parks and/or swimming pools, shall be sold without authorization by a majority vote of the

qualified voters of such city or town; nor shall same be encumbered for more than Ten Thousand Dollars (\$10,000) unless authorized in like manner, except for money for acquisitions, extensions, construction, improvement, or repair of such systems and facilities, or to refund any existing indebtedness lawfully created for such purposes. Such vote to sell or encumber such systems or facilities shall be ascertained at an election, which shall be held in accordance with the laws applicable to the issuance of municipal bonds by such cities and towns. The encumbrances authorized herein shall be applicable only to bonds payable from revenues derived from said system.

Sec. 2. A city with a population of more than 1,200,000, according to the last preceding federal census, may sell an unencumbered natural gas system owned by it without an election as required by Section 1 of this article.

[Amended by Acts 1977, 65th Leg., p. 1910, ch. 762, § 1, eff. Aug. 29, 1977.]

Art. 1118a. Mortgage of Gas, Water, Light or Sewer Systems by Cities and Towns

[See Compact Edition, Volume 3 for text of 1]

Sec. 2. (a) Except as provided in Subsection (b) of this section, no such system or systems shall ever be sold until such sale is authorized by a majority vote of the qualified voters of such city; nor shall same be encumbered for more than Five Thousand (\$5,000.00) Dollars except for purchase money or to refund any existing indebtedness or for repair or reconstruction, unless authorized in like manner. Such vote where required shall be ascertained at an election of which notice shall be given in like manner as and which shall be held in like manner as in the cases of the issuance of municipal bonds by such city.

(b) A city with a population of more than 1,200,000, according to the last preceding federal census, may sell an unencumbered natural gas system owned by it without an election as required by Subsection (a) of this section.

[See Compact Edition, Volume 3 for text of 3 to 9]

[Amended by Acts 1977, 65th Leg., p. 1911, ch. 762, § 2, eff. Aug. 29, 1977.]

Art. 1118n-11. Refunding Certain Outstanding Interest Bearing Obligations

Issuer Defined

Sec. 1. The term "issuer," as used in this Act shall mean and include any city in the State of Texas which owns the water, sewer and electric utility systems serving such city and which operates all such utilities as a combined system and has issued and has outstanding revenue bonds payable from the revenues of such combined system.

[See Compact Edition, Volume 3 for text of 2]

Bonds Payable from Water, Sewer, and Electric Utility Revenues

Sec. 2A. (a) This section applies only to refunding bonds payable solely from the net revenues of the issuer's combined water, sewer, and electric utility systems.

(b) The requirements of Section 2 of this Act that the obligations to be refunded must have stated maturity dates or be callable prior to maturity not more than 10 years from the date of delivery of the refunding bonds and that the refunding must enable the issuer to issue additional obligations it could not otherwise have issued do not apply to the issuance of refunding bonds covered by this section.

(c) The requirement in Section 4 of this Act that the refunding bonds be sold for not less than par value is not applicable to refunding bonds covered by this section.

(d) As to refunding bonds covered by this section, if obligations to be refunded are not callable at the time of refunding but will be subject to redemption before maturity, the issuer may provide in the refunding proceedings for redeeming those obligations before maturity, and if it does so, the issuer need deposit with the State Treasurer under this Act no more than is necessary to provide for payment of the principal and interest on those obligations as they are redeemed.

[Amended by Acts 1977, 65th Leg., p. 1284, ch. 504, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1707, ch. 703, § 1, eff. June 13, 1979.]

The 1977 Act provides in § 2 as follows:

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

Art. 1118n-12. Refunding Certain Bonds and Other Obligations of Cities, Towns, and Villages

Definitions

Sec. 1. (a) The term "Issuer," as used in this Act, shall mean each city, town, and village in the state which at any time has outstanding bonds or other obligations which are secured solely by a pledge of the net revenues of its electric light and power system.

(b) The term "Board," as used in this Act, shall mean the city council, city commission, board of commissioners, board of aldermen, or other group which is the governing body of an issuer.

Authority to Issue Refunding Bonds; Security; New Bonds; Maturity; Negotiability; Conversion; Election not Required

Sec. 2. The board of any issuer is authorized to issue refunding bonds to refund all or any part of any outstanding bonds or other interest bearing

obligations secured solely by a pledge of the net revenues of the issuer's electric light and power system, and any interest coupons appertaining thereto. One or more outstanding issues and any part of one or more outstanding issues of bonds or other interest bearing obligations, and any interest coupons appertaining thereto, may be refunded under this Act; provided that when part of one or more of these issues is being refunded, the board must demonstrate to the satisfaction of the attorney general, prior to his approval of the bonds as required in this Act, that adequate pledged resources are estimated to be available, based on then current conditions, to provide for the payment, when due, of the unrefunded part of the issue or issues. The refunding bonds, and the interest and redemption premium, if any, may be secured by first or subordinate liens on and pledges of, and made payable from, the same source as the obligations being refunded and may be secured by first or subordinate liens on, and pledges of, and made payable from, any other revenues, income, or property, and other, different, or additional source or resources, of the board or the issuer, or any combination of those sources or resources, except any taxes, all within the sole discretion of and in the manner provided by the board; and the refunding bonds additionally may be secured by mortgages, deeds of trust, trust indentures, trust agreements, or other instruments evidencing liens on any real, personal, or mixed property; and the refunding bonds may be issued in combination with new bonds, and with provision for the subsequent issuance of additional parity bonds, or subordinate lien bonds, under the terms or conditions and with the security, set forth in the proceedings authorizing the issuance of the refunding bonds, all as determined within the discretion of the board; provided, however, that no bonds shall be issued contrary to the provisions of the Texas Constitution. If and when the board desires to issue refunding bonds in combination with new bonds for any purpose or purposes for which the issuer is then authorized by any law or home rule charter provision to issue revenue bonds or other interest bearing obligations, the new bonds may be issued for any purpose or purposes under the provisions of, and be secured and payable as provided in, this Act, and the provisions of this Act shall be fully applicable thereto without regard to any other requirements, in the manner provided by the board in the proceedings authorizing the bonds. All bonds issued under the provisions of this Act may be issued to mature serially or otherwise in not to exceed 50 years from their date, and may be issued to bear interest at any rate or rates, all within the discretion of the board. The bonds and any interest coupons appurtenant thereto, are negotiable instruments within the meaning of the Uniform Commercial Code, except that the bonds and the interest thereon may be made payable to a

named payee or made registrable as to principal alone or as to both principal and interest, and may be payable at any place or places, and may be made redeemable prior to maturity, may provide for capitalized interest during construction and thereafter, capitalized operating and maintenance expenses, and capitalized reserve and contingency funds, and may be issued in the form, denominations, and manner, and under the terms, conditions, and details, and may be executed, as provided by the board in the proceedings authorizing the issuance of the bonds. The board may provide and covenant for the conversion of any form of bond into any other form or forms of bond, and for reconversion of bonds into any other form. The board may provide procedures for the replacement of lost, stolen, destroyed, or mutilated bonds or interest coupons in the manner prescribed by the board in the proceedings authorizing the issuance of the bonds. If the duty of replacement, conversion, or reconversion of bonds is imposed upon a corporate trustee under a trust agreement or trust indenture, or upon a place of payment (paying agent) for the bonds, the replacement, converted, or reconverted bond need not be re-approved by the attorney general or reregistered by the comptroller of public accounts as provided in Section 3 of this Act. Otherwise, all replacement, converted, or reconverted bonds must be so approved and registered as provided in Section 3 of this Act, in accordance with the procedures established in the proceedings authorizing the issuance of the bonds. All bonds issued under the provisions of this Act may be issued without any election or referendum in connection with their issuance or the creation of any encumbrance in connection with their issuance.

Approval by Attorney General; Registration; Incontestability

Sec. 3. All bonds permitted to be issued under the provisions of this Act, and the appropriate and applicable proceedings authorizing the issuance, shall be submitted to the attorney general for examination. If he finds that the bonds have been authorized in accordance with this Act, he shall approve them, and then they shall be registered by the comptroller of public accounts; and after the approval and registration, the bonds shall be incontestable in any court, or other forum, for any reason, and shall be valid and binding obligations in accordance with their terms for all purposes.

Bonds as Legal and Authorized Investments

Sec. 4. All bonds issued under the provisions of this Act are investment securities governed by Chapter 8, Uniform Commercial Code, and are legal and authorized investments for banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies, fiduciaries, and trustees, and for the sinking funds of cities, towns, villages, school districts, and other po-

litical subdivisions or public agencies of the state. The bonds also are eligible to secure deposits of any public funds of the state or any political subdivision or public agency of the state, and are lawful and sufficient security for the deposits to the extent of their market value, when accompanied by any unmaturing coupons attached to the bonds.

Exchanges

Sec. 5. The refunding bonds authorized by this Act may be issued in exchange for, and upon surrender and cancellation of, any obligations being refunded, and in that case, the comptroller of public accounts shall register the refunding bonds and deliver them to the holder or holders of the obligations being refunded, in accordance with the provisions of the proceedings authorizing the refunding bonds, and any exchange may be made in one or in several installment deliveries. However, instead of issuing the refunding bonds to be exchanged for any obligations being refunded, the board shall be authorized, in its discretion, to issue refunding bonds to be sold for cash in principal amounts necessary to provide all or any part of the money required to pay the principal of and interest on any obligations being refunded, as they mature and come due, and to provide all or any part of the money required to redeem any obligations being refunded, prior to maturity, on any future date or dates upon which the obligations have been called for such redemption, within the discretion of the board, including principal, any required redemption premium, and the interest to accrue on the obligations to the redemption date or dates, together with an amount sufficient to pay all expenses related to the issuance of the bonds and the expenses of paying the obligations being refunded under this Act; and also to provide any amounts deemed necessary or required by the board to fund or provide for deposits into any debt service reserve funds, interest and sinking funds, or other funds created in the proceedings authorizing the bonds, and to provide amounts to pay interest on all bonds issued under the provisions of this Act for the period prescribed by the board, and to provide any other amounts deemed required by the board. All bonds issued under the provisions of this Act, excepting any exchange refunding bonds, may be sold for cash in the manner, under the procedures, at public or private sale, and at the price or prices, as shall be determined solely within the discretion of the board. If any of the obligations being refunded through the sale of refunding bonds under this Act are subject to redemption prior to maturity, they may, at the option and within the discretion of the board, be called for redemption on any future date or dates upon which they are redeemable, within the discretion of the board, and the proceedings pertaining to the call shall be submitted to the attorney general along with the proceedings authorizing the

issuance of the refunding bonds. When the board has authorized any of the refunding bonds and any new bonds in combination with the refunding bonds to be sold for cash under the provisions of this Act, the refunding bonds and any new bonds in combination with the refunding bonds shall be registered by the comptroller of public accounts after they are approved by the attorney general, without any surrender, exchange, or cancellation of any obligations being refunded.

Deposit of Proceeds with State Treasurer; Duties

Sec. 6. When any refunding bonds issued under the provisions of this Act are sold and delivered to the purchaser, the board immediately shall have deposited with the state treasurer, from the proceeds of the sale, and any other funds available for that purpose, the amount which will be required to pay the principal of and interest on the obligations being refunded as they mature and come due, and the amount which will be required to redeem prior to maturity any obligations being refunded, on the date or dates upon which these obligations have been called for redemption, including principal, any required redemption premium, and the interest to accrue on those obligations to the redemption date or dates, together with an additional amount to pay the state treasurer for his services and to reimburse him for his expenses in performing his duties under this Act, equal to one-twentieth of one percent of the principal or par amount of the obligations being refunded, and one-eighth of one percent of the interest to accrue thereon, but not to exceed a total of \$1,000 in connection with each issue of refunding bonds issued under this Act, plus an additional amount of money sufficient to pay the service charges of the place or places of payment of the obligations for paying and redeeming them. The state treasurer may rely on a certificate or other instrument or document which shall be filed with him by the issuer showing clearly the date or dates upon which the principal matures and interest comes due on the obligations being refunded, and the amounts thereof, and the date or dates, if any, on which the obligations have been called for redemption prior to maturity, together with the redemption price, and the place or places of payment of the obligations being refunded, and the charges to be made by the place or places of payment for paying and redeeming the obligations. It shall be the duty of the state treasurer to make the appropriate required part of the deposits available at the place or places of payment, in current and immediately available funds, on or before, but not later than, each maturity date, due date, or redemption date, respectively, of the obligations being refunded, in order to pay the required amounts on each date, plus the service charges of the place or places of payment.

Investment of Proceeds

Sec. 7. It is provided, however, that instead of depositing money with the state treasurer as required by Section 6 of this Act, except for the money to be paid to him for his services and expenses, which in all events shall be deposited in cash, the board may, at its option, unless the board determines, in its sole discretion, that money is required to be deposited, immediately invest all or any part of the proceeds from the sale of the refunding bonds, and any other necessary available funds, in direct obligations of the United States of America, or in obligations the payment of the principal of and interest on which are unconditionally guaranteed by the United States of America, or in obligations which, in the opinion of the Attorney General of the United States of America, are general obligations of the United States of America and backed by its full faith and credit, which investments will mature, and bear interest payable, at such times and in such amounts as will provide, without any reinvestment, not less than the amount of money, in addition to any money initially deposited for that purpose, required for the payment of the principal of and interest on the obligations being refunded, as they mature and come due, and for the payment of the redemption price of any obligations being refunded and redeemed prior to maturity, on the date or dates on which the obligations being refunded have been called for redemption, including principal, any required redemption premium, and the interest to accrue on the obligations to the redemption date or dates, together with the additional amount required to pay the service charges of the place or places of payment of the obligations for paying and redeeming them. The board shall deposit all of the investments immediately with the state treasurer. In calculating the amount of the investments required to be so deposited, the issuer and the state treasurer shall rely on receiving both the principal and interest, if any, scheduled to mature and accrue or come due on the investments, to the extent that the principal and interest are scheduled to mature and accrue or come due prior to the date or dates of the maturities, due dates, or redemption date or dates, respectively, of the obligations being refunded; and the amount which otherwise would be required to be deposited, if no interest or increase were scheduled to accrue or come due, may, at the option of the board, be reduced accordingly. It shall be the duty of the state treasurer to accept the deposits of investments and to collect promptly, when due and payable, all principal of and interest on the investments, but he shall not reinvest them. It is further provided that the aforesaid investments shall be made in a manner that the proceeds from them, without any reinvestment, will be available for deposit, and shall be deposited, by the state treasurer, in the place or places of payment, in current and

immediately available funds, in the required amounts, on or before, and not later than, each maturity date, due date, or redemption date, respectively, of the obligations being refunded.

Duties of Treasurer as to Handling and Safekeeping of Proceeds

Sec. 8. It shall be the duty of the state treasurer, ex officio, in his official capacity of public office, to accept and keep safely all deposits of money and investments made under this Act, and all proceeds from said investments; but no part of such deposits of money and investments, or proceeds therefrom, excepting the amount paid to him for his services and expenses, shall constitute a part of the state treasury, or be used by or for the state or for the benefit of any creditor of the state, and shall not be commingled with the general revenue fund of the state or any other special funds or accounts held by the state treasurer. The state treasurer shall keep and maintain each such deposit of money and investments, and proceeds from them, excepting the amount paid to him for his services and expenses, separate and apart from all other deposits, money, funds, accounts, and investments, and each such deposit of money and investments, and proceeds from them, shall be kept and held in escrow and in trust by the state treasurer, for and on behalf of, and charged with an irrevocable first lien and pledge in favor of, the holders of the obligations to be paid the deposits, and the deposits of money and investments, and proceeds from them, shall be used only for the purposes provided in this Act. Each deposit of money and investments, and proceeds from them shall be public funds, and legal title shall be in the state treasurer, in his official capacity as trustee, until paid out as provided in this Act, but equitable title shall be in the issuer, until paid out. The writ of mandamus and all other legal and equitable remedies shall be available to any bondholder, the issuer, or any other party at interest to require the state treasurer to perform his functions and duties under this Act. The surety bond or bonds given by the state treasurer in connection with the proper performance of his duties of office, excepting any special bonds given to protect funds of the United States shall protect and be construed as protecting all the deposits of money and investments, and proceeds from them. The state treasurer shall not in any way invest or reinvest any money deposited with him or received by him from investments deposited with him under this Act. In the event that any surplus funds should be on hand with the state treasurer in connection with any deposit of money or investments, or proceeds from them, the surplus shall be returned to the issuer.

Place of Payment

Sec. 9. If there is more than one place of payment for any obligations being refunded under this

Act, the state treasurer shall make all deposits required under this Act at the place of payment located in the state, if there is one, or if there is more than one place of payment located in the state, or if no place of payment is located in the state, then at the one of the places of payment having the largest capital and surplus. It shall be the statutory duty of the place of payment, and the state treasurer shall instruct it, to make the appropriate financial arrangements so that the necessary required current funds will be available, to the extent necessary, at the other places of payment, to pay or redeem the obligations when due; provided that this section shall not apply in the event the board proceeds under Section 10 of this Act.

Alternative Place of Deposit

Sec. 10. It is further provided, however, that in the alternative to making the deposit of money or investments with the state treasurer in connection with refunding bonds issued and sold under this Act, and notwithstanding any provisions of this Act to the contrary, the board shall have the option of making the deposit of money or investments with any place of payment (paying agent), wherever located, for the obligations being refunded, or, at the option of the board, with any trustee under any trust indenture, trust agreement, deed of trust, or other instrument, securing the obligations being refunded. In that case the place of payment or trustee shall, to the extent practicable, substantially perform the applicable and pertinent functions and duties provided in this Act for the state treasurer, to the extent appropriate and practical, and the place of payment or trustee shall be substituted for the state treasurer under this Act to the extent appropriate and practical, except as otherwise provided by this section. Such deposits of money and investments shall be held for safekeeping, in escrow, in trust for, and charged with an irrevocable first lien and pledge in favor of, and for the benefit of, the holders of the obligations being refunded, and the issuer and the place of payment or trustee, may execute an appropriate trust or escrow agreement on the terms and conditions, and for the consideration agreeable to the parties to the agreement. The agreement may provide that any deposits of money may be invested in direct obligations of the United States of America, or obligations the payment of principal of and interest on which are unconditionally guaranteed by the United States of America, or obligations which, in the opinion of the Attorney General of the United States of America, are general obligations of the United States of America and backed by its full faith and credit, or may be placed in interest bearing time deposits secured at all times by an equal amount in market value of any of the federal obligations named above. The agreement further shall provide for deposits with the place or

places of payment (paying agent or agents) to pay or redeem the obligations being refunded when due, and may provide that at any time the amount of money and investments held in escrow exceeds the amount required for purposes of this Act, the excess shall be transferred and delivered to the issuer, or as directed by the board, to be used for any lawful purpose, including the payment of revenue bonds issued pursuant to this Act or otherwise, all at the option of the board.

Rights of Holders of Obligations

Sec. 11. The holder or holders of any obligations being refunded by any refunding bonds sold pursuant to this Act shall never have the right to demand or receive payment of them prior to the scheduled date or dates of the maturities, due dates, or redemption date or dates, respectively, of the obligations being refunded, and the holder or holders shall not be paid for them prior to the date or dates, unless the board specifically and affirmatively provided for and authorized the earlier payment of the obligations in the proceedings authorizing the refunding bonds.

**Discharge and Final Payment or Redemption of Obligations;
Subordination to Refunded Obligations**

Sec. 12. When the initial deposit of money or investments is made with the state treasurer or with a place of payment (paying agent) or trustee in accordance with this Act for any obligations being refunded under this Act, the deposit shall constitute the making of firm banking and financial arrangements for the discharge and final payment or redemption of the obligations being refunded, and although the obligations being refunded continue to be obligations of the issuer, automatically they become obligations of the issuer secured solely by and payable solely from the deposit and the proceeds from them; and on making the deposit, all previous encumbrances, including all liens, pledges, mortgages, deeds of trust, trust indentures, or trust agreements, existing in connection with the obligations being refunded, whether in connection with revenues, real, personal, and mixed property, or any other source of security or payment, automatically terminate and are finally discharged and released, as a matter of law, and the encumbrances shall be of no further force or effect; and although the obligations being refunded will remain outstanding, they shall be regarded as being outstanding only for the purpose of receiving the funds provided by the issuer for their payment or redemption under this Act, and they shall not be regarded as being outstanding in ascertaining the power of the issuer to issue bonds, or in calculating any limitations in connection therewith, or for any other purpose. It is further provided, however, notwithstanding the foregoing provisions of this section, that the board may, in the alternative to the foregoing provisions of this sec-

tion, provide in the proceedings authorizing the issuance of the refunding bonds that the refunding bonds are subordinate to the obligations being refunded, but only in the manner and to the extent provided in the authorizing proceedings; and, except for any specific provisions to the contrary in the authorizing proceedings, the foregoing provisions of this section are fully applicable.

Cumulative and Prevailing Effects of Act; Use of Other Laws

Sec. 13. This Act shall be cumulative of all other laws on the subject, but this Act shall be wholly sufficient authority within itself for the issuance of the bonds and the performance of the other acts and procedures authorized hereby, without reference to any other laws, or home rule charter provisions, or any restrictions or limitations contained therein; and to the extent of any conflict or inconsistency between any provision of this Act and any provision of any other law, including any law passed at the current session of the legislature, or any home rule charter provision, the provisions of this Act shall prevail and control; provided, however, that the board shall have the right to use the provisions of any other laws or home rule charter provisions not in conflict with the provisions of this Act, to the extent convenient or necessary to carry out any power or authority, express or implied, granted by this Act. This Act shall be liberally construed so as to permit the accomplishment of the purposes of this Act. [Acts 1977, 65th Leg., p. 1632, ch. 642, §§ 1 to 13, eff. Aug. 29, 1977.]

Art. 1118w. Mass Transportation Systems; Power to Own, Acquire, Construct, Operate, Etc.; Federal Grants and Loans; Revenue Bonds

[See Compact Edition, Volume 3 for text of 1 to 10]

Management; Lease of System

Sec. 11. During the time any such system is encumbered either as to its revenues or as to both its physical properties and revenues, or whether or not such system is encumbered during any period established by ordinance of the governing body of such city, the management and control of such system may by the terms of the instrument evidencing such encumbrance or by the terms of such ordinance, be placed with the governing body of such city, or may be placed with a board of trustees to be named in such instrument or such ordinance, consisting of not less than three (3) nor more than nine (9) members, one (1) of whom shall be the mayor of such city. The compensation of such trustees shall be fixed by such instrument or such ordinance, but shall never exceed two per cent (2%) of the gross receipts of such system in any one (1) year. The terms of office of such board of trustees, their powers and duties,

the manner of exercising same, the election of their successors, and all matters pertaining to their organization and duties may be specified in such instrument or such ordinance. In all matters where such instrument or such ordinance is silent, the laws and rules controlling the governing body, of such city shall govern said board of trustees so far as applicable. The governing body of any such city or any board of trustees in whose management and control any such system may be placed, with the approval of the governing body of such city, evidenced by adoption of a resolution, in lieu of operating any such system, shall have power and authority to enter into any lease or other contractual arrangement for the operation of same by any privately owned and operated corporation in consideration of such rentals either guaranteed or contingent, based on revenues or gross profits or net profits, or any other basis of compensation, which may be determined to be reasonable by such governing body or such board as the case may be; providing however, that any such lease or contractual arrangement between such city and private corporation, shall be preceded by a public notice and request for the submission of bids in the manner required by law for the taking of bids for public construction contracts, and said city shall accept the best bid submitted, taking into consideration the rental to be paid, the experience and financial responsibility of the corporations submitting such bids.

[Amended by Acts 1975, 64th Leg., p. 1187, ch. 445, § 1, eff. June 19, 1975; Acts 1977, 65th Leg., p. 808, ch. 298, § 1, eff. May 28, 1977; Acts 1979, 66th Leg., p. 198, ch. 108, § 1, eff. May 9, 1979.]

Art. 1118x. Metropolitan Rapid Transit Authorities

Findings

Sec. 1. The legislature finds that:

(a) A dominant part of the state's population is located in its rapidly expanding metropolitan areas which generally cross the boundary lines of local jurisdictions and often extend into two or more counties;

(b) The concentration of population in such areas is accompanied by a corresponding concentration of motor vehicles which are generally powered by internal combustion engines that emit pollutants into the air, which emissions result in increasing dangers to the public health and welfare, including damage to and deterioration of property as well as harm to persons, and hazards to air and ground transportation;

(c) Such concentration of motor vehicles places an undue burden on existing streets, freeways and other traffic ways, resulting in serious vehicular traffic congestion that retards mobility of persons and property and adversely affects the health and

welfare of the citizens and the economic life of the areas;

(d) The proliferation of the use of motor vehicles for passenger transportation in such areas is caused in substantial part by the absence or inefficiency and high cost of mass transit services available to the citizens of such areas, and it is in the public interest to encourage and provide for efficient and economical local mass rapid transit systems in such areas for the benefit and convenience of the people and for the purpose of improving the quality of the ambient air therein and reducing vehicular traffic congestion; and

(e) The inalienable right of all natural persons to use the air for natural purposes does not vest in any person the right to pollute the air by artificial means, but such artificial use is subject to regulation and control by the state.

Definitions

Sec. 2. The following words and terms, wherever used and referred to in this Act, have the following respective meanings, unless a different meaning clearly appears from the context:

(a) "Metropolitan area" means any area within the State of Texas having a population density of not less than 250 persons per square mile and containing not less than 51 percent of the incorporated territory comprising a city having a population of not less than 600,000 inhabitants according to the last preceding or any future federal census, and in which there may be situated other incorporated cities, towns and villages and the suburban areas and environs thereof; provided, however, that bi-county metropolitan areas as subsequently defined herein, are not included or in any way affected by this Act.

[See Compact Edition, Volume 3 for text of 2(b) to (g)]

Creation of Rapid Transit Authority

Sec. 3. (a) The governing body of a principal city in a metropolitan area may, on its own motion, shall, as provided in Subsection (b) of this section, and shall, upon being presented with a petition so requesting signed by not less than 5,000 qualified voters residing within such metropolitan area, institute proceedings to create a rapid transit authority in the manner prescribed in this section.

(b) Such governing body shall by ordinance or resolution fix a time before December 1, 1977, and a place for holding a public hearing on the question of creating an authority. The governing body also shall by ordinance or resolution, after receipt of a petition as provided in Subsection (a) of this section, and may, on its own motion, fix a time and place for holding a public hearing on a proposal to create an

authority. The ordinance or resolution shall define the boundaries of the area proposed to be included in such authority. The initial territory included in an authority shall be all the territory included in the county in which the major portion of the principal city is situated plus any additional territory that is an adjacent county and is included in the ordinance or resolution.

(c) Notice of the time and place of such public hearing, including a description of the area proposed to be included in such authority, shall be published once a week for two consecutive weeks in a newspaper of general circulation in such metropolitan area, the first publication to be not less than 15 days prior to the date fixed for such hearing. The governing body of any principal city shall furnish to the Texas Mass Transportation Commission or any successor thereof, a copy of the notice described herein.

(d) The governing body of the principal city shall conduct said hearing at the time and place specified in such notice, and may continue such hearing from day to day and from time to time until completed. Any interested person may appear and offer evidence for or against the creation of the proposed authority, and may present evidence as to whether or not the creation of such proposed authority and the construction and operation of a mass transit system in such metropolitan area

(1) would be of benefit to persons and property situated within the boundaries of the proposed authority,

(2) would be of public utility, and

(3) would be in the public interest, as well as any other facts bearing upon the creation of such an authority and the construction and operation of such system.

(e) If, after hearing the evidence adduced at such hearing, the governing body of the principal city finds that the creation of such an authority, and the operation of such a system, would be of benefit to persons and property situated within the boundaries of the proposed authority, would be of public utility, and would be in the public interest, such governing body shall adopt an ordinance creating the authority and prescribing the territory to be included, but the actual territory included in the authority is subject to the results of the election provided for in this Act. The authority shall bear a name to be designated in the ordinance creating the authority and when so created and confirmed at an election held for that purpose, shall have and may exercise the powers authorized by this Act.

(f) After such hearing by the governing body of the principal city, it shall submit the proposed plan to the governor's interagency transportation council for their review and comment.

Transit Authority Board

Sec. 4. (a)(1) Until such time as the composition of the board is changed in accordance with other provisions of this Act, the management, control, and operation of an authority and its properties shall be vested in a board composed of five members, who shall be appointed by the governing body of the principal city and shall serve for a term of two years.

(2) In metropolitan areas where the principal city's population exceeds 1,200,000 according to the last preceding federal census or any federal census hereafter, the management, control, and operation of an authority and its properties shall be vested in a board composed of seven members, five of whom shall be appointed by the mayor of the principal city subject to confirmation by the governing body of the principal city, one of whom shall be appointed by the commissioners court of the county of the principal city, and one of whom shall be appointed jointly by the mayors of all incorporated municipalities within the county of the principal city except the principal city. Each member shall serve a term of two years. Upon confirmation, the board's composition shall remain the same except to the extent that it conflicts with the requirements of Section 6B of this Act. Until a confirmation and tax election are held, the principal city shall fund the board for purposes of research and planning:

(b) All vacancies on the board, whether by death or resignation shall be filled for the remainder of the term in the manner provided for the original appointment. On expiration of the terms of office of the members of the board, all or any may be reappointed or another person may be appointed to replace a member for the succeeding term.

(c) Each member of the board shall be entitled to the sum of \$50 for each meeting of the board which he attends, not to exceed five meetings in any calendar month; and shall be reimbursed for his necessary and reasonable expenses incurred in the discharge of his duties. The principal city shall pay, from taxes or other funds, the sums for attendance at meetings held before the authority has received any revenues, and shall reimburse members for necessary and reasonable expenses incurred by the members or the board prior to receipt of revenues by the authority, but the authority, after receiving revenues, shall reimburse the principal city of all payments and reimbursements made as provided in this subsection.

(d) The members of the board, who shall be resident citizens and qualified voters of the authority, shall elect from among their number a chairman, a vice-chairman and a secretary, except that if the board is constituted in the manner provided in Subsection (c) of Section 6B of this Act, the chairman shall be selected as specified in that subsection. The

board may appoint such assistant secretaries, either members or nonmembers of the board, as it deems necessary. The secretary and assistant secretaries shall, in addition to keeping the permanent records of all proceedings and transactions of the authority, perform such other duties as may be assigned to them by the board. No member of the board or officer of the authority shall be pecuniarily interested or benefitted, directly or indirectly, in any contract or agreement to which the authority is a party.

(e)(1) Any member of the board may be removed from office by a majority vote of the remaining members of the board for inefficiency, neglect of duty or malfeasance in office; provided, however, that the board shall furnish to such member a statement in writing of the nature of the charges as grounds for such removal, and the member, before the 11th day after receipt of the statement may request a hearing before the board and opportunity to be heard in person or through counsel. After any such hearing, if the board by a majority vote finds that the charges are true, it shall confirm its decision to remove the member.

(2) In addition to the method of removal of board members provided by Subsection (e)(1) of this section, board members of an authority whose principal city has a population of more than 1,200,000, according to the most recent federal census, are subject to removal by the recall procedure provided by subsection (e)(2).

(i) The qualified voters of the authority by petition may require that an election be held to determine whether a member of the board is to be removed from office. A petition is valid if it states that it is intended to require an election in the authority on the question of removing an identified board member, if it is signed by qualified voters equal in number to at least 10 percent of the number of registered voters of the authority according to the most recent official list of registered voters, if the signatures are collected within a period of 90 days prior to the date on which the petition is presented to the board, and if it is submitted to the board before the first day of the final six months of the term of the member whose removal is sought.

(ii) After receiving a petition, the board shall submit it to the secretary of state, who, not later than the 10th day after the day he or she receives the petition, shall determine whether or not the petition is valid and shall notify the board of the finding. If the secretary of state fails to act within the time allowed, the petition is treated as if it had been found valid.

(iii) If the board receives notice from the secretary of state that the petition is valid or if the secretary of state has failed to act within the time allowed, the board shall order that an election be

held in the authority on a date not fewer than 25 nor more than 35 days after the last day on which the petition could have been approved or disapproved. A state law requiring local elections to be held on a specified date does not apply to the election unless a specified date falls within the time permitted by this section. At the election, the ballots shall be prepared to permit voting for or against the proposition: "The removal of (name of officer) from the rapid transit authority board by recall."

(iv) If a majority of the qualified voters voting on the question in the election favor the proposition, the member is removed, and the office immediately becomes vacant. The appointing authority that appointed the member removed by recall shall fill the vacancy not later than the 30th day after the day of removal.

(v) A member removed by recall is not eligible for reappointment to fill the vacancy and is not eligible for appointment to any other position on the board for a length of time after the day of removal equal to the length of a normal term of a member of the board.

(f) The board shall hold at least one regular meeting during each month for the purpose of transacting the business of the authority. Upon written notice, the chairman or the general manager may call special meetings as may be necessary. The board, when organized, shall by resolution spread upon the minutes, set the time, place and day of the regular meetings, and shall likewise adopt rules and regulations and such bylaws as it may deem necessary for the conduct of its official meetings. A majority of the members shall constitute a quorum of the board for the purpose of conducting its business and exercising its powers and action may be taken by the authority upon a vote of a majority of the board members present unless the bylaws require a larger number for a particular action.

(g) The board shall notice and hold its meetings pursuant to Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), except that the board shall have notices of its meetings posted on a bulletin board located at a place convenient to the public at its administrative offices and a bulletin board located at a place convenient to the public at the county courthouse of the most populous county in which the principal city is located.

Confirmation and Tax Election

Sec. 5. (a) After the original board is organized, at such time as it deems implementation of the authority to be feasible, it shall call a confirmation and tax election in accordance with the provisions of this section.

(b) Before ordering an election the board shall by order entered in its minutes determine the nature and rate of any tax that it desires to levy.

(c) Before ordering an election, the board shall notify the commissioners court of each county included in whole or part within the initial territory of the authority of its intention to do so. Within 30 days after receipt of the notice, each commissioners court by order shall create not more than five designated election areas in the unincorporated portion of the appropriate county. Each designated election area's outer boundaries, to the extent practicable, shall coincide with a boundary of a county voting precinct so that insofar as practicable no county voting precinct is divided between two different designated election areas. The total area of all designated election areas shall include all of the unincorporated area within the initial territory of the authority.

(d) When the board orders a confirmation and tax election, it shall submit to the qualified voters within the authority the following proposition:

"Shall the creation of (name of authority) be confirmed and shall the levy of the proposed tax be authorized?"

(e) Except as otherwise provided in this Act, notice of the election shall be given in accordance with the general election laws. The notice of the election shall include a description of the nature and rate of the proposed tax. A copy of the notice of the election and any other election held under the provisions of this Act shall be furnished to the State Department of Highways and Public Transportation or its successor and to the comptroller of public accounts.

(f) The election shall be conducted so that votes are separately tabulated and canvassed and that the result is declared in separate units of election within the authority, as follows:

(1) the portion of the principal city inside the initial limits of the authority plus any incorporated cities or towns which are wholly located within the perimeter of the outer boundary of the principal city constitutes a unit of election;

(2) each designated election area created by a commissioners court constitutes a unit of election;

(3) every other incorporated city or town wholly located within the initial limits of the authority shall constitute a unit of election.

(g) Immediately after the election, the presiding judge of each election precinct shall return the results to the board, which shall canvass the returns and declare the results separately with respect to each unit of election. In those units of election where a majority of the votes cast is in favor of the confirmation of the creation of the authority and the levy of the proposed tax, the authority shall continue

to exist and be comprised of those units. In those units of election where a majority of the votes cast is against the confirmation of the creation of the authority and the levy of the proposed tax, the authority shall cease to exist. Unless the vote is favorable in the unit of election which includes the principal city, the authority shall cease to exist in its entirety. If the votes cast are such that the authority will continue to exist, the board shall enter the results on its minutes and adopt an order declaring that the creation of the authority is confirmed and describing the territory which comprises the authority. A certified copy of the order shall be filed with the State Department of Highways and Public Transportation or its successor, and with the comptroller of public accounts, and in the deed records of each county in which the authority is located. The order shall include the date of the election, the proposition voted on, the number of votes cast for and against the proposition in each election unit, and the number of votes by which the proposition was approved in each election unit in which it was approved and shall be accompanied by a map of the authority clearly showing the boundaries of the authority.

(h) If the votes cast at the confirmation and tax election are such that the authority ceases to exist in its entirety, the board shall enter an order so declaring and file a certified copy of the order with the State Department of Highways and Public Transportation or its successor and with the comptroller of public accounts, and the authority shall be dissolved.

(i) The cost of the confirmation and tax election shall be paid by the principal city.

(j) If the election results in the confirmation of an authority, the authority shall, within the limits confirmed, be authorized to function in accordance with the terms of this Act, and the board may levy and collect the proposed tax within those limits.

(k) If the continued existence of an authority is not confirmed by election within three years after the effective date of the ordinance creating the authority, the authority ceases to exist on the expiration of the three years.

Election Contest

Sec. 5A. (a) If the validity of any election held under authority of this Act or the result of the election based on the returns thereof shall be contested, the election contest shall be filed and tried as provided in the Election Code of the State of Texas; provided that the contestant shall notify the comptroller of public accounts by United States registered mail or certified mail within 10 days after filing the contest by mailing a copy of such notice of contest to the comptroller showing the style of the contest, the date filed, the case number, and the court in which the same is pending; and provided

further that no such contest shall be heard unless the comptroller is timely notified as provided in this subsection.

(b) Upon receipt of a notice of contest, the date upon which such local sales and use tax shall become effective in any authority as a result of the election shall be suspended. When a final judgment shall be entered in the election contest, the presiding officer of the board shall so notify the comptroller by United States registered mail or certified mail and shall enclose a certified copy of the final judgment. If the judgment sustains the validity of the election or the result of the election so that the local sales and use tax status under this Act of the authority is changed, the comptroller shall place in effect the tax in the authority, substituting the notice of final judgment and the date on which it is received for the notice of the result of the election. This section applies only to elections held and election contests filed after the effective date of this Act.

Effective Date—Local Sales and Use Tax

Sec. 5B. Upon actual receipt by the comptroller of public accounts of notification of adoption of a local sales and use tax containing the information required by Subsection (g) of Section 5, there shall elapse one whole calendar quarter prior to the adoption of a local sales and use tax becoming effective. Thereafter, the adoption shall be effective beginning on the first day of the next calendar quarter following the elapsed calendar quarter.

Powers of the Authority

Sec. 6. (a) The authority, when created and confirmed, shall constitute a public body corporate and politic, exercising public and essential governmental functions, having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Act, including, but not limited to, the following powers granted in this section.

(b) The authority shall have perpetual succession.

(c) The authority may sue and be sued in all courts of competent jurisdiction and may institute and prosecute suits without giving security for costs and may appeal from a judgment or judgments without giving supersedeas or cost bond.

(d) The authority may acquire by grant, purchase, gift, devise, lease, or otherwise, and may hold, use, sell, lease or dispose of, real and personal property of every kind and nature whatsoever, and licenses, patents, rights and interests necessary, convenient or useful for the full exercise of any of its powers pursuant to the provisions of this Act. Before an authority acquires an interest in real property for more than \$20,000, the board of the authority shall cause the property to be appraised by two appraisers working independently of each other.

(e) The authority shall have the power to acquire, construct, complete, develop, own, operate and maintain a system or systems within its boundaries, and both within and without the boundaries of incorporated cities, towns and villages and political subdivisions, and for such purposes shall have the right to use the streets, alleys, roads, highways and other public ways and to relocate, raise, reroute, change the grade of, and alter the construction of, any street, alley, highway, road, railroad, electric lines and facilities, telegraph and telephone properties and facilities, pipelines and facilities, conduits and facilities, and other properties, whether publicly or privately owned, as necessary or useful in the construction, reconstruction, repair, maintenance and operation of the system, or to cause each and all of said things to be done at the authority's sole expense. The authority shall not proceed with any action to change, alter or damage the property or facilities of the state, its municipal corporations, agencies or political subdivisions or of owners rendering public services, or which shall disrupt such services being provided by others, or to otherwise inconvenience the owners of such property or facilities, without having first obtained the written consent of such owners or unless the authority shall have first obtained the right to take such action under its power of eminent domain as herein specified. In the event the owners of such property or facilities desire to handle any such relocation, raising, change in the grade of, or alteration in the construction of such property or facilities with their own forces, or to cause the same to be done by contractors of their own choosing, the authority shall have the power to enter into agreements with such owners providing for the necessary relocations, changes or alterations of such property or facilities by the owners and/or such contractors and the reimbursement by the authority to such owners of the costs incurred by such owners in making such relocations, changes or alterations and/or in causing the same to be accomplished by such contractors.

(f) In the event the authority, in exercising any of the powers conferred by this Act, makes necessary the relocation, adjustment, raising, lowering, rerouting or changing the grade of or altering the construction of any street, alley, highway, overpass, underpass, or road, any railroad track, bridge or other facilities or properties, any electric lines, conduits or other facilities or properties, any telephone or telegraph lines, conduits or other facilities or properties, any gas transmission or distribution pipes, pipelines, mains or other facilities or properties, any water, sanitary sewer or storm sewer pipes, pipelines, mains or other facilities or properties, any cable television lines, cables, conduits or other facilities or properties, or any other pipelines and any facilities or properties relating thereto; any and all such relocations, adjustments, raising, lowering, re-

routing or changing of grade or altering of construction shall be accomplished at the sole cost and expense of the authority, and all damages which may be suffered by the owners of such property or facilities shall be borne by the authority.

(g) The authority shall have the right of eminent domain to acquire lands in fee simple and any interest less than fee simple in, on, under and above lands, including, without limitation, easements, rights-of-way, rights of use of air space or subsurface space, or any combination thereof; provided that such right shall not be exercised in a manner which would unduly interfere with interstate commerce or which would authorize the authority to run its vehicles on railroad tracks which are used to transport property.

(h) Eminent domain proceedings brought by the authority shall be governed by the provisions of Title 52, Eminent Domain, Revised Civil Statutes of Texas, 1925, as they now exist or hereafter may be amended,¹ insofar as such provisions are not inconsistent with this Act. Proceedings for the exercise of the power of eminent domain shall be commenced by the adoption by the board of a resolution declaring the public necessity for the acquisition by the authority of the property or interest therein described in the resolution, and that such acquisition is necessary and proper for the construction, extension, improvement or development of the system and is in the public interest. The resolution of the authority shall be conclusive evidence of the public necessity of such proposed acquisition and that such real or personal property or interest therein is necessary for public use. At least 30 days before adopting a resolution under this subsection, however, a board shall hold a public hearing on the question of acquisition of the property or interest for which eminent domain proceedings are being considered. The board shall hold the hearing at a place convenient to residents of the area in which the property is located. The board shall cause notice of the hearing to be published in a newspaper of general circulation in the county in which the property is located at least once each week for two weeks before the date of the hearing.

(i) The authority shall have the power to enter into agreements with any other public utility, private utility, communication system, common carrier, or transportation system for the joint use of their respective facilities, installations and properties of whatever kind and character within the authority and to establish through routes, joint fares or transfer of passengers.

(j) The authority shall establish and maintain rates, fares, tolls, charges, rents or other compensation for the use of the facilities of the system acquired, constructed, operated or maintained by the authority which shall be reasonable and nondiscrimi-

natory and which, together with receipts from taxes collected by the authority, shall be sufficient to produce revenues adequate:

(1) to pay all expenses necessary to the operation and maintenance of the properties and facilities of the authority;

(2) to pay the interest on and principal of all bonds issued by the authority under this Act which are payable in whole or in part from such revenues, when and as the same shall become due and payable;

(3) to pay all sinking fund and reserve fund payments agreed to be made in respect of any such bonds, and payable out of such taxes and revenues, when and as the same shall become due and payable; and

(4) to fulfill the terms of any agreements made with the holders of such bonds or with any person in their behalf.

(k) It is the intention of this Act that taxes levied and the rates, fares, tolls, charges, rents and other compensation for the use of the facilities of the system shall not be in excess of what may be necessary to fulfill the obligations imposed upon the authority by this Act. Nothing herein shall be construed as depriving the State of Texas of its power to regulate and control such taxes, rates, fares, tolls, charges, rents and other compensation, provided that the State of Texas does hereby pledge to and agree with the purchasers and successive holders of the bonds issued hereunder that the state will not limit or alter the powers hereby vested in the authority to establish and collect such taxes, rates, fares, tolls, charges, rents and other compensation as will produce revenues sufficient to pay the items specified in Subdivisions (1), (2), (3) and (4), Subsection (j) of this subsection, or in any way to impair the rights or remedies of the holders of the bonds, or of any person in their behalf, until the bonds, together with the interest thereon, with interest on unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders and all other obligations of the authority in connection with such bonds, are fully met and discharged.

(l) The authority may make contracts, leases and agreements with, and accept grants and loans from, the United States of America, its departments and agencies, the State of Texas, its agencies, counties, municipalities and political subdivisions, and public or private corporations and persons, and may generally perform all acts necessary for the full exercise of the powers vested in it. The authority may acquire rolling stock or other property under conditional sales contracts, leases, equipment trust certificates, or any other form of contract or trust agreement. Any revenue bond indenture may provide limitations upon the exercise of the powers stated in

this section and such limitations shall apply so long as any of the revenue bonds issued pursuant to such indenture are outstanding and unpaid.

(m) The authority may sell, lease, convey or otherwise dispose of any of its rights, interests or properties which are not needed for, or, in the case of leases, which are not inconsistent with, the efficient operation and maintenance of the system. It may sell, lease, or otherwise dispose of, at any time, any surplus materials or personal or real property not needed for its requirements or for the purpose of carrying out its power under this Act.

(n) The authority shall by resolution make all rules and regulations governing the use, operation and maintenance of the system and shall determine all routings and change the same whenever it is deemed advisable by the authority.

(o) The authority shall have power to lease the system or any part thereof to, or contract for the use or operation of the system or any part thereof by, any operator; provided, however, that a lease of the entire system shall be subject to the written consent and approval of the governing body of the principal city.

(p) The acquisition of any land or interest therein pursuant to this Act, the planning, acquisition, establishment, development, construction, improvement, maintenance, equipment, operation, regulation, protection, and policing of the authority's system and facilities, and the exercise of any other powers herein granted an authority, are hereby declared to be public and governmental functions, exercised for a public purpose, and matters of public necessity.

(q) The authority may contract with any city, county, or other political subdivision for the authority to provide public transportation services to any area outside the boundaries of the authority on such terms and conditions as may be agreed to by the parties.

¹ Article 3264 et seq.

Addition of Territory

Sec. 6A. (a) Territory may be added to an authority only according to the provisions of this section.

(b) The governing body of any incorporated city or town located in whole or in part within a county in which the authority is situated may hold an election on the question of whether the city or town shall be annexed to the authority. If a majority of the qualified voters in the city or town votes for annexation, the governing body shall certify the results of the election to the board of the authority, and the city or town shall become a part of the authority, except as provided in Subsection (f) of this section.

(c) The commissioners court of a county in which the authority is situated in whole or in part or that is adjacent to a county in which the authority is situated in whole or in part may hold an election in any one or more of the designated election areas, formed for the election by order of the commissioners court, on the question of whether the area in which the election is held shall be annexed to the authority. The boundaries of a designated election area shall coincide, to the extent practicable, with a boundary of a county voting precinct, so that insofar as practicable no county voting precinct is divided. If a majority of the qualified voters in any area where such an election is held votes in favor of annexation, the commissioners court shall certify the results of the election to the board of the authority, and the area shall become a part of the authority, except as provided in Subsection (f) of this section.

(d) If a city or town which is a part of an authority lawfully annexes additional territory which is not a part of the authority, the annexed territory becomes a part of the authority.

(e)(1) At the time territory is added to an authority under the provisions of this section, any tax other than a local sales and use tax which the board of the authority has already been authorized to levy applies to the added territory.

(2) If an authority in which a local sales and use tax has been imposed changes or alters its boundaries, the presiding officer of the board shall forward to the comptroller of public accounts by United States registered mail or certified mail a certified copy of the order adding territory to the authority or of the order canvassing the returns and declaring the result of the election. The order shall reflect the effective date of the tax and shall be accompanied by a map of the authority clearly showing the territory added or detached. Upon receipt of the order and map, the tax imposed by Section 11B of this Act shall be effective in the added territory on the first day of the next succeeding quarter. However, if the comptroller notifies the presiding officer of the board in writing within 10 days after receipt of the order and map that he requires more time, the comptroller shall be entitled to delay implementation one whole calendar quarter. Thereafter, the tax shall be effective in the added territory on the first day of the next calendar quarter following the elapsed quarter.

(f) Territory in which an election is held as provided in Subsections (b) or (c) of this section becomes a part of the authority on the 31st day after the election, if the voters approve the addition as provided in Subsections (b) or (c), and unless the board of the authority notifies the appropriate governing body in writing before that date that the addition, because it is not contiguous to the existing authority, would create a fiscal hardship on the authority.

Composition of the Board

Sec. 6B. (a) If less than 50 percent of that part of the population of the county (the county in which not less than 51 percent of the incorporated area of the principal city is situated) which is outside the corporate limits of the principal city resides within the limits of the authority, the board of the authority shall consist of the original five members or their successors plus one additional member to be appointed jointly by the mayors of all incorporated municipalities except the principal city within the authority as confirmed, and one other additional member to be appointed by the commissioners court of the county described in this subsection.

(b) If more than 50 percent but less than 75 percent of the population of the county described in Subsection (a) of this section outside the corporate limits of the principal city resides within the limits of the authority, the board of the authority consists of the original five members or their successors, plus two additional members to be appointed jointly by the mayors of all incorporated municipalities, except the principal city, located within the authority, and two other members appointed by the commissioners court of the county. Population figures shall be computed on the basis of the last preceding United States census.

(c) If 75 percent or more of the population of the county described in Subsection (a) of this section outside the corporate limits of the principal city resides within the limits of the authority, the board consists of 11 members, including the original five members or their successors, two additional members appointed jointly by the mayors of all incorporated municipalities except the principal city located within the authority, three other additional members appointed by the commissioners court of the county, and one member, who serves as chairman, who is appointed by the other ten members.

(d) When this Act requires that the mayors of municipalities except the principal city appoint a member of the board, the mayor of the municipality of greatest population among the municipalities shall serve as chairman of an appointment board composed of the mayors of all appropriate municipalities and shall, by notice in writing to all members, call meetings of the appointment board as necessary to make the appointments. Appointments shall be made within 60 days after a position comes into existence or becomes vacant. If the boundaries of the authority at any time include unincorporated areas of a county other than the county described in Subsection (a) of this section, the county judge of the appropriate county is entitled to serve on the appointment board, with powers equal to the other members of the board, as if the unincorporated area of the county were a municipality and the county judge of that county were the mayor of the municipality.

(e) The terms of office of any members of the board appointed after the confirmation and tax election and after the effective date of this Act are four years, except that in order to provide staggered terms, the terms of office of one-half of the first members appointed by an appointing agency after the effective date of this Act, if an even number is to be appointed by an agency, and a bare majority of the first members appointed by the agency, if an odd number greater than one is to be appointed by an agency, are two years. In addition, the appointing agency may shorten the initial terms to make the expiration dates coincide with those of the previously existing positions. To be eligible for appointment to the board, a person must be a qualified voter residing within the boundaries of the authority. No member of the board may serve more than two consecutive four-year terms.

(f) Vacancies on the board are filled by appointment by the same agency that made the original appointments for the vacant positions. Each member of the board whose term expires shall continue to serve until his successor has been appointed.

(g) In the event the membership of the board must be increased under the provisions of this section, the board as previously constituted may continue to act as the governing board of the authority until the additional members have been appointed and seated.

Station or Terminal Complexes

Sec. 6C. (a) The acquisition of any land or any interest in land pursuant to this Act; the planning, acquisition, establishment, development, construction, improvement, maintenance, equipment, operation, regulation, protection, and policing of the authority's system and facilities; and the exercise of any other powers granted an authority, including without limitation the rights, powers, and authority relating to station or terminal complexes as provided in this section, are declared to be public and governmental functions, exercised for a public purpose, and matters of public necessity for public use and public benefit.

(b) The authority shall have the right, power, and authority to acquire by grant, purchase, gift, devise, lease, or eminent domain proceedings and to own lands in fee simple and any interest less than fee simple in, on, under, and above lands, including, without limitation, easements, rights-of-way, rights of use of air space or subsurface space or any combination thereof, adjacent or accessible to stations and other mass transit facilities, developed or to be developed by the authority, that may be required for or in aid of the development of one or more station or terminal complexes, as part of its mass transit system and may sell, lease, or otherwise transfer the same, or any part thereof, to individu-

als, corporations, or governmental entities, subject to the restrictions provided in this section.

(c) Any lands or interests in land acquired for a station or terminal complex must be part of or contained within a station or terminal complex designated as part of the system within a comprehensive transit plan approved by resolution of the board. Before a station or terminal complex may be included in the system, the board must find and determine that the proposed station or terminal complex will encourage and provide for efficient and economical mass transit service, will facilitate access to mass transit service and provide other mass transit purposes, will reduce vehicular congestion and air pollution in the metropolitan area, and is reasonably essential to the successful operation of the system. The board may amend its comprehensive transit plan to include other station or terminal complexes upon making these findings.

(d) Any station or terminal complex shall include adequate provisions for the transfer of passengers between the various modes of transportation available to the complex. A complex may include provisions for commercial, residential, recreational, institutional, and industrial facilities, except that no land or interests in land that is more than 1,500 feet in distance from the center point of the complex or that has not been included in a master plan of development adopted by the board may be acquired for the facilities. Land or an interest in land more than 1,500 feet in distance from the center point of the complex may not be acquired by eminent domain proceedings, and the board shall designate the center point prior to the commencement of eminent domain proceedings. If a proposed station or terminal complex is to be located within the city limits or extra-territorial jurisdiction of a city or town, the governing body of the city or town must approve the location of the complex as to conformity with the comprehensive or general plan of the city or town by motion, resolution, or ordinance duly adopted.

(e) The authority may sell, lease, or otherwise transfer lands or interests in land acquired within a station or terminal complex, and may enter into contracts with respect to it, in accordance with the comprehensive transit plan approved by the board, subject to such covenants, conditions, and restrictions, including covenants running with the land and obligations to commence construction within a specified time, as the board may deem to be in the public interest or necessary to carry out the purposes of this section, all of which shall be incorporated into the instrument transferring or conveying title or right of use. Any lease, sale, or transfer shall be at fair value, taking into account the use designated for the land in the comprehensive transit plan for the system and the restrictions on, and the covenants, conditions, and obligations assumed by, the

purchaser, lessee, or transferee. However, if the authority offers the property for sale, the original owner from whom the property was acquired by eminent domain proceedings or through threat of eminent domain proceedings has the first right to repurchase at the price at which it is offered to the public.

(f) No station or mass transit facility may be considered a "station or terminal complex" governed by this section unless it has been designated as such in the comprehensive transit plan pursuant to the specific authority granted by this section.

Withdrawal From an Authority

Sec. 6D. (a) The governing body of an incorporated city or town that is included within the territory of an authority and that has a population more than 90 percent of which resides outside the county in which the majority of the population of the principal city resides may on any date from April 1, 1980, to September 1, 1980, hold an election on the question of whether the city or town shall withdraw from the authority. If a majority of the qualified voters in the city or town voting on the question votes to withdraw from the authority, the governing body shall certify the results of the election to the board of the authority, and the city or town shall withdraw from the authority.

(b) The board shall enter the results on its minutes and adopt an order declaring the withdrawal of the city or town. A certified copy of the order shall be filed with the State Department of Highways and Public Transportation or its successor and the comptroller of public accounts and in the deed records of each county in which the authority is located. The order shall reflect the date of the election, the proposition voted on, the total number of votes cast for and against the proposition in each election unit, the number of votes by which the proposition was approved in each election unit and shall be accompanied by a map of the authority clearly showing the boundaries of the authority.

(c) Upon actual receipt of the comptroller of public accounts of notification of the withdrawal of a city or town, there shall elapse one whole calendar quarter prior to the withdrawal becoming effective. Thereafter, the withdrawal shall be effective beginning on the first day of the next calendar quarter following the elapsed calendar quarter.

Bonds and Notes

Sec. 7.

[See Compact Edition, Volume 3 for text of 7(a) and (b)]

(c) In order to secure the payment of such bonds or notes, such authority shall have full power and authority to encumber and pledge all or any part of

the revenue realized from any tax which the authority is authorized to levy, and all or any part of the revenues of its rapid transit system or systems, and to mortgage and encumber all or any part of the properties thereof, and everything pertaining thereto acquired or to be acquired and to prescribe the terms and provisions of such bonds and notes in any manner not inconsistent with the provisions of this Act. If not prohibited by the resolution or indenture relating to outstanding bonds or notes, any such authority shall have full power and authority to encumber separately any item or items of real estate or personalty, including motorbuses, transit cars and other vehicles, machinery and other equipment of any nature, and to acquire, use, hold or contract for any such property under any lease arrangement, chattel mortgage or conditional sale, including, but not limited to, transactions commonly known as equipment trust transactions. Nothing herein shall be construed as prohibiting any such authority from encumbering any one or more rapid transit systems for the purpose of purchasing, building, constructing, enlarging, extending, repairing or reconstructing, another one or more of said systems and purchasing necessary property, both real, personal and mixed, in connection therewith.

[See Compact Edition, Volume 3 for text of 7(d) to (g)]

(h) Bonds payable solely from revenues may be issued by resolution of the board, but no bonds, except refunding bonds, payable wholly or partially from taxes, may be issued until authorized by a majority vote of the qualified voters of the authority voting in an election called and held for that purpose.

(i) Notwithstanding the provisions of Section 7, the authority, acting by board order or resolution, has the power to issue short-term bonds or notes secured by revenues or taxes for any purpose; provided that the repayment of the bonds or notes must be satisfied out of revenues or taxes received during the period from the date of issuance to the last day of the fiscal year in which the bonds or notes are issued. Any such short-term bonds or notes need not be approved by the Attorney General of Texas nor registered by the Comptroller of Public Accounts of the State of Texas.

Motor Vehicle Emission Taxes

Sec. 8. (a) Subject to approval at an election, the board of an authority shall be authorized to levy and cause to be collected motor vehicle emission taxes as herein provided. No increase in taxes as originally authorized may be levied unless the increase is approved at an election. Such taxes shall be collected by the county tax assessor-collector of each county, situated in whole or in part within the authority from each motor vehicle owner whose residence is

within such county and within the authority. Not later than November 1 of each year, the board shall certify to the county tax assessor-collector of each county situated in whole or in part within the authority's boundaries the rate of tax prescribed for each class of motor vehicles for the ensuing tax year. At the time the owner of a motor vehicle applies each year to the State Highway Department through the county tax assessor-collector of the county in which he resides for the registration of each such vehicle owned or controlled by him for the ensuing or current motor vehicle registration year or unexpired portion thereof, such owner shall pay to the county tax assessor-collector the motor vehicle emission taxes due or to become due to such authority on such motor vehicle for the ensuing or current tax year at the applicable rate prescribed by the board. The county tax assessor-collector shall refuse to issue a registration license for a motor vehicle until the emission tax thereon for the period covered by such registration license has been paid.

[See Compact Edition, Volume 3 for text of 8(b) to 11]

General Powers of Taxation

Sec. 11A. (a) In addition to or in lieu of the motor vehicle emission taxes provided for in this Act, the board of an authority may levy and collect any kind of tax, other than an ad valorem tax on property, which is not prohibited by the Texas Constitution.

(b) No tax of any kind may be levied and collected by the board until a proposition proposing the tax has first been submitted to and approved by a majority of the qualified electors of an authority voting at an election held by the board for that purpose. A separate proposition must be submitted for each kind of tax proposed, and propositions may be submitted in the alternative with provision for the method of determining the results of the election. Each proposition must include a brief statement of the nature of the proposed tax. The notice of the election must include a statement or description of the basis of or rate at which the tax is proposed to be levied. Any subsequent increase in a tax must also be approved at an election.

(c) Prior to an election to authorize a tax other than motor vehicle emission taxes or a sales and use tax, the board shall adopt a complete tax code and rules and regulations providing for the nature and amount of any tax with provisions for complete administration and enforcement, including the time and manner of payment, exemptions, liens, interest, penalties, discounts for advance payment, refunds for erroneous payment, fees for collection, collection procedures, manner of enforcement, required returns, registration and reports of taxpayers, the

duties and responsibilities of tax officers and taxpayers, the delegation to tax officers to make additional rules and regulations and determinations and to obtain records as may be appropriate, and every other provision which may be determined to be desirable, including incorporation of any tax laws and remedies for the administration and enforcement that are available to the state or any political entities under general law.

(d) A tax code and rules and regulations may be amended by the board from time to time after an election approving a tax, but no amendment may increase the amount of a tax unless the increase is approved at an election.

(e) The board of an authority by order may decrease the local sales and use tax rate or may call an election to increase or decrease the local sales and use tax rate. In addition, the qualified voters of an authority by petition may require that an election be held on the question of increasing the tax rate. A petition is valid if it is by qualified voters of the authority equal in number to at least 10 percent of the number of registered voters of the authority according to the most recent official list of registered voters.

(f) After receiving a petition, the board shall submit the petition to the secretary of state for validation. The secretary of state shall rule on the validity of the petition not later than the 30th day after the day he or she receives the petition and shall notify the board of the ruling. If the secretary of state finds the petition valid or fails to act within the time allowed, the board shall call an election. The authority shall pay the costs of determining the validity of a petition, if any, and of the election.

(g) At the election, the ballots shall be prepared to permit voting for or against the following proposition: "The increase (decrease) of the local sales and use tax rate to (percentage)." The increase or decrease in the tax rate shall be effective if it is approved by a majority of the votes cast by voters residing within the boundaries of the territory of the authority at the date of the election. A notice of the election and a certified copy of the order canvassing the election results shall be sent to the State Department of Highways and Public Transportation or its successor and the comptroller of public accounts and shall be filed in the deed records of each county in which the authority is located in the same manner as provided for a confirmation and tax election by Section 5 of this Act.

(h) If there is an increase or decrease in the rate of a local sales and use tax already levied, the new rate takes effect on the first day of the next calendar quarter after actual notification to the comptroller of public accounts. However, if the comptroller notifies the presiding officer of the board in writing within 10 days after receipt of the order that he or

she requires more time to implement collection and reporting procedures, the comptroller may delay implementation for one whole calendar quarter. Thereafter, the new tax rate takes effect on the first day of the next calendar quarter following the elapsed quarter.

Local Sales and Use Tax

Sec. 11B. (A) Subject to approval at a tax election in accordance with this Act, the board of an authority shall be authorized to levy, collect and impose a local sales and use tax for the benefit of the authority, the sales tax portion of which shall not exceed one percent on receipts from the sale of all taxable items within the authority area which are subject to taxation under the provisions of the Limited Sales, Excise and Use Tax Act,¹ as enacted and as heretofore or hereafter amended. The provisions of this section shall be applicable to the levy, imposition and collection of such tax. The permissible rates for a local sales and use tax levied under this Act are:

- (1) one-quarter of one percent;
- (2) one-half of one percent;
- (3) three-quarters of one percent; and
- (4) one percent.

(B)(a) The following words and terms shall have the following respective meanings unless a different meaning clearly appears from the context:

- (1) "Authority area" means the geographical limits of the authority.
- (2) "Comptroller" means the Comptroller of Public Accounts of Texas.
- (3) "Local Sales and Use Tax" means any sales and use tax imposed by a city within the authority area under the Local Sales and Use Tax Act (Article 1066c, Vernon's Texas Civil Statutes).

(b) Every retailer within the authority area shall add the tax imposed by the Limited Sales, Excise and Use Tax Act, any applicable Local Sales and Use Tax and the tax imposed under the authority of this Act to his sale price, and when added, the combined tax shall constitute a part of the price, shall be a debt of the purchaser to the retailer until paid, and shall be recoverable at law in the same manner as the purchase price. The combined taxes on the transaction shall be determined by multiplying the amount of the sale by the total of the combined applicable tax rates. Any fraction of one cent which is less than one-half of one cent of tax shall not be collected. Any fraction of one cent of tax equal to one-half of one cent or more shall be collected by the retailer as a whole cent of tax. Provided, however, that any retailer who can establish to the satisfaction of the comptroller that 50 percent or more of his receipts from the sale of taxable items arise from individual transactions where the total sales price

when multiplied by the combined rates of the taxes imposed under the Limited Sales, Excise and Use Tax Act, any applicable Local Sales and Use Tax, and this section equals an amount that is less than one-half of one cent may exclude the receipts from such sales when reporting and paying the tax imposed under this Act, the Limited Sales, Excise and Use Tax Act, and any applicable Local Sales and Use Tax. No retailer shall avail himself of this provision without prior written approval of the comptroller. The comptroller shall grant such approval when he is satisfied that the retailer qualifies on the basis set forth in this section and when the retailer has submitted satisfactory evidence that he can and will maintain records adequate to substantiate the exclusion herein authorized. Any attempt on the part of any retailer to exercise this provision without prior written approval of the comptroller shall be deemed to be a failure and refusal to pay the taxes imposed by this Act, the Limited Sales, Excise and Use Tax Act and any applicable Local Sales and Use Tax, and the retailer shall be subject to assessment for both taxes, penalties and interest as provided for in this Act, the Limited Sales, Excise and Use Tax Act, and any applicable Local Sales and Use Tax.

(c)(1) In every authority area where the tax authorized by this Act has been adopted pursuant to the provisions of this Act, there is hereby imposed an excise tax on the storage, use or other consumption within such authority area of taxable items purchased, leased, or rented from any retailer on or after the effective date for collection of the sales tax portion of the sales and use tax for storage, use or other consumption in such authority area at the same rate as the sales tax levied under this Act of the sales price of the taxable item or, in the case of leases or rentals, of said lease or rental price. Except as provided in Subparagraph (4) of this paragraph, the use tax imposed by this section is not owed to and may not be collected by, for, or in behalf of an authority if no excise tax on the storage, use, or other consumption of an item of tangible personal property is owed to or collected by the state under the Limited Sales, Excise and Use Tax Act, Chapter 20, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended, or if the tangible personal property is first stored, used, or consumed within an authority or area that has not adopted the sales and use tax imposed by this section.

(2) In each authority where the tax authorized by this Act has been imposed as provided in this Act, the excise tax imposed under the Limited Sales, Excise and Use Tax Act and any applicable excise tax under the Local Sales and Use Tax Act on the storage, use or other consumption of taxable items and the excise tax imposed by this Act shall be added together to form a combined rate of excise tax which is equal to the sum of the applicable

taxes. The tax imposed by this section shall be collected by the comptroller on behalf of and for the benefit of such authority. The formula prescribed in paragraph (b) of this subsection shall be applicable to the collection of the excise tax imposed under this section.

(3) The provisions of Article 20.031, Limited Sales, Excise and Use Tax Act shall be applicable to the collection of the tax imposed by this paragraph (c), provided that the name of the authority where the sales and use tax authorized by this Act has been adopted shall be substituted for that of the state where the words "this state" are used to designate the taxing authority or to delimit the tax imposed; and provided further that the effective date for commencing the collection of the sales tax portion of the tax imposed by this Act in any authority area shall be substituted for the phrase "the effective date of this chapter."

(4) If a sale of tangible personal property is consummated within the state but not within an authority that has adopted the taxes imposed by this section and the tangible personal property is shipped directly into or brought by the purchaser or lessee directly into an authority that has adopted the taxes imposed by this section, the tangible personal property is subject to the use tax imposed by the authority under Subparagraph (1) of this paragraph. The use is considered consummated at the location where the item is first stored, used, or otherwise consumed after the intrastate transit has ceased.

(5) If the tangible personal property is shipped from outside this state to a customer within this state, the tangible personal property is subject to the use tax imposed by Subparagraph (1) of this paragraph and not the sales tax imposed by Subsection (A) of this section. The use is consummated at the first point in this state where the property is stored, used, or otherwise consumed after interstate transit has ceased. Tangible personal property delivered to a point in this state is presumed to be for storage, use, or other consumption at that point until the contrary is established.

(d)(1) On and after the effective date of any tax imposed under the provisions of this Act, the comptroller shall perform all functions incident to the administration, collection, enforcement and operation of the tax, and the comptroller shall collect, in addition to the taxes imposed by the Limited Sales, Excise and Use Tax Act, an additional tax under the authority of this Act specified by the authority, but not to exceed one percent on the receipts from the sale at retail or on the sale price or lease or rental price on the storage, use or other consumption of all taxable items within such authority area, which items are subject to the Limited Sales, Excise and Use Tax Act. The tax imposed hereunder and the tax imposed under the Limited Sales, Excise and

Use Tax Act and any applicable Local Sales and Use Tax shall be collected together and reported upon such forms and under such administrative rules and regulations as may be prescribed by the comptroller not inconsistent with the provisions of this Act. On and after the effective date of any proposition to abolish such Local Sales and Use Tax in any authority area, the comptroller shall comply therewith.

(2) The comptroller shall make to the authority substantially the same reports as to taxes within the authority area as are made to cities under Subsections 5(b), (c) and (d) of the Local Sales and Use Tax Act.

Text of subdivision (e) as amended by Acts 1979, 66th Leg., p. 99, ch. 59, § 7

(e) The following provisions shall govern the collection by the comptroller of the tax imposed by this Act:

(1) All applicable provisions contained in the Limited Sales, Excise and Use Tax Act and Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, shall apply to the collection of the tax imposed by this Act, except as modified in this Act.

(2) The provisions contained in Section 6 of the Local Sales and Use Tax Act shall apply to the levy, imposition and collection of the tax imposed by this Act except as modified herein.

(3) The penalties provided in the Limited Sales, Excise and Use Tax Act and Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, for violations of that Act are hereby made applicable to violations of this Act.

(4) The sales and use tax collected by the comptroller under this Act shall be deposited, held, accounted for and transmitted for the authority as provided in Section 7 of the Local Sales and Use Tax Act.

Text of subdivision (e) as amended by Acts 1979, 66th Leg., p. 1433, ch. 629, § 12

(e) The following provisions shall govern the collection by the comptroller of the tax imposed by this Act:

(1) All applicable provisions contained in the Limited Sales, Excise and Use Tax Act or in Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, shall apply to the collection of the tax imposed by this Act, except as modified in this Act.

(2) The provisions contained in Section 6 of the Local Sales and Use Tax Act shall apply to the levy, imposition and collection of the tax imposed by this Act except as modified herein.

(3) The penalties provided in the Limited Sales, Excise, and Use Tax Act for violations of that Act

and the penalties provided in Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, for violation of that title, are hereby made applicable to violations of this Act.

(4) The sales and use tax collected by the comptroller under this Act shall be deposited, held, accounted for and transmitted for the authority as provided in Section 7 of the Local Sales and Use Tax Act.

(f) Each authority's share of all sales and use tax collected under this Act by the comptroller shall be transmitted to the treasurer or the officer performing the functions of such office of such authority by the comptroller payable to the authority periodically as promptly as feasible. Transmittals required under this Act shall be made at least twice in each state fiscal year. Before transmitting such funds, the comptroller shall deduct two percent of the sum collected from each such authority during such period as a charge by the state for its services specified in this Act, and the amounts so deducted shall be deposited by the comptroller in the State Treasury to the credit of the General Revenue Fund of the state. The comptroller is authorized to retain in the suspense account of any authority a portion of the authority's share of the tax collected under this Act. Such balance so retained in the suspense account shall not exceed five percent of the amount remitted to the authority. The comptroller is authorized to make refunds from the suspense account of any authority for overpayments made to such accounts and to redeem dishonored checks and drafts deposited to the credit of the suspense account of such authority. When any authority shall abolish such tax, the comptroller may retain in the suspense account of such authority for a period of one year five percent of the final remittance to each such authority at the time of termination of collection of such tax in such authority to cover possible refunds for overpayment of the tax and to redeem dishonored checks and drafts deposited to the credit of such accounts. After one year has elapsed after the effective date of abolition of such tax in such authority, the comptroller shall remit the balance in such accounts to the authority and close the account.

(g) The comptroller may promulgate reasonable rules and regulations, not inconsistent with the provisions of this Act, to implement the enforcement, administration and collection of the taxes authorized herein.

(h)(1) In any authority where the sales and use tax authorized by this Act has been imposed, if any person is delinquent in the payment of the amount required to be paid by him under this Act or in the event a determination has been made against him for taxes and penalty under this Act, the limitation for bringing suit for the collection of such delinquent tax and penalty shall be the same as that

provided in Article 20.09, Limited Sales, Excise and Use Tax Act. Where any person is delinquent in payment of taxes under this Act, the comptroller shall notify the authority to which delinquent taxes are due under this Act by United States registered mail or certified mail and shall send a copy of the notice to the attorney general. The authority, acting through its attorney, may join in any suit brought by the attorney general as a party plaintiff to seek a judgment for the delinquent taxes and penalty due such authority. The notice sent by the comptroller to the authority showing the delinquency of a taxpayer constitutes a certification of the amount owed and is prima facie evidence of the determination of the tax and of the delinquency of the amounts of sales and use tax set forth in the notice.

(2) Where property is seized by the comptroller under the provisions of any law authorizing seizure of the property of a taxpayer who is delinquent in payment of the tax imposed by the Limited Sales, Excise and Use Tax Act, and where such taxpayer is also delinquent in payment of any tax imposed by this Act, the comptroller shall sell sufficient property to pay the delinquent taxes and penalty due any authority under this Act in addition to that required to pay any amount due the state under the Limited Sales, Excise and Use Tax Act and due any city under the Local Sales and Use Tax Act. The proceeds from such sale shall first be applied to all sums due the state, then all sums due any city under the Local Sales and Use Tax Act, and the remainder, if any, shall be applied to all sums due such authority.

(3) An authority that has adopted the tax authorized by this Act may bring suit for the collection of sales, excise, or use taxes imposed by this Act which have been certified as provided in subparagraph (1) of this paragraph and are owed to the authority under this Act if at least 60 days before the filing of the suit, written notice by certified mail of the tax delinquency and of the intention to file suit is given to the taxpayer, the comptroller, and the attorney general and if neither the comptroller nor the attorney general disapproves the suit by written notice to the authority.

(4) The comptroller or attorney general may disapprove the institution of tax suit by an authority if:

(i) negotiations between the state and the taxpayer are being conducted for the purpose of the collection of delinquent taxes owed to the state and the authority seeking to bring suit;

(ii) the taxpayer owes substantial taxes to the state and there is a reasonable possibility that the taxpayer may be unable to pay the total amount owed in full;

(iii) the state will bring suit against the taxpayer for the collection of all sales, excise and use taxes due under the Limited Sales, Excise and Use Tax Act and this Act; or

(iv) the suit involves a critical legal question relating to the interpretation of state law or a provision of the Texas or United States Constitution in which the state has an overriding interest.

(5) A notice of disapproval to an authority must give the reason for the determination of the comptroller or attorney general. A disapproval is final and not subject to review. An authority, after one year from the date of the disapproval, may proceed again as provided in subparagraph (3) of this paragraph even though the liability of the taxpayer includes taxes for which the authority has previously given notice and the comptroller or attorney general has previously disapproved the suit.

(6) In any suit under this paragraph for the collection of the authority tax, a judgment for or against the taxpayer does not affect any claim against the taxpayer by a city or the state unless the state is a party to the action.

(7) A copy of the final judgment in favor of an authority in a case in which the state is not a party shall be abstracted by the authority and a copy of the judgment together with a copy of the abstract shall be sent to the comptroller. The authority shall collect taxes awarded to it under the judgment as provided by Subsection (4) of Section (G), Article 20.09, Limited Sales, Excise and Use Tax Act, and is responsible for the renewal of the judgment before the expiration of the 10-year period. If a collection is made by an authority on a judgment, notice of the amount collected shall be sent by certified mail to the comptroller. The comptroller may prescribe a form for the notice to be used by authorities.

¹ Taxation—General art. 20.01 et seq.

[See Compact Edition, Volume 3 for text of 12]

Annual Budget

Sec. 12A. Prior to the commencement of a fiscal year, the board shall adopt an annual operating budget which specifies major expenditures by type and amount. Before the board adopts its annual operating budget, it shall conduct a public hearing and shall make the proposed annual operating budget available to the public at least 14 days prior to the hearing. An annual operating budget must be adopted before the authority conducts business in a fiscal year. The authority may not make operating expenditures in excess of the total budgeted operating expenditures for a fiscal year unless the board amends the operating budget by order after public notice and hearing.

[See Compact Edition, Volume 3 for text of 13]

Tort Claims

Sec. 13A. Any authority established hereunder shall be within the definition of "unit of government" as defined by the Texas Tort Claims Act, as amended (Article 6252-19, Vernon's Texas Civil

Statutes), and all operations of an authority are deemed to be essential governmental functions and not proprietary functions for all purposes, including the application of the Texas Tort Claims Act.

Contracts for Construction, Goods, or Services

Sec. 14. (a) Contracts for more than \$5,000 for the construction of improvements or the purchase of material, machinery, equipment supplies and all other property except real property, shall be let on competitive bids after notice published once a week for two consecutive weeks, the first publication to be at least 15 days before the date fixed for receiving bids, in a newspaper of general circulation in the area in which the authority is located. The board may adopt rules governing the taking of bids and the awarding of such contracts and providing for the waiver of this requirement in the event of emergency. This subsection does not apply to personal and professional services or to the acquisition of existing transit systems.

(b) The board of an authority may not let a contract (1) that is not subject to competitive bidding requirements, (2) that is for more than \$10,000 and (3) that is for the purchase of real property or for consulting or professional services, unless an announcement that a contract is being considered is posted in a prominent place in the principal office of the authority for at least two weeks before the contract is awarded. This subsection does not apply to the acquisition of existing transit systems.

[See Compact Edition, Volume 3 for text of 15]

County Authority to Contract with Authority

Sec. 15A. A commissioners court may contract with an authority for the authority to provide public transportation services to any unincorporated area outside the boundaries of the authority for a term and on those conditions as are determined to be desirable by the commissioners court and the board. The county may levy and collect taxes or pledge and encumber other receipts or revenues as may be required to make any payments to the authority under the provisions of the contract.

Elections

Sec. 15B. (a) This section governs all elections ordered by the board except elections held under the provisions of Section 5 of this Act.

(b) Notice of an election ordered by the board shall be given by publication once a week for three consecutive weeks with the first publication in a newspaper with general circulation in the authority at least 21 days before the election.

(c) A resolution calling an election and the notice of the election are sufficient if the date and hours of the election, the voting places within voting precincts for the election, and the propositions to be

voted on are specified. The board may define and declare voting precincts, determine the manner of absentee voting, and prescribe the election officers.

(d) As soon as practicable after an election, the board shall canvass the returns of the election and declare the results.

(e) Where not otherwise provided in this section, the general election laws apply.

[See Compact Edition, Volume 3 for text of 16 and 17]

Eligibility of Excepted Areas for Federal Funds

Sec. 17A. Ratification by referendum of a regional authority under the terms of this Act by less than all incorporated cities within the metropolitan area as defined herein shall not affect in any way the eligibility of such excepted incorporated cities to receive federal transit grants under the National Mass Transportation Assistance Act of 1974,¹ or any subsequent federal statutes.

¹ See 49 U.S.C.A. § 1601b et seq.

[See Compact Edition, Volume 3 for text of 18 and 19]

[Amended by Acts 1975, 64th Leg., p. 2273, ch. 712, §§ 1 to 10, eff. June 21, 1975; Acts 1977, 65th Leg., p. 2168, ch. 863, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 99, ch. 59, § 7, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1403, ch. 624, §§ 4, 5, eff. June 13, 1979; Acts 1979, 66th Leg., p. 1427, ch. 629, §§ 1 to 15, eff. Sept. 1, 1979; Acts 1979, 66th Leg., p. 1522, ch. 656, § 1, eff. Aug. 27, 1979.]

Art. 1118y. Regional Transportation Authorities

Findings

Sec. 1. The legislature finds that:

(1) An increasing proportion of the state's population is located in its rapidly expanding metropolitan areas;

(2) The concentration of population in such areas is accompanied by a corresponding concentration of motor vehicles that emit pollutants into the air and consume great quantities of limited energy resources;

(3) Such concentration of motor vehicles places an undue burden on existing streets, freeways, and other traffic ways, resulting in serious vehicular traffic congestion that retards mobility of persons and property and adversely affects the health and welfare of the citizenry; and

(4) Mobility for all citizens, which must include alternatives to the private passenger motor vehicle, is essential to the continued growth and maintenance of economic vitality of these metropolitan areas.

Definitions

Sec. 2. In this Act, unless the context requires otherwise:

(1) "Authority" means a regional transportation authority created pursuant to this Act.

(2) "County of a principal city" means a county in which the majority of the territory of a principal city is situated.

(3) "Creating entities" means the principal city and/or county of the principal city or any contiguous city as provided in Section 24.

(4) "Executive committee" means the directors of the authority who serve as the governing body of the authority.

(5) "General transportation services" means services that complement the public transportation system, including but not limited to parking garages, special transportation services for the elderly and the handicapped, medical transportation services, assistance in street modifications as necessary to accommodate the public transportation system, and construction of new general aviation facilities or renovation or purchase of existing facilities not served by certificated air carriers in order to relieve air traffic congestion at existing facilities.

(6) "Interim executive committee" means the executive committee selected before the confirmation election for the purpose of guiding the establishment of a permanent authority and creating a service plan.

(7) "Interim subregional board(s)" means the subregional board(s) organized to serve before the holding of the confirmation election.

(8) "Metropolitan area" means a federal standard metropolitan statistical area having a population of more than 500,000, not more than 60 percent of which reside in cities of more than 300,000.

(9) "Population" means the population of a city or area as the context may require, according to the last preceding federal census or if there has been no federal census within the preceding five years, then according to the latest population estimates of the appropriate metropolitan planning organization.

(10) "Principal city" means a city having a population of at least 300,000.

(11) "Public transportation" means the conveyance of passengers and hand-carried packages or baggage of passengers by means of any mode of transportation other than a privately owned vehicle.

(12) "Public transportation system" means all real and personal property owned or held by an authority for public transportation or general transportation service purposes, including but not limited to land, interest in land, buildings, structures, rights-of-way, easements, franchises, rail lines, bus lines, mass transportation facilities, rapid transit facilities, stations, platforms, terminals,

rolling stock, garages, shops, equipment and facilities (including vehicle parking areas and facilities and other facilities necessary or convenient for the beneficial use and access of persons and vehicles to public transportation), control houses, signals and land, facilities and equipment for the protection and environmental enhancement of all the facilities.

(13) "Service plan" means an outline of the service that would be provided by the authority to those units of election confirming the authority in an election.

(14) "Subregion" means a principal city, the county of the principal city, and any city or unit of election included within the boundaries of a subregion by the creating entity of that subregion and which is confirmed at an election.

(15) "Subregional board" means the board created to represent a subregion pursuant to Sections 6 and 7 of this Act.

(16) "Unit of election" means any one of the following:

(A) a principal city;

(B) a designated unincorporated area created by the commissioners court of a county of a principal city;

(C) any other incorporated city located within the territory of an authority.

Creation of a Regional Transportation Authority

Sec. 3. A regional transportation authority to provide public transportation and general transportation services may be created in a metropolitan area. The process for creating an authority must be initiated by one of the following methods:

(1) The governing body of a principal city and/or county of the principal city from each subregion may agree to initiate the process to create an authority on their own motions. The principal city and/or the county of the principal city in each subregion may become the creating entity. If the creating entity in one subregion initiates the process and a creating entity in the other subregion does not initiate the process within 60 days, the first subregion may proceed on its own.

(2) If a petition requesting creation of an authority signed by at least five percent of the registered voters of the creating entity is presented, the creating entity or entities receiving the petitions shall initiate the process for creating the authority. If the creating entity in one subregion initiates the process and a creating entity in the other subregion does not initiate the process within 60 days, the first subregion may proceed on its own. The entity to which a petition is presented has the primary responsibility for initiating the

authority within a subregion. The principal city and county of the principal city of either subregion, however, may by mutual agreement share the responsibility or shift it to the other entity.

Initiating Procedure

Sec. 4. (a) The process shall be initiated by a resolution or order of each creating entity containing the following provisions:

(1) a description of the boundaries of the territory proposed to be included in the subregion(s) of the authority;

(2) designation of the time(s) and place(s) agreed upon by the creating entity or entities for holding public hearings on the proposal to create the authority;

(3) authorization for establishment of the interim subregional boards and interim executive committee.

(b) The boundaries of the proposed authority shall include all territory in the county or counties of the principal city or cities and any additional territory in adjacent counties having more than 52,000 population that is included in the resolution(s) or order(s). A unit of election that has the majority of its population in a county of a principal city shall be included in the subregion of that principal city for the purposes of the initiating procedure.

(c) Notice of the time and place of the public hearings, including a description of the area proposed to be included in the authority, shall be published once a week for two consecutive weeks in a newspaper of general circulation in each of the county or counties of the principal city or cities, the first publication to be not less than 30 days prior to the date fixed for the hearing. The creating entities shall submit to the State Highways and Public Transportation Commission and the comptroller of public accounts a copy of this notice.

(d) The creating entity or entities and the interim executive committee shall conduct the hearings at the time and place specified in the notice and may continue the hearings from day to day and from time to time until completed. Any interested person may appear and offer evidence concerning the boundaries and creation of the authority, operation of a regional transportation system, and whether creation of an authority would be of public utility and in the public interest as well as any other facts bearing upon the creation of an authority.

(e) After hearing the evidence presented at the hearings, the creating entity or entities shall each adopt the resolution or order designating the name of the authority, prescribing the territory to be included in the authority, and declaring that the actual territory included in the authority is subject to the results of the confirmation election. If one

creating entity fails to adopt this resolution or order within 60 days of the action of the other creating entity, the first creating entity may proceed on its own.

(f) After the hearing, the results of the hearing and the boundaries set by the creating entities shall be submitted to the State Highways and Public Transportation Commission and the comptroller of public accounts.

Regional Transportation Authority Executive Committee

Sec. 5. (a) The control and operation of a regional transportation authority and its property shall be vested in an executive committee comprised of 11 members selected as follows:

(1) seven members from the membership of the subregional board in the subregion containing a principal city having a population greater than 800,000; and

(2) four members from the membership of the subregional board in the subregion containing a principal city having a population of less than 800,000.

(b) Before the confirmation election, the subregional boards shall select their representatives to the executive committee from their membership by a vote of the members. After the confirmation election, the subregional boards shall select their representatives in the same manner and those representatives shall serve at the pleasure of the subregional boards with the confirmation of the appointments made each September 1. To remain on the executive committee a person must maintain membership on a subregional board. A vacancy on the executive committee shall be filled in the same manner as original appointments.

(c) Following the confirmation election each member of the subregional board shall be entitled to the sum of \$50 for each meeting of the executive committee or subregional board attended and shall be reimbursed for necessary and reasonable expenses incurred in the discharge of duties.

(d) The members of the executive committee shall elect from among their number a chairman, vice-chairman, and a secretary. The executive committee may appoint such assistant secretaries, either members or non-members of the executive committee, as it deems necessary. The secretary and assistant secretary or secretaries shall in addition to keeping the permanent records of all proceedings and transactions of the authority perform such other duties as may be assigned to them by the executive committee. No member of the executive committee or officer of the authority shall be pecuniarily interested or benefited directly or indirectly in any contract or agreement to which the authority is a party.

(e) The executive committee shall hold at least one regular meeting during each month for the purpose of transacting the business of the authority. Upon written notice, the chairman may call special meetings as may be necessary. The executive committee when organized shall by resolution set the time, place, and day of the regular meetings and shall adopt rules, regulations, and bylaws as it may deem necessary for the conduct of its official meetings. Eight members shall constitute a quorum of the executive committee for the purpose of conducting its business and exercising its powers, and action may be taken by the authority upon a vote of a majority of the executive committee members present unless the bylaws require a larger number for a particular action.

(f) The executive committee shall receive recommendations for the annual budget from each of the subregional boards and shall obtain approval from each subregional board of the final annual budget as it pertains to that board's subregion.

Subregional Board in a Subregion Having a Principal City With Population in Excess of 800,000

Sec. 6. (a) The subregional board in a subregion having a principal city with population in excess of 800,000 shall be organized in accordance with this section.

(b) The commissioners court of the county of the principal city shall appoint one member. The member shall represent only the communities and unincorporated areas in the county not directly represented on the board and shall reside in such an area.

(c) The remaining members of the subregional board shall be apportioned according to the ratio which the population of each incorporated city bears to the total population of the territory included within the subregion. Any combination of cities aggregating a total population of 60,000 shall be entitled to one member on the interim subregional board. Following the confirmation election, any combination of cities who have voted confirmation of the authority may aggregate a population of at least 60,000 for the purpose of appointing one member to the initial subregional board. In establishing the interim subregional board, if the results of the 1980 federal census are unavailable, the most recent population estimates of the appropriate metropolitan planning organization will be used.

(d) No city will be entitled to appoint more than 65 percent of the board members. If it would be so entitled pursuant to Subsection (c) of this section, it will be limited to 65 percent and the remaining members will be apportioned among the other cities in the subregion according to the provisions of Subsection (c) of this section.

(e) Prior to 60 days following the date for establishment of the board or restructuring of the board

pursuant to Subsection (f) of this section, any two or more cities lacking a specifically designated board member may combine to be treated as a single city for purposes of Subsection (c) of this section, but no combination will be entitled to appoint more than one member of the board.

(f) Every five years as of the first day of September following the date the census data or population estimates become available, the board shall be restructured pursuant to Subsections (c) and (h) of this section, if warranted by population changes or changes in combinations established pursuant to Subsection (e) of this section.

(g) The members of the board shall serve at the pleasure of the governing body of each appointing governmental entity. The governing body shall confirm its board appointment to begin terms on the first day of September each year.

(h) The total number of members comprising the board shall be governed by the total population of the territory included in the subregion. Specifically, the board size shall be determined by the following formula:

Total Population in Subregion	Total Members on Subregional Board
Less than 1,000,000	15
1,000,000 to 1,400,000	21
1,400,000 plus	25

(i) Should a city be entitled to more than one board member, the governing body may appoint a number of members less than those allocated, who will be entitled to the same number of votes as the number of members allocated, but a member so appointed shall not cast divided votes.

(j) Sixty-five percent of the members constitutes a quorum for the purpose of conducting business and actions may be taken upon a majority vote of the members present so long as there is a quorum.

Subregional Board in a Subregion Having a Principal City with Population Less than 800,000

Sec. 7. (a) The subregional board in a subregion having a principal city with population less than 800,000 shall be organized in accordance with this section.

(b) The interim subregional board shall be comprised of nine members appointed as follows:

- (1) four members appointed by the governing body of the principal city;
- (2) four members appointed by the commissioners court of the county of the principal city; and
- (3) one member appointed by the governing body of a city having a population in excess of 100,000.

(c) The permanent subregional board shall be comprised of nine members appointed as follows:

(1) If the entire county of the principal city is confirmed as all or part of the authority, the permanent subregional board shall be appointed in the same manner as the interim subregional board.

(2) If less than the entire county of the principal city is confirmed as all or part of the authority the permanent subregional board shall be appointed as follows:

(A) The commissioners court of the county of the principal city shall appoint at least one member to represent the unincorporated areas and incorporated cities of the county which are not otherwise represented on the subregional board.

(B) The remaining members shall be apportioned to the incorporated cities confirmed as all or part of the subregion according to the ratio which the population of each unit of election bears to the total population of the area confirmed as the subregion. Units of election which fail to receive at least one member shall be aggregated with the county to determine population represented by the county, and appropriate additional members, if any, shall be so apportioned to the county. Units of election which are entitled to one or more members shall have the number of members rounded to the nearest whole number to determine actual apportionment.

(d) Six members of the subregional board shall constitute a quorum of the board for the purpose of conducting business and action may be taken by a majority vote of the members present so long as there is a quorum.

**Membership, Terms, Meetings, and Responsibilities
of Subregional Boards**

Sec. 8. (a) Members of subregional boards must be registered voters residing within the boundaries of the authority. They shall serve at the pleasure of the appointing local governing bodies. Reaffirmation of the appointments will be required each September 1. Vacancies shall be filled in the same manner as original appointments.

(b) A subregional board shall elect from among its membership a chairman, vice-chairman, and secretary. The board may appoint such assistant secretaries, either members or nonmembers of the board, as it deems necessary. The secretary and assistant secretary or secretaries shall in addition to keeping the permanent records of all proceedings and transactions of the board perform such other duties as may be assigned to them by the board. No member of a subregional board shall be pecuniarily interested or benefited directly or indirectly in any contract or agreement to which the authority is a party.

(c) A subregional board when organized shall by resolution set the time, place, and day of the regular

meetings and shall likewise adopt rules and regulations and such bylaws as it may deem necessary for the conduct of its official meetings and special meetings called by written notice of the chairman or vice-chairman.

(d) The subregional boards shall:

(1) develop, recommend, and approve the annual budget for the appropriate subregion and shall make recommendations for the overall budget; and

(2) make recommendations to the executive committee for operation of services provided by the authority.

Confirmation Election

Sec. 9. (a) After the interim executive committee has organized, developed a service plan, and determined the rate of tax that it desires to levy, it shall call a confirmation election in accordance with the provisions of this section.

(b) Before ordering an election, the executive committee shall notify the commissioners court of each county included in whole or part within the initial territory of the authority of its intention to do so. Within 30 days after receipt of the notice, each commissioners court by order shall create not more than five designated units of election in the unincorporated portion of the appropriate county. Each designated unit of election shall have outer boundaries, to the extent practicable, that coincide with a boundary of a county voting precinct so that insofar as practicable no county voting precinct is divided between two different designated election areas. The total area of all designated election areas shall include all of the unincorporated area within the initial territory of the authority.

(c) When the executive committee orders a confirmation election, it shall submit to the qualified voters within the authority the following proposition:

Shall the creation of (name of authority) be confirmed and shall the levy of the proposed tax be authorized?

(d) Except as otherwise provided in this Act, notice of the election shall be given in accordance with the general election laws. The notice of the election shall include a description of the nature and rate of the proposed tax. A copy of the notice of the election and any other election held pursuant to this Act shall be furnished to the State Highways and Public Transportation Commission and the comptroller of public accounts.

(e) The election shall be conducted so that votes are separately tabulated and canvassed in each unit of election within the authority.

(f) Immediately after the election, the presiding judge of each election precinct shall return the re-

sults to the executive committee, which shall canvass the returns and declare the results separately with respect to each unit of election. In those units of election where a majority of the votes cast is in favor of the confirmation of the creation of the authority and the levy of the proposed tax, the authority shall continue to exist; except that unless the vote is favorable in the unit of election which includes the principal city, the authority shall cease to exist in that subregion. If the votes cast are such that the authority will continue to exist in either or both subregions, the executive committee shall enter the results on its minutes and adopt an order declaring that the creation of the authority is confirmed and describing the territory which comprises the authority. All units of election approving the authority and proposed tax shall be included in the authority if their subregion is included, unless the executive committee of the authority notifies the appropriate governing body in writing that it is excepted from the authority and proposed tax because it is not contiguous to the existing authority and would create a fiscal hardship on the authority. A certified copy of the order adopted by the executive committee shall be filed with the State Highways and Public Transportation Commission and the comptroller of public accounts. The order shall reflect the date of the election, the proposition voted on, the total number of votes cast for and against the proposition in each unit of election, and the number of votes by which the proposition was approved in each election unit and shall be accompanied by a map of the authority clearly showing the boundaries of the authority.

(g) If the votes cast are such that the authority ceases to exist in its entirety, the executive committee shall enter an order so declaring and file a certified copy of the order with the State Highways and Public Transportation Commission and the comptroller of public accounts, and the authority shall be dissolved.

(h) The cost of the confirmation election shall be paid by the creating entity or entities.

(i) If the election results in the confirmation of an authority, the authority shall, within the limits confirmed, be authorized to function in accordance with the terms of this Act, and the executive committee may levy and collect the proposed tax within those limits. In no event shall the tax authorized under this Act be levied in any unit of election which has failed to confirm the authority.

(j) If the continued existence of an authority is not confirmed by election within three years after the effective date of the resolution(s) or order(s) initiating the process to create the authority, the authority ceases to exist on the expiration of the three years.

(k) For a period of one year following a confirmation election, the governing body of any unit of election may on its own volition or shall upon receipt of a petition containing signatures of at least 20 percent of the registered voters within that unit of election call an election and offer the following proposition: "Shall the (name of authority) be dissolved in (unit of election)?" Should the majority of voters voting in the election vote to dissolve the authority within the unit of election, the authority shall cease to exist within the unit of election as of 12:00 midnight on the date of the canvass of the election and all financial obligations of that unit of election will cease to accrue at that time. The financial obligation shall be computed on a per capita basis for the entire year and taxes will continue to be collected until such time as all financial obligations of the unit of election are paid, at which time the taxes collected to support the authority shall cease within that unit of election.

(l) Should the governing body within a unit of election call an election on its own volition or upon petition as provided in Subsection (k) of this section for the purpose of dissolving the authority within the unit of election more than 12 months after the confirmation election, at least 12 months' notice of intent to hold the election must be provided to the executive committee, the State Department of Highways and Public Transportation and the comptroller of public accounts.

Powers of the Authority

Sec. 10. (a) The authority when created and confirmed shall constitute a public body corporate and politic, exercising public and essential governmental functions, having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Act, including but not limited to the following powers granted in this section.

(b) The authority shall have perpetual succession.

(c) The authority may sue and be sued in all courts of competent jurisdiction and may institute and prosecute suits without giving security for costs and may appeal from a judgment or judgments without giving supersedeas or cost bond.

(d) The authority may acquire by grant, purchase, gift, devise, lease, or otherwise and may hold, use, sell, lease, or dispose of real and personal property of every kind and nature whatsoever and licenses, patents, rights, and interests necessary, convenient, or useful for the full exercise of any of its powers pursuant to the provisions of this Act.

(e) The authority shall have the power to acquire, construct, complete, develop, plan, own, operate, and maintain a system or systems within its boundaries and both within and without the boundaries of incorporated cities, towns, and villages and political subdivisions and for such purposes shall have the right

to use the streets, alleys, roads, highways, and other public ways and to relocate, raise, reroute, change the grade of, and alter the construction of any street, alley, highway, road, railroad, electric lines and facilities, telegraph and telephone properties and facilities, cable television lines and facilities, pipelines and facilities, conduits and facilities, and other properties, whether publicly or privately owned, as necessary or useful in the construction, reconstruction, repair, maintenance, and operation of the system or to cause each and all of said things to be done at the authority's sole expense. The authority shall not proceed with any action to change, alter, or damage the property or facilities of the state, its municipal corporations, agencies, or political subdivisions or of owners of such property or facilities, without having first obtained the written consent of such owners or unless the authority shall have first obtained the right to take such action under its power of eminent domain as herein specified. In the event the owners of such property or facilities desire to handle any such relocation, raising, change in the grade of, or alteration in the construction of such property or facilities with their own forces or to cause the same to be done by contractors of their own choosing, the authority shall have the power to enter into agreements with such owners providing for the necessary relocations, changes, or alterations of such property or facilities by the owners and/or such contractors and the reimbursement by the authority to such owners of the costs incurred by such owners in making such relocations, changes, or alterations and/or in causing the same to be accomplished by such contractors.

(f) In the event the authority in exercising any of the powers conferred by this Act makes necessary the relocation, adjustment, raising, lowering, rerouting, or changing the grade of or altering the construction of any street, alley, highway, or road; any railroad track, bridge, or other facilities or properties; any electric lines, conduits, or other facilities or properties; any gas transmission or distribution pipes, pipelines, mains, or other facilities or properties; any water, sanitary sewer, or storm sewer pipes, pipelines, mains, or other facilities or properties; any telegraph and telephone lines or other facilities or properties; any cable television lines, cables, conduits, or other facilities or properties; or any other pipelines and any facilities or properties relating thereto, any and all such relocations, adjustments, raising, lowering, rerouting, or changing of grade or altering of construction shall be accomplished at the sole cost and expense of the authority, and all damages which may be suffered by the owners of such property or facilities shall be borne by the authority.

(g) The authority shall have the right of eminent domain to acquire lands in fee simple and any interest less than fee simple in, on, under, and above

lands, including without limitation easements, rights-of-way, rights of use of air space or subsurface space, or any combination thereof; provided that such right shall not be exercised in a manner which would unduly impair the then existing neighborhood character of property surrounding or adjacent to the property sought to be condemned or unduly interfere with interstate commerce or which would authorize the authority to run its vehicles on railroad tracks which are used to transport property.

(h) Eminent domain proceedings brought by the authority shall be governed by the provisions of Title 52, Eminent Domain, Revised Civil Statutes of Texas, 1925, as they now exist or hereafter may be amended,¹ insofar as such provisions are not inconsistent with this Act. Proceedings for the exercise of the power of eminent domain shall be commenced by the adoption by the executive committee of a resolution declaring the public necessity for the acquisition by the authority of the property or interest therein described in the resolution, and that such acquisition is necessary and proper for the construction, extension, improvement, or development of the system and is in the public interest. The resolution of the authority shall be evidence of the public necessity of such proposed acquisition and that such real or personal property or interest therein is necessary for public use.

(i) The authority shall have the power to enter into agreements with any other public utility, private utility, communication system, common carrier, or transportation system for the joint use of their respective facilities, installations and properties within the authority and to establish through routes, joint fares, or transfer of passengers.

(j) The authority shall establish and maintain rates, fares, tolls, charges, rents, or other compensation for the use of the facilities of the system acquired, constructed, operated, or maintained by the authority which shall be reasonable and nondiscriminatory and which together with grants and receipts from taxes collected by the authority shall be sufficient to produce revenues adequate:

(1) to pay all expenses necessary to the operation and maintenance of the properties and facilities of the authority;

(2) to pay the interest on and principal of all bonds issued by the authority under this Act which are payable in whole or in part from such revenues, when and as the same shall become due and payable;

(3) to pay all sinking fund and reserve fund payments agreed to be made in respect of any such bonds, and payable out of such taxes and revenues, when and as the same shall become due and payable; and

(4) to fulfill the terms of any agreements made with the holders of such bonds or with any person in their behalf.

(k) It is the intention of this Act that taxes levied and the rates, fares, tolls, charges, rents, and other compensation for the use of the facilities of the system shall not be in excess of what may be necessary to fulfill the obligations imposed upon the authority by this Act. Nothing herein shall be construed as depriving the State of Texas of its power to regulate and control such taxes, rates, fares, tolls, charges, rents, and other compensation; provided that the State of Texas does hereby pledge to and agree with the purchasers and successive holders of the bonds issued hereunder that the state will not limit or alter the powers hereby vested in the authority to establish and collect such taxes, rates, fares, tolls, charges, rents, and other compensation as will produce revenues sufficient to pay the items specified in Subdivisions (1), (2), (3), and (4), Subsection (j) of this section or in any way to impair the rights or remedies of the holders of the bonds or of any person in their behalf until the bonds, together with the interest thereon, with interest on unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders and all other obligations of the authority in connection with such bonds are fully met and discharged.

(l) The authority may make contracts, leases, and agreements with and accept grants and loans from the United States of America, its departments and agencies, the State of Texas, its agencies, counties, municipalities, and political subdivisions, and public or private corporations and persons and may generally perform all acts necessary for the full exercise of the powers vested in it. The authority may acquire rolling stock or other property under conditional sales contracts, leases, equipment trust certificates, or any other form of contract or trust agreement. Any revenue bond indenture may provide limitations upon the exercise of the powers stated in this section and such limitations shall apply so long as any of the revenue bonds issued pursuant to such indenture are outstanding and unpaid.

(m) The authority may sell, lease, convey, or otherwise dispose of any of its rights, interests, or properties which are not needed for or, in the case of leases, which are not inconsistent with the efficient operation and maintenance of the system. It may sell, lease, or otherwise dispose of at any time any surplus materials or personal or real property not needed for its requirements or for the purpose of carrying out its power under this Act.

(n) The authority shall by resolution make all rules and regulations governing the use, operation, and maintenance of the system and shall determine all routings and change the same whenever it is

deemed advisable. The authority shall encourage to the maximum extent feasible the participation of private enterprise.

(o) The authority shall have the power to lease the system or any part thereof to or contract for the use or operation of the system or any part thereof by any operator.

(p) The acquisition of any land or interest therein pursuant to this Act, the planning, acquisition, establishment, development, construction, improvement, maintenance, equipment, operation, regulation, protection, and policing of the authority's system and facilities, and the exercise of any other powers herein granted an authority are hereby declared to be public and governmental functions, exercised for a public purpose, and matters of public necessity.

(q) The authority may contract with any city, county, or other political subdivision for the authority to provide public transportation services to any area outside the boundaries of the authority on such terms and conditions as may be agreed to by the parties.

(r) The authority shall have the power to acquire, construct, complete, develop, plan, own, operate, and maintain a public transportation system and general transportation services within its boundaries and both within and without the boundaries of incorporated cities, towns, and villages and political subdivisions. The powers of the authority may be approved all or in part by referenda proposed by the executive committee. These powers as they relate to a public transportation system and general transportation services are identical to those outlined in other subsections of this section.

(s) The executive committee of the authority may establish a security force and provide for the employment of security personnel. The executive committee may commission any employee of the security force established under this Act as a peace officer if he is certified as qualified to be a peace officer by the Commission on Law Enforcement Officer Standards and Education. Any person commissioned as a peace officer under this Act shall give an oath and such bond for the faithful performance of his duties as the executive committee may require. The bond shall be approved by the executive committee and made payable to the authority. It shall be filed with the executive committee. Any peace officer commissioned under this Act shall be vested with all the rights, privileges, obligations, and duties of any other peace officer in this state while he is on the property under the control of the authority or in the actual course and scope of his employment.

(t) Any and all law enforcement police powers granted pursuant to this section shall be subordinate to the law enforcement police power of an incorporated city wherein the power is attempted to be exercised.

¹ Article 3264 et seq.

Addition of Territory

Sec. 11. (a) Territory may be added to an authority only according to the provisions of this section.

(b) The governing body of an incorporated city or town located in whole or in part within a county in which the authority is situated, other than a principal city as defined by this Act, may hold an election on the question of whether the city or town shall be annexed to the authority. If a majority of the qualified voters in the city or town votes for annexation, the governing body shall certify the results of the election to the executive committee of the authority, and the city or town shall become a part of the authority, except as provided in Subsection (f) of this section. Should a principal city or subregion as defined by this Act choose to consider becoming a member of the authority, the procedures outlined in Sections 3 and 4 of this Act shall apply. Following the conduct of an election as directed by Section 9 of this Act, a subregional board will be established according to either Section 6 or Section 7 of this Act. The executive committee existing before the additional subregional board is created will be modified to conform with Section 5 of this Act.

(c) A city of 90,000 to 100,000 according to the last preceding decennial census located in a county with a principal city having a population of less than 800,000 according to the last preceding decennial census may join a separate authority upon otherwise complying with the terms of this Act. In such event thereafter, should a separate authority be established in a county with a principal city of less than 800,000 population according to the last preceding decennial census, any city within such county which has voted to participate with any authority created pursuant to this Act shall have the following options at that time: to remain a part of the earlier created authority, to join the new authority in the county in which the city is located, or to participate with both authorities. Provided that any such city wherein capital improvements have been previously made at its request by an authority must upon its transfer to a different authority or participation with more than one authority continue to honor reimbursement obligations resulting from such improvements.

(d) The commissioners court of a county in which the authority is situated in whole or in part or that is adjacent to a county in which the authority is situated in whole or in part may hold an election for unincorporated areas in any one or more of the designated election areas formed for the election by order of the commissioners court on the question of whether the unincorporated area in which the election is held shall be annexed to the authority. The boundaries of a designated election area shall coincide to the extent practicable with the boundary of a county voting precinct so that insofar as practicable

no county voting precinct is divided. If a majority of the qualified voters in any area where such an election is held votes in favor of annexation, the commissioners court shall certify the results of the election to the executive committee of the authority, and the unincorporated area shall become a part of the authority, except as provided in Subsection (f) of this section.

(e) If a city or town which is a part of an authority lawfully annexes additional territory which is not a part of the authority, the annexed territory becomes a part of the authority.

(f)(1) If an authority adds territory or alters its boundaries, the presiding officer of the executive committee shall forward to the comptroller of public accounts by United States registered mail or certified mail a certified copy of the order adding territory to the authority or of the order canvassing the returns and declaring the result of the election. The order shall reflect the effective date of the tax and shall be accompanied by a map of the authority clearly showing the territory added or detached.

(2) Upon receipt of the order and map, the tax imposed and authorized to be collected under Section 16 of this Act shall be effective in the added territory on the first day of the next succeeding quarter. However, if the comptroller notifies the presiding officer of the executive committee in writing within 10 days after receipt of the order and map that he requires more time, the comptroller shall be entitled to delay implementation one whole calendar quarter. Thereafter the tax shall be effective in the added territory on the first day of the next succeeding calendar quarter following the elapsed quarter.

(g) Territory in which an election is held as provided in Subsection (b) or (d) of this section becomes a part of the authority on the 31st day after the election, if the voters approve the addition as provided in Subsection (b) or (d) of this section, and unless the executive committee of the authority notifies the appropriate governing body in writing before that date that the addition, because it is not contiguous to the existing authority, would create a fiscal hardship on the authority.

(h) Separate subregional authorities created pursuant to this Act may voluntarily merge upon a subsequent agreement between them.

Separate Subregional Authority

Sec. 12. In the event one subregion should establish a regional transportation authority, the remaining subregion may establish a separate regional transportation authority pursuant to this Act. In a separate subregion with a principal city of less than 800,000, the tax rate shall be approved by the commissioners court before confirmation election as provided in Section 9 of this Act.

Composition of the Executive Committee

Sec. 13. If the existence of the authority is confirmed in both subregions, then the executive committee shall be organized as provided in Section 5 of this Act. If a creating entity in only one subregion initiates the process or if the existence of the authority is confirmed in only one subregion or separate subregion, then the board for that subregion shall become the executive committee and governing body of the authority, and members of the executive committee shall be selected in the manner prescribed for selection of the members of the board for the subregion that comprises the authority.

Station or Terminal Complexes

Sec. 14. (a) The acquisition of any land or any interest in land pursuant to this Act; the planning, acquisition, establishment, development, construction, improvement, maintenance, equipment, operation, regulation, protection, and policing of the authority's system and facilities; and the exercise of any other powers granted an authority, including without limitation the rights, powers, and authority relating to station or terminal complexes as provided in this section, are declared to be public and governmental functions, exercised for a public purpose, and matters of public necessity for public use and public benefit.

(b) The authority shall have the right, power, and authority to acquire by grant, purchase, gift, devise, lease, or eminent domain proceedings and to own lands in fee simple and any interest less than fee simple in, on, under, and above lands, including without limitation easements, rights-of-way, rights of use of air space or subsurface space or any combination thereof adjacent or accessible to stations and other public or general transportation facilities developed or to be developed by the authority that may be required for or in aid of the development of one or more station or terminal complexes, as part of its transportation system and may sell, lease, or otherwise transfer the same or any part thereof to individuals, corporations, or governmental entities, subject to the restrictions provided in this section.

(c) Any lands or interests in land acquired for a station or terminal complex must be part of or contained within a station or terminal complex designated as part of the system within a comprehensive service plan approved by resolution of the executive committee. Before a station or terminal complex may be included in the system, the executive committee must find and determine that the proposed station or terminal complex will encourage and provide for efficient and economical public transportation service, will facilitate access to public transportation service and provide other public transportation purposes, will reduce vehicular con-

gestion and air pollution in the metropolitan area, and is reasonably essential to the successful operation of the system. The executive committee may amend its comprehensive service plan to include other station or terminal complexes upon making these findings.

(d) Any station or terminal complex shall include adequate provisions for the transfer of passengers between the various modes of transportation available to the complex. A complex may include provisions for commercial, residential, recreational, institutional, and industrial facilities, except that no lands or interests in land more than 1,500 feet in distance from the center point of the complex may be acquired for the facilities by eminent domain proceedings, and the executive committee shall designate the center point prior to the commencement of eminent domain proceedings. If a proposed station or terminal complex is to be located within the city limits or extraterritorial jurisdiction of a city or town, the governing body of the city or town must approve the location of the complex as to conform with the comprehensive or general plan of the city or town by motion, resolution, or ordinance duly adopted.

(e) The authority may sell, lease, or otherwise transfer lands or interests in land acquired within a station or terminal complex and may enter into contracts with respect to it in accordance with the comprehensive service plan approved by the executive committee, subject to such covenants, conditions, and restrictions, including covenants running with the land and obligations to commence construction within a specified time, as the executive committee may deem to be in the public interest or necessary to carry out the purposes of this section, all of which shall be incorporated into the instrument transferring or conveying title or right of use. Any lease, sale, or transfer shall be at fair value taking into account the use designated for the land in the comprehensive service plan for the system and the restrictions on and the covenants, conditions, and obligations assumed by the purchaser, lessee, or transferee. However, if the authority offers the property for sale, the original owner from whom the property was acquired by eminent domain proceedings or through threat of eminent domain proceedings has the first right to repurchase at the price at which it is offered to the public.

(f) No station or public transportation facility may be considered a "station or terminal complex" governed by this section unless it has been designated as such in the comprehensive service plan pursuant to the specific authority granted by this section.

Bonds and Notes

Sec. 15. (a) The authority shall have no power to assess, levy, or collect ad valorem taxes on property, nor to issue any bonds or notes secured by ad valo-

rem tax revenues. The authority, however, shall have the full power to issue bonds and notes from time to time and in such amounts as it shall consider necessary or appropriate for the acquisition, purchase, construction, reconstruction, repair, equipping, improvement, or extension of the transportation system and all properties thereof whether real, personal, or mixed. All such bonds and notes shall be fully negotiable and may be made redeemable before maturity at the option of the issuing authority at such price or prices and under such terms and conditions as may be fixed by the issuing authority in the resolution authorizing such bonds or notes and may be sold at public or private sale whichever the executive committee may deem more advantageous.

(b) Prior to delivery, all bonds and notes authorized to be issued hereunder and the records relating to their issuance shall be submitted to the Attorney General of Texas for examination, and if he finds that they have been issued in accordance with the constitution and this Act and that they will be binding obligations of the authority, he shall approve them, and thereupon they shall be registered by the Comptroller of Public Accounts of the State of Texas, and after such approval and registration and the sale and delivery of the bonds to the purchaser, they shall be incontestable.

(c) In order to secure the payment of such bonds or notes, such authority shall have full power and authority to encumber and pledge all or any part of the revenue realized from any tax which the authority is authorized to levy and all or any part of the revenues of its transportation system and to mortgage and encumber all or any part of the properties thereof and everything pertaining thereto acquired or to be acquired and to prescribe the terms and provisions of such bonds and notes in any manner not inconsistent with the provisions of this Act. If not prohibited by the resolution or indenture relating to outstanding bonds or notes, any such authority shall have full power and authority to encumber separately any item or items of real estate or personalty, including motorbuses, transit cars and other vehicles, machinery, and other equipment of any nature, and to acquire, use, hold, or contract for any such property under any lease arrangement, chattel mortgage, or conditional sale, including but not limited to transactions commonly known as equipment trust transactions. Nothing herein shall be construed as prohibiting an authority from encumbering any one or more transportation systems for the purpose of purchasing, building, constructing, enlarging, extending, repairing, or reconstructing another one or more of said systems and purchasing necessary property, both real, personal, and mixed, in connection therewith.

(d) Refunding bonds or notes may be issued for the purposes and in the manner provided by general

law, including without limitation Chapter 503, Acts of the 54th Legislature, Regular Session, 1955, as amended (Article 717k, Vernon's Texas Civil Statutes), and Chapter 784, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-3, Vernon's Texas Civil Statutes), as presently enacted or hereafter amended.

(e) Whenever the revenues of any public transportation system or general transportation services shall be encumbered under this Act, the expense of operation and maintenance, including all salaries, labor, materials, and repairs necessary to render efficient service and every proper item of expense, shall always be a first lien and charge against such revenues. The fares charged for transportation of passengers by any system may be based upon a zone system of determining fares or other fare classification determined by such authority to be reasonable.

(f) All such bonds and notes shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, savings and loan associations, and insurance companies. Such bonds and notes shall be eligible to secure the deposit of any and all public funds of the State of Texas and any and all public funds of cities, towns, villages, counties, school districts, or other political subdivisions of the State of Texas, and such bonds and notes shall be lawful and sufficient security for said deposits to the extent of the principal amount thereof or their value on the market, whichever is the lesser, when accompanied by all unmatured coupons appurtenant thereto.

(g) If revenue bonds are to be issued by an authority to acquire any existing transportation system or any part thereof and the owner thereof is willing to accept said revenue bonds in lieu of cash, then in that event the revenue bonds may be exchanged for the property or for the stock of a corporation owning the property to be dissolved simultaneously.

(h) Bonds payable solely from revenues may be issued by resolution of the executive committee, but no bonds, except refunding bonds, payable wholly or partially from taxes may be issued until authorized by a majority vote of the qualified voters of the authority voting in an election called and held for that purpose.

Local Sales and Use Tax

Sec. 16. (a) Subject to approval at a confirmation election in accordance with this Act, the executive committee is authorized to levy, collect, and impose a local sales and use tax for the benefit of the authority, the sales tax portion of which shall not exceed one percent of receipts from the sale at retail of all taxable items within the authority area which are subject to taxation under the provisions of the Limited Sales, Excise and Use Tax Act, as

enacted and as heretofore or hereafter amended.¹ The tax rate may be levied or collected only as a quarter of one percent, a half of one percent, three-quarters of one percent, or one percent. The provisions of this section shall be applicable to the levy, imposition, and collection of the tax.

(b) The following words and terms shall have the following respective meanings unless a different meaning clearly appears from the context:

(1) "Authority area" means the geographical limits of the authority.

(2) "Comptroller" means the Comptroller of Public Accounts of Texas.

(3) "Local sales and use tax" means any sales and use tax imposed by a city within the authority area under the Local Sales and Use Tax Act (Article 1066c, Vernon's Texas Civil Statutes).

(c) The executive committee by filing a certified copy of the order with the comptroller may authorize and direct the comptroller to collect a rate of tax that is lower than the rate approved by the voters at the confirmation election.

(d) The executive committee shall not increase the tax rate above the rate approved by the voters at the confirmation election without first receiving a majority vote in favor of the increase at an authority-wide election.

(e) Upon actual receipt by the comptroller of notification of adoption, increase, or decrease of a local sales and use tax containing the information required by Subsection (f) of Section 9 of this Act, there shall elapse one whole calendar quarter prior to the adoption, increase, or decrease of a local sales and use tax becoming effective. Thereafter the adoption, increase, or decrease shall be effective beginning on the first day of the next calendar quarter following the elapsed calendar quarter.

(f)(1) Every retailer within the authority area shall add the tax imposed by the Limited Sales, Excise and Use Tax Act, any applicable local sales and use tax, and the tax imposed under the authority of this Act to his sale price, and when added, the combined tax shall constitute a part of the price, shall be a debt of the purchaser to the retailer until paid, and shall be recoverable at law in the same manner as the purchase price. The combined taxes on the transaction shall be determined by multiplying the amount of the sale by the total of the combined applicable tax rates. Any fraction of one cent which is less than one-half of one cent of tax shall not be collected. Any fraction of one cent of tax equal to one-half of one cent or more shall be collected by the retailer as a whole cent of tax. Provided, however, that any retailer who can establish to the satisfaction of the comptroller that 50 percent or more of his receipts from the sale of taxable items arise from individual transactions

where the total sales price when multiplied by the combined rates of the taxes imposed under the Limited Sales, Excise and Use Tax Act, any applicable local sales and use tax, and this section equals an amount that is less than one-half of one cent may exclude the receipts from such sales when reporting and paying the tax imposed under this Act, the Limited Sales, Excise and Use Tax Act, and any applicable local sales and use tax. No retailer shall avail himself of this provision without prior written approval of the comptroller. The comptroller shall grant such approval when he is satisfied that the retailer qualifies on the basis set forth in this section and when the retailer has submitted satisfactory evidence that he can and will maintain records adequate to substantiate the exclusion herein authorized. Any attempt on the part of any retailer to exercise this provision without prior written approval of the comptroller shall be deemed to be a failure and refusal to pay the taxes imposed by this Act, the Limited Sales, Excise and Use Tax Act, and any applicable local sales and use tax, and the retailer shall be subject to assessment for both taxes, penalties and interest as provided for in this Act, the Limited Sales, Excise and Use Tax Act, and any applicable local sales and use tax.

(2)(A) In every authority area where the tax authorized by this Act has been adopted pursuant to the provisions of this Act, there is hereby imposed an excise tax on the storage, use, or other consumption within such authority area of taxable items purchased, leased, or rented from any retailer on or after the effective date for collection of the sales tax portion of the sales and use tax for storage, use, or other consumption in such authority area at the same rate as the sales tax levied under this Act of the sales price of the taxable item or, in the case of leases or rentals, of said lease or rental price. Except as provided in Paragraph (D) of this subdivision, the use tax imposed by this section is not owed to and may not be collected by, for, or in behalf of an authority if no excise tax on the storage, use, or other consumption of an item of tangible personal property is owed to or collected by the state under the Limited Sales, Excise and Use Tax Act or if the tangible personal property is first stored, used, or consumed within an authority or area that has not adopted the sales and use tax imposed by this section.

(B) In each authority where the tax authorized by this Act has been imposed as provided in this Act, the excise tax imposed under the Limited Sales, Excise and Use Tax Act and any applicable excise tax under the Local Sales and Use Tax Act on the storage, use, or other consumption of taxable items and the excise tax imposed by this Act shall be added together to form a combined rate of excise tax which is equal to the sum of the applicable taxes. The tax imposed by this section shall be

collected by the comptroller on behalf of and for the benefit of such authority. The formula prescribed in Subdivision (1) of this subsection shall be applicable to the collection of the excise tax imposed under this section.

(C) The provisions of Article 20.031, Limited Sales, Excise and Use Tax Act shall be applicable to the collection of the tax imposed by this Subdivision (2), provided that the name of the authority where the sales and use tax authorized by this Act has been adopted shall be substituted for that of the state where the words "this state" are used to designate the taxing authority or to delimit the tax imposed; and provided further that the effective date for commencing the collection of the sales tax portion of the tax imposed by this Act in any authority area shall be substituted for the phrase "the effective date of this chapter."

(D) If a sale of tangible personal property is consummated within the state but not within an authority that has adopted the taxes imposed by this section and the tangible personal property is shipped directly into or brought by the purchaser or lessee directly into an authority that has adopted the taxes imposed by this section, the tangible personal property is subject to the use tax imposed by the authority under Paragraph (A) of this subdivision. The use is considered consummated at the location where the item is first stored, used, or otherwise consumed after the intrastate transit has ceased.

(E) If the tangible personal property is shipped from outside this state to a customer within this state, the tangible personal property is subject to the use tax imposed by Paragraph (A) of this subdivision and not the sales tax imposed by Subdivision (1) of this subsection. The use is consummated at the first point in this state where the property is stored, used, or otherwise consumed after interstate transit has ceased. Tangible personal property delivered to a point in this state is presumed to be for storage, use, or other consumption at that point until the contrary is established.

(3)(A) On and after the effective date of any tax imposed under the provisions of this Act, the comptroller shall perform all functions incident to the administration, collection, enforcement, and operation of the tax, and the comptroller shall collect, in addition to the taxes imposed by the Limited Sales, Excise and Use Tax Act, an additional tax under the authority of this Act specified by the authority, but not to exceed one percent on the receipts from the sale at retail or on the sale price or lease or rental price on the storage, use, or other consumption of all taxable items within such authority area, which items are subject to the Limited Sales, Excise and Use Tax Act. The tax imposed hereunder and the tax imposed under the Limited Sales, Excise and Use Tax Act and any applicable local sales and use

tax shall be collected together and reported upon such forms and under such administrative rules and regulations as may be prescribed by the comptroller not inconsistent with the provisions of this Act. On and after the effective date of any proposition to abolish such local sales and use tax in any authority area, the comptroller shall comply therewith.

(B) The comptroller shall make to the authority substantially the same reports as to taxes within the authority area as are made to cities under Subsections 5(b), (c), and (d) of the Local Sales and Use Tax Act.

(4) The following provisions shall govern the collection by the comptroller of the tax imposed by this Act:

(A) All applicable provisions contained in the Limited Sales, Excise and Use Tax Act and Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended, shall apply to the collection of the tax imposed by this Act, except as modified in this Act.

(B) The provisions contained in Section 6 of the Local Sales and Use Tax Act shall apply to the levy, imposition, and collection of the tax imposed by this Act, except as modified herein.

(C) The penalties provided in the Limited Sales, Excise and Use Tax Act and Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended, for violations of that Act are hereby made applicable to violations of this Act.

(D) The sales and use tax collected by the comptroller under this Act shall be deposited, held, accounted for, and transmitted for the authority as provided in Section 7 of the Local Sales and Use Tax Act.

(5) The authority's share of all sales and use tax collected under this Act by the comptroller shall be transmitted to the treasurer or the officer performing the functions of such office of such authority by the comptroller payable to the authority periodically as promptly as feasible. Transmittals required under this Act shall be made at least twice in each state fiscal year. Before transmitting such funds, the comptroller shall deduct two percent of the sum collected from the authority during such period as a charge by the state for its services specified in this Act, and the amounts so deducted shall be deposited by the comptroller in the State Treasury to the credit of the General Revenue Fund of the state. The comptroller is authorized to retain in the suspense account of an authority a portion of the authority's share of the tax collected under this Act. Such balance so retained in the suspense account shall not exceed five percent of the amount remitted to the authority. The comptroller is authorized to make refunds from the suspense account of an authority for overpayments made to such accounts and

to redeem dishonored checks and drafts deposited to the credit of the suspense account of the authority. When an authority shall abolish such tax, the comptroller may retain in the suspense account of the authority for a period of one year five percent of the final remittance to the authority at the time of termination of collection of such tax in the authority to cover possible refunds for overpayment of the tax and to redeem dishonored checks and drafts deposited to the credit of such accounts. After one year has elapsed after the effective date of abolition of such tax in the authority, the comptroller shall remit the balance in such accounts to the authority and close the account.

(6) The comptroller may promulgate reasonable rules and regulations, not inconsistent with the provisions of this Act, to implement the enforcement, administration, and collection of the taxes authorized herein.

(7)(A) In an authority where the sales and use tax authorized by this Act has been imposed, if any person is delinquent in the payment of the amount required to be paid by him under this Act or in the event a determination has been made against him for taxes and penalty under this Act, the limitation for bringing suit for the collection of such delinquent tax and penalty shall be the same as that provided in Article 20.09, Limited Sales, Excise and Use Tax Act. Where any person is delinquent in payment of taxes under this Act, the comptroller shall notify the authority to which delinquent taxes are due under this Act by United States registered mail or certified mail and shall send a copy of the notice to the attorney general. The authority, acting through its attorney, may join in any suit brought by the attorney general as a party plaintiff to seek a judgment for the delinquent taxes and penalty due such authority. The notice sent by the comptroller to the authority showing the delinquency of a taxpayer constitutes a certification of the amount owed and is prima facie evidence of the determination of the tax and of the delinquency of the amounts of sales and use tax set forth in the notice.

(B) Where property is seized by the comptroller under the provisions of any law authorizing seizure of the property of a taxpayer who is delinquent in payment of the tax imposed by the Limited Sales, Excise and Use Tax Act and where such taxpayer is also delinquent in payment of any tax imposed by this Act, the comptroller shall sell sufficient property to pay the delinquent taxes and penalty due an authority under this Act in addition to that required to pay any amount due the state under the Limited Sales, Excise and Use Tax Act and due any city under the Local Sales and Use Tax Act. The proceeds from such sale shall first be applied to all sums due the state, then all sums due any city under the

Local Sales and Use Tax Act, and the remainder, if any, shall be applied to all sums due the authority.

(C) An authority that has adopted the tax authorized by this Act may bring suit for the collection of sales, excise, or use taxes imposed by this Act which have been certified as provided in Paragraph (A) of this subdivision and are owed to the authority under this Act if at least 60 days before the filing of the suit written notice by certified mail of the tax delinquency and of the intention to file suit is given to the taxpayer, the comptroller, and the attorney general and if neither the comptroller nor the attorney general disapproves the suit by written notice to the authority.

(D) The comptroller or attorney general may disapprove the institution of tax suit by an authority if:

(i) negotiations between the state and the taxpayer are being conducted for the purpose of the collection of delinquent taxes owed to the state and the authority seeking to bring suit;

(ii) the taxpayer owes substantial taxes to the state and there is a reasonable possibility that the taxpayer may be unable to pay the total amount owed in full;

(iii) the state will bring suit against the taxpayer for the collection of all sales, excise, and use taxes due under the Limited Sales, Excise and Use Tax Act and this Act; or

(iv) the suit involves a critical legal question relating to the interpretation of state law or a provision of the Texas Constitution or the United States Constitution in which the state has an overriding interest.

(E) A notice of disapproval to an authority must give reason for the determination of the comptroller or attorney general. A disapproval is final and not subject to review. An authority, after one year from the date of the disapproval, may proceed again as provided in Paragraph (C) of this subdivision even though the liability of the taxpayer includes taxes for which the authority has previously given notice and the comptroller or attorney general has previously disapproved the suit.

(F) In any suit under this subdivision for the collection of the authority tax, a judgment for or against the taxpayer does not affect any claim against the taxpayer by a city or the state unless the state is a party to the action.

(G) A copy of the final judgment in favor of an authority in a case in which the state is not a party shall be abstracted by the authority and a copy of the judgment together with a copy of the abstract shall be sent to the comptroller. The authority shall collect taxes awarded to it under the judgment as provided by Subsection (4) of Section (G), Article 20.09, Limited Sales, Excise and Use Tax Act and is responsible for the renewal of the judgment before

the expiration of the 10-year period. If a collection is made by an authority on a judgment, notice of the amount collected shall be sent by certified mail to the comptroller. The comptroller may prescribe a form for the notice to be used by an authority.

¹ Taxation—General, art. 20.01 et seq.

Differential Tax Rates

Sec. 17. The executive committee by filing a certified copy of the order and a map of the authority clearly showing the boundaries of the subregions with the comptroller may authorize and direct the comptroller to collect a different rate of tax in each subregion as long as neither rate is greater than the rate approved by the voters at the confirmation election. In a subregion with a principal city of less than 800,000, the tax rate shall be approved by the commissioners court before the confirmation election as provided in Section 9 of this Act.

Management

Sec. 18. (a) The responsibility for the operation and control of the properties belonging to an authority shall be vested in its executive committee. The executive committee may:

(1) appoint and prescribe compensation for a general manager who shall employ persons, firms, partnerships, or corporations deemed necessary by the executive committee for the conduct of the affairs of the authority, including but not limited to bookkeepers, engineers, financial advisers, and operating or management companies and in accordance with executive committee policy, prescribe the duties, tenure, and compensation of each; all employees may be removed by the general manager;

(2) appoint auditors and attorneys and prescribe the duties, tenure, and compensation of each;

(3) become a subscriber under the Texas Workers' Compensation Act with any old-line legal-reserve insurance company authorized to write policies in the State of Texas;

(4) adopt a seal for the authority;

(5) invest funds of the authority in direct or indirect obligations of the United States, the state, or any county, city, school district, or other political subdivision of the state; funds of the authority may be placed in certificates of deposit of state or national banks or savings and loan associations within the state provided that they are secured in the manner provided for the security of the funds of counties of the State of Texas; the executive committee by resolution may provide that an authorized representative of the authority may invest and reinvest the funds of the authority and provide for money to be withdrawn from the appropriate accounts of the authority for the investments on such terms as the executive committee considers advisable;

(6) fix the fiscal year for the authority;

(7) establish a complete system of accounts for the authority and each year shall have prepared an audit of its affairs by an independent certified public accountant or a firm of independent certified public accountants which shall be open to public inspection; and

(8) designate one or more banks to serve as the depository for the funds of the authority.

(b) All funds of the authority shall be deposited in the depository bank or banks unless otherwise required by orders or resolutions authorizing the issuance of the authority's bonds or notes.

(c) To the extent that funds in the depository bank or banks are not insured by the Federal Deposit Insurance Corporation, they shall be secured in the manner provided by law for the security of funds of counties of the State of Texas.

(d) The executive committee by resolution may authorize a designated representative to supervise the substitution of securities pledged to secure the authority's funds.

Rules and Regulations

Sec. 19. (a) The executive committee may adopt and enforce reasonable rules and regulations:

(1) to secure and maintain safety and efficiency in the operation and maintenance of its facilities;

(2) governing the use of the authority's facilities and services by the public and the payment of fares, tolls, and charges; and

(3) regulating privileges on any land, easement, right-of-way, rolling stock, or other property owned or controlled by the authority.

(b) A condensed substantive statement of the rules and regulations shall be published after adoption once a week for two consecutive weeks in a newspaper with general circulation in the area in which the authority is located which notice shall advise that the full text of the rules and regulations is on file in the principal office of the authority where it may be read by any interested person. Such rules and regulations shall become effective 10 days after the second publication.

Competitive Bids

Sec. 20. Contracts for more than \$2,000 for the construction of improvements or the purchase of material, machinery, equipment, supplies, and all other property, except real property, shall be let on competitive bids after notice published once at least 15 days before the date fixed for receiving bids in a newspaper of general circulation in the area in which the authority is located. The executive committee may adopt rules governing the taking of bids and the awarding of such contracts. This section shall not apply to personal and professional services or to the acquisition of existing transit systems.

County Authority to Contract with Authority

Sec. 21. A commissioners court may contract with an authority for the authority to provide public transportation services to any unincorporated area outside the boundaries of the authority for a term and on those conditions as are determined to be desirable by the commissioners court and the executive committee. The county may levy and collect taxes or pledge and encumber other receipts or revenues as may be required to make any payments to the authority under the provisions of the contract.

Elections

Sec. 22. (a) This section governs all elections ordered by the executive committee except elections held under the provisions of Section 9 of this Act.

(b) Notice of an election ordered by the executive committee shall be given by publication once a week for three consecutive weeks with the first publication in a newspaper with general circulation in the authority at least 21 days before the election.

(c) A resolution calling an election and the notice of the election are sufficient if the date and hours of the election, the voting places within voting precincts for the election, and the propositions to be voted on are specified. The executive committee may define and declare voting precincts, determine the manner of absentee voting, and prescribe the election officers.

(d) As soon as practicable after an election, the executive committee shall canvass the returns of the election and declare the results.

(e) Where not otherwise provided in this section, the general election laws apply.

Exemptions from Taxes

Sec. 23. The property, revenues, and income of the authority and the interest bonds and notes issued by the authority shall be exempt from all taxes levied or to be levied by the State of Texas, its political subdivisions, counties, or municipal corporations.

Incorporated City May Provide Services

Sec. 23A. Nothing contained in this Act shall preclude an incorporated city from providing general transportation services or public transportation services.

Subregional Transportation Authorities in Contiguous Cities

Sec. 24. (a) Nothing contained in this Act shall require any city with boundaries contiguous to a principal city and with boundaries extending into two or more adjacent counties, two of which counties include a principal city, to be a part of or participate in the regional transportation authority provided herein. Such cities shall be called "contiguous cities."

(b) Nothing contained in this Act shall prohibit any such contiguous city from establishing a subregional transportation authority.

(c)(1) Within 60 days after initiation of the process provided in Section 3 of this Act by a principal city or a county of the principal city or within 60 days after a confirmation election or any election to dissolve the authority, in which a majority of the votes cast in such contiguous city either fail to confirm the creation of the authority or approve the dissolving of the authority, any such contiguous city may elect by resolution of its governing body not to participate in the regional transportation authority established by a principal city or county of a principal city.

(2) In the event such contiguous city shall elect not to participate in the regional transportation authority provided in this Act, its boundaries shall be excluded from the regional transportation authority proposed or created by the principal city or county of the principal city and shall not be included in the initiating process of said principal city or county of the said principal city as provided in Section 4 of this Act and the confirmation procedure of Section 9 of this Act.

(d) Any such contiguous city may create a subregional transportation authority by one of the following methods:

(1) The governing body of a contiguous city may initiate the process to create a subregional transportation authority on its own motion.

(2) If a petition requesting creation of a subregional transportation authority signed by at least five percent of the registered voters of the contiguous city is presented, the governing body of the contiguous city shall initiate the process for creating the subregional transportation authority.

(e) The subregional transportation authorities created in any two or more contiguous cities may establish a joint subregional transportation authority by contract. A subregional transportation authority or joint subregional transportation authorities may enter into contracts with a regional transportation authority.

(f) Except as it may conflict with the intent of this Section 24, the initiating procedure for a subregional transportation authority shall be the same as that provided in Section 4 of this Act. Where the word "principal city" is used therein, it shall mean contiguous city and where the word "authority" is used therein, it shall mean the subregional transportation authority.

(g)(1) The management, control, and operation of a subregional transportation authority and its property shall be vested in an executive committee comprised of five members selected by the governing body of the contiguous city.

(2) The members of the executive committee shall elect from among their number a chairman, a vice-chairman, and a secretary. The executive committee may appoint such assistant secretaries, either members or nonmembers of the executive committee, as it deems necessary. The secretary and assistant secretary shall, in addition to keeping the permanent records of all proceedings and transactions of the subregional transportation authority, perform such other duties as may be assigned to them by the executive committee. No member of the executive committee or officer of the subregional transportation authority shall be pecuniarily interested or benefited directly or indirectly in any contract or agreement to which the authority is a party.

(3) The executive committee shall hold at least one regular meeting during each month for the purpose of transacting the business of the subregional transportation authority. Upon written notice, the chairman may call special meetings as may be necessary. The executive committee, when organized, shall by resolution set the time, place, and day of the regular meetings and shall adopt rules, regulations, and bylaws as it may deem necessary for the conduct of its official meetings. Four members shall constitute a quorum of the executive committee for the purpose of conducting its business and exercising its powers, and action may be taken by the subregional transportation authority upon a vote of a majority of the executive committee members present unless the bylaws require a larger number for a particular action.

(4) The executive committee shall receive recommendations for the annual budget from the governing body of the contiguous city and shall obtain approval of the final annual budget from said contiguous city.

(h)(1) After the interim executive committee has organized, developed a service plan, and determined the rate of tax that it desires to levy, it shall call a confirmation election in accordance with the provisions of this section.

(2) Where the executive committee orders a confirmation election, it shall submit to the qualified voters within the subregional transportation authority the following proposition:

"Shall the creation of (name of authority) be confirmed and shall the levy of the proposed tax be authorized?"

(3) Except as otherwise provided in this Act, notice of the election shall be given in accordance with the general election laws. The notice of the election shall include a description of the nature and rate of the proposed tax. A copy of the notice of the election and any other election held pursuant to this Act shall be furnished to the State Highways and Public Transportation Commission.

(4) Immediately after the election, the presiding judge of each election precinct within the contiguous city shall return the results to the executive committee, which shall canvass the returns and declare the results of the election and adopt an order declaring the creation of the subregional transportation authority.

(5) If the votes cast are such that the subregional transportation authority ceases to exist in its entirety, the executive committee shall enter an order so declaring and file a certified copy of the order with the State Highways and Public Transportation Commission, and the authority shall be dissolved.

(6) The cost of the confirmation election shall be paid by the creating entity.

(7) If the election results in the confirmation of a subregional transportation authority, the authority shall, within the limits confirmed, be authorized to function in accordance with the terms of this Act, and the executive committee may levy and collect the proposed tax within those limits.

(8) If the continued existence of a subregional transportation authority is not confirmed by election within three years after the effective date of the resolution(s) or order(s) initiating the process to create the subregional transportation authority, the subregional transportation authority ceases to exist on the expiration of the three years.

(9) For a period of one year following a confirmation election, the governing body of any contiguous city may on its own volition or shall, upon receipt of a petition containing signatures of at least 20 percent of the registered voters within the contiguous city call an election and offer the following proposition: "Shall the (name of authority) be dissolved in city?" Should the majority of voters voting in the election vote to dissolve the subregional transportation authority within the contiguous city, the subregional transportation authority shall cease to exist within the city as of 12 midnight on the date of the canvass of the election and all financial obligations of that unit of election will cease to accrue at that time. The financial obligation shall be computed on a per capita basis for the entire year and taxes will continue to be collected until such time as all financial obligations of the contiguous city are paid, at which time the taxes collected to support the subregional transportation authority shall cease within the contiguous city.

(i) The following sections of this Act shall not apply to subregional transportation authorities:

Sections 5, 6, 7, 8, 9, 11, and 12.

(j) Sections 10, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, and 23 shall be applicable to the subregional transportation authorities. Whenever the term "authority" is used, it shall mean subregional transportation authority.

(k)(1) If a city or town which is a part of an authority lawfully annexes additional territory which is not a part of the subregional transportation authority, the annexed territory becomes a part of the subregional transportation authority.

(2) At the time territory is added to a subregional transportation authority under the provisions of this section, any tax which the board of the subregional transportation authority has already been authorized to levy applies to the added territory.

Eligibility of Excepted Areas for Federal Funds

Sec. 25. Ratification by referendum of an authority under the terms of this Act by less than all incorporated cities within the metropolitan area as defined herein shall not affect in any way the eligibility of such excepted incorporated cities to receive federal transit grants under the Surface Transportation Assistance Act of 1978 or any subsequent federal statutes.

Severability Clause

Sec. 26. If any word, phrase, clause, paragraph, sentence, part, or provision of this Act or the application thereof to any person or circumstance shall be held to be invalid or unconstitutional, the remainder of the Act shall nevertheless be valid, and the legislature hereby declares that this Act would have been enacted without such invalid or unconstitutional word, phrase, clause, paragraph, sentence, part, or provision. It is provided, however, that the provisions of Subsection (b) of Section 4 of this Act are not severable in whole or in part.

[Acts 1979, 66th Leg., p. 1610, ch. 683, §§ 1 to 26, eff. Aug. 27, 1979.]

3. CITY REGULATION

Art. 1119. Repealed by Acts 1975, 64th Leg., p. 2352, ch. 721, § 90, eff. Sept. 1, 1976

See, now, the Public Utility Regulatory Act, classified as art. 1446c.

Arts. 1121, 1122. Repealed by Acts 1975, 64th Leg., p. 2352, ch. 721, § 90, eff. Sept. 1, 1976

See, now, the Public Utility Regulatory Act, classified as art. 1446c.

Art. 1124. Repealed by Acts 1975, 64th Leg., p. 2352, ch. 721, § 90, eff. Sept. 1, 1976

See, now, the Public Utility Regulatory Act, classified as art. 1446c.

Art. 1125 to 1132. Repealed by Acts 1975, 64th Leg., p. 2352, ch. 721, § 90, eff. Sept. 1, 1976

See, now, the Public Utility Regulatory Act, classified as art. 1446c.

CHAPTER ELEVEN. TOWNS AND VILLAGES

Article

1134d. Validation of Incorporation, Boundary Lines and Governmental Proceedings; Towns and Villages Involved in Litigation Resulting in Agreed Judgment.

1146A. Appointment of Health Officer.

Art. 1134d. Validation of Incorporation, Boundary Lines and Governmental Proceedings; Towns and Villages Involved in Litigation Resulting in Agreed Judgment

Scope of Act

Sec. 1. This Act applies to any municipality originally incorporated or attempted to have been incorporated under Chapter 11, Title 28, Revised Civil Statutes of Texas, 1925, as amended (Article 1133, et seq., Vernon's Texas Civil Statutes), which after the date of its incorporation or attempted incorporation was party to a suit in the district court in which another city, town, or village was a party and the issue was raised that the incorporation or attempted incorporation violated the territory or extraterritorial jurisdiction of the other city, town, or village, and the suit resulted in the entry of an agreed judgment upholding the validity of the incorporation or attempted incorporation and providing for the adjustment of boundaries and areas of extraterritorial jurisdiction for the two municipalities, which judgment was either not appealed or not reversed on appeal.

Proceedings Validated

Sec. 2. The following are validated as of the dates on which they occurred:

(1) the incorporation or attempted incorporation of a municipality covered by this Act;

(2) the boundary lines of the municipality covered by the original incorporation or attempted incorporation proceedings;

(3) any governmental proceedings of the municipality relating to the adoption or attempted adoption of the provisions of Chapters 1 through 10, Title 28, Revised Civil Statutes of Texas, 1925, as amended (Article 961, et seq., Vernon's Texas Civil Statutes);

(4) all adjustments in the boundaries and areas of extraterritorial jurisdiction of the municipality that were carried out in accordance with the agreed judgment or the Municipal Annexation Act, as amended (Article 970a, Vernon's Texas Civil Statutes), whether the proceedings were carried out before or after an adoption or attempted adoption by the municipality of the provisions of Chapters 1 through 10, Title 28, Revised Civil Statutes of Texas, 1925, as amended;

(5) any proceedings of the municipality carried out after an adoption or attempted adoption by the municipality of the provisions of Chapters 1 through 10, Title 28, Revised Civil Statutes of Texas, 1925, as amended, relating to the issuance of general obligation bonds, the issuance of which was approved by a majority of the qualified voters of the municipality voting on the question in an election; and

(6) all other governmental acts or proceedings of the municipality.

Exclusions

Sec. 3. This Act does not apply to any matter that on the effective date of this Act:

(1) has been declared invalid by a final judgment of a court of competent jurisdiction; or

(2) is involved in litigation if the litigation ultimately results in the matter being held invalid by a final judgment of a court of competent jurisdiction.

[Acts 1978, 65th Leg., 2nd C.S., p. 9, ch. 3, §§ 1 to 3, eff. Aug. 14, 1978.]

Art. 1145. Quorum May Pass By-laws

The mayor shall be the president of the board of aldermen. At the first meeting of each new board of aldermen or as soon as practicable, the board shall elect one alderman to serve as president pro tempore for a term of one year and to perform the duties of the mayor in the event of the mayor's failure, inability, or refusal to act. The mayor shall, with three of the aldermen, constitute a quorum for the transaction of business. In the mayor's absence, any four of the aldermen constitute a quorum. The quorum has the power to appoint any alderman as a presiding officer at any meeting at which the mayor and president pro tempore are absent. The quorum shall have power to enact such by-laws and ordinances not inconsistent with the laws and constitution of this State as shall be deemed proper for the government of the corporation.

[Amended by Acts 1975, 64th Leg., p. 644, ch. 265, § 1, eff. Sept. 1, 1975.]

Art. 1146A. Appointment of Health Officer

If the board of aldermen appoints a city health officer under Article 4425, Revised Civil Statutes of Texas, 1925, as amended, the appointee is not required to be a resident of the city.

[Added by Acts 1977, 65th Leg., p. 891, ch. 335, § 2, eff. May 30, 1977.]

Art. 1148. Tax Sales

Repeal

This article is repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective Janu-

ary 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

CHAPTER THIRTEEN. HOME RULE

Article

1174a-10. Validation of Adoption of Charter; Governmental Acts and Proceedings.

Art. 1174a-10. Validation of Adoption of Charter; Governmental Acts and Proceedings

Applicability

Sec. 1. This Act applies to any incorporated city or town that before the effective date of this Act adopted or attempted to adopt a home-rule charter and since the adoption or attempted adoption has functioned as a home-rule city.

Proceedings Validated

Sec. 2. (a) All governmental acts and proceedings of a municipality covered by this Act regarding the adoption of a home-rule charter are validated as of the dates on which they occurred.

(b) All governmental acts and proceedings of the municipality since adoption or attempted adoption of the charter are validated as of the dates on which they occurred.

Effect on Litigation

Sec. 3. This Act does not apply to any matter that on the effective date of this Act:

(1) is involved in litigation if the litigation ultimately results in the matter being held invalid by a final judgment of a court of competent jurisdiction; or

(2) has been held invalid by a final judgment of a court of competent jurisdiction.

[Acts 1979, 66th Leg., p. 1552, ch. 668, §§ 1 to 3, eff. Aug. 27, 1979.]

Art. 1175. Enumerated Powers

Cities adopting the charter or amendment hereunder shall have full power of local self-government, and among the other powers that may be exercised by any such city the following are hereby enumerated for greater certainty:

[See Compact Edition, Volume 3 for text of 1 to 34]

35. A home-rule city may require all buildings to be constructed in accordance with energy conservation standards included in the building code, if any.

36. A home-rule city may adopt an ordinance which requires the demolition or repair of buildings which are dilapidated, substandard, or unfit for human habitation and which constitute a hazard to the health, safety, and welfare of the citizens. The ordinance must establish minimum standards for

continued use and occupancy of structures, and these standards shall apply to buildings regardless of when they were constructed. The ordinance must provide for proper notice to the owner and a public hearing. After the hearing, if the building is found to be substandard, the city may direct that the building be repaired or removed within a reasonable time. After the expiration of the allotted time the city has the power to remove the building at the expense of the city and assess the expenses on the land on which the building stood or to which it was attached and may provide for that assessment, the mode and manner of giving notice, and the means of recovering the removal expenses.

[Amended by Acts 1975, 64th Leg., p. 235, ch. 89, § 8, eff. Jan. 1, 1976; Acts 1975, 64th Leg., p. 627, ch. 258, § 1, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 905, ch. 413, § 1, eff. June 6, 1979.]

Sections 1 to 7 of Acts 1975, 64th Leg., ch. 89, were classified as art. 678i; § 9 thereof provided: "This Act takes effect on January 1, 1976."

Art. 1182c-4. Bonds, Issuance by Cities in Lieu of Unissued Bonds of Abolished Conservation and Reclamation District

Sec. 1. This Act shall apply to all incorporated cities, including home-rule cities, and those operating under general laws or special charters, which have heretofore abolished or may hereafter abolish or which have heretofore annexed, or hereafter may annex, all the land within one or more conservation and reclamation districts created under Article XVI, Section 59, of the Texas Constitution, including water control and improvement districts, freshwater supply districts, or municipal utility districts and have abolished or may abolish such districts as provided by applicable law, including but not limited to Article 1182c-1, Vernon's Texas Civil Statutes (Chapter 128, Acts of the Fiftieth Legislature of Texas, Regular Session, 1947), as same has been, or may hereafter be, amended. In the event any such district had, prior to such abolition, voted bonds for the purpose of providing waterworks, sanitary sewer or drainage facilities, any or all, which bonds were not issued, sold and delivered prior to such abolition, the governing body of such city shall be authorized to issue and sell bonds of said city in an amount not exceeding the amount of such voted but unissued district bonds, for the purpose of carrying out the purpose or purposes for which said district bonds were voted. Such bonds shall be authorized by ordinance adopted by the governing body of said city in which provision shall be made for the levy of taxes upon all taxable property within said city for the payment of principal and interest thereon when due. Said bonds shall be sold for not less than par and accrued interest, shall mature, bear interest, be subject to approval by the Attorney General of Texas and registration by the Comptroller of Public Accounts as provided by law for other general obligation bonds of such city, and when so approved, registered, and sold, shall be incontestable.

[See Compact Edition, Volume 3 for text of 2]
[Amended by Acts 1979, 66th Leg., p. 1884, ch. 761, § 1, eff. Aug. 27, 1979.]

Art. 1182c-5. Cities Which Have Annexed Territory Within Water Control and Improvement, Fresh Water Supply or Municipal Utility Districts

Application of Act; Succession to Powers, Duties, Assets and Obligations of Districts

Sec. 1. (a) This Act shall apply to all incorporated cities and towns, including Home Rule Cities and those operating under General Laws or special charters (hereinafter called "city" or "cities"), which now or hereafter contain within their city or corporate limits (by virtue of annexation of territory or original incorporation, either or both) any part of the territory within one (1) or more water control and improvement districts, freshwater supply districts or municipal utility districts (hereinafter called "district" or "districts"), which districts were organized for the primary purpose of providing such municipal functions as the supply of fresh water for domestic or commercial uses, or the furnishing of sanitary sewer service, any or all, when the balance of the territory comprising such district or districts lies in another city or cities so that the entire district lies wholly within two (2) or more cities. Such cities shall succeed to the powers, duties, assets and obligations of such district or districts in the manner and to the extent hereinafter provided. Nothing herein shall prohibit any city from continuing to operate utility facilities within any such district in which such facilities are, or were, owned and operated by such city at the time that the part of the territory of the district became, or becomes, a part of or included within the boundaries of such city.

(b) This Act shall also apply when the balance of the territory comprising a district or districts, other than a district created by a special act of the Legislature, lies in another city or cities and in unincorporated territory so that the entire district lies wholly within two (2) or more cities and in unincorporated territory. In this latter case dissolution of the district may be effected by the procedure in Section 2 hereof. This subsection shall not apply to a district created by a special act of the Legislature.

Abolition of Districts; Distribution of Assets; Assumption of Obligations

Sec. 2. (a) Such district may be abolished by mutual agreement between the district and the cities wherein such district lies. Subject to the provisions of Section 4 of this Act, such agreement shall provide for the distribution among such cities of all the properties and assets of the district and for the pro rata assumption by such cities of all the debts, liabilities and obligations of the district, said distri-

bution and assumption to be predicated or based upon the pro rata value of the properties and assets of the district going to such cities, respectively, to the entire value of such properties and assets. The determination of the value of such properties and assets may be on an original cost basis, a reproduction cost basis, or a fair market value basis or by any other valuation method agreed upon by the parties which reasonably reflects the value of the properties, assets, debts, liabilities, and obligations of the district. Such agreement shall designate the date upon which the district shall be abolished, and the agreement shall be approved by ordinance adopted by the governing body of each of the cities and by order or resolution adopted by the governing board of the district, and the same shall be so approved prior to the date designated in the agreement for such abolition, distribution, and assumption.

(b) In the event a district, other than a district created by a special act of the Legislature, lies wholly within two (2) or more cities and in unincorporated territory, said district may be abolished by mutual agreement between the district and all of the cities wherein portions of the district lie. Subject to the provisions of Section 4 of this Act, the agreement of dissolution shall provide for the distribution of assets and liabilities as stated in Subsection (a) hereof. The agreement shall also include a distribution among one (1) or more of the cities of the pro rata assets and liabilities lying outside the limits of the contracting cities, in unincorporated territory. In addition, the agreement shall also include provisions for service to customers in unincorporated areas previously within the service area of the abolished district. In this connection, the city providing service to customers in unincorporated areas is specifically authorized to charge its usual and customary fees and assessments to such customers and to new customers outside its incorporated limits. The agreement shall be approved by ordinance adopted by the governing body of each city and by order or resolution adopted by the governing board of the district, and the agreement shall have this approval before the date designated in the agreement for abolition, distribution, and assumption.

[See Compact Edition, Volume 3 for text of 2A to 6]

[Amended by Acts 1979, 66th Leg., p. 126, ch. 75, §§ 1, 2, eff. April 26, 1979.]

CHAPTER FOURTEEN. CITIES ON NAVIGABLE WATERS

Article

1187g. City of Port Arthur; Lake Sabine; Regulation.

Art. 1187f. Harbor and Port Facilities; Cities and Towns Over 5,000 on Gulf or Connecting Waters; Bonds

Application of Act; Authority of City

Sec. 1. This Act apply to every incorporated city or town (including Home Rule Cities) located on the coast of the Gulf of Mexico, or any channel, canal, bay or inlet connected therewith, having a population of more than five thousand (5,000) inhabitants according to the Federal Census last preceding the taking of any action by such city under the provisions of this Act. Every such city or town owning and operating port facilities (referred to hereinafter as "city") is hereby empowered and authorized to build, construct, purchase, acquire, lease as lessee, improve, enlarge, extend, repair, maintain, replace, develop, operate, lease, or cause to be built, constructed, improved, enlarged, extended, repaired, maintained, developed, or operated, any and all improvements and facilities which the governing body thereof deems to be necessary or convenient for the proper operation of the ports or harbors of such city. Without in any way limiting the generalization of the foregoing, it is expressly provided that such improvements and facilities mentioned above shall include lands, interests in lands, properties, wharves, piers, docks, roadways, belt railways, warehouses, grain elevators, transport facilities, handling facilities, storage facilities, ship repair facilities, dumping facilities, bunkering facilities, floating plans and facilities, lightering facilities, towing facilities, any other facilities which a navigation district is or may be authorized to provide by general law or specific act, any and all equipment and supplies, and all other structures, buildings, and facilities which the governing body deems to be necessary or convenient for the proper operation of the ports or harbors of such city. The improvements and facilities mentioned in this Section 1 are hereinafter referred to as the "improvements and facilities." Any city may construct improvements and facilities on land acquired by purchase, lease, or otherwise and may convey such land, or interest therein, or such improvements and facilities by lease as lessor, sublease as sublessor or sale by installment or otherwise upon terms and conditions as the city may determine to be advantageous.

Tax Bonds and Revenue Bonds; Election

Sec. 2. For the purpose of providing funds for any of the improvements and facilities provided in Section 1 hereof, the governing body of the city shall have the power and authority to issue from time to time tax bonds or revenue bonds of said city, either or both; provided, however, that no bonds payable from ad valorem taxes, except refunding bonds, shall be issued unless and until they have been authorized at an election at which a majority of the

persons qualified to vote and voting at said election have voted in favor thereof, said election to be called and held under the provisions of and in accordance with Chapter 1 of Title 22, Revised Civil Statutes of Texas, 1925, as the same is now or may hereafter be amended.¹ Notwithstanding the provisions or restrictions of any general or special law or charter to the contrary, no election shall be required to authorize the issuance under this Act of bonds payable solely from revenues if such bonds do not constitute a debt of the city or a pledge of its faith and credit and if the owner or holder of any such bond shall never have the right to demand payment out of any funds raised or to be raised by taxation.

¹ Article 701 et seq.

Pledge of Revenues; Collection of Fees and Charges; Payment of Interest and Principal; Sale of Revenue Bonds

Sec. 3. Revenue bonds may be issued secured solely by a pledge of and payable from the net revenues derived from the operation of all or any designated part or parts of the improvements and facilities then in existence or to be improved, constructed, or otherwise acquired, with the duty of the city to charge and collect fees, tolls, and charges, so long as any of the revenue bonds or interest thereon are outstanding and unpaid, sufficient to pay all maintenance and operation expenses of the improvements and facilities (the net revenues of which are pledged), the interest on such bonds as it accrues, the principal of such bonds as it matures, and to make any and all other payments as may be prescribed in the bond ordinance and other proceedings authorizing and relating to the issuance of such bonds. If a city ordinance adopted under Section 7 of this Act places management and control of the improvements, facilities, and properties under a board of trustees while revenue bonds and the interest on them remain outstanding or unpaid, the board of trustees, if authorized by Home Rule Charter, may fix charges, authorize expenditures, prepare budgets, and otherwise manage and control the pledged revenues. "Net revenues" as used herein shall mean the gross revenues derived from the operation of those improvements and facilities the net revenues of which are pledged to the payment of the bonds less (a) the reasonable expenses of maintaining and operating said improvements and facilities, and said maintenance and operation expenses shall include, among other things, necessary repair, upkeep, and insurance of said improvements and facilities, and (b) if the city is operating under a Home Rule Charter, any annual payment of the city as may be set out in said Charter. Revenue bonds issued hereunder may be sold at public or private sale, notwithstanding the provisions or restrictions of any general or special law or Charter to the contrary.

Revenue Bonds; Public or Private Sale; Security; Sale of Improvements and Facilities

Sec. 3A. Notwithstanding anything to the contrary in Section 3 or 7, revenue bonds may be issued secured solely by a pledge of all or any part of the revenue from any leases, subleases, sales or contracts of sale entered into by city with respect to the improvements and facilities to be financed with such revenue bonds and such revenue bonds may be additionally secured by a trust indenture and by a mortgage or deed of trust lien or security interest upon such improvements and facilities. In connection with the issuance of such revenue bonds, the city may lease as lessor, sublease as sublessor or sell to any person, firm, corporation, partnership, political subdivision of the State of Texas, or agency of the United States of America, all or any part of any improvements and facilities to be constructed or acquired with the proceeds of such revenue bonds, said lease, sublease, sale or contract of sale to contain such terms and provisions (including in the case of a lease, but not by way of limitation, provisions to sell the improvements and facilities at the termination of said lease and provisions relating to management and operation of the improvements and facilities by the lessee thereof) as the city may determine to be advantageous to the city. The terms of said lease or contract of sale may provide that the lessee or purchaser of the improvements and facilities is contractually unconditionally obligated to make payments to the city for use or purchase of the facilities or improvements in amounts adequate to timely pay principal, interest, and premium on the revenue bonds of the city issued to finance the construction or acquisition of said facilities and improvements. Revenue bonds issued hereunder may be sold at public or private sale, notwithstanding the provisions or restrictions of any general or special law or charter to the contrary.

[See Compact Edition, Volume 3 for text of 4 to 6]

Outstanding Bonds; Unpaid Interest

Sec. 7. While any revenue bonds issued under the provisions of this Act or any interest thereon remain outstanding and unpaid, the management and control of such improvements and facilities (and the physical properties comprising the same) and of the income and revenue from them, including the authority to fix charges, prepare budgets, and authorize expenditures, by the terms of the ordinance authorizing the issuance of such bonds may be placed in the hands of the governing body of the city or may be placed in the hands of a board of trustees to be named in such ordinance, consisting of not more than seven (7) members, one (1) of whom shall be a member of the governing body of such city; provided, if the city is operating under a Home Rule Charter and said Charter contains provisions requir-

ing that the improvements and facilities be managed or controlled by a board of trustees, then the provisions of such Charter shall be followed. The compensation of the members of the board of trustees, the terms of office of such members, their powers and duties, the manner of exercising the same, the election or appointment of their successors, and all matters pertaining to their organization and duties shall be specified in said ordinance; provided, if the city is operating under a Home Rule Charter as mentioned above and the Charter contains provisions relating to any of the foregoing matters mentioned in this sentence, it is expressly provided that the provisions of such ordinance relating to such matters shall be in accordance with and governed by the Charter provisions. In all matters where such ordinance or Charter are silent, the laws and rules governing the governing body of the city shall govern said board of trustees so far as applicable.

Refunding Bonds; Approval and Registration

Sec. 8.

[See Compact Edition, Volume 3 for text of 8(a) and (b)]

(c) Refunding bonds (both tax refunding bonds and revenue refunding bonds) shall be authorized by ordinance of the governing body of the city, and shall be executed and mature as is provided in this Act for original bonds. They shall be approved by the Attorney General of the State of Texas as in the case of original bonds, and shall be registered by the Comptroller of Public Accounts of the State of Texas upon surrender and cancellation of the bonds to be refunded; but in lieu thereof, the ordinance authorizing their issuance may provide that they shall be sold at public sale if they are tax refunding bonds and at public or private sale if they are revenue refunding bonds and the proceeds thereof deposited in the place or places where the underlying bonds are payable, or with the State Treasurer, in which case the refunding bonds may be issued in an amount sufficient, not only to pay the principal of the underlying bonds, but also to pay the interest on the underlying bonds to their option or maturity dates, and the Comptroller of Public Accounts shall register them without the surrender and cancellation of the underlying bonds. In those situations where the proceeds of revenue refunding bonds are deposited in the place or places where the underlying bonds are payable, or with the State Treasurer, they shall be so deposited under an escrow agreement so that such proceeds and, at the option of such city, any interest earned from the investment of such proceeds as hereinafter provided, will be available for the payment of the interest on and principal of said underlying bonds as such interest and principal respectively become due; and such escrow agreement may provide that such proceeds may, until such time

as the same are needed to pay interest and principal as the same become due, be invested in direct obligations of the United States of America, in which instances the interest earned on such investments may be pledged to the payment of the principal of and interest on the underlying bonds, the refunding bonds or shall be considered as revenues of the improvements and facilities.

[See Compact Edition, Volume 3 for text of 8(d) and (e)]

Applicability of Statutes; Mortgage of Properties

Sec. 9. Insofar as the same may be applicable, the provisions of Articles 1111 to 1118, Revised Civil Statutes of Texas, 1925, together with all amendments thereof and additions thereto, shall apply to revenue bonds issued under the provisions of this Act, and any city covered by this Act shall have, with respect to revenue bonds issued hereunder, all the powers granted by said Statutes. However, where the provisions of said Statutes are in conflict or inconsistent with the provisions of this Act, the provisions of this Act shall govern and prevail. Further, it is expressly provided that the city shall have no power or authority to mortgage or encumber the physical properties of the improvements and facilities being financed in whole or in part by bonds payable from ad valorem taxes, unless authorized at the election required by Section 2 of this Act.

[See Compact Edition, Volume 3 for text of 10 to 12]

[Amended by Acts 1975, 64th Leg., p. 874, ch. 332, § 1, eff. June 6, 1975; Acts 1977, 65th Leg., p. 149, ch. 73, §§ 1, 2, eff. April 25, 1977; Acts 1979, 66th Leg., p. 478, ch. 219, § 1, eff. May 17, 1979; Acts 1979, 66th Leg., p. 1904, ch. 772, §§ 1 to 4, eff. June 13, 1979.]

Sections 5 and 6 of the 1979 amendatory act provided:

"Sec. 5. The provisions of Sections 60.038, 61.116, and 61.117 of the Water Code, relating to the disposition of lands or flats heretofore purchased from the State of Texas under Article 8225, Revised Civil Statutes of Texas, 1925, or granted by the State of Texas in any general or special act, shall continue to be applicable to the disposition of such lands or flats by any city acting under the authority of Chapter 341, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 1187f, Vernon's Texas Civil Statutes).

"Sec. 6. In case any one or more of the sections, provisions, clauses, or words of this Act, or the application thereof to any situation or circumstance, shall for any reason be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect any other sections, provisions, clauses, or words of this Act, or the application thereof to any other situation or circumstance, and it is intended that this Act shall be severable and shall be construed and applied as if any such invalid or unconstitutional section, provision, clause, or word had not been included herein."

Art. 1187g. City of Port Arthur; Lake Sabine; Regulation

Sec. 1. The governing body of the City of Port Arthur, with respect to the waters of Lake Sabine within the corporate limits of the city, may designate or otherwise regulate by ordinance certain areas of said lake as bathing, fishing, swimming, recreational, or otherwise restricted areas and may make rules and regulations relating to same.

Sec. 2. Notwithstanding any law or regulation of any state agency permitting the taking of crabs or

other sea or water life by the use of traps, the governing body of the City of Port Arthur, with respect to the waters of Lake Sabine within the corporate limits of the city, may designate or otherwise regulate by ordinance the location and placement of traps within said lake.

Sec. 3. The governing body of the City of Port Arthur may, by ordinance, prohibit the depositing or placing of litter, garbage, refuse, or rubbish into or upon the waters of Lake Sabine within the corporate limits of the city.

Sec. 4. The governing body of the City of Port Arthur may, by ordinance, regulate, notwithstanding any other state law or regulation, the speed of boats within and upon Lake Sabine within corporate limits of the city.

Sec. 5. In the event any one or more of the sections or provisions of this Act, or the application of such sections or provisions to any situation, circumstances, or persons, shall for any reason be held to be unconstitutional, such unconstitutionality shall not affect any other sections or provisions of this Act, or the application of such sections or provisions to any situation, circumstances, or persons, and it is intended that this Act shall be construed as if such sections or provisions had not been included herein for any constitutional application.

[Acts 1977, 65th Leg., p. 1788, ch. 716, §§ 1 to 5, eff. Aug. 29, 1977.]

CHAPTER SIXTEEN. MUNICIPAL COURT

GENERAL PROVISIONS

Article

- 1199a. Temporary Replacement.
- 1200e. Panels or Divisions of Municipal Court; Temporary or Relief Judges.
- 1200f. Continuing Legal Education of Municipal Court Judges.

PARTICULAR MUNICIPAL COURTS

- 1200bb. Midland.
- 1200cc. Cities Over 1,200,000.
- 1200dd. Sweetwater.
- 1200ee. El Paso.
- 1200ff. Repealed.
- 1200ff-1. Fort Worth.
- 1200gg. Lubbock.
- 1200hh. Longview.
- 1200ii. San Antonio.

GENERAL PROVISIONS

Art. 1196. Judge of the Municipal Court

Such court shall be presided over by a judge to be known as the "judge of the municipal court" and such alternate judges who, in cities, towns or villages incorporated under special charter shall be selected under the provisions of the charter concerning the election or the appointment of the judges to preside over the municipal court. All such provi-

sions are hereby made applicable to the judges of the municipal court herein provided for. All other statutory references to the "recorder" shall be construed to mean the "judges of the municipal court."

[Amended by Acts 1977, 65th Leg., p. 1185, ch. 426, § 2, eff. Aug. 29, 1977.]

Art. 1196(a). Home Rule Cities; Judge of Municipal Court

The Municipal Court in any city heretofore or hereafter incorporated, which city has adopted or amended its Charter, or which may hereafter adopt or amend the same, under Article 11, Section 5, of the Constitution of the State of Texas, commonly known and referred to as the "Home Rule Amendment", shall be presided over by a judge to be known as the "Judge of the Municipal Court", or other title as such official may be called in the charter of any such city, and who shall be selected under the provisions of the City Charter or ordinance concerning the election or appointment of the judge to preside over the Municipal Court.

All judges now holding office and presiding over any such Municipal Court in any such city and heretofore appointed or elected in accordance with the provisions of the Charter or ordinance of such city are hereby declared to be the duly constituted, appointed or elected judge of such Court and shall hold office until his successor shall have been duly selected in accordance with the provisions hereof and shall have qualified according to law.

[Amended by Acts 1977, 65th Leg., p. 1993, ch. 796, § 1, eff. June 16, 1977.]

Sections 3 and 4 of the 1977 Act provided as follows:

"Sec. 3. If any section, subsection, subdivision, paragraph, sentence, clause, phrase, or word of this Act is for any reason held to be invalid or unconstitutional in its application to particular persons or circumstances, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

"Sec. 4. This Act shall be cumulative as to all laws, charter provisions, and ordinances relating to the municipal court in home-rule cities in this state."

Art. 1199a. Temporary Replacement

While a municipal judge is temporarily unable to act for any reason, the governing body of the city, town, or village may appoint a person meeting the qualifications for such position to sit for the regular municipal judge. The appointee shall have all the powers and duties of the office and shall receive the same compensation as is payable to the regular municipal judge while he is so acting.

[Added by Acts 1977, 65th Leg., p. 1135, ch. 426, § 1, eff. Aug. 29, 1977.]

Art. 1200e. Panels or Divisions of Municipal Court; Temporary or Relief Judges

(a) In lieu of one judge for the municipal court in a home-rule city, as provided in Article 1196(a), Vernon's Texas Civil Statutes, the municipal court in any such city may by charter or ordinance be divided into two or more panels or divisions, one of which

shall be presided over by a presiding judge, and each additional panel or division shall be presided over by an associate judge who shall be a magistrate with the same powers as those conferred on the presiding judge. Each such panel or division of the municipal court, when established, shall have and exercise concurrent jurisdiction with the other panels or divisions of such court within the corporate limits of the city establishing them, and such jurisdiction shall be the same as is now or hereafter may be conferred upon all municipal courts by the general laws of this state. Such panels or divisions of the municipal court may be in concurrent and continuous session, either day or night.

(b) Except as otherwise provided by the charter of such city, the governing body of the city establishing panels or divisions for such court may by ordinance:

(1) prescribe the qualifications of the persons to be eligible to appointment as judge or judges of said court or of its panels or divisions;

(2) provide that such court, its panels or divisions, and the judges thereof may transfer cases from one panel or division to another, and that any judge or any of such panels or divisions may exchange benches and preside over any of the panels or divisions of such court;

(3) provide for a municipal court clerk who shall be clerk for all of the panels or divisions of such municipal court, together with such number of deputies as may be needed. The clerk and the deputies under his direction and supervision shall keep minutes of the proceedings of said court and its panels and divisions, if any, administer oaths, issue all process, and generally perform all the duties of the clerk of a court as prescribed by law for a county clerk insofar as the same may be applicable;

(4) provide that complaints shall be filed with such municipal court clerk in such manner as to provide for an equal distribution among the panels or divisions of such court.

(c) Any such city may provide by charter or ordinance for the appointment of one or more temporary or relief judges to sit for the regular judge of the municipal court or for the presiding judge or any of the associate judges of such court, while such judge or judges, any or all, are temporarily unable to act for any reason. Such temporary or relief judge shall possess the same qualifications required of the judge for whom he is sitting. Any temporary or relief judge shall have all the powers and duties of the judge for whom he is sitting while so acting.

(d) Except as modified by the terms of this Act, the procedure before such court and its panels or divisions, if any, and appeals therefrom shall be governed by the general law applicable to all municipal courts.

[Added by Acts 1977, 65th Leg., p. 1993, ch. 796, § 2, eff. June 16, 1977.]

Sections 3 and 4 of the 1977 Act provided as follows:

"Sec. 3. If any section, subsection, subdivision, paragraph, sentence, clause, phrase, or word of this Act is for any reason held to be invalid or unconstitutional in its application to particular persons or circumstances, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

"Sec. 4. This Act shall be cumulative as to all laws, charter provisions, and ordinances relating to the municipal court in home-rule cities in this state."

Art. 1200f. Continuing Legal Education of Municipal Court Judges

Judges not Licensed as Attorneys

Sec. 1. Each municipal court judge in the State of Texas who is not a licensed attorney in this state may complete successfully within one year from the date he is first elected or appointed, or if he is in office on the effective date of this Act, within one year from the effective date of this Act, a 24-hour course in the performance of his duties. Thereafter, he may complete a minimum of eight hours each year. The course may be completed in an accredited state-supported school of higher education or in a continuing education course, program, seminar, or law school or law enforcement school approved by the Texas Judicial Council.

Judges Licensed as Attorneys

Sec. 2. Each municipal court judge in the State of Texas who is a licensed attorney and in good standing with the State Bar may complete successfully within one year from the date he is first elected or appointed, or if he is in office on the effective date of this Act, within one year from the effective date of this Act, an eight-hour course in the performance of his duties. Thereafter, he may complete an eight-hour course each year. The course may be completed in an accredited state-supported school of higher education or in a continuing education course, program, or seminar approved by the Texas Judicial Council.

Administration of Act

Sec. 3. The Texas Judicial Council shall have general supervisory authority over the administration of this Act. The Texas Judicial Council shall accredit courses, programs, and seminars which will satisfy the educational requirements of this Act and shall discover and encourage the offering of the courses, programs, and seminars. The Texas Judicial Council may make and adopt rules and regulations not inconsistent with this Act governing the conduct of business and the performance of its duties.

Written Reports; Waivers or Extensions

Sec. 4. (a) On or before March 15 of each year, each municipal court judge in the state shall make a written report in duplicate to the Texas Judicial Council in the manner and form that the Texas Judicial Council shall prescribe to satisfy the Texas Judicial Council that the judge has completed the

minimum number of hours of course work during the preceding or prior calendar year as a student.

(b) In individual cases, the Texas Judicial Council on proper application may grant waivers or extensions of the minimum educational or reporting requirements.

Failure to Meet Requirements

Sec. 5. If an active municipal court judge fails to complete the minimum educational or reporting requirements to the satisfaction of the Texas Judicial Council, the council shall report the failure of the judge to comply to the governor, the attorney general, and the city attorney of the municipality in which the delinquent judge presides.

[Acts 1977, 65th Leg., p. 1122, ch. 418, §§ 1 to 5, eff. Aug. 29, 1977.]

PARTICULAR MUNICIPAL COURTS

Art. 1200aa. Wichita Falls

[See Compact Edition, Volume 3 for text of 1]

Criminal Jurisdiction; Writs; Terms; Exchange of Benefits

Sec. 2. (a) Municipal courts in Wichita Falls shall have concurrent jurisdiction in all criminal cases arising under the charter and ordinances of the city and shall also have concurrent jurisdiction in all criminal cases arising under the laws of the State of Texas and arising within the territorial limits of the city, in which punishment is by fine only, and where the maximum of such fine may not exceed \$200.

(b) The judge of a municipal court may grant writs of mandamus, injunction, attachment, and all other necessary writs necessary to the enforcement of the jurisdiction of the court, and to issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court.

(c) Municipal courts shall hold no terms and may sit at any time for the transaction of the business of the courts.

(d) Where more than one municipal court is established by the governing body of the city, the judges of the municipal courts may, at any time, exchange benches and may, at any time, sit and act for and with each other in any case, matter, or proceeding pending in their courts; and any and all acts thus performed by any of the judges shall be valid and binding upon all parties to such cases, matters, and proceedings.

[See Compact Edition, Volume 3 for text of 3 and 4]

Complaints by City Attorney, Assistant or Deputy

Sec. 5. All proceedings in municipal courts shall be commenced upon original complaint approved for filing by the city attorney of the city, his assistant or

deputy, and filed with the court clerk, provided, however, that parking tickets, including red meter tickets, need not be signed by the city attorney, his assistant or deputy, unless a complaint is tried in court. All such complaints shall be prepared under the direction of the city attorney, his assistant or deputy.

[See Compact Edition, Volume 3 for text of 6 to 8]

Costs

Sec. 9. No court costs shall be assessed or collected by any municipal court in any case tried in the courts, except warrant fees or capias fees as authorized by the Code of Criminal Procedure, 1965, for corporation courts and fees for the Criminal Justice Planning Fund as authorized by Chapter 935, Acts of the 62nd Legislature, Regular Session, 1971 (Article 1083, Code of Criminal Procedure, 1965).

[See Compact Edition, Volume 3 for text of 10 and 11]

Complaint; Form

Sec. 12. Proceedings in municipal courts shall be commenced by complaint which shall begin: "In the name and by authority of the State of Texas"; and shall conclude "Against the peace and dignity of the State." All complaints shall be prepared under the direction of the city attorney, his assistant or deputy, and may be signed by any credible person upon information and belief sworn to before the city attorney, or his assistant or deputy, or the clerk of the court or his deputy, each of whom, for that purpose, shall have power to administer oaths. The complaint shall be in writing and shall state:

(1) The name of the accused, if known, and if unknown, shall describe him as accurately as practicable;

(2) The offense with which he is charged in plain and intelligible words;

(3) It must appear that the place where the offense is charged to have been committed is within the jurisdiction of the municipal court; and

(4) It must show, from the date of the offense stated therein that the offense is not barred by limitations. All pleadings in the municipal courts shall be in writing and filed with the clerk of such courts.

Right to Jury Trial; Selection of Jurors

Sec. 13.

[See Compact Edition, Volume 3 for text of 13(a) and (b)]

(c) In lieu of the preceding method of jury selection, the judges of the municipal courts of Wichita Falls may adopt a plan for the selection of persons

for jury service with the aid of mechanical or electronic means. If such a plan is adopted, the laws relating to the selection of petit juries by jury wheel shall not apply. Any such plan so adopted shall conform to the following requirements:

(1) The names taken for jury purposes shall be of registered voters in the City of Wichita Falls.

(2) It shall provide a fair, impartial, and objective method of selecting persons for jury service with the aid of mechanical or electronic equipment.

(3) It shall designate the clerk of the court as the official to be in charge of the selection process and shall define his duties.

(4) It shall specify that a true and complete written list showing the names and addresses of the persons summoned to begin jury services on a particular date shall be filed of record with the clerk of the court at least 10 days prior to the date such persons are to begin jury service.

[See Compact Edition, Volume 3 for text of 14 to 20]

Motion for New Trial; Time; Filing

Sec. 21. A motion for a new trial must be made within 10 days after the rendition of judgment and sentence, and not afterward. Such motion must be in writing and filed with the clerk of the municipal court.

[See Compact Edition, Volume 3 for text of 22 to 34]

Briefs; Filings

Sec. 35. The defendant shall file his brief with the clerk of the appellate court within 15 days from the date of the filing of the transcript and statement of facts with the clerk of the appellate court, who shall notify the prosecuting attorney of the filing. The prosecuting attorney shall file his brief with the clerk of the appellate court within 15 days after the defendant files his brief with the clerk. Each party, on filing his brief with the clerk of the appellate court, shall cause a true copy of his brief to be delivered to the opposing party.

[See Compact Edition, Volume 3 for text of 36 to 44]

[Amended by Acts 1977, 65th Leg., p. 1076, ch. 393, §§ 1 to 7, eff. June 15, 1977.]

Art. 1200bb. Midland

Creation; Formation by Ordinance

Sec. 1. There is created in the city of Midland a court of record to be known as the "City of Midland Municipal Court," to be held in that city if the governing body of the city of Midland, by ordinance, finds and determines that the formation of a municipal

court of record is necessary in order to provide a more efficient disposition of appeals arising from the municipal court.

The authority of the governing body of the city of Midland to create a municipal court of record in the city of Midland includes the authority to establish, in the manner set forth in this section, more than one municipal court of record if the governing body determines that it is necessary in order to dispose of the cases arising in the city. If more than one municipal court of record is created, the judges of the municipal courts may at any time exchange benches and sit and act for and with each other in a case, matter, or proceeding pending in a municipal court, and any and all acts thus performed by a judge are valid and binding on all parties to the case, matter, and proceeding.

The municipal court of record authorized in this section is referred to in this Act as the "municipal court."

Application of Other Laws Regarding Municipal Courts

Sec. 2. The general laws of the state regarding municipal courts, and regarding justice courts on matters where there is no law for municipal courts, and the valid charter provisions and ordinances of the city of Midland relating to the municipal court apply to the municipal court authorized in this Act, unless the laws, charter provisions, and ordinances are in conflict or inconsistent with the provisions of this Act.

Judge; Qualifications

Sec. 3. The municipal court shall be presided over by a judge, who shall be a licensed attorney in good standing in this state and a citizen of the United States and of this state. He need not be a resident of the city at the time of his appointment, but he shall maintain his residence in the city during his tenure of office. He shall devote his entire time to the duties of his office and shall not engage in the private practice of law while in office. He shall be appointed by the governing body of the city. He shall be paid a salary to be determined by the governing body of the city. The salary shall not be based on or in any way contingent on the fines, fees, or costs collected by the municipal court.

If more than one municipal court is created by the governing body of the city, a judge shall be appointed for each court and the governing body of the city shall designate a judge to be the presiding judge.

Court Clerk

Sec. 4. The governing body of the city shall provide a clerk of the municipal courts, and such deputy clerks, warrant officers, and other municipal court

personnel, including at least one bailiff for each court, as are necessary for the proper operation of the municipal courts. It is the duty of the clerk to keep the records of proceedings of the municipal courts and to issue all processes and generally to perform the duties now prescribed by law for clerks of the county courts at law exercising criminal jurisdiction insofar as the same may be applicable. The clerk of the municipal courts and all other personnel shall perform the duties of the office under the direction and control of the municipal court judge.

Court Reporter

Sec. 5. For the purpose of preserving a record in the cases tried before the municipal court, the city shall provide a court reporter, who shall be appointed by the municipal court judge and whose compensation shall be determined by the governing body of the city. The qualifications of the court reporter shall be determined by the judge, or if there is more than one judge, by the presiding judge.

The record of proceedings may be preserved by the court reporter by written notes, transcribing equipment, recording equipment, or any combination of them. The court reporter is not required to take testimony in cases where neither the defendant, the prosecutor, nor the judge demands it.

Ordinances; Judicial Notice

Sec. 6. The municipal court shall take judicial notice of the ordinances of the city.

Appeal; Appellate Courts

Sec. 7. A defendant has the right of appeal from a judgment of conviction in the municipal court under the rules prescribed in this Act. The County Court of Midland County has jurisdiction over the appeals from the municipal court.

Appeals on the Record; No De Novo Appeals

Sec. 8. Each appeal from a conviction in the municipal court shall be determined by the appellate court solely on the basis of errors pointed out in the defendant's motion for new trial and presented in the transcript and statement of facts prepared from the municipal court proceedings leading to the conviction. No appeal from the municipal court may be by trial de novo.

Motion for New Trial

Sec. 9. In order to perfect an appeal, a written motion for new trial must be filed by the defendant no later than the 10th day after the rendition of the judgment of conviction, and may be amended by leave of court at any time before it is acted on within 20 days after it is filed. The motion for new trial shall be presented to the court within 10 days after the filing of the original or amended motion, and shall be determined by the court within 20 days

after the filing of the original or amended motion. For good cause shown the time for filing or amending may be extended by the court. An original or amended motion shall be deemed overruled by operation of law at the expiration of the 20 days allowed for determination of the motion if it is not acted on by the court within that time. The motion shall set forth the points of error complained of by the defendant. For purposes of appeal, a point of error not distinctly set forth in the motion for new trial shall be considered as waived.

Notice of Appeal

Sec. 10. In order to perfect an appeal, the defendant shall give timely notice of appeal. In the event the defendant requests a hearing on his motion for new trial, the notice of appeal may be given orally in open court upon the overruling of the motion for new trial; otherwise, the notice of appeal shall be in writing and filed with the municipal court no later than the 10th day after the motion for new trial is overruled.

Appeal Bond

Sec. 11. If the defendant is not in custody, an appeal may not be taken until the required appeal bond has been filed with and approved by the municipal court. The appeal bond must be filed no later than the 10th day after the motion for new trial is overruled. If the defendant is in custody, he shall be committed to jail unless he posts the required appeal bond. The appeal bond shall be in an amount not less than double the amount of fine and costs adjudged against the defendant. However, the bond may not in any case be for a less sum than \$100. The bond shall recite that in the cause the defendant shall make his personal appearance before the court to which the appeal is taken instanter, if the court is in session, and if the court is not in session, then at its next session, and there remain from day to day and answer in the cause.

Record on Appeal

Sec. 12. The record on appeal in a case appealed from the municipal court consists of a transcript and, where necessary to the appeal, a statement of facts.

Contents of Transcript

Sec. 13. (a) The municipal court clerk, upon written request from the defendant, shall prepare under his hand and seal of the court for transmission to the appellate court a true transcript of the proceedings in the municipal court that shall always include the following:

- (1) the complaint;
- (2) material docket entries made by the court;
- (3) the jury charge and verdict, if the trial is by jury;

- (4) the judgment;
- (5) the motion for new trial;
- (6) the notice of appeal;
- (7) all written motions and pleas and orders of the court; and
- (8) bills of exception, if any are filed.

(b) The municipal court clerk may include in the transcript additional portions of the proceedings in the municipal court if so instructed in writing by either the defendant or the prosecuting attorney.

Bills of Exception

Sec. 14. Either party may include bills of exception in the transcript on appeal, subject to complying with the applicable provisions of the Code of Criminal Procedure governing the preparation of bills of exception and their inclusion in the record on appeal to the Court of Criminal Appeals, except that the bills of exception shall be filed with the municipal court clerk within 60 days after the giving or filing of the notice of appeal.

Statement of Facts; Agreed Statement; Designated Items and Payment

Sec. 15. (a) A statement of facts, when included in the record on appeal, shall consist of:

(1) a transcription of all or any part of the municipal court proceedings in the case that are shown by the notes of the court reporter to have occurred before, during, or after the trial if such transcription is requested of the court reporter by the defendant; or

(2) a brief statement of the facts of the case proven at the trial, as agreed to by the defendant and the prosecuting attorney; or

(3) a partial transcription and the agreed statement of the facts of the case proven at the trial.

(b) The court reporter shall transcribe any portion of his notes of the court proceedings in the case at the request of the defendant. The defendant shall pay for the transcription. The cost to the defendant for the transcription shall not exceed the fees or charges normally being made by court reporters in the county for similar transcriptions. The municipal court shall order the court reporter to make the transcriptions without charge to the defendant if the court finds, after hearing in the response to affidavit by the defendant, that he is too poor to pay or give security for the transcriptions.

Filing of Transcript and Statement of Facts; Time Limits; Completion and Approval of Record; Transfer of Record to Clerk of Appellate Court

Sec. 16. (a) Within 60 days of the giving or filing of the notice of appeal, the parties shall file with the municipal court clerk:

- (1) the statement of facts;

(2) a written designation of all matter that is to be included in the transcript in addition to matter required to be in the transcript by Section 13 of this Act; and

(3) any matter designated to be included in the transcript that is not then in the custody of the municipal court clerk.

(b) On completing the record as designated by the parties in Subdivision (2), Subsection (a) of this section, the municipal court judge shall approve the record in the manner provided by law for record completion notification and approval in appeals to the Court of Criminal Appeals.

(c) On the municipal court judge's approval of the record, the municipal court clerk shall promptly forward it to be filed with the appellate court clerk, who shall notify the defendant and the prosecuting attorney that the record has been filed.

Brief on Appeal: Contents and Filing

Sec. 17. (a) A brief on appeal from the municipal court shall present points of error in the same manner required by law for a brief on appeal to the Court of Criminal Appeals, except that the points of error on appeal shall be confined to those points of error set forth in the defendant's motion for new trial.

(b) The defendant shall file his brief with the clerk of the appellate court within fifteen days from the date of the filing of the transcript and statement of facts with the appellate court clerk, who shall notify the prosecuting attorney of the filing. The prosecuting attorney shall file his brief with the clerk of the appellate court within 15 days after the defendant files his briefs with the clerk. Each party, on filing his brief with the clerk of the appellate court, shall cause a true copy of his brief to be delivered to the opposing party.

Procedure on Appeal; Review or Error

Sec. 18. The appellate court shall hear and determine appeals from the municipal court at the earliest practical time it may be done, with due regard to the rights of parties and proper administration of justice, and no affirmance or reversal of a case shall be determined on mere technicalities or on technical errors in the preparation and filing of the record on appeal. Oral arguments before the appellate court shall be under the rules which the appellate court may determine, and the parties may submit the case on the records and briefs without oral arguments.

Disposition on Appeal; Presumptions; Decision

Sec. 19. (a) The appellate court may affirm the judgment of the municipal court, or may reverse or remand for a new trial, or may reverse and dismiss the case, or may reform or correct the judgment, as the law and the nature of the case may require.

(b) The appellate court shall presume (1) that the venue was proven in the court below; (2) that the jury was properly impaneled and sworn; (3) that the defendant was arraigned and that he pleaded to the complaint; and (4) that the court's charge was certified by the municipal court judge before it was read to the jury; unless such matters were made an issue in the trial court, or it affirmatively appears to the contrary from the transcript or statement of facts.

(c) In each case decided by the appellate court, the court shall deliver a written opinion or order either sustaining or overruling each assignment of error presented. If an assignment of error is overruled no reason need be given by the appellate court, but cases relied on by the court may be cited. If an assignment of error is sustained, the appellate court shall set forth the reasons for the decision. Copies of the decision of the appellate court shall be mailed by the clerk of the appellate court to the parties and the judge of the municipal court as soon as the decision is rendered by the appellate court.

Certificate of Appellate Proceedings; Filing of Record; Enforcement of Judgment

Sec. 20. When the judgment of the appellate court becomes final, the clerk of the appellate court shall make out a proper certificate of the proceedings had and the judgment rendered and shall mail the certificates to the clerk of the municipal court. When the certificate is received by the clerk of the municipal court, he shall file it with the papers in the case and note it on the docket. If the judgment has been affirmed, no proceeding need be had after filing the certificate in the municipal court to enforce the judgment of the court, except to forfeit the bond of the defendant, to issue a *ca-pias* for the defendant, or issue an execution against his property.

New Trial

Sec. 21. If the appellate court awards a new trial to the defendant, the cause shall stand as it would have stood if a new trial had been granted by the municipal court.

Appeals to the Court of Criminal Appeals; Record

Sec. 22. When a judgment is affirmed by the appellate court, the defendant shall have the right to appeal to the Court of Criminal Appeals if the fine assessed against the defendant in the municipal court exceeded \$100. The appeals to the Court of Criminal Appeals shall be governed by provisions in the Code of Criminal Procedure relating to direct appeals from county and district courts to the Court of Criminal Appeals except that:

(1) the record and briefs on appeal in the appellate court, plus the transcript of proceedings in the appellate court, shall constitute the record and briefs on appeal to the Court of Criminal Appeals

unless the rules of the Court of Criminal Appeals provide otherwise; and

(2) the record and briefs shall be filed directly with the Court of Criminal Appeals.

Sec. 23. All laws in conflict or inconsistent with the provisions of this Act are hereby conformed to the provisions of this Act.

[Acts 1975, 64th Leg., p. 228, ch. 87, §§ 1 to 23, eff. Sept. 1, 1975.]

Art. 1200cc. Cities Over 1,200,000

Creation of Municipal Courts of Record; Vacation of Additional Municipal Courts

Sec. 1. (a) A municipal court of record is created in any city with a population of more than 1,200,000 as determined by the last preceding federal census.

(b) Additional municipal courts of record may be created and judges for such courts may be authorized in any city with a population of more than 1,200,000 as determined by the last preceding federal census by action of the governing body of the city through a legally adopted ordinance that specifies that the condition of dockets in the other municipal courts of the city is such as to require additional municipal courts in order to properly dispose of the cases on the dockets of these courts, and that enumerates the number of additional municipal courts necessary to properly dispose of those cases. Municipal courts that are in existence on the effective date of this Act and that were created pursuant to any Article in Title 28, Revised Civil Statutes of Texas, 1925, as amended,¹ shall on such date become municipal courts of record and may, subject to meeting other requirements provided by law for municipal courts, continue their operation under the authority of this Act without passage of such ordinance.

(c) After the establishment of an additional municipal court or courts, if the governing body of the city determines that the continued existence of some or all of the additional municipal courts is not required in order to properly dispose of cases on the dockets of all the municipal courts, the governing body shall by legally adopted ordinance declare the offices of some or all of the additional municipal judges vacated at the end of the term or terms for which such judge or judges were last selected. In that event, any cases pending in a vacated municipal court shall be transferred to the proper court having jurisdiction of the offense.

¹ Article 961 et seq.

Jurisdiction

Sec. 2. Municipal courts created under the provisions of this Act shall have jurisdiction within the territorial limits of the city in all criminal cases arising under the ordinances of the city and shall also have concurrent jurisdiction with any justice of

the peace in any precinct in which the city is situated in criminal cases arising within such territorial limits under the criminal laws of this state in which punishment is only by fine not exceeding \$200.

Judges; Additional Judges; Presiding Judge; Qualifications

Sec. 3. (a) Municipal courts shall be presided over by judges to be known as "municipal judges."

(b) The city shall provide by charter or by ordinance for the selection of its municipal judges, provided the selection shall be for a definite term in office of not less than two nor more than four years, whose duration within these limits shall be determined by charter, ordinance, or the method prescribed in Article XI, Section 11, of the Texas Constitution. Any definite term or indefinite period in office that a municipal judge has begun on the effective date of this Act shall terminate no later than four years after such effective date. A municipal judge may continue in office after the end of his term for not more than 90 days or until his successor is selected and qualified, whichever occurs first.

(c) If there is more than one municipal judge in the city the mayor and city council of the city shall appoint one of the judges to be the presiding municipal judge of the city. If the city has a municipal judge who is either its only municipal judge or its only municipal judge who is not serving in a temporary or part-time capacity, such judge shall be the presiding municipal judge for all purposes of this Act.

(d) The presiding judge shall:

(1) maintain a central docket for all cases filed in the geographical limits of the city over which the municipal courts of the city have jurisdiction;

(2) provide for the distribution of cases from the central docket to the individual municipal judge in order that the business of the courts will be continually equalized and distributed among them;

(3) temporarily assign various judges of the municipal courts to exchange benches for other such judges and to sit and act for each other in any case, matter, or proceeding pending in their courts, when necessary for the expeditious disposition of the business of the courts;

(4) cause all dockets, books, papers, and other records of the municipal courts to be permanently kept and permit these records to be available for inspection at all reasonable times by any interested party;

(5) cause to be maintained as part of the records of the municipal courts an index of municipal-court judgments such as county clerks are required by law to prepare for criminal cases arising in county courts;

(6) where necessary for the proper functioning of the municipal courts, provide for the preservation by microfilm of the records under the custody of county clerks; and

(7) supervise and have control over all of the operations and clerical functions of the administrative section or department of such municipal courts and be responsible for the supervision of all clerical personnel of the administrative department of such municipal court.

(e) A judge of a municipal court created under the provisions of this Act shall be a licensed attorney in good standing in this state. No person may serve in the office of municipal judge while he holds any other office or employment in the government of such city, and the holding of such other office or employment by any person serving in the office of municipal judge shall create an immediate vacancy in the judicial office.

Salary

Sec. 4. A municipal judge is entitled to compensation by the city on a salary basis. The amount of the salary shall be determined by the governing body of the city and may not be diminished during the judge's term of office. The salary may not be based, directly or indirectly, on fines, fees, or costs that the municipal judge is required by law to collect during his term of office. The governing body shall predetermine the salary of the municipal judge prior to his appointment, if he is appointed, or at least two weeks prior to the deadline for filing for election, if he is elected.

Vacancies; Temporary Replacements; Removal

Sec. 5. (a) When a vacancy in the office of municipal judge occurs, the governing body of the city shall appoint a person meeting the qualifications required by law for such position to fill the office of municipal judge for the unexpired term of the judge serving in that office prior to the vacancy.

(b) While a municipal judge is temporarily unable to act for any reason, the governing body of the city may appoint a person meeting the qualifications required by law for such position to sit for the regular municipal judge. The appointee shall have all the powers and duties of the office and shall receive the same compensation as is payable to the regular municipal judge while he is so acting.

(c) A municipal judge may be removed from office only under the procedures outlined in Article V, Section 1-a, of the Texas Constitution.

Court Facilities

Sec. 6. The governing body of the city shall provide such courtrooms, juryrooms, offices and office furniture, libraries, legal books and materials, and other supplies and facilities as the governing body

determines are necessary for the proper operation of the municipal courts.

Appeals; Appellate Courts

Sec. 7. A defendant has the right of appeal from a judgment of conviction in the municipal court under the rules prescribed in this Act. The county criminal court of such county where said court is situated shall have jurisdiction over the appeals from the municipal court.

Appeals on the Record; No De Novo Appeals

Sec. 8. Each appeal from a conviction in the municipal court shall be determined by the appellate court solely on the basis of errors pointed out in the defendant's motion for new trial and presented in the transcript and statement of facts prepared from the municipal court proceedings leading to the conviction. No appeal from the municipal court may be by trial de novo.

Motion for New Trial

Sec. 9. In order to perfect an appeal, a written motion for new trial must be filed by the defendant no later than the 10th day after the rendition of the judgment of conviction, and may be amended by leave of court at any time before it is acted on within 20 days after the filing of the original or amended motion. For good cause shown the time for filing or amending may be extended by the court. An original or amended motion shall be deemed overruled by operation of law at the expiration of the 20 days allowed for determination of the motion if it is not acted on by the court within that time. The motion shall set forth the points of error complained of by the defendant. For purposes of appeal, a point of error not distinctly set forth in the motion for new trial shall be considered as waived.

Notice of Appeal

Sec. 10. In order to perfect an appeal, the defendant shall give timely notice of appeal. In the event the defendant requests a hearing on his motion for new trial, the notice of appeal may be given orally in open court upon the overruling of the motion for new trial; otherwise, the notice of appeal shall be in writing and filed with the municipal court no later than the 10th day after the motion for new trial is overruled.

Appeal Bond

Sec. 11. If the defendant is not in custody, an appeal may not be taken until the required appeal bond has been filed with and approved by the municipal court. The appeal bond must be filed no later than the 10th day after the motion for new trial is overruled. If the defendant is in custody, he shall be committed to jail unless he posts the required appeal bond. The appeal bond shall be in an amount not less than double the amount of fine and costs

adjudged against the defendant. However, the bond may not in any case be for a less sum than \$50. The bond shall recite that in the cause the defendant shall make his personal appearance before the court to which the appeal is taken instanter, if the court is in session, and if the court is not in session, then at its next session, and there remain from day to day and answer in the cause.

Record on Appeal

Sec. 12. The record on appeal in a case appealed from the municipal court consists of a transcript and, where necessary to the appeal, a statement of facts, which may be prepared by a certified court reporter of such court or from mechanical recordings of the proceedings or from video-tape recordings of the proceedings. If the court finds, after hearing in response to affidavit by defendant that he is unable to pay or give security for the record on appeal, the court will order the reporter to make such transcription without charge to the defendant.

Contents of Transcript

Sec. 13. (a) The municipal court clerk, upon written request from the defendant, shall prepare under his hand and seal of the court for transmission to the appellate court a true transcript of the proceedings in the municipal court that shall include the following:

- (1) the complaint;
- (2) material docket entries made by the court;
- (3) the jury charge and verdict, if the trial is by jury;
- (4) the judgment;
- (5) the motion for new trial;
- (6) the notice of appeal;
- (7) all written motions and pleas and orders of the court; and
- (8) bills of exception, if any are filed.

(b) The municipal court clerk may include in the transcript additional portions of the proceedings in the municipal court prepared from mechanical recordings or video-tape recordings of the proceedings.

Bills of Exception

Sec. 14. Either party may include bills of exception in the transcript on appeal, subject to complying with the applicable provisions of the Code of Criminal Procedure governing the preparation of bills of exception and their inclusion in the record on appeal to the Court of Criminal Appeals, except that the bills of exception shall be filed with the municipal court clerk within 60 days after the giving or filing of the notice of appeal.

Statement of Facts; Agreed Statement; Designated Items and Payment

Sec. 15. A statement of facts, when included in the record on appeal, shall consist of:

(a) a transcription of all or any part of the municipal court proceedings, in the case, as provided herein, that are shown by the notes of the court reporter to have occurred before, during, or after the trial if such transcription is requested of the court reporter by the defendant; or

(b) a brief statement of the facts of the case proven at the trial, as agreed to by the defendant and the prosecuting attorney; or

(c) a partial transcription and the agreed statement of the facts of the case proven at the trial; or

(d) a transcription of all or any part of the municipal court proceedings in the case that are prepared from the mechanical recordings or videotape recordings of said proceedings.

Filing of Transcript and Statement of Facts; Time Limits; Completion and Approval of Record; Transfer of Record to Clerk of Appellate Court

Sec. 16. (a) Within 60 days of the giving or filing of the notice of appeal, the parties shall file with the municipal court clerk:

(1) the statement of facts;

(2) a written designation of all matter that is to be included in the transcript in addition to matter required to be in the transcript by Section 13 of this Act; and

(3) any matter designated to be included in the transcript that is not then in the custody of the municipal court clerk.

(b) On completing the record as designated by the parties in Subdivision (2), Subsection (a) of this section, the municipal court judge shall approve the record in the manner provided by law for record completion notification and approval in appeals to the Court of Criminal Appeals.

(c) On the municipal court judge's approval of the record, the municipal court clerk shall promptly forward it to be filed with the appellate court clerk, who shall notify the defendant and the prosecuting attorney that the record has been filed.

Brief on Appeal: Contents and Filing

Sec. 17. (a) A brief on appeal from the municipal court shall present points of error in the same manner required by law for a brief on appeal to the Court of Criminal Appeals.

(b) The defendant shall file his brief with the clerk of the appellate court within 15 days from the date of the filing of the transcript and statement of facts with the appellate court clerk, who shall notify the prosecuting attorney of the filing. The prosecuting attorney shall file his brief with the clerk of the appellate court within 15 days after the defendant files his brief with the clerk. Each party, on filing his brief with the clerk of the appellate court,

shall cause a true copy of his brief to be delivered to the opposing party.

Disposition on Appeal; Presumptions; Decision

Sec. 18. (a) The appellate court may affirm the judgment of the municipal court, or may reverse or remand for a new trial, or may reverse and dismiss the case, or may reform or correct the judgment, as the law and the nature of the case may require.

(b) The appellate court shall presume (1) that the venue was proven in the court below; (2) that the jury was properly impaneled and sworn; (3) that the defendant was arraigned and that he pleaded to the complaint; and (4) that the court's charge was certified by the municipal court judge before it was read to the jury; unless such matters were made an issue in the trial court, or it affirmatively appears to the contrary from the transcript or statement of facts.

(c) In each case decided by the appellate court, the court shall deliver a written opinion or order either sustaining or overruling each assignment of error presented. If an assignment of error is overruled no reason need be given by the appellate court, but cases relied on by the court may be cited. If an assignment of error is sustained, the appellate court shall set forth the reasons for the decision. Copies of the decision of the appellate court shall be mailed by the clerk of the appellate court to the parties and the judge of the municipal court as soon as the decision is rendered by the appellate court.

Certificate of Appellate Proceedings; Filing of Record; Enforcement of Judgment

Sec. 19. When the judgment of the appellate court becomes final, the clerk of the appellate court shall make out a proper certificate of the proceedings had and the judgment rendered and shall mail the certificates to the clerk of the municipal court. When the certificate is received by the clerk of the municipal court, he shall file it with the papers in the case and note it on the docket. If the judgment has been affirmed, no proceeding need be had after filing the certificate in the municipal court to enforce the judgment of the court, except to forfeit the bond of the defendant, to issue a *capias* for the defendant, or issue an execution against his property.

New Trial

Sec. 20. If the appellate court awards a new trial to the defendant, the cause shall stand as it would have stood if a new trial had been granted by the municipal court.

Appeals to the Court of Criminal Appeals; Record

Sec. 21. When a judgment is affirmed by the appellate court, the defendant shall have the right to appeal to the Court of Criminal Appeals if the fine assessed against the defendant in the municipal

court exceeded \$100. The appeals to the Court of Criminal Appeals shall be governed by provisions in the Code of Criminal Procedure relating to direct appeals from county and district courts to the Court of Criminal Appeals except that:

(1) the record and briefs on appeal in the appellate court, plus the transcript of proceedings in the appellate court, shall constitute the record and briefs on appeal to the Court of Criminal Appeals unless the rules of the Court of Criminal Appeals provide otherwise; and

(2) the record and briefs shall be filed directly with the Court of Criminal Appeals.

Court Personnel

Sec. 22. (a) Each municipal judge in his discretion is authorized to appoint a court reporter to transcribe the trial proceedings, including testimony, voir dire examination, objections, and final arguments and shall appoint a court reporter when the defendant or the state requests it prior to trial. Each reporter shall be a sworn officer of the court when transcribing testimony and shall be well skilled in his profession. Each reporter shall be compensated by the city in such manner as the governing body of the city shall determine.

(b) It shall be the duty of the clerk to perform such clerical duties, insofar as they are applicable, as are prescribed by law for the municipal judge and for the county clerk of a county court at law.

(c) The governing body of the city shall provide the municipal courts with such other municipal court personnel as the governing body determines is necessary for the proper operation of the court. Such personnel shall perform their duties under the direction and control of the municipal judge to whom assigned. The governing body shall determine the salaries of such personnel.

Seal

Sec. 23. The governing body of the city shall provide each municipal court with a seal with a star of five points in the center and the words "Municipal Court in _____, Texas." The impress of the seal shall be attached to all papers, except subpoenas, issued out of the court and shall be used by each municipal judge or his clerk to authenticate all official acts of the clerk and the municipal judge.

Effective Date

Sec. 24. This Act is effective beginning January 1, 1976.

Repealer

Sec. 25. To the extent that any local, special, or general law, including Acts of the 64th Legislature, Regular Session, 1975, conflicts with any provision of this Act, that law is repealed.

[Acts 1975, 64th Leg., p. 299, ch. 489, §§ 1 to 25, eff. Jan. 1, 1976. Amended by Acts 1977, 65th Leg., p. 357, ch. 175, § 1, eff. Aug. 29, 1977.]

Section 2 of the 1977 amendatory act provided: "All acts or charter provisions in conflict herewith are expressly repealed."

Art. 1200dd. Sweetwater

Creation; Formation by Ordinance

Sec. 1. There is created in the city of Sweetwater a court of record to be known as the "City of Sweetwater Municipal Court," to be held in that city if the governing body of the city of Sweetwater, by ordinance, finds and determines that the formation of a municipal court of record is necessary in order to provide a more efficient disposition of appeals arising from the municipal court.

The authority of the governing body of the city of Sweetwater to create a municipal court of record in the city of Sweetwater includes the authority to establish, in the manner set forth in this section, more than one municipal court of record if the governing body determines that it is necessary in order to dispose of the cases arising in the city. If more than one municipal court of record is created, the judges of the municipal courts may at any time exchange benches and sit and act for and with each other in a case, matter, or proceeding pending in a municipal court, and any and all acts thus performed by a judge are valid and binding on all parties to the case, matter, and proceeding.

The municipal court of record authorized in this section is referred to in this Act as the "municipal court."

Application of Other Laws Regarding Municipal Courts

Sec. 2. The general laws of the state regarding municipal courts, and regarding justice courts on matters where there is no law for municipal courts, and the valid charter provisions and ordinances of the city of Sweetwater relating to the municipal court apply to the municipal court authorized in this Act, unless the laws, charter provisions, and ordinances are in conflict or inconsistent with the provisions of this Act.

Judge; Qualifications

Sec. 3. The municipal court shall be presided over by a judge, who shall be a licensed attorney in good standing in this state and a citizen of the United States and of this state. He need not be a resident of the city at the time of his appointment, but he shall maintain his residence in the city during his tenure of office. He shall be appointed by the governing body of the city. He shall be paid a salary to be determined by the governing body of the city. The salary shall not be based on or in any way contingent on the fines, fees, or costs collected by the municipal court.

If more than one municipal court is created by the governing body of the city, a judge shall be appointed for each court and the governing body of the city shall designate a judge to be the presiding judge.

Court Clerk

Sec. 4. The governing body of the city shall provide a clerk of the municipal courts, and such deputy clerks, warrant officers, and other municipal court personnel, including at least one bailiff for each court, as are necessary for the proper operation of the municipal courts. It is the duty of the clerk to keep the records of proceedings of the municipal courts and to issue all processes and generally to perform the duties now prescribed by law for clerks of the county courts at law exercising criminal jurisdiction insofar as the same may be applicable. The clerk of the municipal courts and all other personnel shall perform the duties of the office under the direction and control of the municipal court judge.

Court Reporter

Sec. 5. For the purpose of preserving a record in the cases tried before the municipal court, the city shall provide a court reporter, who shall be appointed by the municipal court judge and whose compensation shall be determined by the governing body of the city. The qualifications of the court reporter shall be determined by the judge, or if there is more than one judge, by the presiding judge.

The record of proceedings may be preserved by the court reporter by written notes, transcribing equipment, recording equipment, or any combination of them. The court reporter is not required to take testimony in cases where neither the defendant, the prosecutor, nor the judge demands it.

Ordinances; Judicial Notice

Sec. 6. The municipal court shall take judicial notice of the ordinances of the city.

Appeal; Appellate Courts

Sec. 7. A defendant has the right of appeal from a judgment of conviction in the municipal court under the rules prescribed in this Act. The County Court of Nolan County has jurisdiction over the appeals from the municipal court.

Appeals on the Record; No De Novo Appeals

Sec. 8. Each appeal from a conviction in the municipal court shall be determined by the appellate court solely on the basis of errors pointed out in the defendant's motion for new trial and presented in the transcript and statement of facts prepared from the municipal court proceedings leading to the conviction. No appeal from the municipal court may be by trial de novo.

Motion for New Trial

Sec. 9. In order to perfect an appeal, a written motion for new trial must be filed by the defendant no later than the 10th day after the rendition of the judgment of conviction, and may be amended by leave of court at any time before it is acted on

within 20 days after it is filed. The motion for new trial shall be presented to the court within 10 days after the filing of the original or amended motion, and shall be determined by the court within 20 days after the filing of the original or amended motion. For good cause shown the time for filing or amending may be extended by the court. An original or amended motion shall be deemed overruled by operation of law at the expiration of the 20 days allowed for determination of the motion if it is not acted on by the court within that time. The motion shall set forth the points of error complained of by the defendant. For purposes of appeal, a point of error not distinctly set forth in the motion for new trial shall be considered as waived.

Notice of Appeal

Sec. 10. In order to perfect an appeal, the defendant shall give timely notice of appeal. In the event the defendant requests a hearing on his motion for new trial, the notice of appeal may be given orally in open court upon the overruling of the motion for new trial; otherwise, the notice of appeal shall be in writing and filed with the municipal court no later than the 10th day after the motion for new trial is overruled.

Appeal Bond

Sec. 11. If the defendant is not in custody, an appeal may not be taken until the required appeal bond has been filed with and approved by the municipal court. The appeal bond must be filed no later than the 10th day after the motion for new trial is overruled. If the defendant is in custody, he shall be committed to jail unless he posts the required appeal bond. The appeal bond shall be in an amount not less than double the amount of fine and costs adjudged against the defendant. However, the bond may not in any case be for a less sum than \$100. The bond shall recite that in the cause the defendant shall make his personal appearance before the court to which the appeal is taken instanter, if the court is in session, and if the court is not in session, then at its next session, and there remain from day to day and answer in the cause.

Record on Appeal

Sec. 12. The record on appeal in a case appealed from the municipal court consists of a transcript and, where necessary to the appeal, a statement of facts. If the court finds, after hearing in response to affidavit by defendant that he is unable to pay or give security for the record on appeal, the court will order the reporter to make such transcription without charge to the defendant.

Contents of Transcript

Sec. 13. (a) The municipal court clerk, upon written request from the defendant, shall prepare under his hand and seal of the court for transmission

to the appellate court a true transcript of the proceedings in the municipal court that shall always include the following:

- (1) the complaint;
- (2) material docket entries made by the court;
- (3) the jury charge and verdict, if the trial is by jury;
- (4) the judgment;
- (5) the motion for new trial;
- (6) the notice of appeal;
- (7) all written motions and pleas and orders of the court; and
- (8) bills of exception, if any are filed.

(b) The municipal court clerk may include in the transcript additional portions of the proceedings in the municipal court if so instructed in writing by either the defendant or the prosecuting attorney.

Bills of Exception

Sec. 14. Either party may include bills of exception in the transcript on appeal, subject to complying with the applicable provisions of the Code of Criminal Procedure governing the preparation of bills of exception and their inclusion in the record on appeal to the Court of Criminal Appeals, except that the bills of exception shall be filed with the municipal court clerk within 60 days after the giving or filing of the notice of appeal.

Statements of Facts; Agreed Statement; Designated Items and Payment

Sec. 15. (a) A statement of facts, when included in the record on appeal, shall consist of:

- (1) a transcription of all or any part of the municipal court proceedings in the case that are shown by the notes of the court reporter to have occurred before, during, or after the trial if such transcription is requested of the court reporter by the defendant; or
- (2) a brief statement of the facts of the case proven at the trial, as agreed to by the defendant and the prosecuting attorney; or
- (3) a partial transcription and the agreed statement of the facts of the case proven at the trial.

(b) The court reporter shall transcribe any portion of his notes of the court proceedings in the case at the request of the defendant. The defendant shall pay for the transcription. The cost to the defendant for the transcription shall not exceed the fees or charges normally being made by court reporters in the county for similar transcriptions. The municipal court shall order the court reporter to make the transcriptions without charge to the defendant if the court finds, after hearing in the response to affidavit by the defendant, that he is too poor to pay or give security for the transcriptions.

Filing of Transcript and Statement of Facts; Time Limits; Completion and Approval of Record; Transfer of Record to Clerk of Appellate Court

Sec. 16. (a) Within 60 days of the giving or filing of the notice of appeal, the parties shall file with the municipal court clerk:

- (1) the statement of facts;
- (2) a written designation of all matter that is to be included in the transcript in addition to matter required to be in the transcript by Section 13 of this Act; and
- (3) any matter designated to be included in the transcript that is not then in the custody of the municipal court clerk.

(b) On completing the record as designated by the parties in Subdivision (2), Subsection (a) of this section, the municipal court judge shall approve the record in the manner provided by law for record completion notification and approval in appeals to the Court of Criminal Appeals.

(c) On the municipal court judge's approval of the record, the municipal court clerk shall promptly forward it to be filed with the appellate court clerk, who shall notify the defendant and the prosecuting attorney that the record has been filed.

Brief on Appeal: Contents and Filing

Sec. 17. (a) A brief on appeal from the municipal court shall present points of error in the same manner required by law for a brief on appeal to the Court of Criminal Appeals, except that the points of error on appeal shall be confined to those points of error set forth in the defendant's motion for new trial.

(b) The defendant shall file his brief with the clerk of the appellate court within 15 days from the date of the filing of the transcript and statement of facts with the appellate court clerk, who shall notify the prosecuting attorney of the filing. The prosecuting attorney shall file his brief with the clerk of the appellate court within 15 days after the defendant files his briefs with the clerk. Each party, on filing his brief with the clerk of the appellate court, shall cause a true copy of his brief to be delivered to the opposing party.

Procedure on Appeal; Review or Error

Sec. 18. The appellate court shall hear and determine appeals from the municipal court at the earliest practical time it may be done, with due regard to the rights of parties and proper administration of justice, and no affirmance or reversal of a case shall be determined on mere technicalities or on technical errors in the preparation and filing of the record on appeal. Oral arguments before the appellate court shall be under the rules which the appellate court may determine, and the parties may submit the case on the records and briefs without oral arguments.

Disposition on Appeal; Presumptions; Decision

Sec. 19. (a) The appellate court may affirm the judgment of the municipal court, or may reverse or remand for a new trial, or may reverse and dismiss the case, or may reform or correct the judgment, as the law and the nature of the case may require.

(b) The appellate court shall presume (1) that the venue was proven in the court below; (2) that the jury was properly impaneled and sworn; (3) that the defendant was arraigned and that he pleaded to the complaint; and (4) that the court's charge was certified by the municipal court judge before it was read to the jury; unless such matters were made an issue in the trial court, or it affirmatively appears to the contrary from the transcript or statement of facts.

(c) In each case decided by the appellate court, the court shall deliver a written opinion or order either sustaining or overruling each assignment of error presented. If an assignment of error is overruled no reason need be given by the appellate court, but cases relied on by the court may be cited. If an assignment of error is sustained, the appellate court shall set forth the reasons for the decision. Copies of the decision of the appellate court shall be mailed by the clerk of the appellate court to the parties and the judge of the municipal court as soon as the decision is rendered by the appellate court.

Certificate of Appellate Proceedings; Filing of Record; Enforcement of Judgment

Sec. 20. When the judgment of the appellate court becomes final, the clerk of the appellate court shall make out a proper certificate of the proceedings had and the judgment rendered and shall mail the certificates to the clerk of the municipal court. When the certificate is received by the clerk of the municipal court, he shall file it with the papers in the case and note it on the docket. If the judgment has been affirmed, no proceeding need be had after filing the certificate in the municipal court to enforce the judgment of the court, except to forfeit the bond of the defendant, to issue a *causas* for the defendant, or issue an execution against his property.

New Trial

Sec. 21. If the appellate court awards a new trial to the defendant, the cause shall stand as it would have stood if a new trial had been granted by the municipal court.

Appeals to the Court of Criminal Appeals; Record

Sec. 22. When a judgment is affirmed by the appellate court, the defendant shall have the right to appeal to the Court of Criminal Appeals if the fine assessed against the defendant in the municipal court exceeded \$100. The appeals to the Court of Criminal Appeals shall be governed by provisions in the Code of Criminal Procedure relating to direct

appeals from county and district courts to the Court of Criminal Appeals except that:

(1) the record and briefs on appeal in the appellate court, plus the transcript of proceedings in the appellate court, shall constitute the record and briefs on appeal to the Court of Criminal Appeals unless the rules of the Court of Criminal Appeals provide otherwise; and

(2) the record and briefs shall be filed directly with the Court of Criminal Appeals.

Conflicting Laws Conformed

Sec. 23. All laws in conflict or inconsistent with the provisions of this Act are hereby conformed to the provisions of this Act.

[Acts 1977, 65th Leg., p. 1233, ch. 477, §§ 1 to 23, eff. Aug. 29, 1977.]

Art. 1200ee. El Paso**Establishment of Municipal Courts**

Sec. 1. The city of El Paso may, by ordinance legally adopted, provide for the establishment of municipal courts as needed. The judges of the additional courts shall have the same qualifications, and be selected in the same manner, as is provided for the judges of the existing municipal courts in the charter of the city, or as may be provided in any future charter or charter amendment. If the charter of the city requires the election of the judge by vote of the people, the governing body may designate a person as judge of each newly created court until the next regular city election. The courts may be in concurrent or continuous session, either day or night.

Jurisdiction

Sec. 2. Each municipal court shall have and exercise concurrent jurisdiction within the corporate limits of the city, and the jurisdiction shall be the same as is now or may be hereafter conferred on all municipal courts by the general laws of this state.

Administration

Sec. 3. Except as otherwise provided by the charter of the city, the governing body of the city may provide by ordinance:

(1) the qualifications of persons eligible for appointment as judge;

(2) that a judge of any of these courts may transfer cases from one court to any other of these courts and may exchange benches and preside over any other of these courts;

(3) that there shall be a municipal court clerk who is clerk of all of the municipal courts, together with such number of deputies as may be needed; and

(4) that complaints shall be filed with the municipal court clerk in a manner to provide for an equal distribution of cases among the courts.

Procedures

Sec. 4. Except as modified by the terms of this Act, the procedure before the courts and appeals therefrom shall be governed by the general law applicable to all municipal courts.

[Acts 1977, 65th Leg., p. 1748, ch. 697, §§ 1 to 4, eff. Aug. 29, 1977.]

Art. 1200ee-1. El Paso Courts of Record

Municipal Courts of Record

Sec. 1. The governing body of the city of El Paso may by ordinance establish the city's existing municipal courts as municipal courts of record in accordance with this Act. Additional municipal courts of record may be created and judges for such courts may be authorized by ordinance upon a finding that an additional court or courts is necessary to properly dispose of the cases arising in the city.

Jurisdiction

Sec. 2. (a) Municipal courts created under the provisions of this Act shall have jurisdiction within the territorial limits of the city in all criminal cases arising under the ordinances of the city and shall also have concurrent jurisdiction with any justice of the peace in any precinct in which the city is situated in criminal cases arising within such territorial limits under the criminal laws of this state in which punishment is only by fine not exceeding \$200. Municipal courts shall also have jurisdiction over cases arising outside the territorial limits of the city as provided in Article 1175, Revised Civil Statutes of Texas, 1925, as amended.

(b) The municipal court of record shall take judicial notice of all ordinances of the city.

Judges

Sec. 3. (a) Municipal courts shall be presided over by judges to be known as "municipal judges."

(b) The city shall provide by charter or by ordinance for the selection of its municipal judges, provided the selection shall be for a definite term in office of not less than two nor more than four years, whose duration within these limits shall be determined by charter, ordinance, or the method prescribed in Article XI, Section 11, of the Texas Constitution. Any definite term or indefinite period in office that a municipal judge has begun on the effective date of this Act shall terminate no later than four years after effective date. A municipal judge may continue in office after the end of his term for not more than 90 days or until his successor is selected and qualified, whichever occurs first.

(c) The judges or substitute judges of the municipal courts may at any time exchange benches and may at any time sit and act for or with each other in any case, matter, or proceeding pending in their courts. Any and all such acts performed by any of the judges shall be valid and binding upon all parties to such cases, matters, and proceedings.

(d) If there is more than one municipal judge in the city the mayor and city council of the city shall appoint one of the judges to be the presiding municipal judge of the city. If the city has a municipal judge who is either its only municipal judge or its only municipal judge who is not serving in a temporary or part-time capacity, such judge shall be the presiding municipal judge for all purposes of this Act.

(e) The presiding judge shall:

(1) maintain a central docket for all cases filed in the geographical limits of the city over which the municipal courts of the city have jurisdiction;

(2) provide for the distribution of cases from the central docket to the individual municipal judge in order that the business of the courts will be continually equalized and distributed among them;

(3) temporarily assign various judges or substitute judges of the municipal courts to exchange benches for other such judges and to sit and act for each other in any case, matter, or proceeding pending in their courts, when necessary for the expeditious disposition of the business of the courts;

(4) cause all dockets, books, papers, and other records of the municipal courts to be permanently kept and permit these records to be available for inspection at all reasonable times by any interested parties;

(5) cause to be maintained as part of the records of the municipal courts an index of municipal court judgments such as county clerks are required by law to prepare for criminal cases arising in county courts; and

(6) where necessary for the proper functioning of the municipal courts, provide for the preservation by microfilm of the records of such courts, subject to the same requirements provided by law for the preservation by microfilm of records under the custody of county clerks.

(f) A judge of the municipal court created under the provisions of this Act shall be a licensed attorney in good standing in the practice of law in this state, a citizen of the United States and of this state. He need not be a resident of the city at the time of his appointment, but he shall maintain his residence within the city during his tenure of office. No person may serve in the office of municipal judge while he holds any other office or employment in the

government of such city, and the holding of such other office or employment by any person serving in the office of municipal judge shall create an immediate vacancy in the judicial office.

Salary

Sec. 4. A municipal judge is entitled to compensation by the city on a salary basis. The amount of the salary shall be determined by the governing body of the city and may not be diminished during the judge's term of office. The salary may not be based, directly or indirectly, on fines, fees, or costs that the municipal judge is required by law to collect during his term of office.

Vacancies; Temporary Replacements; Removal

Sec. 5. (a) When a vacancy in the office of municipal judge occurs, the governing body of the city shall appoint a person meeting the qualifications required by law for such position to fill the office of municipal judge for the unexpired term of the judge serving in that office prior to the vacancy.

(b) A municipal judge may be removed from office for cause to the same extent and under the same rules that judges of the county courts may be removed from office.

Court Facilities

Sec. 6. The governing body of the city shall provide such courtrooms, jury rooms, offices and office furniture, libraries, legal books and materials, and other supplies and facilities as the governing body determines are necessary for the proper operation of the municipal courts.

Court Clerk

Sec. 7. The governing body of the city shall provide a clerk of the municipal courts, and such deputy clerks, warrant officers, and other municipal court personnel, including at least one bailiff for each court, as are necessary for the proper operation of the municipal courts. It is the duty of the clerk to keep the records of proceedings of the municipal courts and to issue all processes and generally to perform the duties now prescribed by law for clerks of the county courts at law exercising criminal jurisdiction insofar as the same may be applicable. The clerk of the municipal courts and all other personnel shall perform the duties of the office under the direction and control of the municipal court judge.

Court Reporter; Use of Transcripts, etc.

Sec. 8. For the purpose of preserving a record in cases tried before the municipal court, the city shall provide a court reporter whose qualifications and compensation shall be determined by the governing body of the city.

(a) The record of proceedings may be preserved by written notes, transcribing equipment, record-

ing equipment, or any combination of these methods. The court reporter is not required to take or record testimony in cases where neither the defendant, the prosecutor, nor the judge demands it.

(b) Testimony, exhibits, or evidence given by any witness in the course of any proceeding in a municipal court of record shall be solely for the purposes of such proceeding or appeal therefrom and, in any other civil proceeding, evidence relating to such testimony, exhibits, evidence, or reproductions thereof shall be privileged and not admissible for any purpose.

Prosecutions by City Attorney

Sec. 9. All prosecutions in municipal courts shall be conducted by the city attorney of the city, or his assistant or deputy.

Complaint; Form

Sec. 10. Proceedings in municipal courts shall be commenced by complaint filed by the city attorney or his assistant or deputy, which shall begin: "In the name and by the authority of the State of Texas"; and shall conclude "Against the peace and dignity of the State." All complaints shall be prepared under the direction of the city attorney and may be signed by any credible person upon information and belief sworn to before the city attorney, or his assistant or deputy, who, for that purpose shall have power to administer the oath. The complaint shall be in writing and shall state:

(1) The name of the accused, if known, and if unknown, shall describe him as accurately as practicable;

(2) The offense with which he is charged in plain and intelligible words;

(3) It must appear that the place where the offense is charged to have been committed is within the jurisdiction of the municipal court; and

(4) It must show, from the date of the offense stated therein that the offense is not barred by limitations. All pleadings in the municipal courts shall be in writing and filed with the clerk of such courts.

Right to Jury Trials

Sec. 11. Every person brought before the municipal courts and charged with an offense shall be entitled to be tried by a lawful jury of six persons.

Appeals: Appellate Courts

Sec. 12. A defendant has the right of appeal from a judgment or conviction in the municipal court under the rules prescribed in this Act. The county courts at law of El Paso County shall have jurisdiction over the appeals from the municipal courts, and all appeals from convictions in the municipal court shall be prosecuted in county court by the city attorney or his assistants or deputy.

No De Novo Appeals

Sec. 13. Each appeal from a conviction in the municipal court shall be determined by the appellate court on the basis of errors pointed out in the defendant's motion for new trial and presented in the transcript and statement of facts prepared from the municipal court proceedings leading to the conviction. Appellate courts may consider unassigned error in the interest of justice. No appeal from the municipal court may be to a trial de novo in the county court.

Motion for New Trial

Sec. 14. In order to perfect an appeal, a written motion for a new trial must be filed by the defendant no later than the 10th day after the rendition of the judgment of conviction, and may be amended by leave of court at any time before it is acted on within 20 days after the filing of the original or amended motion. For good cause shown the time for filing or amending may be extended by the court, not to exceed 90 days. An original or amended motion shall be deemed overruled by operation of law at the expiration of the 20 days allowed for determination of the motion if it is not acted on by the court within that time. The motion shall set forth the points of error complained of by the defendant.

Notice of Appeal

Sec. 15. In order to perfect an appeal, the defendant shall give timely notice of appeal. In the event the defendant requests a hearing on his motion for a new trial, the notice of appeal may be given orally in open court upon the overruling of the motion for new trial; otherwise, the notice of appeal shall be in writing and filed with the municipal court no later than the 10th day after the motion for new trial is overruled. For good cause shown the time for giving notice of appeal may be extended by the court, not to exceed 90 days.

Appeal Bond

Sec. 16. If the defendant is not in custody, an appeal may not be taken until the required appeal bond has been filed with and approved by the municipal court. The appeal bond must be filed no later than the 10th day after the motion for new trial has been overruled. If the defendant is in custody, he shall be committed to jail unless he posts the required appeal bond. The appeal bond shall be in an amount not more than double the amount of fine and costs adjudged against the defendant. However, the bond may not in any case be for less sum than \$50. The bond shall recite that in the cause the defendant shall make his personal appearance before the court to which the appeal is taken instantler, if the court is in session, and there remain from day to day and answer in the cause.

Record on Appeal

Sec. 17. The record on appeal in a case appealed from the municipal court consists of a transcript and, where necessary to the appeal, a statement of facts, which may be prepared by a certified court reporter of such court and from mechanical recordings of the proceedings or from videotape recordings of the proceedings. If the court finds, after hearing in response to affidavit by defendant that he is unable to pay or give security for the record on appeal, the court will order the reporter to make such transcription without charge to the defendant.

Contents of Transcripts

Sec. 18. (a) The municipal court clerk, upon written request from the defendant or his attorney, shall prepare under his hand and seal of the court for transmission to the appellate court a true transcript of the proceedings in the municipal court and shall include the following:

- (1) the complaint;
- (2) material docket entries made by the court;
- (3) the jury charge and verdict, if the trial is by jury;
- (4) the judgment;
- (5) the motion for a new trial;
- (6) the notice of appeal;
- (7) all written motions and pleas and orders of the court; and
- (8) bills of exception, if any are filed.

(b) The municipal court clerk may include in the transcript additional portions of the proceedings in the municipal court prepared from mechanical recordings or videotape recordings of the proceedings.

Bills of Exception

Sec. 19. Either party may include bills of exception in the transcript on appeal, subject to complying with the applicable provisions of the Code of Criminal Procedure governing the preparation of bills of exception and their inclusion in the record on appeal to the court of criminal appeals, except that the bills of exception shall be filed with the municipal court clerk within 60 days after the giving or filing of the notice of appeal.

Statement of Facts; Agreed Statement; Designated Items and Payment

Sec. 20. A statement of facts, when included in the record on appeal, shall consist of:

- (a) a transcription of all or any part of the municipal court proceedings, in the case, as provided herein, that are shown by the notes of the court reporter to have occurred before, during, or after the trial if such transcription is requested of the court reporter by the defendant; or

(b) a brief statement of the facts of the case proven at trial, as agreed to by the defendant and the prosecuting attorney; or

(c) a partial transcription and the agreed statement of the facts of the case proven at the trial; or

(d) a transcription of all or any part of the municipal court proceedings in the case that is prepared from the mechanical recordings or videotape recordings of said proceedings.

Filing of Transcript and Statement of Facts; Time Limits; Completion and Approval of Record; Transfer of Record to Clerk or¹ Appellate Court

Sec. 21. (a) Within 60 days of the giving or filing of the notice of appeal, the parties shall file with the municipal court clerk:

(1) the statement of facts;

(2) a written designation of all matter that is to be included in the transcript in addition to matter required to be in the transcript by Section 18 of this Act; and

(3) any matter designated to be included in the transcript that is not then in the custody of the municipal court clerk.

(b) On completing the record as designated by the parties in Subdivision (2), Subsection (a) of this section, the municipal court judge shall approve the record in the manner provided by law for record completion notification and approval in appeals to the court of criminal appeals.

(c) On the municipal court judge's approval of the record, the municipal court clerk shall promptly forward it to be filed with the appellate court clerk, who shall notify the defendant and the prosecuting attorney that the record has been filed.

¹ So in enrolled bill.

New Trials

Sec. 22. It shall be the duty of the trial court to decide from the briefs of the parties whether defendant should be permitted to withdraw his notice of appeal and be granted a new trial by the court. The court may grant a new trial at any time prior to the record being filed with the appellate court clerk.

Brief on Appeal; Contents and Filing

Sec. 23. (a) A brief on appeal from the municipal court shall present points of error in the same manner required by law for a brief on appeal to the court of criminal appeals.

(b) The defendant shall file his brief with the clerk of the appellate court within 15 days from the date of the filing of the transcript and statement of facts with the appellate court clerk, who shall notify the prosecuting attorney of the filing. The prosecuting attorney shall file his brief with the clerk of the appellate court within 15 days after the defend-

ant files his brief with the clerk. Each party, on filing his brief with the clerk of the appellate court, shall cause a true copy of his brief to be delivered to the opposing party and to the municipal court judge.

Court Rules

Sec. 24. The county courts at law of El Paso County may make and enforce all necessary rules of practice and procedure for appeals from the municipal courts, not inconsistent with the law, for the government of said courts so as to expedite the dispatch of appeals in said courts.

Disposition on Appeal; Presumptions; Decision

Sec. 25. (a) The appellate court may affirm the judgment of the municipal court, or may reverse or remand for a new trial, or may reverse and dismiss the case, or may reform or correct the judgment, as the law and the nature of the case may require.

(b) The appellate court shall presume (1) that the venue was proven in the court below; (2) that the jury was properly impaneled and sworn; (3) that the defendant was arraigned and that he pleaded to the complaint; and (4) that the court's charge was certified by the municipal court judge before it was read to the jury; unless such matters were made an issue in the trial court, or it affirmatively appears to the contrary from the transcript or statement of facts.

(c) In each case decided by the appellate court, the court shall deliver a written opinion or order either sustaining or overruling each assignment or error presented. If an assignment or error is overruled, no reason need be given by the appellate court, but cases relied on by the court may be cited. If an assignment of error is sustained, the appellate court shall set forth the reasons for the decision. Copies of the decision of the appellate court shall be mailed by the clerk of the appellate court to the parties and the judge of the municipal court as soon as the decision is rendered by the appellate court.

Certificate of Appellate Proceedings; Filing of Record; Enforcement of Judgment

Sec. 26. When the judgment of the appellate court becomes final, the clerk of the appellate court shall make out a proper certificate of the proceedings had and the judgment rendered and shall mail the certificates to the clerk of the municipal court. When the certificate is received by the clerk of the municipal court, he shall file it with the papers in the case and note it on the docket. If the judgment has been affirmed, no proceeding need be had after filing the certificate in the municipal court to enforce the judgment of the court, except to forfeit the bond of the defendant, to issue a capias for the defendant, or issue an execution against his property.

Effect of Order of New Trial by Appellate Court

Sec. 27. If the appellate court awards a new trial to the defendant, the cause shall stand as if a new trial had been granted by the municipal court.

Appeals to the Court of Criminal Appeals: Records

Sec. 28. When a judgment is affirmed by the appellate court, the defendant shall have the right to appeal to the court of criminal appeals if the fine assessed against the defendant in the municipal court exceeded \$100. The appeals to the court of criminal appeals shall be governed by provisions in the Code of Criminal Procedure relating to direct appeals from county and district courts to the court of criminal appeals except that:

- (1) the record and briefs on appeal in the appellate court shall constitute the record and briefs on appeal to the court of criminal appeals unless the rules of the court of criminal appeals provide otherwise; and
- (2) the record and briefs shall be filed directly with the court of criminal appeals.

Seal

Sec. 29. The governing body of the city shall provide each municipal court with a seal with a star of five points in the center and the words "Municipal Court in El Paso, Texas." The impress of the seal shall be attached to all papers, except subpoenas, issued out of the court and shall be used by each municipal judge or his clerk to authenticate all official acts of the clerk and the municipal judge.

Effective Date

Sec. 30. This Act is effective September 1, 1979.

Repealer

Sec. 31. To the extent that any local, special, or general law, including Act of the Legislature, Regular Session, conflict with any provisions of this Act, that law is repealed.

[Amended by Acts 1979, 66th Leg., p. 893, ch. 410, §§ 1 to 31, eff. Sept. 1, 1979.]

Art. 1200ff. Repealed by Acts 1979, 66th Leg., p. 822, ch. 369, § 45, eff. Aug. 27, 1979

The repealed article, relating to municipal courts of record in Fort Worth, was derived from Acts 1977, 65th Leg., p. 1798, ch. 725, §§ 1 to 41. See, now, art. 1200ff-1.

Art. 1200ff-1. Fort Worth

Creation; Formation by Ordinance; Additional Courts

Sec. 1. There are created municipal courts of record in the city of Fort Worth to be held in that city if the governing body of the city, by legally adopted ordinance, finds and determines that the conditions of the dockets of the other courts of the county are such as to require the formation of such municipal courts in order to properly dispose of the

cases arising in the city. The governing body of the city may by ordinance determine the number of municipal courts that are required in order to dispose of the cases arising in the city, in which case the governing body of the city may establish as many municipal courts as it considers necessary, and the ordinance establishing the municipal courts shall designate the municipal courts as Municipal Court No. 1, Municipal Court No. 2, and as each municipal court is established, it shall be designated with the next succeeding number. Municipal courts of record shall not exist concurrently with municipal courts that are not courts of record in the city of Fort Worth.

Jurisdiction; Writs; Terms; Exchange of Benches

Sec. 2. (a) Municipal courts created under the provisions of this Act shall have jurisdiction within the territorial limits of the city in all criminal cases arising under the ordinances of the city and shall also have concurrent jurisdiction with any justice of the peace in any precinct in which the city is situated in criminal cases arising within such territorial limits under the criminal laws of this state in which punishment is only by fine not exceeding \$200. Municipal courts shall also have jurisdiction over cases arising outside the territorial limits of the city under the ordinances authorized by Subdivision 19, Article 1175, Revised Civil Statutes of Texas, 1925, as amended.

(b) The judge of a municipal court may grant writs of mandamus, injunction, attachment, and all other writs necessary to the enforcement of the jurisdiction of the court, and may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court.

(c) Municipal courts shall hold no terms and may sit at any time for the transaction of the business of the courts.

(d) The judges of the municipal courts may, at any time, exchange benches and may, at any time, sit and act for and with each other in any case, matter, or proceeding pending in their courts, and any acts thus performed by any of the judges shall be valid and binding on all parties to such cases, matters, and proceedings.

Jurisdiction Conformed

Sec. 3. The jurisdiction of all courts exercising criminal jurisdiction is conformed to the terms and provisions of this Act.

Judges; Qualifications; Election; Compensation; Vacancies; Bond and Oath

Sec. 4. (a) Each municipal court shall be presided over by a judge, who shall be known as the "municipal judge," who shall be a licensed attorney in good standing with two or more years of experience in the practice of law in this state and in the

county in which the municipal court is located and a citizen of the United States and of this state. The judge shall be a resident of the city at the time of the election and shall maintain his or her residence within the city during the judge's tenure of office. Each municipal judge shall be elected by the qualified voters of the city for a term of two years, unless the city by charter amendment provides for a four-year term as provided by Article XI, Section 11, of the Texas Constitution. The governing body of the city may, by the procedure provided by Subsection (c) of this section, designate a qualified person to serve as judge of each municipal court of record created by it until the next regular municipal election.

(b) Municipal judges shall receive a salary, to be set by the governing body of the city, which may not be diminished during their terms of office. A municipal judge may not be removed from office during the term for which the judge was elected except for cause to the same extent and under the same rules that judges of the county courts may be removed from office.

(c) A vacancy in the office of municipal judge by death, resignation, creation of a new court, or otherwise shall be filled by appointment by a majority of the governing body, and the person appointed shall serve only until the next regular municipal election, at which time his or her successor shall be elected. An appointee may succeed himself or herself, if elected, as may judges regularly elected.

(d) A majority of the governing body of the city may appoint any number of qualified persons to act in the place of any municipal judge absent because of illness, family death or illness, continuing legal or judicial education programs, or otherwise. In the absence of a judge, the chief judge or his or her designate shall call on one of those persons to serve, and while serving the selectee shall have all the powers and discharge all the duties of the office and shall receive the same compensation that is payable to the regular municipal judge.

(e) Municipal judges shall execute a bond and take the oath of office as required by law relating to county judges.

(f) The chief judge of the municipal courts shall be the senior municipal judge in length of continuous service as judge.

Criminal Complaints

Sec. 5. All proceedings in municipal courts shall be commenced on original complaint filed by the city attorney of the city or the assistant city attorneys. All such complaints shall be prepared under the direction of the city attorney or his or her assistants.

Filing of Original Papers

Sec. 6. The clerk of the municipal courts, under the direction of the chief judge, shall file the original complaint and the original of all judgments, orders, motions, or other papers and proceedings in each case in a folder for permanent record. No separate minute book for the court is required, but the original papers filed with the clerk shall constitute the records of the courts. The clerk of the municipal courts shall cause to be noted on the outside of each case folder the following information:

- (1) the style of the action;
- (2) the nature of the offense charged;
- (3) the date the warrant was issued and return made thereon;
- (4) the time when the examination or trial was had, and if a trial, whether it was by a jury or before the judge of the court;
- (5) the trial settings;
- (6) the verdict of the jury, if any;
- (7) the judgment of the court, if any;
- (8) the motion for a new trial, if any, and the decision thereon;
- (9) if an appeal was taken; and
- (10) the time when and the manner in which the judgment and sentence were enforced.

Clerk; Duties

Sec. 7. The clerk of the municipal courts shall be appointed by the city manager with the consent of the governing body of the city and shall perform all duties in accordance with state statutes, the city charter, and city ordinances. It shall be the duty of the clerk or the clerk's deputies to keep the records of proceedings of the courts and to issue all processes and generally to do and perform the duties now prescribed by law for clerks of county courts exercising criminal jurisdiction insofar as the same may be applicable.

Court Reporter; Evidence Inadmissible in Civil Proceeding

Sec. 8. (a) For the purpose of preserving a record in all cases tried before the municipal courts, the judge of each court shall appoint an official court reporter, who shall be well-skilled in the profession and have the qualifications required of a court reporter in the courts as provided by the general laws of Texas. The reporter shall be a sworn officer of the court and shall hold the office at the pleasure of the judge at a salary to be fixed by the governing body of the city. The judge or judges of the courts may appoint the deputy official court reporters that are deemed necessary to promptly and efficiently dispose of the business of the courts. The court reporter shall perform duties under the direction and control of the municipal judge or judges. The court reporter shall take testimony in any case when a

party or the judge requests it and no testimony shall be taken unless it is requested by a party or the judge.

(b) The testimony, exhibits, or evidence given by a witness in the course of a proceeding in the municipal courts shall be solely for the purpose of such proceeding or appeal therefrom, and in any other civil proceeding, evidence relating to such testimony, exhibits, evidence, or reproductions thereof shall be privileged and not admissible for any purpose.

Court Costs

Sec. 9. No court costs shall be assessed or collected by any municipal court in any case tried in the courts, except warrant fees, capias fees, and other fees authorized for municipal courts.

Service of Process

Sec. 10. All processes issuing out of municipal courts may be served by a policeman or warrant officer of the city or by any peace officer under the same rules as are provided for service by sheriffs and constables of process issuing out of a county court so far as applicable.

Prosecutor; Bailiff

Sec. 11. All prosecutions in municipal courts shall be conducted by the city attorney of the city or the assistant city attorneys. The chief of police of the city shall, in person or by designated officer or deputy, attend the court and perform the duties of a bailiff.

Form of Complaint

Sec. 12. Proceedings in municipal courts shall be commenced by complaint filed by the city attorney, or his or her assistants, which shall begin: "In the name and by authority of the State of Texas" and shall conclude "against the peace and dignity of the state." All complaints shall be prepared under the direction of the city attorney or his or her assistants and may be signed by any credible person on information and belief, sworn to before a notary public, the city attorney, an assistant city attorney, the clerk of the court, or any deputy clerk, each of whom, for that purpose, shall have power to administer the oath. The complaint shall be in writing and shall state:

- (1) the name of the accused, if known, and if unknown, shall describe him or her as accurately as practicable;
- (2) the offense with which the accused is charged in plain and intelligible words;
- (3) facts showing that the place where the offense is charged to have been committed is within the jurisdiction of the municipal court; and
- (4) facts showing, from the date of the offense stated therein, that the offense is not barred by

limitations. All pleadings in the municipal courts shall be in writing and filed with the clerk of such courts.

Jury Trial; Selection of Jurors

Sec. 13. (a) Every person brought before the municipal courts and charged with an offense shall be entitled to be tried by a lawful jury of six persons. The municipal judge may set certain days of each week or month for the trial of jury cases. Juries for the court shall be selected by the following procedure. On the implementation of this Act by the governing body of the city and between the 1st and 15th days of August of each year thereafter, the tax assessor and collector of the city, or one of his or her deputies, and the city secretary, or one of his or her assistants, shall meet together and select, from the list of qualified jurors in the city, the jurors for service in the municipal courts for the ensuing year. The list of jurors shall be taken from the voters registration list of the city. The officers shall place on separate cards of uniform size and color the names of all persons who are known to be qualified jurors under the law residing in the city, placing also on the cards, whenever possible, the post office address of each juror so selected. The cards containing the names shall be deposited in a jury wheel to be provided for that purpose by the governing body of the city. The wheel shall be constructed of any durable material, shall be so constructed as to revolve freely on its axle, and may be equipped with a motor to revolve the wheel so as to thoroughly mix the cards. The wheel shall be locked at all times, except when in use as hereinafter provided, by the use of two separate locks so arranged that the key to one will not open the other lock. The wheel and the clasps into which the locks are fitted shall be arranged so that the wheel cannot be opened unless both of the locks are unlocked. The keys to the locks shall be kept, one by the city secretary and the other by the clerk of the municipal courts. The city secretary and the clerk of the municipal courts shall not open the wheel or permit it to be opened by any person except at the time and in the manner and by the persons herein specified. The city secretary and clerk shall keep the wheel when not in use in a safe and secure place where it cannot be tampered with.

(b) Not less than 10 days before January 1, April 1, July 1, and October 1 of each year, the clerk of the municipal courts, or one of the clerk's deputies, and the city secretary, or one of the secretary's assistants, in the presence and under the direction of one of the municipal judges shall draw from the wheel containing the names of jurors, after the wheel has been turned and the cards thoroughly mixed, one by one the names of jurors to provide the number directed by the judges for each week of the three months next ensuing for which a jury may be re-

quired, and shall record the names as they are drawn on a separate sheet of paper for each week for which jurors may be required. At the drawing, no persons other than those above named shall be permitted to be present. The officers attending the drawing shall not divulge to any person the name of any person that may be drawn as a juror. If at any time during the next three months and prior to the next drawing date it appears that the list already drawn will be exhausted before the expiration of three months, additional lists for as many additional weeks as the judges may direct will be drawn in the same manner. The several lists of names so drawn shall be certified under the hand of the clerk of the municipal courts, or the deputy doing the drawing, and the municipal judge in whose presence the names were drawn, to be the lists drawn by him or her for that quarter and shall be sealed in separate envelopes endorsed "List no. _____ of the petit jurors drawn on the ____ day of _____, 19____, for the Municipal Courts of _____." The clerk doing the drawing shall write his or her name across the seals of the envelopes and deliver them to the judge, who shall inspect the envelopes to see that they are properly endorsed and shall then deliver them to the clerk or the clerk's deputy, and the clerk shall then immediately file them away in some safe and secure place in his or her office under lock and key. When the names are drawn for jury service, the cards containing the names shall be sealed in separate envelopes endorsed "Cards containing the names of jurors list no. _____ of the petit jurors drawn on the ____ day of _____, 19____, for the Municipal Courts of _____." Each envelope shall be retained unopened by the clerk until after the jury selected from the corresponding list has been impaneled. After the jurors so impaneled have served four or more days, the envelope containing the cards bearing the names of the jurors on that list shall then be opened by the clerk or the clerk's deputy. Those cards bearing the names of persons who have not been impaneled and who have not served as many as four days shall be immediately returned to the wheel by the clerk or the deputy, and the cards bearing the names of the persons serving as many as four days shall be put in a box provided for that purpose for the use of the officers who shall next select the jurors from the wheel. If any of the lists drawn are not used, the clerk or the deputy shall open the envelopes containing the cards bearing the names of the unused lists immediately after the expiration of the three-month period and return the cards to the wheel. A juror serving on a jury in the court shall receive not less than \$10 for each day and for each fraction of a day the juror attends the court as a juror, and in no event less than that paid in county courts.

(c) In lieu of the preceding method of jury selection, a majority of the judges of the municipal courts

of the city may adopt a plan binding on all such judges for the selection of persons for jury service with the aid of mechanical or electronic means. If such a plan is adopted, the foregoing provisions of this section dealing with the selection of petit juries by jury wheel shall not apply. A plan so adopted shall include the following requirements:

(1) the names taken for jury purposes shall be names of registered voters in the city;

(2) provision of a fair, impartial, and objective method of selecting persons for jury service;

(3) designation of the clerk of the court as the official to be in charge of the jury selection process and providing the duties of the clerk in that process; and

(4) specification that a true and complete written list showing the names and addresses of the persons summoned to begin jury service on a particular date shall be filed with the clerk of the court at least 10 days prior to the date the persons are to begin jury service.

(d) In lieu of either of the foregoing methods of petit jury selection, a majority of the judges of the municipal courts of the city may adopt a plan binding on all the judges for the selection of persons for jury panels from a central jury pool maintained by the county in which the city is located to provide petit juries for the district courts, county courts, county courts at law, and justice courts of the county, if any such pool exists. If such a plan is adopted, the provisions of this section dealing with the selection of petit juries by jury wheel or mechanical or electronic means do not apply. A plan so adopted shall include the following requirements:

(1) the persons taken from the central jury pool shall be registered voters in the city;

(2) provision of a fair, impartial, and objective method of selecting persons for jury panels from the pool;

(3) designation of the clerk of the municipal courts as the official to be in charge of the selection process from such pool, except that the clerk may, with permission from such county employee, appoint the county employee in charge of the central jury pool as the clerk's deputy for this purpose; and

(4) provision for compensation to the county for juror fees paid by the county to jury panel members selected from the central jury pool for municipal court jury panels, if the fees are paid to the selectees by the county rather than by the city.

Judicial Notice

Sec. 14. Municipal courts shall take judicial notice of all the city ordinances and the corporate limits of that city in all cases tried in the courts.

Rules of Procedure

Sec. 15. Except as modified by this Act, the trial of cases before municipal courts shall be governed by the Code of Criminal Procedure, 1965, applicable to county courts.

Bonds

Sec. 16. All bonds taken in proceedings in the courts shall be payable to the State of Texas for the use and benefit of the city.

Judgment and Sentence

Sec. 17. The judgment and sentence, in case of conviction before municipal courts, shall be in the name of the State of Texas, and shall recover from the defendant the fine and costs for the use and benefit of the city. Except when otherwise ordered by the court, the court shall require that the defendant remain in custody of the chief of police of such city until the fine and costs are paid and shall order that execution issue to collect the fines and penalties.

Appellate Courts

Sec. 18. Appeals from municipal courts shall be heard by the county courts having appellate criminal jurisdiction.

No Appeal by State

Sec. 19. The state shall have no right of appeal.

Right of Appeal

Sec. 20. A defendant has the right of appeal from a judgment of conviction in a municipal court under the rules hereinafter described, and a motion for a new trial shall be prerequisite to the right of appeal from a municipal court.

Motion for New Trial

Sec. 21. A motion for a new trial must be made within five days after the rendition of judgment and sentence and not thereafter. Such motion must be in writing and filed with the clerk of the court.

No New Trial for State

Sec. 22. In no case shall the state be entitled to a new trial.

Notice of Appeal; Bond

Sec. 23. After an order overruling a motion for new trial, an appeal may be taken by paying the \$10 fee for preparation of the transcript which shall be noted on the docket of the court. The fee must be paid within 10 days after the order overruling the motion for a new trial is rendered. An appeal may not be taken until the required bail bond has been given and approved by the court. The bail bond must be filed with the court within 10 days after the order of the court refusing a new trial has been rendered and not afterwards.

Bail on Appeal

Sec. 24. In appeals from the judgments and sentence of a municipal court, the defendant shall, if the defendant is in custody, be committed to jail unless the defendant gives bail, to be approved by the judge of the municipal court in an amount not less than double the amount of fine and costs adjudged against him or her, payable to the State of Texas for the use and benefit of the city. Bail shall not in any case be for a sum less than \$100. The bond shall recite that in the cause the defendant shall make personal appearance before the court to which the appeal is taken instanter, if the court is in session, and if the court is not in session, then at its next session, and there remain from day to day and answer in the cause.

Perfecting Appeal

Sec. 25. Appeals from municipal courts may be perfected by filing the bail bond provided for in Section 24 of this Act on approval by the municipal court.

Record and Briefs on Appeal

Sec. 26. In view of the crowded conditions of the dockets of the courts, the record and briefs on appeal in a case appealed from a municipal court shall be limited so far as possible to the questions relied on for reversal.

Elements of the Record

Sec. 27. The record on appeal in a case appealed from a municipal court shall consist of a transcript.

Assignments of Error

Sec. 28. The motion for a new trial in a case appealed from a municipal court shall constitute the assignments of error on appeal. A ground of error not distinctly set forth in a motion for new trial shall be considered as waived.

Stipulation of Record on Appeal

Sec. 29. The city attorney, or the assistant city attorney, and the defendant, or the defendant's attorney, by written stipulation filed with the clerk of the municipal courts may designate the parts of the record, proceedings, and evidence to be included in the record on appeal.

Contents of Transcript

Sec. 30. The clerk of the municipal courts, under written instructions of the defendant, or the defendant's attorney, shall, after payment of the \$10 preparation fee, prepare under his or her hand and seal of the court for transmission to the appellate court a true copy of the proceedings in the municipal court, and, unless otherwise designated by agreement of the parties, shall include the following: (1) the complaint on which the trial was had; (2) the order of the court on any motions or exceptions; (3) the

judgment of the court and the verdict of the jury; (4) any findings of fact or conclusions of law by the court; (5) the judgment of the court; (6) the motion for new trial and the order of the court thereon; (7) the notice of appeal; (8) any statement of the defendant or the city attorney as to the matter to be included in the record; (9) the bail bond; (10) the certified bill of costs; (11) any statement of facts; and (12) any signed paper designated as material by the defendant, or the defendant's attorney, or the city attorney or assistant city attorney. The defendant, or the defendant's attorney, may file with the clerk and deliver or mail to the city attorney, or assistant city attorney, a copy of the written instruction, and the city attorney, or assistant city attorney, may file and deliver or mail a written direction to the clerk to include in the transcript additional portions of proceedings in the trial court.

Statement of Facts

Sec. 31. (a) The statement of facts shall, except as hereinafter provided, consist of a transcription of the testimony of witnesses and bills of exception. The statement of facts shall be prepared by the court reporter of the municipal court at the request of any party or the court. The court reporter shall immediately notify all parties in writing that the request has been made. Copies of the statement of facts shall be provided all parties by the reporter and one copy shall be filed by the reporter with the clerk of the municipal courts to be forwarded immediately to the clerk of the appellate court. The transcription shall be in narrative form unless written notice of objection to narrative form is made by a party within five days of receiving notice that the transcription was requested.

(b) All matters not essential to the decision or the questions presented in the motion for new trial shall be omitted from a statement of facts. Formal parts of all exhibits and more than one copy of any document appearing in the transcript or the statement of facts may be excluded. All documents may be abridged by omitting or abbreviating a formal portion thereof.

(c) It shall be unnecessary for the statement of facts to be approved by the trial court or judge thereof when agreed to by the defendant, or the defendant's attorney, and the city attorney, or assistant city attorney.

(d) The cost of preparation of the statement of facts shall be paid by the requesting party, unless the requesting party is the State of Texas or the city. The cost, if paid by the defendant, is recovered by the defendant if the case is overturned or dismissed on appeal.

Agreed Statement of Case

Sec. 32. The defendant, or the defendant's attorney, and the city attorney, or assistant city attorney, may agree on a brief statement of the case and on the facts proven as will enable the appellate court to determine where there is error in the judgment of the trial court. Such statements shall be copied into the transcript in lieu of the proceedings themselves.

Date for Filing Record

Sec. 33. The transcript and statement of facts shall be filed with the clerk of the municipal courts within 60 days from the date of the payment of the \$10 fee for preparation of the transcript and shall be promptly forwarded by the clerk of the municipal courts to the clerk of the court to which the appeal is taken.

Fee for Preparation of Record

Sec. 34. The defendant shall pay a fee of \$10 to the clerk of the municipal courts for the preparation of the transcript. If the case is reversed on appeal, the \$10 fee shall be refunded to the defendant.

Date for Filing Brief

Sec. 35. Briefs shall be filed with the clerk of the court to which an appeal is taken within 10 days of the filing of the transcript and statement of facts in the municipal court. At the same time, a true copy of the brief shall be provided to opposing counsel.

Hearing Appeals; Oral Arguments

Sec. 36. The court to which the appeal is taken shall hear and determine appeals from municipal courts at the earliest time it may be done, with due regard to the rights of parties and proper administration of justice. Oral arguments before the court shall be under such rules as the court may determine, and the parties may submit the case on the records and briefs without oral argument.

Disposition on Appeal

Sec. 37. A county court having jurisdiction of appeals from municipal courts may affirm the judgment of the municipal court, or may reverse or remand for a new trial, or may reverse and dismiss the case, or may reform or correct the judgment, as the law and the nature of the case may require. Unless such matters were made an issue in the municipal court, or it affirmatively appears to the contrary from the transcript or statement of facts, the court shall presume that the venue was proven in the court below, that the jury was properly impaneled and sworn, that the defendant was arraigned and that he or she pleaded to the complaint, and that the court's charge was certified by the judge and filed by the clerk before it was read to the jury. In each case decided by the court having jurisdiction of appeals, the court shall deliver a written opinion either sustaining or overruling each

assignment of error presented. If an assignment of error is overruled, no reason need be given by the court, but cases relied on by the court may be cited. If an assignment of error is sustained, the court shall set forth the reasons for such decision. Copies of the decision of the court shall be mailed by the clerk of the court to the parties and the judge of the municipal court as soon as rendered by the court.

Certificate of Appellate Proceedings; Enforcement of Judgment

Sec. 38. When the judgment of the court having jurisdiction of appeals from municipal courts becomes final, the clerk of the court shall make out a proper certificate of the proceedings had and the judgment rendered and mail the certificate to the clerk of the municipal courts from which the appeal was taken. When the record is received by the clerk of the municipal courts, the clerk shall file it with the papers in the case and note it on the docket of the municipal court. Where the judgment has been affirmed, no proceedings need be had after filing the record in the municipal court to enforce the judgment of the court, except forfeiture of the bond of the defendant, issuance of a *capias* for the defendant, or an execution against the defendant's property.

Award of New Trial

Sec. 39. Where the appeal court awards a new trial to the defendant, the cause shall stand as it would have stood if a new trial had been granted by the municipal court.

Appeal to Court of Criminal Appeals

Sec. 40. Appeals to the Court of Criminal Appeals of Texas from the decision of the court having jurisdiction of appeals from municipal courts, when permitted by law, shall be governed by the Code of Criminal Procedure, 1965, except that when an appeal is permitted by law, the transcript, briefs, and statement of facts filed in the court having jurisdiction of appeals from municipal courts shall constitute the transcript, briefs, and statement of facts before the Court of Criminal Appeals of Texas or as the rules of the Court of Criminal Appeals may provide in such cases.

Facilities of Court; Salaries

Sec. 41. (a) The municipal courts shall be held in the city at a place or places within the corporate limits of the city as may be designated by the governing body of the city.

(b) The governing body of the city shall provide suitable quarters for the courts, and all costs of providing courtrooms and office space for the courts, the clerk, and court reporters shall be paid for by the governing body of the city. All salaries paid to the judges, the clerk, court reporters, and employees of the municipal courts shall be paid by the governing body of the city.

Disposition of Fines, Fees, Costs, and Bonds

Sec. 42. All fines, fees, costs, and cash bonds in municipal courts shall be paid to the clerk of the municipal courts. The clerk of the municipal courts shall deposit all fines, fees, costs, and cash bonds directly into the general fund of the city.

Classification of Personnel

Sec. 43. The judges of municipal courts, the clerk and deputy clerks of the courts, and the court reporters of the municipal courts shall not be considered to be classified employees under civil service, charter, or ordinance provisions. However, the governing body of the city may provide by ordinance that all other employees of the municipal courts may be hired and paid as classified employees under the city civil service, charter, or ordinance provisions. The judges, clerk, deputy clerks, and court reporters may be authorized or required by the governing body of the city to participate in the retirement program of the city. The judges, clerk, deputy clerks, and court reporters of municipal courts shall receive the same vacation, sick leave, and other benefits as are provided for other nonclassified employees of the city under such regulations as may be provided by the governing body.

Vacation of Unnecessary Court

Sec. 44. After the establishment of municipal courts, if the governing body of the city shall, by legally adopted ordinance, find and determine that the condition of the dockets of the other courts of the county is such as not to require the existence of one or more municipal courts in order to properly dispose of the cases arising in the city, then the offices of municipal judge, clerk of the municipal courts, court reporters, and other employees of the courts may be declared vacated as of the end of the term for which the municipal court judges were last elected or appointed. In that event, any case pending in the municipal courts shall be transferred to the proper court having jurisdiction of the offense. [Acts 1979, 66th Leg., p. 811, ch. 369, §§ 1 to 44, eff. Aug. 27, 1979.]

Art. 1200gg. Lubbock

Creation

Sec. 1. The governing body of the City of Lubbock may by ordinance establish the city's existing municipal courts as municipal courts of record in accordance with this Act. Additional municipal courts of record may be created and one or more judges for each court may be authorized by ordinance on a finding that an additional court or courts or additional judges are necessary to properly dispose of the cases arising in the city.

Jurisdiction; Writs

Sec. 2. (a) Municipal courts created under the provisions of this Act shall have jurisdiction within the territorial limits of the city in all criminal cases arising under the ordinances of the city and shall also have concurrent jurisdiction with any justice of the peace in any precinct in which the city is situated in criminal cases arising within such territorial limits under the criminal laws of this state in which punishment is only by fine not exceeding \$200. Municipal courts shall also have jurisdiction over cases arising outside the territorial limits of the city under the ordinances authorized by Subdivision 19, Article 1175, Revised Civil Statutes of Texas, 1925, as amended.

(b) The municipal court of record shall take judicial notice of all ordinances of the city.

(c) The judge of a municipal court may grant writs of mandamus, injunction, attachment, and all other necessary writs necessary to the enforcement of the jurisdiction of the court and may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court.

Judges

Sec. 3. (a) Each municipal court shall be presided over by one or more judges to be known as "municipal judges."

(b) Each municipal judge shall be elected by the qualified voters of the city for a term of two years, unless the city by charter amendment provides for a four-year term as provided by Article XI, Section 11, of the Texas Constitution. The governing body of the city may appoint a person or persons with the qualifications required for a judge to serve as the judge or judges authorized for each newly created municipal court of record until the next regular city election.

(c) The judges or substitute judges of the municipal courts may at any time exchange benches and may at any time sit and act for or with each other in any case, matter, or proceeding pending in their courts. An act performed by any of the judges shall be valid and binding on all parties to the cases, matters, and proceedings.

(d) if there is more than one municipal judge in the city, the governing body of the city shall appoint one of the judges to be the presiding municipal judge of the city. If the city has a municipal judge who is either its only municipal judge or its only municipal judge who is not serving in a temporary or part-time capacity, that judge shall be the presiding municipal judge for all purposes of this Act.

(e) The presiding judge shall:

(1) maintain a central docket for all cases filed in the geographical limits of the city over which the municipal courts of the city have jurisdiction;

(2) provide for the distribution of cases from the central docket to the individual municipal judges in order that the business of the courts will be continually equalized and distributed among them;

(3) request the jurors needed for cases that are set for trial by jury in the municipal courts of record, which, as provided by Section 11(b) of this Act, shall be transferred to and serve in the municipal court as if summoned for the municipal court to which they are transferred;

(4) temporarily assign various judges or substitute judges of the municipal courts to exchange benches and to sit and act for each other in any case, matter, or proceeding pending in their courts when necessary for the expeditious disposition of the business of the courts;

(5) cause all dockets, books, papers, and other records of the municipal courts to be permanently kept and permit these records to be available for inspection at all reasonable times by any interested parties;

(6) cause to be maintained as part of the records of the municipal courts an index of municipal court judgments such as county clerks are required by law to prepare for criminal cases arising in county courts; and

(7) where necessary for the proper functioning of the municipal courts, provide for the preservation by microfilm of the records of the courts, subject to the same requirements provided by law for the preservation by microfilm of records under the custody of county clerks.

(f) A judge of a municipal court created under the provisions of this Act shall have been a licensed attorney in good standing in the practice of law in this state for a period of five years, shall be a citizen of the United States and of this state, and shall be required to satisfy the same residency requirements as those pertaining to a member of the city council of the City of Lubbock. No person may serve in the office of municipal judge while he or she holds any other office or employment in the government of the city, and the holding of the other office or employment by a person serving in the office of municipal judge shall create an immediate vacancy in the judicial office.

Salary

Sec. 4. A municipal judge is entitled to compensation by the city on a salary basis. The amount of the salary shall be determined by the governing body of the city and may not be diminished during the judge's term of office. The salary may not be based, directly or indirectly, on fines, fees, or costs that the municipal judge is required by law to collect during his or her term of office.

Vacancies; Temporary Replacements; Removal

Sec. 5. (a) When a vacancy in the office of municipal judge occurs, the governing body of the city shall appoint a person meeting the qualifications required by law for the position to fill the office of municipal judge for the unexpired term of the judge serving in that office prior to the vacancy. If a judge is temporarily unable to act for any reason, the governing body may appoint a person meeting the qualifications for the position to serve during the absence of the judge with all the powers and duties of the office and shall provide for the person's compensation.

(b) A municipal judge may be removed from office for cause to the same extent and under the same rules that judges of the county courts at law may be removed from office. A municipal judge is answerable to the governing body of the city only on budgetary matters.

(c) Each municipal judge shall comply with the same provisions for filing a financial statement as are required of other judges by Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9b, Vernon's Texas Civil Statutes).

Court Facilities

Sec. 6. The governing body of the city shall provide the courtrooms, jury rooms, offices and office furniture, libraries, legal books and materials, and other supplies and facilities that the governing body determines are necessary for the proper operation of the municipal courts.

Court Clerk

Sec. 7. The governing body of the city shall provide a clerk of the municipal courts and the deputy clerks, warrant officers, and other municipal court personnel that are necessary for the proper operation of the municipal courts. It is the duty of the clerk to keep the records of proceedings of the municipal courts and to issue all processes and generally to perform the duties now prescribed by law for clerks of the county courts at law exercising criminal jurisdiction, insofar as the same may be applicable. The clerk of the municipal courts and all other personnel shall perform the duties of the office under the direction and control of the presiding municipal judge.

Court Reporter

Sec. 8. (a) For the purpose of preserving a record in cases tried before the municipal court, the city shall provide a court reporter with the qualifications provided by law for official court reporters, whose compensation shall be determined by the chief administrative officer of the city on the recommendation of the presiding municipal judge.

(b) The record of proceedings may be preserved by written notes, transcribing equipment, recording equipment, or any combination of these methods. The court reporter is not required to take or record testimony in cases where neither the defendant, the prosecutor, nor the judge demands it.

Prosecutions by City Attorney

Sec. 9. All prosecutions in municipal courts shall be conducted by the city attorney of the city or his or her assistant or deputy.

Complaint

Sec. 10. (a) Proceedings in municipal courts shall be commenced by complaint, which shall begin: "In the name and by the authority of the State of Texas"; and shall conclude: "Against the peace and dignity of the State"; and if the offense is only covered by an ordinance, it may also conclude: "Contrary to the said ordinance." The municipal judge shall charge the jury in accordance with Subsection (a) of Section 11 of this Act. Complaints before the court may be sworn to before any officer authorized to administer oaths or before the municipal judge, clerk of the court, city secretary, or city attorney or his or her assistant or deputy, each of whom, for that purpose, shall have power to administer oaths. The complaint shall be in writing and shall state:

- (1) the name of the accused, if known, and if unknown, shall describe the accused as accurately as practicable;
- (2) the offense with which the accused is charged in plain and intelligible words;
- (3) the place where the offense is charged to have been committed, which must appear to be within the jurisdiction of the municipal court; and
- (4) the date of the offense which, as stated, must show that the offense is not barred by limitations.

(b) All pleadings in the municipal courts shall be in writing and filed with the clerk of the courts.

Right to Jury

Sec. 11. (a) Every person brought before the municipal courts and charged with an offense is entitled to be tried by a jury of six persons, unless waived according to law. The jury shall decide all questions of fact or credibility of witnesses. The court shall determine all matters of law and shall charge the jury on the law.

(b) When requested by the clerk of the municipal courts, the officials in the county who draw the names of jurors from the county jury wheel for the county's central jury system shall draw from the same jury wheel, and in the same manner, the names of jurors to compose as many lists for service in the municipal courts as the clerk of the municipal courts

requested. The jury lists drawn for the municipal courts shall be delivered to the clerk of the municipal court. The governing body of the city shall establish the necessary procedures for the summoning and impaneling of jury panels by the municipal courts and for the payment of the jurors. A juror serving in the municipal court shall receive the same pay for each day or fraction of a day that he or she serves as jurors receive for service in the other courts of Lubbock County, as provided by Article 2122, Revised Civil Statutes of Texas, 1925, as amended.

(c) A juror in the municipal courts shall have the same qualifications as jurors in the other courts in Lubbock County as provided by Article 2133, Revised Civil Statutes of Texas, 1925, as amended, except that a juror in municipal court shall also be a registered voter in the City of Lubbock. Jurors in the municipal courts are subject to the same law governing exemption and excuse from jury service as the jurors in the other courts in the county.

Appeals; Appellate Courts

Sec. 12. (a) In this Act, "appellate courts" means the county courts at law in Lubbock County.

(b) A defendant has the right of appeal from a judgment or conviction in the municipal court under the rules prescribed in this Act. The appellate courts have jurisdiction over the appeals from the municipal courts, and all appeals from convictions in the municipal court shall be prosecuted in the appellate court by the city attorney or his or her assistants or deputies.

No De Novo Appeals

Sec. 13. Each appeal from a conviction in the municipal court shall be determined by the appellate court on the basis of errors pointed out in the defendant's motion for new trial and presented in the transcript and statement of facts prepared from the municipal court proceedings leading to the conviction. No appeal from the municipal court may be by trial de novo.

Motion for New Trial

Sec. 14. In order to perfect an appeal, a written motion for a new trial must be filed by the defendant no later than the 10th day after the rendition of the judgment of conviction and may be amended by leave of court at any time before it is acted on within 20 days after the filing of the original or amended motion. For good cause shown, the time for filing or amending may be extended by the court, not to exceed 90 days. An original or amended motion shall be deemed overruled by operation of law at the expiration of the 20 days allowed for determination of the motion, if it is not acted on by the court within that time. The motion shall set forth the points of error complained of by the defendant.

Notice of Appeal

Sec. 15. In order to perfect an appeal, the defendant shall give timely notice of appeal. In the event the defendant requests a hearing on his or her motion for a new trial, the notice of appeal may be given orally in open court on the overruling of the motion for new trial. Otherwise, the notice of appeal shall be in writing and filed with the municipal court no later than the 10th day after the motion for new trial is overruled. For good cause shown, the time for giving notice of appeal may be extended by the court, not to exceed 90 days.

Appeal Bond

Sec. 16. If the defendant is not in custody, an appeal may not be taken until the required appeal bond has been filed with and approved by the municipal court. The appeal bond must be filed no later than the 10th day after the motion for new trial has been overruled. If the defendant is in custody, the defendant shall be committed to jail unless he or she posts the required appeal bond. The appeal bond shall be in an amount not less than double the amount of fine and costs adjudged against the defendant. However, the bond may not in any case be for a sum less than \$50. The bond shall recite that in the cause the defendant was convicted and has appealed and be conditioned that the defendant shall make his or her personal appearance before the court to which the appeal is taken instanter, if the court is in session, and there remain from day to day and answer in the cause.

Record on Appeal

Sec. 17. The record on appeal in a case appealed from the municipal court consists of a transcript and where necessary to the appeal, a statement of facts, which shall be prepared by a court reporter of the court from the reporter's record of the proceeding, mechanical recordings of the proceedings, or from videotape recordings of the proceedings. If the court finds, after hearing in response to an affidavit by defendant, that the defendant is unable to pay or give security for the record on appeal, the court will order the reporter to make the transcription without charge to the defendant.

Contents of Transcripts

Sec. 18. (a) The municipal court clerk, on written request from the defendant or the defendant's attorney, shall prepare under the clerk's hand and seal of the court for transmission to the appellate court a true transcript of the proceedings in the municipal court and shall include copies of the following:

- (1) the complaint;
- (2) material docket entries made by the court;
- (3) the jury charge and verdict, if the trial is by jury;

- (4) the judgment;
 - (5) the motion for a new trial;
 - (6) the notice of appeal;
 - (7) all written motions and pleas and orders of the court;
 - (8) bills of exception, if any are filed; and
 - (9) the appeal bond.
- (b) The municipal court clerk may include in the transcript additional portions of the proceedings in the municipal court prepared by mechanical recordings or videotape recordings of the proceedings.

Bills of Exception

Sec. 19. Either party may include bills of exception in the transcript on appeal, subject to complying with the applicable provisions of the Code of Criminal Procedure, 1965, as amended, governing the preparation of bills of exception and their inclusion in the record on appeal to the court of criminal appeals, except that the bills of exception shall be filed with the municipal court clerk within 60 days after the giving or filing of the notice of appeal.

Statement of Facts

Sec. 20. A statement of facts, when included in the record on appeal, shall consist of:

- (1) a transcription of all or any part of the municipal court proceedings in the case, as provided in this Act, that are shown by the notes of the court reporter to have occurred before, during, or after the trial, if such a transcription is requested of the court reporter by the defendant;
- (2) a brief statement of the facts of the case proven at the trial, as agreed to by the defendant and the prosecuting attorney;
- (3) a partial transcription and the agreed statement of the facts of the case proven at the trial; or
- (4) a transcription of all or any part of the municipal court proceedings in the case that are prepared from the mechanical recordings or videotape recordings of the proceedings.

Completion, Approval, and Transfer of Record

Sec. 21. (a) Within 60 days of the giving or filing of the notice of appeal, the parties shall file with the municipal court clerk:

- (1) the statement of facts;
- (2) a written designation of all matter that is to be included in the transcript in addition to matter required to be in the transcript by Section 18 of this Act; and
- (3) any matter designated to be included in the transcript that is not then in the custody of the municipal court clerk.

(b) On completing the record as designated by the parties in Subdivision (2), Subsection (a) of this section, the municipal court judge shall approve the record in the manner provided by law for record completion notification and approval in appeals to the court of criminal appeals.

(c) On the municipal court judge's approval of the record, the municipal court clerk shall promptly forward the record to be filed with the appellate court clerk, who shall notify the defendant and the prosecuting attorney that the record has been filed.

New Trials

Sec. 22. It is the duty of the trial court to decide from the briefs of the parties whether the defendant should be permitted to withdraw his or her notice of appeal and be granted a new trial by the court. The court may grant a new trial at any time prior to the record being filed with the appellate court clerk.

Brief on Appeal

Sec. 23. (a) A brief on appeal from the municipal court shall present points of error in the same manner required by law for a brief on appeal to the court of criminal appeals.

(b) The defendant shall file his or her brief with the clerk of the appellate court within 15 days from the date of the filing of the transcript and statement of facts with the appellate court clerk, and the defendant or the defendant's attorney shall certify in the brief to the posting of such by United States mail with proper postage affixed and addressed to the office of the prosecuting attorney. The prosecuting attorney shall file his or her brief with the clerk of the appellate court within 15 days after the defendant files the defendant's brief with the clerk. Each party, on filing his or her brief with the clerk of the appellate court, shall cause a true copy of the brief to be delivered to the opposing party and to the municipal court judge.

Court Rules

Sec. 24. (a) Except as modified by this Act, the trial of cases before municipal courts shall be governed by the Code of Criminal Procedure, 1965, as amended.

(b) The municipal courts may make and enforce all necessary rules of practice and procedure, not inconsistent with the law, so as to expedite the trial of cases in the courts.

(c) The county courts at law of Lubbock County may make and enforce all necessary rules of practice and procedure for appeals from municipal courts, not inconsistent with the law, so as to expedite the dispatch of appeals from the municipal courts.

Disposition on Appeal

Sec. 25. (a) The appellate court may affirm the judgment of the municipal court, or may reverse or remand for a new trial, or may reverse and dismiss the case, or may reform or correct the judgment, as the law and the nature of the case may require.

(b) The appellate court shall presume that the venue was proven in the court below, that the jury was properly impaneled and sworn, that the defendant was arraigned and pleaded to the complaint, and that the court's charge was certified by the municipal court judge before it was read to the jury, unless such matters were made an issue in the trial court or it affirmatively appears to the contrary from the transcript or statement of facts.

(c) In each case decided by the appellate court, the court shall deliver a written opinion or order either sustaining or overruling each assignment of error presented. The appellate court shall set forth the reasons for the decision. Copies of the decision of the appellate court shall be mailed by the clerk of the appellate court to the parties and the judge of the municipal court as soon as the decision is rendered by the appellate court.

Certificate of Appellate Proceedings

Sec. 26. When the judgment of the appellate court becomes final, the clerk of the appellate court shall make out a proper certificate of the proceedings had and the judgment rendered and shall mail the certificates to the clerk of the municipal court. When the certificate is received by the clerk of the municipal court, the clerk shall file it with the papers in the case and note it on the docket. If the judgment has been affirmed, no proceeding need be had after filing the certificate in the municipal court to enforce the judgment of the court, except to forfeit the bond of the defendant, to issue a *caapias* for the defendant, or to issue an execution against the defendant's property.

Order of New Trial by Appellate Court

Sec. 27. If the appellate court awards a new trial to the defendant, the cause shall stand as if a new trial had been granted by the municipal court.

Appeal to the Court of Criminal Appeals

Sec. 28. When a judgment is affirmed by the appellate court, the defendant has the right to appeal to the Court of Criminal Appeals if the fine assessed against the defendant in the municipal court exceeded \$100. The appeal to the Court of Criminal Appeals shall be governed by provisions in the Code of Criminal Procedure, 1965, as amended, relating to direct appeals from county and district courts to the Court of Criminal Appeals except that:

(1) the record and briefs on appeal in the appellate court shall constitute the record and briefs on

appeal to the Court of Criminal Appeals unless the rules of the Court of Criminal Appeals provide otherwise; and

(2) the record and briefs shall be filed directly with the Court of Criminal Appeals.

Seal

Sec. 29. The governing body of the city shall provide each municipal court with a seal with a star of five points in the center and the words "Municipal Court in Lubbock, Texas." The impress of the seal shall be attached to all papers, except subpoenas, issued out of the court and shall be used by each municipal judge or the clerk to authenticate all official acts of the clerk and the municipal judge. [Acts 1979, 66th Leg., p. 741, ch. 329, §§ 1 to 29, eff. Aug. 27, 1979.]

Section 30 of the 1979 Act provided:

"The residency requirements for a judge of a municipal court of record do not apply to a person serving as a municipal judge in the City of Lubbock on the effective date of this Act until the first regular city election after the establishment of the municipal courts of record."

Art. 1200hh. Longview**Creation; Formation by Ordinance**

Sec. 1. (a) There is created in the city of Longview a court of record to be known as the "City of Longview Municipal Court," to be held in that city if the governing body of the city of Longview, by ordinance, finds and determines that the formation of a municipal court of record is necessary in order to provide a more efficient disposition of appeals arising from the municipal court.

(b) The authority of the governing body of the city of Longview to create a municipal court of record in the city of Longview includes the authority to establish, in the manner set forth in this section, more than one municipal court of record if the governing body determines that it is necessary in order to dispose of the cases arising in the city. If more than one municipal court of record is created, the judges of the municipal courts may at any time exchange benches and sit and act for and with each other in a case, matter, or proceeding pending in a municipal court, and any and all acts performed by a judge are valid and binding on all parties to the case, matter, and proceeding.

(c) The municipal court of record authorized in this section is referred to in this Act as the "municipal court."

Application of Other Laws Regarding Municipal Courts

Sec. 2. The general laws of the state regarding municipal courts and regarding justice courts on matters where there is no law for municipal courts, and the valid charter provisions and ordinances of the city of Longview relating to the municipal court apply to the municipal court authorized in this Act, unless the laws, charter provisions, and ordinances

are in conflict or inconsistent with the provisions of this Act.

Judge; Qualifications

Sec. 3. (a) The municipal court shall be presided over by a judge, who shall be a licensed attorney in good standing in this state and a citizen of the United States and of this state. The judge need not be a resident of the city. The judge shall devote as much of his or her time to the duties of the office as the office shall require. The judge shall be appointed by the governing body of the city and shall be paid a salary to be determined by the governing body of the city. The salary shall not be based on or be in any way contingent on the fines, fees, or costs collected by the municipal court.

(b) If more than one municipal court is created by the governing body of the city, a judge shall be appointed for each court and the governing body of the city shall designate a judge to be the presiding judge.

Court Clerk

Sec. 4. The governing body of the city shall provide a clerk of the municipal courts and the deputy clerks, warrant officers, and other municipal court personnel that are necessary for the proper operation of the municipal courts. It is the duty of the clerk to keep records of proceedings of the municipal courts and to issue all processes and generally to perform the duties now prescribed by law for clerks of the county courts at law exercising criminal jurisdiction, insofar as the same may be applicable. The clerk of the municipal courts and all other personnel shall perform the duties of the office under the direction and control of the municipal court judge.

Court Reporter

Sec. 5. (a) For the purpose of preserving a record in the cases tried before the municipal court, the city shall provide a court reporter, who shall be appointed by the municipal court judge and whose compensation shall be determined by the governing body of the city. The qualifications of the court reporter shall be as provided by law for official court reporters.

(b) The record of proceedings may be preserved by the court reporter by written notes, transcribing equipment, recording equipment, or any combination of them. The court reporter is not required to take testimony in cases where neither the defendant, the prosecutor, nor the judge demands it.

Jury Selection

Sec. 6. The names of the prospective jurors for trials in the Longview Municipal Court of Record shall be drawn from a jury wheel maintained by the District Court of Gregg County, Texas, or from a

jury wheel maintained by the clerk of the Longview Municipal Court of Record, with names of Longview voter registration rolls of Gregg County and Harrison County, Texas.

Ordinances; Judicial Notice

Sec. 7. The municipal court shall take judicial notice of the ordinances of the city.

Appeal; Appellate Courts

Sec. 8. A defendant has the right of appeal from a judgment of conviction in the municipal court under the rules prescribed in this Act. The County Court of Gregg County has jurisdiction over the appeals from the municipal court.

Appeals on the Record; No De Novo Appeals

Sec. 9. Each appeal from a conviction in the municipal court shall be determined by the appellate court solely on the basis of errors pointed out in the defendant's motion for new trial and presented in the transcript and statement of facts prepared from the municipal court proceedings leading to the conviction. No appeal from the municipal court may be by trial de novo.

Motion for New Trial

Sec. 10. In order to perfect an appeal, a written motion for new trial must be filed by the defendant no later than the 10th day after the rendition of the judgment of conviction, and may be amended by leave of court at any time before it is acted on within 20 days after it is filed. The motion for new trial shall be presented to the court within 10 days after the filing of the original or amended motion, and shall be determined by the court within 20 days after the filing of the original or amended motion. For good cause shown, the time for filing or amending may be extended by the court. An original or amended motion shall be deemed overruled by operation of law at the expiration of the 20 days allowed for determination of the motion if it is not acted on by the court within that time. The motion shall set forth the points of error complained of by the defendant. For purposes of appeal, a point of error not distinctly set forth in the motion for new trial shall be considered as waived.

Notice of Appeal

Sec. 11. In order to perfect an appeal, the defendant shall give timely notice of appeal. In the event the defendant requests a hearing on the motion for new trial, the notice of appeal may be given orally in open court on the overruling of the motion for new trial. Otherwise, the notice of appeal shall be in writing and filed with the municipal court no later than the 10th day after the motion for new trial is overruled.

Appeal Bond

Sec. 12. If the defendant is not in custody, an appeal may not be taken until the required appeal bond has been filed with and approved by the municipal court. The appeal bond must be filed no later than the 10th day after the motion for new trial is overruled. If the defendant is in custody, the defendant shall be committed to jail unless he or she posts the required appeal bond. The appeal bond shall be in an amount not less than double the amount of the fine and costs adjudged against the defendant. However, the bond may not in any case be for a sum less than \$100. The bond shall recite that in the cause the defendant was convicted and has appealed, and be conditioned that the defendant shall make his or her personal appearance before the court to which the appeal is taken instantler, if the court is in session, and if the court is not in session, then at its next session, and there remain from day to day to answer in the cause.

Record on Appeal

Sec. 13. The record on appeal in a case appealed from the municipal court consists of a transcript and, where necessary to the appeal, a statement of facts.

Contents of Transcript

Sec. 14. (a) The municipal court clerk, on written request from the defendant, shall prepare under the clerk's hand and seal of the court for transmission to the appellate court a true transcript of the proceedings in the municipal court that shall always include the following:

- (1) the complaint;
- (2) material docket entries made by the court;
- (3) the jury charge and verdict, if the trial is by jury;
- (4) the judgment;
- (5) the motion for new trial;
- (6) the notice of appeal;
- (7) all written motions and pleas and orders of the court; and
- (8) bills of exception, if any are filed.

(b) The municipal court clerk may include in the transcript additional portions of the proceedings in the municipal court if so instructed in writing by either the defendant or the prosecuting attorney.

Bills of Exception

Sec. 15. Either party may include bills of exception in the transcript on appeal, subject to complying with the applicable provisions of the Code of Criminal Procedure governing the preparation of bills of exception and their inclusion in the record on appeal to the court of criminal appeals, except that the bills of exception shall be filed with the municipal court

clerk within 60 days after the giving or filing of the notice of appeal.

Statement of Facts

Sec. 16. (a) A statement of facts, when included in the record on appeal, shall consist of:

(1) a transcription of all or any part of the municipal court proceedings in the case that are shown by the notes of the court reporter to have occurred before, during, or after the trial if such a transcription is requested of the court reporter by the defendant;

(2) a brief statement of the facts of the case proven at the trial, as agreed to by the defendant and the prosecuting attorney; or

(3) a partial transcription and the agreed statement of the facts of the case proven at the trial.

(b) The court reporter shall transcribe any portion of the reporter's notes of the court proceedings in the case at the request of the defendant. The defendant shall pay for the transcription. The cost to the defendant for the transcription shall not exceed the fees or charges normally being made by court reporters in the county for similar transcriptions. The municipal court shall order the court reporter to make the transcriptions without charge to the defendant if the court finds, after hearing in the response to an affidavit by the defendant, that the defendant is unable to pay or give security for the transcriptions.

Completion, Approval, and Transfer of Record

Sec. 17. (a) Within 60 days of the giving or filing of the notice of appeal, the parties shall file with the municipal court clerk:

- (1) the statement of facts;
- (2) a written designation of all matter that is to be included in the transcript in addition to matter required to be in the transcript by Section 14 of this Act; and
- (3) any matter designated to be included in the transcript that is not then in the custody of the municipal court clerk.

(b) On completing the record as designated by the parties in Subdivision (2), Subsection (a), of this section, the municipal court judge shall approve the record in the manner provided by law for record completion notification and approval in appeals to the court of criminal appeals.

(c) On the municipal court judge's approval of the record, the municipal court clerk shall promptly forward it to be filed with the appellate court clerk, who shall notify the defendant and the prosecuting attorney that the record has been filed.

Brief on Appeal

Sec. 18. (a) A brief on appeal from the municipal court shall present points of error in the same manner required by law for a brief on appeal to the court of criminal appeals, except that the points of error on appeal shall be confined to those points of error set forth in the defendant's motion for new trial.

(b) The defendant shall file the defendant's brief with the clerk of the appellate court within 15 days from the date of the filing of the transcript and statement of facts with the appellate court clerk, who shall notify the prosecuting attorney of the filing. The prosecuting attorney shall file his or her brief with the clerk of the appellate court within 15 days after the defendant files the defendant's brief with the clerk. Each party, on filing his or her brief with the clerk of the appellate court, shall cause a true copy of the brief to be delivered to the opposing party.

Procedure on Appeal

Sec. 19. The appellate court shall hear and determine appeals from the municipal court at the earliest practical time it may be done, with due regard to the rights of parties and proper administration of justice, and no affirmance or reversal of a case shall be determined on mere technicalities or on technical errors in the preparation and filing of the record on appeal. Oral arguments before the appellate court shall be under the rules which the appellate court may determine, and the parties may submit the case on the records and briefs without oral arguments.

Disposition on Appeal

Sec. 20. (a) The appellate court may affirm the judgment of the municipal court, or may reverse or remand for a new trial, or may reverse and dismiss the case, or may reform or correct the judgment, as the law and the nature of the case may require.

(b) The appellate court shall presume that the venue was proven in the court below, that the jury was properly impaneled and sworn, that the defendant was arraigned and pleaded to the complaint, and that the court's charge was certified by the municipal court judge before it was read to the jury, unless such matters were made an issue in the trial court or it affirmatively appears to the contrary from the transcript or statement of facts.

(c) In the case decided by the appellate court, the court shall deliver a written opinion or order either sustaining or overruling each assignment of error presented. If an assignment of error is overruled, no reason need be given by the appellate court, but cases relied on by the court may be cited. If an assignment of error is sustained, the appellate court shall set forth the reasons for the decision. Copies of the decision of the appellate court shall be mailed

by the clerk of the appellate court to the parties and the judge of the municipal court as soon as the decision is rendered by the appellate court.

Certificate of Appellate Proceedings

Sec. 21. When the judgment of the appellate court becomes final, the clerk of the appellate court shall make out a proper certificate of the proceedings had and the judgment rendered and shall mail the certificates to the clerk of the municipal court. When the certificate is received by the clerk of the municipal court, the clerk shall file it with the papers in the case and note it on the docket. If the judgment has been affirmed, no proceeding need be had after filing the certificate in the municipal court to enforce the judgment of the court, except to forfeit the bond of the defendant, to issue a writ of habeas corpus for the defendant, or issue an execution against the defendant's property.

New Trial

Sec. 22. If the appellate court awards a new trial to the defendant, the cause shall stand as it would have stood if a new trial had been granted by the municipal court.

Appeal to the Court of Criminal Appeals

Sec. 23. When a judgment is affirmed by the appellate court, the defendant has the right to appeal to the court of criminal appeals if the fine assessed against the defendant in the municipal court exceeded \$100. The appeal to the court of criminal appeals shall be governed by provisions in the Code of Criminal Procedure relating to direct appeals from county and district courts to the court of criminal appeals except that:

(1) the record and briefs on appeal in the appellate court, plus the transcript of proceedings in the appellate court, shall constitute the record and briefs on appeal to the court of criminal appeals unless the rules of the court of criminal appeals provide otherwise; and

(2) the record and briefs shall be filed directly with the court of criminal appeals.

[Acts 1979, 66th Leg., p. 830, ch. 374, §§ 1 to 23, eff. Aug. 27, 1979.]

Art. 1200ii. San Antonio**Creation**

Sec. 1. The governing body of the city of San Antonio may by ordinance establish the city's existing municipal courts as municipal courts of record in accordance with this Act. Additional municipal courts of record may be created and one or more judges for each court may be authorized by ordinance on a finding that an additional court or courts, or additional judges, are necessary to properly dispose of the cases arising in the city.

Jurisdiction; Writs

Sec. 2. (a) Municipal courts created under the provisions of this Act shall have jurisdiction within the territorial limits of the city in all criminal cases arising under the ordinances of the city and shall also have concurrent jurisdiction with any justice of the peace in any precinct in which the city is situated in criminal cases arising within such territorial limits under the criminal laws of this state in which punishment is only by fine not exceeding \$200. Municipal courts shall also have jurisdiction over cases arising outside the territorial limits of the city under the ordinances authorized by Subdivision 19, Article 1175, Revised Civil Statutes of Texas, 1925, as amended.

(b) The municipal court of record shall take judicial notice of all ordinances of the city.

(c) The judge of a municipal court may grant writs of mandamus, injunction, attachment, and all other necessary writs necessary to the enforcement of the jurisdiction of the court, and may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court.

(d) The general laws of the state regarding municipal courts and regarding justice courts on matters where there is no law for municipal courts, and the valid charter provisions and ordinances of the city of San Antonio relating to the municipal court apply to the municipal court authorized in this Act, unless the laws, charter provisions, and ordinances are in conflict or inconsistent with the provisions of this Act.

Judges

Sec. 3. (a) Each municipal court shall be presided over by one or more judges to be known as "municipal judges."

(b) Notwithstanding any provision of the charter or an ordinance of the city, each municipal judge shall be elected by the qualified voters of the city for a term of two years. The governing body of the city may appoint a person or persons, with the qualifications required for a judge, to serve as the judge or judges authorized for each newly created municipal court of record until the next regular city election.

(c) The judges or substitute judges of the municipal courts may at any time exchange benches and may at any time sit and act for or with each other in any case, matter, or proceeding pending in their courts. An act performed by any of the judges shall be valid and binding on all parties to the cases, matters, and proceedings.

(d) If there is more than one municipal judge in the city, the municipal judges shall determine which of them shall serve as presiding judge of the city. In the event the judges are unable to determine which of them shall serve as presiding judge, after

notification of such impasse, the governing body of the city shall appoint one of the judges to be the presiding municipal judge of the city. If the city has a municipal judge who is either its only municipal judge or its only municipal judge who is not serving in a temporary or part-time capacity, that judge shall be the presiding municipal judge for all purposes of this Act.

(e) The presiding judge shall:

(1) maintain a central docket for all cases filed in the geographical limits of the city over which the municipal courts of the city have jurisdiction;

(2) provide for the distribution of cases from the central docket to the individual municipal judges in order that the business of the courts will be continually equalized and distributed among them;

(3) request the jurors needed for cases that are set for trial by jury in the municipal courts of record, which, as provided by Section 11(b) of this Act, shall be transferred to and serve in the municipal court as if summoned for the municipal court to which they are transferred;

(4) temporarily assign various judges or substitute judges of the municipal courts to exchange benches and to sit and act for each other in any case, matter, or proceeding pending in their courts when necessary for the expeditious disposition of the business of the courts;

(5) cause all dockets, books, papers, and other records of the municipal courts to be permanently kept and permit these records to be available for inspection at all reasonable times by any interested parties;

(6) cause to be maintained as part of the records of the municipal courts an index of municipal court judgments such as county clerks are required by law to prepare for criminal cases arising in county courts; and

(7) where necessary for the proper functioning of the municipal courts, provide for the preservation by microfilm of the records of the courts, subject to the same requirements provided by law for the preservation by microfilm of records under the custody of county clerks.

(f) A judge of a municipal court created under the provisions of this Act shall be a licensed attorney in good standing with two or more years of experience in the practice of law in the state and a citizen of the United States and of this state. No person may serve in the office of municipal judge while he or she holds any other office or employment in the government of the city, and the holding of the other office or employment by a person serving in the office of municipal judge shall create an immediate vacancy in the judicial office.

Salary

Sec. 4. A municipal judge is entitled to compensation by the city on a salary basis. The amount of the salary shall be determined by the governing body of the city and may not be diminished during the judge's term of office. The salary may not be based, directly or indirectly, on fines, fees, or costs that the municipal judge is required by law to collect during his or her term of office.

Vacancies; Temporary Replacements; Removal

Sec. 5. (a) When a vacancy in the office of municipal judge occurs, the governing body of the city shall appoint a person meeting the qualifications required by law for the position to fill the office of municipal judge for the unexpired term of the judge serving in that office prior to the vacancy. If a judge is temporarily unable to act for any reason, the governing body may appoint a person meeting the qualifications for the position to serve during the absence of the judge with all the powers and duties of the office and shall provide for the person's compensation.

(b) A municipal judge may be removed from office for cause to the same extent and under the same rules that judges of the county courts may be removed from office. A municipal judge is answerable to the governing body of the city only on budgetary matters.

Court Facilities

Sec. 6. The governing body of the city shall provide the courtrooms, jury rooms, offices and office furniture, libraries, legal books and materials, and other supplies and facilities that the governing body determines are necessary for the proper operation of the municipal courts.

Court Clerk

Sec. 7. The governing body of the city shall provide a clerk of the municipal courts, and the deputy clerks, warrant officers, and other municipal court personnel that are necessary for the proper operation of the municipal courts. It is the duty of the clerk to keep the records of proceedings of the municipal courts and to issue all processes and generally to perform the duties now prescribed by law for clerks of the county courts at law exercising criminal jurisdiction, insofar as the same may be applicable. The clerk of the municipal courts and all other personnel shall perform the duties of the office under the direction and control of the presiding municipal judge.

Court Reporter

Sec. 8. (a) For the purpose of preserving a record in cases tried before the municipal court, the city shall provide a court reporter with the qualifications provided by law for official court reporters, whose

compensation shall be determined by the chief administrative officer of the city on the recommendation of the presiding municipal judge.

(b) The record of proceedings may be preserved by written notes, transcribing equipment, recording equipment, or any combination of these methods. The court reporter is not required to take or record testimony in cases where neither the defendant, the prosecutor, nor the judge demands it.

Prosecutions by City Attorney

Sec. 9. All prosecutions in municipal courts shall be conducted by the city attorney of the city, or his or her assistant or deputy.

Complaint

Sec. 10. (a) Proceedings in municipal courts shall be commenced by complaint, which shall begin: "In the name and by the authority of the State of Texas"; and shall conclude: "Against the peace and dignity of the State"; and if the offense is only covered by an ordinance, it may also conclude: "Contrary to the said ordinance." The municipal judge shall charge the jury in accordance with Section 11(a) of this Act. Complaints before the court may be sworn to before any officer authorized to administer oaths or before the municipal judge, clerk of the court, city secretary, or city attorney or his or her assistant or deputy, each of whom, for that purpose, shall have power to administer oaths. The complaint shall be in writing and shall state:

(1) the name of the accused, if known, and if unknown, shall describe the accused as accurately as practicable;

(2) the offense with which the accused is charged in plain and intelligible words;

(3) the place where the offense is charged to have been committed, which must appear to be within the jurisdiction of the municipal court; and

(4) the date of the offense which, as stated, must show that the offense is not barred by limitations.

(b) All pleadings in the municipal courts shall be in writing and filed with the clerk of the courts.

Right to Jury

Sec. 11. (a) Every person brought before the municipal courts and charged with an offense is entitled to be tried by a jury of six persons, unless waived according to law. The jury shall decide all questions of fact or credibility of witnesses. The court shall determine all matters of law and shall charge the jury on the law.

(b) Each juror in the municipal courts shall be a resident of the city of San Antonio.

Appeals; Appellate Courts

Sec. 12. (a) In this Act, "appellate courts" means the county courts at law in Bexar County.

(b) A defendant has the right of appeal from a judgment or conviction in the municipal court under the rules prescribed in this Act. The appellate courts have jurisdiction over the appeals from the municipal courts, and all appeals from convictions in the municipal court shall be prosecuted in the appellate court by the city attorney or his or her assistants or deputies.

No De Novo Appeals

Sec. 13. Each appeal from a conviction in the municipal court shall be determined by the appellate court on the basis of errors pointed out in the defendant's motion for new trial and presented in the transcript and statement of facts prepared from the municipal court proceedings leading to the conviction. No appeal from the municipal court may be by trial de novo in the county court.

Motion for New Trial

Sec. 14. In order to perfect an appeal, a written motion for a new trial must be filed by the defendant no later than the 10th day after the rendition of the judgment of conviction, and may be amended by leave of court at any time before it is acted on within 20 days after the filing of the original or amended motion. For good cause shown, the time for filing or amending may be extended by the court, not to exceed 90 days. An original or amended motion shall be deemed overruled by operation of law at the expiration of the 20 days allowed for determination of the motion, if it is not acted on by the court within that time. The motion shall set forth the points of error complained of by the defendant.

Notice of Appeal

Sec. 15. In order to perfect an appeal, the defendant shall give timely notice of appeal. In the event the defendant requests a hearing on his or her motion for a new trial, the notice of appeal may be given orally in open court on the overruling of the motion for new trial. Otherwise, the notice of appeal shall be in writing and filed with the municipal court no later than the 10th day after the motion for new trial is overruled. For good cause shown, the time for giving notice of appeal may be extended by the court, not to exceed 90 days.

Appeal Bond

Sec. 16. If the defendant is not in custody, an appeal may not be taken until the required appeal bond has been filed with and approved by the municipal court. The appeal bond must be filed no later than the 10th day after the motion for new trial has been overruled. If the defendant is in custody, the

defendant shall be committed to jail unless he or she posts the required appeal bond. The appeal bond shall be in an amount not less than double the amount of fine and costs adjudged against the defendant. However, the bond may not in any case be for a sum less than \$50. The bond shall recite that in the cause the defendant was convicted and has appealed and be conditioned that the defendant shall make his or her personal appearance before the court to which the appeal is taken instant, if the court is in session, and there remain from day to day and answer in the cause.

Record on Appeal

Sec. 17. The record on appeal in a case appealed from the municipal court consists of the transcript and, where necessary to the appeal, a statement of facts, which shall be prepared by a court reporter of the court from the reporter's record of the proceedings, mechanical recordings of the proceedings, or from videotape recordings of the proceedings. The defendant shall pay for the transcription. The municipal court shall order the court reporter to make the transcriptions without charge to the defendant if the court finds, after hearing in the response to affidavit by the defendant, that he is too poor to pay or give security for the transcriptions. If the case is reversed on appeal, the cost shall be refunded to the defendant.

Contents of Transcripts

Sec. 18. (a) The municipal court clerk, on written request from the defendant or the defendant's attorney, shall prepare under the clerk's hand and seal of the court for transmission to the appellate court a true transcript of the proceedings in the municipal court and shall include the following:

- (1) the complaint;
- (2) material docket entries made by the court;
- (3) the jury charge and verdict, if the trial is by jury;
- (4) the judgment;
- (5) the motion for a new trial;
- (6) the notice of appeal;
- (7) all written motions and pleas and orders of the court;
- (8) bills of exception, if any are filed; and
- (9) the appeal bond.

(b) The municipal court clerk may include in the transcript additional portions of the proceedings in the municipal court prepared by mechanical recordings or videotape recordings of the proceedings.

Bills of Exception

Sec. 19. Either party may include bills of exception in the transcript on appeal, subject to complying with the applicable provisions of the Code of Crimi-

nal Procedure governing the preparation of bills of exception and their inclusion in the record on appeal to the court of criminal appeals, except that the bills of exception shall be filed with the municipal court clerk within 60 days after the giving or filing of the notice of appeal.

Statement of Facts

Sec. 20. A statement of facts, when included in the record on appeal, shall consist of:

- (1) a transcription of all or any part of the municipal court proceedings in the case, as provided in this Act, that are shown by the notes of the court reporter to have occurred before, during, or after the trial, if such a transcription is requested of the court reporter by the defendant;
- (2) a brief statement of the facts of the case proven at the trial, as agreed to by the defendant and the prosecuting attorney;
- (3) a partial transcription and the agreed statement of the facts of the case proven at the trial; or
- (4) a transcription of all or any part of the municipal court proceedings in the case that are prepared from the mechanical recordings or videotape recordings of the proceedings.

Fee for Preparation of Transcript

Sec. 21. The defendant shall pay a fee of \$50 to the clerk of the municipal court for the preparation of the transcript at the time of the request for the transcript, subject to the provisions of Section 17 of this Act. If the case is reversed on appeal, the \$50 fee shall be refunded to the defendant.

Completion, Approval, and Transfer of Record

Sec. 22. (a) Within 60 days of the giving or filing of the notice of appeal, the parties shall file with the municipal court clerk:

- (1) the statement of facts;
- (2) a written designation of all matter that is to be included in the transcript in addition to matter required to be in the transcript by Section 18 of this Act; and
- (3) any matter designated to be included in the transcript that is not then in the custody of the municipal court clerk.

(b) On completing the record as designated by the parties in Subdivision (2), Subsection (a) of this section, the municipal court judge shall approve the record in the manner provided by law for record completion notification and approval in appeals to the court of criminal appeals.

(c) On the municipal court judge's approval of the record, the municipal court clerk shall promptly forward the record to be filed with the appellate court clerk, who shall notify the defendant and the prosecuting attorney that the record has been filed.

New Trials

Sec. 23. It is the duty of the trial court to decide from the briefs of the parties whether the defendant should be permitted to withdraw his or her notice of appeal and be granted a new trial by the court. The court may grant a new trial at any time prior to the record being filed with the appellate court clerk.

Brief on Appeal

Sec. 24. (a) A brief on appeal from the municipal court shall present points of error in the same manner required by law for a brief on appeal to the court of criminal appeals.

(b) The defendant shall file his or her brief with the clerk of the appellate court within 15 days from the date of the filing of the transcript and statement of facts with the appellate court clerk, who shall notify the prosecuting attorney of the filing. The prosecuting attorney shall file his or her brief with the clerk of the appellate court within 15 days after the defendant files the defendant's brief with the clerk. Each party, on filing his or her brief with the clerk of the appellate court, shall cause a true copy of the brief to be delivered to the opposing party and to the municipal court judge.

Court Rules

Sec. 25. (a) Except as modified by this Act, the trial of cases before municipal courts shall be governed by the Code of Criminal Procedure, 1965.

(b) The municipal courts may make and enforce all necessary rules of practice and procedure, not inconsistent with the law, so as to expedite the trial of cases in the courts.

(c) The county courts at law of Bexar County may make and enforce all necessary rules of practice and procedure for appeals from municipal courts, not inconsistent with the law, so as to expedite the dispatch of appeals from the municipal courts.

Disposition on Appeal

Sec. 26. (a) The appellate court may affirm the judgment of the municipal court, or may reverse or remand for a new trial, or may reverse and dismiss the case, or may reform or correct the judgment, as the law and the nature of the case may require.

(b) The appellate court shall presume that the venue was proven in the court below, that the jury was properly impaneled and sworn, that the defendant was arraigned and pleaded to the complaint, and that the court's charge was certified by the municipal court judge before it was read to the jury, unless such matters were made an issue in the trial court or it affirmatively appears to the contrary from the transcript or statement of facts.

(c) In each case decided by the appellate court, the court shall deliver a written opinion or order either

sustaining or overruling each assignment of error presented. If an assignment of error is overruled, no reason need be given by the appellate court, but cases relied on by the court may be cited. If an assignment of error is sustained, the appellate court shall set forth the reasons for the decision. Copies of the decision of the appellate court shall be mailed by the clerk of the appellate court to the parties and the judge of the municipal court as soon as the decision is rendered by the appellate court.

Certificate of Appellate Proceedings

Sec. 27. When the judgment of the appellate court becomes final, the clerk of the appellate court shall make out a proper certificate of the proceedings had and the judgment rendered and shall mail the certificates to the clerk of the municipal court. When the certificate is received by the clerk of the municipal court, the clerk shall file it with the papers in the case and note it on the docket. If the judgment has been affirmed, no proceeding need be had after filing the certificate in the municipal court to enforce the judgment of the court, except to forfeit the bond of the defendant, to issue a *caipias* for the defendant, or issue an execution against the defendant's property.

Order of New Trial by Appellate Court

Sec. 28. If the appellate court awards a new trial to the defendant, the cause shall stand as if a new trial had been granted by the municipal court.

Appeal to the Court of Criminal Appeals

Sec. 29. When a judgment is affirmed by the appellate court, the defendant has the right to appeal to the court of criminal appeals if the fine assessed against the defendant in the municipal court exceeded \$100. The appeal to the court of criminal appeals shall be governed by provisions in the Code of Criminal Procedure relating to direct appeals from county and district courts to the court of criminal appeals except that:

(1) the record and briefs on appeal in the appellate court shall constitute the record and briefs on appeal to the court of criminal appeals unless the rules of the court of criminal appeals provide otherwise; and

(2) the record and briefs shall be filed directly with the court of criminal appeals.

Seal

Sec. 30. The governing body of the city shall provide each municipal court with a seal with a star of five points in the center and the words "Municipal Court of San Antonio, Texas." The impress of the seal shall be attached to all papers, except subpoenas, issued out of the court and shall be used by each municipal judge or the clerk to authenticate all official acts of the clerk and the municipal judge.

Sec. 31. [Amends § 2 of Code of Criminal Procedure, art. 42.13]

Severability

Sec. 32. If any word, phrase, clause, paragraph, sentence, part, portion, or provision of this Act or the application thereof to any person or circumstance shall be held to be invalid or unconstitutional, the remainder of the Act in all its particulars and as to all other persons and circumstances shall be valid and of full force and effect, and the legislature hereby declares that this Act would have been enacted without such invalid or unconstitutional word, phrase, clause, paragraph, sentence, part, portion, or provision, and to this end the provisions of this Act are declared to be severable.

[Acts 1979, 66th Leg., p. 944, ch. 428, §§ 1 to 30, 32, eff. Aug. 27, 1979.]

CHAPTER NINETEEN. ABOLITION OF CORPORATE EXISTENCE

Art. 1241a. Procedure for Abolition of Cities and Towns

[See *Compact Edition, Volume 3 for text of 1*]

Petition and Election

Sec. 2. When four hundred of the qualified voters resident in any such city, town, or village desire the abolishment of such corporation, they may petition the mayor to that effect, who shall thereupon order an election to be held in such city, town, or village on the same date provided by law for the next general election for mayor therein. If a majority of the qualified voters resident in any such city, town, or village is less than four hundred in number, then the mayor shall order an election as above provided upon the presentation to him of a petition signed by two-thirds of the resident voters of such city, town, or village.

[See *Compact Edition, Volume 3 for text of 3 to 5*]

[Amended by Acts 1975, 64th Leg., p. 648, ch. 267, § 1, eff. Sept. 1, 1975.]

CHAPTER TWENTY. MISCELLANEOUS PROVISIONS

Article

- 1269h-3. Validation of Land Acquisition for County Airport Expansion.
- 1269j-4.12. Public Improvement District Assessment Act of 1977.
- 1269j-4.15. Park Purposes; Acquisition and Improvement of Property by Cities of 1,200,000 or More.
- 1269j-5.3. Airport Revenue Bonds; Cities of 1,200,000 or More; Proceeds.
- 1269j-10. Emergency Medical Technicians or Paramedics; Educational Incentive Pay.
- 1269j-5. Housing Rehabilitation Act.

Art. 1267. Oil, Gas or Mineral Lands

Sec. 1. Cities and towns chartered or organized under the general laws of Texas, or by special Act or charter, which may own oil, gas or mineral lands, shall have the power and right to lease such oil, gas or mineral lands for the benefit of such town or city in such manner and upon such terms and conditions as the governing body of such town or city may determine, but shall not lease for such purposes any street or alley or public square in said town or city; and no well shall be drilled within the thickly settled portion of any city or town, nor within two hundred feet of any private residence.

Sec. 2. If any portion of this Act is held unconstitutional by a court of competent jurisdiction, the remaining portion shall nevertheless be valid the same as if the invalid portion had not been a part hereof. A lease executed pursuant to the provisions of this Act shall not be deemed to be a sale within the meaning of the laws of this state relating to the sale of city land. The provisions of this Act shall be cumulative of all other laws which are by their terms expressly applicable to city land, and any such laws which are not by their terms expressly so applicable shall not be construed as affecting the right and power granted to towns and cities by this Act.

[Amended by Acts 1975, 64th Leg., p. 806, ch. 312, § 1, eff. May 27, 1975.]

Art. 1268. Repealed by Acts 1975, 64th Leg., p. 2352, ch. 721, § 90, eff. Sept. 1, 1976

See, now, the Public Utility Regulatory Act, classified as art. 1446c.

Art. 1269h-3. Validation of Land Acquisition for County Airport Expansion

Sec. 1. Where any county before the effective date of this Act has acquired land for the expansion of a county airport established under Chapter 83, Acts of the 41st Legislature, 1st Called Session, 1929, as amended (Article 1269h, Vernon's Texas Civil Statutes), and the acquisition was by purchase, gift, exchange, or a combination of those methods, the acquisition of the land and all transactions and proceedings related to it are validated in all respects.

Sec. 2. This Act does not apply to a matter that on the effective date of this Act is involved in litigation in a court of competent jurisdiction if the litigation ultimately results in a determination that the matter is invalid, nor does it apply to a matter that has been declared invalid by a final judgment of a court of competent jurisdiction.

[Acts 1977, 65th Leg., p. 626, ch. 231, §§ 1, 2, eff. May 24, 1977.]

Art. 1269j-4.1. Public Improvements in City, Town or Village; Bonds; Occupancy Tax

Applicability of Act

Sec. 1. In this Act, "city" means a home-rule city or a city, town, or village incorporated under general law.

[See Compact Edition, Volume 3 for text of 2 and 3]

Occupancy Tax Authorized

Sec. 3a. Any such city is hereby authorized to levy by ordinance a tax upon the cost of occupancy of any sleeping room furnished by any hotel, where the cost of occupancy is at the rate of \$2 or more per day. Such tax may not exceed four percent of the consideration paid by the occupant of the sleeping room to the hotel.

[See Compact Edition, Volume 3 for text of 3b]

Disposition of Revenue

Sec. 3c. (a) The revenue derived from any occupancy tax authorized or validated by this Act may only be used for:

(1) the acquisition of sites for and the construction, improvement, enlarging, equipping, repairing, operation, and maintenance of convention center facilities including, but not limited to, civic center convention buildings, auditoriums, coliseums, civic theaters, museums, and parking areas or facilities for the parking or storage of motor vehicles or other conveyances located at or in the immediate vicinity of the convention center facilities;

(2) the furnishing of facilities, personnel and materials for the registration of convention delegates or registrants;

(3) for advertising for general promotional and tourist advertising of the city and its vicinity and conducting a solicitation and operating program to attract conventions and visitors either by the city or through contracts with persons or organizations selected by the city;

(4) the encouragement, promotion, improvement, and application of the arts, including music (instrumental and vocal), dance, drama, folk art, creative writing, architecture, design and allied fields, painting, sculpture, photography, graphic and craft arts, motion pictures, television, radio, tape and sound recording, and the arts related to the presentation, performance, execution, and exhibition of these major art forms;

(5) historical preservation and restoration.

(b) Any city which levies and collects an occupancy tax which is authorized or validated by this Act

may pledge a portion of the revenue derived therefrom to the payment of the bonds which the city may issue pursuant to the provisions of Section 3 of this Act, if such bonds are issued solely for one or more of the purposes set forth in the preceding subsection; provided that any city which levies and collects a tax of not more than three percent shall reserve a portion of the tax revenue equal to at least one-half of one percent of the cost of occupancy of hotel rooms, and any city which levies and collects a tax in excess of three percent shall reserve a portion of the tax revenue equal to at least one percent of the cost of the occupancy of hotel rooms for the purpose of advertising and conducting solicitation programs to acquaint potential users with public meeting and convention facilities, and for promotion of tourism and advertising of the city and its vicinity either by the city or through contract with persons or organizations selected by the city.

[See Compact Edition, Volume 3 for text of 3d to 10]

[Amended by Acts 1975, 64th Leg., p. 43, ch. 22, § 1, eff. March 20, 1975; Acts 1977, 65th Leg., p. 41, ch. 25, §§ 1, 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 183, ch. 90, § 1, eff. Aug. 29, 1977.]

Art. 1269j-4.4. Sea Life Park and Oceanarium; Certificates of Indebtedness

[See Compact Edition, Volume 3 for text of 1 to 6]

Abandonment; Sale or Lease

Sec. 6a. In the event it shall be determined by proper findings of the governing body of any such city or town that the continuation of property wholly or partially financed under this Act as a sea life park and oceanarium has ceased to be economically feasible, that continuation for such purpose would be unprofitable, and that such purpose should be abandoned, then such governing body may by ordinance abandon such purpose and sell or lease such land and facilities for such other purpose or purposes as the governing body may deem appropriate and in the interest of the citizens thereof after notice and publication as provided in Chapter 455, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 5421c-12, Vernon's Texas Civil Statutes); provided that if any of such land shall be sold, then same shall be sold to the highest and best bidder as required for other land owned by any such city or town. If any part or all of the land is to be leased for another purpose, then the lease shall be for such term, terms and renewal terms and shall contain such other provisions as may be agreed by the governing body, provided that the rentals derived by the city from such source shall be applied to the same purposes required by any ordinances authorizing the issuance of bonds secured in whole or in part by the revenues derived from the sea life park and oceanarium prior to the abandonment of that purpose.

[See Compact Edition, Volume 3 for text of 7 and 8]

[Amended by Acts 1979, 66th Leg., p. 401, ch. 188, § 1, eff. May 15, 1979.]

Art. 1269j-4.12. Public Improvement District Assessment Act of 1977

Title and Applicability

Sec. 1. (a) This Act shall be known as the Public Improvement District Assessment Act of 1977. The powers granted hereunder may be exercised by any incorporated city or town in which the governing body has called and held an election in accordance with the guidelines for holding bond elections under Chapter 1, Title 22, Revised Civil Statutes of Texas, 1925, as amended,¹ and at which was submitted, and a majority of the qualified voters voting thereat favorably adopted, the following proposition.

"Shall the governing body of the City of _____ be authorized to exercise the powers granted to cities under the Public Improvement District Assessment Act of 1977."

(b) In this Act the "city" means any authorized city to which this Act is applicable under Subsection (a) above.

¹ Article 701 et seq.

Authorized Public Improvements

Sec. 2. (a) The governing body of a city may undertake improvement projects that confer a special benefit on a definable part of the city. The governing body may levy and collect special assessments on property in the area, based on the benefit conferred by the improvement project, to pay all or part of its cost.

(b) A public improvement project may include:

(1) landscaping; the erection of distinctive lighting and signs; the improvement, widening, narrowing, closing, or rerouting of streets or sidewalks; the construction or improvement of pedestrian malls; the establishment or improvement of parks; the erection of fountains; the acquisition and installation of articles of sculpture; and the acquisition, construction, or improvement of off-street parking facilities;

(2) other improvements similar to those described in Subdivision (1) of this subsection; and

(3) the acquisition of real property in connection with an authorized improvement.

Act is Alternative

Sec. 3. This Act is a complete alternative to other methods by which a city may finance public improvements by assessing property owners.

Financing Combined Improvements

Sec. 4. An improvement project on two or more streets or two or more types of improvements in, on, or adjacent to the same street or streets may be included in one proceeding and financed as one improvement.

Petition for Improvement

Sec. 5. (a) A petition for any improvement authorized to be financed under this Act may be filed with the city secretary or other officer who performs the function of city secretary. The petition must state:

- (1) the general nature of the proposed improvement;
- (2) the estimated cost of the improvement;
- (3) the boundaries of the proposed assessment district;
- (4) the proposed method of assessment;
- (5) the proposed apportionment of cost between the improvement district and the city as a whole; and
- (6) that the persons signing the petition request the making of the improvement.

(b) The petition is sufficient if signed by:

- (1) at least two-thirds of the owners of record of property liable for assessment under the proposal; or
- (2) the record owners of property composing at least two-thirds of the area liable for assessment under the proposal.

(c) When a petition which meets the requirements of this section is filed, the governing body of the city may make findings by resolution as to the advisability of the improvement, the estimated cost, the method of assessment, and the apportionment of cost between the improvement district and the city as a whole.

Feasibility Report, Etc.

Sec. 6. (a) Before holding a hearing on the advisability of a proposed improvement, the governing body of a city may require that a feasibility report be made to assist in determining whether an improvement should be made as proposed or otherwise or whether it should be made in combination with other improvements authorized by this Act. The governing body may also require that a preliminary estimate of the cost of the improvement or combination of improvements be made. The governing body may use the services of employees of the city to make the report or estimate, or it may employ consultants.

(b) The governing body may also take other preliminary steps prior to the hearing or before ordering an improvement or letting a contract that will be

of assistance in determining the feasibility and desirability of an improvement.

Hearing as to Advisability

Sec. 7. (a) No contract may be let or work ordered or authorized for an improvement financed under this Act unless the governing body of the city first by resolution orders that a public hearing be held on the advisability of the improvement and gives notice of the hearing as required by this section.

(b) Notice of the hearing shall be given by not less than four publications in a newspaper of general circulation in the city. The four publications must be at least a week apart and the final publication must be at least three days before the date of the hearing. The notice shall include the following information:

- (1) the time and place of the hearing;
- (2) the general nature of the proposed improvement;
- (3) the estimated cost of the improvement;
- (4) the boundaries of the proposed assessment district;
- (5) the proposed method of assessment; and
- (6) the proposed apportionment of cost between the improvement district and the city as a whole.

(c) The hearing may be adjourned from time to time until the governing body makes findings by resolution as to the advisability of the improvement, the nature of the improvement, the estimated cost, the boundaries of the improvement district, the method of assessment, and the apportionment of cost between the district and the city as a whole.

(d) The area of the improvement district to be assessed according to the findings of the governing body may be less than the area proposed in the notice of the hearing, but it may not include any property not within the original proposed boundaries unless there is an additional hearing, preceded by the required notice.

May Order Improvements

Sec. 8. (a) At any time within six months after the final adjournment of the hearing on the advisability of an improvement, the governing body of the city by a majority vote of all members may adopt a resolution authorizing the improvement in accordance with its finding as to the advisability of the improvement. The authorization takes effect when it has been published one time in a newspaper of general circulation in the city. Actual construction of the improvement may not begin until 20 days after the authorization takes effect.

(b) An improvement may not be commenced if, within 20 days after the authorization takes effect,

written protests signed by at least two-thirds of the owners of record of property within the improvement district or the owners of record of at least two-thirds of the total area of the district are filed with the city secretary or other officer who performs the function of city secretary.

(c) Any person may withdraw his name from a protest at any time before the governing body convenes its meeting to determine the sufficiency of the protest.

Assessment Plan

Sec. 9. (a) The portion of the cost of an improvement to be assessed against the property in the improvement district shall be apportioned by the governing body of the city based on the special benefits accruing to the property because of the improvement.

(b) The cost may be assessed equally per front foot or per square foot against all property within the district; it may be assessed against property according to the value of the property as determined by the governing body of the city, with or without regard to structures or other improvements on the property; or it may be assessed on the basis of any other reasonable assessment plan that results in imposing equal shares of the cost on property similarly benefitted.

(c) The governing body may establish by ordinance reasonable classifications and formulas for the apportionment of the cost between the city and the area to be assessed and the methods of assessing the special benefits for various classes of improvements.

Apportionment of Costs

Sec. 10. (a) An assessment plan must provide that at least 20 percent of the cost of an improvement be paid by special assessments against property in the improvement district.

(b) If any property in the improvement district is exempt from the payment of the special assessment, the assessment that would otherwise be levied against that property shall be paid by the city as a whole. Assessments paid by the city as a whole under this subsection are counted as having been paid by special assessment for the purpose of Subsection (a) of this section.

Preparing Assessment Roll; Notice; Etc.

Sec. 11. (a) When the total cost of an improvement is determined, the governing body shall cause the assessments against each parcel of land within the benefit district to be determined in accordance with the manner of assessment set forth in the resolution as to the advisability of the improvement. The governing body shall also cause a proposed assessment roll to be prepared.

(b) The proposed assessment roll shall be filed with the city secretary or other officer who performs the function of city secretary and be open for public inspection. The governing body shall direct the secretary to publish notice that the governing body will meet to consider the proposed assessments at a public hearing. The notice must be published in a newspaper of general circulation in the city at least 10 days before the hearing and shall state the date, time, and place of the hearing, the general nature of the improvement, the cost of the improvement, the boundaries of the assessment district, and that written or oral objections will be considered at the hearing.

(c) At the time the assessment roll is filed with the city secretary or other officer, the city secretary or other officer shall also mail to the owners of property liable for assessment, at their last known address, a notice of the hearing which contains all the information required of the notice published in a newspaper. The failure of a property owner to receive the notice does not invalidate the proceedings.

Assessments: Hearing, Levy, Payment

Sec. 12. (a) At the hearing on proposed assessments or at any adjournment of the hearing, the governing body shall hear and pass on all objections to each proposed assessment. The governing body may amend the proposed assessments as to any parcel. When all objections have been heard and action has been taken with regard to them, the governing body by ordinance shall levy the assessments as special assessments on the property. The governing body by ordinance shall specify the method of payment of the assessments and may provide that they be payable in not more than 20 equal annual installments.

(b) All assessments bear interest at a rate specified by the governing body, which may not exceed six percent per annum. Interest on the assessment between the effective date of the ordinance levying the assessment and the date the first installment is payable shall be added to the first installment. The interest for one year on all unpaid installments shall be added to each subsequent installment until paid. An assessment or any reassessment is a lien against the property until it is paid. The owner of any property assessed may pay the entire assessment against any lot or parcel with accrued interest to the date of the payment at any time.

Supplemental Assessments

Sec. 13. After notice and hearing in the manner required for original assessments, the governing body may make supplemental assessments to correct omissions or mistakes in the assessment relating to the total cost of the improvement.

Reassessments and New Assessments

Sec. 14. If an assessment against a parcel of land is set aside by a court of competent jurisdiction, found excessive by the governing body, or determined to be invalid by the governing body on the written advice of counsel, the governing body may make a reassessment or new assessment as to the parcel.

Separate Improvement Funds

Sec. 15. A separate improvement fund shall be created in the city treasury for each improvement or combination of improvements. The proceeds from the sale of bonds, temporary notes and time warrants, and any other sums appropriated to the fund by the governing body shall be credited to the fund. The fund may be used solely to pay the costs incurred in the making of the improvement. When the improvement is completed, the balance shall be transferred to the fund established for the retirement of the bonds.

Special Improvement Fund

Sec. 16. (a) A city proposing to make an improvement to be financed under the authority of this Act may establish by ordinance a special improvement fund in the city treasury. The city may levy annually a tax of not to exceed 10 cents on each \$100 valuation of the assessed taxable property of the city for the purpose of the fund.

(b) The fund may be used to pay the costs of planning any improvement authorized by this Act and for preparing preliminary plans, studies, and engineering reports preparatory to the consideration of the feasibility of an improvement and to pay the initial cost of the improvement when ordered by the governing body until temporary notes, time warrants, or improvement bonds have been issued and sold.

(c) The fund shall be reimbursed from the proceeds of the issuance of improvement bonds and shall never exceed one percent of the total assessed property valuation of the city for the preceding year or \$200,000, which ever is less.

(d) The fund need not be budgeted for expenditure during any year, but the amount of the fund shall be stated in the city's annual budget. All grants-in-aid or contributions made to the city for planning and preparation of plans for improvements which are authorized under this Act may be credited to the special improvement fund, and the amount of the aid or contribution shall not be considered in calculating the limitation on the fund imposed by Subsection (c) of this section.

Payment of Costs

Sec. 17. (a) The cost of any improvement made under the authority of this Act shall be paid in accordance with this section.

(b) All costs payable by the city as a whole may be paid from general funds available for the purpose or from other available general improvement funds.

(c) Costs payable by special assessments which have been paid in full shall be paid from those assessments.

(d) Costs payable by special assessments to be paid in installments and costs made payable by the city as a whole but not payable from available general funds or other available general improvement funds shall be paid by the issuance and sale of revenue or general obligation bonds.

(e) During the progress of an improvement the governing body may issue temporary notes or time warrants of the city to pay costs of the improvements and on the completion of the work issue revenue or general obligation bonds.

(f) The costs of more than one improvement may be paid from a single issue and sale of bonds without other consolidation proceedings prior to the bond issue.

General Obligation Bonds

Sec. 18. A city may issue general obligation bonds under the provisions of Chapter 1, Title 22, Revised Civil Statutes of Texas, 1925, as amended,¹ to pay all or part of the costs covered by Section 17(d) of this Act.

¹ Article 701 et seq.

Issuance of Revenue Bonds

Sec. 19. For the payment of all or part of the costs covered by Section 17(d) of this Act, the governing body may issue revenue bonds from time to time in one or more series to be payable from and secured by liens on all or part of the revenue derived from improvements authorized under this Act, including installment payments of special assessments.

Terms and Conditions of Bonds

Sec. 20. (a) Revenue bonds may be issued to mature serially or otherwise within not more than 40 years from their date, and provision may be made for the subsequent issuance of additional parity bonds or subordinate lien bonds under any terms or conditions that may be set forth in the ordinance authorizing the issuance of the bonds.

(b) The bonds and any interest coupons appertaining thereto are negotiable instruments within the meaning and for all purposes of the Texas Uniform Commercial Code. The bonds may be issued registrable as to principal alone or as to both principal and interest, and shall be executed, and may be made redeemable prior to maturity, and may be issued in such form, denominations, and manner, and under such terms, conditions, and details, and may be sold in such manner, at such price, and under such terms, and said bonds shall bear interest at such

rates, all as shall be determined and provided in the ordinance authorizing the issuance of the bonds.

(c) If so provided in the bond ordinance, the proceeds from the sale of the bonds may be used for paying interest on the bonds during and after the period of the acquisition or construction of any improvement to be provided through the issuance of the bonds, for creating a reserve fund for the payment of the principal of and interest on the bonds, and for creating any other funds. The proceeds of the bonds may be placed on time deposit or invested, until needed, all to the extent, and in the manner provided, in the bond ordinance.

Pledges

Sec. 21. (a) The governing body may pledge all or any part of the income from improvements financed under this Act, including the installment payments described in Section 17(d) of this Act, to the payment of the bonds, including the payment of principal, interest, and any other amounts required or permitted in connection with the bonds. The pledged income shall be fixed and collected in amounts that will be at least sufficient, together with any other pledged resources, to provide for all payments of principal, interest, and any other amounts required in connection with the bonds, and, to the extent required by the ordinance authorizing the issuance of the bonds, to provide for the payment of expenses in connection with the bonds, and for the payment of operation, maintenance, and other expenses in connection with the improvements authorized under this Act.

(b) The bonds may be additionally secured by mortgages or deeds of trust on any real property relating to the facilities authorized under this Act owned or to be acquired by the city and by chattel mortgages, liens, or security interests on any personal property appurtenant to that real property. The governing body may authorize the execution of trust indentures, mortgages, deeds of trust, or other forms of encumbrances to evidence the indebtedness.

(c) The governing body may also pledge to the payment of the bonds all or any part of any grant, donation, revenues, or income received or to be received from the United States government or any other public or private source, whether pursuant to an agreement or otherwise.

Refunding Bonds

Sec. 22. (a) Any revenue bonds issued pursuant to this Act may be refunded or otherwise refinanced by the issuance of refunding bonds for that purpose, under any terms or conditions, as are determined by ordinance of the governing body of the local government. All appropriate provisions of this Act are applicable to refunding bonds, and the refunding bonds shall be issued in the manner provided in this

Act for other bonds. The refunding bonds may be sold and delivered in amounts necessary to pay the principal, interest, and redemption premium, if any, of bonds to be refunded, at maturity or on any redemption date.

(b) The refunding bonds may be issued to be exchanged for the bonds being refunded by them. In that case, the comptroller of public accounts shall register the refunding bonds and deliver them to the holder or holders of the bonds being refunded in accordance with the provisions of the ordinance authorizing the refunding bonds. The exchange may be made in one delivery or in several installment deliveries.

(c) General obligation bonds issued under this Act also may be refunded in the manner provided by law.

Approval and Registration of Bonds

Sec. 23. (a) All revenue bonds issued under this Act and the appropriate proceedings authorizing their issuance shall be submitted to the attorney general for examination. If the bonds recite that they are secured by a pledge of revenues or rentals from a contract or lease, a copy of the contract or lease and the proceedings relating to it shall be submitted to the attorney general also. If he finds that the bonds have been authorized and any contract or lease has been made in accordance with law, he shall approve the bonds and the contract or lease, and thereupon the bonds shall be registered by the comptroller of public accounts. After approval and registration the bonds and any contract or lease relating to them are incontestable in any court or other form for any reason and are valid and binding obligations for all purposes in accordance with their terms.

(b) General obligation bonds issued under this Act shall be approved and registered as provided by law.

Authorized Investments and Security for Deposits

Sec. 24. All bonds issued under this Act are legal and authorized investments for all banks, trust companies, building and loan associations, savings and loans associations, insurance companies of all kinds and types, fiduciaries, trustees, and guardians, and for all interest and sinking funds and other public funds of the state and all agencies, subdivisions, and instrumentalities of the state, including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic. The bonds also are eligible and lawful security for all deposits of public funds of the state and all agencies, subdivisions, and instrumentalities of it, including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic, to the extent of the market value of the bonds, when

accompanied by any unmatured interest coupons appurtenant thereto.

[Acts 1977, 65th Leg., p. 1205, ch. 467, §§ 1 to 24, eff. Aug. 29, 1977.]

Art. 1269j-4.15. Park Purposes; Acquisition and Improvement of Property by Cities of 1,200,000 or More

Applicability of Act

Sec. 1. This Act shall be applicable to all incorporated cities, including home-rule cities, having a population of 1,200,000 or more according to the last preceding federal census.

Acquisition, Construction and Improvement of Property; Operating Contracts

Sec. 2. Any such city is authorized to acquire by purchase, lease, or otherwise, any or all, property (real, personal, or mixed) and to construct or otherwise acquire, improve, and equip any property for park purposes, including, but not by way of limitation: establishing, acquiring, leasing, or contracting as lessee or lessor, purchasing, constructing, improving, enlarging, equipping, repairing, operating, or maintaining (any or all) golf courses, clubhouses, and pro shops, tennis courts, and facilities, swimming pools, marinas, recreation centers, rugby fields, baseball fields, zoos, clarification lakes or pools, park transportation systems and equipment, theaters, bicycle trails, multipurpose shelters, service facilities, and any other recreational facilities, all or any (hereinafter called "Facility" or "Facilities"), together with all necessary water, sewer, and drainage facilities, and to establish, acquire, lease, or contract as lessee or lessor, purchase, construct, improve, enlarge, equip, repair, operate, or maintain (any or all) structures, parking areas, or parking facilities to be used in connection with such Facilities for parking and storage of motor vehicles or other conveyances; and provided that any of such leases or contracts may be on such terms and conditions as said city shall deem appropriate. Also, such city shall have authority to enter into a contract or agreement under which the Facilities may be operated on behalf of the city, such operating contracts or agreements to contain such terms or conditions as said city shall deem appropriate. Each and all of the foregoing purposes are hereby found and declared to be public purposes and proper municipal functions.

Revenue Bonds Authorized

Sec. 3. For any purpose or purposes authorized under Section 2 of this Act, the governing body of the city may issue its revenue bonds from time to time in one or more series to be payable from and secured by liens on all or part of the revenues derived from any Facility or Facilities.

Issuance of Bonds; Proceeds From Sale of Bonds; Ad Valorem Tax

Sec. 4. (a) Said bonds may be issued when authorized by ordinance duly adopted by the city's governing body and may mature serially or otherwise within not to exceed 40 years from their date or dates, and provision may be made for the subsequent issuance of additional parity bonds, or subordinate lien bonds, under any terms or conditions that may be set forth in the ordinance authorizing the issuance of the bonds.

(b) Said bonds, and any interest coupons appertaining thereto, shall be deemed and construed to be a "Security" within the meaning of Chapter 8, Investment Securities, Business & Commerce Code.¹ The bonds may be issued registrable as to principal alone or as to principal and interest and shall be executed and may be made redeemable prior to maturity and may be issued in such form, denominations, and manner and under such terms, conditions, and details and may be sold in such manner, at such price, and under such terms, and such bonds shall bear interest at such rates, all as shall be determined and provided in the ordinance authorizing the issuance of the bonds.

(c) If so provided in said ordinance, the proceeds from the sale of the bonds may be used for paying interest on the bonds during and after the period of the acquisition, construction, or improvement of any Facility, for paying expenses of operation and maintenance of said Facilities, for creating a reserve fund for the payment of the principal of and interest on the bonds, and for establishing any other funds. The proceeds of sale of the bonds may be placed on time deposit or invested, until needed, all to the extent and in the manner provided in the bond ordinance.

(d) Any such city shall also be authorized to levy and pledge to the payment of the operation and maintenance of any Facility or Facilities, either as a supplement to the pledge of revenues for such purpose or in lieu thereof, a continuing annual ad valorem tax at a rate on each \$100 valuation of taxable property within said city sufficient for such purposes, all as may be provided in said ordinance authorizing the issuance of such bonds; provided, that such taxes shall be within any constitutional or charter limit for cities included by this Act; and provided further, that no part of any moneys raised by such taxes shall ever be used for the payment of the interest on or principal of any bonds issued hereunder. The proceeds of any such taxes thus pledged shall be utilized annually to the extent required by or provided in the ordinance for operation and maintenance of such Facilities, and such city in its discretion may covenant in such ordinance that certain costs of operating and maintaining such Facilities, as may be enumerated therein, or all of

such costs will be paid by the city from the proceeds of such tax.

¹ Business and Commerce Code, § 8.101 et seq.

Fees, Rentals, Rates and Charges

Sec. 5. Each such city shall be authorized to fix and collect fees, rentals, rates, and charges for the occupancy, use, or availability of all or any of the Facilities in such amounts and in such manner as may be determined by the governing body of the city.

Pledge of Revenues, Income or Receipts; Mortgages or Deeds of Trust

Sec. 6. (a) The city may pledge all or any part of the revenues, income, or receipts from such fees, rentals, rates, and charges to the payment of the bonds, including the payment of principal, interest, and any other amounts required or permitted in connection with the bonds. The pledged fees, rentals, rates, and charges shall be fixed and collected in amounts that will be at least sufficient, together with any other pledged resources, to provide for all payments of principal, interest, and any other amounts required in connection with the bonds, and, to the extent required by the ordinance authorizing the issuance of the bonds, to provide for the payment of expenses in connection with the bonds, and for the payment of operation, maintenance, and other expenses in connection with the Facilities.

(b) The bonds may be additionally secured by mortgages or deeds of trust on any real property relating to the Facilities owned or to be acquired by the city and by chattel mortgages, liens, or security interests on any personal property appurtenant to that real property. The governing body of the city may authorize the execution of trust indentures, mortgages, deeds of trust, or other forms of encumbrances to evidence the indebtedness.

(c) The city may also pledge to the payment of the bonds all or any part of any grant, donation, revenues, or income received or to be received from the United States government or any other public or private source, whether pursuant to an agreement or otherwise.

Refunding Bonds

Sec. 7. (a) Any bonds issued pursuant to this Act may be refunded or otherwise refinanced by the issuance of refunding bonds for that purpose under any terms or conditions as are determined by ordinance of the governing body of the city. All appropriate provisions of this Act are applicable to refunding bonds, and the refunding bonds shall be issued in the manner provided in this Act for other bonds. The refunding bonds may be sold and delivered in amounts necessary to pay the principal, interest, and redemption premium, if any, of bonds to be refunded, at maturity or on any redemption date.

(b) The refunding bonds may be issued to be exchanged for the bonds being refunded by them. In that case, the comptroller of public accounts shall register the refunding bonds and deliver them to the holder or holders of the bonds being refunded in accordance with the provisions of the ordinance authorizing the refunding bonds. The exchange may be made in one delivery or in several installment deliveries.

(c) Bonds issued at any time by a city under this Act also may be refunded in the manner provided by any other applicable law.

Examination, Approval and Registration of Bonds

Sec. 8. All bonds issued under this Act and the appropriate proceedings authorizing their issuance shall be submitted to the attorney general for examination. If the bonds recite that they are secured by a pledge of revenues or rentals from a contract or lease, a copy of the contract or lease and the proceedings relating to it shall be submitted to the attorney general also. If he finds that the bonds have been authorized and any contract or lease has been made in accordance with law, he shall approve the bonds and the contract or lease, and thereupon the bonds shall be registered by the comptroller of public accounts. After approval and registration, the bonds and any contract or lease relating to them are incontestable for any reason and are valid and binding obligations for all purposes in accordance with their terms.

Legal and Authorized Investments; Security for Deposit of Public Funds

Sec. 9. All bonds issued under this Act are legal and authorized investments for all banks, trust companies, building and loan associations, savings and loan associations, insurance companies of all kinds and types, fiduciaries, trustees, and guardians, and for all interest and sinking funds and other public funds of the state and all agencies, subdivisions, and instrumentalities of the state, including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic. The bonds also are eligible and lawful security for all deposits of public funds of the state and all agencies, subdivisions, and instrumentalities of it, including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic, to the extent of the market value of the bonds, when accompanied by any unmatured interest coupons appurtenant thereto.

Cumulative Effect; Conflicting Provisions

Sec. 10. This Act is cumulative of all other law on the subject, but this Act shall be wholly sufficient authority within itself for the issuance of the bonds and the performance of the other acts and procedures authorized by it without reference to any

other law or any restrictions or limitations contained therein, except as herein specifically provided. When any bonds are issued under this Act, then to the extent of any conflict or inconsistency between any provisions of this Act and any provision of any law or home-rule charter provision, the provisions of this Act shall prevail and control. A city shall have the right to use the provisions of any other laws, not in conflict with the provisions of this Act, to the extent convenient or necessary to carry out any power or authority, express or implied, granted by this Act.

Severability

Sec. 11. In case any one or more of the sections, provisions, clauses, or words of this Act or the application thereof to any situation or circumstance shall for any reason be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect any other sections, provisions, clauses, or words of this Act or the application thereof to any other situation or circumstance, and it is intended that this Act shall be severable and shall be construed and applied as if any such invalid or unconstitutional section, provision, clause, or word had not been included herein.

[Acts 1975, 64th Leg., p. 640, ch. 264, §§ 1 to 11, eff. Sept. 1, 1975.]

Art. 1269j-5.1. Airport Revenue Bonds

Sec. 1. This Act shall be applicable to all incorporated cities, including Home Rule Cities.

[See Compact Edition, Volume 3 for text of 2]

[Amended by Acts 1975, 64th Leg., p. 46, ch. 24, § 1, eff. March 20, 1975.]

Art. 1269j-5.3. Airport Revenue Bonds; Cities of 1,200,000 or More; Proceeds

Sec. 1. This Act applies to any city having a population of 1,200,000 or more, according to the most recent federal census.

Sec. 2. (a) If a city covered by this Act issues revenue bonds to finance the construction or acquisition of buildings, improvements, or facilities at one or more airports owned and operated by the city, to be leased by the city to a private entity pursuant to a lease agreement under which the lessee is obligated to maintain the buildings, improvements, or facilities solely at its expense and is unconditionally obligated throughout the term of the bonds to make payments of net rent, which are pledged to the payment of the bonds, in amounts and at times as are sufficient to provide for the timely payment of all principal, interest, redemption premiums, and other costs and expenses arising or to arise in connection with the payment of the bonds, the city may spend or agree to spend all or any portion of the proceeds of the bonds without inviting, advertising

for, or otherwise requiring competitive bids for the construction or acquisition of the buildings, improvements, or facilities or requiring or obtaining payment or performance bonds in connection with the construction or acquisition.

(b) This Act does not apply to the expenditure of the proceeds of bonds unless the bonds provide by their own terms that:

- (1) they are payable solely from net rents as provided by Subsection (a) of this section; and
- (2) they may not be repaid in any circumstances from tax revenues.

(c) This Act does not apply to the expenditure of the proceeds of bonds that create or provide for the creation of a lien against real property owned by the city.

(d) This Act does not affect the obligation of the city to obtain competitive bids or require a payment or performance bond in connection with a contract for the construction of a building, improvement, or facility if the contract is awarded by the city.

(e) Any expenditure of or agreement to spend proceeds of bonds covered by this Act for the construction of buildings, improvements, or facilities must be conditioned on the payment of not less than the rate of per diem wages for work of a similar character in the city as ascertained and established by the governing body of the city as provided by Chapter 45, General Laws, Acts of the 43rd Legislature, Regular Session, 1933, as amended (Article 5159a, Vernon's Texas Civil Statutes).

[Acts 1979, 66th Leg., p. 2057, ch. 805, §§ 1, 2, eff. June 13, 1979.]

Art. 1269j-10. Emergency Medical Technicians or Paramedics; Educational Incentive Pay

A city, town, or other political subdivision that employs emergency medical technicians or paramedics may pay educational incentive pay to employees holding certificates from the Texas Department of Health as emergency medical technicians or as paramedics. The incentive pay shall be in addition to any other form of compensation provided by law. [Acts 1979, 66th Leg., p. 862, ch. 385, § 1, eff. Aug. 27, 1979.]

CHAPTER TWENTY-ONE. HOUSING

Article

- 1269j-4. Community Development Act of 1975.
- 1269j-6. Housing Agency Act.
- 1269j-7. Housing Finance Corporations Act.

Art. 1269I-3. Urban Renewal Law

[See Compact Edition, Volume 3 for text of 1 to 3]

Definitions

Sec. 4. The following terms wherever used or referred to in this Act, shall have the following meanings, unless a different meaning is clearly indicated by the context.

[See Compact Edition, Volume 3 for text of 4(a) to (w)]

(x) When this Act is applied to a county, "mayor" means county judge, "city council" means the commissioners court, and the "city" means county, unless the context clearly requires otherwise.

(y) "Comptroller" means the Comptroller of Public Accounts of the State of Texas.

(z) "Captured Market Value" means any amount by which the current market value of property within the boundaries of an urban renewal project area exceeds its market value at the time such urban renewal project was designated in accordance with the requirements of this Act.

(aa) "Taxable Property" means all real taxable property, but shall not include personal property or intangible property.

(bb) "Tax Assessor-Collector" means the tax assessor-collector of the municipality.

(cc) "Taxing Entity" means any governmental unit, including the State and its political subdivisions, but not including municipalities, authorized by law to levy taxes on property located within an urban renewal project area.

(dd) "Tax Increment" means that amount of property taxes levied and collected each year on property within an urban renewal project area in excess of the amount levied and collected on such property during the year prior to the date of adoption of the urban renewal project plan. A tax increment is calculated by multiplying the total in property taxes levied and collected by the municipality and all other taxing entities on the taxable property within an urban renewal project area in any year by a fraction having a numerator equal to that year's market value of all taxable property in such area minus the tax incremental base and a denominator equal to that year's market value of all taxable property in such area.

(ee) "Tax Incremental Base" means the aggregate market value of all taxable property within an urban renewal project area on the date of approval of the urban renewal project plan in accordance with the requirements of this Act.

(ff) "Tax Increment Fund" means a fund into which all tax increments produced from the captured market value of property located within an

urban renewal project area are paid, and from which moneys are disbursed to pay costs with respect to such project or to satisfy claims of holders of tax increment bonds issued with respect to such project.

Finding of Necessity; Powers of Counties

Sec. 5. (a) No city shall exercise any of the powers conferred upon cities by this Act until after the City Council shall have adopted a resolution, after giving notice and ordering an election on the question of whether the City Council shall adopt such resolution, finding that: (1) one or more slum or blighted areas exist in such city; and (2) the rehabilitation, conservation, or slum clearance and redevelopment, or a combination thereof, of such area or areas is necessary in the interest of public health, safety, morals or welfare of the residents of such city. Such notice shall be published at least twice in the newspaper officially designated by the City Council and shall state that on a date certain, which date shall be stated in the notice and shall be not less than sixty (60) days after the publication of the first of such notices, the City Council will consider the question of whether or not it will order an election to determine if it should adopt such a resolution. On the date specified in the notice to consider such question the City Council may, on its own motion, call an election to determine whether it shall adopt such a resolution and shall, in any event, call such election if there has been presented to it during such period a petition that such election be held, signed by at least five per cent (5%) of the legally qualified voters residing in such city and owning taxable property within the boundaries thereof, duly rendered for taxation. If it be determined to call such an election, at least thirty (30) day's notice thereof shall be given. Notwithstanding any other provisions of this Act, no powers granted by this Act shall be exercised by any city until an election shall have been held as herein provided with a majority of the votes cast at such election being cast in favor of the exercise of such powers by such city. Only qualified voters residing in said city, owning taxable property within the boundaries thereof, who have duly rendered the same for taxation, shall be entitled to vote at such election. If a majority of those voting at such election shall vote in favor of the adoption of such resolution, the City Council shall then be authorized to adopt it. If a majority of those voting at such election shall vote against the adoption of such resolution, the City Council shall not adopt it and such resolution shall not again be proposed within the period of one (1) year.

(b) Any county that has a population of more than 700,000, according to the last preceding federal census, may exercise all powers provided for cities under this Act. Those powers may be exercised only

with respect to areas of the county not inside the corporate limits of a city or town. The county may not exercise any power under this Act unless the commissioners court adopts a resolution as provided in Subsection (a) of this section, the adoption of which has been first approved at an election. The election shall be held throughout the county in the same way an election is held in a city under Subsection (a) of this section. The adoption of a resolution is not approved unless a majority of the voters voting on the question in the entire county as well as in each incorporated city and town in the county approves adoption. In cities only partly in the county, only voters residing in the county may vote.

[See Compact Edition, Volume 3 for text of 5a]

Approval of Tax Increment Financing

Sec. 5b. A city may not use the tax increment method of financing prescribed by Sections 22a, 22b, 22c, and 22d of this Act unless a majority of the qualified voters of the city voting on the question, who own taxable property within the city that is duly rendered for taxation, approve that method of financing in an election held by the city. At an election held under this section, the ballots shall provide for voting for or against the proposition: "Use of tax increment financing for urban renewal purposes." An election under this section may be held in conjunction with an election held under Section 5 or 5a of this Act. This referendum shall not be necessary if the constitutional amendment on tax increment financing is approved by the voters.

[See Compact Edition, Volume 3 for text of 6]

Preparation and Approval of Urban Renewal Plan

Sec. 7.

[See Compact Edition, Volume 3 for text of 7(a) to 7(h)]

(i) Upon approval of an urban renewal plan by the city and approval of the tax increment method of financing as required under Section 5b of this Act, a fund, to be known as the "Tax-increment Fund" shall be established by the adoption of a resolution by the City Council.

[See Compact Edition, Volume 3 for text of 8]

Powers

Sec. 9. A city shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Act, including the following powers in addition to others herein granted:

(a) To conduct preliminary surveys to determine if the undertakings and carrying out of urban renewal projects is feasible.

(b) To undertake and carry out urban renewal projects within its area of operation.

(c) To make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this Act.

(d) To provide or arrange or contract for the furnishing or repair by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities or other facilities for or in connection with an urban renewal project; to install, construct and reconstruct streets, utilities, parks, playgrounds, and other public improvements necessary for carrying out urban renewal projects.

(e) To acquire by purchase, lease, option, gift, grant, or bequest, devise, eminent domain or otherwise, any real property (or personal property for its administrative purposes) together with any improvements thereon, necessary or incidental to an urban renewal project; to hold, improve, clear or prepare for redevelopment any such property; to mortgage, pledge, hypothecate or otherwise encumber or dispose of any real property; to insure or provide for the insurance of any real or personal property or operations of the city against any risks or hazards, including the power to pay premiums on any such insurance; and to enter into any contracts necessary to effectuate the purpose of this Act.

(f) To invest any urban renewal project funds held in reserves or sinking funds or any such funds not required for immediate disbursements, in property or securities in which banks may legally invest funds subject to their control; to redeem such bonds as have been issued pursuant to Section 15 of this Act at the redemption price established therein or to purchase such bonds at less than redemption price, all such bonds so redeemed or purchased to be cancelled.

(g) To borrow money and to apply for and accept advances, loans, grants, contributions and any other form of financial assistance from the Federal Government, the State, County or other public body or from any sources, public or private, for the purposes of this Act, and to give such security as may be required and to enter into and carry out contracts in connection therewith. A city may include in any contract for financial assistance with the Federal Government for an urban renewal project such provisions and conditions imposed pursuant to Federal Law as the city may deem reasonable and appropriate and which are not inconsistent with the purposes of this Act.

(h) Within its area of operation, to make or have made all plans necessary to the carrying out of the purposes of this Act and to contract with any person, public or private, in making and carrying out such plans and to adopt or approve, modify and amend such plans. The city is authorized to develop, test and report methods

and techniques and carry out demonstrations and other activities, for the prevention and the elimination of slums and urban blight, and to apply for, accept and utilize grants of funds from the Federal Government for such purposes.

(i) To prepare plans and provide reasonable assistance for the relocation of persons (including families, business concerns, and others) displaced from an urban renewal project area to the extent essential for acquiring possession of and clearing such area or parts thereof to permit the carrying out of the urban renewal project.

(j) To appropriate such funds and make such expenditures as may be necessary to carry out the purposes of this Act, and to levy taxes and assessments for such purposes; to close, vacate, plan or replan streets, roads, sidewalks, ways or other places; to plan or replan, zone or rezone any part of the city and to make exceptions from building regulations; and to enter into agreements with an urban renewal agency vested with urban renewal powers under Section 15 of this Act (which agreements may extend over any period, notwithstanding any provision or rule or law to the contrary), restricting action to be taken by such city pursuant to any of the powers granted by this Act; provided, however, that no taxes or assessments shall be levied under authority or for the purposes of this Act unless and until such levy shall first have been submitted to a vote of the property-owning taxpayers of said city, and said proposition shall have received a majority of the votes cast as being "for" such levy.

(k) Within its area of operation to organize, coordinate and direct the administration of the provisions of this Act as they apply to such city in order that the objective of remedying slum and blighted areas and preventing the causes thereof within such city may be most effectively promoted and achieved, and to establish such new office or offices of the city or to reorganize existing offices in order to carry out such purpose most effectively.

(l) To issue tax increment bonds.

(m) To exercise all or any part or combination of powers herein granted.

[See Compact Edition, Volume 3 for text of 10 to 22]

Computation of Tax Increments

Sec. 22a. (a) For purposes of this Act, the market value of property located within an urban renewal project area shall be determined by the tax assessor-collector, and only the tax assessor-collector, during the time such project exists. Provided, however, that such determination shall require the concurrence of the comptroller; and provided, further, that any property owner aggrieved by a determina-

tion of the tax assessor-collector shall have the same right of appeal provided by law to owners of property not affected by this Act.

(b) At the time an urban renewal project is designated by the governing body, the tax assessor-collector shall, with the concurrence of the comptroller, certify to the governing body the market value of property within the boundaries of such district. Property taxable at the time the urban renewal project is designated shall be included at its most recently determined market value; property exempt from taxation at the time the redevelopment district was designated shall be included at zero.

(c) The tax assessor-collector shall, within one year of the time an urban renewal project is designated, and annually thereafter, certify to the governing body the amount of the captured market value of property within the boundaries of the district and the amount of tax increments produced from such captured market value.

(d) For any years in which taxes are to be paid into the tax increment fund required under Subsection (i), Section 7 of this Act, any captured market value with respect to an urban renewal project shall not be considered by any taxing entity in computing any debt limitation or for any other purpose except in determining the amount to be paid into the tax increment fund.

Allocation of Tax Collections and Tax Increments

Sec. 22b. (a) For purposes of this Act, the tax assessor-collector shall have the sole authority and the duty to collect the taxes levied by the city and all other taxing entities on property located within an urban renewal project and for allocating taxing and tax increments in the manner required by this Act.

(b) Commencing with the first payment of taxes levied by the city or other taxing entities subsequent to the time an urban renewal project is designated, receipts from such taxes shall be allocated and paid over as follows:

(1) There shall first be allocated and paid over in such amounts as belong to each respectively, to the city and to each other taxing entity, all of the property taxes collected which are produced from the tax incremental base.

(2) There shall next be deposited into the tax increment fund established for such project all tax increments produced from the captured market value of property located within the project.

Tax Increment Bonds

Sec. 22c. (a) A city shall, in addition to any other powers vested in it, have the power to issue tax increment bonds, the proceeds of which may be used to pay redevelopment costs with respect to the urban renewal project on behalf of which the bonds were issued or to satisfy claims of holders of such bonds.

Upon approval of two-thirds of the resident property taxpayers who are qualified electors of the city, such city shall also have the power to issue refunding bonds for the payment or retirement of tax increment bonds previously issued by it. Such tax increment bonds shall be made payable, as to both principal and interest, solely from tax increments allocated to and paid into the tax increment fund established by the city in accordance with this Act, or from any private sources, or contributions or other financial assistance from the State or United States Government, or by any combination of these methods.

(b) Tax increment bonds issued under this Act, together with interest thereon and income therefrom, shall be exempt from all taxes. The period of maturity of tax increment bonds is limited to a maximum of 20 years from the date of issuance. Bonds issued under this Act shall be authorized by resolution or ordinance of the governing body and may be issued in one or more series, and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium), be secured in such manner, and have such other characteristics, as may be provided by such resolution or trust indenture or mortgage issued pursuant thereto. Such bonds may be sold at not less than par at public sales held after notice published prior to such sale in a newspaper having a general circulation in the city and in such other medium of publication as the governing body may determine or may be exchanged for other bonds on the basis of par. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this Act shall be fully negotiable. In any suit, action or proceeding involving the validity or enforceability of any bond issued under this Act or the security therefor, any such bond reciting in substance that it has been issued by the city in connection with an urban renewal project, as herein defined, shall be conclusively deemed to have been issued for such purposes and the urban renewal project shall be conclusively deemed to have been planned, located and carried out in accordance with the provisions of this Act.

(c) All banks, trust companies, bankers, savings banks and institutions, buildings and loan associations, savings and loan associations, investment companies and other persons carrying on a banking or investment business; all insurance companies, insurance associations, and other persons carrying on an insurance business; and all executors, administrators, curators, trustees, and other fiduciaries, may

legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any tax increment bonds issued by a city pursuant to this Act. Such bonds shall be authorized security for all public deposits. Any persons, political subdivisions and officers, public or private, are authorized to use any funds owned or controlled by them for the purchase of any such bonds. Nothing in this Act with regard to legal investments shall be construed as relieving any person of any duty of exercising reasonable care in selecting securities.

(d) Tax increment bonds shall be payable only out of the tax increment fund created pursuant to Subsection (i), Section 7 of this Act. The City Council may irrevocably pledge all or a part of such fund to the payment of such bonds or notes. Such fund or the designated part thereof may thereafter be used only for the payment of such bonds and interest thereon until the same have been fully paid; and a holder of such bonds or of any coupons appertaining thereto shall have a lien against such fund for payment of such bonds or notes and interest thereon and may either at law or in equity protect and enforce such lien.

(e) To increase the security and marketability of tax increment bonds, the city may create a lien for the benefit of the bondholders upon any public improvements or public works financed thereby or the revenues therefrom, or make such covenants and do any and all such acts as may be necessary or convenient or desirable in order to additionally secure such bonds or tend to make the bonds more marketable according to the best judgment of the City Council.

(f) Moneys shall be disbursed from the tax increment fund only to satisfy the claims of holders of tax increment bonds issued in aid of the urban renewal project with respect to which the fund was established, or to pay project costs. "Project costs" means any expenditure made or estimated to be made or monetary obligations incurred or estimated to be incurred by the city which are listed in an urban renewal project, plus any costs incidental thereto, diminished by any income or revenues other than tax increments, received or reasonably expected to be received by the city in connection with the implementation of such plan. Such project costs include, but are not limited to:

(1) capital costs, including, but not limited to, the actual costs of the construction of public works or improvements, new buildings, structures, and fixtures; the demolition, alteration, remodeling, repair or reconstruction of existing buildings, structures and fixtures; the acquisition of equipment; and the clearing and grading of land;

(2) financing costs, including, but not limited to, all interest paid to holders of tax increment bonds issued to pay for project costs and any premium paid over the principal amount thereof because of the redemption of such obligations prior to maturity;

(3) professional service costs, including, but not limited to, costs incurred for architectural, planning, engineering or legal services;

(4) imputed administrative costs, including, but not limited to, reasonable charges for the time spent by employees of the city in connection with the implementation of an urban renewal plan; or

(5) organizational costs, including, but not limited to, the cost of conducting studies and the cost of informing the public with respect to the creation of urban renewal projects and the implementation of project plans.

(g) Subject to any agreement with the holders of tax increment bonds, moneys in a tax increment fund may be temporarily invested in the same manner as other municipal funds.

(h) After all project costs and all tax increment bonds issued with respect to an urban renewal project have been paid or the payment thereof provided for, and subject to any agreement with bondholders, if there remain in such fund any moneys, they shall be paid over to the city and other taxing entities levying taxes on property within such project in such amounts as belong to each respectively.

(i) Tax increment bonds issued under this Act shall not be general obligations of the city, nor in any event shall they give rise to a charge against its general credit or taxing powers, or be payable other than as provided by this Act; and any tax increment bonds issued under this Act shall so state on their face.

(j) Tax increment bonds issued under this Act shall not be included in any computation of the debt of the issuing city.

(k) Tax increment bonds may not be issued in an amount exceeding the aggregate costs of implementing the urban renewal plan for the project in aid of which they were issued, and such bonds shall mature over a period not exceeding twenty (20) years from the date thereof.

Annual Report

Sec. 22d. (a) On or before July 1 each year, the City Council shall submit to the chief executive officer of every taxing entity a report on the status of such district. The report shall include the following information:

(1) the amount and source of revenue in the tax increment fund established in accordance with the requirements of this Act;

(2) the amount and purpose of expenditures from the fund;

(3) the amount of principal and interest due on any outstanding bonded indebtedness;

(4) the tax incremental base and the current captured market value retained by the project; and

(5) the captured market value shared by the city and other taxing entities, the total in tax increments received, and any additional information necessary to demonstrate compliance with the tax increment financing plan adopted by the City Council.

(b) On or before July 1 of each year, the City Council shall cause to be published in a newspaper of general circulation in the city a statement showing:

(1) the tax increment received and expended during the previous year;

(2) the original market value and captured market value of all property located within the urban renewal project;

(3) the amount in outstanding indebtedness incurred in aid of the urban renewal project; and

(4) any additional information the City Council deems necessary.

[Amended by Acts 1975, 64th Leg., p. 107, ch. 47, §§ 1, 2, eff. April 15, 1975; Acts 1977, 65th Leg., p. 2126, ch. 850, §§ 1 to 5, eff. Aug. 29, 1977.]

Section 6 of the 1977 amendatory act provided:

"Except to the extent otherwise specifically provided in this Act, if any provision of this Act or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

Art. 1269I-4. Community Development Act of 1975

Short Title

Sec. 1. This Act may be cited as the "Texas Community Development Act of 1975."

Public Purposes

Sec. 2. It is hereby found and declared that the activities specified in Sections 4 and 6 of this Act contribute to the development of viable urban communities by providing decent housing and a suitable living environment, and by expanding economic opportunities for eligible persons as defined by the federal Housing and Community Development Act of 1974;¹ and that the objectives of such activities are matters of public interest and legitimate public purposes for municipalities within this state.

¹ 42 U.S.C.A. § 5301 et seq.

Definitions

Sec. 3. In this Act:

(a) "Community Development Program" means a planned and publicized program of work designed to improve the living and economic conditions of primarily low and moderate income persons, and which includes any of the activities or functions specified for a community development program under this Act.

(b) "Governing body" means the governing body of any municipality in this state.

(c) "Municipality" means any city, town, or village incorporated under the laws of this state.

(d) "Texas Urban Renewal Law" means Chapter 298, Acts of the 55th Legislature, Regular Session, 1957, as amended (Article 12691-3, Vernon's Texas Civil Statutes).

Powers of Municipalities; Limitations

Sec. 4. (a) Any municipality is hereby authorized to implement a community development program upon adoption by the governing body of an ordinance or resolution enacting the same.

(b) A community development program implemented by any municipality may include the following activities:

(1) the acquisition of real property, including air rights, water rights, and other interests therein which is blighted, deteriorated, deteriorating, undeveloped, or inappropriately developed from the standpoint of sound community development and growth; appropriate for rehabilitation or conservation activities; appropriate for the preservation or restoration of historic sites, the beautification of urban land, the conservation of open spaces, natural resources, and scenic areas, the provision of recreational opportunities or the guidance of urban development; to be used for the provision of public works, facilities, and improvements eligible for assistance under this Act, or to be used for other public purposes;

(2) the acquisition, construction, reconstruction, or installation of public works, facilities, and sites or other improvements, including neighborhood facilities, senior centers, historic properties, utilities, streets, street lights, water and sewer facilities, foundations and platforms for air rights sites, pedestrian malls and walkways and parks, playgrounds, and recreation facilities, flood and drainage facilities, and parking facilities, solid waste disposal facilities, and fire protection services and facilities which are located in or which serve designated community development areas;

(3) code enforcement in deteriorated or deteriorating areas in which such enforcement, together with public improvements and services to be provided, may be expected to arrest the decline of the area;

(4) clearance, demolition, removal, and rehabilitation of buildings and improvements, including interim assistance and financing the rehabilitation of privately owned properties when incidental to other activities;

(5) special projects directed to the removal of material and architectural barriers which restrict the mobility and accessibility of elderly and handicapped persons;

(6) payments to housing owners for losses of rental income incurred in holding for temporary periods housing units to be utilized for the reloca-

tion of individuals and families displaced by program activities under this title;

(7) disposition, through sale, lease, donation or otherwise, of any real property acquired pursuant to this Act or its retention for public purposes;

(8) provision of public services not otherwise available in areas where other activities authorized under this Act are being carried out, if such services are determined to be necessary or appropriate to support such other activities, and/or if such services are directed toward improving the community's public services and facilities, including those concerned with the employment, economic development, crime prevention, child care, health, drug abuse, education, welfare, or recreation needs of persons residing in such areas, and coordinating public and private development programs;

(9) payment of the nonfederal share required in connection with a federal grant-in-aid program undertaken as part of a local community development program;

(10) payment of the cost of completing a project funded under Title I of the federal Housing Act of 1949;¹

(11) relocation payments and assistance for individuals, families, businesses, organizations, and farm operations displaced by activities assisted under this Act;

(12) activities necessary to develop a comprehensive community development plan, and to develop a policy-planning-management capacity, so that recipients of assistance under this Act may more rationally and effectively determine their needs, set long-term goals and objectives, devise programs and activities to meet these goals and objectives, evaluate the progress of such programs in accomplishing these goals and objectives, and carry out management, coordination, and monitoring of activities necessary for effective planning implementation; and

(13) payment of reasonable administrative costs and carrying charges related to the planning and execution of community development and housing activities, including the provisions of information and resources to residents of areas in which community development and housing activities are to be concentrated with respect to the planning and execution of such activities.

(c) Any municipality may provide for and implement programs to provide financing for the rehabilitation of privately owned buildings through the use of loans and grants from federal money remitted to a municipality for the purposes of this Act; except that municipalities are prohibited from providing municipal property or funds for private purposes. Any program established for financing the rehabili-

tation of buildings from federal funds may prescribe procedures under which the owner(s) of such building(s) shall agree to partially or fully reimburse the municipality for the cost of such rehabilitation.

¹ 42 U.S.C.A. § 1450 et seq.

Required Procedures

Sec. 5. Prior to the exercise of powers established under Section 4 of this Act, the governing body of any municipality shall:

(a) identify areas of the municipality in which predominantly low and moderate income persons dwell, and set out within the community development program areas of the municipality where community development activities, building rehabilitation, or the acquisition of privately owned buildings or land are proposed to be undertaken; and

(b) adopt, by resolution or ordinance, a plan under which citizens may publicly comment on the proposed community development program; and

(c) conduct public hearings on the proposed community development program at least 15 days prior to its final adoption by the governing body; and

(d) adopt the provisions of the community development program by resolution or ordinance.

Limitations on Powers

Sec. 6. For the purpose of implementing any of the activities enumerated in Section 4 of this Act, compliance with Section 5 shall be sufficient; provided, however, that in no event shall a municipality implementing any of the activities enumerated in Section 4 have the power of condemnation for the purpose of rehabilitating or removing buildings or for the purpose of acquiring real property of any kind for the purpose of resale. Nothing in this Act shall be construed to grant municipalities the authority to implement an urban renewal project under the terms and provisions of the Texas Urban Renewal Law without an enabling referendum passed by the voters or to exercise powers of eminent domain as granted by the Texas Urban Renewal Law. In order to exercise such powers, the municipality must have adopted the provisions of the Texas Urban Renewal Law in the manner prescribed by such Act.

Continuation of Urban Renewal

Sec. 7. This Act shall not be construed to alter or change the status, operations, contracts, or obligations of any existing urban renewal agency adopted pursuant to the Texas Urban Renewal Law, nor should any provisions of this Act be construed as to prevent the governing body of any municipality from adopting the provisions of and authority granted under the Texas Urban Renewal Law.

Scope

Sec. 8. The powers of municipalities described in this Act are granted in addition to all other powers of municipalities, and are intended to be cumulative thereof.

Validation of Previous Proceedings

Sec. 9. All ordinances or resolutions heretofore passed and adopted by the governing body of any such municipality implementing a community development program as defined and authorized by this Act are hereby validated as of the date of such ordinance or resolution, and are declared fully enforceable to the same extent as if such ordinance or resolution had been passed in accordance with laws duly enacted by the legislature of this state specifically providing for the passage and adoption of such ordinances or resolutions. All governmental proceedings and acts heretofore performed by the governing bodies of such municipalities and all officers thereof in implementing a community development program as authorized by this Act are hereby ratified as of the date of such proceedings and acts.

Applicability to "New Towns"

Sec. 10. Nothing in this Act shall be construed to authorize the use of the powers or federal funds referred to herein to establish any "new town" or "new town in town" pursuant to Title IV of the Housing and Urban Development Act of 1968 (42 U.S.C.A. 3901 et seq.), Title VII of the Housing and Urban Development Act of 1970 (42 U.S.C.A. 4501 et seq.), or Section 107(a) of the Housing and Urban Development Act of 1974 (42 U.S.C.A. 5307).

Severability

Sec. 11. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

[Acts 1975, 64th Leg., p. 2058, ch. 677, §§ 1 to 11, eff. Sept. 1, 1975.]

Art. 12691-5. Housing Rehabilitation Act

Short Title

Section 1. This Act may be cited as the Texas Housing Rehabilitation Act.

Legislative Findings

Sec. 2. The legislature finds that:

(1) a substantial amount of housing in the State of Texas is deteriorating and does not conform to accepted minimum standards applicable to structures for human habitation;

(2) deteriorating housing contributes to the decline of residential areas in urban and rural communities throughout this state, and such housing causes reductions in the taxable values of cities, counties, and other units of local government;

(3) declining residential areas require large-scale public investment to mitigate the effect of slums, health and safety problems, and retard the development of socially and economically disruptive conditions within affected communities;

(4) many owners of deteriorating housing cannot afford to make needed repairs and improvements without expending more than a reasonable portion of their incomes for housing, and some homeowners are financially unable to afford to spend any amount whatsoever to upgrade the quality of their dwellings;

(5) existing programs sponsored by public and private agencies to facilitate the rehabilitation of housing owned by persons of low and moderate income are inadequate to meet current and future needs, and a cooperative state-local government housing rehabilitation program therefore is clearly warranted; and

(6) unless the problem of deteriorating housing and other problems associated with the decline of residential areas are affirmatively addressed by the legislature, the health, safety, and welfare of the residents of such areas, as well as the citizens of the State of Texas generally, will be detrimentally affected.

Policy; Purpose

Sec. 3. It is the policy of the state and the purpose of this Act to provide a means by which the further deterioration of housing and the decline of residential areas in urban and rural communities throughout the State of Texas can be arrested and prevented. The legislature therefore declares that all of the purposes of this Act are public purposes and uses for which public money may be borrowed, expended, and loaned.

Definitions

Sec. 4. In this Act:

(1) "Borrower" means a household whose loan application is approved by a local government.

(2) "Department" means the Texas Department of Community Affairs.

(3) "Direct housing rehabilitation cost" means the amount contracted for between borrowers and contractors in a contract approved by a local government.

(4) "Fund" means the Texas Housing Rehabilitation Loan Fund.

(5) "Household" means a person or persons owning housing in an area designated under this Act.

(6) "Housing" means a structure which is situated on a permanent foundation and which consists of from one to four family units used exclusively for residential purposes.

(7) "Local agency" means a nonprofit organization whose principal purpose is to improve housing conditions or a local housing authority, urban renewal agency, or other public entity.

(8) "Local government" means a county, city, town, or village.

(9) "Rehabilitation" means the repair, renovation, or other improvement of housing with the object of making such housing decent, safe, sanitary, and more habitable.

Housing Rehabilitation Loan Fund

Sec. 5. (a) Funds for the implementation and administration of this Act shall be provided by the General Appropriations Act. A special account in the state treasury, to be known as the Texas Housing Rehabilitation Loan Fund is hereby created. Funds appropriated by the legislature for housing rehabilitation loans, together with any funds received from other sources for the purpose of making loans under this Act, must be placed in the fund. All repayments received from borrowers for loans made from the fund, income from the transfer of interests in property acquired in connection with rehabilitation loans made from the fund, and interest earned on deposits and investments of the fund shall be credited to the fund. It is the intent of this Act that the housing rehabilitation loan fund operate as a revolving fund whereby all appropriations and payments made thereto may be applied and reapplied to the purposes of this Act.

(b) The state treasurer shall invest and disburse money from the fund upon the written authorization of the executive director of the department. The department shall administer the fund as a revolving loan fund for carrying out the purposes of this Act and may designate separate accounts in the fund and the purposes for which the accounts are to be used.

(c) Money in the fund may be used only for:

(1) financing loans made pursuant to this Act, including the administrative charge provided for in Subsection (c) of Section 12 of this Act; and

(2) paying expenses incurred by the department in connection with the acquisition or disposal of real property under this Act.

Area Rehabilitation Plan

Sec. 6. (a) In order to qualify households within its boundaries for rehabilitation loans under this Act, a local government must designate a specific area, or areas, in conformity with standards established by the department, and must prepare an area rehabili-

tation plan for each designated area in the form prescribed by the department.

(b) An area rehabilitation plan must provide relevant information concerning the area and must include the following elements:

(1) a description of the physical, social, and economic characteristics of the area(s);

(2) a description of housing conditions in the area(s);

(3) an assessment of the need for housing rehabilitation loans in the area(s), such assessment to be expressed in terms of numbers and characteristics of households and average and total loan amounts;

(4) a description of methods by which the local government will determine whether the rehabilitation of housing in the area(s) is economically feasible;

(5) a description of methods by which rehabilitation work will be supervised and methods by which compliance with departmental regulations governing materials, fixtures, and rehabilitation contracts will be ensured;

(6) a description of methods and procedures that will be used to enforce local housing, building, fire, and related codes, or if such codes have not been enacted, a description of methods and procedures for enforcing the standards promulgated by the department;

(7) an assessment of the need for additional public improvements and public services in the area(s), together with a description of the specific means by which these improvements and services will be provided; and

(8) a description of methods by which private investment to improve conditions in the area(s) will be encouraged.

(c) An area rehabilitation plan must be approved by resolution or order of the governing body of the local government and submitted to the department for review. The department shall determine whether the designated area meets the standards established by the department and whether the plan contains all the prescribed elements. If so, the department must accept the plan. Upon acceptance of the plan, households in the designated area are qualified to apply for housing rehabilitation loans. If an area does not meet the department's standards or a plan does not contain all the prescribed elements, the department shall return the plan to the local government with a list of deficiencies. No loans may be made within a designated area unless the deficiencies are corrected and the plan is resubmitted and accepted by the department.

Authority of the Department

Sec. 7. The department has all the powers necessary or appropriate to carry out the purposes of this Act. The department may:

(1) acquire interests in property necessary to and in connection with the making of rehabilitation loans under this Act as set forth in Section 8 of this Act;

(2) make contracts and agreements with the federal government, other agencies of the state, any other public agency, or any other person, association, corporation, local government, or other entity in exercising its powers and performing its duties under this Act;

(3) make regulations governing the disposition or further encumbrance by the borrower of property subject to a lien in connection with a rehabilitation loan;

(4) expend funds appropriated by the legislature to employ staff and for travel, supplies, materials, and equipment or to contract for services necessary to carry out its powers and duties under this Act;

(5) provide technical assistance to local governments; and

(6) seek and accept funding from any public or private source.

Interests in Property; Disposition

Sec. 8. (a) The department may not construct residential housing, nor may the department acquire residential housing except in connection with the enforcement of a lien under this Act, and then only by a foreclosure of a mortgage, a sale under a deed of trust, or by a voluntary conveyance from a borrower in full or partial settlement of a rehabilitation loan.

(b) If the department acquires residential housing in the enforcement of a lien, it must, within six months of such acquisition, offer the housing for public sale or auction. Notice of the public sale or auction must be provided by the department by publication once each week for three consecutive weeks prior to the day of the sale or auction in a newspaper of general circulation in the county in which the housing is located. The notice must contain a description of the property and must specify procedures for submitting competitive bids and the time and location of the public sale or auction. The department may reject any or all bids.

(c) If a sale cannot be effected by public sale or auction, the department may enter negotiations with any party for the expeditious sale of the housing. First priority must be given to selling the housing to a purchaser that will be required to pay ad valorem taxes on the property. If it is not practicable to sell it to such a purchaser, the department shall attempt

to sell it to a purchaser that is exempt from ad valorem taxes but will make payments in lieu of taxes on the property. If neither type of purchaser is available, the department may sell it to any purchaser.

Regulations and Standards

Sec. 9. (a) The department shall adopt regulations for making and servicing housing rehabilitation loans, and for the foreclosure of defaulted loans. The regulations must require that each loan be evidenced by a promissory note payable to the state and secured by a valid lien on real property in this state.

(b) The department shall establish:

(1) standards by which households within the boundaries of a local government may qualify for loans;

(2) standards and procedures for the administration of this Act by local governments and local agencies;

(3) standards for the selection of contractors and for contracts between borrowers and contractors performing rehabilitation work under this Act; and

(4) standards for materials and fixtures used in performing rehabilitation work under this Act.

(c) The department shall set minimum and maximum interest rates for loans made under this Act.

(d) The department shall adopt minimum housing, building, fire, and related code standards for application in designated areas for which a rehabilitation plan has been accepted and no such local government standards are in effect.

Administration by Department

Sec. 10. (a) The department shall audit the local administration of rehabilitation loans under this Act to determine if good faith efforts are being made to comply with the applicable area rehabilitation plan and the regulations, standards, and guidelines adopted by the department.

(b) If in any fiscal year anticipated rehabilitation loans exceed estimated available funds, the department shall allocate the estimated available funds for that fiscal year among the local governments that have filed area rehabilitation plans, taking into account the probable amount of rehabilitation loans to be made by each local government.

(c) Upon receipt of notification of approval of a loan application by a local government, the director shall authorize the state treasurer to disburse the approved amount from the fund to the local government unless:

(1) the department has found that the local government is currently not making good faith

efforts to substantially comply with the applicable area rehabilitation plan or the regulations, standards, and guidelines adopted by the department; or

(2) the remaining portion of the fund allocated to the local government under Subsection (b) of this section is insufficient to allow payment of the approved amount.

Loan Eligibility

Sec. 11. (a) The department shall establish eligibility guidelines for local governments to use in determining whether households qualify for housing rehabilitation loans under this Act. In establishing these guidelines, the department shall take into account:

(1) household gross income;

(2) household income available for housing needs;

(3) household size;

(4) the value and condition of the housing to be rehabilitated; and

(5) the ability of households to compete successfully in the private housing market and to pay the amounts at which private enterprise is providing sanitary, decent, and safe housing.

(b) The department shall not approve any loan unless it finds that the benefit to an area designated pursuant to the requirements of Section 6 of this Act will exceed the financial commitment of the department and that the approval of the particular loan will be of benefit to the state and its taxpayers.

General Powers and Duties of Local Governments

Sec. 12. (a) A local government may approve or disapprove loan applications from households according to the eligibility guidelines and regulations of the department. Upon approval of a loan application, the local government shall notify the department of the amount of the approved loan.

(b) A local government shall fix the interest rate for each loan within the minimum and maximum rates established by the department and shall fix the term of each loan and any other necessary conditions pertaining to the repayment of the loan pursuant to this Act and the regulations of the department.

(c) A local government may impose an administrative charge of not more than three percent of the direct housing rehabilitation cost and may deduct the charge from the amount loaned to borrowers.

(d) A local government may contract with any public or private entity for servicing rehabilitation loans.

(e) The governing body of a local government may designate a local agency or agencies to carry out any of the powers and duties of the local govern-

ment under this Act. Any power or duty that a governing body delegates to a local agency may be withdrawn by the governing body at any time.

(f) A local government engaged in housing rehabilitation under this Act shall carry on a program of general education designed to inform residents in designated areas of methods for maintaining their housing and of the availability of housing rehabilitation loans.

Loan Conditions

Sec. 13. (a) Rehabilitation loans must be used primarily to make housing comply with state, county, or municipal building, housing maintenance, fire, health, or similar codes and standards applicable to housing.

(b) No loan made under this Act may exceed an amount which, when added to all other existing indebtedness secured by the property, would exceed the market value of the rehabilitated property as determined by the local government. No loan may exceed the total of the approved direct housing rehabilitation cost together with the administrative charge provided for in Subsection (c) of Section 12 of this Act.

(c) The term of a loan made under this Act may not exceed 20 years. It must be repaid by installments and must be secured as required by this Act and the regulations of the department. The local government may allow deferment of payments or adjust the interest rate or term of the note if the borrower is unable to make the required payments.

(d) A borrower must agree that if he voluntarily destroys, moves, or relinquishes ownership of the rehabilitated housing within one year after completion of the rehabilitation, the loan is immediately due and payable, together with an interest surcharge sufficient to make the total interest paid equivalent to an amount determined by prevailing interest rates for rehabilitation loans from private sources at the time of the sale. If the local government finds that the borrower must sell due to financial hardship or similar circumstances, the interest surcharge may be waived by the local government with the consent of the department.

(e) The department may take title by foreclosure to any project where such acquisition is necessary to protect any loan previously made therefor by the department and to pay all costs arising out of such foreclosure.

Rehabilitation Contracts

Sec. 14. (a) A borrower and contractor may not enter into a contract for rehabilitation work to be financed under this Act unless the proposed contract has first been approved by the local government in accordance with standards established by the department. The local government shall supervise all

work performed under the contract. The contractor is not entitled to payment until the work has been approved by the local government, and the borrower is not liable to the contractor for any work not approved by the local government.

(b) Any contract involving the expenditure of more than \$3,000 for housing rehabilitation construction or other work financed by means of loan funds applied by the department may be made only after advertising in the manner provided by Chapter 163, General Laws, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Article 2368a, Vernon's Texas Civil Statutes). The provisions of Article 5160, Revised Civil Statutes of Texas, 1925, as amended, relating to performance and payment bonds, shall apply to construction contracts.

Pledge of State Credit Prohibited

Sec. 15. The department shall have no power at any time to borrow money, incur pecuniary obligations, or in any manner to pledge the credit or taxing power of the State of Texas or any of its political subdivisions.

Transfer of Encumbered Property

Sec. 16. Upon sale or gift of the encumbered property, or upon the death of the borrower, the local government may, subject to approval of the department, declare all or part of any deferred payments due and payable, declare the balance of the loan due and payable, or allow the buyer, donee, or other successor in title of the borrower to assume the loan if the buyer, donor, or successor qualifies under the provisions of Section 11 of this Act. [Acts 1977, 65th Leg., p. 2020, ch. 808, §§ 1 to 16, eff. Aug. 29, 1977.]

Art. 12691-6. Housing Agency Act

Short Title

Sec. 1. This Act shall be known and may be cited as the Texas Housing Agency Act.

Definitions

Sec. 2. In this Act the following words, as used in this Act, shall have the meanings set forth below, unless the context clearly requires otherwise:

(a) "Act" means the Texas Housing Agency Act.

(b) "Agency" means the Texas Housing Agency created by the Act.

(c) "Board" means the board of directors of the agency.

(d) "Bond" means any type of interest-bearing obligation, including, without limitation, any bond, note, bond anticipation note, or other evidence of indebtedness, whether general or special, whether negotiable or nonnegotiable in form, whether in

bearer or registered form, whether in temporary or permanent form, whether with or without interest coupons, and regardless of the source of payment.

(e) "Director" means a member of the board.

(f) "Federal government" means the United States of America or any department, division, agency, or instrumentality, corporate or otherwise, of the United States of America.

(g) "Federally insured mortgage" means a mortgage loan for residential housing which is insured or guaranteed by the federal government or for which there is a commitment to insure or guarantee the mortgage by the federal government.

(h) "Federal mortgage" means a mortgage loan for residential housing made by the federal government or for which there is a commitment by the federal government to make the mortgage loan.

(i) "Housing development costs" means the total of all costs incurred in financing, creating, or purchasing any housing development, including but not limited to a single-family dwelling, which is approved by the agency as reasonable and necessary. The costs may include but are not limited to:

(1) the value of land and any buildings on the land owned by the sponsor or the cost of land acquisition and any buildings on the land, including payments for options, deposits, or contracts to purchase properties on the proposed housing sites;

(2) cost of site preparation, demolition, and development;

(3) any expenses relating to the issuance of bonds;

(4) fees paid or payable in connection with the planning, execution, and financing of the housing development, such as those to the architects, engineers, attorneys, accountants, and the agency;

(5) cost of necessary studies, surveys, plans, permits, insurance, interest, financing, tax and assessment costs, and other operating and carrying costs during construction;

(6) cost of construction, rehabilitation, reconstruction, fixtures, furnishings, equipment, machinery, and apparatus related to the real property;

(7) cost of land improvements, including without limitation, landscaping and off-site improvements, whether or not the costs have been paid in cash or in a form other than cash;

(8) necessary expenses in connection with initial occupancy of the housing development;

(9) a reasonable profit and risk fee in addition to job overhead to the general contractor and, if applicable, a limited profit housing sponsor;

(10) an allowance established by the agency for working capital and contingency reserves and reserves for any anticipated operating deficits during the first two years of occupancy; and

(11) the cost of the other items, including tenant relocation, if tenant relocation costs are not otherwise being provided for, as the agency shall determine to be reasonable and necessary for the development of the housing development, less any and all net rents and other net revenues received from the operation of the real and personal property on the development site during construction.

(j) "Housing development" or "housing project" means any real or personal property, project, building, structure, facilities, work, or undertaking, whether existing, new construction, remodeling, improvement, or rehabilitation, which meets or is designed to meet minimum property standards prescribed by the agency and which is financed pursuant to the provisions of this Act for the primary purpose of providing sanitary, decent, and safe dwelling accommodations for persons and families of low income and families of moderate income in need of housing. The term may include buildings, structures, land, equipment, facilities, or other real or personal properties which are necessary, convenient, or desirable appurtenances, such as but not limited to streets, water, sewers, utilities, parks, site preparation, landscaping, stores, offices, and other nonhousing facilities, such as administrative, community, and recreational facilities the agency determines to be necessary, convenient, or desirable appurtenances. "Housing development" and "housing project" include both single-family dwellings and multifamily dwellings in rural and in urban areas.

(k) "Housing sponsor" means individuals, including persons and families of low income or families of moderate income, joint ventures, partnerships, limited partnerships, trusts, firms, corporations, and cooperatives, approved by the agency as qualified either to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development, subject to the regulatory powers of the agency and other terms and conditions set forth in this Act.

(l) "Land development" means the process of acquiring land for residential housing construction and making, installing, or constructing nonresidential improvements, including, without limitation, waterlines and water supply installations, sewer lines and sewage disposal installations, steam, gas, and electric lines and installations,

roads, streets, curbs, gutters, and sidewalks, whether on or off the site, which the agency deems necessary or desirable for housing developments to be financed by the agency.

(m) "Mortgage" means a mortgage, mortgage deed, deed of trust, or other instrument which constitutes a first lien:

(1) on real property; or

(2) on a leasehold under a lease having a remaining term which at the time the mortgage is acquired does not expire until after the maturity date of the interest-bearing obligation secured by the mortgage.

(n) "Mortgage lender" means any bank or trust company, savings bank, mortgage company, mortgage banker, credit union, national banking association, savings and loan association, building and loan association, life insurance company, or other financial institution authorized to transact business in the state that is approved as a mortgage lender by the agency.

(o) "Mortgage loan" means an interest-bearing obligation secured by a deed of trust, a mortgage, bond, note, or other instrument which is a first lien on real property in the state.

(p) "Municipality" means any city, town, or village in this state.

(q) "Persons and families of low income" means persons and families determined by the board to require assistance as is made available by this Act because of insufficient personal or family income taking into consideration, without limitation, such factors as:

(1) the amount of the total income of such persons and families available for housing needs;

(2) the size of the family;

(3) the cost and condition of housing facilities available;

(4) the ability of the persons and families to compete successfully in the private housing market and to pay the amounts required by private enterprise for sanitary, decent, and safe housing; and

(5) standards established for various federal programs determining eligibility based on income.

(r) "Family of moderate income" means a family:

(1) that is determined by the board to require assistance, taking into account the factors listed in Subdivision (q) of this section; and

(2) that does not qualify as a family of low income.

(s) "Public agency" means any board, authority, agency, department, commission, political subdivi-

sion, municipal corporation, district, public corporation, body politic, or instrumentality of the state including, without limitation, any county, home-rule charter city, general-law city, town, or village, any housing authority, any state-supported educational institution of higher learning, any school, junior college, hospital, water, sewerage, waste disposal, pollution, road, navigation, levee, drainage, conservation, reclamation, or other district or authority, and any other type of political or governmental entity of the state.

(t) "Real property" means all land, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest, and right, legal or equitable, therein, including leasehold interests, terms for years, and liens by way of judgment, mortgage, or otherwise.

(u) "Reserve fund" means the Texas Housing Agency Reserve Fund which may be created pursuant to this Act and which may be established by the agency with the State Treasurer of the State of Texas out of proceeds from the sale of the agency's bonds or other resources, as additional security for the agency's bonds.

(v) "Residential housing" means a specific work or improvement within this state undertaken primarily to provide dwelling accommodations, including the acquisition, construction, reconstruction, remodelling, improvement, or rehabilitation of land, buildings, and improvements thereto, for residential housing, and such other nonhousing facilities as may be incidental or appurtenant thereto.

(w) "State" means the State of Texas.

Creation of the Agency

Sec. 3. (a) There is hereby created and established a public and official governmental agency of the state, to be known as the Texas Housing Agency, and the state shall act by and through the agency in carrying out all powers and duties conferred by this Act. The exercise by the agency of all powers and duties conferred by this Act shall constitute and be deemed and held to be an essential public and official governmental function and purpose of the state, acting by and through the agency, in promoting the general welfare and prosperity of the state and all of its citizens.

(b) The agency is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes). Unless continued in existence as provided by that Act, the agency is abolished and this Act expires effective September 1, 1991.

Primary Purpose of the Agency: Declaration of Policy

Sec. 4. It is hereby declared:

(a) that there exists within both rural and urban areas of this state a shortage of sanitary and safe residential housing at prices or rentals which persons and families of low income and families of moderate income can afford; that this shortage has contributed to and will contribute to the creation and persistence of substandard living conditions and is inimical to the health, welfare, and prosperity of the residents and communities of this state;

(b) that it is imperative that the supply of residential housing for such persons and families and for persons and families displaced by public actions or natural disaster be increased;

(c) that private enterprise and investment are unable, without financial assistance, to provide in sufficient quantities the needed construction or rehabilitation of sanitary and safe residential housing at prices or rentals which persons and families of low income and families of moderate income can afford and to provide sufficient long-term mortgage financing for residential housing for occupancy by such persons and families;

(d) that private enterprise and investment be encouraged to develop land and to build and to rehabilitate residential housing for such persons and families, and that private financing be supplemented by financing as provided in this Act in order to help prevent the creation and recurrence of substandard living conditions and to assist in their permanent elimination throughout this state. It is further declared that in order to provide a fully adequate supply of sanitary and safe dwelling accommodations at rents, prices, or other costs which such persons or families can afford, the legislature finds that it is necessary to create and establish a housing finance agency for the purpose of encouraging the investment of private capital and stimulating the acquisition, construction, and rehabilitation of residential housing to meet the needs of such persons and families through the use of public financing, to provide construction and mortgage loans, and to make provision for the purchase of mortgage loans and otherwise. It is hereby further declared to be necessary and in the public interest that such housing finance agency provide for predevelopment costs, temporary financing, incidental land development expenses, and residential housing acquisition, construction, or rehabilitation by housing sponsors for sale or rental to persons and families of low income and families of moderate income; and further, to provide mortgage financing, including, without limitation, long-term federally insured mortgages to eligible housing sponsors; and further, to increase the acquisition, construction, and rehabilitation of

low income housing through the purchase from mortgage lenders authorized to transact business within the state of first mortgage loans for residential housing for persons and families of low income and families of moderate income in this state; and further, to provide technical, consultative, and project assistance services to private sponsors, to assist in coordinating federal, state, regional, and local public and private efforts and resources, to guarantee to the extent provided herein the repayment of certain loans secured by residential mortgages, and to preserve the quality of life in this state. It is hereby further declared that all of the foregoing are public purposes and uses for which public money may be borrowed, expended, advanced, loaned, granted, or appropriated, and that such activities serve a public purpose in improving or otherwise benefitting the people of this state; that the necessity of enacting the provisions of this Act is in the public interest and is hereby so declared as a matter of express legislative determination.

Appointment and Removal of Directors

Sec. 5. (a) The board of directors of the agency which is and constitutes a "board" of the state, within the meaning of Article XVI, Section 30a, of the Texas Constitution and which shall have such powers and duties as are prescribed in this Act shall consist of nine members, entitled directors. Each director occupies one of the nine places on the board designated as Places 1 through 9.

(b) The nine regular directors shall be appointed by the governor with the advice and consent of the senate.

(c) Except for the initial appointees, directors hold office for staggered terms of six years, with the terms of three directors expiring on January 31 of each odd-numbered year. Each director shall hold office until a successor is appointed and has qualified.

(d) The directors initially appointed to occupy Places 1, 4, and 7 shall serve terms expiring on January 31, 1981. The directors initially appointed to occupy Places 2, 5, and 8 shall serve terms expiring on January 31, 1983. The directors initially appointed to occupy Places 3, 6, and 9 shall serve terms expiring on January 31, 1985.

(e) Each director is eligible for reappointment.

(f) Any vacancy on the board is filled by appointment by the governor with the advice and consent of the senate. A vacancy, except for expiration of term, is filled for the unexpired term only. If a vacancy occurs while the senate is not in session, the governor may make the appointment subject to confirmation by the senate when convened.

(g) To be eligible for appointment as a director, a person must be a qualified voter of the state and not hold any other public office. The governor shall make appointments so that the places on the board are occupied by persons having the following experience:

- (1) Place 1—a person with experience in housing development administration;
- (2) Place 2—a person with experience in commercial banking;
- (3) Place 3—a person with experience in real estate operations;
- (4) Place 4—a person with experience in home building;
- (5) Place 5—a person with experience in apartment construction or ownership;
- (6) Place 6—a person with experience in mortgage banking;
- (7) Place 7—a person with experience in savings and loan operations;
- (8) Place 8—a person with experience in municipal or county government;
- (9) Place 9—a person with experience in housing problems of persons and families of low income and families of moderate income.

General Provisions Relating to the Board

Sec. 6. (a) The directors do not receive any compensation but each director is entitled to reimbursement for actual expenses incurred in performing duties of office to the extent authorized by the board.

(b) The board shall employ an executive administrator of the agency. The administrator may attend all meetings and participate in all proceedings of the board, but may not vote.

(c) The executive director of the Texas Department of Community Affairs, shall, as part of his or her regular duties of office, serve, ex officio, as the chairman of the board, who shall preside at meetings of the board and perform such other duties as are prescribed by the board and this Act, except that he or she shall not have a vote.

(d) The board shall elect one of the directors as vice-chairman to perform the duties of the chairman when the chairman is not present or is incapable of performing duties. The board shall elect a secretary to be the official custodian of the minutes, books, records, and seal of the board and to perform other duties as prescribed by the board. The board shall elect a treasurer to perform duties prescribed by the board. The offices of secretary and treasurer may be held by one person, and the holder of each of these offices need not be a director. The board may appoint one or more persons who are not directors to be assistant secretaries who may perform any duty of the secretary.

(e) A majority of the regular members of the board of directors constitutes a quorum. The board shall act and proceed by and through resolutions adopted by the board. The affirmative vote of at least five directors is necessary to adopt a resolution.

(f) The vice-chairman, secretary, and treasurer of the board shall be elected at the first meeting of the board after all directors shall have been appointed, taken the oath required by Article XVI, Section 1, of the Texas Constitution, and otherwise qualified for office. Thereafter, officers of the board shall be elected at the first meeting of the board on or following January 31 of each odd-numbered year, or at any time necessary to fill a vacancy.

(g) The board shall hold regular meetings at times specified by resolution of the board and may hold special meetings when called by the chairman, the administrator, or three of the directors.

(h) Prior to the issuance of bonds, each director shall execute a surety bond in the penal sum of \$25,000, conditioned on the faithful performance of the duties of director, executed by a surety company authorized to transact business in this state, approved by the attorney general, and filed with the secretary of state. The surety bonds shall be kept in force at all times thereafter and the costs shall be paid by the agency.

(i) A director, chairman of the board, or administrator is not liable personally for any bonds issued or contracts executed by the agency.

Powers of the Administrator and the Board

Sec. 7. (a) The administrator of the agency shall exercise and perform all powers, duties, and functions prescribed by this Act except those prescribed in Subsection (b) of this section or otherwise required to be exercised by the board. The administrator, with the advice and consent of the board, shall appoint a deputy administrator of the agency. The administrator may employ any other employees necessary for the discharge of the duties of the agency, in such number and for such time as may be necessary for the performance of such duties and functions and to remove same, subject to the annual budget and the provisions of any resolution authorizing the issuance of the agency's bonds.

(b) The board shall have the following specific duties and powers, in addition to any other specific duties and powers assigned to the board in this Act:

- (1) in its discretion, authorize all bonds of the agency;
- (2) make rules, not inconsistent with this Act, governing the administration of the agency and its programs;
- (3) adopt procedures for approving loans, purchases of loans, and commitments to purchase loans under this Act;

- (4) adopt underwriting standards for loans made or purchased by the agency;
- (5) adopt minimum property standards for housing developments financed under this Act;
- (6) establish interest rates and amortization schedules for loans made or purchased by the agency;
- (7) establish a schedule of fees and penalties authorized by this Act, including but not limited to application, processing, loan commitment, origination, servicing, and administrative fees;
- (8) establish eligibility criteria for persons and families of low income and families of moderate income to participate in and benefit from the agency's programs;
- (9) compile a list of approved mortgage lenders;
- (10) approve an annual report of the agency; and
- (11) approve an annual budget pursuant to Section 18 of this Act.

General Powers of the Agency

Sec. 8. (a) The agency is hereby granted, has, and may exercise all powers necessary or appropriate to carry out, achieve, or effectuate the purposes of this Act, including, without limitation, the following powers:

- (1) to sue and be sued, and plead and be impleaded, in its own name; and it is specifically enacted that the agency is and constitutes a separate governmental agency and a body politic and corporate of this state, acting for and on behalf of this state;
- (2) to adopt an official seal and alter same when deemed advisable;
- (3) to adopt and enforce bylaws and rules for the conduct of its affairs not inconsistent with bylaws and this Act;
- (4) to acquire, hold, invest, deposit, use and dispose of its revenues, income, receipts, funds, and money from every source and to select its depository or depositories, subject only to the provisions of this Act and any covenants with respect to the agency's bonds;
- (5) to acquire, own, rent, lease, accept, hold, or dispose of any real, personal, or mixed property, or any interest therein, in performing its duties and exercising its powers under this Act, by purchase, exchange, gift, assignment, transfer, foreclosure, sale, lease, or otherwise, including rights or easements and to hold, manage, operate, or improve real, personal, or mixed property, except that:
 - (A) the agency may not construct or acquire any housing development unless acquired through foreclosure of mortgages or sales under deeds of trust;

(B) the agency shall make a diligent effort to sell a housing development so acquired to a purchaser who will be required to pay ad valorem taxes on the housing development or, if such a purchaser cannot be found, to any other purchaser; and

(C) in any event the agency shall sell a housing development so acquired within three years after the date of acquisition unless the board adopts a resolution stating that a purchaser for the housing development cannot be found after diligent search by the agency, in which case the agency shall continue to try to find a purchaser and shall sell the housing development when a purchaser is found;

(6) to sell, assign, lease, encumber, mortgage, or otherwise dispose of any real, personal, or mixed property, or any interest therein, or any deed of trust or mortgage lien interest owned by it or under its control, custody, or in its possession, and release or relinquish any right, title, claim, lien, interest, easement, or demand however acquired, including any equity or right of redemption in property foreclosed by it, and to do any of the foregoing by public or private sale, with or without public bidding, notwithstanding the provisions of any other law; and to lease or rent any dwellings, houses, accommodations, lands, buildings, structures, or facilities from private parties to effectuate the purposes of this Act;

(7) to request and accept any appropriations, grants, allocations, subsidies, rent supplements, guaranties, aid, contributions, services, labor, materials, gifts, or donations from the federal government, the state, any public agency, or any other sources;

(8) to maintain an office or offices throughout the state and appoint and determine the duties, tenure, qualifications, and compensation of its officers, employees, agents, professional advisors, and counselors, including, without limitation, financial consultants, accountants, attorneys, architects, engineers, real estate consultants, appraisers, housing construction and financing experts, as are determined necessary or advisable; it is the intention of this Act that the programs of the agency be coordinated with the programs of the Texas Department of Community Affairs with respect to their design and implementation in order to avoid duplication of governmental housing programs;

(9) to make, enter into, and enforce contracts and agreements with the federal government, the state, any public agency, or any person, firm, corporation, or other entity in performing its duties and exercising its powers under this Act; to make and enter into all contracts, agreements, and other arrangements with mortgage lenders; to

designate mortgage lenders to act for and in behalf of the agency, with respect to originating, servicing, and processing mortgage loans of the agency, under the terms and conditions agreed on between the parties; and to provide, contract, or arrange for consolidated processing of any aspect of a housing development in order to avoid duplication;

(10) to issue its bonds, to provide for and secure the payment of the bonds, and to provide for the rights of the holders of the bonds, in the manner and to the extent permitted by this Act and the Texas Constitution; and to purchase, hold, cancel, or resell or otherwise dispose of any of its bonds, subject to any restrictions in any resolution authorizing the issuance of its bonds;

(11) to fix, charge, and collect fees and charges in connection with loans made or other services provided by the agency pursuant to this Act;

(12) to do anything authorized by this Act, through its directors, officers, or employees, or by contracts with the federal government, the state, any public agency, or any person, firm, corporation, or other entity;

(13) to invest its money in any bonds, obligations, or other securities or place such money in demand or time deposits, whether or not evidenced by certificates of deposit unless otherwise provided by this Act or a resolution authorizing the issuance of its bonds;

(14) to do all things necessary, convenient, or desirable to carry out the powers expressly granted or necessarily implied by this Act;

(15) to conduct hearings and to take testimony and proof, under oath or affirmation, at public hearings, on any matter necessary to carry out the purposes of this Act;

(16) to procure and pay premiums on insurance of any type whatsoever, in amounts and from insurers as the board deems necessary or advisable;

(17) to encourage individual or cooperative home ownership among persons and families of low income and families of moderate income in this state; and

(18) to investigate housing conditions and the means for improving those conditions and determine where slum or blighted areas exist.

Powers Relative to Making Mortgage Loans and Construction Loans to Housing Sponsors

Sec. 9. In addition to all other powers, the agency shall have the following specific powers:

(a) The agency may make, undertake commitments to make, and participate in the making of mortgage loans, including, without limitation, federally insured mortgage loans, and/or make tem-

porary loans and advances in anticipation of permanent mortgage loans to housing sponsors to finance the purchase, construction, remodeling, improvement, or rehabilitation of housing developments for residential housing designed and planned for persons and families of low income and/or families of moderate income, upon the terms and conditions set forth in this Act.

(b) The agency may make and publish rules respecting making mortgage loans pursuant to this Act, the regulations of borrowers, the construction of ancillary commercial facilities, and resale and disposition of any real property, or any interest therein, financed by the agency.

(c) The agency may enter into agreements and contracts with housing sponsors and mortgage lenders under the provisions of this Act with respect to making or participating in making mortgage loans for residential housing for persons and families of low income and/or families of moderate income.

(d) The agency may institute any action or proceeding against any housing sponsor receiving a loan under the provisions hereof, or owning any housing development hereunder in any court of competent jurisdiction in order to enforce the provisions of this Act, the terms and provisions of any agreement or contract between the agency and such recipients of loans under the provisions hereof, including, without limitation, provisions as to rental or carrying charges and income limits as applied to tenants or occupants, or to foreclose its mortgage, or to protect the public interest, persons and families of low income or families of moderate income, stockholders, or creditors of the sponsor. In connection with any such action or proceeding the agency may apply for the appointment of a trustee or receiver to take over, manage, operate, and maintain the affairs of a housing sponsor. The agency through such agent as it shall designate is hereby authorized to accept appointment as trustee or receiver of any such sponsor when so appointed by a court of competent jurisdiction.

Loan Terms and Conditions

Sec. 10. Loans made by the agency under the preceding section shall be subject to the following terms and conditions:

(a) The agency shall not process an application for a loan for a housing development unless the applicant is a housing sponsor and the application is submitted and recommended by a mortgage lender.

(b) The ratio of loan to total housing development cost and the amortization period of loans made under this Act which are insured or guaranteed by the federal government are governed by the federal government mortgage insurance com-

mitment or federal guarantee for each housing development, except the amortization period may not exceed 40 years.

(c) A mortgage loan not insured by the federal government may not exceed 95 percent of the total housing development cost as determined by the agency. The amortization period of the loan shall be determined in accordance with regulations formulated and published by the agency, except the amortization period may not exceed 40 years.

(d) A mortgage loan made under this Act may be prepaid to maturity after the period of years and under the terms and conditions decided upon by the board.

(e) The agency may set the interest rates at which it makes loans and commitments therefor. The interest rates shall be established by the board in its sole discretion so as to produce at least the amounts required, together with other available funds, to pay for the agency's costs of operation and to meet its covenants with and responsibilities to the holders of its bonds. In addition to such interest charges the agency shall make and collect such fees and charges, including but not limited to reimbursement of the agency's financing costs, service charges, insurance premiums, and mortgage insurance premiums, as the agency determines to be reasonable.

(f) In considering an application for a loan, the agency shall give first priority to applications for well-planned and well-designed housing developments. The agency shall also give consideration to:

(1) the comparative need for housing for persons and families of low income and families of moderate income in the area to be served by the proposed housing development;

(2) the ability of the applicant to carry out, operate, manage, and maintain the proposed housing development;

(3) the existence of zoning, protective covenants, or regulations that adequately protect the proposed housing development against detrimental future uses that could cause undue depreciation in the value of the housing development; and

(4) the availability in urban areas of adequate parks, recreational areas, utilities, schools, transportation, and parking.

(g) Each mortgage loan shall be evidenced by a mortgage or deed of trust note or bond and by a mortgage or deed of trust that constitutes a first lien on the housing development and on all the real property constituting the site of or relating to the housing development, and that contains provisions and is in a form required by the agency. The note or bond and mortgage or deed of trust

may contain exculpatory provisions relieving the borrower or its principal from personal liability if agreed upon by the agency.

(h) Each mortgage loan is subject to an agreement between the agency and the housing sponsor that subjects the sponsor and its principals or stockholders to limitations established by the agency as to rentals and other charges, builders' and developers' profits and fees, and the disposition of its property and on all of the real property constituting the site of or relating to the housing development.

(i) As a condition of each loan, the agency may at any time during the construction, rehabilitation, or operation of a housing development:

(1) enter upon and inspect the housing development, including all parts thereof, for the purpose of investigating the physical and financial condition thereof, and its construction, rehabilitation, operation, management, and maintenance and to examine all books and records with respect to capitalization, income, and other matters relating thereto and to make such charges as may be required to cover the cost of such inspections and examinations;

(2) order alterations, changes, or repairs necessary to protect the security of the agency's investment in a housing development or the health, safety, and welfare of the occupants; and

(3) order any managing agent, housing development manager, or owner of a housing development to do whatever is necessary to comply with the provisions of applicable laws, ordinances, or rules of the agency or the terms of any agreement concerning the housing development or to refrain from doing any acts in violation thereof and in this regard the agency shall be a proper party to file a complaint and to prosecute thereon for any violations of laws or ordinances as set forth herein.

(j) A housing sponsor may not make distributions in any one year with respect to a housing development financed by the agency in excess of that which shall be prescribed by rules of the agency of the housing sponsor's equity in the development. The principals or stockholders of a housing sponsor may not at any time earn, accept, or receive a return greater than that which shall be prescribed by rules of the agency per annum of their investment in a housing development financed by the agency. A housing sponsor's equity in a housing development consists of the difference between the mortgage loan and the total housing development cost. The agency shall establish the sponsor's equity at the time of the making of the final mortgage advance and, for the purposes of this subsection, that figure remains

constant during the life of the agency's mortgage or deed of trust on the development, except for additional equity investment made by the sponsor with the agency's approval or at its order.

Purchase and Sale of Mortgage Loans

Sec. 11. (a) The agency may purchase and take assignments from mortgage lenders or the federal government of notes and mortgages evidencing loans for the construction, remodeling, improvement, or rehabilitation, purchase, leasing, or refinancing of housing developments for persons and families of low income and families of moderate income.

(b) The agency may sell, at public or private sale, with or without public bidding, a mortgage or other obligation held by the agency.

Terms of the Purchase and Sale of Mortgage Loans

Sec. 12. (a) No mortgage loan purchased from a mortgage lender is eligible for purchase by the agency unless the mortgage lender certifies that:

(1) the mortgage loans transferred to the agency are for housing developments for persons or families of low income or for families of moderate income; or

(2) the proceeds of the sale or the equivalent have been or will be invested in mortgage loans that benefit persons and families of low income and families of moderate income or invested in short-term obligations pending the making of such mortgage loans.

(b) When the agency purchases a mortgage loan from a mortgage lender, it shall pay a purchase price equal to the outstanding principal balance, except that discount from the principal balance or the payment of a premium may be employed to effect a fair rate of return consistent with the obligations of the agency and the purposes of this Act. In addition to payment of the outstanding principal balance, the agency shall pay the accrued interest due to the date on which the mortgage loan is delivered against payment.

(c) Mortgage loans purchased or sold under this section may include mortgage loans that are insured, guaranteed, or assisted by the federal government, or for which there is commitment by the federal government to insure, guarantee, or assist the mortgage loan.

(d) The agency shall adopt rules governing the purchase and sale of mortgage loans and the application of the proceeds thereof, including rules governing:

(1) procedures for submitting requests or inviting proposals for the purchase and sale of mortgage loans;

(2) restrictions as to the number of family units, location, or other qualifications of residences to be

financed by residential mortgage loans, and income limits of persons and families of low income or families of moderate income occupying the residence;

(3) restrictions as to the interest rates on mortgage loans or the return realized by mortgage lenders;

(4) requirements for commitments by mortgage lenders with respect to mortgage loans;

(5) schedules of fees and charges necessary for expenses and reserves of the agency;

(6) resale of the housing development; and

(7) any other matters related to the powers of the agency to purchase and sell mortgage loans.

(e) The agency shall review each mortgage loan purchased by the agency to determine if the loan meets the conditions of this Act, the rules of the agency, and any commitment made with the mortgage lender to purchase mortgage loans. The agency may require the substitution of another mortgage loan when it determines that a loan does not comply with this Act, its rules, or a commitment made with the mortgage lender. Subsections (b), (c), (d), (e), and (g) of Section 10 of this Act apply to the purchase of mortgage loans.

(f) The agency may not purchase an obligation that is more than two years old.

Supervising Housing Sponsors

Sec. 13. The agency shall have the power to supervise housing sponsors of housing developments that are rented or leased to tenants, including limited profit housing sponsors, and their real and personal property, in the following respects:

(a) The agency may prescribe uniform systems of accounts and records for housing sponsors and may require housing sponsors to make reports and certifications of their expenditures and to answer specific questions on forms and at such times as may be necessary for the purposes of this Act.

(b) The agency, through its agents or employees, may enter upon and inspect the land, buildings, and equipment of a housing sponsor, including all parts thereof, and may examine all records showing the capital structure, income, expenditures, and other payments of a housing sponsor.

(c) The agency may supervise the operation and maintenance of a housing development and may order repairs as necessary to protect the public interest or the health, welfare, or safety of the housing development occupants.

(d) The agency shall approve and may alter from time to time a schedule of rents and charges for a housing development.

(e) The agency shall determine standards for and shall control tenant and management selection by a housing sponsor.

(f) The agency may require a housing sponsor to pay the agency fees and charges for the costs of regulating the housing sponsor, including, without limitation, the costs of examination, inspection, supervision, and auditing the housing sponsor.

(g) The agency may order a housing sponsor to do or to refrain from doing what is necessary to comply with the provision of law, the rules of the agency, and the terms of a contract or agreement to which the housing sponsor is a party.

(h) The agency shall regulate the retirement of any capital investment or the redemption of stock of a limited profit housing sponsor if the retirement or redemption, when added to any dividend or other distribution, exceeds in any one fiscal year the permitted percentage, as shall be prescribed by rules of the agency, of the original face amount of the limited profit housing sponsor's investment or equity in any housing development.

(i) The agency shall make rules specifying the categories of cost allowable in the construction, reconstruction, remodelling, improvement, or rehabilitation of a housing development. The agency shall require a housing sponsor to certify the actual housing development costs on completion of the housing development, subject to audit and determination by the agency, except that the agency may accept, in lieu of certification of housing development costs, other assurances of the housing development costs, in any form or manner whatsoever, that will enable the agency to determine with reasonable accuracy the amount of the housing development costs.

(j) This section does not apply to any housing development for which persons or families of low income or families of moderate income receive a mortgage loan hereunder and which initially is intended for occupancy by such persons or families.

Admission to Housing Developments

Sec. 14. (a) Admission to housing developments that are rented or leased to tenants financed under this Act is limited to persons or families of low income and families of moderate income.

(b) The agency shall periodically examine the income of any person or family who are tenants residing in a housing development. The agency or, with the approval of the agency, the housing sponsor of a housing development may terminate the tenancy or interest of any person or family whose gross income exceeds the income level prescribed for admission by more than 25 percent for a period of six months or more. No tenancy or interest of any person or family in any housing development may be terminated except on reasonable notice and opportunity to obtain suitable alternate housing in accordance with rules of the agency. A person or family whose gross

income would not otherwise permit continued occupancy of a dwelling unit may, with the approval of the agency, continue to occupy a dwelling unit on payment of a surcharge to the housing sponsor in accordance with a schedule of surcharges fixed by the agency.

(c) If a person or family who resides in a cooperative housing development must move from the housing development because of excessive income, the person or family must be discharged from liability of any note, bond, or other evidence of indebtedness and reimbursed, in accordance with the rules of the agency, for all sums paid to the housing sponsor on account of the purchase of stock or debentures as a condition of occupancy or on account of the acquisition of title for that purpose.

(d) This section does not apply to any housing development for which persons or families of low income or families of moderate income receive a mortgage loan hereunder and which initially is intended for occupancy by such persons or families.

Procedure Prior to Financing of Housing Developments Undertaken by Housing Sponsors

Sec. 15. Notwithstanding any other provision of this Act, the agency is not empowered to finance any housing development undertaken by a housing sponsor unless, prior to the financing of any housing development hereunder, the agency finds that:

(1) the housing development is necessary to provide needed decent, safe, and sanitary housing at rentals or prices which persons or families of low income or families of moderate income can afford;

(2) the housing sponsor or sponsors undertaking the proposed housing development in this state will supply well-planned and well-designed housing for persons or families of low income or families of moderate income and that such sponsors are financially responsible;

(3) the financing of the housing development pursuant to the provisions of this Act will constitute a public purpose and will provide a public benefit; and

(4) the housing development will be undertaken within the authority conferred by this Act upon the agency and the housing sponsor or sponsors.

Exemption from Taxation

Sec. 16. The property of the agency, its income, and operations are exempt from all taxes and assessments imposed by the state and all public agencies on property acquired or used by the agency under the provisions of this Act. The agency may, under its terms, conditions, and rules, make payments to public agencies in lieu of ad valorem taxes on any property which the agency has acquired through foreclosure or sale under a deed of trust. It shall be the policy of the agency to make these payments in

lieu of taxes whenever practicable with any money lawfully available for this purpose, subject to the provisions, requirements, and restrictions of any bond resolution.

Fiscal Year; Annual Report; Audit

Sec. 17. The agency shall operate on a fiscal year beginning September 1 and ending August 31. The agency shall have an audit of its books and accounts for each fiscal year by the state auditor or by a certified public accountant. The cost of the audit is an expense of the agency. A copy of the audit shall be filed with the governor and the legislature on or before January 1 of each year, except if the audit is being made by the state auditor and is not available by January 1, it shall be filed as soon as it is available. Also, on or before January 1 of each year, the agency shall prepare a report of its activities for the preceding fiscal year for the governor and the legislature. The report shall set forth a complete operating and financial statement.

Annual Budget

Sec. 18. (a) On or before August 1 of each year, the administrator shall file with the board a proposed annual budget for the succeeding fiscal year. The budget shall set forth the general categories of expected expenditures out of revenues and income of the agency, and the amount on account of each, and may include a provision or reserve for contingencies or over expenditures. On or before September 1 in each year, the board shall consider the proposed annual budget and shall approve it or change it as the board determines necessary or advisable. Copies of the annual budget certified by the chairman of the board shall be filed promptly with the governor and the legislature. The annual budget is not effective until it is filed.

(b) If for any reason the agency does not adopt the annual budget before September 2, the budget for the preceding year shall remain in effect until a new budget is adopted.

(c) The agency may adopt an amended annual budget for the current fiscal year, but the amended annual budget may not supersede a prior budget until it is filed with the governor and the legislature.

(d) All expenses incurred in carrying out the provisions of the Act shall be payable solely from revenues or funds provided or to be provided pursuant to the provisions of this Act, and nothing in this Act shall be construed to authorize the agency to incur any indebtedness or liability on behalf of or payable by the State of Texas, except as provided in this Act, or as otherwise provided by law.

Selection of Depository

Sec. 19. (a) The agency shall choose a depository for its revenues and funds, other than appropriated

funds, after inviting bids for favorable interest rates. The agency shall publish notice in at least one newspaper of general circulation in the state at least 14 days before the last day set for the receipt of the bids. The notice shall state the types of deposits planned, the last day on which bids will be received, and the time and place for opening bids.

(b) Sealed bids that are identified as bids on the envelope must be submitted to the agency before the deadline for receiving bids. The state auditor or a member of the auditor's staff must be present at the bid opening. The agency shall provide a tabulation of all submitted bids for public inspection.

(c) The agency shall choose the depository submitting the bid with the most favorable interest rate.

(d) If covenants related to the agency's bonds specify one or more depositories or set out a method of selecting depositories different from the method prescribed by this section, the covenants prevail with respect to the funds to which they apply.

Agency Records

Sec. 20. (a) The agency shall keep complete records and accounts of its business transactions according to generally accepted methods of accounting.

(b) The agency shall keep complete minutes of its meetings. The agency accounts, minutes, and other records shall be kept at its principal office.

Issue of Housing Finance Agency Bonds

Sec. 21. (a) The board of directors of the agency by resolution from time to time may provide for the issuance of negotiable bonds as authorized by the Texas Constitution. The bonds shall be on a parity and shall be called Texas Housing Bonds. The board may issue them in one or several installments and shall date the bonds of each issue.

(b) In addition to the authority to issue general obligation bonds as provided in Subsection (a) of Section 21 of this Act, the agency may issue its revenue bonds for the purpose of providing money with which to carry out, achieve, or effectuate any purpose, power, or duty of the agency under this Act. The agency's bonds may be issued from time to time in one or more series or issues, payable as to principal, interest, and redemption premium, if any, from and secured by a first lien or a subordinate lien on and pledge of all or any part of the revenues, income, or other resources of the agency including, without limitation, the repayments of mortgage loans, the earnings from investment or deposit of the reserve fund and other funds of the agency, the fees, charges, and any other amounts or payments received pursuant to this Act, and any appropriations, grants, allocations, subsidies, rent supplements, guaranties, aid, contribution, or donations from the federal government.

(c) Also, the agency may issue its bonds, which may be designated as "bond anticipation notes," which may be made payable as to principal, interest, and redemption premium, if any, solely from the proceeds from the sale of the agency's definitive refunding bonds if or when issued and delivered for the purpose of refunding such bond anticipation notes or payable as to principal, interest, and redemption premium, if any, from such definitive refunding bonds and any other revenues, income, or resources of the agency, and the agency may covenant that it will issue, sell, and deliver such definitive refunding bonds in such manner as will provide the money necessary to pay any required part of the principal of and interest and redemption premium, if any, on the bond anticipation notes when due; provided that such bond anticipation notes may be refunded in any other manner permitted by the Act.

(d) The payment of the principal of and the interest and redemption premium, if any, on the agency's bonds additionally may be secured by a first lien or a subordinate lien on and pledge of all or any part of the assets and real, personal, or mixed property of the agency (including mortgages and obligations securing same, and investments), and the reserve fund, or other reserves or funds of the agency.

(e) All bonds issued by the agency shall be authorized by resolution of the board and may be secured by mortgages or deeds of trust on property, and/or by trust agreements or trust indentures administered by one or more corporate trustees, in such manner as may be prescribed by the board; and the substantial form of any such mortgage, deed of trust, trust agreement, or trust indenture shall be set forth in and constitute a part of the resolution authorizing the issuance of the bonds. Any resolution authorizing the issuance of the bonds of the agency may provide that part of the proceeds from the sale thereof may be used for paying the costs and expenses of issuing the bonds, for paying interest on the bonds during such period as may be prescribed by the board, and for paying or repaying operation and maintenance expenses of the agency to the extent and for the period of time specified in said resolution, and also for the funding, increasing, or restoring any depletions of the reserve fund or other reserves or funds for any purposes.

(f) The agency may provide for the subsequent issuance of additional parity bonds, or subordinate lien bonds, under such terms or conditions as may be set forth in the resolution authorizing the issuance of the bonds.

(g) The agency also may issue its bonds for the specific purpose of providing all or any part of the money required for funding or increasing the reserve fund or other reserves or funds of the agency.

Interest on Bonds

Sec. 22. The agency's bonds may be issued to bear interest at any rate or rates as shall be determined by the board.

Form; Denomination; Place of Payment

Sec. 23. (a) The agency's bonds may be issued as serial bonds, or as term bonds, or any combination of each as shall be determined by the board.

(b) The agency's bonds may be issued in coupon form payable to bearer, or in fully registered form, or as coupon bonds payable to bearer but registrable as to principal alone, or as to both principal and interest, or in any other form.

(c) The agency's bonds may be payable at any place or places, may be made redeemable prior to maturity, and may be issued in such form, denominations, and manner, and under such terms, conditions, and details, and shall be executed, all as provided by the board in the resolution authorizing the issuance of said bonds.

(d) The agency's bonds may be sold in such manner, at such price, and under such terms and conditions, as shall be determined by the board.

Maturity of Bonds

Sec. 24. The agency's bonds may mature within any period as shall be determined by the board.

Redemption Before Maturity; Conversion

Sec. 25. (a) The board may provide and covenant for the conversion of any form of bond into any other form or forms of bond, and for reconversion of bonds into any other form.

(b) If the duty of replacement, conversion, or reconversion of bonds is imposed upon a place of payment (paying agent) of any bonds, or upon a corporate trustee under a trust agreement or trust indenture, the replacement, converted, or reconverted bond need not be reapproved by the attorney general or reregistered by the comptroller of public accounts as provided in Section 27 of this Act. Otherwise, all replacement, converted, or reconverted bonds must be so approved and registered as provided in Section 27 of this Act, in accordance with the procedures established in the resolution authorizing the bonds.

Agency's Bonds not Obligations of the State

Sec. 26. (a) The agency's bonds are solely obligations of the agency and are payable solely from funds of the agency, and this Act and the agency's bonds are not and do not create or constitute in any way an obligation, a debt, or a liability of the state, or create or constitute a pledge, giving, or lending of the faith or credit or taxing power of the state except bonds authorized by the Texas Constitution and as provided in Subsection (a) of Section 21 of this Act.

(b) Each bond of the agency not authorized by Subsection (a) of Section 21 of this Act shall contain on its face a statement to the effect that the state is not obligated to pay the principal thereof or interest thereon; and that neither the faith or credit nor the taxing power of the state is pledged, given, or loaned to such payment.

(c) However, the state hereby pledges to and agrees with the holders of any bonds issued under this Act that the state will not limit or alter the rights hereby vested in the agency to fulfill the terms of any agreements made with the said holder thereof or in any way impair the rights and remedies of such holders until such bonds, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged. The agency is authorized to include this pledge and agreement of the state in any agreement with the holders of such bonds.

Approval of Bonds; Registration

Sec. 27. All bonds issued by the agency and the appropriate proceedings authorizing their issuance shall be submitted to the Attorney General of the State of Texas for examination. If the attorney general finds that such bonds have been authorized in accordance with this Act, the attorney general shall approve them, and thereupon they shall be registered by the Comptroller of Public Accounts of the State of Texas.

Execution of Bonds

Sec. 28. The bonds authorized by Subsection (a) of Section 21 of this Act shall be executed on behalf of the board as general obligations of the state in the following manner: the chairman of the board shall sign the bonds; the board shall impress its seal on the bonds; the governor shall sign the bonds; and the secretary of state shall attest the bonds and impress on them the state seal.

Facsimile Signatures and Seals

Sec. 29. The resolution authorizing the issuance of an installment or series of bonds may prescribe the extent to which the board in executing the bonds and appurtenant coupons may use facsimile signatures and facsimile seals instead of manual signatures and manually impressed seals. Interest coupons may be signed by the facsimile signatures of the chairman of the board of the agency.

Signature of Former Officer

Sec. 30. If an officer whose manual or facsimile signature appears on a bond or whose facsimile signature appears on any coupon ceases to be an officer before the bond is delivered, the signature is valid and sufficient for all purposes as if the officer had remained in office until the delivery had been made.

Bonds Incontestable

Sec. 31. (a) After approval by the attorney general and registration by the comptroller of public accounts, the bonds shall be incontestable in any court or other forum for any reason and shall be valid and binding obligations in accordance with their terms for all purposes.

(b) In addition, general obligation bonds issued as provided in Subsection (a) of Section 21 of this Act and after approval and registration as provided in this Act shall constitute general obligations of the state.

Reserve Fund

Sec. 32. (a) There may be created and established by the agency, with the State Treasurer of the State of Texas, a separate and special fund to be entitled the Texas Housing Agency Reserve Fund. The reserve fund may be used for the purpose of paying principal of and interest, and redemption premium, if any, on any of the agency's bonds secured by the reserve fund, or any account therein, in order to prevent or cure a default, if, when, and to the extent the revenues, income, and receipts of the agency are insufficient for such payment, and for such other purposes as are provided in any resolution authorizing the issuance of the agency's bonds. The agency may establish separate accounts within the reserve fund to secure and be applicable only to the agency's bonds for which they are established.

(b) It shall be an additional duty of the State Treasurer, in the State Treasurer's official capacity, ex officio, to accept the reserve fund, as custodian thereof, in accordance with the provisions of this section; but the reserve fund shall not be commingled with the General Revenue Fund of the state or any other special funds or accounts in the State Treasury, and the reserve fund shall not constitute or be a part of the State Treasury. The reserve fund and any account therein shall be kept and maintained separate and apart from all other money, funds, deposits, and accounts and shall be kept and held in escrow and in trust by the State Treasurer, for and on behalf of, and charged with an irrevocable lien and pledge in favor of, the holders of the agency's bonds secured thereby; and the reserve fund shall be used only as provided in this Act. Legal title to the reserve fund shall be in the agency unless or until paid out as herein provided, but the State Treasurer, as custodian, shall administer the reserve fund strictly and solely as provided in this Act and the agency's bond resolutions, and the State Treasurer shall take no action with respect to the reserve fund other than that specified in this Act and in said bond resolutions.

(c) Out of proceeds from the sale and delivery of its first series or issue of bonds which are secured by

the reserve fund, or from any other source available to it, the agency may provide for depositing into the reserve fund, or an account therein, such amount as is specified in the bond resolution, and thereafter the reserve fund, or such accounts therein, shall be increased to, when necessary, and maintained at, said amount with respect to all bonds at any time outstanding which are secured by the reserve fund, or such account therein. The board is authorized to establish the procedures for funding, increasing, and maintaining the reserve fund, or any account therein, and the operation and use of, and the priorities of bondholders in connection with, the reserve fund, or any account therein, in the resolutions authorizing the issuance of its bonds. The State Treasurer shall be furnished certified copies of said bond resolutions, and the State Treasurer shall comply therewith.

(d) Amounts in the reserve fund, or any account therein, at any time in excess of the amount then required to be on hand therein, whether by reason of investment or deposit earnings or otherwise, shall be paid by the State Treasurer directly to, or upon the order of, the agency, upon written request by the agency, or disposed of and disbursed by the State Treasurer as provided in any bond resolution of the agency.

(e) The State Treasurer shall place the money in the reserve fund, or any account therein, in demand or time deposits, or invest said money in any direct obligations of, or obligations the payment of the principal of and interest on which are guaranteed by, the federal government, and such deposits and/or investments shall be made by the State Treasurer at the places and in the amounts and manner as provided in written instructions from the agency as to the procedures and details thereof, or as provided in any bond resolution of the agency. If said money is placed in demand or time deposits, such deposits shall be secured at all times by the same type of obligations as those in which the reserve fund may be invested. Earnings from such deposits and investments shall be credited to the reserve fund, or the account therein from which the money was deposited or invested, or disposed of as provided in any bond resolution. Said investments shall be sold promptly by the State Treasurer if and when necessary to prevent or cure any default in connection with the agency's bonds, as provided in this Act and the resolutions authorizing such bonds.

(f) The State Treasurer's surety bond required by law, and conditioned that the State Treasurer will faithfully execute the duties of the treasurer's office, shall be applicable to and cover the execution of the State Treasurer's duties with respect to the reserve fund as required by this Act.

(g) Notwithstanding the foregoing provisions of this section, the agency may or may not, at its option, create or fund the reserve fund and may

issue its bonds which are not secured by the reserve fund, or any account therein, but which may be secured by any other or separate reserve fund or account to be kept at any place, or secured in any other manner provided in the agency's bond resolutions.

Payment Enforceable by Mandamus

Sec. 33. The writ of mandamus and all other legal and equitable remedies shall be available to any party at interest to require the agency, the State Treasurer, and any other party to carry out its or their agreements and to perform its or their functions and duties under this Act, the Texas Constitution, or the agency's bond resolutions.

Refunding Bonds

Sec. 34. (a) Any bonds issued by the agency may be refunded, or otherwise refinanced, by the issuance by the agency of refunding bonds for such purpose, under such terms, conditions, and details as shall be determined by the board.

(b) All pertinent and appropriate provisions of this Act shall be applicable to such refunding bonds, and they may be issued in the manner provided herein for other bonds authorized under this Act; provided that such refunding bonds may be sold and delivered in amounts sufficient to provide for the payment of the principal, interest, and redemption premium, if any, of any bonds to be refunded, at maturity or on any redemption date, in accordance with such procedures as shall be determined by the board, and the comptroller of public accounts shall register such refunding bonds without the necessity of cancelling the bonds being refunded.

(c) Also, such refunding bonds may be issued to be exchanged for the bonds being refunded thereby. In any case where refunding bonds are to be exchanged, the comptroller of public accounts shall register the refunding bonds and deliver the same to the holder or holders of the bonds being refunded thereby, in accordance with the provisions of the resolution authorizing the refunding bonds; and any such exchange may be made in one delivery or in several installment deliveries.

(d) Bonds issued by the agency also may be refunded in the manner provided by any other applicable statute, including Chapter 503, Acts of the 54th Legislature, Regular Session, 1955, as amended, and Chapter 784, Acts of the 61st Legislature, Regular Session, 1969 (Articles 717k and 717k-3, Vernon's Texas Civil Statutes).

Bonds Negotiable Instruments

Sec. 35. Notwithstanding any statute to the contrary, each bond and interest coupon issued and delivered by the agency is and constitutes a negotiable instrument within the meaning and for all pur-

poses of the Texas Uniform Commercial Code,¹ except that said bonds may be registered or subject to registration as permitted by this Act.

¹ Business and Commerce Code, § 1.101 et seq.

Payment of Agency's Obligations

Sec. 36. It is the duty of the board to establish and collect sufficient fees and charges for services and facilities and to utilize all other available sources of revenues, income, and receipts, in order to pay all expenses of operation and maintenance of the agency, to pay the principal of and interest on its bonds, and to create and maintain the reserve fund and any other reserves or funds as provided in each resolution authorizing the issuance of its bonds. In any resolution authorizing the issuance of the agency's bonds the board may prescribe systems, methods, routines, and procedures under which the agency shall function, consistent with this Act.

Validity of Liens and Pledges

Sec. 37. Each lien on or pledge of revenues, income, or other resources of the agency, or on the assets of the agency, or on the reserve fund, or other reserves or funds of the agency, as authorized by this Act, shall be valid and binding from the time of payment for and delivery of the bonds authorized by the resolution of the board creating or confirming any such lien or pledge. All such liens and pledges shall be fully effective as to items then on hand or thereafter received, and said items shall be subject to such liens or pledges without any physical delivery thereof or further act. All such liens and pledges shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the agency or other party, irrespective of whether such parties have notice thereof. Neither any resolution authorizing the issuance of bonds of the agency nor any other instrument by which any such lien or pledge is created or confirmed need be filed or recorded except in the records of the agency, and except that each bond resolution of the agency shall be submitted to the Attorney General of the State of Texas as required by Section 27 of this Act.

Bonds not Taxable

Sec. 38. As set forth in this act the agency will be performing an essential governmental function in the exercise of the powers conferred upon it by this Act, and the bonds of the agency issued pursuant to this Act, and the interest and income therefrom, including any profit made on the sale thereof, and all its fees, charges, gifts, grants, revenues, receipts, and other money received or pledged to pay or secure the payment of such bonds shall at all times be free from taxation and assessments of every kind by this state and by all public agencies.

Authorized Investments

Sec. 39. (a) All bonds issued by the agency under this Act shall be legal and authorized investments for all:

- (1) banks;
- (2) savings banks;
- (3) trust companies;
- (4) building and loan associations;
- (5) savings and loan associations;
- (6) insurance companies of all kinds and types;
- (7) fiduciaries;
- (8) trustees;
- (9) guardians; and
- (10) sinking and other public funds of the state, cities, towns, villages, counties, school districts, and other political subdivisions and public agencies of the state.

Security for Deposit of Funds

Sec. 40. All bonds also shall be eligible and lawful security for all deposits of public funds of the state and all public agencies, to the extent of the par or market value of said bonds, whichever is greater, when accompanied by any unmatured interest coupons appurtenant thereto.

Mutilated, Lost, Stolen, Destroyed Bonds

Sec. 41. The board may provide procedures for the replacement of any mutilated, lost, stolen, or destroyed bond or interest coupon.

No Gain Allowed

Sec. 42. Neither the administrator, chairman of the board, nor any director of the agency, for purposes of personal pecuniary gain, shall have or attempt to have any pecuniary interest in any transaction to which the agency is a party.

No Discrimination

Sec. 43. No person in the state shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this Act.

Liberal Construction of the Act

Sec. 44. This Act shall be construed liberally to effectuate the legislative intent and the purposes of this Act, and all powers herein granted shall be broadly interpreted to effectuate such intent and purposes and not as a limitation of powers.

Cumulative Effect of the Act; Conflicting Laws

Sec. 45. This Act shall be cumulative of all other laws, but this Act shall be wholly sufficient authority within itself for the issuance of the bonds and the performance of the other acts and procedures autho-

rized hereby, without reference to any other laws or any restrictions, approvals, or limitations contained therein, except as herein specifically provided; and to the extent of any conflict or inconsistency between any provisions of this Act and any provisions of any other law, the provisions of this Act shall prevail and control; provided, however, that the board shall have the right to use the provisions of any other laws not in conflict with the provisions hereof to the extent convenient or necessary to carry out any power or authority, express or implied, granted by this Act.

Severability Clause

Sec. 46. In case any one or more of the sections, provisions, clauses, or words of this Act or the application of such sections, provisions, clauses, or words to any situation or circumstance shall for any reason be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect any other sections, provisions, clauses, or words of this Act or the application of such sections, provisions, clauses, or words to any other situation or circumstance, and it is intended that this Act shall be severable and shall be construed and applied as if any such invalid or unconstitutional section, provision, clause, or word had not been included herein.

Appropriation

Sec. 47. If the General Appropriation Act for the fiscal biennium ending on August 31, 1981, contains an appropriation for the administration of this Act, the validity of the appropriation is not affected by the fact that it refers to the Texas Housing Agency as the Texas Housing Finance Authority.

Authority to Issue General Obligation Bonds Contingent

Sec. 48. Subsection (a) of Section 21 of this Act, to the extent it authorizes the issuance of general obligation bonds, takes effect if and when the Texas Constitution is amended to permit the issuance of such bonds as contemplated by that provision of this Act.

[Acts 1979, 66th Leg., p. 2122, ch. 823, §§ 1 to 48, eff. Aug. 27, 1979.]

Art. 12691-7. Housing Finance Corporations Act

Short Title, Captions, Sections, Subsections, and Paragraphs

Sec. 1. A. This Act shall be known and may be cited as the "Texas Housing Finance Corporations Act."

B. The division of this Act into sections, subsections, and paragraphs and the use of captions in connection therewith are solely for convenience and shall have no legal effect in construing the provisions of this Act.

Definitions

Sec. 2. Wherever used in this Act, unless a different meaning clearly appears in the context, the following terms, whether used in the singular or plural, shall be given the following respective interpretations:

"Bonds" means the revenue bonds authorized under this Act and includes notes and any and all other limited obligations payable as provided hereunder.

"City" means any city or town of this state presently existing or hereafter created, whether existing or created by general law or pursuant to a home-rule charter.

"Corporation" means any public nonprofit corporation organized pursuant to the provisions of this Act.

"County" means a political subdivision of the State of Texas created and established under Article IX, Section 1, of the Constitution of Texas.

"Development costs" means and includes the sum total of all reasonable or necessary costs incidental to the providing, acquisition, construction, reconstruction, rehabilitation, repair, alteration, improvement, and extension of a residential development, including, without limitation, the following: the cost of studies and surveys; plans and specifications; architectural and engineering services; financial advisory, mortgage banking and administrative services; underwriting fees; legal, accounting, marketing, and other special services relating to residential development or incurred in connection with the issuance and sale of bonds; necessary application and other fees to federal, state, and local government agencies for any requisite approvals for construction, for assisted financing or otherwise; financing, acquisition, demolition, construction, equipment, and site development of new and rehabilitated buildings; the relocation of utilities, public ways, and parks; the construction of recreational, cultural, and commercial facilities; rehabilitation, reconstruction, repair, or remodeling of existing buildings and all other necessary and incidental expenses, including trustee and rating agency fees and an initial bond and interest reserve together with interest on bonds issued to finance a residential development to a date 12 months subsequent to the estimated date of completion; any premiums for mortgage insurance or insurance with respect to bonds; and such other expenses as the corporation may deem appropriate to effectuate the purposes of this Act.

"Governing body" means, with reference to a local governmental unit, as herein defined, the council, commission, commissioners court, or similar body charged by law with the governance of a local governmental unit.

"Home" means real property and improvements thereon located within a local governmental unit (but as to a county, not within a city within the county without approval of the governing body of the city if the population of the city exceeds 20,000 as determined by the corporation's rules or regulations, resolutions relating to the issuance of bonds, or financing documents relating to such issuance) consisting of not more than four connected dwelling units, including but not limited to condominium units, owned by one mortgagor who occupies or intends to occupy one of such units.

"Home mortgage" means an interest-bearing loan to a mortgagor, or a participation therein, for the purpose of purchasing, improving, or constructing a home, evidenced by a promissory note, secured by a mortgage, mortgage deed, deed of trust, or other instrument which constitutes a lien on such home, and which is guaranteed or insured by the United States or any agency, department, or instrumentality thereof, or by any private mortgage insurance or surety company, to the extent that such loan exceeds 80 percent of the lesser of (i) the appraised value of the home at the time of its making or (ii) the sales price of such home. Such guaranty or insurance shall not be required on home mortgages if the principal of and interest on the corporation's bonds issued to make or purchase such home mortgages or to make loans to lending institutions are guaranteed or insured by an agency, department or instrumentality of the United States government or any insurance or surety company authorized to issue municipal bond insurance.

"Lending institution" means any bank, trust company, savings bank, national banking association, savings and loan association, building and loan association, mortgage banker, mortgage company, credit union, life insurance company, or other financial institution or governmental agency which customarily provides service or otherwise aids in the financing of mortgages on single family residential housing or multifamily residential housing located in the local governmental unit, or any holding company for any of the foregoing.

"Local governmental unit" means any city or county.

"Mortgagor" means a person or persons of low or moderate income whose adjusted gross aggregate income, together with the adjusted gross aggregate income of all persons who intend to reside with such person or persons in one dwelling unit, did not, for the immediately preceding taxable year, exceed the maximum amount established as constituting moderate income by the corporation's rules or regulations, resolutions relating to the issuance of bonds, or financing documents relating to such issuance.

"Person" means any individual, partnership, co-partnership, firm, company, corporation, lending institution, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or its legal representative, agent, or assigns, but shall, when used with reference to a mortgagor or owner of a home, mean a natural person or a trust for the benefit of such natural person.

"Residential development" means the acquisition, construction, reconstruction, rehabilitation, repair, alteration, improvement, or extension of any land, interest in land, building, structure, facility, system, fixture, improvement, addition, appurtenance, machinery, or equipment or any combination thereof, all real and personal property deemed necessary in connection therewith, and all real and personal property or improvements functionally related and subordinate thereto, substantially (at least 90 percent) for use by or intended to be occupied substantially (at least 90 percent) by persons of low and moderate income whose adjusted gross income, together with the adjusted gross income of all persons who intend to reside with such persons in one dwelling unit, did not, for the immediately preceding taxable year, exceed the maximum amount established as constituting moderate income by the corporation's rules or regulations, resolutions relating to the issuance of bonds, or financing documents relating to such issuance, for the purpose of obtaining decent, safe, and sanitary housing, and in connection therewith nonhousing facilities which are an integral part of or functionally related to such residential development. Any such residential development shall be located within the local governmental unit.

Purpose of Act—Liberal Construction

Sec. 3. It is hereby determined and declared that the purpose of this Act is to provide a means of financing the cost of residential ownership and development that will provide decent, safe, and sanitary housing for residents of local governmental units at prices they can afford; it is further determined and declared that such residential ownership and development will (a) provide for and promote the public health, safety, morals, and welfare; (b) relieve conditions of unemployment and encourage the increase of industry and commercial activity and economic development so as to reduce the evils attendant upon unemployment; (c) provide for efficient and well-planned urban growth and development including the elimination and prevention of potential urban blight and the proper coordination of industrial facilities with public services, mass transportation, and residential development; (d) assist persons of low and moderate income in acquiring and owning decent, safe, and sanitary housing which they can afford; and (e) preserve and increase ad

valorem tax bases of local governmental units; and the foregoing are hereby determined and declared to lessen the burdens of government and to be public purposes and functions; and it is the intent of the legislature by the passage of this Act to authorize local governmental units to create and utilize public nonprofit corporations to issue obligations to accomplish such public purposes. This Act shall be liberally construed in conformity with its intention.

Application to Governing Body of Local Governmental Unit

Sec. 4. Whenever any number of individuals, not less than three, each of whom shall be a citizen of the State of Texas, of the age of 18 years or more and residents of the local governmental unit, shall file with the governing body of the local governmental unit an application in writing seeking the incorporation of a housing finance corporation under the provisions of this Act, the governing body shall proceed to consider such application. If the governing body shall by appropriate resolution duly adopted find and determine that it is wise, expedient, necessary, or advisable that the corporation be formed and shall approve the form of articles of incorporation proposed to be used in organizing the corporation, then articles of incorporation for the corporation may be filed as hereinafter provided. No corporation may be formed unless such application shall have first been filed with the governing body of the local governmental unit and the governing body shall have adopted a resolution as provided in this section. The approval of the articles of incorporation of one corporation shall not preclude the approval by the governing body of the local governmental unit of the articles of incorporation of other corporations with names or designations sufficient to distinguish them from any corporation theretofore incorporated; provided that the governing body of the local governmental unit shall not permit the existence of more than one corporation created on its behalf which has the power to make or acquire home mortgages, or make loans to lending institutions.

Articles of Incorporation—Contents

Sec. 5. A. The articles of incorporation of a housing finance corporation shall set forth:

- (1) the name of the corporation;
- (2) a statement that the corporation is a public nonprofit corporation;
- (3) the period of duration, which may be perpetual;
- (4) a statement that the corporation is organized solely to carry out the purposes of this Act;
- (5) a statement that the corporation is to have no members;
- (6) any provision, not inconsistent with law, including any provision which under this Act is

required or permitted to be set forth in the by-laws, for the regulation of the internal affairs of the corporation;

(7) the street address of its initial registered office (which shall be within the local governmental unit) and the name of its initial registered agent at such street address;

(8) the number of directors constituting the initial board of directors, and the names and addresses of the persons who are to serve as the initial directors together with a recital that each of them resides within the local governmental unit;

(9) the name and street address of each incorporator together with a recital that each of them resides within the local governmental unit;

(10) a recital that a resolution approving the form of the articles of incorporation has been duly adopted by the governing body of the local governmental unit and the date of the adoption of such resolution.

B. It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this Act; provided, however, that the articles of incorporation may prohibit the exercise by the corporation of any power or powers enumerated in this Act.

C. Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the bylaws shall be controlling. In all other cases, whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling.

Incorporators

Sec. 6. Three or more residents of the local governmental unit, of the age of 18 years or more, may act as incorporators of a corporation by signing, verifying, and delivering in duplicate to the secretary of state articles of incorporation for such corporation. An incorporator may be a member of the governing body, an officer, or an employee of the local governmental unit.

Filing of Articles of Incorporation—Effect of Issuance of Certificate of Incorporation

Sec. 7. A. Duplicate originals of the articles of incorporation shall be delivered to the secretary of state. If the secretary of state finds that the articles of incorporation conform to this Act, he shall, when a fee of \$25 has been paid:

(1) endorse on each duplicate original the word "Filed," and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in his office;

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

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

C. Upon the issuance of the certificate of incorporation, the corporate existence shall begin, and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the local governmental unit and the incorporators have been complied with, and that the corporation has been duly incorporated under this Act. The corporation shall constitute a public instrumentality and nonprofit corporation under the name set out in the articles of incorporation. The corporation does not and will not constitute a county, city, or other political corporation or subdivision of the state, but the corporation is authorized to issue bonds and to carry out the public purposes for which it is incorporated on behalf of and for the benefit of the general public, the governmental unit, and the state.

Amendment of Articles of Incorporation—Articles of Amendment

Sec. 8. A. The articles of incorporation may at any time and from time to time be amended so as to make any changes therein and add any provisions thereto which might have been included in the articles of incorporation in the first instance. Any such amendment shall be effected in either of the following manners: (i) the members of the board of directors of the corporation shall file with the governing body of the local governmental unit an application in writing seeking permission to amend the articles of incorporation, specifying in such application the amendment proposed to be made, such governing body shall consider such application and, if it shall by appropriate resolution duly find and determine that it is wise, expedient, necessary, or advisable that the proposed amendment be made and shall authorize the same to be made, and shall approve the form of the proposed amendment, then the board of directors of the corporation may amend the articles of incorporation by adopting such amendment at a meeting of the board of directors and delivering articles of amendment to the secretary of state, or (ii) the governing body of the local governmental unit may, at its sole discretion, and at any time, alter or change the structure, organization, programs, or activities of the corporation (including the power to terminate the corporation) subject to any limitation on the impairment of contracts entered into by the corporation, by adopting an amendment to the articles of incorporation of the corporation at a meeting of the governing body of the local governmental unit and delivering articles of amendment to the secretary of state.

B. The articles of amendment shall be executed in duplicate by the corporation by its president or by a vice-president and by its secretary or an assistant secretary, or by the local governmental unit by its presiding officer and secretary or clerk, shall be verified by one of the officers signing such articles, and shall set forth:

(1) the name of the corporation;

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

(3) the date of the meeting of the board of directors, or of the governing body of the local governmental unit, at which the amendment was adopted, and a statement of the fact that such amendment received the vote of a majority of the directors, or of the members of the governing body of the local governmental unit, in office.

Filing of Articles of Amendment—Effect of Certificate of Amendment

Sec. 9. A. Duplicate originals of the articles of amendment shall be delivered to the secretary of state. If the secretary of state finds that the articles of amendment conform to law, he shall, when a fee of \$25 has been paid:

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

(2) file one of such duplicate originals in his office;

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

B. The certificate of amendment, together with the duplicate original of the articles of amendment affixed thereto by the secretary of state, shall be delivered to the corporation or its representative.

C. Upon the issuance of the certificate of amendment by the secretary of state, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.

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

Board of Directors

Sec. 10. The corporation shall have a board of directors in which all powers of the corporation shall be vested and which shall consist of any number of directors all of whom shall be residents of the local governmental unit. A director may be a member of the governing body, an officer, or an employee of the local governmental unit. The initial board of directors shall be named in the articles of incorporation approved by the local governmental unit and shall hold office for such period as may be specified in the articles of incorporation. Thereafter, directors shall be appointed by the governing body of the local governmental unit in the manner and for the terms provided in the articles of incorporation or the bylaws. Directors may be divided into classes and the terms of office of the several classes need not be uniform. Each director shall hold office for the term for which he is elected or appointed and until his successor shall have been elected or appointed and qualified. A director may be removed from office pursuant to any procedure therefor provided in the articles of incorporation or bylaws. Any vacancy occurring in the board of directors shall be filled by appointment by the governing body of the local governmental unit in the manner provided in the articles of incorporation or the bylaws. A majority of the directors shall constitute a quorum, and when a quorum is present action may be taken by a majority vote of the directors present. Meetings of the board of directors, regular or special, may be held within or without the state. Regular meetings may be held with or without notice as prescribed in the bylaws. Special meetings shall be held upon such notice as is prescribed in the bylaws. The officers of the corporation shall consist of a president, one or more vice-presidents, a secretary, a treasurer, and such other officers and assistant officers as may be deemed necessary, each of whom shall be elected or appointed at such times and in such manner and for such terms as may be prescribed in the articles of incorporation or the bylaws.

Organization Meeting

Sec. 11. After the issuance of the certificate of incorporation, an organization meeting of the board of directors named in the articles of incorporation shall be held, either within or without this state, at the call of a majority of the incorporators, for the purpose of adopting bylaws, electing officers, and for such other purposes as may come before the meeting. The incorporators calling the meeting shall give at least three days' notice thereof by mail to each director named in the articles of incorporation, which notice shall state the time and place of the meeting.

Registered Office and Registered Agent

Sec. 12. The corporation shall maintain a registered office and registered agent in accordance with the provisions of Article 2.05, Texas Non-Profit Corporation Act.¹ The corporation may change its registered office and registered agent in accordance with the provisions of Article 2.06, Texas Non-Profit Corporation Act.² Process may be served on the corporation in accordance with the provisions of Article 2.07, Texas Non-Profit Corporation Act.³

¹ Article 1396-2.05.² Article 1396-2.06.³ Article 1396-2.07.

Powers of Corporation

Sec. 13. A corporation organized under this Act shall have the following powers together with all powers incidental thereto or necessary for the performance of those hereinafter stated:

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

(2) to sue and be sued, complain and defend, in its corporate name;

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

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

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

(6) to purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, mortgage, lend, pledge, sell, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships, or individuals, or direct or indirect obligations of the United States or of any other government, state, political subdivision of a state, territory, government district, or of any instrumentality thereof;

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

(8) to lend money for its corporate purposes, invest and reinvest its funds, and take and hold

real and personal property as security for the payment of funds so loaned or invested;

(9) to elect or appoint officers and agents of the corporation for such period of time as the corporation may determine and define their duties and fix their compensation;

(10) to make, alter, amend, and repeal bylaws, not inconsistent with its articles of incorporation or with this Act, for the administration and regulation of the affairs of the corporation;

(11) to make donations for the public welfare or for charitable, scientific, or educational purposes;

(12) to plan, conduct research, study, develop, and promote the establishment of residential development;

(13) to acquire, and contract and enter into advance commitments to acquire, by assignment or otherwise, home mortgages owned by lending institutions at such purchase prices and upon such other terms and conditions as shall be determined by the corporation or such other person as it may designate as its agent;

(14) to make, and contract and enter into advance commitments to make, home mortgages; provided, however, that such home mortgages shall be originated and serviced by lending institutions;

(15) to make and execute contracts with lending institutions for the origination, administration, and servicing of home mortgages and to pay the reasonable value of services rendered under those contracts;

(16) to make loans to lending institutions under terms and conditions which, in addition to other provisions as determined by the corporation, shall require the lending institutions to use substantially all of the net proceeds thereof, directly or indirectly, for the making of home mortgages in an aggregate principal amount substantially equal to the amount of such net proceeds; provided that such loans to lending institutions shall be fully secured in the same manner as deposits of public funds of the local governmental unit to the extent not secured by home mortgages;

(17) to establish, by rules or regulations, in resolutions relating to any issuance of bonds, or in any financing documents relating to such issuance, such standards and requirements applicable to the making or purchase of home mortgages or the making of loans to lending institutions as the corporation deems necessary or desirable, including but not limited to: (i) the time within which lending institutions must make commitments and disbursements for home mortgages; (ii) the location and other characteristics of homes to be financed by home mortgages; (iii) the terms and conditions of home mortgages to be made or ac-

quired; (iv) the amounts and types of insurance coverage required on homes, home mortgages, and bonds; (v) the representations and warranties of lending institutions confirming compliance with such standards and requirements; (vi) restrictions as to interest rate and other terms of home mortgages or the return realized therefrom by lending institutions; (vii) the type and amount of collateral security to be provided to assure repayment of any loans from the corporation and to assure repayment of bonds; and (viii) any other matters related to the making or purchase of home mortgages or the making of loans to lending institutions as shall be deemed relevant by the corporation;

(18) to require from each lending institution from which home mortgages are proposed to be purchased or to which loans are made, the submission of evidence satisfactory to the corporation of the ability and intention of such lending institution to make home mortgages, and the submission, within the time specified by the corporation for making disbursements for home mortgages, of evidence satisfactory to the corporation of the making of home mortgages and of compliance with any standards and requirements established by the corporation;

(19) to issue its bonds to defray, in whole or in part, the development costs of any residential development; to issue its bonds the aggregate principal amount of which issued in any calendar year shall not exceed the total of (a) the costs of issuance of such bonds, any reserves or capitalized interest required by the resolution or resolutions authorizing the bonds, plus any bond discounts, and (b) the greater of (i) \$20,000,000, (ii) a figure determined by multiplying \$150 times the population of the local governmental unit as determined by the corporation's rules or regulations, resolutions relating to the issuance of bonds, or financing documents relating to such issuance, which determination shall be conclusive, or (iii) an amount equal to 25 percent of the total dollar amount of the market demand for home mortgages during such calendar year as determined by the corporation's rules or regulations, resolutions relating to the issuance of bonds, or financing documents relating to such issuance, which determination shall be conclusive, to defray, in whole or in part, the costs of purchasing, or funding the making of, home mortgages including, but not limited to, the costs of studies and surveys, insurance premiums, financial advisory, mortgage banking and administrative services, underwriting fees, legal, accounting, and marketing services incurred in connection with the issuance and sale of such bonds, including bond and interest reserve accounts, capitalized interest accounts, and trustee, custodian, and rating agency fees; and to

designate appropriate names for such bonds. The corporation need not acquire or hold title to or any interest in a residential development or home mortgage;

(20) to rent, lease, sell, or otherwise dispose of any residential development or home mortgages, in whole or in part, or to loan sufficient funds to any person to defray, in whole or in part, the development costs of any residential development or the costs of purchasing home mortgages, so that the rents or other revenues to be derived with respect to the residential development or home mortgages, together with any insurance proceeds, reserve accounts and earnings thereon shall be designed to produce revenues and receipts at least sufficient to provide for the prompt payment at maturity of principal, interest, and redemption premiums, if any, upon all bonds issued to finance such costs;

(21) to pledge all or any part of the revenues, receipts, or resources of the corporation, including the revenues and receipts to be received from any residential development or home mortgages to the punctual payment of bonds authorized under this Act, and the interest and redemption premiums, if any, thereon;

(22) to mortgage, pledge, or grant security interests in any residential development, home mortgages, notes, or other property in favor of the holder or holders of bonds issued therefor;

(23) to sell and convey any residential development or home mortgages, including, without limitation, the sale and conveyance thereof subject to a mortgage, pledge, or security interest, if any, as provided in the resolution relating to the issuance of the bonds for such prices and at such times as the board of directors of the corporation may determine;

(24) to issue its bonds to refund in whole or in part at any time bonds theretofore issued by the corporation under authority of this Act;

(25) to apply for and accept on its own behalf or on behalf of any person, advances, loans, grants, contributions, guarantees, rent supplements, mortgage assistance, and any other form of financial assistance from the federal government, the state, any county or city, or any other public or quasi-public body, corporation or foundation, or from any other source, public or private, including any person, for any of the purposes of this Act, and to include in any contract for financial assistance such conditions as it may deem reasonable and appropriate and which are not inconsistent with the purposes of this Act;

(26) to make and execute contracts and other instruments necessary or convenient to the exercise of any of the powers granted herein;

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

Bonds of Corporation

Sec. 14. The exercise of any or all powers granted by this Act may be authorized and the bonds may be authorized to be issued under this Act for the purposes set forth in this Act, by resolution of the board of directors of the corporation, which shall take effect immediately upon adoption. The bonds shall bear interest at such rate or rates as authorized by the provisions of Chapter 3, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 717k-2, Vernon's Texas Civil Statutes), may be payable at such times, may be in one or more series, may bear such date or dates, may mature at such time or times, may be payable in such medium of payment at such place or places, may carry such registration privileges, may be subject to such terms of redemption at such premiums, may be executed in such manner, may contain such terms, covenants, and conditions, and may be in such form, either coupon or registered, as such resolution may provide. The bonds may be sold at public or private sale in such manner and upon such terms as may be provided in such resolution. Pending the preparation of definitive bonds, interim receipts, or certificates in such form and with such provisions as may be provided in such resolution, may be issued to the purchaser or purchasers of bonds sold pursuant to this Act.

Covenants in Bonds

Sec. 15. Any resolution authorizing the issuance of bonds under this Act may contain covenants as to (a) the use and disposition of the proceeds of the bonds and the revenues and receipts from any residential development or home mortgages for which the bonds are to be issued, including the creation and maintenance of reserves; (b) the issuance of other or additional bonds relating to any residential development or any rehabilitation, improvements, renovations, enlargements, or additions thereto; (c) the maintenance and repair of such residential development or any homes; (d) the insurance to be carried on any residential development, home, home mortgage, or bonds and the use and disposition of insurance moneys; (e) the appointment of one or more banks or trust companies within or outside the State of Texas, having the necessary trust powers, as trustee and/or custodian for the benefit of the bondholders, paying agent, or bond registrar; (f) the appointment of one or more mortgage bankers to provide requisite administrative and mortgage servicing functions to assure the proper administration, for the benefit of the bondholders, of the corporation's portfolio of home mortgage loans; (g) the

investment of any funds held by such trustee or custodian; (h) the maximum interest rate payable on any home mortgage; and (i) the terms and conditions upon which the holders of the bonds or any portion thereof or any trustees therefor, are entitled to the appointment of a receiver by a court of competent jurisdiction, and said terms and conditions may provide that the receiver may enter and take possession of the residential development or home mortgages, or any part thereto, and maintain, lease, sell, or otherwise dispose of such development or mortgages, prescribe rentals or other payments, and collect, receive, and apply all income and revenues thereafter arising therefrom. Any resolution authorizing the issuance of bonds under this Act may provide that the principal of and interest on any bonds issued under this Act shall be secured by a mortgage, pledge, security interest, insurance agreement, or indenture of trust covering such residential development or home mortgages for which the bonds are issued and may include any improvements or extensions thereafter made. Such mortgage, pledge, security interest, insurance agreement, or indenture of trust may contain such covenants and agreements to properly safeguard the bonds as may be provided for in the resolution authorizing such bonds and shall be executed in the manner as may be provided for in the resolution. The provisions of this Act and any such resolution and any such mortgage, pledge, security interest, or indenture of trust shall constitute a contract with the holder or holders of the bonds and continue in effect until the principal of, the interest on, and the redemption premiums, if any, on the bonds so issued have been fully paid or provision made therefor, and the duties of the corporation and its corporate authorities and officers under this Act and any such resolution and any such mortgage, pledge, security interest, or indenture of trust shall be enforceable as provided therein by any bondholder by mandamus, foreclosure of any such mortgage, pledge, security interest, or indenture of trust or other appropriate suit, action, or proceeding in any court of competent jurisdiction; provided the resolution or any mortgage, pledge, security interest, or indenture of trust under which the bonds are issued may provide that all such remedies and rights to enforcement may be vested in a trustee (with full power of appointment) for the benefit of all the bondholders, which trustee shall be subject to the control of such number of holders or owners of any outstanding bonds as provided therein.

Signature of Officers on Bonds—Validity of Bonds

Sec. 16. The bonds shall bear the manual or facsimile signatures of such officers of the corporation as may be designated in the resolution authorizing such bonds, and such signatures shall be the valid and binding signatures of the officer of the corpora-

tion, notwithstanding that before the delivery thereof and payment therefor any or all of the persons whose signatures appear thereon have ceased to be officers of the corporation issuing such bonds. The validity of the bonds is not dependent on nor affected by the validity or regularity of any proceedings relating to the residential development or home mortgages for which the bonds are issued. The resolution authorizing the bonds may provide that the bonds shall contain a recital that they are issued pursuant to this Act, which recital shall be conclusive evidence of their validity and of the regularity of their issuance.

Lien of Bonds

Sec. 17. Bonds issued under this Act may be secured by a pledge of or lien upon all or any part of the revenues, receipts, or resources of the corporation, including the revenues and receipts derived from the residential development or home mortgages or from any notes or other obligations of lending institutions with respect to which the bonds have been issued, and the board of directors may provide in the resolution authorizing such bonds for the issuance of additional bonds to be equally and ratably secured by a lien upon such revenues and receipts or may provide that the lien upon such revenues and receipts is subordinate. Subordinate lien bonds also may be issued unless prohibited in any bond resolution.

Liability for Bonds

Sec. 18. All bonds issued under and pursuant to this Act shall be limited obligations of the corporation payable solely out of the revenues, receipts, and resources pledged to their payment. No holder of any bonds issued under this Act has the right to compel the local governmental unit to pay the bonds, the interest or redemption premium, if any, thereon, and the bonds shall not constitute an indebtedness or obligation of the local governmental unit or any other county, city, or other municipal or political corporation or subdivision of the state or of the state, or a loan of credit of any of them, within the meaning of any constitutional or statutory provision, nor shall the bonds be construed to create any moral obligation on the part of the local governmental unit or any other county, city, or other municipal or political corporation or subdivision of the state or of the state, with respect to the payment of such bonds, and all such entities are hereby prohibited from making any payments with respect to said bonds. It shall be plainly stated on the face of each bond that it has been issued under the provisions of this Act and that it does not constitute an indebtedness or obligation of the local governmental unit or any other county, city, or other municipal or political corporation or subdivision of the state or of the state, or a loan of credit of any of them, within the

meaning of any constitutional or statutory provisions.

Investment of Funds

Sec. 19. The corporation, or any trustee or custodian on behalf of the corporation, may invest any funds held by it as provided in the resolution authorizing the issuance of the bonds.

Exception from Construction and Bidding Requirements for Public Buildings

Sec. 20. The acquisition, construction, or rehabilitation of a private residential development or a home shall not be subject to any requirements relating to public buildings, structures, grounds, works, or improvements imposed by the laws of the State of Texas or any other similar requirements, and any requirement of competitive bidding or restriction imposed on the procedure for award of contracts for such purpose or the lease, sale, or other disposition of property of the local governmental unit is not applicable to any action taken under authority of this Act.

Exemption from Taxation

Sec. 21. It is hereby determined that the creation of the corporation is in all respects for the benefit of the people of the state, for the improvement of their health and welfare, and for the promotion of the economy, and that said purposes are public purposes and the corporation, being a public instrumentality and nonprofit corporation, will be performing an essential governmental function on behalf of and for the benefit of the general public, the local governmental unit, and the state. Accordingly, the corporation and all properties at any time owned by it and the income therefrom and all bonds issued by it, and their transfer, and the income therefrom shall be exempt from the franchise tax, license and recording fees, and all other taxes imposed by the State of Texas or any political subdivision thereof as public property used for public purposes.

Bonds and Coupons are Securities

Sec. 22. Bonds issued under the provisions of this Act, and coupons, if any, representing interest thereon, shall when delivered be deemed and construed to be a "security" within the meaning of Chapter 8, Investment Securities, of the Uniform Commercial Code, as amended (Chapter 8, Title 1, Business & Commerce Code), and shall be exempt securities under the Texas Securities Act, as amended (Article 581-1 et seq., Vernon's Texas Civil Statutes). No contract under this Act shall be a security within the meaning of the Texas Securities Act.

Bonds are Legal and Authorized Investments and Security

Sec. 23. Bonds issued under the provisions of this Act shall be and are hereby declared to be legal and

authorized investments for any banks; savings banks; trust companies; building and loan associations; insurance companies; fiduciaries; trustees and guardians; and sinking funds of cities, towns, villages, counties, school districts, and other political corporations or subdivisions of the State of Texas. Such bonds shall be eligible to secure the deposit of any and all public funds of the State of Texas and any and all public funds of cities, towns, villages, counties, school districts, and other political corporations or subdivisions of the State of Texas, and they shall be lawful and sufficient security for said deposits at their face value when accompanied by all unmatured coupons, if any, appurtenant thereto.

Nonliability of Local Governmental Unit and the State

Sec. 24. The local governmental unit and the state shall not in any event be liable in any manner for or with respect to the bonds of the corporation, and none of the corporation's agreements or obligations shall be construed to constitute an agreement, obligation, or indebtedness of the local governmental unit or the state within the meaning of any constitutional or statutory provision whatsoever.

Nonprofit Corporation—Disposition of Earnings

Sec. 25. The corporation shall be a public nonprofit corporation. No dividends shall ever be paid, and no part of the net earnings of the corporation shall be distributed to, or enure to the benefit of, its directors or officers, or other private person, association, or corporation, except in reasonable amounts for services rendered, and except that in the event the board of directors of the corporation shall determine that sufficient provision has been made for the full payment of the expenses, bonds, and other obligations of the corporation, then any net earnings of the corporation thereafter accruing shall be paid to the local governmental unit on behalf of which the corporation was organized; provided, however, that nothing herein contained shall prevent the board of directors from transferring all or any part of its properties in accordance with the terms of any contract or agreement entered into by the corporation.

Books and Records

Sec. 26. The corporation shall keep correct and complete books and records of account and shall keep minutes of proceedings of its board of directors.

Completion of Corporate Purpose—Dissolution

Sec. 27. Whenever the board of directors of the corporation shall by resolution determine that the purposes for which the corporation was formed have been substantially complied with and all bonds theretofore issued and all obligations theretofore incurred by the corporation have been fully paid, then the directors of the corporation shall thereupon execute and file for record in the office of the secretary of state a certificate of dissolution reciting

such facts and declaring the corporation to be dissolved. Such certificate of dissolution shall be executed under the corporate seal of the corporation. Upon the filing of such certificate of dissolution the corporation shall stand dissolved, the title to all funds and properties owned by it at the time of such dissolution shall vest in the local governmental unit, and possession of such funds and properties shall forthwith be delivered to such local governmental unit.

Powers not Restricted—Law Complete in Itself

Sec. 28. Neither this Act nor anything herein contained shall be construed as a restriction or limitation upon any powers which the corporation might otherwise have under any laws of this state, but shall be construed as cumulative of any such powers. No proceedings, notice, or approval shall be required for the organization of the corporation or the issuance of any bonds or any instrument as security therefor, except as herein provided, any other law to the contrary notwithstanding; provided, that nothing herein shall be construed to deprive the state and its governmental subdivisions of their respective police powers over properties of the corporation, or to impair any power thereover of any official or agency of the state and its governmental subdivisions which may be otherwise provided by law.

Residential Development Sites

Sec. 29. Any local governmental unit may transfer any residential development site to a corporation by sale or lease. Such transfer may be authorized by a resolution of the governing body of the local governmental unit without submission of the question to the voters, and without regard to the requirements, restrictions, limitations, or other provisions contained in any other general, special, or local law. Such project site may be within or without the local governmental unit or partially within and partially without the local governmental unit.

Powers Additional to Those Granted by Other Laws—Severability

Sec. 30. The powers conferred by this Act shall be in addition and supplementary to, and the limitations by this Act shall not affect the powers conferred by any other general, special, or local law. If any one or more sections or provisions of this Act, or the application thereof to any person or circumstance, shall ever be held by any court of competent jurisdiction to be invalid, the remaining provisions of this Act and the application thereof to persons or circumstances other than those to which it is held to be invalid, shall not be affected thereby, it being the intention of this legislature to enact the remaining provisions of this Act notwithstanding such invalidity.

[Acts 1979, 66th Leg., p. 2186, ch. 835, §§ 1 to 30, eff. June 14, 1979.]

**CHAPTER TWENTY-TWO. CIVIL SERVICE
FIREMEN AND POLICEMEN**

Article

1269a. Defense of Civil Suits Against Peace Officers.

Art. 1269m. Firemen's and Policemen's Civil Service in Cities Over 10,000

[See Compact Edition, Volume 3 for text of 1]

Definitions

Sec. 2. By the term "Fireman" is meant any member of the Fire Department appointed to such position in substantial compliance with the provisions of Sections 9, 10 and 11 of this Act, or entitled to Civil Service Status under Section 24 of this Act. The term includes firemen who perform fire suppression, fire prevention, fire training, fire safety education, fire maintenance, fire communications, fire medical emergency technology, fire photography, or fire administration. By the term "Policeman" is meant any member of the Police Department appointed to such position in substantial compliance with the provisions of Sections 9, 10 and 11 of this Act, or entitled to Civil Service Status under Section 24 of this Act. By the term "Commission" as used herein is meant the Firemen's and Policemen's Civil Service Commission. The term "Director" means Director of Firemen's and Policemen's Civil Service.

[See Compact Edition, Volume 3 for text of 3 to 5]

Investigations and Inspections

Sec. 5a. The Commission may make investigations concerning, and report upon all matters touching, the enforcement and effect of the provisions of this Act, and the rules and regulations prescribed hereunder; and shall ascertain whether this Act and all such rules and regulations are being obeyed. Such investigations may be made by the Commission or by any Commissioner designated by the Commission for that purpose. In the course of such investigation the Commission or designated Commissioner shall have the power to administer oaths, subpoena and require the attendance of witnesses and the producing by them of books, papers, documents, and accounts pertaining to the investigation, and also to cause the deposition of witnesses residing within or without the State to be taken in the manner prescribed by law for like depositions in civil actions in the court of original and unlimited jurisdiction to civil suits of the United States; and the oaths administered hereunder and the subpoenas issued hereunder shall have the same force and effect as the oaths administered by a magistrate in his judicial capacity; and the failure upon the part of any person so subpoenaed to comply with the provisions of this Section shall be deemed a violation of this Act, and punishable as such.

Public Records

Sec. 5b. The Commission shall keep records of all hearings or cases that come before it. Commission decisions shall be signed by the concurring Commissioners. All rules, opinions, directives, decisions, and orders issued by the Commission shall be written and are public records that shall be retained on file by the Commission.

[See Compact Edition, Volume 3 for text of 6 and 7]

Classification of Firemen and Policemen; Educational Incentive Pay

Text of section as amended by Acts 1979, 66th Leg., p. 152, ch. 83, § 1

Sec. 8. The Commission shall provide for the classification of all firemen and policemen. Such classification shall be provided by ordinance of the City Council, or legislative body. Said City Council, or legislative body, shall prescribe by ordinance the number of positions of each classification.

No classification now in existence, or that may be hereafter created in such cities, shall ever be filled except by examination held in accordance with the provisions of this law. All persons in each classification shall be paid the same salary and in addition thereto be paid any of the following types of pay that they may be entitled to: (1) longevity pay; (2) seniority pay; (3) educational incentive pay; or (4) assignment pay. This shall not prevent the Head of such Department from designating some person from the next lower classification to fill a position in a higher classification temporarily, but any such person so designated by the Head of the Department shall be paid the base salary of such higher position plus his own longevity pay during the time he performs the duties thereof. The temporary performance of the duties of any such position by a person who has not been promoted in accordance with the provisions of this Act shall never be construed to promote such person. All vacancies shall be filled by permanent appointment from eligibility lists furnished by the Commission within ninety (90) days after such vacancy occurs.

Firemen and policemen shall be classified as above provided, and shall be under civil service protection except the Chief or Head of such Fire Department or Police Department, by whatever name he may be known.

Said Chiefs or Department Heads shall be appointed by the Chief Executive, and confirmed by the City Council or legislative body except in cities where the Department Heads are elected. In those cities having elective Fire and Police Commissioners the appointments for Chiefs and Heads of those Departments shall be made by the respective Fire or Police Commissioners in whose Department the va-

cancy exists, and such appointments shall be confirmed by the City Council or legislative body.

Said City Council or legislative body may authorize educational incentive pay in addition to regular pay for policemen and firemen within each classification, who have successfully completed courses in an accredited college or university, provided that such courses are applicable toward a degree in law enforcement-police science and include the core curriculum in law enforcement or are applicable toward a degree in fire science. An accredited college or university, as that term is used herein, shall mean any college or university accredited by the nationally recognized accrediting agency and the state board of education in the state wherein said college or university is located and approved or certified by the Texas Commission on Law Enforcement Officer Standards and Education as teaching the core curriculum or its equivalent or, in the case of fire science degree courses, approved or certified by the Texas Commission on Fire Protection, Personnel Standards, and Education. Core curriculum in law enforcement, as used herein, shall mean those courses in law enforcement education as approved by the Coordinating Board, Texas College and University System and the Texas Commission on Law Enforcement Officer Standards and Education.

Classification of Firemen and Policemen; Educational Incentive Pay

Text of section as amended by Acts 1979, 66th Leg., p. 1857, ch. 753, § 3

Sec. 8. The Commission shall provide for the classification of all firemen and policemen. Such classification shall be provided by ordinance of the City Council, or legislative body. Said City Council, or legislative body, shall prescribe by ordinance the number of positions of each classification.

No classification now in existence, or that may be hereafter created in such cities, shall ever be filled except by examination held in accordance with the provisions of this law. All persons in each classification shall be paid the same salary and in addition thereto be paid any longevity, seniority, educational incentive pay, or certification pay that he may be entitled to. This shall not prevent the Head of such Department from designating some person from the next lower classification to fill a position in a higher classification temporarily, but any such person so designated by the Head of the Department shall be paid the base salary of such higher position plus his own longevity pay during the time he performs the duties thereof. The temporary performance of the duties of any such position by a person who has not been promoted in accordance with the provisions of this Act shall never be construed to promote such person. All vacancies shall be filled by permanent

appointment from eligibility lists furnished by the Commission within sixty (60) days after such vacancy occurs. If no list is in existence, the vacancies shall be filled from a list which the Commission shall provide within ninety (90) days after the vacancy occurs.

Firemen and policemen shall be classified as above provided, and shall be under civil service protection except the Chief or Head of such Fire Department or Police Department, by whatever name he may be known.

Said Chiefs or Department Heads shall be appointed by the Chief Executive, and confirmed by the City Council or legislative body except in cities where the Department Heads are elected. In those cities having elective Fire and Police Commissioners the appointments for Chiefs and Heads of those Departments shall be made by the respective Fire or Police Commissioners in whose Department the vacancy exists, and such appointments shall be confirmed by the City Council or legislative body.

The City Council or legislative body of a city may authorize educational incentive pay in addition to regular pay for a fireman or policeman who has successfully completed courses at an accredited college or university if the criteria for the educational incentive pay is clearly established, is in writing, and is applied equally to all firemen or policemen meeting the criteria. If all firemen or policemen are afforded an opportunity to qualify themselves for certification, certification pay may be authorized by the City Council or legislative body of the city in addition to regular pay for those firemen meeting the requirements for certification set by the Commission on Fire Protection Personnel Standards and Education or policemen meeting the requirements for certification set by the Commission on Law Enforcement Officer Standards and Education.

Sec. 8A. Repealed by Acts 1979, 66th Leg., p. 1856, ch. 753, § 12, eff. Sept. 1, 1979.

Cities of 1,200,000 or More; Assignment Pay

Sec. 8B. (a) In any city having a population of 1,200,000 or more, according to the most recent federal census, the city council or legislative body may authorize assignment pay for emergency ambulance attendants in an amount and payable under conditions as set by ordinance. The assignment pay shall be in addition to the regular pay received by members of the fire department. The chief of the fire department is not eligible for the assignment pay authorized by this section.

(b) In this section:

(1) "Emergency ambulance attendant" means a member of the fire department who provides emergency medical care and emergency transportation for members of the public.

(2) "Helicopter personnel" means a member of the police department who pilots helicopters or rides as an observer in helicopters.

(3) "Bomb squad personnel" means a member of the police department who is assigned to the bomb squad and actually participates in the detection, handling, or disarming of explosive devices or materials.

(4) "Special weapons and tactics personnel" means a member of the police department who is assigned to the special weapons and tactics squad and actually performs the duties and responsibilities of the special weapons and tactics squad.

(c) In any city having a population of 1,200,000 or more according to the most recent federal census, the city council or legislative body may authorize assignment pay for helicopter personnel, bomb squad personnel, and special weapons and tactics personnel. Assignment pay shall be in an amount and payable under conditions as set by ordinance. The assignment pay shall be in addition to the regular pay received by members of the police department. The chief of the police department is not eligible for the assignment pay authorized by this section.

Examination for Eligibility Lists

Sec. 9. The Commission shall make provisions for open, competitive and free examinations for persons making proper application and meeting the requirements as herein prescribed. All eligibility lists for applicants for original positions in the Fire and Police Departments shall be created only as a result of such examinations, and no appointments shall ever be made for any position in such Departments except as a result of such examination, which shall be based on the applicant's knowledge of and qualifications for fire fighting and work in the Fire Department, or for police work and work in the Police Department, as shown by competitive examinations in the presence of all applicants for such position, and shall provide for thorough inquiry into the applicant's general education and mental ability. Fire Department entrance examinations may be given at different locations if all applicants are given the same examination and examined in the presence of other applicants. An applicant may not take the examination more than once for each eligibility list. An applicant may not take an examination unless at least one (1) other applicant being tested is present.

An applicant who has served in the armed forces of the United States and who received an honorable discharge shall receive five (5) points in addition to his competitive grades.

The Commission shall keep all eligibility lists for applicants for original positions in the Fire Department or Police Department in effect for not less

than six (6) months nor more than twelve (12) months unless the names of all applicants have been referred to the appropriate Department. The Commission shall give a new examination at the end of the twelve (12) month period or sooner, if applicable, or if all names on the list have been referred to the appropriate Department. The Commission shall determine how long each eligibility list shall remain in effect within the six (6) to twelve (12) month period and shall include this information on the eligibility announcement.

Appropriate physical examinations shall be required of all applicants for beginning or promotional positions, and the examinations shall be given by a physician appointed by the Commission and paid by such city; and in the event of rejection by such physician, the applicant may call for further examination by a board of three (3) physicians appointed by the Commission, but at the expense of the applicant, whose findings shall be final. The age and physical requirements shall be set by the Commission in accordance with provisions of this law and shall be the same for all applicants.

No person shall be certified as eligible for a beginning position with a Fire Department who has reached his thirty-sixth birthday. No person shall be certified as eligible for a beginning position with a Police Department who has reached his thirty-sixth birthday unless the applicant has at least five (5) years prior experience as a peace officer. No person shall be certified as eligible for a beginning position with a Police Department who has reached his forty-fifth birthday.

All police officers and firemen coming under this Act must be able to intelligently read and write the English language.

When a question arises as to whether a fireman or policeman is sufficiently physically fit to continue his duties, the employee shall submit a report from his personal physician to the Commission. If the Commission, the head of the Department, or the employee questions the report, the Commission shall appoint a physician to examine the employee and to submit a report to the Commission, to the head of the Department, and to the employee. If the appointed physician's report disagrees with the report of the employee's personal physician, the Commission shall appoint a board of three (3) physicians to examine the employee. Their findings as to the employee's fitness for duty shall determine the issue. The cost of the services of the employee's personal physician shall be paid by the employee. All other costs shall be paid by the city.

A fireman or policeman who has been certified by a physician selected by a firemen's or policemen's relief or retirement fund as having recovered from a disability for which he has been receiving a monthly disability pension shall, with the approval of the Commission and if otherwise qualified, be eligible for reappointment to the classified position that he held as of the date that he qualified for a monthly disability pension.

[See Compact Edition, Volume 3 for text of 10 and 11]

Probationary and Full-fledged Firemen and Policemen

Sec. 12. A person who has received appointment to the Fire Department or Police Department hereunder, shall serve a probationary period of one (1) year from date of employment with the Department as a Fireman, Policeman, or trainee in an academy. During such probationary period, it shall be the duty of the Fire Chief or head of the Fire Department or Police Chief or head of the Police Department to discharge all Firemen or Policemen whose appointments were not regular, or not made in compliance with the provisions of this Act, or of the rules or regulations of the Commission, and to eliminate from the payrolls any such probationary employee. When Firemen or Policemen, however, have served the full probationary period, having been appointed in substantial compliance with Sections 9, 10, and 11 of this Act and not otherwise, they shall automatically become full-fledged civil service employees and shall have full civil service protection. All positions in the Fire Department, except that of Chief or head of the Department, and in the Police Department, except that of Chief or head of the Department, shall be classified by the Commission and the positions filled from the eligibility lists as provided herein.

All offices and positions in the Fire Department or Police Department shall be established by ordinance of the City Council or governing body, provided however that the failure of a City Council or governing body to establish a position by ordinance shall not result in the loss of Civil Service benefits under this Act by any person appointed to such position in substantial compliance with the provisions of Sections 9, 10 and 11 of this Act, or entitled to Civil Service Status under Section 24 of this Act.

Employee Organization Membership Requirements Prohibited

Sec. 12A. An employee who is on probation may not be prohibited from joining or required to join an employee organization. Joining or not joining an employee organization is not a ground for retention

or nonretention of an employee who is serving a probationary period.

Notice of Examinations

Sec. 13. At least ten (10) days in advance of any entrance examination and at least thirty (30) days in advance of any examination for promotion, the Commission shall cause to be posted on a bulletin board located in the main lobby of the city hall, and the office of the Commission, and in plain view, a notice of such examination, and said notice shall show the position to be filled or for which examination is to be held, with date, time, and place thereof, and in case of examination for promotion, copies of such notice shall be furnished in quantities sufficient for posting in the various stations or subdepartments in which position is to be filled. No one under eighteen (18) years of age shall take any entrance examination, and appointees to the Police and Fire Department shall not have reached their thirty-sixth birthday for entrance into the Fire Department or Police Department. The results of each examination for promotion shall be posted on a bulletin board located in the main lobby of the city hall by the Commission within twenty-four (24) hours after such examination.

Promotions; Filling Vacancies

Sec. 14. The Commission shall make rules and regulations governing promotions and shall hold promotional examinations to provide eligibility lists for each classification in the Police and Fire Departments, which examinations shall be held substantially under the following requirements:

Text of subsection A as amended by Acts 1979, 66th Leg., p. 544, ch. 258, § 1

A. (1) All promotional examinations shall be open to all policemen who have held a continuous position for two (2) years or more immediately prior to the examination in the classification immediately below in salary of that classification for which the examination is to be held. In police departments that have adopted a classification plan that classifies positions on the basis of similarity in duties and responsibilities, all promotional examinations shall be open to a policeman who has held a continuous position for two (2) years or more immediately prior to the examination at the next lower paygrade, if it exists, in the classification for which the promotional examination is being offered. When there is not a sufficient number of members in the next lower position with two (2) years service in that position to provide an adequate number of persons to take the examination, the Commission may extend the examination to the members in the second lower position in salary to that for which the examination is to be held.

(2) All promotional examinations shall be open to all firemen who have ever held a continuous position

for two (2) years or more in the classification immediately below in salary of that classification for which the examination is to be held. In fire departments that have adopted a classification plan that classifies positions on the basis of similarity in duties and responsibilities, all promotional examinations shall be open to a fireman who has ever held a continuous position for two (2) years or more at the next lower paygrade, if it exists, in the classification for which the promotional examination is being offered. This section shall be construed so as to allow the lateral crossover between classes. When there is not a sufficient number of members in the next lower position with two (2) years service in that position to provide an adequate number of persons to take the examination, the Commission may extend the examination to the members in the second lower position in salary to that for which the examination is to be held.

Text of subsection A as amended by Acts 1979, 66th Leg., p. 1860, ch. 753, § 7

A. (1) All promotional examinations shall be open to all policemen who have held a continuous position for two (2) years or more immediately prior to the examination in the classification immediately below, in salary, that classification for which the examination is to be held. In police departments that have adopted a classification plan that classifies positions on the basis of similarity in duties and responsibilities, all promotional examinations shall be open to a policeman who has held a continuous position for two (2) years or more immediately prior to the examination at the next lower paygrade, if it exists, in the classification for which the promotional examination is being offered. When there is not a sufficient number of members in the next lower position with two (2) years' service in that position to provide an adequate number of persons to take the examination, the Commission shall open the examination to members in that position with less than two (2) years' service. If there is still an insufficient number, the Commission may extend the examination to the members in the second lower position in salary to that for which the examination is to be held.

(2) All promotional examinations shall be open to all firemen who have ever held a continuous position for two (2) years or more in the classification immediately below, in salary, that classification for which the examination is being held. In fire departments that have adopted a classification plan that classifies positions on the basis of similarity in duties and responsibilities, all promotional examinations shall be open to a fireman who has ever held a continuous position for two (2) years or more at the next lower paygrade, if it exists, in the class for which the promotional examination is being offered. This section may not be construed to prohibit lateral cross-

over between classes. If there are not enough members in the next lower position with two (2) years' service in that position to provide an adequate number of persons to take the examination, the Commission may open the examination to members in that position with less than two (2) years' service. If there is still an insufficient number, the Commission may extend the examination to the members in the second lower position in salary to that for which the examination is to be held with two (2) years' service in that position.

B. Each fireman shall be given one (1) point for each year of seniority in his Department, but never to exceed ten (10) points. Each policeman shall be given one (1) point for each year of seniority as a classified police officer in his Department, but never to exceed ten (10) points.

C. The Commission may formulate proper procedure and rules for semi-annual efficiency reports and grade of each member of the Police or Fire Departments. If the Commission compiles efficiency reports for members of the Police or Fire Department, the Commission shall provide a copy of a member's efficiency report to the member. Any fireman or policeman may, within ten (10) days after receiving his efficiency report, make a statement in writing about the efficiency report. The statement shall be placed in his personnel file with the efficiency report.

D. (1)(a) All applicants shall be given an identical examination in the presence of each other, which promotional examination shall be entirely in writing and no part of which shall be by oral interview, and all of the questions asked therein shall be prepared and composed in such a manner that the grading of the examination papers can be promptly completed immediately after the holding of the examination and shall be prepared so as to test the knowledge of the applicants concerning information and facts, and all of said questions shall be based upon material which is a reasonably current publication and has been made reasonably available to all members of the Fire or Police Department involved and shall be based upon the duties of the position sought and upon any study courses given by such Departmental Schools of Instruction. All promotional examination questions must be taken from sources that are listed in a notice that is posted by the Commission at least thirty (30) days before the date of the examination. Firemen or policemen may suggest source materials for promotional examinations. The notice required by Section 13 of this Act may include the name of each source used and the number of questions taken from each source. The Commission may include the chapter of each source. When one of the applicants taking an examination for promotion has completed his answers, the grading of such examination shall

begin, and all of the examination papers shall be graded as they are completed, at the place where the examination is given and in the presence of any applicants who wish to remain during the grading.

(b) The Director is responsible for the preparation and security of all promotional examinations. The fairness of the competitive promotional examinations is the responsibility of the Commission, the Director, and any municipal employee involved in the preparation or administration of the examination. A person who knowingly or intentionally reveals any part of a promotional examination to an unauthorized person or a person who knowingly or intentionally receives from an unauthorized person any part of a promotional examination commits a misdemeanor and shall be fined not less than One Thousand Dollars (\$1,000) or imprisoned for not more than one (1) year in the county jail or both.

(2) The grade which shall be placed on the eligibility list for each policeman applicant shall be computed by adding such policeman applicant's points for seniority to his grade on such written examination. Grades on such written examinations shall be based upon a maximum grade of one hundred (100) points and shall be determined entirely by the correctness of each applicant's answers to such questions. The minimum passing score for the written examination is seventy (70) points.

(3) The grade which shall be placed on the eligibility list for each fireman applicant shall be computed by adding the fireman applicant's points for seniority to his grade on the written examination. Grades on the written examination shall be based on a maximum grade of one hundred (100) points and shall be determined entirely by the correctness of each fireman applicant's answers to the questions. The minimum passing score for the written examination is seventy (70) points.

(4) Each applicant shall have the opportunity to examine the source materials, his examination, and his answers thereto together with the grading thereof and if dissatisfied shall, within five (5) working days, appeal the same to the Commission for review in accordance with the provisions of this Act.

(5) No fireman shall be eligible for promotion unless he has served in such Department for at least two (2) years at any time prior to the day of such promotional examination in the next lower position or other positions specified by the Commission, and no person with less than four (4) years' actual service in such Department shall be eligible for promotion to the rank of captain or its equivalent. No policeman shall be eligible for promotion unless the policeman has served in the Department for at least two (2) years immediately preceding the date of the promotional examination in the next lower position or other positions specified by the Commission, and

no person with less than four (4) years' actual service in the Department shall be eligible for promotion to the rank of captain or its equivalent. Provided, however, that the requirement of two (2) years' service in the Fire Department at any time prior to the day of promotional examination shall not be applicable to those persons recalled on active military duty for a period not to exceed twenty-four (24) months. The Police Department's requirement of two (2) years' service immediately preceding the date of the promotional examination does not apply to persons recalled to active military duty for a period not to exceed twenty-four (24) months. Such persons shall be entitled to have time spent on active military duty considered as duty in the Department concerned. However, any person whose absence for active military duty exceeds twelve (12) months, shall be required to serve ninety (90) days upon returning to the Department before he shall become eligible to participate in a promotional examination, such period of time to be considered essential for bringing him up to date on equipment and techniques.

(6) No person shall be eligible for appointment as Chief or Head of the Fire Department of any city coming under the provisions of this Act who is not eligible for certification by the Commission on Fire Protection Personnel Standards and Education at the intermediate level or its equivalent as determined by that Commission and who has not served at least five (5) years as a fully paid fireman. No person may be eligible for appointment as Chief or Head of the Police Department who is not eligible for certification by the Commission on Law Enforcement Officer Standards and Education at the intermediate level or its equivalent as determined by that Commission and who has not served as a bona fide law enforcement officer for five (5) years.

E. (1) Upon written request by the Heads of the Departments for a person to fill a vacancy in any classification, the Commission shall certify to the Head of the Department the three (3) names having the highest grades on such eligibility list for such classification for the vacancy requested to be filled. If fewer than three (3) names remain on the eligibility list, all the names must be submitted to the Head of the Department, and the Head of such Department shall appoint the person having the highest grade, except where such Head of the Department shall have a valid reason for not appointing such highest name, and in such cases he shall, before such appointment, file his reasons in writing, for rejection of the higher name or names, with the Commission, which reasons shall be valid and subject to review by the Commission upon the application of such rejected person.

(2) The name of each person on the eligibility lists shall be submitted to the Head of the Department

three (3) times; and if passed over three (3) times with written reasons filed thereafter and not set aside by the Commission, he shall thereafter be dropped from the eligibility list. All promotional eligibility lists shall remain in existence for one (1) year unless exhausted, and at the expiration of one (1) year they shall expire and new examinations may be given.

F. The Commission shall proceed to hold examinations to create eligibility lists within ninety (90) days after a vacancy in any classification occurs, or new positions are created, unless an eligibility list is in existence. If an eligibility list exists, the Commission shall certify within ten (10) days after notification of the vacancy to the Head of the Department the names of persons eligible to fill all promotional positions. The certified names must come from the eligibility list which exists on the date the vacancy occurs.

G. In the event any new classification is established either by name or by increase of salary, the same shall be filled by competitive examination in accordance with this law.

Crossover Promotions

Sec. 14A. (a) In any city in this state having a population of 1,200,000 or more inhabitants, according to the last preceding federal census, all members of the police department, who shall be employed by such department with duties in a specialized technical area, to wit: (1) technical class, which includes but is not limited to criminal laboratory analysis and interpretations, and the technical criminal aspects of identification and photography, or (2) communications class, which includes but is not limited to the technical operations of police radio communications, shall be eligible for promotions within their respective classes.

(b) In no event shall the members of the technical class, communications class, or uniformed and detective class be eligible for promotion to a position outside of their respective class. This section shall be construed so as to preclude the lateral crossover by promotion of members of the technical and communications classes into the uniformed and detective class of the department; also to preclude the lateral crossover by promotion of members of the uniformed and detective class into the technical and communications classes of the department. In the event a member of one class desires to change classes, such may be accomplished upon qualification and only by entry into the new class at the lowest entry level of that class.

(c) This section shall not operate so as to prevent the chief of police, assistant chiefs of police, and deputy chiefs of police or their equivalent, by whatever name or title they may be called, from exercising the full sanctions, powers, duties, and authority

of their respective offices in the supervision, management, and control over the uniformed and detective class, technical class, and communications class.

(d) All provisions of this article regarding eligibility lists, examinations, appointments, and promotions shall apply to members of the technical class and communications class, uniform class and detective class. However, said provisions shall apply only to the appointment and promotion of a member of a particular class to a new position within such class.

[See Compact Edition, Volume 3 for text of 15 and 16]

Purpose of Law; Hearings

Sec. 16a. It is hereby declared that the purpose of the Firemen and Policemen's Civil Service Law is to secure to the cities affected thereby efficient Police and Fire Departments, composed of capable personnel, free from political influence, and with permanent tenure of employment as public servants. The members of the Civil Service Commissions are hereby directed to administer the civil service law in accordance with this purpose; and when sitting as a board of appeals for a suspended or aggrieved employee who has invoked any review procedures under the provisions of this Act, they are to conduct such hearing fairly and impartially under the provisions of this law and are to render a fair and just decision, considering only the evidence presented before them in such hearing.

Procedure before Commission

Sec. 17. In order for a Fireman or Policeman to appeal to the Commission from any action for which an appeal or review is provided under the terms of this Act, it shall only be necessary for him to file within ten (10) days with the Commission an appeal setting forth the basis of his appeal. The appeal shall include a statement denying the truth of the charge as made, a statement taking exception to the legal sufficiency of such charges, a statement alleging that the recommended action does not fit the offense or alleged offense, or any combination of the statements, and in addition, a request for a hearing by the Commission. In all hearings, appeals, and reviews of every kind and character, wherein the Commission is performing an adjudicatory function, the employee shall have the right to be represented by council or any person of his choice. The employee may request the Commission to subpoena any books, records, documents, papers, accounts, or witnesses that the employee considers pertinent to his case. The request to have materials subpoenaed must be made at least ten (10) days before the date of the hearing. If the Commission does not subpoena the requested material, at least three (3) days prior to the hearing date, it shall make a written report to the employee stating the reason it will not subpoena the requested material, and this report

shall be read into the public records of the Commission hearing. The witnesses may be placed under the rule. All such proceedings shall be public. The Commission shall consider only evidence submitted at the hearing. The Commission shall have the authority to issue subpoenas and subpoenas duces tecum for the attendance of witnesses and for the production of documentary material. The Commission shall maintain a permanent public record of all proceedings with copies available at cost.

Appeal to District Court

Sec. 18. In the event any Fireman or Policeman is dissatisfied with any decision of the Commission, he may, within ten (10) days after the rendition of such final decision, file a petition in the District Court, asking that the decision be set aside, and such case shall be tried de novo. Such cases shall be advanced on the docket of the District Court, and shall be given a preference setting over all other cases. The court in such actions may grant such legal or equitable relief as may be appropriate to effectuate the purposes of this Act, including reinstatement or promotion with back pay where an order of suspension, dismissal, or demotion is set aside. The court may award reasonable attorney's fees to the prevailing party and assess court costs against the nonprevailing party. If the court finds for the fireman or policeman, the court shall order the city to pay lost wages to the fireman or policeman.

[See Compact Edition, Volume 3 for text of 19]

Disciplinary Suspensions

Sec. 20. The head of either the Fire or Police Department shall have the power to suspend any officer or employee under his jurisdiction or supervision for disciplinary purposes, for reasonable periods, not to exceed fifteen (15) days; provided, that in every such case, the department head shall file with the Commission within one hundred and twenty (120) hours, a written statement of action, and the Commission shall, upon appeal from the suspended officer or employee, hold a public hearing under Section 17 of this Act. The Commission shall determine whether just cause exists therefor. In the event the department head fails to file said statement with the Commission within one hundred and twenty (120) hours, the suspension shall be void and the employee shall be entitled to his full salary. The Commission shall have the power to reverse the decision of the department head and to instruct him immediately to restore such employee to his position and to repay the employee for any lost wages. If the Commission finds that the period of disciplinary suspension should be reduced, it may order a reduction in the period of suspension. In the event such department head refuses to obey the order of the Commission, then the provisions with reference to

salaries of the employees and to the discharge of the department head as well as the other provisions of Section 16, pertaining to such refusal of the department head, shall apply.

[See Compact Edition, Volume 3 for text of 21 and 22]

Military Leave of Absence

Sec. 22a. The Civil Service Commission on written application of a member of the fire or police department shall grant military leave of absence without pay to such member to enable him to enter military service of the United States in any of its branches. Such leave of absence may not exceed the compulsory military service or the basic minimum enlistment period for that branch of service. The Commission shall grant a leave of absence to a member of the fire or police department for initial training or annual duty in military reserves or the national guard. The Civil Service Commission shall grant such leave retroactively back to the commencement of the Korean War. Any such member receiving military leave of absence hereunder shall be entitled to be returned to the position in the department held by him at the time the leave of absence is granted, upon the termination of his active military service, provided he receives an Honorable Discharge and remains physically and mentally fit to discharge the duties of that position; and further provided he makes application for reinstatement within ninety (90) days after his discharge. Upon being returned to said position, such member shall receive full seniority credit for the time spent in the military service. During the absence from the department of any such member to whom military leave of absence shall have been granted by the Civil Service Commission the position in the department held by such member shall be filled in accordance with the other provisions of the Firemen's and Policemen's Civil Service Act subject to the person filling such position being replaced by the member to whom military leave of absence has been granted upon his return to active duty with the department. Any person so replaced and remaining with the department and by reason of such replacement being returned to a position lower in grade or compensation shall have a preferential right for subsequent appointment or promotion to the same or similar position of that from which he has been replaced over any eligibility list for such position, provided he remains physically and mentally fit to discharge the duties of such position.

[See Compact Edition, Volume 3 for text of 23 to 25]

Penalties

Sec. 25a. Any chief executive of a city who knowingly or intentionally fails or refuses to appoint

the Civil Service Commissioners provided by Section 3 of this Act within sixty (60) days after the city has adopted this Act commits a misdemeanor and shall be fined not less than One Hundred Dollars (\$100) nor more than Two Hundred Dollars (\$200). Each day after the 60-day deadline that the chief executive fails or refuses to make an appointment constitutes a separate offense. A chief executive or any city official who knowingly or intentionally refuses to implement this Act or attempts to obstruct the enforcement of this Act commits a misdemeanor and shall be fined not less than One Hundred Dollars (\$100) nor more than Two Hundred Dollars (\$200) for each offense.

Sick and Injury Leaves of Absence

Sec. 26. Permanent and temporary employees in the classified service shall be allowed a total of sick leave with full pay computed upon a basis of one and one-fourth (1-1/4) full working days allowed for each full month employed in a calendar year, so as to total fifteen (15) working days to an employee's credit each twelve (12) months.

Employees shall be allowed to accumulate fifteen (15) working days of sick leave with pay in one (1) calendar year.

Sick leave with pay may be accumulated without limit and may be used while an employee is unable to work because of any bona fide illness. In the event that the said employee can conclusively prove that the illness was incurred while in performance of his duties, an extension of sick leave in case of exhaustion of time shall be granted.

In the event that a Fireman or Policeman for any reason leaves the classified service, he shall receive, in a lump sum payment, the full amount of his salary for the period of his accumulated sick leave, provided that if the Fireman or Policeman has more than ninety (90) working days of accumulated sick leave, the employer may limit the payment to that sum equal to the sum that the employee would have been paid had he been allowed to use the ninety (90) days of accumulated sick leave during the last six (6) months of employment. Provided, however, that such payments shall not be based upon more than ninety (90) working days of accumulated sick leave. The lump-sum payment provided in this section is calculated as follows: the employee is compensated for the accumulated time at the highest permanent classification of pay for which the employee was eligible during the last six (6) months of employment. The employee is paid for the same period of time the employee would have been paid if the sick leave had been taken but excluding additional holidays and any sick leave or vacation time which the employee might have accrued during the ninety (90) working days.

If an active Fireman or Policeman dies as a result of a line of duty injury or line of duty illness, the entire amount of his accumulated sick leave shall be paid as provided in this section. Provided, that in order to facilitate the settlement of the accounts of deceased employees of the Fire or Police Departments, all unpaid compensation due such employee at the time of his death shall be paid to the person or persons surviving at the date of death, in the following order or precedence and such payments shall be a bar to recovery by any other person of amounts so paid.

First, to the beneficiary or beneficiaries designated by the employee in writing to receive such compensation filed with the Civil Service Commission prior to the employee's death;

Second, if there be no such beneficiary, to the widow or widower of such employee;

Third, if there be no such beneficiary or surviving spouse, to the child or children of such employee, and descendants of deceased children, by representation;

Fourth, if none of the above, to the parents of such employee, or the survivor of them;

Fifth, if there be none of the above, to the duly appointed legal representative of the estate of the deceased employee, or if there be none, to the person or persons determined to be entitled thereto under the laws of descent and distribution of the State of Texas.

Provided that all such cities coming under the provisions of this Act shall provide injury leaves of absence and line of duty illness leaves of absence for Firemen and Policemen with full pay for periods of time commensurate with the nature of the line of duty illness or injuries for at least one (1) year. At the expiration of said one-year period, the City Council or governing body may extend such line of duty illness or injury leave, at full or reduced pay, provided that in cities that have a Firemen's or Policemen's Pension Fund, that if said injured employee's salary should be reduced below sixty per cent (60%) of his regular monthly salary, said employee shall have the option of being retired on pension until able to return to duty.

If there are no pension benefits available to an employee who is temporarily disabled by a line of duty injury or illness and the year at full pay and any extensions which may have been granted by the employer have expired, the employee may use accumulated sick leave, vacation time, and other accrued benefits before being temporarily placed on leave.

If an employee is temporarily disabled by an injury or illness not related to the employee's line of duty, the employee may use all sick leave, vacation time, and any other time the employee may have

accumulated before being placed on temporary leave.

After recovery from a temporary disability, a Fireman or Policeman shall be reinstated at the same rank and with the same seniority the person had before going on temporary leave. Another Fireman or Policeman may voluntarily do the work of an injured or ill Fireman or Policeman until the Fireman or Policeman returns to duty.

[See Compact Edition, Volume 3 for text of 26(a)]

Termination of Service, Lump Sum Payments: Cities of 1,200,000 or More, Accumulated Sick Leave; Cities of 650,000 or More, Accumulated Vacation Leave

Sec. 26(b). (a) In any city in this State having a population of one million, two hundred thousand (1,200,000) or more inhabitants, according to the last preceding federal census, a fireman or policeman who leaves the classified service for any reason or the beneficiaries of any fireman or policeman who loses his life as a result of a line of duty injury or illness shall receive in a lump sum payment the full amount of his salary for the period of his accumulated sick leave. Sick leave shall be accumulated without limit.

(b) In any city in this State having a population of six hundred and fifty thousand (650,000) or more inhabitants, according to the last preceding federal census, a fireman or policeman who leaves the classified service for any reason shall receive in a lump sum payment the full amount of his salary for the period of his accumulated vacation leave, provided that such payment shall be based upon not more than sixty (60) working days of accumulated vacation leave. Any fireman or policeman who leaves the classified service or loses his life as the result of a line of duty injury or illness or the beneficiaries of such fireman or policeman shall be paid the full amount of his salary for the total number of his working days of accumulated vacation leave.

[See Compact Edition, Volume 3 for text of 27]

Adoption of Act by Vote or Otherwise

Sec. 27(a). Provided, however, that the provisions of this Act as amended by this House Bill No. 79, passed at the Fifty-fifth Regular Session of the Legislature, shall not apply to any city unless such city has already adopted and has in effect the provisions of this Act before the effective date of this amending Act, or unless first determined at an election at which the adoption or rejection of this Act shall be submitted. Upon receiving a petition signed by qualified voters in said city in number not less than ten per cent (10%) of the total number voting in the last preceding municipal election, the governing body of said city shall call and hold an election within sixty (60) days after said petition has been filed with governing body. If at said election a

majority of the votes cast shall favor the adoption of this Act, said governing body shall put such Act into effect within thirty (30) days after the beginning of the first fiscal year of said city after said election. The question shall be submitted for the vote of the qualified electors as follows:

FOR the adoption of the Firemen's and Police-men's Civil Service Act.

AGAINST the adoption of the Firemen's and Po-licemen's Civil Service Act.

When any election has been held in a city, at which election the adoption or rejection of Chapter 325, Acts of the Fiftieth Legislature, 1947, (Vernon's Annotated Civil Statutes, Article 1269m) has been submitted, whether such election has been held prior to the effective date of this amending Act or subse-quent thereto, a petition for another such election shall not be filed for at least one (1) year subsequent to the election so held; and said petition for any such election after the first election shall be signed by qualified voters in said city in number not less than twenty per cent (20%) of the total number voting in the last preceding municipal election; and any such election after the first election shall be held at the next general municipal election to be held in such city after the filing of such petition.

This Act may be adopted to apply only to a Fire Department or a Police Department. If the Act, as adopted, is to be limited to one or the other depart-ment, the ballot question shall be printed to reflect which department will be covered by this Act.

[See Compact Edition, Volume 3 for text of 27(b) to 28(a)]

[Amended by Acts 1975, 64th Leg., p. 302, ch. 131, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 484, ch. 207, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1963, ch. 648, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 134, ch. 63, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 176, ch. 86, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1130, ch. 424, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1140, ch. 431, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2073, ch. 824, § 1, Aug. 29, 1977; Acts 1979, 66th Leg., p. 152, ch. 83, §§ 1, 2, eff. April 26, 1979; Acts 1979, 66th Leg., p. 544, ch. 258, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1856, ch. 753, §§ 1 to 12, eff. Sept. 1, 1979.]

Acts 1977, 65th Leg., ch. 63, which by § 1 added § 14A to this article, provided in §§ 2 and 3:

"Sec. 2. All prior laws shall be deemed to have been superseded by the provisions hereof and, to the extent that any other law is in conflict with or inconsistent with the provisions hereof, the provisions of this Act shall take precedence and be effective. This section shall apply to each and every section of this Act.

"Sec. 3. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

Acts 1977, 65th Leg., ch. 86, which by § 1 amended § 26(b) of this article, provided in § 2: "This Act shall take effect on August 1, 1977." However, since the Act did not receive the requisite two-thirds record vote in each house, it became effective on August 29, 1977, 90 days after adjournment.

Art. 1269p. Hours of Labor and Vacation of Firemen and Policemen in Certain Cities

[See Compact Edition, Volume 3 for text of 1 to 6]

Cities Over 10,000; Overtime.

Text of section as amended by Acts 1979, 66th Leg., p. 1045, ch. 475, § 1

Sec. 6A. It shall be unlawful for any city having more than ten thousand (10,000) inhabitants, accord- ing to the last preceding Federal Census, to require or permit any policeman to work more hours during any calendar week than the number of hours in the normal work week of the majority of the employees of said city other than firemen and policemen.

Provided, however, that in any such city having more than ten thousand (10,000) inhabitants, in the event of an emergency, policemen may be required to work more than the number of hours in the normal work week of the majority of other city employees; and in the event policemen are ordered to work a greater number of hours than the number of hours in such normal work week of other city employees, such policemen shall be compensated for any such overtime at a rate equal to one and one-half times the compensation paid to such policemen for regular hours unless a policeman decides, with the approval of the city governing body, to accept compensatory time equal to one and one-half times the number of overtime hours.

Cities Over 10,000; Overtime

Text of section as amended by Acts 1979, 66th Leg., p. 1062, ch. 492, § 1

Sec. 6A. It shall be unlawful for any city having more than ten thousand (10,000) inhabitants, accord- ing to the last preceding Federal Census, to require any policeman to work more hours during any calen- dar week than the number of hours in the normal work week of the majority of the employees of said city other than firemen and policemen.

Provided, however, that in any such city having more than ten thousand (10,000) inhabitants, in the event of an emergency, policemen may be required to work more than the number of hours in the normal work week of the majority of other city employees; and in the event policemen are ordered to work a greater number of hours than the number of hours in such normal work week of other city employees, such policemen shall be compensated for any such overtime at a rate equal to one and one-half times the compensation paid to such policemen for regular hours.

Provided, further that in cases where a majority of policemen working for a city sign a written waiver of the prohibition against cities requiring any policeman to work more hours during any calendar week than the number of hours in the normal work week of the majority of the employees of said city other than firemen and policemen, a city may adopt a work schedule for policemen requiring any police- man to work more hours than the number of hours

in the normal work week of the majority of the employees of said city other than firemen and policemen, so long as no policeman works more hours during any calendar month than the number of hours in the normal work month of the majority of the employees of said city other than firemen and policemen without overtime pay.

[See Compact Edition, Volume 3 for text of 6(B) to 9]

[Amended by Acts 1979, 66th Leg., p. 1045, ch. 475, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1062, ch. 492, § 1, eff. June 7, 1979.]

Art. 1269s. Defense of Civil Suits Against Peace Officers

Sec. 1. An incorporated city or town or special purpose district shall provide a peace officer employed by it with legal counsel without cost to the peace officer, on the officer's request, to defend the officer against a suit for damages by a party other

than a governmental entity if the claim involves an official act of the peace officer in the scope of the officer's authority. The city, town, or special purpose district may provide counsel already employed by it or may employ and pay private counsel to defend the officer against the claim. In this Act, "peace officer" has the meaning given in Article 2.12, Code of Criminal Procedure, 1965, as amended.

Sec. 2. If the municipality or district fails to provide counsel as required by Section 1 of this Act, the officer may recover from it the reasonable attorney's fees incurred in defending the suit if the trier of fact finds that the fees were incurred in defending a suit covered by Section 1 of this Act and determines that the officer is without fault or finds that the officer acted with a reasonable good faith belief that his actions were proper.

[Acts 1979, 66th Leg., p. 1078, ch. 507, §§ 1, 2, eff. Aug. 27, 1979.]

TITLE 29A

COMMISSIONERS ON UNIFORM LAWS

Art. 1273b. Commission on Uniform State Laws

Appointment of Commission

Sec. 1. A Commission is hereby created to be known as the Commission on Uniform State Laws which shall consist of six recognized members of the bar who shall be appointed by the Governor for staggered terms of six years, with the terms of two members expiring on September 30 of each even-numbered year; and in addition thereto, any residents of this state who because of long service in the cause of the uniformity of state legislation shall have been elected life members of the National Conference of Commissioners on Uniform State Laws.

Application of Sunset Act

Sec. 1a. The Commission on Uniform State Laws is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1983.

¹ Article 5429k.

[See Compact Edition, Volume 3 for text of 2 to 4]

[Amended by Acts 1977, 65th Leg., p. 341, ch. 168, § 1, eff. May 20, 1977; Acts 1977, 65th Leg., p. 1843, ch. 735, § 2.078, eff. Aug. 29, 1977.]

Section 2 of Acts 1977, 65th Leg., ch. 168, amending § 1 of this article, provided:

"In making the initial appointments following the effective date of this Act, the governor shall designate two members for terms expiring September 30, 1978, two for terms expiring September 30, 1980, and two for terms expiring September 30, 1982."

TITLE 30

COMMISSION MERCHANTS

Art. 1287-3. Regulation of Vegetable Producers, Handlers and Dealers

Definitions

Sec. 1. As used in this Act:

[See Compact Edition, Volume 3 for text of 1(a)]

(b) "Vegetables" means all produce in fresh form generally considered as perishable vegetables, nuts, or fruits, excluding citrus fruits, whether or not packed in ice or held in cold storage, but does not include those perishable vegetables, nuts, and fruits which have been manufactured into articles of food of a different kind or character. The effects of the following operations may not be considered as changing a commodity into food of a different kind of character: water or steam blanching; shelling; chopping; color adding; curing; cutting; dicing; drying for the removal of surface moisture; fumigating; gassing; heating for necessary control; ripening; coloring; removal of seed, pits, stems, calyx, husks, pods, rinds, skins, peel, etc.; trimming; washing with or without chemicals; waxing; adding of sugar or other sweetening agents; adding ascorbic acids or other agents used to retard oxidation; or mixing of several kinds of sliced, chopped, or diced vegetables, nuts, or fruits for packaging in any type of containers or comparable methods of preparation.

[See Compact Edition, Volume 3 for text of 1(c)]

(d) "Handle" means buying or offering to buy, selling or offering to sell, or shipping for the purpose of selling, whether as owner, agent, or otherwise, any vegetables grown within the State of Texas. Persons buying or shipping vegetables for canning, processing or handling are defined as handlers.

[See Compact Edition, Volume 3 for text of 1(e) to 1(i)]

(j) "Commission merchant" shall include "contract dealer" and "dealer" and means any person who purchases vegetables on credit, or who takes vegetables into his possession for consignment or handling on behalf of the producer or owner, or in any manner which does not require nor result in the payment to the producer, seller or consignor of the full purchase price in current money of the United States at the time of delivery to such commission merchant or when title passes from such producer, seller or consignor to such commission merchant.

[See Compact Edition, Volume 3 for text of 2 to 5]

Produce Recovery Fund and Board

Sec. 6. (a) There is established a special fund with the State Treasurer to be known as the Produce Recovery Fund and to be administered by the Commissioner, without appropriation, for the payment of claims against commission merchants and dealers and for administration of the claims process under both this Act and Chapter 236, Acts of the 45th Legislature, Regular Session, 1937, as amended (Article 118b, Vernon's Texas Civil Statutes). No more than ten percent (10%) of the fund may be expended during any one year for administration of the claims process.

(b) There is established the Produce Recovery Fund Board. The board consists of three members appointed by the Governor with the advice and consent of the Senate. One member appointed shall be a producer, one shall be a commission merchant licensed under this Act or Chapter 236, Acts of the 45th Legislature, Regular Session, 1937, as amended (Article 118b, Vernon's Texas Civil Statutes), and one shall be a member of the general public. Each member must reside in a different state senatorial district. In making the initial appointments, the Governor shall designate that the term of one member expires in 1979, that one expires in 1981, and that one expires in 1983. Thereafter, members serve for staggered terms of six years. The terms of office for members expire January 31 of odd-numbered years. Members of the board are entitled to per diem and reimbursement for actual expenses incurred while carrying out their duties.

(c) The Produce Recovery Fund Board shall:

(1) advise the Commissioner on all matters pertaining to the Produce Recovery Fund, including the fund's budget and the revenues necessary to accomplish the purposes of the fund;

(2) advise the Commissioner in the promulgation of rules relating to the payment of claims from the fund and to the administration of the fund; and

(3) conduct adjudicative hearings, with a quorum of the board members present, on disputed claims presented for payment from the fund.

(d) All commission merchants, retailers whose annual sales of vegetables and citrus fruit comprise

seventy-five percent (75%) or more of the retailer's total sales and whose annual purchases of vegetables and citrus fruit exceed Fifteen Thousand Dollars (\$15,000) a year, and retailers who employ buying agents who buy directly from producers shall, in addition to the license fee herein prescribed, deliver to the Commissioner, together with their application for license, a fee of Two Hundred Dollars (\$200). All retailers whose annual sales of vegetables and citrus fruit comprise seventy-five percent (75%) or more of the retailer's total sales and whose annual purchases of vegetables and citrus fruit are less than Fifteen Thousand Dollars (\$15,000) shall pay a fee of Fifty Dollars (\$50) in addition to the license fee required in Section 5 of this Act. The fee must be paid annually at the time application is made for licensing, and the Commissioner may not issue a license to a person who fails to pay the fee. All fees collected under this Section shall be paid into the Produce Recovery Fund.

(e) A person with whom a commission merchant deals in purchasing, handling, selling, and accounting for sales of vegetables and who is aggrieved by an action of that commission merchant as the result of a violation of terms or conditions of a contract made by that commission merchant may initiate a claim against the Produce Recovery Fund in accordance with the provisions of this Section. The aggrieved party must file with the Commissioner a sworn complaint against the commission merchant and a filing fee of Fifteen Dollars (\$15). The filing fee shall be refunded if the aggrieved party is awarded recovery from the fund. The Commissioner shall conduct an investigation of the complaint and shall determine the amount due the aggrieved party. If the amount determined by the Commissioner is not disputed by the merchant or by the aggrieved party, the Commissioner shall pay the claim, within the limits prescribed in this Section, from the Produce Recovery Fund. If the amount is disputed, the Produce Recovery Fund Board shall conduct a hearing on the claim in the manner provided for contested cases under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). After a hearing on the disputed amount, the board shall determine the amount due the aggrieved party and the Commissioner shall pay the aggrieved party that amount, within the limits prescribed in this Section, from the Produce Recovery Fund. A party not satisfied with the decision of the board may appeal that decision in the manner provided under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(f) In making payments from the Produce Recovery Fund, the Commissioner may not pay the aggrieved party more than sixty percent (60%) of any claim for more than One Hundred Dollars (\$100). The total payment of all claims arising from the

same transaction may not exceed Ten Thousand Dollars (\$10,000). The total payment of claims against a single commission merchant may not exceed Twenty-five Thousand Dollars (\$25,000) in any one year.

(g) If the Commissioner pays a claim against a commission merchant, the Commissioner is subrogated to all rights of the aggrieved party against that merchant to the extent of the amount paid to the aggrieved party.

(h) If the Commissioner pays a claim against a commission merchant, the merchant must either reimburse the fund immediately or agree in writing to reimburse the fund on a schedule to be determined by rule of the Commissioner. In addition, the commission merchant must either pay the aggrieved party immediately the amount due him or agree in writing to pay the aggrieved party on a schedule to be determined by rule of the Commissioner. The payments made to the fund and to the aggrieved party shall include interest at the rate of eight percent (8%) a year. If the commission merchant does not reimburse the fund or pay the aggrieved party, or does not agree in writing to do so, or defaults on a scheduled payment, the Commissioner shall cancel his license and may not issue a new license to that commission merchant for four years from the date of cancellation. If the merchant is a corporation, no officer or director, and no person owning more than twenty-five percent (25%) of the stock in that corporation, may be licensed as a commission merchant under this Act during the four-year period in which the corporation is ineligible for licensing. An individual or corporation who is ineligible for licensing under this Act is ineligible for licensing as a commission merchant, dealer, or contract dealer under Chapter 236, Acts of the 45th Legislature, Regular Session, 1937, as amended (Article 118b, Vernon's Texas Civil Statutes), during the period of ineligibility.

(i) The Commissioner may not pay any claim against a commission merchant who was not licensed at the time of the transaction on which the claim is based and he may not pay any claim against a cash dealer.

(j) Payments from the Produce Recovery Fund during a fiscal year may not exceed the amount of payments into the fund during that fiscal year, except that surplus funds remaining at the end of each fiscal year may be credited to the funds available for the payment of claims during any succeeding year.

(k) With the advice of the Produce Recovery Fund Board, the Commissioner shall promulgate rules, consistent with this Act, for the payment of claims from the Produce Recovery Fund.

Cancellation of License; Complaint; Hearing and Determination

Sec. 7. Any license issued under the provisions of this Act shall remain in full force and effect for a period of twelve (12) months from and after the date of issuance thereof unless said permit shall be cancelled in the manner hereinafter provided and pursuant to the proceedings hereinafter required, to wit: (a) any party aggrieved, injured or damaged by virtue of any violations of the terms and provisions of this Act by any licensee or by the transporting or buying agent of any licensee hereunder, may file with the Commissioner or his duly authorized agent or employee a verified complaint, setting out the specific violations complained of. The complaint must be filed within twelve (12) months from the date of the act that injured the complaining party.

(b) The Commissioner shall set a date not more than ten (10) days from the receipt of such complaint for the hearing thereof; and notify the person complained of, furnishing him with a copy of such complaint, by registered mail to the last known address of such person.

(c) The Commissioner may, at his discretion, recess the hearing provided for in this Section from day to day if in his discretion the ends of justice demand such continuance; for the purpose of said hearings the Commissioner shall have the authority to summon witnesses; to inquire into matters of fact; to administer oaths, and to issue the subpoena duces tecum, for the purpose of obtaining any books, records, instruments, or writing, and other papers pertinent to the investigation at hand.

(d) Upon the conclusion of said hearing and the introduction of all evidence by the respective parties thereto, the Commissioner shall make his decision on the basis of the evidence introduced therein, and shall, if the evidence warrants, issue his order canceling the license of the person complained of.

[See Compact Edition, Volume 3 for text of 8 and 9]

Publication of List of Licenses

Sec. 9a. The Commissioner may publish as often as he considers necessary a list in pamphlet form of all persons licensed under this Act.

[See Compact Edition, Volume 3 for text of 10 and 11]

Expiration and Renewal of License; Identification Cards; Contents; Return

Sec. 12. (a) Any license issued hereunder will authorize the licensee and none other, to engage in the business as a dealer for one year from date of issuance, at which time said license shall expire and become null and void. Any license issued to applicant under the provisions of this Act, which expired by its own terms, may be renewed upon completion

of a renewal application and payment to the Commissioner of Agriculture of the proper license fee as provided for the original issuance thereof. Said license and the identification cards hereinafter provided shall not be assignable and any attempt to assign same shall void such license or identification card. Upon application to the Commissioner by any licensed dealer, a reasonable number of "buying agent" and "transporting agent" identification cards may be issued and credited to such dealer, under such rules and regulations as said Commissioner may prescribe, and said Commissioner is hereby empowered to charge a fee not to exceed One Dollar (\$1) for each card so issued.

[See Compact Edition, Volume 3 for text of 12(b) to 13]

Investigation of Violations; Hearings; Orders

Sec. 14. (a) For the purpose of enforcing the provisions of this Act, the Commissioner shall, either upon his own initiative or upon the receipt of a properly verified complaint, investigate all alleged violations of this Act and for the purpose of making such investigation, he shall have, at all times, free and unimpeded access to all books, records, buildings, yards, warehouses, storage, and transportation and other facilities or places in which any vegetables are kept, stored, handled, processed or transported, and in furtherance of such investigation either the Commissioner in person or through his authorized representatives, may examine any portion of the ledger, books, accounts, memorandum, documents, scales, measures and other matters, objects or persons pertinent to such alleged violation under investigation. The Commissioner shall take such action and hold such public hearing as in his judgment are shown to be necessary after such investigations, and shall take the proper action with reference to the cancellation or suspension of the license of any dealer hereunder shown to have been guilty of a violation of the terms of this Act. Such hearings shall be held in the county where violations are alleged to have occurred. Any order made by the Commissioner with reference to the revocation or cancellation of any license granted under the provisions of this Act, shall be subject to review by a court of competent jurisdiction.

(b) If a person who has received at least 15 days' notice of an order of the Commissioner refuses to comply with that order, the Commissioner may seek temporary or permanent relief to require compliance. The district court has jurisdiction to grant this relief.

[See Compact Edition, Volume 3 for text of 15 to 18]

Offenses and Violations; Fines

Sec. 19. From and after the effective date of this Act any person who shall:

(a) Act as a dealer or handler, or both, without first obtaining a license to act as such dealer or handler, or both;

(b) Act or assume to act as a transporting agent or buying agent, without first obtaining from the Commissioner a license or a buying agent's or transporting agent's card as by the terms and provisions of this Act required, shall be fined not to exceed Five Hundred Dollars (\$500), and each day upon which any dealer, handler, buying agent, or transporting agent, shall act or assume to act in violation of the requirements of this Act shall constitute a separate offense.

(1) Any buying or transporting agent who ceases to be employed by, or the agent of the dealer or handler to whom such buying agent's or transporting agent's cards were issued and who fails and refuses on the termination of such employment to turn over to the Commissioner of Agriculture the buying or transporting agent's cards issued to such persons shall be fined not to exceed Five Hundred Dollars (\$500).

(2) Any person who shall act or assume to act as a commission merchant without first paying to the Commissioner of Agriculture of the State of Texas the fee required in Section 6 of this Act, and obtaining a license to act as such commission merchant shall be fined not to exceed Five Hundred Dollars (\$500), and each day upon which such person shall act or assume to act as such commission merchant shall constitute a separate offense.

(3) Any licensee or any transporting agent or buying agent of any licensee under this Act who shall violate any of the terms and provisions of this Act shall be fined not to exceed Five Hundred Dollars (\$500).

(c) Fifty percent (50%) of all fines collected under this Section shall be deposited in the Produce Recovery Fund. The clerk of the county court or county court-at-law and the custodian of county treasury funds shall keep separate records of all fines collected under this Section. On the first day of each January, April, July, and October, the custodian of funds in the county treasury shall remit this portion of the fines collected to the comptroller of public accounts, and the comptroller shall deposit that amount in the Produce Recovery Fund.

Cash Dealers; License

Sec. 20. Any person who purchases vegetables only from dealers duly qualified as such under this Act, and pays therefor prior to or at the time of delivery or taking possession of such vegetables so purchased, in current money of the United States, shall be exempt from paying the fee provided for in Section 6 of this Act and such person shall indicate on his application for license that he desires to

operate as a cash buyer, buying only from dealers duly qualified as such under this Act, in accordance with the provisions of this Section and thereupon such person shall be entitled to a license as a cash dealer, purchasing only from dealers duly qualified under this Act, upon the payment by such applicant of the license fee as required under this Act. Such dealer shall be subject to all the pertinent provisions of this Act. Any violation of this Section shall be deemed a misdemeanor and be punishable, as provided in Section 19 of this Act.

Any producer handling or dealing in his own products exclusively, shall be licensed, upon application, by the Commissioner of Agriculture without charge and without being required to pay the fee required under Section 6 of this Act.

Citrus Fruit Dealers; License Fees

Sec. 21. Any person who comes within any of the classifications set out in Chapter 236, Acts of the 45th Legislature, Regular Session, 1937, as amended (Article 118b, Vernon's Texas Civil Statutes), wherein a payment of either Two Hundred Dollars (\$200) or Fifty Dollars (\$50) to the Produce Recovery Fund is required of him, shall be permitted to make only one payment of either Two Hundred and Fifty Dollars (\$250) or Seventy-Five Dollars (\$75) to the fund and shall be liable for only one license fee of Twenty-five Dollars (\$25), and his license shall reflect the fact that he is licensed thereby to handle both citrus fruits and vegetables.

Applicability to Retailer of Vegetables

Sec. 21a. This Act does not apply to a retailer of vegetables except a retailer whose annual sales of vegetables and citrus fruit comprise seventy-five percent (75%) or more of his total sales or who employs a buying agent who buys directly from a producer.

[See Compact Edition, Volume 3 for text of 22 to 24]

[Acts 1977, 65th Leg., p. 1042, ch. 386, §§ 1 to 10, eff. Sept. 1, 1977.]

Sections 20 to 22 of the 1977 amendatory act provide:

"Sec. 20. A bond of a commission merchant, dealer, or contract dealer required under Chapter 218, Acts of the 58th Legislature, 1963, as amended (Article 1287-3, Vernon's Texas Civil Statutes), or under Chapter 236, Acts of the 45th Legislature, Regular Session, 1937, as amended (Article 118b, Vernon's Texas Civil Statutes), and issued prior to the effective date of this Act continues in effect until the expiration of the liability provided for in the bonding contract. After the expiration of the liability under which the commission merchant, dealer, or contract dealer is operating on the effective date of this Act, that merchant or dealer must pay the required fee to the Produce Recovery Fund in order to be licensed.

"Sec. 21. Notwithstanding any other provision of law, for the first fiscal year that this Act is in effect all license fees collected under the provisions of Chapter 218, Acts of the 58th Legislature, 1963, as amended (Article 1287-3, Vernon's Texas Civil Statutes), or of Chapter 236, Acts of the 45th Legislature, Regular Session, 1937, as amended (Article 118b, Vernon's Texas Civil Statutes), shall be deposited in the Produce Recovery Fund. Thereafter, license fees shall be deposited as provided for in those acts.

"Sec. 22. This Act takes effect September 1, 1977."

TITLE 31

CONVEYANCES

Article

1293b. Attorney's Fees in Breach of Restrictive Covenant Actions.
1293c. Invalidity of Deed Restriction Requiring Wood Shingles.

Art. 1293b. Attorney's Fees in Breach of Restrictive Covenant Actions

(a) In an action based on breach of a restrictive covenant pertaining to real property, the court shall allow a prevailing party who asserted the action for breach of a restrictive covenant, reasonable attorney's fees, in addition to his costs and claim.

(b) To determine reasonable attorney's fees, the court shall consider:

- (1) the time and labor required;
- (2) the novelty and difficulty of the questions;
- (3) the expertise, reputation, and ability of the attorney; and
- (4) any other factor.

[Acts 1977, 65th Leg., p. 2167, ch. 862, § 1, eff. Aug. 29, 1977.]

Art. 1293c. Invalidity of Deed Restriction Requiring Wood Shingles

To the extent that a deed restriction applicable to a structure on residential property requires the use of a wood shingle roof, it is void.

[Acts 1979, 66th Leg., p. 2184, ch. 833, § 1, eff. Aug. 27, 1979.]

Art. 1301a. Condominium Act

Repeal

Sections 17 and 22 of this article are repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

TITLE 33

COUNTIES AND COUNTY SEATS

CHAPTER THREE. CORPORATE RIGHTS AND POWERS

Article

1581g-2. County Industrial Commissions.

1581h. Unclaimed Funds in Custody of County or Precinct Officer.

Art. 1580. Agents to Contract for County

Counties of 74,000 or more

Acts 1939, 46th Leg., Spec.Laws, p. 602, § 1 as amended by Acts 1939, 46th Leg., Spec.Laws, p. 605, § 1; Acts 1947, 50th Leg., p. 491, ch. 288, § 1; Acts 1949, 51st Leg., p. 713, ch. 376, § 1; Acts 1955, 54th Leg., p. 815, ch. 302, § 1; Acts 1957, 55th Leg., p. 382, ch. 185, § 1; Acts 1959, 56th Leg., p. 913, ch. 418, § 1; Acts 1965, 59th Leg., p. 343, ch. 161, § 1; Acts 1969, 61st Leg., 2nd C.S., p. 166, ch. 24, § 1; Acts 1971, 62nd Leg., p. 2550, ch. 837, § 1; Acts 1975, 64th Leg., p. 748, ch. 294, § 1, read as follows:

"Section 1. (a) In all counties of this state having a population of seventy-four thousand (74,000) or more inhabitants according to the last preceding Federal Census, a majority of a Board composed of the judges of the District Courts and the County Judge of such county, may appoint a suitable person who shall act as the county purchasing agent for such county, who shall hold office, unless removed by said judges, for a period of two (2) years, or until his successor is appointed and qualified, who shall execute a bond in the sum of Five Thousand Dollars (\$5,000), payable to said county, for the faithful performance of his duties.

"(b) It shall be the duty of such agent to make all purchases for such county of all supplies, materials and equipment required or used by such county or by a subdivision, officer, or employee thereof, excepting such purchases as may by law be required to be made by competitive bid, and to contract for all repairs to property used by such county, its subdivisions, officers, and employees, except such as by law are required to be contracted for by competitive bid. All purchases made by such agent shall be paid for by warrants drawn by the county auditor on the county treasurer of such county as in the manner now provided by law.

"(c) It shall be unlawful for any person, firm or corporation, other than such purchasing agent, to purchase any supplies, materials and equipment for, or to contract for any repairs to property used by, such county or subdivision, officer, or employee thereof, and no warrant shall be drawn by the county auditor or honored by the county treasurer of any such county for any purchases except by such agent and those made by competitive bid as now provided by law; provided that the county purchasing agent may lawfully cooperate with the purchasing agent for any incorporated city or cities in such county to purchase such items in volume as may be necessary, and the County Treasurer shall honor any warrant drawn by the county auditor to reimburse any city purchasing agent making such purchase for the county.

"(d) On the first day of July of each year, such purchasing agent shall file with the county auditor and each of said judges of such county an inventory of all property of the county and of each subdivision, officer, or employee thereof then on hand, and it shall be the duty of the county auditor to examine carefully such inventory and to make an accounting for all property purchased or previously inventoried and not appearing in such inventory.

"(e) In order to prevent unnecessary purchases, such agent shall have authority and it shall be his duty to transfer county supplies, materials and equipment from any subdivision, department, officer, or employee of the county when such supplies, materials, or equipment are not actually needed or used by such division, department, officer, or employee that may require such supplies and materials, or the use of such equipment and such agent shall furnish to the county auditor a list of such supplies, materials, and equipment so transferred.

"(f) Such agent shall receive as compensation for his services a salary of not less than Five Thousand Dollars (\$5,000) per year, payable in equal monthly installments. The salary of the county purchasing agent shall be paid out of the General Fund and/or the Road and Bridge Fund of such county by warrants drawn on the county treasurer and shall be set by the Board as designated in Section 1(a) of this Act.

"(g) Said agent may have assistants to aid in the performance of his duties as county purchasing agent.

"(h) Said agent and said assistants may have such help, equipment, supplies and traveling expenses with the approval of said Board of Judges, as they may deem advisable, the amount of said expenses to be approved by said Board."

Art. 1581g-2. County Industrial Commissions

Establishment of Commission

Sec. 1. (a) The county judge of any county may appoint a County Industrial Commission.

(b) The commission shall consist of at least seven residents of the county who have exhibited interest in the industrial development of the county. Members serve for a term of two years.

Expenses

Sec. 2. The county may pay the necessary expenses of the commission.

Duties of Commission

Sec. 3. The County Industrial Commission shall investigate and undertake ways and means of promoting the prosperous development of business, industry, and commerce within the county. The commission shall promote the location and development of new businesses and industries in the county as well as the maintenance and expansion of existing businesses.

Cooperation with Texas Industrial Commission

Sec. 4. The commission shall cooperate with and utilize the services of the Texas Industrial Commission.

[Acts 1979, 66th Leg., p. 2017, ch. 791, §§ 1 to 4, eff. June 13, 1979.]

Art. 1581h. Unclaimed Funds in Custody of County or Precinct Officer

Definition

Sec. 1. In this Act, "person" includes any private legal entity.

Funds Covered by Act

Sec. 2. (a) This Act applies to any funds in the custody or control of a county or precinct officer, including a court, that a person is entitled to receive on demand. That a court must enter an order directing that the funds be paid or that an officer must perform a ministerial act for them to be paid does not remove the funds from the coverage of this Act.

(b) This Act does not apply to funds if a controversy exists about who is entitled to receive them, nor does it apply to a claim, the validity of which is unquestioned, if there is a controversy regarding the amount of funds a person is entitled to receive.

Notice

Sec. 3. (a) If a county or precinct officer has custody or control of funds covered by this Act and

the person entitled to receive them does not claim them within a reasonable time after becoming entitled to them, the officer shall give the person a written notice stating:

- (1) that the officer holds funds belonging to the person;
- (2) the amount of the funds; and
- (3) that the funds will become the property of the county if the person does not claim them within the time prescribed by law.

(b) Except as provided by Subsection (d) of this section, the officer shall send the notice to the person at the person's last known address by certified mail, delivery restricted to addressee. If no address is available or if the letter is returned undelivered, the officer shall publish the notice in a newspaper of general circulation in the county once a week for at least two consecutive weeks.

(c) The cost of postage, if notice is given by mail, and the cost of newspaper publication, if notice by publication is required, shall be deducted from the funds to which the notice applies. If notice by publication is given for more than one item of funds in a single advertisement, an equal share of the cost of the advertisement shall be paid from each item of funds.

(d) If the cost that would be assessable for giving notice equals or exceeds the funds to which the notice applies, notice shall be given by posting it at the courthouse at or near the place where notices of meetings of public bodies are posted. The notice must remain posted for at least 14 consecutive days.

Unclaimed Funds

Sec. 4. If funds are not claimed within four years after notice is given, they become the property of the county. The officer shall give them to the county treasurer, who shall deposit them in the county general fund.

Funds Held on Effective Date of Act

Sec. 5. (a) If on the effective date of this Act a county or precinct officer holds funds covered by this Act, the officer shall give the notice required by this Act within 90 days after the effective date of this Act.

(b) If the funds are not claimed on or before the 180th day after the date notice is given or the fourth anniversary of the date on which the person entitled to receive them became so entitled, whichever date is later, the funds become the property of the county and shall be given to the county treasurer. The treasurer shall deposit them in the county general fund.

(c) If the person entitled to receive the funds is a successor in interest of the person originally entitled to receive them, the four-year period prescribed by

Subsection (b) of this section runs from the date on which the person originally entitled to receive the funds became so entitled.

[Acts 1979, 66th Leg., p. 727, ch. 321, §§ 1 to 5, eff. Aug. 27, 1979.]

CHAPTER FIVE. COUNTY SEATS

Article

1605a-5. Auxiliary Courthouses and Facilities.

Art. 1605. Location of Offices

(a) The County Judge, Sheriff, Clerks of the District and of the County Courts, County Treasurer, Assessor and Collector of Taxes, County Surveyor and County Attorney of the several counties of this State, shall keep their offices at the county seats of their respective counties; provided, however, that in all counties having a city or cities, other than the county seats, within their boundaries, having a population of five thousand (5,000) and over, and in counties of over three hundred fifty thousand (350,000), according to the last Federal Census, the Assessor and Collector of Taxes when authorized by order of the Commissioners Court may maintain a branch office in said city or cities, and may appoint one or more Deputies for said offices, and the salaries to be paid said Deputies together with the office rent and other expenses incidental to maintaining said offices shall be considered as a part of the necessary expenses of the Assessor and Collector of Taxes and shall be paid in the manner now provided by law for the payment of the expenses of the Assessor and Collector of Taxes; and provided further that in all counties having a population of more than seventy thousand (70,000), according to the last Federal Census, and containing one or more cities or towns, other than the county seat, which has in excess of one thousand (1,000) inhabitants, according to the last Federal Census, said Tax Assessor and Collector with the consent and approval of the Commissioners Court may maintain a branch office and may appoint a Deputy Tax Collector in each such town or city, who shall have the right to collect taxes from all persons who desire to pay their taxes to him, and to issue a valid receipt therefor. Such Deputy shall enter into such bond, payable to the County Judge of the County, as the Tax Assessor and Collector and Commissioners Court of the county may require. The period of time such branch offices shall be maintained, and the salary of such Deputy Collector and the period of time he shall hold such office shall be fixed by the Commissioners Court and such Deputy Collector shall be subject to all of the terms and provisions of the law relating to Deputy Tax Collectors. The Tax Collector shall remain liable on his bonds for all taxes collected by such Deputy, and nothing herein shall be construed as a limitation on the liability of the bonds of either the Tax Collector or such Deputy. Nothing contained herein shall be

construed as making it mandatory upon the Assessor and Collector of Taxes and the Commissioners Courts of such counties to maintain such branch offices and appoint such Deputies, but the establishment of such branch offices and the appointment shall wholly be within the discretion of the Commissioners Courts of such counties. When such branch office or offices are established and a Deputy or Deputies are appointed hereunder, the salary or salaries to be paid and expense necessary to maintain said office or offices shall be considered as a part of the necessary expenses of the Assessor and Collector of Taxes, and shall be paid as now provided by law for the payment of the expenses of the Assessor and Collector of Taxes.

(b) If any branch office is established under this Article or under any other law permitting the establishing of subcourthouses, office buildings, or branch offices and if the Assessor and Collector of Taxes maintains at least one (1) full-time, permanent employee at the subcourthouse, office building, or branch office, boat certificates of number and boat and outboard motor certificates of title shall be issued or the applications for those certificates shall be accepted as provided by Subchapters B and B-1, Chapter 31, Parks and Wildlife Code, as amended,¹ at the subcourthouse, office building, or branch office.

[Amended by Acts 1979, 66th Leg., p. 1354, ch. 607, § 6, eff. Aug. 27, 1979.]

¹ Parks and Wildlife Code, §§ 31.021 et seq. and 31.045 et seq.

Art. 1605a. Branch Office Buildings in Cities of 15,000 or More Outside County Seat

Sec. 1. The Commissioners Court of each county of this State shall have the power and the authority to provide, maintain, and repair an office building and/or jail in one or more cities, other than the county seat, having a population of Fifteen Thousand (15,000) or more, according to the last preceding federal census in the same manner as the Commissioners Court may now provide for and maintain a courthouse and jail at the county seat, and upon the acquisition or construction of such office building, the Commissioners Court may authorize, in the same manner as authorized by Article 1605, the maintaining of branch offices in each of said cities, except the District Clerk, County and District Judges, County Clerk, and County Treasurer, provided that all officers shall keep all original records at the county seat, and deputies may be provided as authorized in Article 1605. The Commissioners Court shall have the care and custody of such buildings and may place such limitations as it may see fit on the authorization and maintenance of branch offices.

Sec. 2. Said office building and/or jail may be provided for, maintained and repaired by the is-

suance of bonds as is provided by Chapters 1 and 2, Title 22, Revised Civil Statutes, 1925, and all amendments thereto,¹ or to provide, maintain, the repair the same through the issuance of evidences of indebtedness in the same manner as courthouses and jails at the county seats, and the taxes may be levied therefor in the same manner and subject to the same limitations as for courthouses and jails at the county seat; provided, however, that the cost of any such office building and/or jail shall not exceed more than two percent of the taxable values of the county for the last preceding year.

Sec. 3. All acts heretofore taken and proceedings heretofore adopted by the Commissioners Court in any county providing for the purchasing of a site and erecting and equipping an office building for county officers in any city other than the county seat of such county, all evidences of indebtedness heretofore authorized to finance the same, and all tax levies heretofore made in behalf of such evidences of indebtedness are in all things confirmed, approved and validated; provided, however, nothing in this Act shall validate any evidence of indebtedness the validity of which is in question in a court of competent jurisdiction on the effective date of this Act if the ultimate decision of the court is against the validity thereof.

[Amended by Acts 1975, 64th Leg., p. 645, ch. 266, § 1, eff. May 20, 1975.]

¹ Article 701 et seq.

Art. 1605a-5. Auxiliary Courthouses and Facilities

Auxiliary Courthouses and Facilities

Sec. 1. (a) The commissioners court of a county may provide one or more of the following facilities in any part of the city, town, or village designated as the county seat, including a part of the municipality added to the municipality after it became the county seat, but not including a part of the municipality that is outside the county:

- (1) auxiliary courthouses;
- (2) jails;
- (3) parking garages;
- (4) district, county, and precinct administrative and judicial offices and courtrooms; or
- (5) any facility related to the administration of civil or criminal justice.

(b) The authority of the commissioners court to provide a facility under this Act includes the authority to acquire necessary sites and to purchase, construct, equip, or enlarge one or more facilities, as well as to repair and maintain the facilities provided.

(c) The commissioners court by order may designate a facility acquired or constructed under this Act as a courthouse of the county, but an auxiliary

facility provided under this Act may not replace the courthouse at the county seat.

Holding of Court

Sec. 2. (a) Any district, county, or other court required by law to hold its terms at the county seat may hold its terms at a court facility provided under this Act, even though the facility is located in a part of the municipality designated as the county seat that was added to the municipality after it became the county seat.

(b) This section does not apply to the terms of the commissioners court.

Offices

Sec. 3. Any district, county, or precinct officer who is required by law to maintain an office at the county seat may maintain an office and keep official records at a facility provided under this Act, but the officer must continue to maintain an office at the county seat.

Auxiliary Courts within the County

Sec. 4. In addition to auxiliary courthouses and facilities within a municipality designated as the county seat, the commissioners court of a county may authorize specific geographic locations within the county and outside the limits of a municipality designated as the county seat as auxiliary courts for purposes of conducting nonjury proceedings and may designate those locations as auxiliary county seats for such purposes.

Previous Actions Validated

Sec. 5. If before the effective date of this Act the commissioners court of a county undertook to provide a facility covered by this Act or to acquire land for a facility covered by this Act, and the location of the proposed facility or the land was in a part of the city, town, or village designated as the county seat that was not a part of the municipality when it was designated as the county seat, all governmental acts and proceedings of the commissioners court relating to that undertaking, including any evidences of indebtedness authorized and any tax levies made for the evidences of indebtedness, are validated. This section does not apply to any matter that, on the effective date of this Act:

- (1) is involved in litigation, if the litigation ultimately results in the matter being held invalid by a final judgment of a court of competent jurisdiction; or
- (2) has been held invalid by a final judgment of a court of jurisdiction.

Effect on Other Laws

Sec. 6. (a) This Act does not limit authority of a commissioners court under any other law with regard to providing facilities of the type covered by this Act.

(b) To the extent this Act conflicts with Article 1602 or 1605, Revised Civil Statutes of Texas, 1925, as amended, or any other statute, this Act prevails. [Acts 1979, 66th Leg., p. 382, ch. 174, §§ 1 to 6, eff. May 15, 1979.]

CHAPTER SEVEN. COUNTY HOME RULE

Art. 1606c. Office of County Fire Marshal

[See Compact Edition, Volume 3 for text of 1 to 6]

Right of Entry; Investigation of Dangerous Conditions; Order

Sec. 7. He shall have the authority to enter and examine any and all buildings or structures where a fire has occurred, in the performance of his duties of office, day or night, and examine any adjacent buildings or premises, but this authority shall be exercised with reason and discretion and with a minimum burden upon the persons living in said buildings. It shall be his duty when called upon, or when he has reason to believe that it is in the interest of safety and fire-prevention, to enter any premises and inspect the same, and if he find that because of inflammable substance being present, dangerous or dilapidated walls, ceilings or other parts of the structure existing, improper lighting, heating or other facilities being used that endanger life, health or safety, or if because of chimneys, wiring, flues, pipes, mains or stoves, or any substance he shall find stored in any building, he believes that the safety of said building or that of its occupants is endangered and that it will likely promote or cause fire or combustion, he shall be empowered to order the said situation rectified forthwith and the owner or occupant of the said structure shall comply with the orders of the said County Fire Marshal or shall be adjudged guilty of contempt of said order and of a Class B misdemeanor; and each recurring refusal to so rectify such conditions shall be deemed as a separate offense and violation of such order.

[See Compact Edition, Volume 3 for text of 8 and 9]

[Amended by Acts 1977, 65th Leg., p. 133, ch. 62, § 1, eff. Aug. 29, 1977.]

TITLE 34

COUNTY FINANCES

1. GENERAL PROVISIONS

Article

1644e. Fiscal Year.

1644f. Contracts for Deposit of Public Funds in Counties of Less Than 200,000.

2. COUNTY AUDITOR

1645e-3. Compensation of County Auditors in Counties of 90,000 to 97,500.

1645e-4. Compensation of Auditor in Rusk County.

1666b. Budget Officer in Certain Counties Over 1,200,000.

1. GENERAL PROVISIONS

Art. 1644e. Fiscal Year

Sec. 1. The commissioners court of a county at a regular meeting may adopt an order making the fiscal year of the county a one-year period beginning on October 1 of each year.

Sec. 2. The fiscal year of a county is a calendar year unless the commissioners court has adopted a fiscal year that begins on October 1 pursuant to Section 1 of this Act.

Sec. 3. If the commissioners court of a county adopts a fiscal year that begins on October 1, it may revert to a fiscal year based on a calendar year by adopting an order to that effect at a regular meeting.

Sec. 4. If a law prescribes a certain date or month each year for taking action with regard to a county budget, and the law is based on the assumption that the county fiscal year is a calendar year, in counties that have a fiscal year that begins on October 1 the law shall be construed as prescribing a date or month three months earlier than the date or month specified in the law.

[Acts 1975, 64th Leg., p. 1928, ch. 627, §§ 1 to 4, eff. Sept. 1, 1975.]

Art. 1644f. Contracts for Deposit of Public Funds in Counties of Less Than 200,000

The commissioners court of any county with a population of less than 200,000 is hereby authorized at the February regular term thereof to enter into a contract with any banking corporation, association, or individual banker in such county for the depositing of the public funds of such county in such bank or banks; provided, however, that such commissioners court is required at the February regular term thereof next following each general election to enter

into such contracts for the depositing of public funds. Notice that such contracts will be made by the commissioners court shall be published by and over the name of the county judge once each week for at least 20 days before the commencement of such term in some newspaper published in said county, and if no newspaper be published therein, then in any newspaper published in the nearest county. In addition thereto, notice shall be published by posting same at the courthouse door of said county.

[Acts 1979, 66th Leg., p. 1660, ch. 694, § 1, eff. Aug. 27, 1979.]

2. COUNTY AUDITOR

Art. 1645. Appointment in Certain Counties; Term of Office; Compensation

In any county having a population of 35,000 inhabitants or over according to the last preceding Federal Census, or having a tax valuation of \$35,000,000 or over according to the last approved tax rolls, there shall be appointed every two years an auditor of accounts and finances, the title of said office to be County Auditor, who shall hold his office for two years and who shall receive as compensation for his services an annual salary from the County General Fund of not more than the amount allowed or paid the Assessor-Collector of Taxes in his county, such salary of the County Auditor to be fixed and determined by the District Judge or District Judges making such appointment and having jurisdiction in the county, a majority ruling, said annual salary to be paid monthly out of the General Fund of the county. The action of the District Judge or District Judges in determining and fixing the salary of the County Auditor shall be made by order and recorded in the minutes of the District Court of the county and the Clerk thereof shall certify the same for observance to the Commissioners Court which shall cause the same to be recorded in its minutes.

[Amended by Acts 1979, 66th Leg., p. 870, ch. 395, § 1, eff. Aug. 27, 1979.]

Art. 1645e-3. Compensation of County Auditors in Counties of 90,000 to 97,500

In all counties with a population of more than 90,000 but not more than 97,500, according to the last preceding federal census, the annual salary of the county auditor shall be in an amount determined by the district judge or judges having authority to

appoint the county auditor, and shall not exceed the annual salary of the county judge.

[Acts 1975, 64th Leg., p. 1243, ch. 466, § 1, eff. June 19, 1975.]

Art. 1645e-4. Compensation of Auditor in Rusk County

The county auditor of Rusk County is entitled to compensation as determined by the district judge or judges having jurisdiction in the county, but the compensation may not exceed the total compensation the county judge receives from all sources.

[Acts 1977, 65th Leg., p. 1420, ch. 578, § 1, eff. Aug. 29, 1977.]

Art. 1650a. Mileage Expenses

The commissioners court may reimburse the county auditor for expenses incurred in traveling to and from the county seat in his personal automobile to perform his official duties and to attend conferences and seminars relating to the performance of his official duties. However, the commissioners court may not reimburse the auditor for expenses incurred in traveling between his personal residence and county office, or for expenses incurred in any other travel of a personal nature. The commissioners court by order shall fix the rate of reimbursement at a reasonable rate. Reimbursement shall be made monthly from the appropriate county funds on submission of sworn expense reports by the county auditor.

In all counties having a population of 1,500,000 or more according to the last preceding or any future federal census, the commissioners court may reimburse the county auditor and his assistants for expenses incurred in traveling to and from the county seat in their personal automobiles to perform official duties and to attend conferences and seminars relating to the performance of official duties. However, the commissioners court may not reimburse the auditor or his assistants for expenses incurred in traveling between their personal residence and county office, or for expenses incurred in any other travel of a personal nature. The commissioners court by order shall fix the rate of reimbursement at a reasonable rate. Reimbursement shall be made monthly from the appropriate county funds on submission of sworn expense reports by the county auditor and his assistants.

[Amended by Acts 1975, 64th Leg., p. 1190, ch. 447, § 1, eff. June 19, 1975; Acts 1979, 66th Leg., p. 1104, ch. 520, § 1, eff. Aug. 27, 1979.]

Art. 1651. General Duties

The Auditor shall have a general oversight of all the books and records of all the officers of the county, district or state, who may be authorized or required by law to receive or collect any money, funds, fees, or other property for the use of, or

belonging to, the county; and he shall see to the strict enforcement of the law governing county finances.

[Amended by Acts 1979, 66th Leg., p. 194, ch. 103, § 1, eff. Aug. 27, 1979.]

Art. 1659. Bids for Material

Supplies of every kind, road and bridge material, or any other material, for the use of said county, or any of its officers, departments, or institutions must be purchased on competitive bids, the contract to be awarded to the party who, in the judgment of the commissioners court, has submitted the lowest and best bid. The county auditor shall advertise the bidding at least once a week for two consecutive weeks in at least one newspaper published and circulated in the county. The advertisements shall state where the specifications are to be found, and shall give the time and place for receiving the bids. Publication of the first advertisement shall precede the last day for receiving bids by at least 14 days. All such competitive bids shall be kept on file by the county auditor as a part of the records of his office, and shall be subject to inspection by any one desiring to see them. Copies of all bids received shall be furnished by the county auditor to the county judge and to the commissioners court; and when the bids received are not satisfactory to the said judge or county commissioners, the auditor shall reject said bids and readvertise for new bids. In cases of emergency, purchases not in excess of \$1,000 may be made upon requisition to be approved by the commissioners court without advertising for competitive bids.

[Amended by Acts 1977, 65th Leg., p. 331, ch. 161, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1437, ch. 582, § 1, eff. Aug. 29, 1977.]

Art. 1659a. Counties of 800,000; Bids for Supplies or Materials; Advertisement; Filing

In all counties having a population of eight hundred thousand (800,000) or more, according to the last preceding or any future Federal Census, supplies of every kind, road and bridge material, or any other material, for the use of said county, or any of its officers, departments, or institutions must be purchased on competitive bids, the contract to be awarded to the party who, in the judgment of the Commissioners Court, has submitted the lowest and best bid. Where the total expenditure for any such purchase or any such contract shall exceed Two Thousand Dollars (\$2,000), advertisements for bids for such supplies and material, according to specifications giving in detail what is needed, shall be made by the county purchasing agent once each week for two (2) successive weeks in a daily newspaper published and circulated in the county. Such advertisements shall state where the specifications

are to be found, and shall state the time and place for receiving such bids. All bids shall be publicly opened on the day and time appointed. A copy of such competitive bids shall be kept on file after opening by the county auditor as a part of the records of his office, and shall be subject to inspection by anyone desiring to see them. All bids received shall be furnished by the county purchasing agent to the Commissioners Court; and when the bids received are not satisfactory to the Commissioners Court, the Commissioners Court shall reject that bid or bids and readvertise for new bids.

In the event of an emergency which precludes the obtaining of bids in accordance with the foregoing provisions, or in the case of a public calamity, where it becomes necessary to appropriate supplies or other materials to preserve the property of the county, or to relieve the necessity of its citizens, the Commissioners Court may by order specifically setting forth the nature of the emergency or public calamity permit the purchase of supplies, road and bridge materials, or any other materials without first taking bids in the manner described above.

All bids taken pursuant to the provisions of this article which shall exceed the amount of Two Thousand Dollars (\$2,000) may be secured by a certified check, cashiers check, or a bid bond, in the amount of 5 percent of the amount of the bid, payable to the county and conditioned in the case of a bid bond that the successful bidder will supply the materials or supplies described in the bid. In addition, if so described in the specifications to which the bid is directed, a bidder shall condition the bid bond which shall be required in the specifications upon the further condition that the successful bidder will enter into a performance bond for the supplying of the supplies, road and bridge materials, or any other materials, if awarded the contract for which the bid is submitted. The bond, if one is required by the Commissioners Court, shall be in a sum equal to the amount of money to be paid by the county under the contract and shall be executed by a surety company authorized to do business in Texas and having an agent within the county, and having a capital stock of \$100,000 or more. All bonds which may be tendered hereunder shall be filed with the office of the County Clerk.

[Amended by Acts 1975, 64th Leg., p. 1120, ch. 420, § 1, eff. June 19, 1975.]

Art. 1666a. Budget; Counties Over 225,000

Repeal of Conflicting Laws

Acts 1977, 65th Leg., p. 1278, ch. 500, classified as art. 1666b, and providing for a budget officer in certain counties over 1,200,000, provides in § 12 that to the extent that any provisions of the Act conflict with provisions in this

article, such provisions in this article are repealed to the extent of the conflict.

Art. 1666b. Budget Officer in Certain Counties Over 1,200,000

Authorization to Appoint

Sec. 1. In the preparation of the county budget, the commissioners court in counties having a population in excess of 1,200,000, but excluding any county with a city with more than 1,000,000 in population as shown by the last preceding United States Census may appoint a budget officer to prepare a county budget for the current fiscal and calendar year.

Abolition of Office

Sec. 2. A county which has established an office of county budget officer may abolish such office only by formal action of the commissioners court taken after February 1 and before June 1, at which time the county auditor shall assume all lawful responsibilities as the chief budget officer of the county.

Preparation of Budget

Sec. 3. Such budget shall be carefully itemized so as to make possible as clear a comparison as practicable between expenditures included in the proposed budget and actual expenditures for the same or similar purposes for the preceding year. The budget shall be so prepared as to show with reasonable accuracy each of the various projects for which appropriations are set up in the budget and the estimated amount of money carried in the budget for each of such projects.

Contents of Budget

Sec. 4. The county budget officer shall obtain from the county auditor the necessary information so that the budget will contain a complete financial statement of the county showing all outstanding obligations of the county, the cash on hand to the credit of every and each fund of the county government, the funds received from all sources during the previous year, the funds and revenue estimated by the auditor to be received from all sources during the previous year, the funds and revenue estimated by the auditor to be received from all sources during the ensuing year, together with a statement of all accounts and contracts on which sums are due to or by the county as of December 31 of the year preceding, except taxes and court costs.

Limitation on Payments; Budget Available for Public Inspection

Sec. 5. Until a budget has been adopted by the commissioners court, no payments shall be made during the current year except for emergencies and for obligations legally incurred prior to January 1 of such year for salaries, utilities, materials, and supplies. A copy of the budget shall be filed with the

clerk of the county court and the county auditor, and it shall be available for inspection to the public.

Public Hearings; Changes in Budget

Sec. 6. The commissioners court in each county shall provide for a public hearing on the county budget, which hearing shall take place on some date to be named by the commissioners court within seven calendar days after the filing of the budget and prior to January 31 of the current year. Public notice shall be given that on the date of said hearing the budget as prepared by the county budget officer will be considered by the commissioners court. Said notice shall name the hour, the date, and the place the hearing shall be conducted and shall be published once in a newspaper of general circulation in said county. Any taxpayer of such county shall have the right to be present and participate in said hearing. At the conclusion of the hearing, the budget as prepared by the county budget officer shall be acted upon by the commissioners court. The court shall have authority to make such changes in the budget as in its judgment the facts and the law warrant and the interest of the taxpayers demand, provided the amounts budgeted for current expenditures from the various funds of the county shall not exceed the balances in said funds as of January 1, plus the anticipated revenue for the current year for which the budget is made as estimated by the county auditor.

Filing of Budget Upon Final Approval

Sec. 7. Upon final approval of the budget by the commissioners court, a copy of such budget as approved shall be filed with the county auditor, the clerk of the court, and the state auditor, and no expenditures of the funds of the county shall thereafter be made except in strict compliance with said budget. Said court may upon proper application transfer an existing budget surplus during the year to a budget of like kind and fund, but no such transfer shall increase the total of the budget.

Obtaining Necessary Information

Sec. 8. In the preparation of the budget, the county budget officer shall have authority to require of any district, county, or precinct officer of the county such information as may be necessary to properly prepare the budget.

Assistance to Commissioners Court

Sec. 9. The county budget officer may also assist the commissioners court in the performance of their duties with regard to the efficiency and effectiveness of county operations.

Employment of Personnel

Sec. 10. The commissioners court of counties covered by this Act are hereby authorized to appoint and employ such other persons they deem necessary to assist the county budget officer in the performance of his duties.

County Auditor to Retain Certain Duties

Sec. 11. All duties heretofore conferred upon county auditors by Chapter 1, page 144, General Laws, Acts of the 46th Legislature, 1939, as amended (Article 1666a, Vernon's Texas Civil Statutes), not expressly conferred upon the county budget officer by this Act shall continue to be the duties of the county auditor and shall be performed by the county auditor.

Conflicting Provisions Repealed

Sec. 12. To the extent that any provisions of this Act conflict with provisions in Chapter 1, page 144, General Laws, Acts of the 46th Legislature, 1939, as amended (Article 1666a, Vernon's Texas Civil Statutes), concerning the preparation of the county budget, such provisions in Article 1666a, Vernon's Texas Civil Statutes, are repealed to the extent of the conflict.

[Acts 1977, 65th Leg., p. 1278, ch. 500, §§ 1 to 12, eff. Aug. 29, 1977.]

TITLE 35

COUNTY LIBRARIES

1. COUNTY FREE LIBRARIES

Article

1682a. Application of Sunset Act.

1. COUNTY FREE LIBRARIES

Art. 1682a. Application of Sunset Act

The State Board of Library Examiners is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished effective September 1, 1981.

[Added by Acts 1977, 65th Leg., p. 1836, ch. 735, § 2.030, eff. Aug. 29, 1977.]

¹ Article 5429k.

2. LAW LIBRARY

Arts. 1697 to 1702. Repealed by Acts 1977, 65th Leg., p. 271, ch. 131, § 2, eff. May 11, 1977

See, now, art. 1702h.

Arts. 1702a-1 to 1702b-5. Repealed by Acts 1977, 65th Leg., p. 271, ch. 131, § 2, eff. May 11, 1977

See, now, art. 1702h.

Arts. 1702c to 1702g. Repealed by Acts 1977, 65th Leg., p. 271, ch. 131, § 2, eff. May 11, 1977

See, now, art. 1702h.

Art. 1702h. County Law Libraries in All Counties

[See Compact Edition, Volume 3 for text of 1]

Establishment on Initiative of Commissioners
Court; Appropriations

Sec. 2. The Commissioners Court of any county may establish and provide for the maintenance of such County Law Library on its own initiative, and appropriate a sum not to exceed \$20,000 to establish properly such library, and shall appropriate each year such sum as may be necessary to properly maintain and operate such County Law Library, which shall be established, maintained and operated at the county seat.

[See Compact Edition, Volume 3 for text of 3]

Costs; Law Library Fund

Sec. 4. For the purpose of establishing County Law Libraries after the entry of such order, there shall be taxed, collected, and paid as other costs, a sum set by the Commissioners Court not to exceed \$10 in each civil case, except suits for delinquent taxes, hereafter filed in every county or district court; provided, however, that in no event shall the county be liable for said costs in any case. Such costs shall be collected by the clerks of the respective courts in said counties and paid by said clerks to the County Treasurer to be kept by said Treasurer in a separate fund to be known as the "County Law Library Fund." Such fund shall not be used for any other purpose.

[See Compact Edition, Volume 3 for text of 5
and 6]

Administration of Fund; Rules; Space and Shelving

Sec. 7. Such fund shall be administered by the Commissioners Court, or under its direction, for the purchase and lease of library materials, the maintenance of the Law Library, and the acquisition of all furniture, shelving and equipment necessary thereto, in a place convenient and accessible to the Judges and litigants of such county. The Commissioners Court shall provide suitable space for housing the law library and may, with the advice of the committee referred to in section 5 of this Act, use funds collected under this Act for the acquisition of such space. Priority in the use of such funds shall be given to providing books, periodicals, other library materials, and staff for the law library. The Commissioners Court of the counties affected by this Act shall make rules for the use of books in said library.

[See Compact Edition, Volume 3 for text of 8
and 9]

[Amended by Acts 1977, 65th Leg., p. 270, ch. 131, § 1, eff. May 11, 1977; Acts 1979, 66th Leg., p. 234, ch. 121, § 1, eff. May 9, 1979.]

Arts. 1702i, 1702j. Repealed by Acts 1977, 65th Leg., p. 271, ch. 131, § 2, eff. May 11, 1977

Prior to repeal, art. 1702j was amended by Acts 1975, 64th Leg., p. 1901, ch. 609, § 1.

See, now, art. 1702h.

TITLE 38

COURT OF CRIMINAL APPEALS

Article

1811aa. Application of Sunset Act.

Art. 1811. State Prosecuting Attorneys

The Court of Criminal Appeals shall appoint an attorney to represent the State in all proceedings before said Court, to be styled "State Prosecuting Attorney," who shall take and subscribe the official oath, hold office for a term of two (2) years and until his successor is appointed and qualified, and who shall have had at least five (5) years experience as a practicing attorney in this State in criminal cases. The State Prosecuting Attorney may also appoint one or more Assistant State Prosecuting Attorneys. Assistant State Prosecuting Attorneys shall have the same duties and the same term of

office as the State Prosecuting Attorney. For good cause, the Court of Criminal Appeals shall have power to remove from office State Prosecuting Attorneys.

[Amended by Acts 1977, 65th Leg., p. 675, ch. 256, § 1, eff. Aug. 29, 1977.]

Art. 1811aa. Application of Sunset Act

The office of State Prosecuting Attorney is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the office is abolished effective September 1, 1987.

[Added by Acts 1977, 65th Leg., p. 1852, ch. 735, § 2.142, eff. Aug. 29, 1977.]

¹ Article 5429k.

TITLE 39

COURTS OF CIVIL APPEALS

CHAPTER ONE. TERMS AND JURISDICTION

Article

1817b. Thirteenth Supreme Judicial District, Places Where Business Transacted.

Art. 1812. Membership

(a) Except as provided in Subsection (b) of this article, each Court of Civil Appeals shall consist of a Chief Justice and two Associate Justices. A majority shall be a quorum for the transaction of business, and the concurrence of two Justices shall be necessary to a decision.

(b) Each Court of Civil Appeals for the First, Fourteenth, and Fifth Supreme Judicial Districts shall consist of a Chief Justice and five Associate Justices and may sit in panels of not less than three Justices. Effective January 1, 1983, the Court of Civil Appeals for the Second Supreme Judicial District shall consist of a Chief Justice and five Associate Justices and may sit in panels of not less than three Justices. The concurrence of a majority of a panel is necessary for a decision.

(c) When additional Justices of a Court of Civil Appeals are elected and qualified, they shall draw lots for their terms of office, as provided by law for Justices of the Courts of Civil Appeals after the initial creation of such courts.

(d) A Justice of the Court of Civil Appeals may be assigned temporarily to another Court of Civil Appeals by the Chief Justice of the Supreme Court regardless of whether a vacancy exists in the Court of Civil Appeals to which he is assigned. A qualified retired Justice may be assigned to a Court of Civil Appeals for active service regardless of whether a vacancy exists.

[Amended by Acts 1977, 65th Leg., p. 1531, ch. 624, § 1.]

Section 2 of the 1977 amendatory act provided:
"This Act takes effect on approval by the qualified voters of this state of an amendment to the Texas Constitution providing that each court of civil appeals shall consist of a chief justice and not less than two associate justices."

S.J.R. No. 45 proposing such amendment was approved by the voters in an election held November 7, 1978.

Art. 1817b. Thirteenth Supreme Judicial District, Places Where Business Transacted

The Court of Civil Appeals for the Thirteenth Supreme Judicial District may transact its business at the county seat of any of the counties within its district, as the Court shall determine it necessary and convenient, providing that all cases originating

in Nueces County shall be heard and transacted in such county.

[Added by Acts 1975, 64th Leg., p. 2357, ch. 726, § 1, eff. Sept. 1, 1975.]

Section 2 of the 1975 Act provided: "All laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict."

CHAPTER TWO. CLERKS AND EMPLOYEES

Article

1831a. Thirteenth Supreme Judicial District; Reproduction Recording and Retention of Records.

1831b. Reproduction, Recording, and Retention of Records.

Art. 1831a. Thirteenth Supreme Judicial District; Reproduction Recording and Retention of Records

Plan for Reproduction

Sec. 1. The clerk of the court of civil appeals for the Thirteenth Supreme Judicial District may, pursuant to his duty to preserve:

- (1) all records certified to his court,
- (2) all papers relative thereto,
- (3) all orders and opinions of the judges of said court, and
- (4) all other documents of or proceedings in said court, provide a plan for the reproduction by microfilm or other process which correctly and legibly reproduces or which forms a medium of copying or reproducing all such records for which the said clerk is or may become responsible by law.

The plan shall be in writing and shall include provisions for maintenance, retention, security, and retrieval of all records so microfilmed or otherwise duplicated.

Requirements of Plan

Sec. 2. Any such plan shall provide for the following requirements:

- (1) All original instruments and records shall be recorded and released into the file system within a specified minimum time period after presentation to the clerk.
- (2) Original paper records may be used during the pendency of any proceeding.
- (3) The plan shall include setting standards for organizing, identifying, coding, and indexing so that the image produced during the microfilming

or other duplicating process can be certified as a true and correct copy of the original and may be retrieved rapidly.

(4) All materials used in the microfilming or other process which correctly and legibly reproduces or which forms a medium of copying or reproducing all records, as herein authorized, and all processes of development, fixation, and washing of said photographic duplicates shall be of quality approved for permanent photographic records by the United States Bureau of Standards.

(5) The plan shall provide for permanent retention of the records and shall provide security provisions to guard against physical loss, alterations, and deterioration.

Adoption of Plan

Sec. 3. The clerk may present such plan in writing to the justices of the court of civil appeals for the Thirteenth Supreme Judicial District. If a majority of such justices determine that the plan meets the requirements set forth in Section 2 of this Act, they shall so inform the clerk in writing, and the clerk may adopt the plan. The decision of the justices shall be entered in the minutes of said court, and thereafter all reproductions of original documents of said court made in accordance with the plan shall be considered to be the original records for all purposes and shall be so accepted by courts and administrative agencies in this state. All transcripts, exemplifications, copies, or reproductions on paper or on film of an image or images of any microfilmed or otherwise duplicated record shall be deemed to be certified copies of the original for all purposes.

Destruction of Original Records

Sec. 4. Upon certification of the clerk to the librarian of the state that all requirements have been met and are on record as provided by this plan, the clerk may destroy all records which have been filed with or left in the possession of the clerk in any hearing or proceeding in the court, including all original documents generated by the court in connection with said hearing or proceeding, after one year has elapsed following the time at which the judgment of said court of civil appeals has become final and times for appeal have expired without having perfected appeal, or mandate which is finally decisive of such matters has been issued, further providing, that after these requirements are reached and prior to actual destruction of the instruments and records by the clerk, any party or parties or the state librarian by petitioning the court may move for the return of such documents and records.

Repealer

Sec. 5. All laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict.

[Acts 1975, 64th Leg., p. 1364, ch. 520, §§ 1 to 5, eff. Sept. 1, 1975.]

Art. 1831b. Reproduction, Recording, and Retention of Records

Plan for Reproduction

Sec. 1. The clerks of the courts of civil appeals may, pursuant to their duty to preserve: (1) all records certified to their courts, (2) all papers relative thereto, (3) all orders and opinions of the judges of those courts, and (4) all other documents of or proceedings in those courts, provide a plan for the reproduction by microfilm or other process which correctly and legibly reproduces or which forms a medium of copying or reproducing all records for which the clerks are or may become responsible by law. The plan shall be in writing and shall include provisions for maintenance, retention, security, and retrieval of all records so microfilmed or otherwise duplicated.

Requirements of Plan

Sec. 2. The plan shall provide for the following requirements:

(1) All original instruments and records shall be recorded and released into the file system within a specified minimum time period after presentation to the clerks.

(2) Original paper records may be used during the pendency of any proceeding.

(3) The plan shall include setting standards for organizing, identifying, coding, and indexing so that the image produced during the microfilming or other duplicating process can be certified as a true and correct copy of the original and may be retrieved rapidly.

(4) All materials used in the microfilming or other process which correctly and legibly reproduces or which forms a medium of copying or reproducing all records as authorized by this Act, and all processes of development, fixation, and washing of the photographic duplicates shall be of quality approved for permanent photographic records by the United States Bureau of Standards.

(5) The plan shall provide for permanent retention of the records and shall provide security provisions to guard against physical loss, alterations, and deterioration.

Adoption of Plan

Sec. 3. The clerk or clerks may present the plan in writing to the justices of the court of civil appeals. If a majority of such justices determine that the plan meets the requirements set forth in Section 2 of this Act, they shall so inform the clerks in writing, and the clerks may adopt the plan. The decision of the justices shall be entered in the minutes of the court, and thereafter all reproductions of original documents of the court made in accordance with the plan shall be considered to be the original

records for all purposes and shall be so accepted by courts and administrative agencies in this state. All transcripts, exemplifications, copies, or reproductions on paper or on film of an image or images of any microfilmed or otherwise duplicated record shall be deemed to be certified copies of the original for all purposes.

Destruction of Original Records

Sec. 4. Upon certification of the clerk to the librarian of the state that all requirements have been met and are on record as provided by this plan, the clerk may destroy all records which have been filed with or left in the possession of the clerk in any hearing or proceeding in the court, including all

original documents generated by the court in connection with the hearing or proceeding, after one year has elapsed following the time at which the judgment of the court of civil appeals has become final and times for appeal have expired without having perfected appeal, or mandate which is finally decisive of such matters has been issued, further providing, that after these requirements are reached and prior to actual destruction of the instruments and records by the clerk, any party or parties or the state librarian by petitioning the court may move for the return of the documents and records.

[Acts 1977, 65th Leg., p. 342, ch. 169, §§ 1 to 4, eff. Aug. 29, 1977.]

TITLE 40

COURTS—DISTRICT

Chapter	Article
4A. Family District Courts	1926a
CHAPTER TWO. DISTRICT CLERK	

Article
1899b. Recording Proceedings of More Than One Court.

Art. 1897. Bond, Oath, and Insurance

Bond and Oath

Sec. 1. Each district clerk shall, before entering upon the duties of his office, give bond either with two or more good and sufficient sureties or with a surety company authorized to do business in Texas as a surety to be approved by the commissioners court in an amount equal to not less than \$5,000 nor less than 20 percent of the maximum amount of fees collected in any year during the previous term of office immediately preceding the term of office for which the bond is to be given, but in no event to exceed \$100,000, conditioned for the faithful discharge of the duties of his office. Said clerk shall also take and subscribe the official oath which shall be endorsed on the bond, and the bond and oath so taken and approved shall be filed and recorded in the office of the county clerk.

Deputies and Employees; Bond

Sec. 2. Each district clerk shall obtain a surety bond covering his deputy or a schedule surety bond or a blanket surety bond covering his deputies, if more than one, and all employees of his office. Each deputy and each employee shall be covered for the same conditions and in the same amount as the district clerk.

Beneficiaries of Bonds

Sec. 3. The bond covering the district clerk shall be made payable to the governor and the bond or bonds covering the deputies and the employees of the district clerk shall be made payable to the governor for the use and benefit of the district clerk.

Errors and Omissions Insurance

Sec. 4. Each district clerk shall obtain an errors and omissions insurance policy, covering the district clerk and the deputy or deputies of the district clerk against liabilities incurred through errors and omissions in the performance of the official duties of said district clerk and the deputy or deputies of said district clerk; with the amount of the policy being in an amount equal to a maximum amount of fees

collected in any year during the previous term of office immediately preceding the term of office for which said insurance policy is to be obtained, but in no event shall the amount of the policy be for less than \$10,000 or more than \$700,000.

Burglary, Theft, Robbery, etc. Insurance

Sec. 5. Each district clerk shall obtain an insurance policy to cover any loss due to burglary, theft, robbery, counterfeit currency, and destruction, with the amount of policy being in an amount not to exceed \$20,000.

Payment of Premiums

Sec. 6. The premiums for the bonds and the insurance policies required by this article to be given or to be obtained by the district clerk of each county shall be paid by the commissioners court of the county out of the general fund of the county. [Amended by Acts 1979, 66th Leg., p. 1506, ch. 650, § 1, eff. Aug. 27, 1979.]

Art. 1899b. Recording Proceedings of More Than One Court

Combining the Minutes: Civil and Criminal Separate

Sec. 1. (a) All district clerks who have duties in more than one district court are authorized to combine all the minutes of the civil business of the several courts into one record book.

(b) All aforesaid district clerks are also authorized to combine the criminal minutes in the same manner.

(c) The civil minutes are to be kept in a book separate from the criminal minutes.

Manner of Entry

Sec. 2. Entry of all business in the minutes of both the civil book and the criminal book are to be made sequentially, regardless of the district court from which the business originates.

[Added by Acts 1975, 64th Leg., p. 1183, ch. 441, § 1, eff. June 19, 1975.]

CHAPTER THREE. POWERS AND JURISDICTION

Article	
1916a.	Exchange of Benches by Judges of the 51st and 119th Judicial Districts.
1918a.	Court Coordinator System in Counties over 700,000.

Article

1918b. Masters in Suits Affecting Parent-Child Relationship and Certain Contempt Proceedings.

Art. 1907. Repealed by Acts 1975, 64th Leg., p. 2197, ch. 701, § 7, eff. June 21, 1975

See, now, Probate Code, § 5.

Art. 1911a. Contempt; Power of Courts; Penalties

[See Compact Edition, Volume 3 for text of 1 to 3]

Work-Release Sentence for Child Nonsupport

Sec. 4. Section 5, Article 42.03, Code of Criminal Procedure, 1965, as amended, applies when a person is punished by confinement for contempt of court for disobedience of court order to make periodic payments for the support of a child.

[Amended by Acts 1977, 65th Leg., p. 2076, ch. 827, § 2, eff. Aug. 29, 1977.]

Art. 1916a. Exchange of Benches by Judges of the 51st and 119th Judicial Districts

Sec. 1. The provisions of this Act authorize the exchange of benches without formal order by the judges of the 51st Judicial District and the 119th Judicial District and are applicable in each county in those districts, including the counties in which the districts do not overlap.

Sec. 2. The judges of those courts may, in their discretion, exchange benches from time to time, and any of the judges may, in his own courtroom, try and determine any case or proceeding pending in any of the other courts without having the case transferred, or may sit in any of the other courts and there hear and determine any case there pending, and each judgment and order shall be entered in the minutes of the court in which the case is pending. The judges may try different cases filed in the same court at the same time and each may occupy his own courtroom or the room of any other court. In case of absence, sickness, or disqualification of any of those judges, any of the other of those judges may hold court for him. Any of the judges may hear any part of any case or proceeding pending in any of those courts and determine the same or may hear and determine any question in any case, and any other of those judges may complete the hearing and render judgment in the case. Any of those judges may hear and determine motions, petitions for injunction, application for appointment of receivers, interventions, pleas of privilege, pleas in abatement, all dilatory pleas, motions for new trials and all preliminary matters, questions, and proceedings and may enter judgment or order thereon in the court in which the case is pending without having the case transferred to the court of the judge acting, and the judge in whose court the case is pending may thereafter proceed to hear, complete, and deter-

mine the case or other matter or any part thereof and render final judgment thereon. Any of the judges of those courts may issue restraining orders and injunctions returnable to any of the other judges or courts.

[Acts 1977, 65th Leg., p. 656, ch. 246, §§ 1, 2, eff. May 25, 1977.]

Art. 1918a. Court Coordinator System in Counties over 700,000

The criminal district courts and the district courts of general jurisdiction giving preference to criminal cases in counties with a population in excess of 700,000 according to the last preceding federal census may establish and maintain a court coordinator system. The district courts shall, by rule, designate the duties to be performed by the coordinators to improve criminal justice and expedite the processing of criminal cases through the district courts. The court coordinators in each county shall cooperate with administrative judges and state agencies having duties in the area of the operation of the courts to promote uniform and efficient administration of justice in the state. The court coordinators serve by appointment of the district courts and at the pleasure of the district courts, and shall receive reasonable compensation to be determined by the judges of those courts, not to exceed 70 percent of the salary paid by the state to the judges of those courts. The district courts may appoint appropriate staff and supporting personnel according to the needs of each local jurisdiction. The commissioners court of each county shall provide from the fines and fees collected by these courts the necessary funding for the court coordinator system on order and directive of the district courts to be served, provided that if said fines or fees are insufficient to provide the total funding for this program the county shall provide the additional funds needed.

[Acts 1975, 64th Leg., p. 589, ch. 240, § 1, eff. May 20, 1975.]

Art. 1918b. Masters in Suits Affecting Parent-Child Relationship and Certain Contempt Proceedings

Appointment of Master

Sec. 1. (a) The judge of a district court, court of domestic relations, or other court having jurisdiction of suits affecting the parent-child relationship under Title 2, Family Code, as amended,¹ may appoint a master to perform the duties authorized by this Act if the commissioners court of a county in which the court has jurisdiction authorizes the employment of a master. Except as provided by Subsection (d) of this section, the master shall be appointed by the judge and serves at the will of the judge.

(b) If the court exercises jurisdiction in more than one county, the master may serve only in a county in

which the commissioners court has authorized the master's appointment.

(c) If more than one district court, court of domestic relations, or other court having jurisdiction of suits affecting the parent-child relationship has jurisdiction in a county, the commissioners court may authorize the appointment of a master for each court or may authorize one or more masters to share service with two or more courts.

(d) If a master serves more than one court, the master's appointment must be made with the unanimous approval of all the judges under whom the master serves, and the master's services may be terminated by a majority vote of all the judges for whom the master serves.

¹ Family Code, § 11.01 et seq.

Qualifications of Master

Sec. 2. To be eligible for appointment as a master under this Act, a person must be a resident of Texas and must be licensed to practice law in this state.

Compensation of Master

Sec. 3. The master is entitled to a salary as determined by the commissioners court of the county in which he or she serves. If the master serves in more than one county, the master's salary shall be determined by agreement of the commissioners courts of the counties. The salary shall be paid from the county fund available for payment of officers' salaries.

Referral of Cases to Master

Sec. 4. (a) The judge of a court having a master appointed as provided in this Act may refer to the master any civil case involving motions:

(1) for contempt for the failure or refusal to pay child support, temporary support, or separate maintenance or for failure or refusal to comply with court orders concerning the possession of or access to children who have been the subjects of suits affecting the parent-child relationship; or

(2) to modify the decree in a suit affecting the parent-child relationship providing for the support, conservatorship, or possession of or access to a child.

(b) To refer a case to a master, the judge shall issue an order of referral specifying the duties of the master.

Powers of Master

Sec. 5. (a) Except as provided by Subsection (b) of this section, a master to whom a case is referred may:

- (1) conduct hearings;
- (2) hear evidence;
- (3) compel the production of relevant evidence;

(4) rule on the admissibility of evidence;

(5) issue summons for the appearance of witnesses;

(6) examine witnesses;

(7) swear witnesses for the hearing;

(8) make findings of fact on the evidence;

(9) formulate conclusions of law;

(10) recommend the judgment to be made in the case;

(11) regulate all proceedings in a hearing before the master; and

(12) do all acts and take all measures necessary and proper for the efficient performance of the duties required in the order of referral.

(b) The order of referral may limit the powers of the master and direct the master to report only on specific issues, do particular acts, or receive and report on evidence only. The order may set the time and place for the hearing, prescribe a closing date for the hearing, and provide for a date for the filing of the master's report.

Witnesses Appearing Before Master

Sec. 6. (a) A witness appearing before the master is subject to the penalties of perjury if the witness is duly sworn.

(b) If a witness after being duly summoned fails to appear or having appeared refuses to answer questions, on certification of the refusal to the referring court, the court may issue attachment against the witness and may fine or imprison the witness.

Findings; Notice

Sec. 7. On the conclusion of the hearing in each case, the master shall transmit to the referring judge all papers relating to the case, together with the findings and a statement that notice of the findings and of the right to a hearing before the judge has been given to all adult principals, minors, or parents, guardians, or custodians of any minor whose case has been heard by the master. This notice may be given at the hearing or otherwise as the referring court directs.

Action on Master's Report

Sec. 8. After the master's report is filed, the referring court may adopt, modify, correct, reject, or reverse the master's report or recommit it for further information, as the court may deem proper and necessary in the particular circumstances of the case. If judgment has been recommended, the court in its discretion may approve the recommendation and hear further evidence before rendition of judgment.

Hearing

Sec. 9. Adult principals or a minor child or his parents, guardians, or custodians are entitled to a

hearing by the judge of the referring court if within three days after receiving notice of the findings of the master they file a request with the court for a hearing. The referring court may allow the hearing at any time.

Decree Upon Adoption by Court

Sec. 10. If no hearing before the judge of the referring court is requested or the right to such hearing is waived, the findings and recommendations of the master become the decree of the court when adopted by an order of the judge.

Notice of Time and Place of Hearing

Sec. 11. Prior to the hearing by the master, the parties litigant shall be given due notice as provided by law of the time and place of the hearing.

Jury Trial

Sec. 12. In a proceeding in which a jury trial has been demanded, the master shall refer the case back to the referring court for a full hearing before the court and jury, subject to the usual rules of the court in such cases.

[Acts 1979, 66th Leg., p. 1771, ch. 719, §§ 1 to 12, eff. Aug. 27, 1979.]

Section 13 of the 1979 Act provided:

"In the event of the passage of S.B. No. 785 [vetoed] and H.B. No. 467, [this article] 66th Legislature, Regular Session, 1979, the provisions of S.B. No. 785 shall apply to the district courts in Dallas County."

CHAPTER FOUR A. FAMILY DISTRICT COURTS

Art. 1926a. Family District Court Act

SUBCHAPTER A. GENERAL PROVISIONS

Short Title

Sec. 1.01. This Act may be cited as the Family District Court Act.

Purpose

Sec. 1.02. (a) This Act substitutes district courts of general jurisdiction, to be called family district courts, for the existing domestic relations courts and special juvenile courts. It also restructures existing juvenile boards in certain counties and provides for the future creation and organization of juvenile boards in other counties. Subchapter A contains general provisions applicable to all family district courts, now or later created, and Subchapter B creates the new family district courts. Subchapter C contains temporary provisions.

(b) This Act is designed so that future legislatures may create new family district courts by adding a section to Subchapter B without repeating the general provisions of Subchapter A relating to jurisdiction, terms, personnel, facilities, and administration of all family district courts.

Jurisdiction

Sec. 1.03. (a) A family district court has the jurisdiction and power provided for district courts by the constitution and laws of this state. Its jurisdiction is concurrent with that of other district courts in the county in which it is located.

(b) A family district court shall have primary responsibility for cases involving family law matters. These matters include but are not limited to:

- (1) adoptions;
- (2) birth records;
- (3) divorce and marriage annulment;
- (4) child welfare, custody, support and reciprocal support, dependency, neglect, and delinquency;
- (5) parent and child; and
- (6) husband and wife.

(c) This Act does not limit the jurisdiction of other district courts nor relieve them of responsibility for handling cases involving family law matters.

Terms of Court

Sec. 1.04. The terms of a family district court begin on the first Monday in January and the first Monday in July of each year. Each term of court continues until the next succeeding term begins.

Judge

Sec. 1.05. (a) A family district court judge's qualifications and term of office are the same as those prescribed by the constitution and laws of this state for district judges. A family district court judge is elected in the same manner as a district judge.

(b) A family district court judge is entitled to the same compensation and allowances provided by the state and county for the other district judges in his county.

Court Officials, Personnel, and Facilities

Sec. 1.06. (a) Each family district court judge may appoint an official court reporter. The reporter must have the qualifications prescribed by law for that office and is entitled to the same compensation, fees, and allowances provided by law for other official court reporters in the county.

(b) The district attorney, criminal district attorney, or county attorney, and the sheriff and district clerk shall serve each family district court in his county in the same manner he serves the district court or courts of his county.

(c) The commissioners court of the county in which a family district court is located shall provide the physical facilities and the deputy clerks, bailiffs, and other personnel necessary to operate the family district court.

County Juvenile Board

Sec. 1.07. (a) Except as otherwise provided in this section, when a family district court is created in a county, that county's juvenile board is composed of the county judge, the family district court judge or judges, the district judge or judges whose jurisdiction includes the county, and the judges of all other courts in the county having jurisdiction over juvenile matters. Except in counties where there is only one family district court judge, the members of the juvenile board shall select a family district court judge to serve as chairman of the board. The juvenile board has the powers and duties prescribed by law.

(b) The juvenile board shall appoint a chief juvenile probation officer who shall serve as the chief administrative officer of the family district court at the pleasure of the juvenile board. Subject to approval of the juvenile board, the chief juvenile probation officer shall select as many assistant probation officers and other personnel as are necessary to perform the duties assigned him by the juvenile board.

(c) The commissioners court may compensate juvenile board members for their duties performed on the juvenile board beyond such compensation as is otherwise provided for by law, and this compensation is in addition to all other compensation paid by the state or county to district, family district, and county judges. On recommendation of the juvenile board, the commissioners court shall also:

- (1) fix the compensation of the chief juvenile probation officer and the members of his staff; and
- (2) provide the physical facilities necessary to operate the juvenile board.

(d) The creation of a family district court in a county also creates a juvenile board in that county if one does not exist.

(e) This Act does not affect the composition or organization of any juvenile board existing on the effective date of the Act, except that the judges of the courts of domestic relations and of the juvenile courts are replaced by the family district court judges.

Judicial Retirement

Sec. 1.08. (a) This section applies to each person serving as judge of a domestic relations court or a special juvenile court on the date on which the court was abolished by this Act and replaced with a family district court and to each person serving as judge of a district court or appellate court on the effective date of this Act but who formerly served as judge of a domestic relations court or special juvenile court abolished by this Act.

(b) Each judge, at his option, may pay into the State Treasury no less than six percent plus interest of that salary that would have been paid to him had he been paid by the state for his full tenure on any court of domestic relations or special juvenile court. Upon such payment and the compliance with the transfer herein provided the judge will be given full credit for such tenure toward state judicial retirement.

In addition, for such full credit to apply, any judge of the family district court, district court, or appellate court who elects to secure credit in the judicial retirement system pursuant to this section shall forfeit all rights to any county and district retirement system other than the reserves for the additional funds, if any, paid by the county to such judge over and above the amount of state salary paid to district judges by the state, for the tenure for which credit is sought. Such county and district retirement systems shall transfer to the judicial retirement system all sums credited to the account of such judge except the amount paid in for such additional salary, if any, whether paid by the judge or by the employer, plus accumulated interest thereon, in such county and district retirement system. Such sum paid into the judicial retirement system by any county and district retirement systems shall be first applied against the judges' required six percent payment herein set out and any remainder shall remain in the General Revenue Fund.

SUBCHAPTER B. CREATING FAMILY DISTRICT COURTS

300th District Court

Sec. 2.01. On the effective date specified in Section 3.02 of this Act, the 300th Judicial District is created. Its boundaries are coextensive with the boundaries of Brazoria County, and its court, which replaces the Court of Domestic Relations for Brazoria County, is the 300th District Court. The 300th District Court may be called the Family District Court for the 300th Judicial District.

301st District Court

Sec. 2.02. On the effective date specified in Section 3.02 of this Act, the 301st Judicial District is created. Its boundaries are coextensive with the boundaries of Dallas County, and its court, which replaces the Court of Domestic Relations for Dallas County, is the 301st District Court. The 301st District Court may be called the Family District Court for the 301st Judicial District.

302nd District Court

Sec. 2.03. On the effective date specified in Section 3.02 of this Act, the 302nd Judicial District is created. Its boundaries are coextensive with the boundaries of Dallas County, and its court, which

replaces the Court of Domestic Relations No. 2 for Dallas County, is the 302nd District Court. The 302nd District Court may be called the Family District Court for the 302nd Judicial District.

303rd District Court

Sec. 2.04. On the effective date specified in Section 3.02 of this Act, the 303rd Judicial District is created. Its boundaries are coextensive with the boundaries of Dallas County, and its court, which replaces the Court of Domestic Relations No. 3 for Dallas County, is the 303rd District Court. The 303rd District Court may be called the Family District Court for the 303rd Judicial District.

304th District Court

Sec. 2.05. On the effective date specified in Section 3.02 of this Act, the 304th Judicial District is created. Its boundaries are coextensive with the boundaries of Dallas County, and its court, which replaces the Juvenile Court of Dallas County, is the 304th District Court. The 304th District Court may be called the Family District Court for the 304th Judicial District.

305th District Court

Sec. 2.06. On the effective date specified in Section 3.02 of this Act, the 305th Judicial District is created. Its boundaries are coextensive with the boundaries of Dallas County, and its court, which replaces the Juvenile Court No. 2 of Dallas County, is the 305th District Court. The 305th District Court may be called the Family District Court for the 305th Judicial District.

306th District Court

Text of section as amended by Acts 1979, 66th Leg., p. 784, ch. 345, § 8

Sec. 2.07. On the effective date specified in Section 3.02 of this Act, the 306th Judicial District is created. Its boundaries are coextensive with the boundaries of Galveston County, and its court, which replaces the Court of Domestic Relations for Galveston County, is the 306th District Court. The 306th District Court may be called the Family District Court for the 306th Judicial District. All juvenile matters and proceedings in Galveston County shall be filed originally with the district clerk on the docket of the 306th District Court. Upon order of the judge of the 306th District Court, the district clerk shall transfer the juvenile matter or proceeding to the docket of the court designated therein. Whenever possible, the court which presides over the initial hearing shall maintain exclusive jurisdiction over the case until final disposition.

Text of section as amended by Acts 1979, 66th Leg., p. 1643, ch. 686, § 15

306th District Court

Sec. 2.07. On the effective date specified in Section 3.02 of this Act, the 306th Judicial District is created. Its boundaries are coextensive with the boundaries of Galveston County, and its court, which replaces the Court of Domestic Relations for Galveston County, is the 306th District Court. The 306th District Court may be called the Family District Court for the 306th Judicial District. All juvenile matters and proceedings in Galveston County shall be filed originally with the district clerk on the docket of the 306th District Court. The district clerk shall transfer juvenile matters and proceedings to the other courts so that the County Courts Nos. 1 and 2, the Probate and County Court and the 306th District Court will rotate trying all juvenile cases and holding detention hearings and other associated matters during a three-month period of each year, beginning with the County Court No. 1 during the first quarter of each year, the County Court No. 2 during the second quarter, the Probate and County Court during the third quarter, and the 306th District Court during the fourth quarter, except that the judge of the 306th District Court upon his own order may retain jurisdiction of or transfer to one of the other courts, that is, County Courts Nos. 1 and 2 and the Probate and County Court, any such case as the judge of the 306th District Court may determine serves the needs of justice.

Whenever possible, the court which presides over the initial hearing shall maintain exclusive jurisdiction over the case until final disposition.

307th District Court

Sec. 2.08. On the effective date specified in Section 3.02 of this Act, the 307th Judicial District is created. Its boundaries are coextensive with the boundaries of Gregg County, and its court, which replaces the Court of Domestic Relations for Gregg County, is the 307th District Court. The 307th District Court may be called the Family District Court for the 307th Judicial District.

308th District Court

Sec. 2.09. On the effective date specified in Section 3.02 of this Act, the 308th Judicial District is created. Its boundaries are coextensive with the boundaries of Harris County, and its court, which replaces the Court of Domestic Relations for Harris County, is the 308th District Court. The 308th District Court may be called the Family District Court for the 308th Judicial District.

309th District Court

Sec. 2.10. On the effective date specified in Section 3.02 of this Act, the 309th Judicial District is created. Its boundaries are coextensive with the boundaries of Harris County, and its court, which

replaces the Court of Domestic Relations No. 2 for Harris County, is the 309th District Court. The 309th District Court may be called the Family District Court for the 309th Judicial District.

310th District Court

Sec. 2.11. On the effective date specified in Section 3.02 of this Act, the 310th Judicial District is created. Its boundaries are coextensive with the boundaries of Harris County, and its court, which replaces the Court of Domestic Relations No. 3 for Harris County, is the 310th District Court. The 310th District Court may be called the Family District Court for the 310th Judicial District.

311th District Court

Sec. 2.12. On the effective date specified in Section 3.02 of this Act, the 311th Judicial District is created. Its boundaries are coextensive with the boundaries of Harris County, and its court, which replaces the Court of Domestic Relations No. 4 for Harris County, is the 311th District Court. The 311th District Court may be called the Family District Court for the 311th Judicial District.

312th District Court

Sec. 2.13. On the effective date specified in Section 3.02 of this Act, the 312th Judicial District is created. Its boundaries are coextensive with the boundaries of Harris County, and its court, which replaces the Court of Domestic Relations No. 5 for Harris County, is the 312th District Court. The 312th District Court may be called the Family District Court for the 312th Judicial District.

313th District Court

Sec. 2.14. On the effective date specified in Section 3.02 of this Act, the 313th Judicial District is created. Its boundaries are coextensive with the boundaries of Harris County, and its court, which replaces the Juvenile Court for Harris County, is the 313th District Court. The 313th District Court may be called the Family District Court for the 313th Judicial District.

314th District Court

Sec. 2.15. On the effective date specified in Section 3.02 of this Act, the 314th Judicial District is created. Its boundaries are coextensive with the boundaries of Harris County, and its court, which replaces the Juvenile Court No. 2 for Harris County, is the 314th District Court. The 314th District Court may be called the Family District Court for the 314th Judicial District.

315th District Court

Sec. 2.16. On the effective date specified in Section 3.02 of this Act, the 315th Judicial District is created. Its boundaries are coextensive with the boundaries of Harris County, and its court, which

replaces the Juvenile Court No. 3 for Harris County, is the 315th District Court. The 315th District Court may be called the Family District Court for the 315th Judicial District.

316th District Court

Sec. 2.17. On the effective date specified in Section 3.02 of this Act, the 316th Judicial District is created. Its boundaries are coextensive with the boundaries of Hutchinson County, and its court, which replaces the Court of Domestic Relations for Hutchinson County, is the 316th District Court. The 316th District Court may be called the Family District Court for the 316th Judicial District.

317th District Court

Sec. 2.18. On the effective date specified in Section 3.02 of this Act, the 317th Judicial District is created. Its boundaries are coextensive with the boundaries of Jefferson County, and its court, which replaces the Court of Domestic Relations for Jefferson County, is the 317th District Court. The 317th District Court may be called the Family District Court for the 317th Judicial District.

318th District Court

Sec. 2.19. On the effective date specified in Section 3.02 of this Act, the 318th Judicial District is created. Its boundaries are coextensive with the boundaries of Midland County, and its court, which replaces the Court of Domestic Relations for Midland County, is the 318th District Court. The 318th District Court may be called the Family District Court for the 318th Judicial District.

319th District Court

Sec. 2.20. On the effective date specified in Section 3.02 of this Act, the 319th Judicial District is created. Its boundaries are coextensive with the boundaries of Nueces County, and its court, which replaces the Court of Domestic Relations for Nueces County, is the 319th District Court. The 319th District Court may be called the Family District Court for the 319th Judicial District.

320th District Court

Sec. 2.21. On the effective date specified in Section 3.02 of this Act, the 320th Judicial District is created. Its boundaries are coextensive with the boundaries of Potter County, and its court, which replaces the Court of Domestic Relations for Potter County, is the 320th District Court. The 320th District Court may be called the Family District Court for the 320th Judicial District.

321st District Court

Sec. 2.22. On the effective date specified in Section 3.02 of this Act, the 321st Judicial District is created. Its boundaries are coextensive with the boundaries of Smith County, and its court, which

replaces the Court of Domestic Relations for Smith County, is the 321st District Court. The 321st District Court may be called the Family District Court for the 321st Judicial District.

322nd District Court

Sec. 2.23. On the effective date specified in Section 3.02 of this Act the 322nd Judicial District is created. Its boundaries are coextensive with the boundaries of Tarrant County, and its court, which replaces the Court of Domestic Relations No. 1 for Tarrant County, is the 322nd District Court. The 322nd District Court may be called the Family District Court for the 322nd Judicial District.

323rd District Court

Sec. 2.24. On the effective date specified in Section 3.02 of this Act, the 323rd Judicial District is created. Its boundaries are coextensive with the boundaries of Tarrant County, and its court, which replaces the Court of Domestic Relations No. 2 for Tarrant County, is the 323rd District Court. The 323rd District Court may be called the Family District Court for the 323rd Judicial District.

324th District Court

Sec. 2.25. On the effective date specified in Section 3.02 of this Act, the 324th Judicial District is created. Its boundaries are coextensive with the boundaries of Tarrant County, and its court, which replaces the Court of Domestic Relations No. 3 for Tarrant County, is the 324th District Court. The 324th District Court may be called the Family District Court for the 324th Judicial District.

325th District Court

Sec. 2.26. On the effective date specified in Section 3.02 of this Act, the 325th Judicial District is created. Its boundaries are coextensive with the boundaries of Tarrant County, and its court, which replaces the Court of Domestic Relations No. 4 for Tarrant County, is the 325th District Court. The 325th District Court may be called the Family District Court for the 325th Judicial District.

326th District Court

Sec. 2.27. On the effective date specified in Section 3.02 of this Act, the 326th Judicial District is created. Its boundaries are coextensive with the boundaries of Taylor County, and its court, which replaces the Court of Domestic Relations for Taylor County, is the 326th District Court. The 326th District Court may be called the Family District Court for the 326th Judicial District.

327th District Court

Sec. 2.28. On the effective date specified in Section 3.02 of this Act, the 327th Judicial District is created. Its boundaries are coextensive with the boundaries of El Paso County, and its court, which

replaces the Court of Domestic Relations for El Paso County, is the 327th District Court. The 327th District Court may be called the Family District Court for the 327th Judicial District.

328th District Court

Sec. 2.29. On the effective date specified in Section 3.02 of this Act, the 328th Judicial District is created. Its boundaries are coextensive with the boundaries of Fort Bend County, and its court, which replaces the Court of Domestic Relations of Fort Bend County, is the 328th District Court. The 328th District Court may be called the Family District Court for the 328th Judicial District.

329th District Court

Sec. 2.30. On the effective date specified in Section 3.02 of this Act, the 329th Judicial District is created. Its boundaries are coextensive with the boundaries of Wharton County, and its court, which replaces the Court of Domestic Relations of Wharton County, is the 329th District Court. The 329th District Court may be called the Family District Court for the 329th Judicial District.

330th District Court

Sec. 2.31. On the effective date specified in Section 3.02 of this Act, the 330th Judicial District is created. Its boundaries are coextensive with the boundaries of Dallas County, and its court, which replaces the Court of Domestic Relations No. 4 of Dallas County, is the 330th District Court. The 330th District Court may be called the Family District Court for the 330th Judicial District.

SUBCHAPTER C. TEMPORARY PROVISIONS

Appointment

Sec. 3.01. The first judge of a family district court created in this Act is appointed by the governor.

Effective Date

Sec. 3.02. Subchapter B of this Act shall become effective immediately.

Transfer of Pending Cases, Process, and Writs

Sec. 3.03. When a family district court is created:

- (1) all cases pending in the replaced court are transferred to the family district court which replaces it; and
- (2) all process and writs pending in or issued by the replaced court are transferred to the family district court which replaces it and are returnable to that family district court.

Repealer

Sec. 3.04. (a) Each act creating or providing for a court replaced by a family district court under this

Act is repealed on the date the family district court is created.

(b) The following acts are repealed on the dates provided in Subsection (a) of this section:

(1) Chapter 426, Acts of the 51st Legislature, Regular Session, 1949, as amended (Article 2338-3, Vernon's Texas Civil Statutes);

(2) Chapter 23, Acts of the 55th Legislature, 1st Called Session, 1957, as amended (Article 2338-3a, Vernon's Texas Civil Statutes);

(3) Chapter 325, Acts of the 53rd Legislature, Regular Session, 1953, as amended (Article 2338-5, Vernon's Texas Civil Statutes);

(4) Chapter 49, Acts of the 54th Legislature, 1955, as amended (Article 2338-7, Vernon's Texas Civil Statutes);

(5) Chapter 157, Acts of the 55th Legislature, Regular Session, 1957 (Article 2338-7a, Vernon's Texas Civil Statutes);

(6) Chapter 16, Acts of the 55th Legislature, Regular Session, 1957, as amended (Article 2338-8, Vernon's Texas Civil Statutes);

(7) Chapter 511, Acts of the 55th Legislature, Regular Session, 1957, as amended (Article 2338-9, Vernon's Texas Civil Statutes);

(8) Chapter 13, Acts of the 56th Legislature, 3rd Called Session, 1959, as amended (Article 2338-9a, Vernon's Texas Civil Statutes);

(9) Chapter 31, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 2338-10, Vernon's Texas Civil Statutes);

(10) Chapter 242, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 2338-11, Vernon's Texas Civil Statutes);

(11) Chapter 299, Acts of the 58th Legislature, 1963, as amended (Article 2338-11a, Vernon's Texas Civil Statutes);

(12) Chapter 443, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 2338-13, Vernon's Texas Civil Statutes);

(13) Chapter 159, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 2338-14, Vernon's Texas Civil Statutes);

(14) Section 2, Chapter 212, Acts of the 59th Legislature, Regular Session, 1965 (Section 2, Article 6819a-39, Vernon's Texas Civil Statutes);

(15) Chapter 6, Acts of the 57th Legislature, 3rd Called Session, 1962, as amended (Article 2338-15, Vernon's Texas Civil Statutes);

(16) Chapter 278, Acts of the 59th Legislature, Regular Session, 1965, as amended (Article 2338-15a, Vernon's Texas Civil Statutes);

(17) Chapter 64, Acts of the 57th Legislature, 3rd Called Session, 1962, as amended (Article 2338-16, Vernon's Texas Civil Statutes);

(18) Chapter 44, Acts of the 58th Legislature, 1963, as amended (Article 2338-17, Vernon's Texas Civil Statutes);

(19) Chapter 289, Acts of the 59th Legislature, Regular Session, 1965, as amended (Article 2338-18, Vernon's Texas Civil Statutes);

(20) Chapter 307, Acts of the 59th Legislature, Regular Session, 1965, as amended (Article 2338-19, Vernon's Texas Civil Statutes);

(21) Chapter 537, Acts of the 59th Legislature, Regular Session, 1965, as amended (Article 2338-20, Vernon's Texas Civil Statutes);

(22) Chapter 780, Acts of the 60th Legislature, Regular Session, 1967 (Article 2338-9b, Vernon's Texas Civil Statutes);

(23) Chapter 781, Acts of the 60th Legislature, Regular Session, 1967 (Article 2338-15b, Vernon's Texas Civil Statutes);

(24) Chapter 465, Acts of the 61st Legislature, Regular Session, 1969 (Article 2338-11b, Vernon's Texas Civil Statutes);

(25) Chapter 761, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 2338-15c, Vernon's Texas Civil Statutes);

(26) Chapter 786, Acts of the 61st Legislature, Regular Session, 1969 (Article 2338-9c, Vernon's Texas Civil Statutes);

(27) Chapter 673, Acts of the 61st Legislature, Regular Session, 1969 (Article 2338-18a, Vernon's Texas Civil Statutes);

(28) Chapter 844, Acts of the 62nd Legislature, Regular Session, 1971 (Article 2338-21, Vernon's Texas Civil Statutes);

(29) Chapter 100, Acts of the 63rd Legislature, Regular Session, 1973 (Article 2338-22, Vernon's Texas Civil Statutes);

(30) Chapter 201, Acts of the 63rd Legislature, Regular Session, 1973 (Article 2338-23, Vernon's Texas Civil Statutes); and

(31) Chapter 207, Acts of the 63rd Legislature, Regular Session, 1973 (Article 2338-9b.1, Vernon's Texas Civil Statutes).

(c) Chapter 393, Acts of the 52nd Legislature, 1951 (Article 2338-4, Vernon's Texas Civil Statutes), and Chapter 434, Acts of the 53rd Legislature, Regular Session, 1953 (Article 2338-6, Vernon's Texas Civil Statutes), are repealed.

(d) All other laws or parts of laws in conflict with this Act are repealed to the extent of the conflict.

SUBCHAPTER D. MISCELLANEOUS PROVISIONS

Effective Date

Sec. 4.00. This Act takes effect on September 1, 1977.

[Acts 1977, 65th Leg., p. 2144, ch. 859 eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 157, ch. 85, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 784, ch. 345, § 8, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1643, ch. 686, § 15, eff. Aug. 27, 1979.]

CHAPTER FIVE. CRIMINAL DISTRICT
COURTS

JEFFERSON COUNTY

Art. 1926-63. Criminal Judicial District of Jefferson County

[See Compact Edition, Volume 3 for text of 1 to 3]

Sec. 4. (a) The Criminal District Attorney of Jefferson County shall be commissioned by the Governor and may receive as compensation a salary in an amount not more than the total salary, including all supplements, paid to the highest paid district judge in the district. The salary shall be fixed by the Commissioners Court of Jefferson County, to be paid out of the Officer's Salary Fund of Jefferson County if adequate; if inadequate the Commissioners Court shall transfer necessary funds from the General Fund of the County to the Officer's Salary Fund.

(b) Jefferson County shall receive annually from the State of Texas under the provisions of this Act an amount equal to the amount paid district attorneys by the State of Texas, and shall be paid by the comptroller of public accounts as appropriated by the legislature in 12 equal installments. Such funds shall be paid into the salary fund of Jefferson County.

(c) The Criminal District Attorney of Jefferson County shall not engage in the private practice of law in that he shall not appear and practice as an attorney at law in any court of record in this state except in behalf of the State of Texas or Jefferson County as herein provided.

[See Compact Edition, Volume 3 for text of 5 and 6]

[Amended by Acts 1975, 64th Leg., p. 1821, ch. 557, § 1, eff. Sept. 1, 1975.]

TITLE 41

COURTS—COUNTY

CHAPTER ONE. THE COUNTY JUDGE

Article

- 1933a. Appointment of Special County Judges in Certain Counties.
1934b. Court Administrator System for County Courts in Certain Countries.
1934c. Court Manager and Coordinator System for Courts Having Criminal Jurisdiction in Counties Over 1,500,000.
1934d. Ministerial Practices and Procedures in Courts Having Criminal Jurisdiction in Counties Over 1,500,000.

Art. 1933a. Appointment of Special County Judges in Certain Counties

Sec. 1. The provisions of this Article apply only to counties in which there is no statutory county court at law or statutory probate court, and in which all duties of the county court devolve upon the county judge. The provisions hereof are cumulative of all other provisions of law for appointment or election of special county judges, and existing provisions are repealed hereby only to the extent of any conflict.

Sec. 2. The county judge may at any time appoint a special county judge, with respect to any pending matter, whether of civil or criminal nature, in accordance with the provisions following:

- (a) Such action may be taken on the motion of any counsel of record in such pending matter, or on the court's own motion.
- (b) All counsel of record are entitled to notice and hearing on such motion.
- (c) If the county judge finds that good cause exists therefor, he shall appoint a special county judge, at his discretion, except: (1) the person so appointed must be a duly licensed attorney at law; (2) the person so appointed must be the person agreed upon by all counsel of record in the pending matter, if they are able to so agree; and (3) due consideration shall be given by the court to such recommendations as may be made by the attorneys of such court for the further implementation of this Act and the accomplishment of the purposes hereof.
- (d) The motion for, and order appointing, the special county judge, shall be noted in the docket, and may be reduced to writing and filed among the papers in the pending cause.
- (e) Thereafter, the special county judge, while sitting in the matter in which he is so appointed, shall have and exercise all powers of a county

judge in relation to the matter involved; and shall be entitled to compensation in such amount as the commissioners court of the county may provide.

[Acts 1975, 64th Leg., p. 1251, ch. 475, §§ 1, 2, eff. Sept. 1, 1975.]

Section 3 of the 1975 Act, the emergency provision, provides, in part: "The purpose of this Act is to improve the administration of justice in county courts, in view of the problems inherent in the crowded condition of the dockets of constitutional county courts, in the numerous and diverse nature of other nonjudicial duties devolving upon county judges, and in the fact county judges are not required to be licensed attorneys although confronted by questions of increasing legal complexity."

Art. 1934b. Court Administrator System for County Courts in Certain Counties

Sec. 1. County criminal courts or county courts at law having jurisdiction in both criminal and civil actions and proceedings in counties having more than one county criminal court or more than one county court at law having jurisdiction in both criminal and civil actions and proceedings may establish and maintain a court administrator's system if approved by the commissioners court. Upon approval, Sections 2, 3, and 4 of this Act shall apply.

Sec. 2. The county criminal courts or the county courts at law having jurisdiction in both criminal and civil actions and proceedings shall, by rule, designate the duties to be performed by the court administrator. The court administrator shall cooperate with the administrative judges and state agencies having duties relating to the operation of the courts to perform uniform and efficient administration of justice.

Sec. 3. (a) The court administrator shall be appointed by the judges of the county criminal courts or the judges of the county courts at law having jurisdiction in both criminal and civil actions and proceedings and shall serve at the pleasure of those courts. The court administrator shall receive reasonable compensation to be determined by the commissioners court not to exceed 70 percent of the salary paid by the county to the judges of those courts.

(b) The judges of those courts shall appoint appropriate staff and supporting personnel according to the needs of each local jurisdiction.

Sec. 4. The commissioners court of each county shall provide from the fines collected by these courts the necessary funding for the court administration system on order and directive of the courts to be

served by the court administrator. If the fines are insufficient to provide the total funding for this program, the county shall provide the additional funds needed.

[Acts 1977, 65th Leg., p. 1624, ch. 638, §§ 1 to 4, eff. June 15, 1977.]

Art. 1934c. Court Manager and Coordinator System for Courts Having Criminal Jurisdiction in Counties Over 1,500,000

Courts having the same jurisdiction over criminal justice that are now or may be hereafter vested in county courts having jurisdiction in criminal actions and proceedings under the constitution and laws of Texas in counties with a population in excess of 1,500,000 according to the last preceding federal census may establish and maintain a court manager and coordinator system. The courts shall, by rule, designate and set out the qualifications of and duties to be performed by the court manager and coordinators to improve criminal justice and expedite the processing of criminal cases through the county courts. The court manager and coordinators in each such county shall cooperate with state agencies having duties in the operation of the courts to promote uniform and efficient justice in the state. Nothing in this Act shall be construed to diminish the statutory duties and powers conferred on the clerk of the court, sheriff, district attorney, or any officer of the court. The court manager and coordinators shall serve by and at the pleasure of the courts, and shall receive reasonable compensation, to be determined by the judges of the courts, not more than 60 percent for the court manager and 50 percent for the coordinators of the salary paid to the judges of the courts. The courts may appoint a court manager, coordinators, appropriate staff, and supporting personnel according to the needs of each local jurisdiction. The commissioners court of each such county shall provide from the fines collected by these courts the necessary funding for the court manager and coordinator system on order and directive of the courts to be served provided that if the said fines are insufficient to provide the total funding for this program the county shall provide the additional funds needed.

[Acts 1977, 65th Leg., p. 1891, ch. 752, § 1, eff. Aug. 29, 1977.]

Art. 1934d. Ministerial Practices and Procedures in Courts Having Criminal Jurisdiction in Counties Over 1,500,000

Sec. 1. The judges of courts having the same jurisdiction over criminal matters that are now or may be vested in county courts having jurisdiction in criminal actions and proceedings under the constitution and laws of Texas in counties with a population in excess of 1,500,000 according to the last preceding

federal census and in which there are nine or more such courts may select from their number a presiding judge.

(a) The presiding judge shall be selected by a vote of two-thirds of the judges of such courts, for a term of six months, and shall serve until his successor is selected. The selection of such presiding judge may be cancelled and another presiding judge selected to serve the unexpired term of the regularly selected presiding judge by a vote of two-thirds of the judges of such courts. Selection of the presiding judge shall be during the month immediately preceding the term such judge is to serve. Each judge of courts included in this Act shall enter on the minutes of his court an order reciting each selection of a presiding judge.

(b) The presiding judge shall have the following duties and responsibilities pertaining to courts included in this Act:

(1) The presiding judge shall preside at any session of the judges of the courts and be ex officio member of all committees created by the judges in session pertaining to the common goal of the courts in achieving more equal and efficient justice and orderly dispatch of business.

(2) The presiding judge shall be the chief administrator of the office of county court manager and county court coordinators; pretrial release services in all misdemeanor cases; and all other court-related ministerial services in all misdemeanor cases as promulgated by the judges having jurisdiction thereof.

(c) In the event that the judge of any court governed by the provisions of this Act is absent, or is for any cause disabled from presiding, the presiding judge of the courts may appoint a special judge whose qualifications shall be the same as the qualifications of the regular judge, and while serving the special judge shall have the same duties and powers as the regular judge. The provisions of Articles 30.04, 30.05, and 30.06, Code of Criminal Procedure, 1965, relating to the oath, compensation, and record of appointment of certain special judges shall apply to the appointment of a special judge under this section.

Sec. 2. The judges of courts included in this Act may also adopt rules, not inconsistent with the Code of Criminal Procedure and the Texas Rules of Civil Procedure for practice and procedure in such courts. A rule may be adopted by a two-thirds vote of the judges and upon adoption shall be entered verbatim on the minutes of each of the courts. The clerk of the court shall supply copies of the rules so adopted to every interested person.

[Acts 1977, 65th Leg., p. 1892, ch. 753, §§ 1, 2, eff. Aug. 29, 1977.]

CHAPTER TWO. COUNTY CLERK

Art. 1937. Bond, Oath and Insurance

Sec. 1. Each county clerk shall, before entering upon the duties of his office, give bond either with four or more good and sufficient sureties or with a surety company authorized to do business in Texas as a surety, to be approved by the Commissioners Court in an amount equal to not less than Five Thousand Dollars (\$5,000) nor less than twenty per cent (20%) of the maximum amount of fees collected in any year during the previous term of office immediately preceding the term of office for which the bond is to be given, but in no event to exceed Five Hundred Thousand Dollars (\$500,000), conditioned for the faithful discharge of the duties of his office. Said clerk shall also take and subscribe the official oath which shall be endorsed on the bond, and the bond and oath so taken and approved shall be recorded in the county clerk's office, and deposited in the office of the clerk of the District Court. A certified copy of such bond may be put in suit in the name of the county for the use of the party injured.

[See Compact Edition, Volume 3 for text of 2 and 3]

Sec. 4. Each county clerk shall obtain an errors and omissions insurance policy, covering the county clerk and the deputy or deputies of the county clerk against liabilities incurred through errors and omissions in the performance of the official duties of said county clerk and the deputy or deputies of said county clerk; with the amount of the policy being in an amount equal to a maximum amount of fees collected in any year during the previous term of office immediately preceding the term of office for which said insurance policy is to be obtained, but in no event shall the amount of the policy be for less than Ten Thousand Dollars (\$10,000) or more than Five Hundred Thousand Dollars (\$500,000).

Sec. 5. The premiums for the bonds and the errors and omissions policies required by this Act to be given, or to be obtained, by the county clerk of each county shall be paid by the Commissioners Court of the county out of the general fund of the county. *[Amended by Acts 1979, 66th Leg., p. 872, ch. 397, § 1, eff. Aug. 27, 1979.]*

Art. 1941(a). Microfilm Records of County Clerks

[See Compact Edition, Volume 3 for text of 1 to 5]

Checking and Proving Microfilm Records; Return of Original Instruments; Disposition of Printed Records

Sec. 6. (a) Each county clerk and county recorder and clerk of county courts, whenever the original paper record is not retained in the files of the county clerk, shall inspect and check each filmed image on each roll of microfilm, or each filmed

image of the discrete group of filmed images against the original instrument of writing, legal document, paper or record for accuracy and clarity. A county clerk may reproduce from microfilm onto paper records each filmed image on each roll of microfilm, or each filmed image of the discrete group of filmed images, for the purpose of inspecting and checking each filmed image for accuracy and clarity. Should a microfilm image be defective in any respect, the original instrument of writing, legal document, paper or record, from which said defective filmed image was made, shall be remicrofilmed on a subsequent roll of microfilm, or on a subsequent discrete image or images of a subsequent discrete group of individual images, to obtain acceptable images on microfilm. A record need not be reproduced if it is transferred to the custody of the state librarian pursuant to state law.

(b) Notwithstanding anything to the contrary provided by any other statute or statutes, when an instrument of writing, legal document, paper, or record has been microfilmed and said microfilm has been proven satisfactory by inspecting and checking as provided herein, said clerk is hereby authorized to, and shall, return each such instrument of writing, legal document, paper or record, excepting those involved in or relating to court matters and proceedings, to the party or parties who filed it.

[See Compact Edition, Volume 2 for text of 6(c) to (d)]

[Amended by Acts 1977, 65th Leg., p. 1201, ch. 463, § 9, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 538, ch. 254, § 1, eff. Aug. 27, 1979.]

CHAPTER THREE. POWERS AND JURISDICTION

Art. 1949. Jurisdiction

The county court shall have concurrent jurisdiction with the justice court in civil cases when the matter in controversy shall exceed in value two hundred dollars, and shall not exceed five hundred dollars, exclusive of interest.

[Amended by Acts 1979, 66th Leg., p. 846, ch. 377, § 2, eff. June 6, 1979.]

CHAPTER FIVE. MISCELLANEOUS PROVISIONS

ACTS CREATING COUNTY COURTS AT LAW AND SIMILAR COURTS, AND AFFECTING PARTICULAR COUNTY COURTS, AND DECISIONS THEREUNDER

DALLAS COUNTY

Article

1970-31.2. County Court of Dallas County at Law No. 5.
1970-31.15. County Criminal Courts Nos. 6 and 7 of Dallas County.

Article

1970-31.16. County Criminal Court No. 8 of Dallas County.
 1970-31.17. County Criminal Court No. 9 of Dallas County.
 1970-31.18. County Criminal Court No. 10 of Dallas County.
 1970-31.21. County Criminal Court of Appeals No. 2 of Dallas County.

1970-31.30. Retired Judges as Substitutes in Dallas County.
 1970-31c. Probate Court No. 3 of Dallas County.

TARRANT COUNTY AT LAW

1970-45a. Compensation of Certain Tarrant County Judges.

TARRANT COUNTY AT LAW NO. 1

1970-62.2. County Court at Law No. 2 of Tarrant County.

TARRANT COUNTY CRIMINAL COURTS

1970-62d. County Criminal Court No. 4 of Tarrant County.

HARRIS COUNTY

1970-110a.3. Probate Court No. 3 of Harris County.
 1970-110c.3. County Criminal Court at Law No. 8 and 9 of Harris County.

1970-110c.4. County Criminal Court at Law No. 10 of Harris County.

1970-110f. County Civil Court at Law No. 4 of Harris County.

EL PASO COUNTY

1970-141.3. County Court at Law No. 4 of El Paso County.

WICHITA COUNTY

1970-166d. County Court at Law of Wichita County.

McLENNAN COUNTY

1970-298d. County Court at Law No. 2 of McLennan County.

CAMERON COUNTY

1970-305c. County Court at Law No. 2 of Cameron County.

POTTER COUNTY

1970-311b. County Court at Law No. 2 of Potter County.

TRAVIS COUNTY

1970-324a.2. County Court at Law No. 4 of Travis County.

TITUS COUNTY

1970-330a. Jurisdiction of Titus County Court and District Courts.

GRAYSON COUNTY

1970-332a. County Court at Law No. 2 of Grayson County.

HIDALGO COUNTY

1970-341a. County Court at Law No. 2 of Hidalgo County.
 1970-341b. County Court at Law No. 3 of Hidalgo County.

GALVESTON COUNTY

1970-342b. County Court No. 2 of Galveston County.
 1970-348a. County Court at Law No. 2 of Smith County.

BELL COUNTY

1970-350a. County Court at Law No. 2 of Bell County.

DENTON COUNTY

1970-352a. County Court at Law No. 2 of Denton County.

VICTORIA COUNTY

1970-356a. County Court at Law No. 2 of Victoria County.

BRAZOS COUNTY

1970-359. County Court at Law of Brazos County.

WEBB COUNTY

1970-360. County Court at Law of Webb County.

NACOGDOCHES COUNTY

1970-361. County Court at Law of Nacogdoches County.

COLLIN COUNTY

1970-362. County Court at Law of Collin County.
 1970-362a. County Court at Law No. 2 of Collin County.

MONTGOMERY COUNTY

Article

1970-363. County Court at Law No. 1 of Montgomery County.

FORT BEND COUNTY

1970-364. County Court at Law of Fort Bend County.

HOUSTON COUNTY

1970-365. County Court at Law of Houston County.

HENDERSON COUNTY

1970-366. County Court at Law of Henderson County.

WALKER COUNTY

1970-367. County Court at Law of Walker County.

COMAL COUNTY

1970-368. County Court at Law of Comal County.

TOM GREEN COUNTY

1970-369. County Court at Law of Tom Green County.

MIDLAND COUNTY

1970-370. County Court at Law of Midland County.

RANDALL COUNTY

1970-371. County Court at Law of Randall County.

REEVES COUNTY

1970-372. County Court at Law of Reeves County.

VAL VERDE COUNTY

1970-373. County Court at Law of Val Verde County.

WISE COUNTY

1970-374. County Court at Law of Wise County.

GREGG COUNTY

1970-375. County Court at Law of Gregg County.

MEDINA COUNTY

1970-376. County Court at Law of Medina County.

ACTS CREATING COUNTY COURTS AT LAW AND SIMILAR COURTS, AND AFFECTING PARTICULAR COUNTY COURTS, AND DECISIONS THEREUNDER

DALLAS COUNTY

Art. 1970-31.2 County Court of Dallas County at Law No. 5

Sec. 1. On January 1, 1979, there is created a county court to be held in Dallas County to be known as "County Court of Dallas County at Law No. 5." The seal of the court shall be the same as provided by law for county courts, except the seal shall contain the words "County Court of Dallas County at Law No. 5."

Sec. 2. The court hereby created shall have exclusive, concurrent civil jurisdiction of all cases, original and appellate, over which by the laws of the State of Texas the existing County Courts of Dallas County at Law Nos. 1, 2, 3, and 4 have original and appellate jurisdiction. In addition thereto, it is spe-

cifically provided that the County Courts of Dallas County at Law Nos. 1, 2, 3, 4, and 5 shall have concurrent and coextensive and equal jurisdiction over all civil, administrative, and ministerial acts and over the filing and disposition of all proceedings in eminent domain matters. The judge of any county court at law of Dallas County may sit for the judge of any other county court at law of Dallas County when such judge is unavailable for the performing of any of the administrative acts in connection with eminent domain proceedings, but the performing of the same shall not transfer the cause or proceedings from the court for which the act was performed. All civil cases appealed from the several justice courts of Dallas County shall be filed by the county clerk in the several county courts of Dallas County at law consecutively as the appeal cases are received by the clerk from the several justices of the peace in the county, except in cases wherein the judge of any one of the county courts at law has granted a writ of certiorari, in which case the same shall be docketed in the court so granting the writ and shall not be transferred from that court.

Sec. 3. The County Court of Dallas County at Law No. 5 shall be known as the "E" Court. The county clerk shall number consecutively all cases filed in the county courts of Dallas County at law affixing immediately following the number of all cases the letter A, B, C, D, or E, according to which county court of Dallas County at law the case is assigned, and each case so filed shall be filed in rotation in each of the county courts of Dallas County at law with the letter designation being used to denote the court in which the case is filed. The judge of any one of the county courts of Dallas County at law shall have the power to transfer to any of the other of those courts any case pending on the docket of the court, except where a writ of certiorari has been granted, provided that the cases so transferred shall be for the purpose of equalizing the dockets of each of the county courts of Dallas County at law. Each of the judges of those courts shall together at least once a year transfer cases from one to another in order to equalize the dockets.

Sec. 4. All of the county courts of Dallas County at law and the respective judges thereof shall have the power to issue writs of injunction, sequestration, attachment, garnishment, certiorari, and supersedeas and all other writs and processes necessary to the enforcement of their jurisdiction, and also power to punish for contempt under such provisions as are or may be provided by the general laws governing county courts throughout the state.

Sec. 5. The terms of the County Court of Dallas County at Law No. 5 shall be held six times each year on the first Monday in January, March, May, July, September, and November, and each term shall continue until the business is disposed of.

Sec. 6. (a) The judge of the County Court of Dallas County at Law No. 5 shall be a licensed attorney in this state, informed in the laws of the state, and shall have resided in and shall have been actively engaged in the practice of law in Dallas County for a period of not less than four years prior to his election or appointment. The commissioners court shall fix the salary of each of the judges of the county courts of Dallas County at law at not less than \$1,000 less per annum than the total annual salary, including supplements, received by judges of the district courts in Dallas County, which shall be paid in 12 equal monthly installments.

(b) At the general election in 1978 and every fourth year thereafter, there shall be elected by the qualified voters of Dallas County a judge of the court created in the Act for regular terms of four years beginning on January 1, 1979, as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution.

(c) A vacancy in the office of judge shall be filled by appointment by the Commissioners Court of Dallas County, and the appointee shall hold office until the next general election and until his successor is duly elected and has qualified.

Sec. 7. After this court is created, it shall be the duty of the judges of the county courts of Dallas County at law to transfer immediately from their dockets a portion of the civil cases pending on their dockets to the court hereby created, which shall be done by beginning with the oldest case pending on the docket of each court and transferring cases without reference to whether any particular case is pending on the jury or nonjury docket of that court.

Sec. 8. In case of disqualification, an overcrowded docket, sickness, or absence from the county of any of the judges of the County Courts of Dallas County at Law Nos. 1, 2, 3, 4, and 5, any other judge of those courts may exchange benches with that judge, and, when exchanging benches with any of the other judges of the county courts at law, shall have all of the power and jurisdiction of the court and judge for whom he is sitting while exchanging benches and may sign orders, judgments, and decrees or other process of any kind as "Judge Presiding" when acting for a disqualified or absent judge on request, or in an emergency without request, or for any other good cause shown. This authority is in addition to the provisions hereinabove made for performing administrative matters for each other.

Sec. 9. Except as otherwise provided in this Act, all laws applicable to County Courts of Dallas County at Law Nos. 1, 2, 3, and 4 shall be applicable to County Court of Dallas County at Law No. 5. [Acts 1977, 65th Leg., p. 1730, ch. 690, §§ 1 to 9, eff. Aug. 29, 1977.]

Art. 1970-31.10. County Criminal Court of Dallas County, Creation, Jurisdiction, etc.

[See Compact Edition, Volume 3 for text of 1 to 8]

Sec. 9. The county clerk of Dallas County, Texas, shall be the clerk of the county criminal court of Dallas County, Texas, the seal of said court shall be the same as provided for county courts except that the seal shall contain the words "The county criminal court, Dallas County, Texas." The sheriff of Dallas County, Texas, shall in person or by deputy, attend said court when required by the judge thereof. The Judge of the County Criminal Court of Dallas County shall have an administrative assistant to aid him in the performance of his duties. The salary of the administrative assistant shall be set by the Commissioners Court of Dallas County.

[See Compact Edition, Volume 3 for text of 10 to 13]

[Amended by Acts 1975, 64th Leg., p. 1348, ch. 507, § 1, eff. Sept. 1, 1975.]

Art. 1970-31.11. County Criminal Court No. 2 of Dallas County

[See Compact Edition, Volume 3 for text of 1 to 8]

Sec. 9. The county clerk of Dallas County, Texas, shall be the clerk of the County Criminal Court of Dallas County, Texas, the seal of said court shall be the same as provided for county courts, except that the seal shall contain the words "The County Criminal Court, Number Two, Dallas County, Texas." The sheriff of Dallas County, Texas, shall in person or by deputy, attend said court when required by the Judge thereof. The Judge of the County Criminal Court Number Two of Dallas County shall have an administrative assistant to aid him in the performance of his duties. The salary of the administrative assistant shall be set by the Commissioners Court of Dallas County.

[See Compact Edition, Volume 3 for text of 10 to 13]

[Amended by Acts 1975, 64th Leg., p. 1348, ch. 507, § 2, eff. Sept. 1, 1975.]

Art. 1970-31.12. County Criminal Court No. 3 of Dallas County

[See Compact Edition, Volume 3 for text of 1 to 8]

Sec. 9. The county clerk of Dallas County, Texas, shall be the clerk of the County Criminal Court, Number Three, of Dallas County, Texas, the seal of said court shall be the same as provided for county courts, except that the seal shall contain the words "The County Criminal Court, Number Three, Dallas County, Texas." The sheriff of Dallas County, Tex-

as, shall in person or by deputy, attend said court when required by the Judge thereof. The Judge of the County Criminal Court Number Three of Dallas County shall have an administrative assistant to aid him in the performance of his duties. The salary of the administrative assistant shall be set by the Commissioners Court of Dallas County.

[See Compact Edition, Volume 3 for text of 10 to 13-A]

[Amended by Acts 1975, 64th Leg., p. 1349, ch. 507, § 3, eff. Sept. 1, 1975.]

Art. 1970-31.13. County Criminal Court No. 4 of Dallas County

[See Compact Edition, Volume 3 for text of 1 to 8]

Sec. 9. The county clerk of Dallas County, Texas, shall be the clerk of the County Criminal Court Number Four of Dallas County, Texas; and the seal of said court shall be the same as provided for county courts, except that the seal shall contain the words "The County Criminal Court Number Four, Dallas County, Texas." The Sheriff of Dallas County, Texas, shall, in person or by deputy, attend said court when required by the judge thereof. The Judge of the County Criminal Court Number Four of Dallas County shall have an administrative assistant to aid him in the performance of his duties. The salary of the administrative assistant shall be set by the Commissioners Court of Dallas County.

[See Compact Edition, Volume 3 for text of 10 to 14]

[Amended by Acts 1975, 64th Leg., p. 1349, ch. 507, § 4, eff. Sept. 1, 1975.]

Art. 1970-31.14. County Criminal Court No. 5 of Dallas County

[See Compact Edition, Volume 3 for text of 1 to 8]

Sec. 9. The county clerk of Dallas County, Texas, shall be the clerk of the County Criminal Court Number Five of Dallas County, Texas; and the seal of said court shall be the same as provided for county courts, except that the seal shall contain the words "The County Criminal Court Number Five, Dallas County, Texas." The sheriff of Dallas County, Texas, shall, in person or by deputy, attend said court when required by the judge thereof. The Judge of the County Criminal Court Number Five of Dallas County shall have an administrative assistant to aid him in the performance of his duties. The salary of the administrative assistant shall be set by the Commissioners Court of Dallas County.

[See Compact Edition, Volume 3 for text of 10 to 14]

[Amended by Acts 1975, 64th Leg., p. 1349, ch. 507, § 5, eff. Sept. 1, 1975.]

Art. 1970-31.15. County Criminal Courts Nos. 6 and 7 of Dallas County

Sec. 1. On September 1, 1977, there are created two courts to be held in Dallas County to be known and designated as the "County Criminal Court Number 6 of Dallas County, Texas," and the "County Criminal Court Number 7 of Dallas County, Texas."

Sec. 2. The County Criminal Courts Nos. 6 and 7 of Dallas County shall have and the same are vested with concurrent jurisdiction within the county of all criminal matters and causes, original and appellate, that is now vested in the county courts having jurisdiction in civil and criminal cases under the Constitution and laws of Texas, except as provided in Section 3 of this Act.

Sec. 3. Each of the County Criminal Courts Nos. 6 and 7 of Dallas County, or the judge thereof, shall have the power to issue writs of habeas corpus and grant injunctions for the enforcement of the penal laws in cases where the offense charged is within the jurisdiction of that court or any court or tribunal inferior to that court and shall also have power to punish for contempt under such provisions as are now or may be provided by the general law governing county courts throughout the state.

Sec. 4. The terms of the County Criminal Courts Nos. 6 and 7 of Dallas County and the practice therein and appeals therefrom shall be as prescribed by law relating to the county courts. The terms shall be held not less than four times each year and the Commissioners Court of Dallas County shall fix the time at which the courts shall hold their terms until the same may be changed according to law.

Sec. 5. As soon as practicable after the creation of these courts, there shall be appointed by the Commissioners Court of Dallas County in accordance with the law a judge of each court created in this Act, who shall be well informed in the laws of the state and who shall hold his office until the next succeeding general election and until his successor shall have duly qualified. At the general election in 1978 and every fourth year thereafter, there shall be elected by the qualified voters of Dallas County a judge of each of the county criminal courts of Dallas County created in this Act for a regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution. No person shall be eligible for judge of a court created in this Act unless he shall be a citizen of the United States and of this state, who shall have been a practicing lawyer of this state or a judge of a

court in this state for four years next preceding his appointment or election and who shall have resided in the county of Dallas for two years next preceding his appointment or election.

Sec. 6. Each judge of a court created in this Act shall execute a bond and take the oath of office as required by the law relating to county judges.

Sec. 7. A special judge of each of the courts created in this Act may be appointed or elected as provided by the laws relating to county courts and the judges thereof.

Sec. 8. The county clerk of Dallas County shall be the clerk of the courts created in this Act. The seals of the County Criminal Courts Nos. 6 and 7 of Dallas County shall be the same as provided for county courts, except that the seals shall contain the words "The County Criminal Court, Number Six, Dallas County, Texas," and the words "The County Criminal Court, Number Seven, Dallas County, Texas," respectively. The sheriff of Dallas County shall in person or by deputy attend each court created in this Act when required by the judge thereof. The judge of each court created in this Act shall have an administrative assistant to aid him in the performance of his duties. The salary of the administrative assistant shall be set by the Commissioners Court of Dallas County.

Sec. 9. The judge of each court created in this Act shall collect the same fee provided by law for county judges in similar cases, all of which shall be paid by him monthly into the county treasury. The commissioners court shall fix the salary of each of the judges of the county criminal courts of Dallas County at not less than \$1,000 less per annum than the total annual salary, including supplements, received by judges of the district courts in Dallas County, which shall be paid in 12 equal monthly installments out of the county treasury by the commissioners court. The judge shall devote his entire time to the duties of his office and shall not engage in the practice of the law while in office.

Sec. 10. The judge of each court created in this Act may be removed from office in the same manner and for the same causes as any other county judge may be removed under the laws of this state.

Sec. 11. For the purpose of preserving a record in all cases for the information of the court, jury, and parties, the judge of each court created in this Act shall appoint an official shorthand reporter, who shall be well-skilled in his profession, shall be a sworn officer of the court, and who shall hold his office at the pleasure of the court. The provisions of the general laws of Texas relating to the appointment of stenographers for the district courts shall and are hereby made to apply, in all their provisions

insofar as they are applicable, to the official shorthand reporters herein authorized to be appointed, and the reporters shall be entitled to the same fees and salary and shall perform the same duties and shall take the same oath as are provided for the stenographers of district courts of this state and shall also be governed by any other laws covering the stenographers of the district courts of this state. The official shorthand reporter of each of these courts shall not be required to take testimony in cases where neither party litigant nor the judge demands it. Where the testimony is taken by the reporter, a fee of \$3 shall be taxed by the clerk as costs in the case to be paid into the county treasury of Dallas County.

Sec. 12. As soon as practicable after the creation of these courts, the clerk of the county criminal courts of Dallas County may transfer to the dockets of the courts created by this Act any of the criminal cases then pending in the County Criminal Court or the County Criminal Court No. 2, 3, 4, or 5 of Dallas County, and thereafter the judge of any of these courts may in his discretion transfer any cause or causes that may at any time be pending in his court to the other courts by an order or orders entered in the minutes of his court, and the judge of the court to which such transfer or transfers are made shall dispose of the cause or causes in the same manner as if the cause or causes were originally instituted in his court.

Sec. 13. The judges of the County Criminal Court of Dallas County and the County Criminal Courts Nos. 2, 3, 4, 5, 6, and 7 may, in their discretion, exchange benches and sit and hear cases in the court in which the case or proceeding is then pending and try or otherwise dispose of same.

[Acts 1977, 65th Leg., p. 1727, ch. 689, §§ 1 to 13, eff. Aug. 29, 1977.]

Art. 1970-31.16. County Criminal Court No. 8 of Dallas County

Text of article effective January 1, 1981.

Creation

Sec. 1. There is created a court to be held in Dallas County to be known and designated as "County Criminal Court No. 8 of Dallas County, Texas."

Jurisdiction

Sec. 2. The County Criminal Court No. 8 shall have and is vested with concurrent jurisdiction within the county of all criminal matters and causes, original and appellate, that is now vested in the county courts having jurisdiction in civil and criminal cases under the constitution and laws of Texas.

Writ Power

Sec. 3. The County Criminal Court No. 8, or the judge thereof, shall have the power to issue writs of habeas corpus and grant injunctions for the enforcement of the penal laws in cases where the offense charged is within the jurisdiction of the court or any court or tribunal inferior to the court and shall also have power to punish for contempt under such provisions as are now or may be provided by the general law governing county courts throughout the state.

Terms

Sec. 4. The terms of the County Criminal Court No. 8 and the practice therein and appeals therefrom shall be as prescribed by law relating to the county courts. The terms shall be held not less than four times each year and the Commissioners Court of Dallas County shall fix the times at which the court shall hold its terms until the same may be changed according to law.

Judge

Sec. 5. (a) No person is eligible for judge of the County Criminal Court No. 8 unless the person is a citizen of the United States and of this state who shall have been a practicing lawyer of this state or a judge of a court in this state for four years next preceding the appointment or election and who shall have resided in the county of Dallas for two years next preceding the appointment or election.

(b) At the primaries and general election in 1980, there shall be elected by the qualified voters of Dallas County a judge of the County Criminal Court No. 8 for a two-year term beginning on January 1, 1981. At the general election in 1982, the judge shall be elected by the qualified voters of the county for a four-year term as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution.

(c) A vacancy in the office shall be filled by appointment by the Commissioners Court of Dallas County, and the appointee shall hold office until the next general election and until his or her successor is duly elected and qualified.

Bond and Oath

Sec. 6. The judge of the County Criminal Court No. 8 shall execute a bond and take the oath of office as required by the law relating to county judges.

Special Judge

Sec. 7. A special judge of the County Criminal Court No. 8 may be appointed or elected as provided by the laws relating to county courts and the judges thereof.

Court Officials and Seal

Sec. 8. The county clerk of Dallas County shall be the clerk of the County Criminal Court No. 8. The seal of the court shall be the same as provided for county courts, except that the seal shall contain the words "The County Criminal Court, Number Eight, Dallas County, Texas." The sheriff of Dallas County shall in person or by deputy attend the court when required by the judge. The judge of the County Criminal Court No. 8 shall have an administrative assistant to aid the judge in the performance of his or her duties. The salary of the administrative assistant shall be set by the Commissioners Court of Dallas County.

Fees and Compensation

Sec. 9. The judge of the County Criminal Court No. 8 shall collect the same fees provided by law for county judges in similar cases, all of which shall be paid by the judge monthly into the county treasury. The judge of the court shall receive a salary as fixed by the commissioners court at an amount that is at least equal to the sum that is \$1,000 less per annum than the total annual salary, including supplements, received by judges of the district courts in Dallas County, which shall be paid in 12 equal monthly installments out of the county treasury by the commissioners court. The judge shall devote his or her entire time to the duties of the office and shall not engage in the practice of the law while in office.

Removal

Sec. 10. The judge of the County Criminal Court No. 8 may be removed from office in the same manner and for the same causes as any other county judge may be removed under the laws of this state.

Court Reporter

Sec. 11. For the purpose of preserving a record in all cases for the information of the court, jury, and parties, the judge of the County Criminal Court No. 8 shall appoint an official court reporter, who shall have the qualifications provided by law, shall be a sworn officer of the court, and shall hold the office at the pleasure of the court. The provisions of the general laws of Texas relating to the appointment of official court reporters for the district courts shall apply in all provisions, insofar as they are applicable, to the official court reporter herein authorized to be appointed. The reporter shall be entitled to the same fees and salary and shall perform the same duties and shall take the same oath as are provided for the official court reporters of district courts of this state and shall be governed by any other laws covering the official court reporters of the district courts of this state. The official court reporter of this court shall not be required to take testimony in cases where neither party litigant nor the judge demands it. Where the testimony is taken by the reporter, a fee of \$3 shall be taxed by the

clerk as costs in the case, the \$3, when collected, to be paid into the county treasury of Dallas County.

Transfer of Cases

Sec. 12. As soon as practicable after this Act takes effect, the clerk of the County Criminal Courts of Dallas County may transfer to the docket of the County Criminal Court No. 8 any of the criminal cases then pending in those courts, and thereafter the judge of any of those courts may in the judge's discretion transfer any cause or causes that may at any time be pending in his or her court to the other courts by an order or orders entered in the minutes of that judge's court, and the judge of the court to which such transfer or transfers are made shall dispose of the cause or causes in the same manner as if the cause or causes were originally instituted in his or her court.

Exchange of Benches

Sec. 13. The judges of the County Criminal Courts of Dallas County may, in their discretion, exchange benches and sit and hear cases in the court in which the case or proceeding is then pending, and try or otherwise dispose of same.

Effective Dates

Sec. 14. Except as provided by Subsection (b) of Section 5 of this Act, this Act takes effect on January 1, 1981.
[Acts 1979, 66th Leg., p. 1656, ch. 692, §§ 1 to 14, eff. Jan. 1, 1981.]

Art. 1970-31.17. County Criminal Court No. 9 of Dallas County

Text of article effective January 1, 1981

Creation

Sec. 1. There is created a court to be held in Dallas County to be known and designated as "County Criminal Court No. 9 of Dallas County, Texas."

Jurisdiction

Sec. 2. The County Criminal Court No. 9 shall have and is vested with concurrent jurisdiction within the county of all criminal matters and causes, original and appellate, that is now vested in the county courts having jurisdiction in civil and criminal cases under the constitution and laws of Texas.

Writ Power

Sec. 3. The County Criminal Court No. 9, or the judge thereof, shall have the power to issue writs of habeas corpus and grant injunctions for the enforcement of the penal laws in cases where the offense charged is within the jurisdiction of the court or any court or tribunal inferior to the court and shall also have power to punish for contempt under such provisions as are now or may be provided by the general law governing county courts throughout the state.

Terms

Sec. 4. The terms of the County Criminal Court No. 9 and the practice therein and appeals therefrom shall be as prescribed by law relating to the county courts. The terms shall be held not less than four times each year and the Commissioners Court of Dallas County shall fix the times at which the court shall hold its terms until the same may be changed according to law.

Judge

Sec. 5. (a) No person is eligible for judge of the County Criminal Court No. 9 unless the person is a citizen of the United States and of this state who shall have been a practicing lawyer of this state or a judge of a court in this state for four years next preceding the appointment or election and who shall have resided in the county of Dallas for two years next preceding the appointment or election.

(b) At the primaries and general election in 1980, there shall be elected by the qualified voters of Dallas County a judge of the County Criminal Court No. 9 for a two-year term beginning on January 1, 1981. At the general election in 1982, the judge shall be elected by the qualified voters of the county for a four-year term as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution.

(c) A vacancy in the office shall be filled by appointment by the Commissioners Court of Dallas County, and the appointee shall hold office until the next general election and until his or her successor is duly elected and qualified.

Bond and Oath

Sec. 6. The judge of the County Criminal Court No. 9 shall execute a bond and take the oath of office as required by the law relating to county judges.

Special Judge

Sec. 7. A special judge of the County Criminal Court No. 9 may be appointed or elected as provided by the laws relating to county courts and the judges thereof.

Court Officials and Seal

Sec. 8. The county clerk of Dallas County shall be the clerk of the County Criminal Court No. 9. The seal of the court shall be the same as provided for county courts, except that the seal shall contain the words "The County Criminal Court, Number Nine, Dallas County, Texas." The sheriff of Dallas County shall in person or by deputy attend the court when required by the judge. The judge of the County Criminal Court No. 9 shall have an administrative assistant to aid the judge in the performance of his or her duties. The salary of the administrative assistant shall be set by the Commissioners Court of Dallas County.

Fees and Compensation

Sec. 9. The judge of the County Criminal Court No. 9 shall collect the same fees provided by law for county judges in similar cases, all of which shall be paid by the judge monthly into the county treasury. The judge of the court shall receive a salary as fixed by the commissioners court at an amount that is at least equal to the sum that is \$1,000 less per annum than the total annual salary, including supplements, received by judges of the district courts in Dallas County, which shall be paid in 12 equal monthly installments out of the county treasury by the commissioners court. The judge shall devote his or her entire time to the duties of the office and shall not engage in the practice of the law while in office.

Removal

Sec. 10. The judge of the County Criminal Court No. 9 may be removed from office in the same manner and for the same causes as any other county judge may be removed under the laws of this state.

Court Reporter

Sec. 11. For the purpose of preserving a record in all cases for the information of the court, jury, and parties, the judge of the County Criminal Court No. 9 shall appoint an official court reporter, who shall have the qualifications provided by law, shall be a sworn officer of the court, and shall hold the office at the pleasure of the court. The provisions of the general laws of Texas relating to the appointment of official court reporters for the district courts shall apply in all provisions, insofar as they are applicable, to the official court reporter herein authorized to be appointed. The reporter shall be entitled to the same fees and salary and shall perform the same duties and shall take the same oath as are provided for the official court reporters of district courts of this state and shall be governed by any other laws covering the official court reporters of the district courts of this state. The official court reporter of this court shall not be required to take testimony in cases where neither party litigant nor the judge demands it. Where the testimony is taken by the reporter, a fee of \$3 shall be taxed by the clerk as costs in the case, the \$3, when collected, to be paid into the county treasury of Dallas County.

Transfer of Cases

Sec. 12. As soon as practicable after this Act takes effect, the clerk of the County Criminal Courts of Dallas County may transfer to the docket of the County Criminal Court No. 9 any of the criminal cases then pending in those courts, and thereafter the judge of any of those courts may in the judge's discretion transfer any cause or causes that may at any time be pending in his or her court to the other courts by an order or orders entered in the minutes of that judge's court, and the judge of the court to which such transfer or transfers are made shall

dispose of the cause or causes in the same manner as if the cause or causes were originally instituted in his or her court.

Exchange of Benches

Sec. 18. The judges of the County Criminal Courts of Dallas County may, in their discretion, exchange benches and sit and hear cases in the court in which the case or proceeding is then pending, and try or otherwise dispose of same.

Effective Dates

Sec. 14. Except as provided by Subsection (b) of Section 5 of this Act, this Act takes effect on January 1, 1981.

[Acts 1979, 66th Leg., p. 1120, ch. 584, §§ 1 to 14, eff. Jan. 1, 1981.]

Art. 1970-31.18. County Criminal Court No. 10 of Dallas County

Text of article effective January 1, 1981

Creation

Sec. 1. There is created a court to be held in Dallas County to be known and designated as "County Criminal Court No. 10 of Dallas County, Texas."

Jurisdiction

Sec. 2. The County Criminal Court No. 10 shall have and is vested with concurrent jurisdiction within the county of all criminal matters and causes, original and appellate, that is now vested in the county courts having jurisdiction in civil and criminal cases under the constitution and laws of Texas.

Writ Power

Sec. 3. The County Criminal Court No. 10, or the judge thereof, shall have the power to issue writs of habeas corpus and grant injunctions for the enforcement of the penal laws in cases where the offense charged is within the jurisdiction of the court or any court or tribunal inferior to the court and shall also have power to punish for contempt under such provisions as are now or may be provided by the general law governing county courts throughout the state.

Terms

Sec. 4. The terms of the County Criminal Court No. 10 and the practice therein and appeals therefrom shall be as prescribed by law relating to the county courts. The terms shall be held not less than four times each year and the Commissioners Court of Dallas County shall fix the times at which the court shall hold its terms until the same may be changed according to law.

Judge

Sec. 5. (a) No person is eligible for judge of the County Criminal Court No. 10 unless the person is a citizen of the United States and of this state who

shall have been a practicing lawyer of this state or a judge of a court in this state for four years next preceding the appointment or election and who shall have resided in the county of Dallas for two years next preceding the appointment or election.

(b) At the primaries and general election in 1980, there shall be elected by the qualified voters of Dallas County a judge of the County Criminal Court No. 10 for a two-year term beginning on January 1, 1981. At the general election in 1982, the judge shall be elected by the qualified voters of the county for a four-year term as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution.

(c) A vacancy in the office shall be filled by appointment by the Commissioners Court of Dallas County, and the appointee shall hold office until the next general election and until his or her successor is duly elected and qualified.

Bond and Oath

Sec. 6. The judge of the County Criminal Court No. 10 shall execute a bond and take the oath of office as required by the law relating to county judges.

Special Judge

Sec. 7. A special judge of the County Criminal Court No. 10 may be appointed or elected as provided by the laws relating to county courts and the judges thereof.

Court Officials and Seal

Sec. 8. The county clerk of Dallas County shall be the clerk of the County Criminal Court No. 10. The seal of the court shall be the same as provided for county courts, except that the seal shall contain the words "The County Criminal Court, Number Ten, Dallas County, Texas." The sheriff of Dallas County shall in person or by deputy attend the court when required by the judge. The judge of the County Criminal Court No. 10 shall have an administrative assistant to aid the judge in the performance of his or her duties. The salary of the administrative assistant shall be set by the Commissioners Court of Dallas County.

Fees and Compensation

Sec. 9. The judge of the County Criminal Court No. 10 shall collect the same fees provided by law for county judges in similar cases, all of which shall be paid by the judge monthly into the county treasury. The judge of the court shall receive a salary as fixed by the commissioners court at an amount that is at least equal to the sum that is \$1,000 less per annum than the total annual salary, including supplements, received by judges of the district courts in Dallas County, which shall be paid in 12 equal monthly installments out of the county trea-

sury by the commissioners court. The judge shall devote his or her entire time to the duties of the office and shall not engage in the practice of the law while in office.

Removal

Sec. 10. The judge of the County Criminal Court No. 10 may be removed from office in the same manner and for the same causes as any other county judge may be removed under the laws of this state.

Court Reporter

Sec. 11. For the purpose of preserving a record in all cases for the information of the court, jury, and parties, the judge of the County Criminal Court No. 10 shall appoint an official court reporter, who shall have the qualifications provided by law, shall be a sworn officer of the court, and shall hold the office at the pleasure of the court. The provisions of the general laws of Texas relating to the appointment of official court reporters for the district courts shall apply in all provisions, insofar as they are applicable, to the official court reporter herein authorized to be appointed. The reporter shall be entitled to the same fees and salary and shall perform the same duties and shall take the same oath as are provided for the official court reporters of district courts of this state and shall be governed by any other laws covering the official court reporters of the district courts of this state. The official court reporter of this court shall not be required to take testimony in cases where neither party litigant nor the judge demands it. Where the testimony is taken by the reporter, a fee of \$3 shall be taxed by the clerk as costs in the case, the \$3, when collected, to be paid into the county treasury of Dallas County.

Transfer of Cases

Sec. 12. As soon as practicable after this Act takes effect, the clerk of the County Criminal Courts of Dallas County may transfer to the docket of the County Criminal Court No. 10 any of the criminal cases then pending in those courts, and thereafter the judge of any of those courts may in the judge's discretion transfer any cause or causes that may at any time be pending in his or her court to the other courts by an order or orders entered in the minutes of that judge's court, and the judge of the court to which such transfer or transfers are made shall dispose of the cause or causes in the same manner as if the cause or causes were originally instituted in his or her court.

Exchange of Benches

Sec. 13. The judges of the County Criminal Courts of Dallas County may, in their discretion, exchange benches and sit and hear cases in the court in which the case or proceeding is then pending, and try or otherwise dispose of same.

Effective Dates

Sec. 14. Except as provided by Subsection (b) of Section 5 of this Act, this Act takes effect on January 1, 1981.

[Acts 1979, 66th Leg., p. 1117, ch. 533, §§ 1 to 14, eff. Jan. 1, 1981.]

Art. 1970-31.20. County Criminal Court of Appeals of Dallas County

[See Compact Edition, Volume 3 for text of 1 to 9]

Sec. 10. The county clerk of Dallas County, Texas, shall be the clerk of the County Criminal Court of Appeals, of Dallas County, Texas, the seal of said court shall be the same as provided for county courts, except that the seal shall contain the words "The County Criminal Court of Appeals, Dallas County, Texas." The Sheriff of Dallas County, Texas, shall in person or by deputy, attend said court when required by the Judge thereof. The Judge of the County Criminal Court of Appeals of Dallas County shall have an administrative assistant to aid him in the performance of his duties. The salary of the administrative assistant shall be set by the Commissioners Court of Dallas County.

[See Compact Edition, Volume 3 for text of 11 to 15]

[Amended by Acts 1975, 64th Leg., p. 1349, ch. 507, § 6, eff. Sept. 1, 1975.]

Art. 1970-31.21. County Criminal Court of Appeals No. 2 of Dallas County

Text of article effective January 1, 1981

Creation

Sec. 1. There is created a court to be held in Dallas County to be called County Criminal Court of Appeals No. 2 of Dallas County, Texas.

Jurisdiction

Sec. 2. The County Criminal Court of Appeals No. 2 shall have and is vested with concurrent jurisdiction within the county of all appeals from criminal convictions had under the laws of the State of Texas and the municipal ordinances of the municipalities located in Dallas County in the justice courts and municipal courts in the county, which jurisdiction is concurrent with the jurisdiction of the County Criminal Court of Appeals of Dallas County. The County Criminal Court of Appeals No. 2 shall have and is vested with concurrent jurisdiction within the county of all criminal matters and causes, original and appellate, that is now vested in the county courts having jurisdiction in civil and criminal cases under the constitution and laws of Texas.

Writ Power

Sec. 3. The County Criminal Court of Appeals No. 2, or the judge thereof, shall have the power to issue writs of habeas corpus and grant injunctions for the enforcement of the penal laws in cases where the offense charged is within the jurisdiction of the court or any court or tribunal inferior to the court and shall also have power to punish for contempt under such provisions as are now or may be provided by the general law governing county courts throughout the state.

Terms

Sec. 4. The terms of the County Criminal Court of Appeals No. 2 and the practice therein and appeals therefrom shall be as prescribed by law relating to the county courts. The terms shall be held not less than four times each year and the Commissioners Court of Dallas County shall fix the times at which the court shall hold its terms until the same may be changed according to law.

Judge

Sec. 5. (a) No person is eligible for judge of the County Criminal Court of Appeals No. 2 unless the person is a citizen of the United States and of this state who shall have been a practicing lawyer of this state or a judge of a court in this state for four years next preceding the appointment or election and who shall have resided in the County of Dallas for two years next preceding the appointment or election.

(b) At the primaries and general election in 1980, there shall be elected by the qualified voters of Dallas County a judge of the County Criminal Court of Appeals No. 2 for a two-year term beginning on January 1, 1981. At the general election in 1982, the judge shall be elected by the qualified voters of the county for a four-year term as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution.

(c) A vacancy in the office shall be filled by appointment by the Commissioners Court of Dallas County, and the appointee shall hold office until the next general election and until his or her successor is duly elected and qualified.

Bond and Oath

Sec. 6. The judge of the County Criminal Court of Appeals No. 2 shall execute a bond and take the oath of office as required by the law relating to county judges.

Special Judge

Sec. 7. A special judge of the County Criminal Court of Appeals No. 2 may be appointed or elected as provided by the laws relating to county courts and the judges thereof.

Court Officials and Seal

Sec. 8. The county clerk of Dallas County shall be the clerk of the County Criminal Court of Appeals No. 2. The seal of the court shall be the same as provided for county courts, except that the seal shall contain the words "The County Criminal Court of Appeals No. 2 of Dallas County, Texas." The sheriff of Dallas County shall in person or by deputy attend the court when required by the judge. The judge of the County Criminal Court of Appeals No. 2 shall have an administrative assistant to aid the judge in the performance of his or her duties. The salary of the administrative assistant shall be set by the Commissioners Court of Dallas County.

Fees and Compensation

Sec. 9. The judge of the County Criminal Court of Appeals No. 2 shall collect the same fees provided by law for county judges in similar cases, all of which shall be paid by the judge monthly into the county treasury. The judge of the court shall receive a salary as fixed by the commissioners court at an amount that is at least equal to the sum that is \$1,000 less per annum than the total annual salary, including supplements, received by judges of the district courts in Dallas County, which shall be paid in 12 equal monthly installments out of the county treasury by the commissioners court. The judge shall devote his or her entire time to the duties of the office and shall not engage in the practice of the law while in office.

Removal

Sec. 10. The judge of the County Criminal Court of Appeals No. 2 may be removed from office in the same manner and for the same causes as any other county judge may be removed under the laws of this state.

Court Reporter

Sec. 11. For the purpose of preserving a record in all cases for the information of the court, jury, and parties, the judge of the County Criminal Court of Appeals No. 2 shall appoint an official court reporter, who shall have the qualifications provided by law, shall be a sworn officer of the court, and shall hold the office at the pleasure of the court. The provisions of the general laws of Texas relating to the appointment of official court reporters for the district courts shall apply in all provisions, insofar as they are applicable, to the official court reporter herein authorized to be appointed. The reporter shall be entitled to the same fees and salary and shall perform the same duties and shall take the same oath as are provided for the official court reporters of district courts of this state and shall be governed by any other laws covering the official court reporters of the district courts of this state. The official court reporter of this court shall not be required to take testimony in cases where neither

party litigant nor the judge demands it. Where the testimony is taken by the reporter, a fee of \$3 shall be taxed by the clerk as costs in the case, the \$3, when collected, to be paid into the county treasury of Dallas County.

Transfer of Cases

Sec. 12. (a) As soon as practicable after this Act takes effect, the clerk of the county criminal courts in Dallas County may transfer to the docket of the County Criminal Court of Appeals No. 2 any of the criminal cases then pending in the County Criminal Court of Appeals of Dallas County, and thereafter the judge of either of those courts may in the judge's discretion transfer any cause or causes that may at any time be pending in his or her court to the other court by an order or orders entered in the minutes of that judge's court, and the judge of the court to which such transfer or transfers are made shall dispose of the cause or causes in the same manner as if the cause or causes were originally instituted in his or her court. However, no case may be transferred from one court to another without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred.

(b) In cases transferred to either of the county criminal courts of appeals, all processes, writs, bonds, recognizances, or other obligations issued or made in the cases shall be returned to and filed in the court to which the transfer is made. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of the bonds or recognizances at the terms of the court to which the cases are transferred as fixed by law. All processes issued or returned before transfer of the cases, as well as all bonds and recognizances taken before transfer, shall be valid and binding as though originally issued out of the court to which the transfer is made.

(c) All new appeals from convictions had under the laws of the State of Texas and ordinances of the municipalities located in Dallas County in justice courts and municipal courts in the county, filed with the county clerk of Dallas County, irrespective of the court or judge to which the appeal is addressed, shall be filed by the clerk alternately in the County Criminal Court of Appeals of Dallas County, Texas, and the County Criminal Court of Appeals No. 2 of Dallas County, Texas.

Exchange of Benches

Sec. 13. The judges of the county criminal courts and county criminal courts of appeals of Dallas County may, in their discretion, exchange benches and sit and hear cases in the court in which the case or proceeding is then pending and try or otherwise dispose of same.

Effective Dates

Sec. 14. Except as provided by Subsection (b) of Section 5 of this Act, this Act takes effect on January 1, 1981.

[Acts 1979, 66th Leg., p. 1018, ch. 452, §§ 1 to 14, eff. Jan. 1, 1981.]

Art. 1970-31.30. Retired Judges as Substitutes in Dallas County

Sec. 1. (a) When the regular judge of a county court at law, county criminal court, county criminal court of appeals, or probate court for Dallas County is absent or is from any cause disabled or disqualified from presiding, the presiding judge of the First Administrative Judicial District may appoint a retired judge to sit for the regular judge, provided the retired judge:

- (1) voluntarily retired from office;
- (2) resides within the First Administrative Judicial District;
- (3) certifies his willingness to serve;
- (4) has previous judicial experience; and
- (5) otherwise meets the qualifications required of the regular judge.

(b) When the docket of a county court at law, county criminal court, county criminal court of appeals, or probate court for Dallas County becomes so excessive that the presiding judge deems it an emergency, he may appoint a retired judge who meets the qualifications set out in Subsection (a) of this section to sit for the regular judge for as long as the emergency exists.

Sec. 2. A retired judge appointed to sit for a regular judge under the provisions of this Act shall execute the bond and take the oath of office which is required by law for the regular judge for whom he is sitting.

Sec. 3. A retired judge appointed under the provisions of this Act has all the power and jurisdiction of the court and the regular judge for whom he is sitting and may sign orders, judgments, decrees, or other process of any kind as "Judge Presiding" when acting for the regular judge.

Sec. 4. A retired judge appointed to sit for the regular judge under the provisions of this Act shall receive for the services actually performed the same amount of compensation which the regular judge is entitled to receive for such services. The amount to be paid for such services shall be paid out of the county funds on certification by the presiding judge of the First Administrative Judicial District that the retired judge has rendered the services and is entitled to receive the compensation. No part of the amount paid to a retired judge sitting for the regular judge shall be deducted or paid out of the salary of the regular judge.

Sec. 5. The provisions of the Act are cumulative of all laws pertaining to the election or appointment of a special judge, and if, in addition to a retired judge appointed to sit temporarily for a regular judge, a special judge is needed, he shall be appointed or elected as now authorized by law.

[Acts 1975, 64th Leg., p. 582, ch. 237, §§ 1 to 5, eff. May 20, 1975.]

Art. 1970-31c. Probate Court No. 3 of Dallas County

Sec. 1. There is created a county court to be held in and for Dallas County to be called the Probate Court Number 3 of Dallas County.

Sec. 2. Probate Court Number 3 of Dallas County shall have the general jurisdiction of the probate court within the limits of Dallas County concurrent with the jurisdiction of the Probate Court of Dallas County, the Probate Court Number 2 of Dallas County, and of the County Court of Dallas County in such matters and proceedings. It shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards, grant letters testamentary and administrative, settle accounts of executors, transact all business pertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the settlement, partition, and distribution of estates of deceased persons, lunacy proceedings, and the apprenticing of minors as provided by law. It is the intention of this Act that the Probate Court Number 3 of Dallas County shall have the primary responsibility, at all times, for all mental illness proceedings.

Sec. 3. On the first day of the initial term of Probate Court Number 3 of Dallas County there shall be transferred to the docket of the court under the jurisdiction of the county judge and of the judges of the Probate Court of Dallas County and the Probate Court Number 2 of Dallas County, and by order entered on the minutes of the County Court of Dallas County and of the Probate Court of Dallas County and of the Probate Court Number 2 of Dallas County, such number of such proceedings and matters then pending in the Probate Court of Dallas County, in the Probate Court Number 2 of Dallas County, and in the County Court of Dallas County as will equalize the number of such cases pending on the dockets of each of said four courts, with the Probate Court Number 3 of Dallas County having responsibility, at all times, for all mental illness proceedings. However, should an emergency or an overcrowded docket preclude the Probate Court Number 3 of Dallas County from effectively diminishing the number of mental illness proceedings before it, such cases may be transferred, with the concurrence of the judge of one or more of the other probate courts in Dallas County, to the dockets of

one or more of the other probate courts of Dallas County. All writs and processes theretofore issued by or out of the Probate Court of Dallas County, Probate Court Number 2 of Dallas County, and County Court of Dallas County in such matters or proceedings shall be returnable to the Probate Court Number 3 of Dallas County as though originally issued therefrom. All new mental illness proceedings filed on said day or thereafter filed with the County Clerk of Dallas County irrespective of the court or judge to which the matter or proceeding is addressed, shall be filed by the clerk in the Probate Court Number 3 of Dallas County in the order in which the same are deposited with him for filing.

Sec. 4. The County Court of Dallas County shall retain as heretofore the powers and jurisdiction of the court existing at the time of the passage of this Act and shall exercise its own powers and jurisdiction as a probate court with respect to all matters and proceedings of such nature other than those provided hereinabove to be transferred to and filed in the Probate Court Number 3 of Dallas County. The County Judge of Dallas County shall be the Judge of the County Court of Dallas County and all ex officio duties of the County Judge of Dallas County as they now exist shall be exercised by the County Judge of Dallas County except insofar as the same shall have been committed heretofore to the Judge of the Probate Court of Dallas County, or to the Judge of the Probate Court Number 2 of Dallas County, or as the same shall by this Act expressly be committed to the Judge of the Probate Court Number 3 of Dallas County. Nothing in this Act shall be construed as in anywise impairing or affecting the jurisdiction of the County Court of Dallas County, the Probate Court of Dallas County, the Probate Court Number 2 of Dallas County, the County Courts of Dallas County at Law Numbers 1, 2, 3, and 4, or any other County Court at Law of Dallas County heretofore or hereafter created.

Sec. 5. There shall be two terms of Probate Court Number 3 of Dallas County in each year and the first term shall be known as the January-June term, which shall begin on the first Monday in January and shall continue until and including Sunday next before the first Monday in July, and the second of such terms shall be known as the July-December term and shall begin on the first Monday in July and continue until and including Sunday next before the first Monday in the following January. The initial term of the court shall begin on the first Monday after the effective date of this Act.

Sec. 6. The Judge of the Probate Court Number 3 of Dallas County shall be well informed on the laws of the state and shall have been a duly licensed and practicing member of the bar of this state for not less than five consecutive years prior to his

election. A judge of the court shall be appointed by the Commissioners Court of Dallas County as soon as may be possible after the passage of this Act, who shall hold office from the date of his appointment until the next general election and until his successor is duly elected and has qualified. At the general election in 1978 and every fourth year thereafter, there shall be elected by the qualified voters of Dallas County a judge of the Probate Court Number 3 of Dallas County for a regular term of four years as provided in Article V, Section 30 and Article XVI, Section 65 of the Texas Constitution.

Sec. 7. The Judge of the Probate Court Number 3 of Dallas County shall execute a bond and take the oath of office as required by the laws relating to county judges.

Sec. 8. Any vacancy in the office of the Judge of Probate Court Number 3 of Dallas County may be filled by the Commissioners Court of Dallas County by appointment of a judge of the court who shall serve until the next general election and until his successor shall be duly elected and qualified.

Sec. 9. In case of the absence, disqualification, or incapacity of the Judge of the Probate Court Number 3 of Dallas County, the County Judge of Dallas County shall sit and act as judge of the court and may hear and determine either in his own courtroom or in the courtroom of the court any matter or proceeding there pending and may enter such orders in such matters or proceedings as the Judge of said Probate Court Number 3 of Dallas County might enter if personally presiding therein.

Sec. 10. The Judge of the Probate Court of Dallas County and the Judge of the Probate Court Number 2 of Dallas County may sit for the Judge of the Probate Court Number 3 of Dallas County, and the Judge of the Probate Court Number 3 of Dallas County may sit for the Judge of the Probate Court of Dallas County and the Judge of the Probate Court Number 2 of Dallas County on any matters or proceedings pending in any of the courts. In the case of the absence, disqualification, or incapacity of the County Judge of Dallas County, the Judge of the Probate Court of Dallas County, the Judge of the Probate Court Number 2 of Dallas County, and the Judge of the Probate Court Number 3 of Dallas County, a special judge of the Probate Court Number 3 of Dallas County may be appointed or elected as provided by the general laws relating to county courts and to the judges thereof.

Sec. 11. The County Clerk of Dallas County shall be the Clerk of the Probate Court Number 3 of Dallas County. The seal of the court shall be the same as that provided by law for county courts except that the seal shall contain the words "Probate Court Number 3 of Dallas County, Texas." The

Sheriff of Dallas County shall in person or by deputy attend the court when required by the judge thereof. The Judge of the Probate Court Number 3 of Dallas County shall have an administrative assistant to aid him in the performance of his duties. The salary of the administrative assistant shall be set by the Commissioners Court of Dallas County.

Sec. 12. The Judge of the Probate Court Number 3 of Dallas County shall collect the same fees as are now or hereafter established by law relating to county judges as to matters within the jurisdiction of the court, all of which shall be paid by him into the county treasury as collected and from after the date of his qualification as Judge of said Probate Court Number 3 of Dallas County he shall receive an annual salary to be fixed by order of the Commissioners Court of Dallas County which shall be the same salary as that paid to the Judge of the Probate Court of Dallas County and the Judge of the Probate Court Number 2 of Dallas County.

Sec. 13. All laws and parts of laws in conflict with the provisions of this Act are repealed to the extent of such conflict only. All other laws applicable to the Probate Court of Dallas County and the Probate Court Number 2 of Dallas County shall be applicable to Probate Court Number 3 of Dallas County. As to all other laws and parts of laws this Act shall be cumulative.

[Acts 1975, 64th Leg., p. 359, ch. 153, §§ 1 to 13, eff. May 8, 1975.]

TARRANT COUNTY AT LAW

Art. 1970-45a. Compensation of Certain Tarrant County Judges

Effective January 1, 1978, the judges of the county criminal courts of Tarrant County, the probate court of Tarrant County, and the county courts at law of Tarrant County may be paid annually a sum that is at least equal to that sum which is \$8,000 less than the total annual salary as of January 1, 1978, including supplements, of any district judge in Tarrant County. Effective January 1, 1979, they may be paid annually a sum that is at least equal to that sum which is \$5,500 less than the total annual salary as of January 1, 1979, including supplements, of any district judge in Tarrant County. Effective January 1, 1980, they may be paid annually a sum that is at least equal to that sum which is \$3,000 less than the total annual salary as of January 1, 1980, including supplements, of any district judge in Tarrant County. Effective January 1, 1981, they may be paid annually a sum that is at least equal to that sum which is \$1,000 less than the total annual salary, including supplements, of any district judge in Tarrant County. If the annual salary of any district judge in Tarrant County is increased within any calendar year, the salary of the judge of each county

court of Tarrant County included in this Act may be increased in an equal amount so that the variance between the salaries of the judges of the county courts and the judges of the district courts does not exceed the amounts specified in this Act. [Acts 1977, 65th Leg., p. 1821, ch. 730, § 1, eff. Aug. 29, 1977.]

Art. 1970-62.2. County Court at Law No. 2 of Tarrant County

Sec. 1. (a) There is created a court to be held in Tarrant County to be known and designated as the "County Court at Law No. 2 of Tarrant County."

(b) The County Court at Law of Tarrant County shall be hereafter known and designated as the "County Court at Law No. 1 of Tarrant County."

Sec. 2. (a) The County Court at Law No. 2 of Tarrant County has jurisdiction of all civil matters and causes, original and appellate, over which by the general laws of the state the county court of the county would have jurisdiction, and its jurisdiction is concurrent with that of the County Court at Law of Tarrant County in civil matters and causes, original and appellate. This provision does not affect the jurisdiction of the commissioners court or of the county judge of Tarrant County as the presiding officer of that court as to roads, bridges, and public highways, and matters which are now within the jurisdiction of the commissioners court or of the judge of the county court of Tarrant County. The county judge of Tarrant County shall be the judge of the county court of Tarrant County, and all ex officio duties of the county judge shall be exercised by the judge of the county court of Tarrant County.

(b) The County Court at Law No. 2 of Tarrant County has the general jurisdiction of a probate court within the limits of Tarrant County, concurrent with the jurisdiction of the County Court of Tarrant County and the Probate Court of Tarrant County in such matters and proceedings. It shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis and habitual drunkards, grant letters testamentary and of administration, settle accounts of executors, transact all business appertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis and habitual drunkards, including the settlement, partition, and distribution of estates of deceased persons, lunacy proceedings and the apprenticing of minors as provided by law.

(c) The County Court at Law No. 2 of Tarrant County has jurisdiction concurrent with the district court in civil cases when the matter in controversy exceeds \$500 and does not exceed \$5,000, exclusive of interest, as provided by general law.

Sec. 3. The County Court at Law No. 2 of Tarrant County, or its judge, has the power to issue writs of injunction, sequestration, attachment, garnishment, certiorari, supersedeas and all other writs necessary to the enforcement of the jurisdiction of the court, to punish for contempts under such provisions as are, or may be, provided by the general laws governing county courts throughout the state, and to issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court, or of any court or tribunal inferior to that court.

Sec. 4. (a) The judges of the County Court at Law of Tarrant County and the County Court at Law No. 2 of Tarrant County may transfer cases to and from the dockets of their respective courts. The judges of the County Court of Tarrant County, the Probate Court of Tarrant County, and the County Court at Law No. 2 of Tarrant County may transfer matters and proceedings to and from the dockets of their respective courts. However, no case may be transferred from one court to another court without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred.

(b) The judges of the county courts at law with civil jurisdiction may freely exchange benches and courtrooms with each other so that if one is ill, disqualified, or otherwise absent, the other may hold court for him without the necessity of transferring the case involved. Either judge may hear all or any part of a case pending in a county court at law and may rule and enter orders on and continue, determine, or render judgment on all or any part of the case without the necessity of transferring it to his own docket. In case of the absence, disqualification or incapacity of either the judge of the Probate Court of Tarrant County, or the County Judge of Tarrant County, or the judge of the County Court at Law No. 2 of Tarrant County, or in the discretion of any of them for any other reason, any of those judges may sit and act as judge of another of those courts with respect to any matters referred to in Subsection (b) of Section 2 of this Act, and any of those judges may hear and determine, either in his own courtroom or, with the consent of the judge thereof, in the courtroom of another of those courts, any matter or proceeding pending in any of those courts, and may enter any orders in such matters or proceedings as the judge of the other court might enter if personally presiding therein. However, the judge of any court may not sit or act in a case unless it is within the jurisdiction of his court. Each judgment and order shall be entered in the minutes of the court in which the case is pending.

(c) In cases transferred to any of the courts by order of the judge of one of the other courts, all processes, writs, bonds, recognizances or other obligations issued or made in the cases shall be returned to and filed in the court to which transfer is made. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of such bonds or recognizances at the terms of the court to which the cases are transferred as fixed by law. All processes issued or returned before transfer of the cases as well as all bonds and recognizances before taken in the cases shall be valid and binding as though originally issued out of the court to which the transfer is made.

Sec. 5. The terms of the County Court at Law No. 2 of Tarrant County are the same as the terms for the County Court at Law of Tarrant County. The practice in the court, and appeals and writs of error therefrom, shall be as prescribed by the laws relating to county courts.

Sec. 6. (a) The judge of the County Court at Law No. 2 of Tarrant County must be a citizen of the United States and of this state, who shall have been a practicing lawyer of this state, or a judge of a court in this state, for four years next preceding his election or appointment, and who shall have resided in the county of Tarrant for two years next preceding his election or appointment.

(b) At the primaries and general election in 1978, there shall be elected by the qualified voters of Tarrant County a judge of the County Court at Law No. 2 for a four-year term beginning on January 1, 1979. Every four years thereafter, this judge shall be elected by the qualified voters of Tarrant County for a four-year term as provided in the Texas Constitution. A vacancy in the office shall be filled by appointment by the Commissioners Court of Tarrant County until the next general election.

Sec. 7. The judge of the County Court at Law No. 2 shall execute a bond and take the oath of office as required by the law relating to county judges.

Sec. 8. A special judge of the County Court at Law No. 2 may be appointed or elected as provided by law relating to county courts and to the judges thereof.

Sec. 9. The county clerk of Tarrant County shall be the clerk for the County Court at Law No. 2. The seal of the court shall be the same as that provided for county courts, except that the seal shall contain the words, "County Court at Law No. 2 of Tarrant County." The sheriff of Tarrant County shall, in person or by deputy, attend the court when required by the judge thereof.

Sec. 10. The jurisdiction and authority now vested by law in the County Court at Law of Tarrant County for the selection and service of jurors shall be exercised by the County Court at Law No. 2.

Sec. 11. The judge of the County Court at Law No. 2 of Tarrant County shall collect the same fees provided by law for county judges in similar cases, all of which shall be paid by him monthly into the county treasury. The commissioners court may fix the amount of compensation to be paid to the judge of the County Court at Law No. 2 of Tarrant County, such compensation to be paid monthly out of the county treasury, provided however, that any such compensation shall be equal to the compensation as provided by law and fixed by the commissioners court for the judge of the County Court at Law No. 1 of Tarrant County. The judge shall not engage in the practice of law while in office.

Sec. 12. The judge of the County Court at Law No. 2 of Tarrant County may be removed from office in the same manner and for the same causes as any other county judge may be removed under the laws of this state.

Sec. 13. The judge of the County Court at Law No. 2 of Tarrant County shall appoint an official shorthand reporter, who shall be well skilled in his profession, shall be a sworn officer of the court, and who shall hold his office at the pleasure of the court. The provisions of the general laws of Texas relating to the appointment of reporters for the district courts shall apply in all their provisions, insofar as they are applicable, to the official shorthand reporter herein authorized to be appointed, and the reporter is entitled to the same fees and salary and shall perform the same duties and shall take the same oath as provided for the reporters of district courts of this state, and shall be governed by any other laws covering the reporters of the district courts of this state.

Sec. 14. With the exception of Subsection (b), Section 6, the provisions of this Act take effect on January 1, 1979.

[Acts 1977, 65th Leg., p. 1532, ch. 625, §§ 1 to 14, eff. Jan. 1, 1979.]

TARRANT COUNTY CRIMINAL COURTS

Art. 1970-62c. County Criminal Court No. 3 of Tarrant County

[See Compact Edition, Volume 3 for text of 1]

Sec. 2. The County Criminal Court No. 3 of Tarrant County shall have, and same is hereby vested with, concurrent jurisdiction within said County of all criminal matters and causes, original and appellate, that are now vested in the county courts having jurisdiction in civil and criminal cases under the Constitution and laws of Texas. Each of the County

Criminal Courts Nos. 3 and 4 of Tarrant County have concurrent jurisdiction within the County of all appeals from criminal convictions under the laws of the State of Texas and the municipal ordinances of the municipalities located in Tarrant County that are appealed from the justice courts and municipal courts in the County. The county clerk of Tarrant County shall alternatively file the appeals from the justice and municipal courts from convictions under the laws of the State and the ordinances of the municipalities in the County Criminal Court No. 3 and the County Criminal Court No. 4, regardless of the court or the judge to which the cases are addressed.

Sec. 3. Repealed by Acts 1979, 66th Leg., p. 802, ch. 360, § 4, eff. Aug. 27, 1979.

[See Compact Edition, Volume 3 for text of 4 to 18]

[Amended by Acts 1979, 66th Leg., p. 800, ch. 360, §§ 1, 4, eff. Aug. 27, 1979.]

Section 3 of the 1979 amendatory act provided:

"When this Act becomes effective, the judges of the County Criminal Court No. 3 of Tarrant County and the County Criminal Court No. 4 of Tarrant County, together with the clerk of the courts, shall make a just and fair division of all the cases pending on the dockets of those courts, including those cases appealed from criminal convictions under the laws of the State of Texas and the municipal ordinances of the municipalities located in Tarrant County that were appealed from the justice courts and the municipal courts in the county. After the division is made, the clerk of the courts shall transfer to the docket of each court all cases allotted to the court in the division made by the judges. In cases transferred as provided by this Act, all processes, writs, bonds, recognizances or other obligations issued or made in the cases shall be returned to and filed in the court to which transfer is made. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of such bonds or recognizances at the terms of the court to which the cases are transferred as fixed by law. All processes issued or returned before transfer of the cases as well as all bonds and recognizances before taken in the cases shall be valid and binding as though originally issued out of the court to which the transfer is made."

Art. 1970-62d. County Criminal Court No. 4 of Tarrant County

Sec. 1. There is created a county court to be held in and for Tarrant County to be called the County Criminal Court No. 4 of Tarrant County.

Sec. 2. The County Criminal Court No. 4 of Tarrant County shall have and same is vested with concurrent jurisdiction within the county of all criminal matters and causes, original and appellate, that is vested in the county courts having jurisdiction in criminal cases under the constitution and laws of Texas. Each of the County Criminal Courts Nos. 3 and 4 of Tarrant County have concurrent jurisdiction within the county of all appeals from criminal convictions under the laws of the State of Texas and the municipal ordinances of the municipalities located in Tarrant County that are appealed from the justice courts and municipal courts in the county. The county clerk of Tarrant County shall alternately file the appeals from the justice and municipal courts from convictions under the laws of the state and the ordinances of the municipalities in the County Criminal Court No. 3 and the County Criminal Court No. 4 regardless of the court or the judge to which the cases are addressed.

Sec. 3. The County Criminal Court No. 4 of Tarrant County, or its judge, has the power to issue writs of injunction and all writs necessary for the enforcement of the jurisdiction of the court. It may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court of inferior jurisdiction in the county. The court and judge have the power to punish for contempt as prescribed by law for county courts. The judge of the County Criminal Court No. 4 has all other powers, duties, immunities, and privileges provided by law for county court judges.

Sec. 4. The terms of the County Criminal Court No. 4 of Tarrant County and the practice therein and appeals therefrom shall be as prescribed by law relating to the county courts. The terms of the County Criminal Court No. 4 shall be held not less than four times each year, and the Commissioners Court of Tarrant County shall fix the time at which the court shall hold its terms until the same may be changed according to law.

Sec. 5. As soon as possible after the passage of this Act, there shall be appointed by the Commissioners Court of Tarrant County a judge of the County Criminal Court No. 4, who shall be well informed in the laws of the state and who shall hold his office until the next succeeding general election and until his successor has qualified. At the next general election, there shall be elected a judge of the County Criminal Court No. 4 who shall hold office for the unexpired term. The judge of the court elected at the general election in 1978 and thereafter shall hold office for four years and until his successor has qualified. No person is eligible to be judge of the court unless he is a citizen of the United States and of this state who has been a practicing lawyer of this state or a judge of a court in this state for four years next preceding his appointment or election, and who shall have resided in the County of Tarrant for two years next preceding his appointment or election.

Sec. 6. The judge of the County Criminal Court No. 4 of Tarrant County shall execute a bond and take the oath of office as required by the law relating to county judges.

Sec. 7. A special judge of the County Criminal Court No. 4 of Tarrant County may be appointed or elected as provided by the laws relating to County Courts and the judges thereof.

Sec. 8. The County Clerk of Tarrant County, Texas, shall be the clerk of the County Criminal Court No. 4 of Tarrant County. The seal of the court shall be the same as provided for county courts except that the seal shall contain the words "The County Criminal Court No. 4, Tarrant County, Texas." The sheriff of Tarrant County shall in person

or by deputy attend the court when required by the judge thereof.

Sec. 9. The judge of the County Criminal Court No. 4 of Tarrant County shall collect the same fees provided by law for county judges in similar cases, all of which shall be paid by him monthly into the county treasury. The judge of the County Criminal Court No. 4 shall receive the same compensation as provided by law and fixed by the commissioners court for the judges of the County Criminal Courts Nos. 1, 2, and 3 of Tarrant County, to be paid monthly out of the county treasury by the commissioners court. The judge shall not engage in the practice of law while in office.

Sec. 10. The judge of the County Criminal Court No. 4 of Tarrant County may be removed from office in the same manner and for the same causes as any other county judge may be removed under the laws of this state.

Sec. 11. For the purpose of preserving a record in all cases for the information of the court, jury, and parties, the judge of the County Criminal Court No. 4 of Tarrant County shall appoint an official shorthand reporter, who shall be well skilled in his profession, shall be a sworn officer of the court, and who shall hold his office at the pleasure of the court. The provisions of the general laws of Texas relating to the appointment of stenographers for the district courts shall apply in all their provisions, insofar as they are applicable, to the official shorthand reporter herein authorized to be appointed, and the reporter is entitled to the same fees and salary and shall perform the same duties and shall take the same oath as provided for the stenographers of district courts of this state, and shall be governed by any other laws covering the stenographers of the district courts of this state.

Sec. 12. After this Act becomes effective, the judges of the County Criminal Courts Nos. 1, 2, 3, and 4 of Tarrant County shall make a just and fair division of the cases pending on the dockets of the County Criminal Courts Nos. 1, 2, and 3, and after such division is made the clerk shall transfer to the docket of the County Criminal Court No. 4 of Tarrant County all cases allotted to the County Criminal Court No. 4 of Tarrant County in the division so made by the judges. Thereafter, the judge of a county criminal court in Tarrant County may, in his discretion, transfer any cause that may at any time be pending in his court to the other courts by an order or orders entered in the minutes of his court. However, no case may be transferred from one court to another court without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred. The judge of the court to which such transfer or transfers are

made shall dispose of the cause or causes in the same manner as if such cause or causes were originally instituted in that court. In cases transferred to any one of the county criminal courts in Tarrant County, as provided in this Act, all process extant at the time of the transfer shall be returned to and filed in the court to which the transfer is made, and shall be as valid and binding as though originally issued out of the court to which the transfer is made.

Sec. 13. The judges of the County Criminal Courts Nos. 1, 2, 3, and 4 of Tarrant County may, in their discretion, exchange benches and sit and hear cases in the court in which the case or proceeding is then pending, and try or otherwise dispose of same. [Acts 1975, 64th Leg., p. 1844, ch. 574, §§ 1 to 13, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 801, ch. 360, § 2, eff. Aug. 27, 1979.]

Section 3 of the 1979 amendatory act provided for the division of cases pending on the dockets of County Criminal Courts Nos. 3 and 4 upon the effective date of the amendment; see note under art. 1970-62c.

HARRIS COUNTY

1970-110a. Probate Court No. 1 of Harris County

[See Compact Edition, Volume 3 for text of 1 to 12]

Sec. 13. Repealed by Acts 1979, 66th Leg., p. 1639, ch. 686, § 3, eff. Aug. 27, 1979.

[See Compact Edition, Volume 3 for text of 14 to 16]

[Amended by Acts 1979, 66th Leg., p. 1639, ch. 686, § 3, eff. Aug. 27, 1979.]

Art. 1970-110a.2. Probate Court No. 2 of Harris County

[See Compact Edition, Volume 3 for text of 1 to 3]

Sec. 4. On the first day of the initial term of said Probate Court No. 2 of Harris County, Texas, there shall be transferred to the docket of said Court, under the direction of the County Judge and by order entered on the Minutes of the County Court of Harris County, Texas, such number of such proceedings and matters then pending in the County Court of Harris County, Texas, as shall be, as near as may be, four-fifths in number of the total of all of same then pending, and all writs and processes theretofore issued by or out of said County Court of Harris County in such matters or proceedings shall be returnable to the Probate Court No. 2 of Harris County, Texas, as though originally issued therefrom. All such new matters and proceedings filed on said day, or thereafter filed, with the County Clerk of Harris County, irrespective of the Courts or Judge to which the matter or proceeding is addressed, shall be filed by said Clerk alternately in said Probate Court No. 1 of Harris County and said Probate Court No. 2 of Harris County in the order in which the same are

deposited with said Clerk for filing, beginning first with the Probate Court No. 1 of Harris County, filing the next with the Probate Court No. 2 of Harris County, and continuing alternately thereafter, and further, said Clerk shall keep separate dockets for each of said Courts. The County Judge of Harris County, in his discretion, may, by an order entered upon the Minutes of the County Court of Harris County, on or after the first day of the initial term of said Probate Court No. 2 of Harris County, transfer to said Probate Court No. 2 any such matter or proceeding then or thereafter pending in the County Court of Harris County and all processes extant at the time of such transfer shall be returned to and filed in the Court to which such transfer is made and shall be as valid and binding as though originally issued out of the Court to which such transfer may be made. Each of the Judges of the County Court and said Probate Courts Nos. 1 and 2 may, at any time, with the consent of the Judge of the County Court or the Judge of the Probate Court to which transfer is to be made by an order entered upon the Minutes of the County Court or of such Probate Court of Harris County, transfer to said County Court or other Probate Court any such matter or proceeding then or thereafter pending in such County or Probate Court of Harris County, and all processes extant at the time of such transfer shall be returnable to and filed in the County Court or the Probate Court to which such transfer is made and shall be as valid and binding as though originally issued out of the County Court or the Probate Court to which such transfer may be made.

[See Compact Edition, Volume 3 for text of 5 to 8]

Sec. 9. The term of office of the Judge of the Probate Court No. 2 of Harris County shall be for a period of four (4) years; said Judge shall be elected as provided by the Constitution and laws of the State for the election of Judges of County Probate Courts. A Judge of said Court shall be appointed by the Commissioners Court of Harris County as soon as practicable after the passage of this Act, who shall hold office from the date of his appointment until the General Election next before the first full term of office of said Judge, as herein provided and until his successor shall be duly elected and qualified. The Judge of said Court shall be well informed in the laws of the State, and shall have been a duly licensed and practicing member of the Bar of this State for not less than five (5) consecutive years.

[See Compact Edition, Volume 3 for text of 10 to 13]

Sec. 14. Repealed by Acts 1975, 64th Leg., p. 1118, ch. 421, § 2, eff. June 19, 1975.

[See Compact Edition, Volume 3 for text of 15 and 16]

[Amended by Acts 1975, 64th Leg., p. 1118, ch. 421, §§ 1, 2, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1202, ch. 464, § 1, eff. Aug. 29, 1977.]

Art. 1970-110a.3. Probate Court No. 3 of Harris County

Sec. 1. There is created a county court to be held in and for Harris County, to be called the "Probate Court No. 3 of Harris County, Texas."

Sec. 2. The Probate Court No. 3 of Harris County shall have the general jurisdiction of a probate court within the limits of Harris County, concurrent with the jurisdiction of the County Court of Harris County, Texas, in probate, administrations, guardianship, and mental illness proceedings, and also concurrent with and in all things equal to that heretofore conferred on the Probate Court No. 1 of Harris County, Texas, and Probate Court No. 2 of Harris County, Texas. It shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards, grant letters testamentary and of administration, settle accounts of executors, transact all business appertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the settlement, partition, and distribution of estates of deceased persons, lunacy proceedings, and the apprenticing of minors as provided by law. It is the intention of this Act that the Probate Court No. 3 of Harris County shall have the primary responsibility at all times for all mental illness proceedings.

Sec. 3. On the first day of the initial term of the Probate Court No. 3 of Harris County, Texas, there shall be transferred to the docket of said court, under the jurisdiction of the county judge and the judges of the Probate Court No. 1 of Harris County, and the Probate Court No. 2 of Harris County, and by order entered on the minutes of the County Court of Harris County, and of the Probate Court No. 1 of Harris County, and of the Probate Court No. 2 of Harris County, such number of such proceedings and matters then pending in the County Court of Harris County, in the Probate Court No. 1 of Harris County, and in the Probate Court No. 2 of Harris County, as will equalize the number of such cases pending on the dockets of each of said four courts with the Probate Court No. 3 of Harris County having responsibility at all times for all mental illness proceedings. All writs and processes theretofore issued by or out of the County Court of Harris County, the Probate Court No. 1 of Harris County, and the Probate Court No. 2 of Harris County, in such matters and proceedings shall be returnable to the Probate Court No. 3 of Harris County as though originally issued therefrom. All new mental illness proceedings filed on said day or thereafter with the

County Clerk of Harris County irrespective of the court or judge to which the matter or proceedings is addressed, shall be filed by the clerk in the Probate Court No. 3 of Harris County in the order in which the same are deposited with him for filing. All other new matters and proceedings filed on said day, or thereafter filed, with the County Clerk of Harris County, irrespective of the courts or judge to which matter or proceeding is addressed, shall be filed by said clerk so that the cases ending in 0 and 5 shall be filed in the Probate Court No. 3 of Harris County and all other cases or matters ending in an odd number shall be filed in the Probate Court No. 1 of Harris County, and all other cases or matters ending in an even number shall be filed in the Probate Court No. 2 of Harris County, and in the order in which the same are deposited with said clerk for filing, and further said clerk shall keep separate dockets for each of said courts. Each of the judges of the County Court and said Probate Courts Nos. 1, 2, and 3 of Harris County may, at any time, with the consent of the judge of the county court or probate court to which transfer is to be made, by an order entered on the minutes of the county court or of such probate court of Harris County, transfer to said county court or other probate court any such matter or proceeding then or thereafter pending in such county or probate court of Harris County, and all processes extant at the time of such transfer shall be returnable to and filed in the county court or the probate court to which such transfer is made and shall be as valid and binding as though originally issued out of the county court or the probate court to which such transfer may be made.

Sec. 4. The County Court of Harris County shall retain, as heretofore, the powers and jurisdiction of said court existing at the time of the passage of this Act, and shall exercise its powers and jurisdiction as a probate court with respect to all matters and proceedings of such nature, except those matters and proceedings transferred to or filed in said Probate Court No. 1 of Harris County or Probate Court No. 2 of Harris County or Probate Court No. 3 of Harris County. The County Judge of Harris County shall be the Judge of the County Court of Harris County, and all ex officio duties of the County Judge of Harris County as they now exist shall be exercised by the County Judge of Harris County. Nothing contained in this Act shall be construed as in anywise impairing or affecting the jurisdiction of the County Civil Courts at Law Nos. 1, 2, or 3 of Harris County, or the County Criminal Courts at Law Nos. 1, 2, 3, 4, 5, 6, 7, 8, or 9 of Harris County, Texas, or any other county court at law of Harris County heretofore or hereafter created.

Sec. 5. The practice and procedure in the Probate Court No. 3 of Harris County shall be the same as that provided by law generally for the county

courts of this state, and all statutes and laws of the state, as well as all rules of court relating to proceedings therefrom, shall, as to all matters within the jurisdiction of said court, apply equally thereto.

Sec. 6. The Probate Court No. 3 of Harris County shall have power to issue writs of injunction, mandamus, execution, attachment, and all writs and process necessary to the exercise and enforcement of the jurisdiction of said court, and also the power to punish for contempt under such provisions as are or may be provided by the general laws governing county courts throughout the state.

Sec. 7. The initial term of the Probate Court No. 3 of Harris County shall begin on the first Monday next after the first day of the first calendar month following the effective date of this Act and shall continue until and including Sunday next before the first Monday in January of the following year. Thereafter there shall be two terms of said Probate Court No. 3 of Harris County in each year, and the first of such terms shall be known as the January-June Term, and shall begin on the first Monday in January and shall continue until and including Sunday next before the first Monday in July, and the second of such terms, which shall be known as the July-December Term, shall begin on the first Monday in July and shall continue until and including Sunday next before the first Monday in the following January.

Sec. 8. When this Act becomes effective, the Commissioners Court of Harris County shall appoint a judge to the Probate Court No. 3 of Harris County. The judge appointed serves until the next general election and until his successor has been duly elected and has qualified. At the general election in 1978 and every fourth year thereafter, there shall be elected by the qualified voters of Harris County a judge of the Probate Court No. 3 of Harris County for a regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65 of the Texas Constitution. The judge of said court shall be well informed in the laws of the state and shall have been a duly licensed and practicing member of the bar of this state for not less than five consecutive years prior to his appointment or election.

Sec. 9. The Judge of the Probate Court No. 3 of Harris County shall execute a bond in the amount of \$100,000 and take the oath of office as required by the laws relating to county judges.

Sec. 10. Any vacancy in the office of the Judge of the Probate Court No. 3 of Harris County may be filled by the Commissioners Court of Harris County by the appointment of a judge of said court, who shall serve until the next general election and until his successor shall be duly elected and qualified.

Sec. 11. In the case of the absence, disqualification, or incapacity of the Judge of the Probate Court No. 3 of Harris County, the County Judge of Harris County or the Judge of the Probate Court No. 1 of Harris County or the Judge of the Probate Court No. 2 of Harris County, may sit and act as judge of said court, and may hear and determine, either in his own courtroom or in the courtroom of said court, any matter or proceeding there pending, and enter any order in such matters or proceedings as the judge of said court may enter if personally presiding therein.

Sec. 12. In case of the absence, disqualification, or incapacity of the Judge of the Probate Court No. 1 of Harris County, the Judge of the Probate Court No. 2 of Harris County, the Judge of the Probate Court No. 3 of Harris County, or the County Judge of Harris County, a special judge of the Probate Court No. 1 of Harris County or of the Probate Court No. 2 of Harris County or of the Probate Court No. 3 of Harris County, as the need may demand, may be appointed or elected, as provided by the general laws relating to county courts and to the judges thereof.

Sec. 12a. Within 10 days after the effective date of this section, the judges of the Probate Courts Nos. 1, 2, and 3 of Harris County shall draw lots for terms as presiding judge of the courts of probate of Harris County. The judge of the court drawing lot number one shall act in that capacity until the first Tuesday after the first Monday of January, 1980. The judge of the court drawing lot number two shall serve for the six-month period ending on the first Tuesday after the first Monday of July, 1980. The judge of the court drawing lot number three shall serve for the six-month period ending on the first Tuesday after the first Monday of January, 1981. Thereafter, the judges shall continue to serve in rotation as presiding judge for periods of six months. No judge may serve two consecutive terms as presiding judge. It is the duty of the presiding judge of the courts of probate of Harris County to equalize as nearly as possible the dockets of the Probate Courts Nos. 1, 2, and 3, so that each of the courts will have an equal number of the probate cases pending in Harris County. It is the duty of the presiding judge of the courts of probate of Harris County to call a conference twice during each six-month term for the purpose of consultation and counsel as to the state of business in probate matters in Harris County and to arrange for the disposition of the business pending on the probate docket of each of the courts with probate jurisdiction in Harris County. In order to carry out the duties of presiding judge, the presiding judge of the courts of probate of Harris County has the power to transfer to or from any of the Probate Courts Nos. 1, 2, or 3 any case the presiding judge deems proper.

Sec. 12b. (1) Should there be created additional probate courts in Harris County, the judge of each new probate court shall serve as presiding judge for a period of six months with the first such six-month period to commence on the day following the expiration date of the term of the presiding judge of the most recently created probate court of Harris County.

(2) If two or more new probate courts are created in Harris County, at the same time, then the judge of each of the new probate courts shall draw lots for the purpose of determining the order of rotation to be used in the selection of the presiding judge.

Sec. 13. The County Clerk of Harris County shall be the Clerk of the Probate Court No. 3 of Harris County. The seal of the court shall be the same as that provided by law for county courts except that the seal shall contain the words "Probate Court No. 3 of Harris County, Texas," and said seal shall be judicially noticed. The Sheriff of Harris County shall, in person or by deputy, attend the court when required by the judge thereof.

Sec. 14. The Judge of the Probate Court No. 3 of Harris County shall collect the same fees as are now or hereafter established by law relating to county judges or to matters within the jurisdiction of said court, all of which shall be paid by him into the county treasury as collected. He may receive an annual salary equal to the salary of the judges of the Probate Courts Nos. 1 and 2 of Harris County, Texas, and payable in like manner.

Sec. 15. The provisions of this Act shall take effect September 1, 1977.

[Acts 1977, 65th Leg., p. 1145, ch. 434, §§ 1 to 15, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1638, ch. 686, § 2, eff. Aug. 27, 1979.]

Art. 1970-110c.3. County Criminal Court at Law Nos. 8 and 9 of Harris County

(a) There are hereby created two courts to be held in Harris County, Texas, to be called the "County Criminal Court at Law No. 8 of Harris County, Texas," and the "County Criminal Court at Law No. 9 of Harris County, Texas."

(b) The County Criminal Courts at Law Nos. 8 and 9 of Harris County, Texas, shall have, and they are hereby granted the same jurisdiction over criminal matters that is now or may be vested in county courts having jurisdiction in criminal actions and proceedings under the constitution and laws of Texas, and shall have appellate jurisdiction in all appeals in criminal cases from justice courts and corporation courts within Harris County, and the judges of said courts shall have the same powers, rights, and privileges as to criminal matters as are or may be vested in the judges of county courts having criminal juris-

diction; provided that said courts shall have no jurisdiction over any of those matters which are now vested exclusively in the County Court of Harris County, or in the judge thereof.

(c) When this Act becomes effective, the Commissioners Court of Harris County shall appoint a judge of the County Criminal Court at Law No. 8 of Harris County, Texas, and a judge of the County Criminal Court at Law No. 9 of Harris County, Texas, who shall have the qualifications herein prescribed and shall serve until the next general election and until their successors shall be duly elected and qualified. At the general election in 1978 and every fourth year thereafter, there shall be elected by the qualified voters of Harris County a judge of each of the County Criminal Courts at Law Nos. 8 and 9 of Harris County for a regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65 of the Texas Constitution. The judge shall have been a duly licensed and practicing member of the bar of this state for not less than five years; and he shall be compensated as provided by law, and shall be paid out of the county treasury by the commissioners court in equal monthly installments; but such judge shall not collect any fee from the county for disposing of any criminal case, as provided in the Code of Criminal Procedure of Texas. Any vacancy occurring in the office of the judge of said County Criminal Court at Law No. 8 of Harris County, Texas, or in the office of the judge of said County Criminal Court at Law No. 9 of Harris County, Texas, shall be filled by the Commissioners Court of Harris County, the appointee thereof to hold office until the next succeeding general election and until his successor shall be duly elected and qualified. Said courts or the judges thereof shall have the power to issue writs of habeas corpus in criminal misdemeanor cases, and all writs necessary to the enforcement of its jurisdiction.

(d) The judges of the County Criminal Courts at Law Nos. 8 and 9 of Harris County, Texas, shall each appoint an official shorthand reporter for his court, who shall be well skilled in his profession and shall be a sworn officer of the court and shall hold his office at the pleasure of the court and all of the provisions of Chapter 13, Title 42, Revised Civil Statutes of Texas, 1925, as amended, and as the same may hereafter be amended and all other provisions of the law relating to official court reporters shall and are hereby made to apply in all its provisions, insofar as they are applicable to the official shorthand reporters herein authorized to be appointed, and insofar as they are not inconsistent with the provisions of this Act, and such official shorthand reporters shall be entitled to the same compensation as applicable to official shorthand reporters in the district courts of Harris County, Texas, paid in the same manner that compensation of official shorthand reporters of the district courts of Harris County is paid.

(e) The district clerk of Harris County, Texas, shall act as and be the clerk of said County Criminal Court at Law No. 8 of Harris County, Texas, and of said County Criminal Court at Law No. 9 of Harris County, Texas. The district clerk shall receive and collect such fees as he now receives and collects in criminal matters as clerk of the County Criminal Courts at Law Nos. 1, 2, 3, 4, 5, 6, and 7 of Harris County, Texas.

(f) The sheriff of Harris County, either in person or by deputy, shall attend said courts when required by the judges thereof; and the various sheriffs and constables of this state executing process issued out of said courts shall receive the fees now or hereafter fixed by law for executing process issued out of county courts.

(g) The seals of the County Criminal Courts at Law Nos. 8 and 9 of Harris County, Texas, shall be the same as that provided by law for county courts, except that such seals shall contain the words "County Criminal Court at Law No. 8 of Harris County, Texas," and the words "County Criminal Court at Law No. 9 of Harris County, Texas," respectively, and said seals shall be judicially noticed.

(h) A special judge of each of said courts may be appointed or elected in the manner and instances now or hereafter provided by law relating to county courts and judges thereof.

(i) The terms of the courts hereby created shall begin on the first Monday of the months of June, August, October, December, February, and April of each year. The sessions of said courts shall be held in such places as may be provided therefor by the Commissioners Court of Harris County.

(j) When this Act becomes effective, the district clerk of Harris County, Texas, shall alternately file the first 200 cases to be filed in the said County Criminal Court at Law No. 8, and the said County Criminal Court at Law No. 9, with 100 cases being filed in each of the two said courts. Thereafter, cases shall be filed in rotation so thereafter of every 9 cases filed, each of the County Criminal Courts at Law Nos. 1, 2, 3, 4, 5, 6, 7, 8, and 9 shall each receive one case.

(k) The judges of the County Criminal Courts at Law Nos. 8 and 9 of Harris County, Texas, may exchange benches with each other and with the judges of the County Criminal Courts at Law Nos. 1, 2, 3, 4, 5, 6, and 7 of Harris County, Texas, in the same manner that the judges of the County Criminal Courts at Law Nos. 1, 2, 3, 4, 5, 6, and 7 of Harris County, Texas, are authorized to exchange benches. The judges of the County Criminal Courts at Law Nos. 1, 2, 3, 4, 5, 6, 7, 8, and 9 of Harris County, Texas, may transfer criminal causes between said courts by entry of an order on the docket of the court from which the cause is transferred, provided that no cause shall be transferred without the consent of the judge of the court to which transferred.

(l) The practice in said County Criminal Courts at Law Nos. 8 and 9 and in cases of appeal and writs of error therefrom and thereto, shall be the same as is now or may hereafter be prescribed for county courts.

(m) In cases transferred to any one of the County Criminal Courts at Law of Harris County, Texas, as provided in this Act, all process extant at the time of such transfer shall be returned to and filed in the court to which such transfer is made, and shall be as valid and binding as though originally issued out of the court to which such transfer shall be made. [Added by Acts 1975, 64th Leg., p. 928, ch. 346, § 1, eff. Jan. 1, 1976.]

Section 2 of the 1975 Act provided:

"The provisions of this Act shall take effect on January 1, 1976."

Art. 1970-110c.4. County Criminal Court at Law No. 10 of Harris County

(a) There is hereby created a court to be held in Harris County, Texas, to be called the "County Criminal Court at Law No. 10 of Harris County, Texas."

(b) The County Criminal Court at Law No. 10 of Harris County, Texas, shall have and it is hereby granted the same jurisdiction over criminal matters that is now or may be vested in county courts having jurisdiction in criminal actions and proceedings under the constitution and laws of Texas and shall have appellate jurisdiction in all appeals in criminal cases from justice courts and corporation courts within Harris County, and the judge of said court shall have the same powers, rights, and privileges as to criminal matters as are or may be vested in the judges of county courts having criminal jurisdiction; provided that said court shall have no jurisdiction over any of those matters which are now vested exclusively in the County Court of Harris County or in the judge thereof.

(c) When this Act becomes effective, the Commissioners Court of Harris County shall appoint a judge of the County Criminal Court at Law No. 10 of Harris County, Texas, who shall have the qualifications herein prescribed and shall serve until the next general election and until his successor shall be duly elected and qualified. At the general election in 1982 and every fourth year thereafter, there shall be elected by the qualified voters of Harris County a judge of the County Criminal Court at Law No. 10 of Harris County for a regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution. The judge shall have been a duly licensed and practicing member of the bar of this state for not less than five years, and he shall be compensated as provided by law and shall be paid out of the county treasury by the commissioners court in equal monthly installments, but such judge shall not collect any fee from the county for disposing of any criminal case, as

provided in the Code of Criminal Procedure of Texas. Any vacancy occurring in the office of the judge of said County Criminal Court at Law No. 10 of Harris County, Texas, shall be filled by the Commissioners Court of Harris County, the appointee thereof to hold office until the next succeeding general election and until his successor shall be duly elected and qualified. Said court or the judge thereof shall have the power to issue writs of habeas corpus in criminal misdemeanor cases and all writs necessary to the enforcement of its jurisdiction.

(d) The judge of the County Criminal Court at Law No. 10 of Harris County, Texas, shall appoint an official shorthand reporter for his court, who shall be well skilled in his profession and shall be a sworn officer of the court and shall hold his office at the pleasure of the court; and all of the provisions of Chapter 13, Title 42, Revised Civil Statutes of Texas, 1925, as amended, and as the same hereafter be amended and all other provisions of the law relating to official court reporters shall and are hereby made to apply in all its provisions insofar as they are applicable to the official shorthand reporters herein authorized to be appointed and insofar as they are not inconsistent with the provisions of this Act; and such official shorthand reporters shall be entitled to the same compensation as applicable to official shorthand reporters in the district courts of Harris County, Texas, paid in the same manner that compensation of official shorthand reporters of the district courts of Harris County is paid.

(e) The district clerk of Harris County, Texas, shall act as and be the clerk of said County Criminal Court at Law No. 10 of Harris County, Texas. The district clerk shall receive and collect such fees as he now receives and collects in criminal matters as clerk of the County Criminal Courts at Law Nos. 1, 2, 3, 4, 5, 6, 7, 8, and 9 of Harris County, Texas.

(f) The sheriff of Harris County, either in person or by deputy, shall attend said court when required by the judge thereof, and the various sheriffs and constables of this state executing process issued out of said court shall receive the fees now or hereafter fixed by law for executing process issued out of county courts.

(g) The seal of the County Criminal Court at Law No. 10 of Harris County, Texas, shall be the same as that provided by law for county courts, except that such seal shall contain the words "County Criminal Court at Law No. 10 of Harris County, Texas," and said seal shall be judicially noticed.

(h) A special judge of said court may be appointed or elected in the manner and instances now or hereafter provided by law relating to county courts and judges thereof.

(i) The terms of the court hereby created shall begin on the first Monday of the months of June, August, October, December, February, and April of

each year. The sessions of said court shall be held in such place as may be provided therefor by the Commissioners Court of Harris County.

(j) When this Act becomes effective, the district clerk shall transfer to and docket in County Criminal Court at Law No. 10 of Harris County, Texas, all cases ending with the number 0 in the cause number of cases pending on the docket of County Criminal Courts at Law Nos. 1, 2, 3, 4, 5, 6, 7, 8, and 9 of Harris County, Texas, and all cases thereafter filed shall be alternately docketed as follows: all cause numbers ending in 1 shall be docketed in County Criminal Court at Law No. 1 of Harris County, Texas; all cause numbers ending in 2 shall be docketed in County Criminal Court at Law No. 2 of Harris County, Texas; all cause numbers ending in 3 shall be docketed in County Criminal Court at Law No. 3 of Harris County, Texas; all cause numbers ending in 4 shall be docketed in County Criminal Court at Law No. 4 of Harris County, Texas; all cause numbers ending in 5 shall be docketed in County Criminal Court at Law No. 5 of Harris County, Texas; all cause numbers ending in 6 shall be docketed in County Criminal Court at Law No. 6 of Harris County, Texas; all cause numbers ending in 7 shall be docketed in County Criminal Court at Law No. 7 of Harris County, Texas; all cause numbers ending in 8 shall be docketed in County Criminal Court at Law No. 8 of Harris County, Texas; all cause numbers ending in 9 shall be docketed in County Criminal Court at Law No. 9 of Harris County, Texas; and all cause numbers ending in 0 shall be docketed in County Criminal Court at Law No. 10 of Harris County, Texas, and of every 10 cases so filed each court shall each receive one case.

(k) The judge of the County Criminal Court at Law No. 10 of Harris County, Texas, may exchange benches with the judges of the County Criminal Courts at Law Nos. 1, 2, 3, 4, 5, 6, 7, 8, and 9 of Harris County, Texas, in the same manner that the judges of the County Criminal Courts at Law Nos. 1, 2, 3, 4, 5, 6, 7, 8, and 9 of Harris County, Texas, are authorized to exchange benches. The judges of the County Criminal Courts at Law Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 of Harris County, Texas, may transfer criminal causes between said courts by entry of an order on the docket of the court from which the cause is transferred; provided that no cause shall be transferred without the consent of the judge of the court to which transferred.

(l) The practice in said County Criminal Court at Law No. 10 and in cases of appeal and writs of error therefrom and thereto shall be the same as is now or may hereafter be prescribed for county courts.

(m) In cases transferred to any one of the County Criminal Courts at Law of Harris County, Texas, as provided in this Act, all process extant at the time of such transfer shall be returned to and filed in the

court to which such transfer is made and shall be as valid and binding as though originally issued out of the court to which such transfer shall be made. [Acts 1979, 66th Leg., p. 474, ch. 217, § 1, eff. Jan. 1, 1980.]

Art. 1970-110f. County Civil Court at Law No. 4 of Harris County

(a) There is hereby created one court to be held in Harris County, Texas, to be called the "County Civil Court at Law No. 4 of Harris County, Texas." The seal of the court shall be the same as provided by law for county courts, except the seal shall contain the words "County Civil Court at Law No. 4."

(b) The county civil court at law of Harris County created in this Act shall have the same jurisdiction over civil matters, proceedings, and cases that is now or may be vested in the County Civil Courts at Law Nos. 1, 2, and 3 and shall have jurisdiction in civil actions, and the judge thereof exercises equal administrative and ministerial jurisdiction in matters of the filing and disposition of proceedings in eminent domain, concurrently and coextensively with the judge presiding in County Civil Court at Law No. 1 and the judge presiding in County Civil Court at Law No. 2 and the judge presiding in County Civil Court at Law No. 3, under the constitution and laws of Texas. The court created in this Act shall have appellate jurisdiction likewise in appeals of civil cases from the justice courts within Harris County. The judge of this court shall have the same powers, rights, and privileges as to civil matters as are or may be vested in the judges of county courts having civil jurisdiction, except that the court created in this Act shall have no jurisdiction over any of those matters which are now vested exclusively in the County Court of Harris County or in the judge thereof.

(c) The county civil court at law of Harris County created in this Act shall have jurisdiction in all civil matters and causes, original and appellate, except probate matters, over which, by the constitution and general laws of the State of Texas, the county court of the county would have formerly had jurisdiction, and shall have equal and like jurisdiction over civil cases and civil proceedings in the same manner as jurisdiction has been heretofore exercised in civil cases and civil proceedings and in eminent domain by the County Civil Courts at Law Nos. 1, 2, and 3. The County Civil Courts at Law Nos. 1, 2, 3, and 4 shall have special jurisdiction in matters of eminent domain, and the judges thereof shall have sole administrative and ministerial jurisdiction to file and dispose of proceedings in eminent domain concurrently and coextensively when filed in either of these civil courts or with the respective judges thereof.

(d) The terms of the county civil court at law of Harris County created in this Act and the practice

therein and appeals and writs of error therefrom shall be as prescribed by laws relating to county courts. The terms of the Harris County civil court at law created in this Act for civil cases shall be held as now established for the terms of the County Civil Courts at Law Nos. 1, 2, and 3 of Harris County until the same be changed in accordance with the law.

The court created in this Act shall hold six terms a year, beginning respectively on the first Monday in January, in March, in May, in July, in September, and in November of each year, and each term shall continue until the business is disposed of.

(e) As soon as practicable after this Act becomes effective, the Commissioners Court of Harris County shall appoint a judge to the county civil court at law of Harris County created in this Act, who shall have the qualifications herein prescribed and shall serve until the next general election and until his successor shall be duly elected and qualified. At the general election in 1978 and every fourth year thereafter, there shall be elected by the qualified voters of Harris County a judge of each of the county civil courts at law of Harris County created in this Act for a regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution. The judge shall have been a duly licensed and practicing member of the bar of this state for not less than five years. The judge shall be compensated as provided by law and shall be paid out of the county treasury by the commissioners court in equal monthly installments. A vacancy occurring in the office of a judge of the Harris County civil court at law created in this Act shall be filled by the Commissioners Court of Harris County, the appointee thereof to hold office until the next succeeding general election and until his successor shall be duly elected and qualified.

(f) The judge of the Harris County civil court at law created in this Act shall execute a bond and take the oath of office as required by the law relating to county judges.

(g) A special judge of the Harris County civil court at law created in this Act may be appointed or elected as provided by law relating to county courts and to the judges thereof.

(h) The County Clerk of Harris County shall be the clerk of the Harris County civil court at law created in this Act. The Sheriff of Harris County shall, in person or by deputy, attend the court when required by the judge thereof.

The county clerk shall keep separate dockets for each of the County Civil Courts Nos. 1, 2, 3, and 4 and shall tax the official court reporter's fee as costs in civil actions filed in each of these courts in like manner as the fee is taxed in civil cases in the district courts.

Beginning as soon as practicable after the effective date of this Act, the county clerk shall file all civil cases and civil proceedings exclusively in the County Civil Courts at Law Nos. 1, 2, 3, and 4 and shall file the civil cases alternately in each of these courts as presented for filing.

(i) In case of disqualification, an overcrowded docket, sickness, or absence from the county of any of the judges of the County Civil Courts at Law Nos. 1, 2, 3, and 4 or county criminal courts at law, any other judge of these courts may exchange benches with any other county court at law judge of Harris County, and when so exchanging benches with any other of the county court at law judges of Harris County, the judge of the county civil court at law of Harris County created in this Act shall have all power and jurisdiction of the county civil or county criminal courts at law, and of the judge thereof, while so exchanging benches. In like manner, the judges of the county civil or criminal courts at law of Harris County shall have all the power and jurisdiction of any other of these civil or criminal county courts at law, and of the judges thereof, while so exchanging benches, and may sign orders, judgments and decrees, or other process as "Judge Presiding" when acting for the disqualified or absent judge upon request or in an emergency or for good cause shown.

(j) The judge of the county civil court at law of Harris County created in this Act may appoint and discharge an official court reporter in the same manner as such a reporter is appointed or discharged by the district courts. An official court reporter shall receive the same salary as the reporters of the district courts of Harris County, to be paid by the county treasurer out of the general fund of the county, and in addition to the salary shall receive the compensation for transcript fees as provided by law. [Acts 1977, 65th Leg., p. 1152, ch. 437, § 1, eff. Jan. 1, 1978.]

Section 2 of the 1977 Act provided:

"This Act takes effect on January 1, 1978."

EL PASO COUNTY

Art. 1970-141.2. County Court at Law No. 3 of El Paso County

[See Compact Edition, Volume 3 for text of 1 to 4]

Sec. 5.

[See Compact Edition, Volume 3 for text of 5(a)]

(b) The judges of the county courts at law now in existence or which shall hereafter be created in El Paso County and the judge of the county court shall receive an annual salary in an amount not to exceed nine-tenths of the total annual salary, including supplements, paid any district judge sitting in El Paso County. The salary shall be paid out of the general fund of El Paso County in equal monthly install-

ments by warrants drawn on the county treasury on orders of the Commissioners Court of El Paso County. The judge of the county court and the judges of each county court at law in El Paso County shall not collect any fee from the county for disposing of any criminal case.

[See *Compact Edition, Volume 3 for text of 6 to 14*]

[Amended by Acts 1975, 64th Leg., p. 1383, ch. 531, § 1, eff. Sept. 1, 1975.]

Art. 1970-141.3 County Court at Law No. 4 of El Paso County

Sec. 1. There is created a County Court at Law in El Paso County, to be known and designated as the "County Court at Law No. 4 of El Paso County, Texas."

Sec. 2. The County Court at Law No. 4 of El Paso County shall have the same jurisdiction over criminal matters that is now or may be vested in county courts having jurisdiction in criminal actions and proceedings under the constitution and laws of Texas, and shall have appellate jurisdiction in appeals in criminal cases from justice courts and municipal courts within El Paso County. The judge of the court shall have the same powers, rights, and privileges as to criminal matters as are or may be vested in the judges of county courts having criminal jurisdiction. The County Court at Law No. 4 of El Paso County shall have the same jurisdiction and powers in criminal matters and civil actions or proceedings that are now or may be vested in the County Courts at Law Nos. 1, 2, and 3 of El Paso County. The judge of each of the county courts at law may with the consent of the judge of the court to which transfer is to be made, transfer civil or criminal actions or proceedings from his respective court to the other court by the entry of an order to that effect on the docket. The judges of the County Courts at Law Nos. 1, 2, and 3 of El Paso County shall transfer to the County Court at Law No. 4 of El Paso County any civil or criminal action or proceeding pending on the docket of the court on the effective date of this Act as may be necessary in order that the now overcrowded dockets of the courts may be relieved, and the County Court at Law No. 4 of El Paso County, and the judge thereof, shall have jurisdiction to hear and determine civil or criminal matters, and render and enter the necessary and proper orders, decrees, and judgments therein. No cause may be transferred without the consent of the judge of the court to which it is transferred.

Sec. 3. (a) The county courts at law of El Paso County shall have the general jurisdiction of probate courts within the limits of El Paso County concurrent with jurisdiction of the County Court of El Paso County in such matters and proceedings. The coun-

ty courts at law shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and drunkards, grant letters testamentary and of administration, settle accounts with administrators, executors, and guardians, transact all business pertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis, and drunkards, including the settlement, partition, and distribution of estates of deceased persons, and the apprenticing of minors as provided by law, and conduct lunacy proceedings. The county courts at law shall have no jurisdiction over any other of those matters which are now vested exclusively in the County Court of El Paso County, or in the judge therein.

(b) The judges of the County Court of El Paso County and the county courts at law of El Paso County may, with the consent of the judge of the court to which transfer is to be made, transfer probate matters or proceedings from his respective court to the other court by the entry of an order to that effect on the docket.

(c) The judges of the county court and the county courts at law may collectively make and publish rules from time to time governing the docketing and disposition of probate matters and proceedings in their courts not inconsistent with the laws of the State of Texas or the Texas Rules of Civil Procedure and for the purpose of efficient and justiciable disposition of probate matters and proceedings. A copy of the rules and changes shall be filed with the County Clerk of El Paso County, and one copy of the rules and changes shall be available in each court for the examination of participants in any probate matters filed.

(d) The County Court of El Paso County and the county courts at law of El Paso County, or each of the judges thereof, have the power to issue writs of injunction, sequestration, attachment, garnishment, certiorari, supersedeas, and all other writs necessary to the enforcement of the jurisdiction of the courts, and also have the power to punish for contempt under such provisions as are or may be provided by the general laws governing county courts throughout the state, and to issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the courts or of any court or tribunal inferior to the courts.

Sec. 4. (a) The terms of the county courts at law of El Paso County shall commence on the first Monday in January and July and the courts may continue in session until the Sunday next preceding the Monday for the convening of the next regular term of court.

(b) The judges of the county courts at law of El Paso County may divide each term of court into as many sessions as they deem necessary for the dispo-

sition of business, and may extend a particular term of court whenever practicable for the efficient and justiciable disposition of individual proceedings and matters.

Sec. 5. (a) The judge of each county court at law of El Paso County shall be a citizen of the United States and of this state, who shall have been a practicing attorney of this state for at least five years next preceding his election or appointment and who shall have resided in the County of El Paso for at least two years next preceding his election or appointment.

(b) The judge of the County Court at Law No. 4 of El Paso County may receive an annual salary to be fixed by the commissioners court. The salary may be paid out of the general fund of El Paso County in equal monthly installments by warrants drawn on the county treasury on orders of the Commissioners Court of El Paso County. The judge of the county court and the judges of each county court at law in El Paso County shall not collect any fee from the county for disposing of any criminal case.

Sec. 6. When this Act becomes effective, the Commissioners Court of El Paso County shall appoint a judge of the County Court at Law No. 4 of El Paso County who shall serve until the next general election and until his successor is elected and has qualified. Beginning at the general election in 1978 and every fourth year thereafter, there shall be elected by the qualified voters of the county a judge of the County Court at Law No. 4 for a regular term of four years as provided by the Texas Constitution. In case of vacancy, the office shall be filled by appointment by the commissioners court, and the appointee shall hold office until the next succeeding general election and until his successor is elected and has qualified.

Sec. 7. The judge of the County Court at Law No. 4 of El Paso County shall execute bond and take the oath of office as required by law relating to county judges.

Sec. 8. The judge of the County Court at Law No. 4 of El Paso County shall appoint an official court reporter for the court, who shall be well-skilled in his profession and shall be a sworn officer of the court and shall hold his office at the pleasure of the court. All of the provisions of Chapter 13, Title 42, Revised Civil Statutes of Texas, 1925, as amended, and as hereafter amended, and all other provisions of the law relating to official court reporters, shall apply in all their provisions, insofar as they are applicable, to the official court reporter herein authorized to be appointed, and insofar as they are not inconsistent with the provisions of this Act. The

official court reporter shall be entitled to the same compensation as the official court reporters in the district courts of El Paso County, to be paid in the same manner that compensation of official court reporters of the district courts of El Paso County is paid.

Sec. 9. The county clerk of El Paso County shall be the clerk of the County Court at Law No. 4 of El Paso County in civil and criminal matters. The county clerk shall receive and collect the same fees which he now receives and collects as clerk of the County Courts at Law Nos. 1, 2, and 3 of El Paso County. The clerk shall keep separate dockets for each court and shall tax the official court reporter's fee as costs in civil actions in each court in like manner as the fee is taxed in civil cases in the district courts.

Sec. 10. The sheriff of El Paso County, either in person or by deputy, shall attend the court when required by the judge. The various sheriffs and constables of this state executing process issued out of this court shall receive the fees now or hereafter fixed by law for executing process issued out of county courts.

Sec. 11. The seal of the County Court at Law No. 4 of El Paso County shall be the same as that provided by law for county courts, except that the seal shall contain the words "County Court at Law No. 4 of El Paso County, Texas," and the seal shall be judicially noticed.

Sec. 12. A special judge of the court may be appointed or elected in the manner and instances now or hereafter provided by law relating to county courts and judges thereof.

Sec. 13. (a) The judges of the county courts at law of El Paso County shall have the power to make and publish rules as to the docketing and disposition of criminal and civil cases in their courts not inconsistent with the laws of the State of Texas or the Texas Rules of Civil Procedure.

(b) The judges of the county courts at law of El Paso County with mutual consent may exchange benches with one another or act as presiding judge of the other courts in individual proceedings or actions in the absence or disqualification of the other judge.

Sec. 14. In cases transferred to any one of the county courts at law by order of the judge of one of the other county courts at law, all process extant at the time of the transfer shall be returned to and filed in the court to which such transfer is made, and shall be as valid and binding as though originally issued out of the court to which the transfer is made. [Acts 1977, 65th Leg., p. 1493, ch. 607, §§ 1 to 14, eff. Aug. 29, 1977.]

WICHITA COUNTY

Art. 1970-166d. County Court at Law of Wichita County**Creation**

Sec. 1. The County Court at Law of Wichita County is created on the date determined by Section 10 of this Act.

Jurisdiction

Sec. 2. (a) The County Court at Law of Wichita County has jurisdiction concurrent with the County Court of Wichita County over all criminal and juvenile proceedings, original and appellate, prescribed by the constitution and general laws of this state for county courts, and prescribed by Chapter 762, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 1200aa, Vernon's Texas Civil Statutes), and by Chapter 519, Acts of the 63rd Legislature, Regular Session, 1973 (Article 1970-166c, Vernon's Texas Civil Statutes).

(b) The County Court at Law of Wichita County has civil jurisdiction concurrent with the district courts of Wichita County over civil suits, causes, and proceedings when the amount in controversy exceeds \$500 and does not exceed \$10,000, exclusive of interest, and, without regard to the value of the estate or matter in question, over suits, causes, and proceedings involving dissolution of marriage by divorce or annulment, including the adjustment of property rights, suits affecting the parent-child relationship, suits concerning adoptions, suits for protection of children in an emergency, suits for removal of disabilities of minority or for change of name, suits involving delinquent children or children in need of supervision, suits brought under the authority of the Uniform Reciprocal Enforcement of Support Act or the Uniform Interstate Compact on Juveniles and all other jurisdiction, powers, and authorities now or hereafter placed in the district or county courts under the juvenile or child welfare laws of this state.

(c) The County Court at Law of Wichita County has no jurisdiction other than that specifically set forth in this section. The concurrent civil jurisdiction granted to the County Court at Law of Wichita County does not include causes or proceedings, original or appellate, concerning eminent domain, probate, roads, bridges and public highways, or the general administration of county business which is now within the jurisdiction of the commissioners court of Wichita County.

(d) The County Court at Law of Wichita County and the duly qualified judge of the court have the power to issue writs and orders as may be necessary in aid of its jurisdiction or the enforcement of its lawful orders.

(e) The provisions of this section do not diminish the jurisdiction of the several district courts of

Wichita County, and the district courts shall retain and continue to exercise the jurisdiction that they now have or that may be hereafter conferred upon them by law.

Terms

Sec. 3. The County Court at Law of Wichita County shall hold two continuous terms which commence on the first Monday in January and on the first Monday in July of each year. Each term of court continues until the next succeeding term begins.

Judge

Sec. 4. (a) The judge of the County Court at Law of Wichita County shall be at least 25 years of age and shall be a citizen of the United States and of this state who is licensed to practice law in this state, has been a practicing lawyer or a judge of a court in this state or both combined for four years, and has been a resident of Wichita County for two years. The judge shall reside in Wichita County during his or her term of office.

(b) During his or her term of office, the judge of the County Court at Law of Wichita County shall not engage in the private practice of law.

(c) When this court is created, the commissioners court of Wichita County shall appoint a judge of the County Court at Law of Wichita County, who shall serve until the next general election after he or she takes office and until his or her successor is duly elected and has qualified. Beginning at the general election in 1982 and every fourth year thereafter, there shall be elected by the qualified voters of Wichita County a judge of the county court at law for a regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution.

(d) A vacancy occurring in the office of the judge of the County Court at Law of Wichita County shall be filled by the commissioners court of Wichita County, and the appointee shall hold office until the next general election and until his or her successor is elected and has qualified.

(e) The judge of the County Court at Law of Wichita County shall execute a bond and take the oath of office prescribed by law for county judges. The judge may be removed from office in the same manner and for the same causes as a county judge.

(f) The judge of the County Court at Law of Wichita County may receive a salary not to exceed 90 percent of the total annual salary paid to the judges of the district courts having jurisdiction in Wichita County to be set by the commissioners court and to be paid out of the county treasury by the commissioners court. The salary may be paid in equal monthly installments. The judge of the County Court at Law of Wichita County may be entitled

to traveling expenses and necessary office expenses, including administrative and clerical help, in the same manner as is allowed the county judge of Wichita County. The judge of the county court at law is a member of the Juvenile Board of Wichita County. The judge of the County Court at Law of Wichita County shall assess the same fees as are now prescribed or may be established by law relating to county judge's fees, all of which shall be collected by the clerk of the court and shall be paid into the county treasury on collection, and no part of which shall be paid to the judge.

(g) A special judge of the County Court at Law of Wichita County with the same qualifications as the regular judge may be appointed or elected in the manner provided by law for the appointment or election of a special county judge. If a judge of the County Court at Law of Wichita County is disqualified to try a case pending in his or her court, the parties or their attorneys may agree on the selection of a special judge for the case. A special judge is entitled to the same rate of compensation as the regular judge.

Personnel

Sec. 5. (a) The county attorney and sheriff of Wichita County shall serve as county attorney and sheriff, respectively, of the County Court at Law of Wichita County. The district clerk of Wichita County shall serve as clerk of the County Court at Law of Wichita County in cases enumerated in Subsection (b) of Section 2 of this Act, and the county clerk of Wichita County shall serve as clerk of the County Court at Law of Wichita County in cases enumerated in Subsection (a) of Section 2 of this Act. These officials, either personally or by the appointment of a deputy or assistant, shall perform the duties and responsibilities of their office and are entitled to the compensation, fees, and allowances prescribed by law for their respective offices. The commissioners court may employ as many deputy sheriffs and bailiffs as are necessary to serve the court.

(b) The judge of the County Court of Law of Wichita County shall appoint an official court reporter who shall have the same qualifications and whose duties shall in every respect be the same as now provided by law. The official court reporter is entitled to the compensation fixed by the commissioners court of Wichita County.

Transfer of Cases and Judges

Sec. 6. (a) As soon as practicable after this court is created, the county clerk may establish a separate docket for the court created by this Act from among pending matters filed originally in the county court of Wichita County and shall transfer those matters to the docket of the court created by this Act. Equalization of case load shall be the primary object

in establishing the initial case docket for the County Court at Law of Wichita County. As soon as practicable after this court is created, the district clerk shall establish a separate docket for the County Court at Law of Wichita County. The transfer of any pending matters originally filed in the district courts prior to the date the County Court at Law of Wichita County is created shall be in accordance with the provisions of Subsection (b) of this section.

(b) The judge of the county court and the judge of the county court at law may transfer cases to and from the dockets of their respective courts, in matters within their jurisdiction, in order that the business may be equally distributed between them. All cases of concurrent jurisdiction enumerated in Subsection (b) of Section 2 of this Act may be instituted in or transferred between the district courts of Wichita County and the County Court at Law of Wichita County. However, no case may be transferred from one court to another without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred.

(c) In cases transferred to the county court at law as provided by Subsection (a) of this section and in cases transferred to any of the courts in Wichita County by order of the judge of another court, all processes, writs, bonds, recognizances, or other obligations issued or made in the cases shall be returned to and filed in the court to which the transfer is made. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of the bonds or recognizances at the terms of the court to which the cases are transferred as are fixed by law. All processes issued or returned before transfer of the cases as well as all bonds and recognizances before taken in the cases shall be valid and binding as though originally issued out of the court to which the transfer is made.

(d) The county judge and the judge of the County Court at Law of Wichita County may freely exchange benches and courtrooms with each other in matters within their jurisdiction so that if one is ill, disqualified, or otherwise absent, the other may hold court for him or her without the necessity of transferring the case involved. Either judge may hear all or any part of a case pending in the county court or county court at law, but only in matters within their jurisdiction, and may rule and enter orders on and continue, determine, or render judgment on all or any part of the case without the necessity of transferring it to his or her own docket. The district judges and the judge of the County Court at Law of Wichita County may freely exchange benches and courtrooms with each other in matters within their concurrent jurisdiction so that if one is ill, disqualified, or otherwise absent, another may hold court for

him or her without the necessity of transferring the case involved. Any of those judges may hear all or any part of a case pending in the district court or county court at law, but only in matters within their jurisdiction, and may rule and enter orders on and continue, determine, or render judgment on all or any part of the case without the necessity of transferring it to his or her own docket. However, a judge may not sit or act in a case unless it is within the jurisdiction of his or her court. Each judgment and order shall be entered in the minutes of the court in which the case is pending. The provisions providing for the exchange of benches by and between the judges are cumulative of and in addition to the provisions herein provided for the selection and appointment of a special judge of the County Court at Law of Wichita County.

Practice and Procedure

Sec. 7. (a) Practice in the County Court at Law of Wichita County shall conform to that prescribed by general law for county courts, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings in the County Court at Law of Wichita County involving those matters of concurrent jurisdiction enumerated in Subsection (b) of Section 2 of this Act shall be governed by the provisions of this Act and the laws and rules pertaining to district courts, general and special, as well as county courts. If a case enumerated in Subsection (b) of Section 2 of this Act is tried before a jury, the jury shall be composed of six members and shall be privileged to render verdicts by a five to one margin in civil cases and a unanimous verdict in criminal cases.

(b) The laws which govern the drawing, selection, service, and pay of jurors for county courts apply to the County Court at Law of Wichita County.

(c) Jurors regularly impaneled for a week by the district court or courts may, on request of either the county judge or the judge of the county court at law, be made available and shall serve for the week in either the county court or county court at law.

Courtroom

Sec. 8. The commissioners court of Wichita County shall furnish and equip a suitable courtroom and office space for the court created by this Act.

Seal

Sec. 9. The seal of the court created by this Act shall be the same as that provided by law for county courts, except the seal shall contain the words "County Court at Law of Wichita County."

Date of Creation

Sec. 10. The County Court at Law of Wichita County is created on January 1, 1982, or on a date

determined by the commissioners court by an order entered on its minutes, after the provisions of Section 8 of this Act shall be fully complied with, whichever date is earlier.

[Acts 1979, 66th Leg., p. 424, ch. 195, §§ 1 to 10, eff. Aug. 27, 1979.]

McLENNAN COUNTY

Art. 1970-298d. County Court at Law No. 2 of McLennan County

Sec. 1. The County Court at Law No. 2 of McLennan County is created on the date determined by the provisions of Section 11 of this Act.

Sec. 2. (a) The County Court at Law No. 2 of McLennan County has jurisdiction in all matters and causes, civil, criminal, and probate, original and appellate, over which by the general laws and constitution of the state the county court of the county would have jurisdiction, and its jurisdiction is concurrent with that of the County Court of McLennan County and the County Court at Law of McLennan County. This provision does not affect the jurisdiction of the commissioners court, or of the county judge of McLennan County as the presiding officer of the commissioners court, as to roads, bridges, and public highways, and matters that are now within the jurisdiction of the commissioners court or the county judge as presiding officer. The county judge of McLennan County shall be the judge of the County Court of McLennan County. All ex officio duties of the county judge shall be exercised by the judge of the County Court of McLennan County, except insofar as the same shall by this Act be committed to the judge of the County Court at Law No. 2 of McLennan County.

(b) The County Court at Law No. 2 of McLennan County has jurisdiction concurrent with the district court in eminent domain cases and in civil cases when the matter in controversy exceeds \$500 and does not exceed \$5,000, exclusive of interest, as provided by general law.

Sec. 3. The County Court at Law No. 2 of McLennan County or its judge has the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, and supersedeas, and all writs necessary to the enforcement of the jurisdiction of the court, and to issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court or tribunal inferior to that court. The court and judge have the power to punish for contempt as prescribed by law for county courts.

Sec. 4. (a) The judges of the county court and the county courts at law may transfer cases to and from the dockets of their respective courts. However, no case may be transferred from one court to

another court without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred.

(b) The county judge and the judges of the county courts at law may freely exchange benches and courtrooms with each other so that if one is ill, disqualified, or otherwise absent, the other may hold court for him without the necessity of transferring the case involved. Either judge may hear all or any part of a case pending in the county court or in a county court at law and may rule and enter orders on and continue, determine, or render judgment on all or any part of the case without the necessity of transferring it to his own docket. However, the judge of either court may not sit or act in a case unless it is within the jurisdiction of his court. Each judgment and order shall be entered in the minutes of the court in which the case is pending.

(c) In cases transferred to either of the courts by order of the judge of one of the other courts, all processes, writs, bonds, recognizances, or other obligations issued or made in the cases shall be returned to and filed in the court to which transfer is made. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of such bonds or recognizances at the terms of the court to which the cases are transferred as are fixed by law. All processes issued or returned before transfer of the cases, as well as all bonds and recognizances before taken in the cases, shall be valid and binding as though originally issued out of the court to which the transfer is made.

Sec. 5. The terms of the County Court at Law No. 2 of McLennan County shall be held on the first Mondays in January, March, May, July, September, and November in each year, and each term of the court shall continue in session until and including the Saturday next preceding the beginning of the next succeeding term. The practice in the court, and appeals and writs of error therefrom, shall be as prescribed by the laws relating to county courts.

Sec. 6. Regardless of whether the court is created prior to January 1, 1979, beginning at the general election in 1978 and every fourth year thereafter, there shall be elected by the qualified voters in McLennan County, for a term beginning on January 1 following each election, a judge of the County Court at Law No. 2 of McLennan County, who shall be a qualified voter in the county, who shall be a regularly licensed attorney at law in this state, who shall be well informed in the laws of this state, who shall have resided in and been actively engaged in the practice of law in this state or as the judge of a court for a period of not less than five years next

preceding such general election, and who shall hold his office until his successor shall have been duly elected and qualified.

Sec. 7. The judge of the County Court at Law No. 2 of McLennan County shall execute a bond and take the oath of office as required by law relating to county judges.

Sec. 8. A special judge of the County Court at Law No. 2 of McLennan County may be appointed or elected when and under such circumstances as are provided by law relating to county courts and to the judges thereof, who shall receive for each day he actually serves the same compensation as provided for a special judge of the County Court at Law of McLennan County, to be paid out of the general fund of the county by the commissioners court.

Sec. 9. The clerk of the County Court of McLennan County shall be the clerk of the County Court at Law No. 2 of McLennan County. The seal of the court shall be the same as that provided by law for county courts except that the seal shall contain the words "Clerk of the County Court at Law No. 2 of McLennan County." The sheriff of McLennan County shall in person or by deputy attend the court when required by the judge thereof.

Sec. 10. (a) The judge of the County Court at Law No. 2 of McLennan County is authorized to appoint an official shorthand reporter for the court. A person is eligible for appointment who is well skilled in his profession. On appointment the reporter is to serve as a sworn officer of the court, holding his office at the pleasure of the court.

(b) The reporter is not required to take testimony in a case unless a party to the case or the judge demands that testimony be taken. In cases in which the reporter is required to take testimony, the court clerk shall tax a \$3 fee as costs in the case. The clerk shall deposit fees collected under this section in the treasury of McLennan County. The reporter shall be available for matters being considered in the county court if a reporter is requested by the litigants before that court and the request is approved by the judge of the County Court at Law No. 2 of McLennan County.

(c) The reporter may receive the same compensation as the official shorthand reporters of the district courts in McLennan County, which compensation is to be paid in the same manner as is the compensation of the official shorthand reporters of the district courts in McLennan County. The county judge, the county auditor, the commissioners court, and any other officials of McLennan County charged with preparing and approving the county budget are authorized to amend the budget of McLennan County to provide for paying compensation to the reporter.

(d) Except where inconsistent with this Act, all general laws relating to court reporters apply to the official court reporter of the County Court at Law No. 2 of McLennan County.

Sec. 11. Any vacancy in the office of the judge of the court created by this Act shall be filled by the Commissioners Court of McLennan County until the next general election. The County Court at Law No. 2 of McLennan County is created on January 1, 1979, or on a date determined by the commissioners court by an order entered in its minutes, whichever date is earlier. If the court is created prior to January 1, 1979, the commissioners court shall appoint a judge of the County Court at Law No. 2 of McLennan County, who shall serve for a term ending on December 31, 1978, and until his successor is duly elected and has qualified.

Sec. 12. The judge of the County Court at Law No. 2 of McLennan County shall assess the same fees as are or may be established by law relating to county judges, all of which shall be collected by the clerk of the court and be paid monthly by him into the county treasury, and the judge of the County Court at Law No. 2 of McLennan County may receive an annual salary equal to the annual salary of the judge of the County Court at Law of McLennan County, payable monthly out of the county treasury by the commissioners court.

[Acts 1977, 65th Leg., p. 1007, ch. 373, §§ 1 to 12, eff. Aug. 29, 1977.]

BEXAR COUNTY

Art. 1970-301. County Courts at Law Nos. 1 and 2 of Bexar County

[See *Compact Edition, Volume 3 for text of 1 to 4*]

Sec. 4-A. The Judge of the County Court at Law No. 2 of Bexar County, Texas, upon proper certification of the County Judge of Bexar County, Texas, because of conflicting duties, or absence or inability to act; or upon the failure or refusal of such County Judge to act for any reason or cause, shall also be authorized and empowered to act for and in the place and stead of said such County Judge in any probate proceeding or matter, and also may perform for the County Judge of Bexar County any and all other ministerial acts required by the laws of this State of said County Judge of Bexar County, Texas, including the granting or denying of applications for beer and wine licenses and other authority given the County Judge as set forth in the Alcoholic Beverage Code, and upon any such certification, the Judge of said County Court at Law No. 2, of Bexar County, Texas, shall give preference and priority to all such actions, matters, and proceedings so certified, and any and all such acts thus performed by the Judge of said County Court at Law No. 2, of

Bexar County, Texas, shall be valid and binding upon all parties to such actions, matters, and proceedings the same as if performed by the County Judge of Bexar County, Texas. Provided, that the powers thus conferred on the Judge of the County Court at Law No. 2, of Bexar County, Texas, shall extend to and include all powers of the County Judge of Bexar County, Texas, except his powers and duties in connection with the transaction of the business of the County as presiding officer of the Commissioners Court, and in connection with the budget of Bexar County. And provided further that the provisions of this paragraph shall be in addition to and cumulative of the provisions of Chapter 355, Acts of the 52nd Legislature, Regular Session, 1951 (Article 1969a-2, Vernon's Texas Civil Statutes).

Notwithstanding the additional powers and duties conferred upon the Judge of the County Court at Law No. 2, of Bexar County, Texas, by the provisions of this paragraph, no additional compensation or salary shall be paid to said Judge, but the compensation or salary of such Judge shall remain the same as now, or as may be hereafter, fixed by law.

[See *Compact Edition, Volume 3 for text of 5 to 21-B*]

[Amended by Acts 1979, 66th Leg., p. 824, ch. 371, § 1, eff. Aug. 27, 1979.]

Art. 1370-301e.1. County Courts at Law Nos. 4 and 5 of Bexar County

[See *Compact Edition, Volume 3 for text of 1 to 15*]

Sec. 16. The judge of the County Court at Law Number 4 of Bexar County, Texas, may appoint an administrative assistant or assistants to aid him in the performance of his duties in matters probate. The salary of said administrative assistant or assistants shall be set by the Commissioners Court of Bexar County to be paid out of the General Fund of Bexar County, Texas, by warrants drawn on the county treasurer of said county upon orders of the Commissioners Court of Bexar County.

[Amended by Acts 1979, 66th Leg., p. 1003, ch. 439, § 1, eff. June 6, 1979.]

1970-301h. Repealed by Acts 1977, 65th Leg., p. 187, ch. 93, § 2, eff. May 2, 1977

See, now, § 8(c) of Art. 3883i.

CAMERON COUNTY

Art. 1970-305c. County Court at Law No. 2 of Cameron County

Creation

Sec. 1. The County Court at Law No. 2 of Cameron County is created. It shall sit in Brownsville, Texas.

Jurisdiction

Sec. 2. (a) The County Court at Law No. 2 of Cameron County shall have and exercise jurisdiction in all matters and causes, civil and criminal, original and appellate, over which by the general laws of the state, the county courts have jurisdiction, and shall have jurisdiction concurrent with the County Court at Law of Cameron County in matters and causes, civil and criminal, original and appellate.

(b) The County Court at Law No. 2 of Cameron County shall have and exercise original concurrent jurisdiction with the justice courts and with the County Court at Law of Cameron County in all civil and criminal matters which by the general laws of this state is conferred on justice courts. No appeal or writ of error shall be taken to the court of civil appeals from any final judgment of the County Court at Law No. 2 of Cameron County in civil cases of which the court has appellate or original concurrent jurisdiction with the justice court, where the judgment or amount in controversy does not exceed \$100, exclusive of interest and costs. This Act does not deprive the justice courts of the jurisdiction conferred on them by law, but gives concurrent original jurisdiction to the county courts at law of Cameron County over the matters specified in this subsection. This Act does not deny the right of appeal to the county courts at law of Cameron County from the justice court where the right of appeal to the county court exists by law. All cases appealed from the justice court and other inferior courts in Cameron County shall be made direct to the county courts at law under the provisions governing such appeals.

(c) The County Court at Law No. 2 of Cameron County shall also have the general jurisdiction of a probate court within the limits of Cameron County, concurrent with jurisdiction of the County Court of Cameron County and the County Court at Law of Cameron County in such matters and proceedings.

(d) The County Court at Law No. 2 of Cameron County has jurisdiction concurrent with the district court in eminent domain cases and in civil cases when the matter in controversy exceeds \$500 and does not exceed \$20,000, exclusive of interest, as provided by general law.

(e) The County Court of Cameron County shall have and retain concurrently with the County Court at Law of Cameron County and the County Court at Law No. 2 of Cameron County the general jurisdiction of a probate court but shall have no other jurisdiction, civil or criminal. The county judge of Cameron County shall be the judge of the County Court of Cameron County, and all ex officio duties of the county judge shall continue to be exercised by the judge of the County Court of Cameron County unless by this Act committed to the judges of the county courts at law. The county courts at law do

not have jurisdiction over causes and proceedings concerning roads, bridges, and public highways or the general administration of county business which is within the jurisdiction of the commissioners court or the presiding judge of the commissioners court.

Writ Power

Sec. 3. The County Court at Law No. 2 of Cameron County, or the judge thereof, shall have the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary to the enforcement of jurisdiction of the court, and to issue writs of habeas corpus in such cases where the offense charged is within the jurisdiction of the court or of any other court in the county of inferior jurisdiction to the County Court at Law No. 2.

Terms

Sec. 4. The County Court at Law No. 2 of Cameron County shall hold six terms of court each year, commencing on the first Monday in January, March, May, July, September, and November of each year, and each term shall continue until the next succeeding term begins.

Judge

Sec. 5. (a) There shall be elected in Cameron County, by the qualified voters of the county, a judge of the County Court at Law No. 2. No person may be elected judge of the court who has not been a resident citizen and practicing attorney of Cameron County for at least one year prior to the election and who does not possess all of the qualifications for the office that are required by the general laws of the state for county judges. As soon as this court is created, the Commissioners Court of Cameron County shall appoint a judge to the County Court at Law No. 2 of Cameron County, who shall hold the office as judge until the next general election and until his or her successor is elected and has qualified. Beginning at the general election in 1982 and every fourth year thereafter, there shall be elected a judge of the County Court at Law No. 2 for a regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution. A vacancy in the office of the judge of the County Court at Law No. 2 of Cameron County shall be filled by appointment of the Commissioners Court of Cameron County, and when so filled, the judge shall hold the office until the next general election and until his or her successor is elected and has qualified.

(b) The judge of the County Court at Law No. 2 shall execute a bond and take the oath of office as required by law relating to county judges.

(c) The judge of the County Court at Law No. 2 may be removed from office in the same manner and for the same causes as provided by law for county judges.

(d) A special judge of the County Court at Law No. 2 may be appointed or elected as provided by law relating to county courts and to the judges thereof, who shall be compensated in the same manner as provided for special judges of the county courts.

Compensation

Sec. 6. The judge of the County Court at Law No. 2 of Cameron County may receive an annual salary, the amount of which shall be fixed by the Commissioners Court of Cameron County. The salary shall be paid out of the county treasury of Cameron County on the order of the commissioners court and shall be paid monthly in equal installments. The amount shall not exceed 90 percent of the amount paid a district court judge having jurisdiction in Cameron County.

Personnel

Sec. 7. (a) The county clerk, county attorney, and sheriff of Cameron County shall serve as clerk, county attorney, and sheriff, respectively, for the County Court at Law No. 2. These officials, either personally or by the appointment of a deputy or assistant, shall perform the duties and responsibilities of their offices and are entitled to the compensation, fees, and allowances prescribed by law for their respective offices.

(b) The judge of the County Court at Law No. 2 shall appoint an official shorthand reporter for the court who shall have the qualifications provided by law for official court reporters, shall be a sworn officer of the court, and shall hold office at the pleasure of the judge. The duties of the reporter shall be the same as provided by general law for official court reporters, and the salary of the reporter shall be set by the commissioners court and paid monthly by the commissioners court out of any funds available for the purpose. All other provisions of the law relating to official court reporters shall apply insofar as they are applicable to the court reporter authorized by this Act and insofar as they are not inconsistent with this Act.

Jurors

Sec. 8. (a) The jurisdiction and authority vested by law in the county court and the judge thereof for the drawing, selection, and service of jurors shall also be exercised by the county courts at law and the judges thereof. Jurors summoned for a county court at law or the county court may, by order of the judge of the court in which they are summoned, be transferred to any of the other courts for service and may be used as if summoned for the court to which they may be transferred. On concurrence of the judges of the county courts at law and the county judge, jurors may be summoned for service in all of those courts and shall be used interchangeably in all of those courts.

(b) Jurors, regularly impaneled for the week by the district court or courts may, on request of either the county judge or the judge of a county court at law, be made available by the district judge or judges in such numbers as may be requested for service for the week in either or both of the county courts at law or the county court, and such jurors shall serve in the county court and county court at law the same as if they had been drawn and selected as is otherwise provided by law.

Transfer of Cases; Exchange of Benches

Sec. 9. (a) The judges of the county court and the county courts at law may transfer cases to and from the dockets of their respective courts. However, no case may be transferred from one court to another court without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred. In cases transferred to any of the courts by order of the judge of one of the other courts, all processes, writs, bonds, recognizances, or other obligations issued or made in the cases shall be returned to and filed in the court to which transfer is made. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of such bonds or recognizances at the terms of the court to which the cases are transferred as fixed by law. All processes issued or returned before transfer of the cases, as well as all bonds and recognizances taken before the transfer, shall be valid and binding as though originally issued out of the court to which the transfer is made.

(b) The county judge and the judges of the county courts at law may freely exchange benches and courtrooms with each other in matters within their jurisdiction so that if one is ill, disqualified, or otherwise absent, the other may hold court for him or her without the necessity of transferring the case involved. Any judge may hear all or any part of a case pending in the county court or a county court at law, but only in matters within his or her jurisdiction, and may rule and enter orders on and continue, determine, or render judgment on all or any part of the case without the necessity of transferring it to his or her own docket. However, the judge of any court may not sit or act in a case unless it is within the jurisdiction of his or her court. Each judgment and order shall be entered in the minutes of the court in which the case is pending. This provision providing for the exchange of benches by and between the judge of the county court and the judges of the county courts at law is cumulative of and in addition to the provisions in this Act for the selection and appointment of a special judge of the county court at law.

Seal

Sec. 10. The seal of the court shall be the same as that provided by law for county courts, except the seal shall contain the words "County Court at Law No. 2 of Cameron County, Texas."
[Acts 1979, 66th Leg., p. 999, ch. 438, §§ 1 to 10, eff. Jan. 1, 1980.]

PARTICULAR COUNTY COURTS

Art. 1970-310. Other Acts Creating or Affecting Jurisdiction of Particular County Courts

Brazos—Jurisdiction: Acts 1959, 56th Leg., p. 4, ch. 2; amended by Acts 1975, 64th Leg., p. 112, ch. 50, § 8, eff. Jan. 1, 1977.

Falls—Jurisdiction: Acts 1917, March 20, ch. 89, p. 243; amended by Acts 1975, 64th Leg., p. 84, ch. 39, § 1, eff. April 8, 1975.

Real—Acts 1917, March 1, ch. 53, p. 92, repealed and jurisdiction restored: Acts 1979, 66th Leg., p. 452, ch. 208, eff. Aug. 27, 1979.

POTTER COUNTY

Art. 1970-311b. County Court at Law No. 2 of Potter County

Sec. 1. There is created a court to be held in Amarillo, Potter County, Texas, which shall be known as the County Court at Law No. 2 of Potter County.

Sec. 2. The County Court at Law No. 2 of Potter County shall have original and concurrent jurisdiction with the County Court of Potter County and the County Court at Law of Potter County in all matters and causes, civil, criminal, and probate, original and appellate, over which by the general laws of this state, county courts have jurisdiction. This provision shall not affect the jurisdiction of the commissioners court or the county judge of Potter County as the presiding officer of the commissioners court as to roads, bridges and public highways, and matters which are now within the jurisdiction of the commissioners court or the judge of Potter County.

Sec. 3. The County Court at Law No. 2 of Potter County shall have and exercise original concurrent jurisdiction with the justice courts in all civil matters which by the general laws of this state is conferred on justice courts. Neither the County Court at Law No. 2 of Potter County nor the judge thereof shall have jurisdiction to act as a coroner or to preside at inquests, or have jurisdiction of claims which come within the jurisdiction of the Small Claims Court as prescribed by Chapter 309, Acts of the 53rd Legislature, Regular Session, 1953, as amended (Article 2460a, Vernon's Texas Civil Statutes).

Sec. 4. No appeal or writ of error shall be taken to the Court of Civil Appeals from any final judgment of the County Court at Law No. 2 of Potter County in civil cases of which the court had appellate or original concurrent jurisdiction with the justice court where the judgment or amount in controversy would not exceed \$100, exclusive of interest and costs.

Sec. 5. This Act shall not be construed to deprive the justice courts of jurisdiction now conferred on them by law, but only to give concurrent original jurisdiction to the County Court at Law No. 2 of Potter County over such matters as are specified in this Act; nor shall this Act be construed to deny the right of an appeal to the County Court at Law No. 2 of Potter County from the justice court, where the right of appeals to the county court now exists by law.

Sec. 6. The County Court of Potter County shall retain the general jurisdiction of a probate court. It shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards, grant letters testamentary and of administration, settle accounts of executors, administrators, and guardians, transact all business appertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the settlement, partition, and distribution of estates of deceased persons, and to apprentice minors as provided by law; and the court, or the judge thereof, shall have the power to issue writs of injunction, mandamus, and all writs necessary to the enforcement of the jurisdiction of the court, and also to punish contempts under such provisions as are or may be provided by general law governing county courts throughout the state. The County Judge of Potter County shall be the judge of the County Court of Potter County. All ex officio duties of the county judge shall be exercised by the judge of the County Court of Potter County except in so far as the same shall, by this Act, be committed to the judges of the County Courts at Law of Potter County.

Sec. 7. The terms of the County Court at Law No. 2 of Potter County shall be as prescribed by the laws relating to the county courts. The terms of the County Court at Law No. 2 of Potter County shall be held as now established for the terms of the County Court of Potter County and the same may be changed in accordance with the laws governing the change in the terms of the County Court of Potter County.

Sec. 8. No person may be elected or appointed judge of the court who is not a resident citizen of Potter County. He also shall have been a licensed attorney of the State of Texas for at least four years immediately prior to his appointment or election.

The person elected judge shall hold his office for four years and until his successor shall have been duly elected and qualified.

Sec. 9. The County Attorney of Potter County shall represent the state in all prosecutions in the County Court at Law No. 2 of Potter County, as provided by law for such prosecutions in county courts, and shall be entitled to the same fees as now prescribed by law for such prosecutions in the county courts.

Sec. 10. As soon as this Act becomes effective, the Commissioners Court of Potter County shall appoint a judge of the County Court at Law No. 2 of Potter County, who shall hold his office until the next general election and until his successor is duly elected and has qualified. At the general election in 1978 and every fourth year thereafter, there shall be elected by the qualified voters of Potter County a judge of the County Court at Law No. 2 for a regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution. The commissioners court shall provide suitable quarters for the holding of the court.

Sec. 11. The judge of the County Court at Law No. 2 of Potter County may be removed from office in the same manner and for the same causes as any county judge may be removed under the laws of this state.

Sec. 12. The judge of the County Court at Law No. 2 of Potter County shall execute a bond and take the oath of office as required by law relating to county judges.

Sec. 13. A special judge of the County Court at Law No. 2 of Potter County may be appointed or elected as provided by law relating to county courts and to the judge thereof. He shall receive a sum of money for each day he actually serves equal to the compensation for each day paid to the regular judge of County Court at Law No. 2 of Potter County, to be paid out of the general fund of the county by the commissioners court.

Sec. 14. In the case of the disqualification of the judge of the County Court at Law No. 2 of Potter County to try any case pending in his court, the parties or their attorneys may agree on the selection of a special judge to try the case or cases in which the judge of the County Court at Law No. 2 of Potter County is disqualified. In case of the selection of a special judge by agreement of the parties or their attorneys, the special judge shall draw the same compensation as that provided in Section 13 of this Act.

Sec. 15. The County Court at Law No. 2 of Potter County, or the judge thereof, shall have the power to issue writs of injunction, mandamus, se-

questration, attachment, garnishment, certiorari, supersedeas, and all writs necessary to the enforcement of jurisdiction of the court, and to issue writs of habeas corpus in such cases where the offense charged is within the jurisdiction of the court or of any other court in the county of inferior jurisdiction to the County Court at Law No. 2.

Sec. 16. The county clerk of Potter County shall be the clerk of the County Court at Law No. 2 of Potter County, and the seal of the court shall be the same as that provided by law for county courts, except the seal shall contain the words "County Court at Law No. 2 of Potter County."

Sec. 17. The sheriff of Potter County shall in person or by deputy attend the County Court at Law No. 2 of Potter County when required by the judge thereof.

Sec. 18. The jurisdiction and authority now vested by law in the County Court of Potter County and the judge thereof, for the drawing, selection, and service of jurors and talesmen shall also be exercised by the County Court at Law No. 2 of Potter County and the judge thereof; but jurors and talesmen summoned for either of the county courts at law or county court may by order of the judge of the court in which they are summoned be transferred to one of the other courts for service therein and may be used therein as if summoned for the court to which they may be thus transferred. On concurrence of the judges of the county courts at law of Potter County and the judge of the county court of Potter County, jurors may be summoned for service in all county courts and shall be used interchangeably in all such courts. All summons for petit jurors for all civil and criminal cases under existing laws at the time this Act takes effect shall be as valid as if no change had been made, and the persons constituting such jury panels shall be required to appear and serve at the ensuing term of the courts as fixed by this Act, and their acts as jurors shall be as valid as if they had been selected as jurors in the court for which they were originally drawn.

Sec. 19. Any vacancy in the office of the judge of the County Court at Law No. 2 of Potter County shall be filled by the commissioners court, and when so filled the judge shall hold office until the next general election and until his successor is elected and has qualified.

Sec. 20. The judges of the County Court at Law of Potter County and the County Court at Law No. 2 of Potter County may each be paid an annual salary of not more than the total salary paid any District Judge in and for Potter County to be paid out of the general fund of Potter County by the County Treasurer of Potter County, on the order of the commissioners court of the county.

Sec. 21. The judge of the County Court at Law No. 2 of Potter County shall assess the same fees as are prescribed by law relating to the county judge's fees, all of which shall be collected by the clerk of the court and shall be paid into the county treasury on collection, no part of which shall be paid to the judge, but he shall draw the salary as specified in Section 20 of this Act.

Sec. 22. The judge of the County Court at Law No. 2 of Potter County may appoint an official shorthand reporter for such court who shall be well skilled in his profession and shall be a sworn officer of the court and shall hold his office at the pleasure of the court. The reporter shall take the oath required of official court reporters and shall receive a salary as set by the Commissioners Court of Potter County to be paid out of the county treasury of Potter County, as other county officials are paid, in equal monthly installments. All other provisions of Chapter 13, Title 42, Revised Civil Statutes of Texas, 1925, as amended and as the same may hereafter be amended, and all other provisions of the law relating to official court reporters are hereby made to apply in all provisions, insofar as they are applicable, to the official shorthand reporter herein authorized to be appointed and insofar as they are not inconsistent with this Act.

Sec. 23. The laws of the State of Texas, the rules of procedure and the rules of evidence shall be applicable to and control trials and proceedings in the County Court at Law No. 2 of Potter County, and shall be applicable to and govern the proceedings in and appeals to and appeals from the County Court at Law No. 2 of Potter County.

Sec. 24. The County Clerk of Potter County shall distribute the cases filed, both civil and criminal. All cases with even numbers shall be filed and docketed in the County Court at Law of Potter County and all cases with odd numbers shall be filed and docketed in the County Court at Law No. 2 of Potter County. With the consent of the judge of the court to which a case is transferred, the judge of either county court at law or the county court shall have the power to transfer to the other courts any case pending upon the docket of his court over which the courts have concurrent jurisdiction, except in cases where the writ of certiorari has been granted. The judges of the county courts at law may, in their discretion, exchange benches and sit and hear cases in the court in which the case or proceeding is then pending, and try or otherwise dispose of same.

Sec. 25. The effective date of this Act is January 1, 1977.

[Acts 1975, 64th Leg., p. 1955, ch. 645, §§ 1 to 25, eff. Jan. 1, 1977.]

MARION COUNTY

Art. 1970-322a. County Court of Marion County; Concurrent Jurisdiction of Certain Criminal Matters

[See Compact Edition, Volume 3 for text of 1 to 3]

Sec. 4. The County Attorney of Marion County shall represent the state in all misdemeanor and felony cases before the District Court of Marion County, Texas.

[Amended by Acts 1975, 64th Leg., p. 1857, ch. 581, § 3, eff. Sept. 1, 1975.]

TRAVIS COUNTY

Art. 1970-324a.2. County Court at Law No. 4 of Travis County

Creation

Sec. 1. The County Court at Law Number 4 of Travis County is created. The court shall sit in Austin, Texas.

Jurisdiction of County Court at Law

Sec. 2. The County Court at Law Number 4 of Travis County shall have and exercise jurisdiction in all matters and causes, civil and criminal, original and appellate, over which by the general laws of the state the county court of the county would have jurisdiction, and its jurisdiction is concurrent with the other county courts at law of Travis County. The County Court at Law Number 4 of Travis County shall have and exercise jurisdiction concurrent with the County Court of Travis County and the other county courts at law of Travis County over all probate matters and proceedings. The County Court at Law Number 4 has jurisdiction concurrent with the district court in civil cases when the matter in controversy exceeds \$500 and does not exceed \$5,000, exclusive of interest, as provided by general law.

Jurisdiction of County Court

Sec. 3. The County Court of Travis County shall have and retain jurisdiction conferred by law over probate matters, and such jurisdiction shall be concurrent with the county courts at law. The County Court of Travis County shall have no jurisdiction over other matters, civil or criminal. The county judge of Travis County shall be the judge of the county court of the county, and all ex officio duties of the county judge shall be exercised by the judge of the County Court of Travis County, unless by this Act, or otherwise, committed exclusively to the county courts at law of Travis County.

Filing and Transfer of Cases; Exchange of Benches

Sec. 4. On the first day of the initial term of the County Court at Law Number 4, there shall be transferred to the docket of that court, under the

direction of the county judge and by order entered upon the minutes of the County Court of Travis County, all mental health and probate actions, matters, and proceedings then pending in the County Court of Travis County, and all writs and processes theretofore issued by or out of either the County Court of Travis County or any of the county courts at law of Travis County in such actions, matters, and proceedings shall be returnable to the County Court at Law Number 4 of Travis County as though originally issued therefrom. All new mental health and probate actions, matters, and proceedings filed on or after the first day of the initial term of the County Court at Law Number 4 with the county clerk of Travis County, irrespective of the court or judge to which the matter or proceeding is addressed, shall be filed by the clerk in the County Court at Law Number 4. The county judge of Travis County may sit at any time for the judge of the County Court at Law Number 4 with regard to mental health and probate actions, matters, and proceedings. No mental health or probate proceeding had in either of the courts, or any order entered therein, shall be invalid because of a failure of the clerk to file new matters and proceedings as provided by this section. The judge of either of those courts, in his discretion, may, on or after the first day of the initial term of the County Court at Law Number 4, transfer to any other county court at law of Travis County, any mental health or probate matter or proceeding then or thereafter pending in those courts, and all processes extant at the time of the transfer shall be returned to and filed in the court to which the transfer is made and shall be as valid and binding as though originally issued out of the court to which the transfer is made. No application, pleading, motion, order, judgment, oath, bond, citation, return of citation, or any other mental health or probate matter or proceeding shall be invalid because of any reference therein to either of the courts by the name of the other, and any reference therein to either of the courts by the name of the other shall be legally sufficient for every purpose.

Terms; Practice and Procedure

Sec. 5. The terms of the County Court at Law Number 4 shall begin on the first Mondays in January, March, May, July, September, and November in each year, and each term of the court shall continue until the convening of the next succeeding term. The practice in the court, and appeals and writs of error from the court, shall be as prescribed by the laws relating to county courts, except as expressly provided by this Act.

Judge

Sec. 6. The Commissioners Court of Travis County shall appoint a judge of the County Court at Law Number 4, who shall serve until the next general

election, and until his or her successor is elected and has qualified. Beginning at the general election in 1982 and every four years thereafter, a judge of the County Court at Law Number 4 shall be elected by the qualified voters of the county for a regular term of four years. The judge must be a qualified voter in the county, must be a regularly licensed attorney at law in this state, and must be a resident of Travis County, who shall have been actively engaged in the practice of law for a period of not less than two years next preceding the judge's election or appointment.

Bond and Oath

Sec. 7. The judge of the County Court at Law Number 4 shall execute a bond and take the oath of office as required by law relating to county judges.

Vacancy; Quarters

Sec. 8. Any vacancy in the office of the judge of the County Court at Law Number 4 shall be filled by the commissioners court, and when so filled, the judge shall hold office until the next general election and until his successor is elected and has qualified. The commissioners court shall provide suitable quarters for the holding of the County Court at Law Number 4.

Disqualification

Sec. 9. In the case of the disqualification of the judge of the County Court at Law Number 4 to try any case pending in the court, the parties or their attorneys may agree on the selection of a special judge to try the case, or the judges of the county courts at law may exchange benches or transfer a case to another county court at law, as provided by law. A special judge may be appointed or elected as provided by law for county judges or for judges of county courts at law, who shall receive such compensation as may be provided by law for special judges of county courts or county courts at law, whichever is the greater, to be paid out of the general funds of the county by the commissioners court.

Removal

Sec. 10. The judge of the County Court at Law Number 4 may be removed from office in the same manner and for the same causes as any county judge or judge of a county court at law may be removed under the laws of the state.

Court Reporter

Sec. 11. The judge of the County Court at Law Number 4 shall appoint an official court reporter who shall have the same qualifications and whose duties shall in every respect be as provided by law for official court reporters. The official court reporter is entitled to the compensation fixed by the commissioners court.

Writ Power

Sec. 12. The County Court at Law Number 4 and the judge thereof, shall have power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary to the enforcement of jurisdiction of the court, and to issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court in the county with concurrent or inferior jurisdiction to the County Court at Law Number 4.

Appealed Cases

Sec. 13. All cases appealed from the justice courts and other inferior courts in Travis County shall be made direct to the County Court at Law Number 4 or to any other county court at law of Travis County.

Personnel; Seal

Sec. 14. The county clerk of Travis County shall be the clerk of the County Court at Law Number 4. The seal of the court shall be the same as that provided by law for county courts, except the seal shall contain the words "County Court at Law Number 4 of Travis County." The sheriff of Travis County shall in person or by deputy attend the court when required by the judge of the court. The county attorney of Travis County shall represent the state in all prosecutions pending in the County Court at Law Number 4, and shall be entitled to the same fee as now prescribed by law for such prosecution in the county courts.

Jurors

Sec. 15. The jurisdiction and authority now vested by law in the County Court of Travis County for the drawing, selection, and service of jurors shall be exercised by the County Court at Law Number 4 or by any other county court at law of Travis County, but juries summoned for either or any of the courts may, by order of the judge of the court in which they are summoned, be transferred to any of the other courts for service therein and may be used in any of those courts as if summoned for the court to which they are transferred.

Compensation

Sec. 16. The judge of the County Court at Law Number 4 may be paid by the commissioners court a yearly salary in an amount determined by the commissioners court, but not more than 90 percent of the amount paid district judges from the General Revenue Fund of the state. The salary shall be paid out of the general fund of the county in equal monthly installments by warrants drawn upon the county treasurer upon orders of the commissioners court. The judge of the County Court at Law Number 4 shall assess the same fees and costs as are now prescribed by law for county judges, to be

deposited in the county treasury as prescribed by law.

Private Practice Prohibited

Sec. 17. The judge of the County Court at Law Number 4 shall not engage in the private practice of law while holding the office of judge of the court. [Acts 1979, 66th Leg., p. 826, ch. 373, §§ 1 to 17, eff. Jan. 1, 1980.]

TITUS COUNTY

Art. 1970-330. Repealed by Acts 1975, 64th Leg., p. 1366, ch. 521, § 5, eff. June 19, 1975
See, now, art. 1970-330a.

Art. 1970-330a. Jurisdiction of Titus County Court and District Courts

Sec. 1. The County Court of Titus County has the full jurisdiction granted by the constitution and general law to county courts.

Sec. 2. The district courts having jurisdiction in Titus County have the jurisdiction granted by the constitution and general law to district courts.

Sec. 3. (a) All cases pending on the effective date of this Act in the district courts having jurisdiction in Titus County which are within the jurisdiction of the county court under Section 1 of this Act are transferred to the County Court of Titus County.

(b) All writs and process relating to cases transferred under Subsection (a) of this section are returnable to the next term of the County Court of Titus County.

Sec. 4. The provisions of this Act may not be construed to affect judgments rendered by the district courts having jurisdiction in Titus County prior to the effective date of this Act. The clerks of the district courts having jurisdiction in Titus County shall issue all executions and orders of sale and proceeding thereunder, which shall be valid and binding.

[Acts 1975, 64th Leg., p. 1366, ch. 521, §§ 1 to 4, eff. June 19, 1975.]

GRAYSON COUNTY

Art. 1970-332. Grayson County; County Court at Law; Jurisdiction; Terms; Judge; Prosecutor; Writs; Clerk and Court Reporter

[See Compact Edition, Volume 3 for text of 1 to 15]

Sec. 16. (a) The Judge of the County Court at Law of Grayson County may receive an annual salary up to an amount equal to the total annual salary of the County Attorney of Grayson County to be paid out of the County Treasury of Grayson

County, Texas, on the order of the Commissioners Court of said County, and said salary shall be paid monthly in equal installments. The Judge of the County Court at Law of Grayson County shall assess the same fees as are now prescribed by law relating to the County Judge's fee, all of which shall be collected by the Clerk of the Court and shall be paid into the County Treasury on collection, no part of which shall be paid to the said Judge, but he shall draw the salary as above specified in this Section.

(b) The Judge of the County Court at Law of Grayson County may not actively engage in the private practice of law while serving as judge of the county court at law.

[See *Compact Edition, Volume 3 for text of 17 to 20*]

[Amended by Acts 1975, 64th Leg., p. 628, ch. 259, § 1, eff. Sept. 1, 1975.]

Art. 1970-332a. County Court at Law No. 2 of Grayson County

Sec. 1. On the date determined by the provisions of Section 19 of this Act, there is created a court to be held in Sherman, Grayson County, Texas, which shall be known as the County Court at Law No. 2 of Grayson County.

Sec. 2. The County Court at Law No. 2 of Grayson County shall have and exercise the jurisdiction in all matters and cases, civil, criminal, juvenile, and probate, original and appellate, over which by the general laws of this state county courts have jurisdiction, and has jurisdiction concurrent with the County Court at Law of Grayson County in matters and cases, civil and criminal, original and appellate. The County Court of Grayson County shall have and retain, as heretofore, the general jurisdiction of a probate court and has jurisdiction concurrent with the County Court at Law No. 2 of Grayson County in probate matters and cases. The provisions of this Act do not affect the jurisdiction of the Commissioners Court nor of the County Judge of Grayson County as presiding officer of the commissioners court as to roads, bridges, and public highways, or matters which are now in the jurisdiction of the Commissioners Court or the Judge of the County Court of Grayson County. The County Judge of Grayson County shall be the judge of the county court of the county, and all ex officio duties of the county judge shall be exercised by the judge of the County Court of Grayson County, except insofar as the same shall by this Act be committed to the County Court at Law No. 2 of Grayson County.

Sec. 3. The County Court at Law No. 2 of Grayson County has jurisdiction concurrent with the district court in eminent domain cases and in civil cases when the matter in controversy exceeds \$500 and does not exceed \$5,000, exclusive of interest, as provided by general law.

Sec. 4. (a) The County Court at Law No. 2 of Grayson County shall have and exercise original concurrent jurisdiction with the justice courts in all civil and criminal matters which by the general laws of this state are conferred upon justice courts.

(b) No appeal or writ of error shall be taken to the court of civil appeals from any final judgment of the County Court at Law No. 2 of Grayson County in civil cases of which the court has appellate or original concurrent jurisdiction with the justice court, where the judgment or amount in controversy does not exceed \$100, exclusive of interest and costs.

(c) This Act shall not be construed to deprive the justice courts of the jurisdiction now conferred upon them by law, but only to give concurrent original jurisdiction to the County Court at Law No. 2 of Grayson County over such matters as are specified in this Act, nor shall this Act be construed to deny the right of appeal to the County Court at Law No. 2 of Grayson County from the justice court where the right of appeal to the county court now exists by law.

Sec. 5. The terms of the County Court at Law No. 2 of Grayson County, and the practice therein, and the appeals and writs of error therefrom shall be as prescribed by the laws relating to county courts. The terms of the County Court at Law No. 2 of Grayson County shall be held in the Courthouse of Grayson County, and shall begin on the first Monday in February, April, June, August, October, and December of each year, and shall continue in session until the Saturday before the first Monday in April, June, August, October, December, and February of each year.

Sec. 6. The judge of the County Court at Law No. 2 of Grayson County shall be a qualified voter in Grayson County, shall be a regularly licensed attorney at law in this state, shall be a resident of Grayson County, and shall have been actively engaged in the practice of law for a period of not less than one year next preceding his appointment or election.

Sec. 7. At the general election in 1978 and every four years thereafter, a judge shall be elected for a regular four-year term by the qualified electors of Grayson County.

Sec. 8. Any vacancy in the office of the judge of the County Court at Law No. 2 of Grayson County may be filled by the commissioners court, and when so filled the judge shall hold office until the next general election and until his successor is elected and qualified.

Sec. 9. In the case of the disqualification of the judge of the County Court at Law No. 2 in any case pending in this court, the county judge or the judge

of the County Court at Law of Grayson County may sit in such case, or, the parties or their attorneys may agree on the selection of a special judge to try such case or cases; and in default of such agreement a majority of the practicing lawyers of Grayson County shall elect a judge to try such cases where the judge of the County Court at Law No. 2 is disqualified.

Sec. 10. (a) The judges of the county court and the county courts at law may transfer cases to and from the dockets of their respective courts. However, no case may be transferred from one court to another court without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred.

(b) In cases transferred to either of the courts by order of the judge of one of the other courts, all processes, writs, bonds, recognizances, or other obligations issued or made in the cases shall be returned to and filed in the court to which transfer is made. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of such bonds or recognizances at the terms of the court to which the cases are transferred as fixed by law. All processes issued or returned before transfer of the cases, as well as all bonds and recognizances taken before the transfer, shall be valid and binding as though originally issued out of the court to which the transfer is made.

Sec. 11. The County Court at Law No. 2 of Grayson County, or the judge thereof, shall have power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary to the enforcement of jurisdiction of the court, and to issue writs of habeas corpus in such cases where the offense charged is within the jurisdiction of the court, or of any other court in the county of inferior jurisdiction to the County Court at Law No. 2.

Sec. 12. The County Attorney of Grayson County shall represent the state in all prosecutions pending in the County Court at Law No. 2 of Grayson County, and shall be entitled to the same fee as now prescribed by law for such prosecutions in the county courts.

Sec. 13. The County Clerk of Grayson County shall be the clerk of the County Court at Law No. 2 of Grayson County, and the seal of the court shall be the same as that provided by law for county courts, except the seal shall contain the words "County Court at Law No. 2 of Grayson County."

Sec. 14. The jurisdiction or authority now vested by law in the county court for the selection and

service of jurors shall be exercised by the County Court at Law No. 2 of Grayson County.

Sec. 15. (a) The judge of the County Court at Law No. 2 of Grayson County may receive an annual salary up to an amount equal to the total annual salary of the County Attorney of Grayson County to be paid out of the county treasury of Grayson County on the order of the commissioners court of the county, and the salary shall be paid monthly in equal installments. The judge of the County Court at Law No. 2 of Grayson County shall assess the same fees as are now prescribed by law relating to the county judge's fee, all of which shall be collected by the clerk of the court and shall be paid into the county treasury on collection, no part of which shall be paid to the judge, but he shall draw the salary as specified in this section.

(b) The judge of the County Court at Law No. 2 of Grayson County may not actively engage in the private practice of law while serving as judge of the county court at law.

Sec. 16. All cases appealed from the justice court and other inferior courts in Grayson County, Texas, shall be made direct to the County Court at Law of Grayson County or the County Court at Law No. 2 of Grayson County, under the provisions heretofore governing such appeals.

Sec. 17. The judge of the County Court at Law No. 2 of Grayson County may be removed from office in the same manner and for the same causes as any county judge may be removed under the laws of this state.

Sec. 18. The judge of the County Court at Law No. 2 of Grayson County may appoint an official shorthand reporter for his court in the manner now provided for district courts in this state who shall have the same qualifications and whose duties shall in every respect be the same as now provided by law. The official shorthand reporter shall receive a salary of not more than the compensation paid the official shorthand reporters of the district courts of Grayson County. The salary shall be fixed, determined, set, and allowed by the commissioners court of Grayson County, and shall be in addition to transcript fees, fees for statement of facts, and all other fees. The salary when so fixed and determined by the commissioners court shall be paid monthly out of the general fund, or the jury fund, or out of any fund available for the purpose as may be determined by the commissioners court, in the same manner as salaries of other county officers are paid. From and after passage of this Act, all provisions relating to official shorthand reporters and their duties in district courts shall in all respects govern, except that the salary of the official shorthand reporter as provided

for in this Act shall be fixed and determined by the commissioners court of Grayson County.

Sec. 19. The County Court at Law No. 2 of Grayson County is created on January 1, 1979, or on a date determined by the Commissioners Court of Grayson County by an order entered on its minutes, whichever date is earlier. If the County Court at Law No. 2 is created on January 1, 1979, the office of the judge is initially filled by the judge elected at the general election in 1978. If the County Court at Law No. 2 is created on an earlier date by order of the commissioners court, the governor shall appoint a judge of the County Court at Law No. 2 of Grayson County, who shall serve until the next general election and until his successor shall be duly elected and has qualified.

[Acts 1975, 64th Leg., p. 2027, ch. 669, §§ 1 to 19, eff. Sept. 1, 1975.]

HILL COUNTY

Art. 1970—333. Hill County; Jurisdiction; Clerk's Duties; Shorthand Reporter; County Attorney's Duties

Sec. 1. The County Court of Hill County shall have and exercise the general jurisdiction of a probate Court, shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards; grant letters testamentary and of administration; settle the accounts of executors, administrators and guardians; transact all business pertaining to the estates of deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the partition, settlement and distribution of estates of deceased persons pending in such Court; to conduct lunacy hearings; to apprentice minors as provided by law, and to issue all writs necessary for the enforcement of its own jurisdiction; to punish contempt under such provisions as now or may be provided for by General Law governing County Courts throughout the State; and in addition thereto, the County Court of Hill County and the Judge thereof, subject to the conditions stated in this Act, shall have jurisdiction over matters of original civil jurisdiction, original criminal jurisdiction, appellate civil jurisdiction, and appellate criminal jurisdiction as are normally exercised by County Courts under the Constitution and General Laws of this State; provided, however, that all future Statutes pertaining to probate matters enacted by the Legislature of the State of Texas, shall be operative in said Hill County as fully as though this Statute had not been enacted.

Sec. 2. The Judge of the 66th District Court in Hill County will be the presiding Judge, insofar as the District Court and the county court are concerned, over original and appellate jurisdiction in all

civil and criminal matters in causes over which by the laws of this State the County Court of Hill County would have original or appellate jurisdiction; and all such causes will be filed with the District Clerk of Hill County in the District Court. The Judge of the District Court may, in his discretion, assign to the County Court of Hill County, for trial and disposition, cases, or portions of cases, of original and appellate jurisdiction in civil and criminal matters and causes over which, by the General Laws of this State, the County Court of Hill County would have original or appellate jurisdiction. The assignments shall be made by docket notation. The purpose and intent of this Statute is to vest the 66th District Court and the County Court of Hill County with concurrent jurisdiction over matters of original and appellate jurisdiction in all civil and criminal matters over which, by the General Laws of this State, the County Court of Hill County would have original or appellate jurisdiction, subject to the control over assignments of the cases, or parts of the cases, by the District Court, as provided in this section.

Sec. 3. The District Clerk of Hill County shall continue to perform all the clerical functions of the County Court of Hill County as to all matters and causes over which the District Court and County Court have concurrent jurisdiction, as provided in this Act. Insofar as all cases over which the District Court and County Court have concurrent jurisdiction, the Clerk shall charge fees at the rate set by law for County Court cases.

Sec. 4. The Judge of the County Court of Hill County may appoint an official shorthand reporter for his Court in the manner provided for District Courts in this State, who shall have the same qualifications and whose duties shall in every respect be the same as now provided by law. In addition to transcript fees, fees for statement of facts and all other fees, the official shorthand reporter shall receive a salary to be fixed by the Commissioners Court of Hill County in an amount not more than the compensation paid the official shorthand reporter of the District Court in Hill County and to be paid out of the General Fund, or the Jury Fund, or out of any fund available for the purpose, as may be determined by the Commissioners Court, in the same manner as salaries of other County officers are paid. All provisions relating to official shorthand reporters and their duties in District Courts shall in all respects govern, except that the salary of the official shorthand reporter shall be fixed and determined by the Commissioners Court of Hill County.

Sec. 5. The duties of the County Attorney of Hill County shall not be changed or affected by this Act, and the County Attorney shall perform the same duties as were performed prior to the passage of this Act.

[Amended by Acts 1975, 64th Leg., p. 657, ch. 274, § 1, eff. May 20, 1975.]

NUECES COUNTY

Art. 1970-339. County Court at Law No. 1 of Nueces County

[See Compact Edition, Volume 3 for text of 1 to 16]

Sec. 17. The Judge of the County Court at Law No. 1 of Nueces County may receive a salary of Thirty Thousand Dollars per annum, to be paid out by the County Treasury by order of the commissioners court, and said salary shall be paid monthly in equal installments. The Judge of the County Court at Law No. 1 of Nueces County shall assess the same fees as are now prescribed or may be established by law, relating to the County Judge's fees, all of which shall be collected by the Clerk of the Court and shall be paid into the County Treasury on collection, and no part of which shall be paid to said Judge, but he shall draw the salary as above specified in this section.

[Amended by Acts 1975, 64th Leg., p. 1940, ch. 636, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1611, ch. 629, § 1, eff. June 15, 1977.]

Sections 5 and 6 of the 1977 Act provide as follows;

"Sec. 5. The provisions of this Act shall be severable. Should any section, paragraph, sentence, clause, or other part hereof, be declared for any reason unconstitutional or void, such declaration shall not affect or impair the remaining provisions hereof, and the legislature specifically declares that it would have passed this Act notwithstanding the absence of such portion as may be declared unconstitutional or void.

"Sec. 6. All laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict."

Art. 1970-339A. County Court at Law No. 2 of Nueces County

[See Compact Edition, Volume 3 for text of 1 to 17]

Sec. 18. The Judge of the County Court at Law No. 2 of Nueces County may receive a salary of Thirty Thousand Dollars per annum, to be paid out of the County Treasury by order of the commissioners court, and said salary shall be paid monthly in equal installments. The Judge of the County Court at Law No. 2 of Nueces County shall assess the same fees as are now prescribed or may be established by law, relating to the County Judge's fees, all of which shall be collected by the Clerk of the Court and shall be paid into the County Treasury on collection and no part of which shall be paid to said Judge, but he shall draw the salary as above specified in this section.

[See Compact Edition, Volume 3 for text of 19 to 27]

[Amended by Acts 1975, 64th Leg., p. 1940, ch. 636, § 2, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1611, ch. 629, § 2, eff. June 15, 1977.]

Art. 1970-339C. County Court at Law No. 3 of Nueces County

[See Compact Edition, Volume 3 for text of 1 to 3]

Judge

Sec. 4.

[See Compact Edition, Volume 3 for text of 4(a) to (d)]

(e) The judge of County Court at Law No. 3 may receive an annual salary of Thirty Thousand Dollars. The salary shall be paid in equal monthly installments out of the county treasury on order of the commissioners court. The judge of the County Court at Law No. 3 shall assess the fees prescribed by law for county judges, which fees shall be collected by the clerk of the court and paid into the county treasury.

[See Compact Edition, Volume 3 for text of 4(f) to 9]

[Amended by Acts 1975, 64th Leg., p. 1941, ch. 636, § 3, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1611, ch. 629, § 3, eff. June 15, 1977.]

LUBBOCK COUNTY

Art. 1970-340. County Court at Law No. 1 Lubbock County

[See Compact Edition, Volume 3 for text of 1]

Sec. 2. The County Court at Law No. 1 of Lubbock County, Texas, shall have and exercise jurisdiction in all matters and causes, civil and criminal, original and appellate, over which by the General Laws of the State, the County Court of said County would have jurisdiction, and the County Court at Law No. 1 shall have and exercise jurisdiction as to all probate matters concurrently with the County Court and any other numbered County Court at Law of Lubbock County. The County Court at Law No. 1 has jurisdiction concurrently with the district court in eminent domain cases, as provided by general law; but this provision shall not affect the jurisdiction of the Commissioners Court or of the County Judge of Lubbock County as the presiding officers of such Commissioners Court, as to roads, bridges, and public highways, and matters of eminent domain which are now in the jurisdiction of the Commissioners Court or the Judge thereof.

[See Compact Edition, Volume 3 for text of 3 to 5]

Sec. 6. The County Court of Lubbock County shall have and retain the general jurisdiction of the Probate Court concurrently with the County Courts at Law of Lubbock County; but the County Court now existing shall have no jurisdiction over other matters, civil or criminal. The County Judge of Lubbock County shall be the Judge of the County

Court of said County, and all ex-officio duties of the County Judge shall be exercised by said Judge of the County Court of Lubbock County, except in so far as the same shall by this Act be committed to the County Court at Law No. 1 of Lubbock County.

[See Compact Edition, Volume 3 for text of 7 to 27]

[Amended by Acts 1977, 65th Leg., p. 1276, ch. 498, § 1, eff. Aug. 29, 1977.]

Art. 1970-340.1. County Court at Law No. 2 of Lubbock County

[See Compact Edition, Volume 3 for text of 1]

Sec. 2. The County Court at Law No. 2 of Lubbock County, Texas, shall have and exercise jurisdiction in all matters and causes, civil and criminal, original and appellate, over which by the General Laws of the State, the County Court of said County would have jurisdiction, and the County Court at Law No. 2 shall have and exercise jurisdiction as to all probate matters concurrently with the County Court and any other numbered County Court at Law of Lubbock County. The County Court at Law No. 2 has jurisdiction concurrently with the district court in eminent domain cases, as provided by general law; but this provision shall not affect the jurisdiction of the Commissioners Court or of the County Judge of Lubbock County as the presiding officers of such Commissioners Court, as to roads, bridges, and public highways, and matters of eminent domain which are now in the jurisdiction of the Commissioners Court or the Judge thereof.

[See Compact Edition, Volume 3 for text of 3 to 6]

Sec. 7: The County Court of Lubbock County shall have and retain the general jurisdiction of the Probate Court concurrently with the County Courts at Law of Lubbock County; but the County Court now existing shall have no jurisdiction over other matters, civil or criminal. The County Judge of Lubbock County shall be the Judge of the County Court of said County, and all ex officio duties of the County Judge shall be exercised by said Judge of the County Court of Lubbock County, except in so far as the same shall by this Act be committed to the County Court at Law No. 2 of Lubbock County.

[See Compact Edition, Volume 3 for text of 8 to 21]

Sec. 22. After the effective date of this amendment, the Judge of the County Court of Lubbock County and the Judge of the County Court at Law No. 2 of Lubbock County shall receive an annual salary in an amount not less than three-fourths ($\frac{3}{4}$) of the total annual salary paid to the Judge of the 99th Judicial District of Texas by the State of Texas. This sum shall be paid in equal monthly installments

out of the General Fund of Lubbock County on orders from Commissioners Court.

[See Compact Edition, Volume 3 for text of 23 to 27]

[Amended by Acts 1977, 65th Leg., p. 1276, ch. 498, § 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1317, ch. 522, § 1, eff. Aug. 29, 1977.]

HIDALGO COUNTY

Art. 1970-341. County Court at Law of Hidalgo County

[See Compact Edition, Volume 3 for text of 1 to 4]

Sec. 5. The County Court at Law of Hidalgo County shall sit in the County seat of Hidalgo County and shall hold continuous terms which commence on the first Monday in January and on the first Monday in July of each year. Each term of court continues until the next succeeding term begins. The practice in said Court, and appeals and writs of error thereto and therefrom, shall be as prescribed by the laws and rules relating to County Courts.

[See Compact Edition, Volume 3 for text of 6 to 9]

Sec. 10. The Judge of the County Court at Law shall appoint an official shorthand reporter for such Court who shall be well skilled in his profession, shall be a sworn officer of the Court and shall hold office at the pleasure of said Judge. The duties of such reporter shall be the same as provided by general law for reporters of the District Courts and the salary of the reporter shall be set by the Judge as provided by general law for reporters of District Courts and paid monthly by the Commissioners Court out of any funds available for the purpose. The clerk of the Court shall tax as costs in each case, civil, criminal and probate where a record or any part thereof is made of the evidence in said case by the reporter, a stenographer's fee of Three Dollars (\$3). Said fee shall be paid as other costs in the case and paid by the clerk, when collected, into the general fund of the County.

[See Compact Edition, Volume 3 for text of 11 to 18]

[Amended by Acts 1975, 64th Leg., p. 1018, ch. 387, § 1, eff. June 19, 1975; Acts 1977, 65th Leg., p. 227, ch. 110, § 1, eff. May 4, 1977.]

Art. 1970-341a. County Court at Law No. 2 of Hidalgo County

Sec. 1. There is created a court to be held in and for Hidalgo County, which shall be known as the County Court at Law No. 2 of Hidalgo County, and which shall be a court of record.

Sec. 2. (a) The County Court at Law No. 2 of Hidalgo County shall have and exercise jurisdiction

in all matters and causes civil and criminal, original and appellate, over which by the general laws of the state, the county courts have jurisdiction, and shall have jurisdiction concurrent with the County Court at Law of Hidalgo County in matters and cases, civil and criminal, original and appellate. The county court at law does not have jurisdiction over causes and proceedings concerning roads, bridges, and public highways or the general administration of county business which is within the jurisdiction of the commissioners court or the presiding judge of the commissioners court.

(b) The County Court at Law No. 2 of Hidalgo County has jurisdiction concurrent with the district court in eminent domain cases and in civil cases when the matter in controversy exceeds \$500 and does not exceed \$5,000, exclusive of interest, as provided by general law.

Sec. 3. The County Court at Law No. 2 of Hidalgo County shall also have the general jurisdiction of a probate court within the limits of Hidalgo County, concurrent with jurisdiction of the County Court of Hidalgo County and the County Court at Law of Hidalgo County in such matters and proceedings. The County Court at Law No. 2 of Hidalgo County shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards, grant letters testamentary and of administration, settle accounts of executors, transact all business appertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the settlement, partition, and distribution of estates of deceased persons, the apprenticing of minors as provided by law, and conduct lunacy proceedings.

Sec. 4. The County Court of Hidalgo County shall have and retain concurrently with the County Court at Law of Hidalgo County and the County Court at Law No. 2 of Hidalgo County the general jurisdiction of a probate court and of jurisdiction now conferred or which may be conferred by law over probate matters but shall have no other jurisdiction criminal or civil, original or appellate. The County Judge of Hidalgo County shall be the judge of the County Court of Hidalgo County and all ex officio, executive, ministerial, and administrative duties of the County Judge of Hidalgo County shall continue to be exercised by the County Judge of Hidalgo County, but he shall not act in any proceeding of a judicial nature save in probate matters.

Sec. 5. The County Court at Law No. 2 of Hidalgo County shall sit in the county seat of Hidalgo County and shall hold continuous terms which commence on the first Monday in January and on the first Monday in July of each year. Each term of court continues until the next succeeding term be-

gins. The practice in the court and appeals and writs of error to and from the court shall be as prescribed by the laws and rules relating to county courts.

Sec. 6. There shall be elected in Hidalgo County, by the qualified voters of the county, a judge of the County Court at Law No. 2, who shall be a regularly licensed attorney at law in this state, and who shall be a resident citizen of Hidalgo County, and who shall have been actively engaged in the practice of law in this state for a period of not less than four years next preceding his election, and who shall hold his office for four years and until his successor shall have been duly elected and qualified. As soon as this Act becomes effective, the Commissioners Court of Hidalgo County shall appoint a judge to the County Court at Law No. 2 of Hidalgo County, who shall hold this office as judge until the next general election and until his successor is elected and qualified. Beginning at the general election in 1978 and every fourth year thereafter, there shall be elected a judge of the County Court at Law No. 2 for a regular term of four years as provided in Article V, Section 30 and Article XVI, Section 65 of the Texas Constitution. A vacancy in the office of the judge of the County Court at Law No. 2 of Hidalgo County, shall be filled by appointment of the Commissioners Court of Hidalgo County, and when so filled, the judge shall hold his office until the next general election and until his successor is elected and qualified.

Sec. 7. The judge of the County Court at Law No. 2 shall execute a bond and take the oath of office as required by law relating to county judges.

Sec. 8. (a) A special judge of the County Court at Law No. 2 of Hidalgo County may be appointed or elected as provided by law relating to county courts and to the judges thereof, who shall be compensated in the same manner as provided for special judges of the county courts.

(b) The judges of the county court and the county courts at law may transfer cases to and from the dockets of their respective courts. However, no case may be transferred from one court to another court without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred. In cases transferred to either of the courts by order of the judge of one of the other courts, all processes, writs, bonds, recognizances, or other obligations issued or made in the cases shall be returned to and filed in the court to which transfer is made. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of such bonds or recognizances at the

terms of the court to which the cases are transferred as fixed by law. All processes issued or returned before transfer of the cases, as well as all bonds and recognizances taken before the transfer, shall be valid and binding as though originally issued out of the court to which the transfer is made.

(c) The county judge and the judges of the county courts at law may freely exchange benches and courtrooms with each other in matters within their jurisdiction so that if one is ill, disqualified, or otherwise absent, the other may hold court for him without the necessity of transferring the case involved. Any judge may hear all or any part of a case pending in the county court or a county court at law, but only in matters within his jurisdiction, and may rule and enter orders on and continue, determine, or render judgment on all or any part of the case without the necessity of transferring it to his own docket. However, the judge of any court may not sit or act in a case unless it is within the jurisdiction of his court. Each judgment and order shall be entered in the minutes of the court in which the case is pending. This provision providing for the exchange of benches by and between the judge of the county court and the judges of the county courts at law is cumulative of and in addition to the provisions herein provided for the selection and appointment of a special judge of the county court at law.

Sec. 9. The judge of the County Court at Law No. 2 of Hidalgo County may be removed from office in the same manner and for the same causes as provided by law for county judges.

Sec. 10. The judge of the County Court at Law No. 2 shall appoint an official shorthand reporter for the court who shall be well skilled in his profession, shall be a sworn officer of the court, and shall hold office at the pleasure of the judge. The duties of the reporter shall be the same as provided by general law for reporters of the district courts, and the salary of the reporter shall be set by the judge as provided by general law for reporters of district courts and paid monthly by the commissioners court out of any funds available for the purpose. The clerk of the court shall tax as costs in each case, civil, criminal, and probate where a record or any part thereof is made of the evidence in said case by the reporter, a stenographer's fee of \$3. The fee shall be paid as other costs in the case and paid by the clerk, when collected, into the general fund of the county.

Sec. 11. (a) The judge of the County Court at Law No. 2 of Hidalgo County may receive an annual salary, the amount of which shall be fixed by the Commissioners Court of Hidalgo County. The salary shall be paid in the same manner and from the same fund as prescribed by law for payment of the salary of the County Judge of Hidalgo County.

(b) The judge of the County Court at Law No. 2 shall assess the fees prescribed by law for county judges, which shall be collected by the clerk of the court and paid into the county treasury and which may not be paid to the judge.

Sec. 12. The official interpreter of the district courts of Hidalgo County shall serve as official interpreter of the County Court at Law No. 2 of Hidalgo County, but if the official interpreter is not available when needed for service in the County Court at Law No. 2, the judge of that court is authorized to appoint an interpreter who shall serve only temporarily and who shall be paid not to exceed \$5 per day out of the general fund of the county on certificate of the judge. On concurrence of the county commissioners court, the judge of the County Court at Law No. 2 may appoint an official interpreter for the court as provided by general law.

Sec. 13. The County Court at Law No. 2 of Hidalgo County, or the judge thereof, shall have the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary to the enforcement of jurisdiction of the court, and to issue writs of habeas corpus in such cases where the offense charged is within the jurisdiction of the court or of any other court in the county of inferior jurisdiction to the County Court at Law No. 2, and to punish for contempt under such provisions as are or may be provided by general laws governing county courts. The judge shall have all other powers, duties, immunities, and privileges as are or may be provided by general law for judges of courts of record and for judges of county courts at law, and he shall be a magistrate and a conservator of the peace.

Sec. 14. The county clerk of Hidalgo County shall be the clerk of the County Court at Law No. 2 of Hidalgo County, and as clerk of the court, he shall have the same powers, duties, privileges, and immunities as provided by law for county clerks. The seal of the court shall be the same as that provided by law for county courts, except the seal shall contain the words "County Court at Law No. 2 of Hidalgo County, Texas."

Sec. 15. The sheriff of Hidalgo County shall in person or by deputy attend the County Court at Law No. 2 when required by the judge.

Sec. 16. The jurisdiction and authority now vested by law in the County Court at Hidalgo County and the judge thereof for the drawing, selection, and service of jurors and talesmen shall also be exercised by the County Court at Law No. 2 and the judge thereof; but jurors and talesmen summoned for either of the county courts at law or the county court may by order of the judge of the court in which they are summoned be transferred to either of

the other courts for service therein and may be used therein as if summoned for the court to which they may thus be transferred. Upon concurrence of the judges of the county courts at law and the county judge, jurors may be summoned for service in all of those courts and shall be used interchangeably in all of those courts.

Jurors regularly impaneled for the week by the district court or courts may on request of either the county judge or the judge of either of the county courts at law be made available by the district judge or judges in such numbers as may be requested for service for the week in either or all of the county courts at law or the county court, and such jurors shall serve in the county court and county court at law the same as if they had been drawn and selected as is otherwise provided by law.

[Acts 1977, 65th Leg., p. 259, ch. 123, §§ 1 to 16, eff. May 10, 1977.]

Art. 1970-341b. County Court at Law No. 3 of Hidalgo County

Creation

Sec. 1. The County Court at Law No. 3 of Hidalgo County is created. It is a court of record.

Jurisdiction

Sec. 2. (a) The County Court at Law No. 3 of Hidalgo County shall have and exercise jurisdiction in all matters and causes, civil and criminal, original and appellate, over which by the general laws of the state the county courts have jurisdiction and shall have jurisdiction concurrent with the County Court at Law of Hidalgo County and the County Court at Law No. 2 of Hidalgo County in matters and cases, civil and criminal, original and appellate. The county court at law does not have jurisdiction over causes and proceedings concerning roads, bridges, and public highways or the general administration of county business which is within the jurisdiction of the commissioners court or the presiding judge of the commissioners court.

(b) The County Court at Law No. 3 of Hidalgo County shall also have the general jurisdiction of a probate court within the limits of Hidalgo County, concurrent with jurisdiction of the County Court of Hidalgo County, the County Court at Law of Hidalgo County, and the County Court at Law No. 2 of Hidalgo County in such matters and proceedings. The County Court at Law No. 3 of Hidalgo County shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards, grant letters testamentary and of administration, settle accounts of executors, transact all business appertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the settlement, parti-

tion, and distribution of estates of deceased persons, the apprenticing of minors as provided by law, and conduct mental health proceedings.

(c) The County Court at Law No. 3 of Hidalgo County has jurisdiction concurrent with the district court in eminent domain cases and in civil cases when the matter in controversy exceeds \$500 and does not exceed \$20,000, exclusive of interest, as provided by general law.

(d) The County Court of Hidalgo County shall have and retain concurrently with the County Court at Law of Hidalgo County and the County Courts at Law Nos. 2 and 3 of Hidalgo County the general jurisdiction of a probate court and of jurisdiction conferred by law over probate matters but shall have no other jurisdiction, criminal or civil, original or appellate. The county judge of Hidalgo County shall be the judge of the County Court of Hidalgo County and all ex officio, executive, ministerial, and administrative duties of the county judge of Hidalgo County shall continue to be exercised by the county judge of Hidalgo County, but he or she shall not act in any proceeding of a judicial nature, except in probate matters.

Writ Power

Sec. 3. The County Court at Law No. 3 of Hidalgo County or the judge thereof shall have the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary to the enforcement of jurisdiction of the court and to issue writs of habeas corpus in such cases where the offense charged is within the jurisdiction of the court or of any other court in the county of inferior jurisdiction to the County Court at Law No. 3 and to punish for contempt under such provisions as are provided by general laws governing county courts. The judge shall have all other powers, duties, immunities, and privileges as are provided by general law for judges of courts of record and for judges of county courts at law, and he or she shall be a magistrate and a conservator of the peace.

Terms

Sec. 4. The County Court at Law No. 3 of Hidalgo County shall sit in the county seat of Hidalgo County and shall hold continuous terms which commence on the first Monday in January and on the first Monday in July of each year. Each term of court continues until the next succeeding term begins. The practice in the court and appeals and writs of error to and from the court shall be as prescribed by the laws and rules relating to county courts.

Judge

Sec. 5. (a) There shall be elected in Hidalgo County by the qualified voters of the county a judge

of the County Court at Law No. 3, who shall be a regularly licensed attorney at law in this state and who shall be a resident citizen of Hidalgo County and who shall have been actively engaged in the practice of law in this state for a period of not less than four years next preceding his or her election and who shall hold the office for four years and until his or her successor is elected and has qualified. As soon as this court is created, the Commissioners Court of Hidalgo County shall appoint a judge to the County Court at Law No. 3 of Hidalgo County, who shall hold the office as judge until the next general election and until his or her successor is elected and has qualified. Beginning at the general election in 1982 and every fourth year thereafter, there shall be elected a judge of the County Court at Law No. 3 for a regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution. A vacancy in the office of the judge of the County Court at Law No. 3 of Hidalgo County shall be filled by appointment of the Commissioners Court of Hidalgo County, and when so filled, the judge shall hold the office until the next general election and until his or her successor is elected and has qualified.

(b) The judge of the County Court at Law No. 3 shall execute a bond and take the oath of office as required by law relating to county judges.

(c) The judge of the County Court at Law No. 3 of Hidalgo County may be removed from office in the same manner and for the same causes as provided by law for county judges.

(d) A special judge of the County Court at Law No. 3 of Hidalgo County may be appointed or elected as provided by law relating to county courts and to the judges thereof, who shall be compensated in the same manner as provided for special judges of the county courts.

Compensation

Sec. 6. (a) The judge of the County Court at Law No. 3 of Hidalgo County may receive an annual salary; the amount of which shall be fixed by the Commissioners Court of Hidalgo County. The salary shall be paid in the same manner and from the same fund as prescribed by law for payment of the salary of the county judge of Hidalgo County. The amount paid shall not exceed 90 percent of the amount paid a district court judge having jurisdiction in Hidalgo County.

(b) The judge of the County Court at Law No. 3 shall assess the fees prescribed by law for county judges, which shall be collected by the clerk of the court and paid into the county treasury and which may not be paid to the judge.

Personnel

Sec. 7. (a) The county clerk of Hidalgo County shall be the clerk of the County Court at Law No. 3 of Hidalgo County and as clerk of the court shall have the same powers, duties, privileges, and immunities as provided by law for county clerks.

(b) The criminal district attorney and sheriff of Hidalgo County shall serve as district attorney and sheriff, respectively, for the county court at law. These officials, either personally or by the appointment of a deputy or assistant, shall perform the duties and responsibilities of their offices and are entitled to the compensation, fees, and allowances prescribed by law for their respective offices.

(c) The judge of the County Court at Law No. 3 shall appoint an official shorthand reporter for the court who shall have the qualifications provided by law for official court reporters, shall be a sworn officer of the court, and shall hold office at the pleasure of the judge. The duties of the reporter shall be the same as provided by general law for reporters of the district courts, and the salary of the reporter shall be set by the judge as provided by general law for reporters of district courts and paid monthly by the commissioners court out of any funds available for the purpose. The clerk of the court shall tax as costs in each case, civil, criminal, and probate where a record or any part of a record is made of the evidence in the case by the reporter a stenographer's fee of \$3. The fee shall be paid as other costs in the case and paid by the clerk, when collected, into the general fund of the county.

(d) The official interpreter of the district courts of Hidalgo County shall serve as official interpreter of the County Court at Law No. 3 of Hidalgo County, but if the official interpreter is not available when needed for service in the County Court at Law No. 3, the judge of that court is authorized to appoint an interpreter who shall serve only temporarily and who shall be paid not to exceed \$5 per day out of the general fund of the county on certificate of the judge. On concurrence of the county commissioners court, the judge of the County Court at Law No. 3 may appoint an official interpreter for the court as provided by general law.

Jurors

Sec. 8. (a) The jurisdiction and authority now vested by law in the County Court at Hidalgo County and the judge thereof for the drawing, selection, and service of jurors shall also be exercised by the County Court at Law No. 3 and the judge thereof. Jurors summoned for any of the county courts at law or the county court may by order of the judge of the court in which they are summoned be transferred to any of the other courts for service and may be used as if summoned for the court to which they may be transferred. Upon concurrence of the

judges of the county courts at law and the county judge, jurors may be summoned for service in all of those courts and shall be used interchangeably in all of those courts.

(b) Jurors regularly impaneled for the week by the district court or courts may, on request of either the county judge or the judge of any of the county courts at law, be made available by the district judge or judges in such numbers as may be requested for service for the week in either or all of the county courts at law or the county court, and such jurors shall serve in the county court and county court at law the same as if they had been drawn and selected as is otherwise provided by law.

Transfer of Cases; Exchange of Benches

Sec. 9. (a) The judges of the county court and the county courts at law may transfer cases to and from the dockets of their respective courts. However, no case may be transferred from one court to another court without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred. In cases transferred to any of the courts by order of the judge of one of the other courts, all processes, writs, bonds, recognizances, or other obligations issued or made in the cases shall be returned to and filed in the court to which transfer is made. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of such bonds or recognizances at the terms of the court to which the cases are transferred as fixed by law. All processes issued or returned before transfer of the cases, as well as all bonds and recognizances taken before the transfer, shall be valid and binding as though originally issued out of the court to which the transfer is made.

(b) The county judge and the judges of the county courts at law may freely exchange benches and courtrooms with each other in matters within their jurisdiction so that if one is ill, disqualified, or otherwise absent, the other may hold court for him or her without the necessity of transferring the case involved. Any judge may hear all or any part of a case pending in the county court or a county court at law, but only in matters within his or her jurisdiction, and may rule and enter orders on and continue, determine, or render judgment on all or any part of the case without the necessity of transferring it to his or her own docket. However, the judge of any court may not sit or act in a case unless it is within the jurisdiction of his or her court. Each judgment and order shall be entered in the minutes of the court in which the case is pending. This provision providing for the exchange of benches by and between the judge of the county court and the judges of the county courts at law is cumulative of and in

addition to the provisions in this Act for the selection and appointment of a special judge of the county court at law.

Seal

Sec. 10. The seal of the court shall be the same as that provided by law for county courts, except the seal shall contain the words "County Court at Law No. 3 of Hidalgo County, Texas."

Date Created

Sec. 11. The County Court at Law No. 3 of Hidalgo County is created on January 1, 1980, or on a date determined by the commissioners court by an order entered in its minutes, whichever date is earlier.

[Acts 1979, 66th Leg., p. 736, ch. 328, §§ 1 to 11, eff. Aug. 27, 1979.]

GALVESTON COUNTY

Art. 1970-342. Probate and County Court of Galveston County

[See Compact Edition, Volume 3 for text of 1 and 1a]

Sec. 1b. (a) The name of the Probate Court of Galveston County is changed to the "Probate and County Court of Galveston County," and the seal of the court shall contain the words "Probate and County Court of Galveston County."

(b) In addition to all other jurisdiction granted by law to the Probate and County Court of Galveston County, the court has jurisdiction concurrent with the district court in eminent domain cases and in civil cases when the matter in controversy exceeds \$500 and does not exceed \$10,000, exclusive of interest.

(c) The judge of the Probate and County Court of Galveston County shall appoint an official shorthand reporter for the Probate and County Court, who shall be well-skilled in his profession and shall be a sworn officer of the court and shall hold his office at the pleasure of the court. All of the provisions of Chapter 13, Title 42, Revised Civil Statutes of Texas, 1925, as amended, and all other applicable provisions of the law relating to "official court reporters" shall apply to the official shorthand reporter herein authorized to be appointed. The official shorthand reporter shall be entitled to the same compensation, to be paid in the same manner, as provided for the official shorthand reporters of the district courts of Galveston County. The court reporter shall be required primarily to report cases in the Probate and County Court of Galveston County but may be made available, when not engaged in a jury trial in that court, to report jury trials in the County Court of Galveston County and to the district attorney for examining trials in justice courts.

Text of subsection as added by Acts 1979, 66th Leg., p. 783, ch. 345, § 5

(d) In addition to all other jurisdiction granted by law to the probate and county court, the court has concurrent jurisdiction with the district courts and the County Courts Nos. 1 and 2 of Galveston County in juvenile matters and proceedings, and notwithstanding any other provision of the law relating to the designation of juvenile courts, each of these courts may serve as a juvenile court. All juvenile matters and proceedings shall be filed originally with the district clerk on the docket of the 306th District Court. The district clerk shall act as clerk in all juvenile proceedings, shall maintain all records, and upon order of the judge of the 306th District Court shall transfer juvenile matters and proceedings to the docket of the court designated therein.

Whenever possible, the court which presides over the initial hearing shall maintain exclusive jurisdiction over the case until final disposition.

Text of subsection as added by Acts 1979, 66th Leg., p. 1641, ch. 686, § 10

(d) In addition to all other jurisdiction granted by law to the probate and county court, the court has concurrent jurisdiction with the district courts and the County Courts Nos. 1 and 2 of Galveston County in juvenile matters and proceedings, and notwithstanding any other provision of the law relating to the designation of juvenile courts, each of these courts may serve as a juvenile court. All juvenile matters and proceedings shall be filed originally with the district clerk on the docket of the 306th District Court. The district clerk shall act as clerk in all juvenile proceedings, shall maintain all records, and shall transfer juvenile matters and proceedings to the other courts so that the County Courts Nos. 1 and 2, the Probate and County Court, and the 306th District Court will rotate trying all juvenile cases and holding detention hearings and other associated matters during a three-month period of each year, beginning with the County Court No. 1 during the first quarter of each year, the County Court No. 2 during the second quarter, the Probate and County Court during the third quarter, and the 306th District Court during the fourth quarter, except that the judge of the 306th District Court upon his own order may retain jurisdiction of or transfer to one of the other courts, that is, County Courts Nos. 1 and 2 and the Probate and County Court, any such case as the judge of the 306th District Court may determine serves the needs of justice.

Whenever possible, the court which presides over the initial hearing shall maintain exclusive jurisdiction over the case until final disposition.

[See Compact Edition, Volume 3 for text of 2 to 8]

Sec. 9. The Commissioners Court of Galveston County shall fix the yearly salary of the Judge of the Probate Court of Galveston County at a sum not less than 90 percent of the total salary, including supplements, paid any District Judge sitting in Galveston County. The salary shall be paid out of the general fund of the County in equal monthly installments by warrants drawn upon the County Treasury upon orders of the Commissioners Court of Galveston County, Texas.

[See Compact Edition, Volume 3 for text of 10]

[Amended by Acts 1975, 64th Leg., p. 1332, ch. 496, § 2, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 277, ch. 133, § 16, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 783, ch. 345, § 5, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1641, ch. 686, § 10, eff. Aug. 27, 1979.]

Art. 1970-342a. County Court No. 1 of Galveston County

[See Compact Edition, Volume 3 for text of 1]

Sec. 2.

[See Compact Edition, Volume 3 for text of 2(a) and (b)]

(c) In addition to the other jurisdiction granted in this section, the County Court No. 1 of Galveston County has jurisdiction concurrent with the district court in eminent domain cases and in civil cases when the matter in controversy exceeds \$500 and does not exceed \$10,000, exclusive of interest.

Text of subsection as added by Acts 1979, 66th Leg., p. 783, ch. 345, § 6

(d) In addition to all other jurisdiction granted by law to the County Court No. 1, the court has concurrent jurisdiction with the district courts, the probate and county court, and the County Court No. 2 of Galveston County in juvenile matters and proceedings, and notwithstanding any other provision of the law relating to the designation of juvenile courts, each of these courts may serve as a juvenile court. All juvenile matters and proceedings shall be filed originally with the district clerk on the docket of the 306th District Court. The district clerk shall act as clerk in all juvenile proceedings, shall maintain all records, and upon order of the judge of the 306th District Court shall transfer juvenile matters and proceedings to the docket of the court designated therein.

Whenever possible, the court which presides over the initial hearing shall maintain exclusive jurisdiction over the case until final disposition.

Text of subsection as added by Acts 1979, 66th Leg., p. 1641, ch. 686, § 12

(d) In addition to all other jurisdiction granted by law to the County Court No. 1, the court has concurrent jurisdiction with the district courts, the probate

and county court, and the County Court No. 2 of Galveston County in juvenile matters and proceedings, and notwithstanding any other provision of the law relating to the designation of juvenile courts, each of these courts may serve as a juvenile court. All juvenile matters and proceedings shall be filed originally with the district clerk on the docket of the 306th District Court. The district clerk shall act as clerk in all juvenile proceedings, shall maintain all records, and shall transfer juvenile matters and proceedings to the other courts so that the County Courts Nos. 1 and 2, the Probate and County Court, and the 306th District Court will rotate trying all juvenile cases and holding detention hearings and other associated matters during a three-month period of each year, beginning with the County Court No. 1 during the first quarter of each year, the County Court No. 2 during the second quarter, the Probate and County Court during the third quarter and the 306th District Court during the fourth quarter, except that the judge of the 306th District Court upon his own order may retain jurisdiction of or transfer to one of the other courts, that is, County Courts Nos. 1 and 2 and the Probate and County Court, any such case as the judge of the 306th District Court may determine serves the needs of justice.

Whenever possible, the court which presides over the initial hearing shall maintain exclusive jurisdiction over the case until final disposition.

Sec. 3.

[See Compact Edition Volume 3, for text of 3(a)]

(b) Probate matters, mental illness cases, and alcoholic hearings shall continue to be filed and docketed in the County Court of Galveston County and the County Court No. 2 of Galveston County in the same manner as they have been heretofore filed and docketed. Condemnation cases may be filed and docketed in the County Court of Galveston County, the Probate and County Court of Galveston County, County Court No. 1 of Galveston County, or County Court No. 2 of Galveston County.

[See Compact Edition, Volume 3 for text of 4 to 6]

Sec. 7. The judge of the County Court No. 1 of Galveston County shall appoint an official shorthand reporter for the County Court No. 1, who shall be well-skilled in his profession and shall be a sworn officer of the court, and shall hold his office at the pleasure of the court. All of the provisions of Chapter 13, Title 42, Revised Civil Statutes of Texas, 1925, as amended, and all other applicable provisions of the law relating to "official court reporters" shall apply to the official shorthand reporter herein authorized to be appointed. Such official shorthand reporter shall be entitled to the same compensation,

to be paid in the same manner, as provided for the official shorthand reporters of the district courts of Galveston County, Texas. Said court reporter shall be required primarily to report cases in the County Court No. 1 of Galveston County, but may be made available, when not engaged in a jury trial in said court, to report jury trials in the Probate and County Court of Galveston County.

[See Compact Edition, Volume 3 for text of 8 to 10]

Sec. 11.

[See Compact Edition, Volume 3 for text of 11(a)]

(b) The Commissioners Court of Galveston County shall fix the yearly salary of the Judge of the County Court No. 1 of Galveston County at a sum not less than 90 percent of the total salary, including supplements, paid any District Judge in and for Galveston County. The salary shall be paid to each Judge in equal monthly installments out of the General Fund of Galveston County, Texas, by warrants drawn upon the County Treasury upon orders of the Commissioners Court of Galveston County, Texas.

Sec. 12. A special judge may be appointed or elected for the County Court No. 1 of Galveston County in the same manner as may now or hereafter be provided by the General Laws of this state relating to the appointment and election of special judges. Every such special judge thus appointed or elected for said court shall receive for the services he may actually perform the same amount of pay which the regular judge of said court would be entitled to receive for such services.

[See Compact Edition, Volume 3 for text of 13 and 14]

[Amended by Acts 1975, 64th Leg., p. 1332, ch. 496, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 278, ch. 133, §§ 17, 18, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 783, ch. 345, § 6, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1641, ch. 686, §§ 11, 12, eff. Aug. 27, 1979.]

Art. 1970-342b. County Court No. 2 of Galveston County

Sec. 1. There is created on the effective date of this Act a court to be held in Galveston County to be known as the "County Court No. 2 of Galveston County."

Sec. 2. (a) The County Court No. 2 of Galveston County shall have the same jurisdiction over criminal matters that is now or may be vested in county courts having jurisdiction in criminal actions, matters, and proceedings under the constitution and laws of Texas and shall have appellate jurisdiction in all appeals in criminal cases from justice courts and municipal courts within Galveston County. The

judge of the court shall have the same powers, rights, and privileges as to criminal matters as are now or may be vested in the judges of county courts having criminal jurisdiction.

(b) The County Court No. 2 of Galveston County shall have the same jurisdiction and powers in civil actions, matters, and proceedings that are now or may be conferred by law upon and vested in the County Court of Galveston County, the County Court No. 1, the Probate and County Court of Galveston County, and the judges thereof. The jurisdiction of the County Court of Galveston County, the Probate and County Court, and the County Courts Nos. 1 and 2 of Galveston County over all such actions, matters, and proceedings, civil and criminal, within Galveston County shall be concurrent.

(c) In addition to the other jurisdiction granted in this section, the County Court No. 2 of Galveston County has jurisdiction concurrent with the district court in eminent domain cases and in civil cases when the matter in controversy exceeds \$500 and does not exceed \$10,000, exclusive of interest.

Text of subsection as added by Acts 1979, 66th Leg., p. 783, ch. 345, § 7

(d) In addition to all other jurisdiction granted by law to the County Court No. 2, the court has concurrent jurisdiction with the district courts, the probate and county court, and the County Court No. 1 of Galveston County in juvenile matters and proceedings, and notwithstanding any other provision of the law relating to the designation of juvenile courts, each of these courts may serve as a juvenile court. All juvenile matters and proceedings shall be filed originally with the district clerk on the docket of the 306th District Court. The district clerk shall act as clerk in all juvenile proceedings, shall maintain all records, and upon order of the judge of the 306th District Court shall transfer juvenile matters and proceedings to the docket of the court designated therein.

Whenever possible, the court which presides over the initial hearing shall maintain exclusive jurisdiction over the case until final disposition.

Text of subsection as added by Acts 1979, 66th Leg., p. 1643, ch. 686, § 14

(d) In addition to all other jurisdiction granted by law to the County Court No. 2, the court has concurrent jurisdiction with the district courts, the probate and county court, and the County Court No. 1 of Galveston County in juvenile matters and proceedings, notwithstanding any other provision of the law relating to the designation of juvenile courts, each of these courts may serve as a juvenile court. All juvenile matters and proceedings shall be filed originally with the district clerk on the docket of the 306th District Court. The district clerk shall act as

clerk in all juvenile proceedings, shall maintain all records, and shall transfer juvenile matters and proceedings to the other courts so that the County Courts Nos. 1 and 2, the Probate and County Court, and the 306th District Court will rotate trying all juvenile cases and holding detention hearings and other associated matters during a three-month period of each year, beginning with the County Court No. 1 during the first quarter of each year, the County Court No. 2 during the second quarter, the Probate and County Court during the third quarter, and the 306th District Court during the fourth quarter, except that the judge of the 306th District Court upon his own order may retain jurisdiction of or transfer to one of the other courts, that is, County Courts Nos. 1 and 2 and the Probate and County Court, any such case as the judge of the 306th District Court may determine serves the needs of justice.

Whenever possible, the court which presides over the initial hearing shall maintain exclusive jurisdiction over the case until final disposition.

Sec. 3. (a) Criminal cases shall be filed and docketed sequentially in the County Court No. 1 of Galveston County and the County Court No. 2 of Galveston County. Civil cases shall be filed and docketed sequentially in the County Court No. 1, the County Court No. 2, and the Probate and County Court of Galveston County. Upon the effective date of this Act, the civil cases now filed and docketed in County Court No. 1 shall be refiled in an equal and proportionate manner among the County Court No. 1, the County Court No. 2, and the Probate and County Court of Galveston County. The criminal cases now filed and docketed in County Court No. 1 shall be refiled in an equal and proportionate manner between County Court No. 1 and County Court No. 2.

(b) Probate matters, mental illness cases, and alcoholism hearings, shall continue to be filed and docketed in the County Court of Galveston County and the Probate and County Court of Galveston County in the same manner as they have been heretofore filed and docketed, except as may otherwise be agreed upon by consent of all judges of the county courts of Galveston County and the county probate court. Condemnation cases may be filed and docketed in the County Court of Galveston County, the Probate and County Court of Galveston County, County Court No. 1 of Galveston County, or County Court No. 2 of Galveston County.

Sec. 4. The clerk of the County Court No. 2 of Galveston County shall keep a separate docket for the court in the same manner as now or may be provided by law for the keeping of dockets for the County Court of Galveston County and the County

Court No. 1 and the Probate and County Court of Galveston County. He shall tax the official court reporter's fee as costs in civil actions in the County Court No. 2 of Galveston County in like manner as the fee is taxed in civil cases in the district courts of this state. The judge of the County Court of Galveston County and the judges of the Probate and County Court and the County Courts Nos. 1 and 2 of Galveston County may, with the consent of the judge of the court to which transfer is to be made, transfer civil or criminal actions, matters, and proceedings from his respective court to any one of the other courts by entry of an order to that effect upon the docket of his court. The judge of the court to which any such action, matter, or proceeding, civil or criminal, shall have been transferred shall have jurisdiction to hear and determine the matter or matters and render and enter the necessary and proper orders, decrees, and judgments therein, and in the same manner and with the same force and effect as if the case, action, matter, or proceeding had been originally filed in the court to which transferred. However, no cause, action, matter, case, or proceeding shall be transferred without the consent of the judge of the court to which it is transferred.

Sec. 5. The judge of the County Court No. 2 of Galveston County, together with the judges of the County Court of Galveston County, the County Court No. 1, and the Probate and County Court of Galveston County, may at any time exchange benches and may at any time sit and act for and with each other in any civil or criminal case, matter, or proceeding now or hereafter pending in their courts, and all such acts thus performed by any of the judges shall be valid and binding on all parties to such cases, matters, and proceedings.

Sec. 6. The practice in the County Court No. 2 of Galveston County shall be the same as prescribed by law relating to county courts and county courts at law. Appeals and writs of error may be taken from judgments and orders of the County Court No. 2 of Galveston County, and from judgments and orders of the judge thereof, in civil and criminal cases and in the same manner as now is or may hereafter be prescribed by law relating to such appeals and writs of error. Appeals may also be taken from interlocutory orders of the County Court No. 2 of Galveston County appointing a receiver or from orders overruling a motion to vacate or appointing a receiver. The procedure and manner in which the appeals from interlocutory orders are taken shall be governed by the laws relating to appeals from similar orders of the district courts throughout this state.

Sec. 7. The judge of the County Court No. 2 of Galveston County shall appoint an official shorthand reporter for the County Court No. 2, who shall be well skilled in his profession and shall be a sworn

officer of the court and shall hold his office at the pleasure of the court. All of the provisions of Chapter 13, Title 42, Revised Civil Statutes of Texas, 1925, as amended, and all other applicable provisions of the law relating to "official court reporters" shall apply to the official shorthand reporter herein authorized to be appointed. The official shorthand reporter shall be entitled to the same compensation, to be paid in the same manner, as provided for the official shorthand reporters of the district courts of Galveston County. The official shorthand reporter shall be required primarily to report cases in the County Court No. 2 of Galveston County but may be made available, when not engaged in a jury trial in that court, to report jury trials in the Probate and County Court of Galveston County.

Sec. 8. The county clerk of Galveston County shall be the clerk of the County Court No. 2 of Galveston County. The court shall have a seal consisting of a star of five points with the words "County Court No. 2 of Galveston County" engraved thereon. The sheriff of Galveston County shall appoint a deputy to attend the court when required by the judge.

Sec. 9. The criminal district attorney of Galveston County shall represent the state in all prosecutions in the County Court No. 2 of Galveston County as provided by law for prosecutions in county courts and shall be entitled to the same fees as in other cases.

Sec. 10. There shall be elected a judge of the County Court No. 2 of Galveston County, who shall have been a duly licensed and practicing member of the State Bar of Texas for not less than five years, who shall be well versed in the laws of the state and who shall have resided in and been actively engaged in the practice of law in Galveston County for a period of not less than four years prior to his election. When this Act becomes effective, the commissioners court shall appoint a judge of the County Court No. 2 of Galveston County, who shall have the qualifications prescribed in this section and who shall serve until the next general election and until his successor shall have been duly elected and have qualified. Beginning at the general election in 1978 and every fourth year thereafter, there shall be elected by the qualified voters of the county a judge of the County Court No. 2 for a regular term of four years as provided by the Texas Constitution. A vacancy thereafter occurring in the office of the judge of the County Court at Law No. 2 of Galveston County shall be filled by the Commissioners Court of Galveston County, and the appointee shall hold office until the next succeeding general election and until his successor shall be duly elected and have qualified.

Sec. 11. (a) The judge of the County Court No. 2 of Galveston County shall take the oath of office prescribed by the constitution, but no bond shall be required of him.

(b) The Commissioners Court of Galveston County may fix the yearly salary of the judge of the County Court No. 2 of Galveston County at the same salary paid all judges of other county courts and the Probate and County Court of Galveston County. The salary shall be paid to each judge in equal monthly installments out of the General Fund of Galveston County by warrants drawn on the county treasury on orders of the Commissioners Court of Galveston County.

Sec. 12. A special judge may be appointed or elected for the County Court No. 2 of Galveston County in the same manner as may now or hereafter be provided by the general laws of this state relating to the appointment and election of special judges. Every special judge appointed or elected for the court shall receive for the services he may actually perform the same amount of pay which the regular judge of the court would be entitled to receive for such services.

Sec. 13. The County Court No. 2 of Galveston County, or the judge thereof, shall have power to grant all writs necessary to the enforcement of the jurisdiction of the court and to issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court in Galveston County of inferior jurisdiction to the County Court No. 2 of Galveston County.

Sec. 14. The County Court No. 2 of Galveston County shall hold six terms of court commencing on the first Monday in January, March, May, July, September, and November of each year, and each term shall continue until the business of the court is disposed of. No term of the court shall extend beyond the date fixed for the commencement of the succeeding term, except pursuant to an order entered on the minutes during the term to be extended.

Sec. 15. The judge of the County Court No. 2 shall be a member of the Juvenile Board of Galveston County and shall have the same jurisdiction over juvenile proceedings as the judges of the County Court No. 1, the Probate and County Court, and the Court of Domestic Relations for Galveston County, with juvenile proceedings filed sequentially in the County Court No. 1, the Probate and County Court, the County Court No. 2, and the Court of Domestic Relations.

[Acts 1977, 65th Leg., p. 274, ch. 133, §§ 1 to 15, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 783, ch. 345, § 7, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1642, ch. 686, §§ 13, 14, eff. Aug. 27, 1979.]

Sections 16 to 18 of the 1977 Act amended arts. 1970-342 and 1970-342a; § 19 thereof provided:

"The provisions of this Act take effect on September 1, 1977."

TAYLOR COUNTY

Art. 1970-343. County Court at Law of Taylor County

[See Compact Edition, Volume 3, for text of 1 and 2]

Sec. 3. The County Court of Taylor County shall retain, as heretofore, the general jurisdiction of a probate court; it shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards, grant letters testamentary and of administration, settle accounts of executors, administrators and guardians, transact all business appertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the settlement, partition and distribution of estates of deceased persons, and to apprentice minors as provided by law; and the said Court and the Judge thereof shall have the power to issue writs of injunction, mandamus, and all writs necessary to the enforcement of the jurisdiction of said Court, and also to punish contempts under such provisions as are or may be provided by law governing County Courts throughout the State; but said County Court of Taylor County shall have no other jurisdiction, civil or criminal. The County Judge of Taylor County shall be the Judge of the County Court of Taylor County. All ex-officio duties of the County Judge shall be exercised by the said Judge of the County Court of Taylor County, except in so far as the same shall by this Act be committed to the Judge of the County Court at Law of Taylor County.

[See Compact Edition Volume 3, for text of 4 and 5]

Sec. 5a. When the Judge of the County Court at Law is ill, disqualified, or otherwise absent, a County Judge of Taylor County with the qualifications required of the Judge of the County Court at Law of Taylor County may, at the request of the Judge of the County Court at Law, sit and hold court in the County Court at Law. When the Judge of the County Court is ill, disqualified, or otherwise absent, the Judge of the County Court at Law may, at the request of the County Judge, sit in the County Court to hear and determine any probate matter pending in the County Court. If either of the Judges is incapable of requesting the services of the other Judge, either the Judge of the County Court or of the County Court at Law may hold court for the other Judge without the Judge's request. The provisions of this section are cumulative of and in addition to the provisions provided in this Act for the election and appointment of a Special Judge of the County Court at Law.

[See Compact Edition Volume 3, for text of 6]

Sec. 7. A Special Judge of the County Court at Law of Taylor County may be appointed or elected when and under such circumstances as are provided by law relating to County Courts and to the Judges thereof, who shall receive a reasonable fee as determined by the Commissioners Court for each day he so actually serves, to be paid out of the General Fund of the county by the Commissioners Court.

[See Compact Edition, Volume 3 for text of 8 to 12]

[Amended by Acts 1979, 66th Leg., p. 196, ch. 106, § 1, eff. Aug. 27, 1979.]

SMITH COUNTY

Art. 1970-348a. County Court at Law No. 2 of Smith County

Sec. 1. There is created a court to be held in Tyler, Smith County, Texas, which shall be known as the County Court at Law No. 2 of Smith County.

Sec. 2. The County Court at Law No. 2 of Smith County shall have jurisdiction in all matters, causes, and proceedings, civil, criminal, and probate, original and appellate, over which by the general laws of this state county courts have jurisdiction, and jurisdiction of the County Court at Law No. 2 is concurrent with that of the County Court of Smith County and the County Court at Law of Smith County. This provision does not affect the jurisdiction of the Commissioners Court or the County Judge of Smith County as the presiding officer of the commissioners court. The County Judge of Smith County shall be the judge of the County Court of Smith County. All ex officio duties of the county judge shall be exercised by the judge of the County Court of Smith County, except insofar as the same shall, by this Act, be committed to the judge of the county court at law.

Sec. 3. The County Court at Law No. 2 of Smith County has jurisdiction concurrent with the district court in eminent domain cases and in civil cases when the matter in controversy exceeds \$500 and does not exceed \$5,000, exclusive of interest, as provided by general law.

Sec. 4. The terms of the County Court at Law No. 2 of Smith County shall be the same as the terms of the County Court of Smith County and may be changed in accordance with the laws governing the change in the terms of the County Court of Smith County.

Sec. 5. (a) The judge of the County Court at Law No. 2 of Smith County shall have been a duly licensed and practicing member of the State Bar of Texas for not less than five years, shall be well-informed in the laws of the state, and shall have

resided in and been actively engaged in the practice of law in Smith County, Texas, for a period of not less than two years prior to his appointment or election.

(b) When this Act becomes effective, the Commissioners Court of Smith County shall appoint a judge to the County Court at Law No. 2 of Smith County, and shall provide suitable quarters for the holding of the court. The judge appointed serves until the general election in 1976, and until his successor is duly elected and has qualified. At the general election in 1976, there shall be elected a judge of the County Court at Law No. 2 for a term ending on December 31, 1978. At the general election in 1978 and every four years thereafter, the judge of the County Court at Law No. 2 shall be elected for a regular four year term as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution. Any vacancy occurring in the office of the judge of the County Court at Law No. 2 shall be filled by the Commissioners Court of Smith County, and the appointee shall hold office until the next general election and until his successor is duly elected and has qualified.

Sec. 6. The judge of the County Court at Law No. 2 of Smith County may be removed from office in the same manner and for the same causes as any county judge may be removed under the laws of this state.

Sec. 7. The judge of the County Court at Law No. 2 of Smith County shall execute a bond and take the oath of office as required by law relating to county judges.

Sec. 8. A special judge of the County Court at Law No. 2 of Smith County may be appointed or elected as provided by law relating to county courts and to the judge thereof. He shall receive for each day he actually serves the same compensation as provided for a special judge of the County Court at Law of Smith County, to be paid out of the general fund of the county by the commissioners court.

Sec. 9. In the case of the disqualification of the judge of the County Court at Law No. 2 of Smith County to try a case pending in his court, the parties or their attorneys may agree on the selection of a special judge to try the case or cases where the judge of the County Court at Law No. 2 of Smith County is disqualified. In case of the selection of a special judge by agreement of the parties or their attorneys, the special judge shall draw the same compensation as that provided for a special judge in the County Court at Law of Smith County.

Sec. 10. The County Court at Law No. 2 of Smith County, or the judge thereof, shall have the power to issue writs of injunction, mandamus, se-

questration, attachment, garnishment, certiorari, supersedeas, and all writs necessary to the enforcement of jurisdiction of the court, and to issue writs of habeas corpus in such cases where the offense charged is within the jurisdiction of said court or of any other court in the county of inferior jurisdiction to the county court at law. The County Court at Law No. 2, or the judge thereof, shall also have the power to punish for contempt as prescribed by law for county courts.

Sec. 11. (a) The judge of the County Court at Law No. 2 may sit in the absence from the courtroom of the County Judge of Smith County in all matters, causes, and proceedings without the necessity of transferring those matters, causes, and proceedings, except matters coming under the jurisdiction of the commissioners court where the county judge would be the presiding officer of that court.

(b) The county judge, if a duly licensed attorney, may sit in the absence from the courtroom of the judge of the County Court at Law No. 2 in all matters and causes without the necessity of transferring those matters and causes. The judges of the county courts at law may freely exchange benches and courtrooms with each other without the necessity of transferring the case involved.

(c) Except in cases where the writ of certiorari has been granted, the judges of the county court and the county courts at law may transfer cases to and from the dockets of their respective courts. However, no case may be transferred from one court to another court without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred.

(d) In cases transferred to either of the courts by order of the judge of one of the other courts, all processes, writs, bonds, recognizances, or other obligations issued or made in the cases shall be returned to and filed in the court to which transfer is made. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of such bonds or recognizances at the terms of the court to which the cases are transferred as fixed by law. All processes issued or returned before transfer of the cases, as well as all bonds and recognizances taken before the transfer, shall be valid and binding as though originally issued out of the court to which the transfer is made.

Sec. 12. The Criminal District Attorney of Smith County shall represent the state in all prosecutions in the County Court at Law No. 2 of Smith County, as provided by law for such prosecutions in county courts, and shall be entitled to the same fees as now prescribed by law for such prosecutions in the county courts.

Sec. 13. The County Clerk of Smith County shall be the clerk of the County Court at Law No. 2 of Smith County, and the seal of the court shall be the same as that provided by law for county courts, except the seal shall contain the words "County Court at Law No. 2 of Smith County."

Sec. 14. The Sheriff of Smith County shall in person or by deputy attend the County Court at Law No. 2 of Smith County when required by the judge thereof.

Sec. 15. The jurisdiction and authority now vested by law in the County Court of Smith County, and the judge thereof, for the drawing, selection and service of jurors and talesmen shall also be exercised by the County Court at Law No. 2 of Smith County and the judge thereof. Jurors and talesmen summoned for either of the county courts at law or the county court may by order of the judge of the court in which they are summoned be transferred to the other courts for service and may be used as if summoned for the court to which they may be thus transferred. On concurrence of the judges of the county courts at law and the judge of the County Court of Smith County, jurors may be summoned for service in all of those courts and shall be used interchangeably in all such courts. All summons for petit jurors for all civil and criminal cases under existing laws at the time this Act takes effect, shall be as valid as if no change had been made and the persons constituting such jury panels shall be required to appear and serve at the ensuing term of the courts as fixed by this Act, and their acts as jurors shall be as valid as if they had been selected as jurors in the court for which they were originally drawn.

Sec. 16. The laws of the State of Texas, the rules of procedure, and the rules of evidence shall be applicable to and control trials and proceedings in the County Court at Law No. 2 of Smith County, and shall be applicable to and govern the proceedings in and appeals to and appeals from the County Court at Law No. 2 of Smith County.

Sec. 17. The judge of the County Court at Law No. 2 of Smith County shall receive an annual salary equal to the annual salary of the judge of the County Court at Law of Smith County as set by the commissioners court, to be paid out of the county treasury on the order of the commissioners court. The salary shall be paid monthly in equal installments. The judge of the County Court at Law No. 2 of Smith County shall assess the same fees as are now prescribed or may be established by law, relating to the county judge's fees, all of which shall be collected by the clerk of the court and shall be paid into the county treasury on collection, no part of which shall be paid to the judge, but he shall draw the salary as above specified in this section.

Sec. 18. The judge of the County Court at Law No. 2 of Smith County may appoint an official shorthand reporter for the court who shall be well-skilled in his profession and shall be a sworn officer of the court and shall hold his office at the pleasure of the court. The reporter shall take the oath required of official court reporters and shall receive a salary as set by the Commissioners Court of Smith County to be paid out of the county treasury of Smith County, as other county officials are paid, in equal monthly installments. All other provisions of Chapter 13, Title 42, Revised Civil Statutes of Texas, 1925, as amended and as the same may hereafter be amended, and all other provisions of the law relating to official court reporters shall be and are hereby made to apply in all provisions in so far as they are applicable to the official shorthand reporter authorized to be appointed and in so far as they are not inconsistent with this Act.

Sec. 19. The judge of the County Court at Law No. 2 of Smith County, with the consent of the commissioners court, may employ a secretary. The secretary is entitled to a salary as determined by the commissioners court.

[Acts 1975, 64th Leg., p. 2031, ch. 672, §§ 1 to 19, eff. Sept. 1, 1975.]

BELL COUNTY

Art. 1970-350. County Court at Law No. 1 of Bell County

[See Compact Edition, Volume 3 for text of 1]

Change of Name

Sec. 1A. The name of the County Court at Law of Bell County is changed to County Court at Law No. 1 of Bell County, and all laws heretofore or hereafter enacted by the Legislature applicable or relating to the County Court at Law of Bell County shall hereafter be applicable and shall relate to the County Court at Law No. 1 of Bell County.

[See Compact Edition, Volume 3 for text of 2 to 6]

[Amended by Acts 1975, 64th Leg., p. 79, ch. 37, § 7, eff. April 3, 1975.]

Art. 1970-350a. County Court at Law No. 2 of Bell County

Sec. 1. (a) On the effective date of this Act, the County Court at Law No. 2 of Bell County is created.

(b) The County Court at Law No. 2 has the same jurisdiction over all causes and proceedings, civil, criminal, and probate, original and appellate, prescribed by law for county courts, and its jurisdiction is concurrent with that of the County Court of Bell County and the County Court at Law of Bell County.

(c) The County Court at Law No. 2 of Bell County, or its judge, may issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court; and may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court, or of any other court of inferior jurisdiction in the county. The court and judge also have the power to punish for contempt as prescribed by law for county courts.

(d) The County Judge of Bell County is the Judge of the County Court of Bell County. All ex officio duties of the county judge shall be exercised by the Judge of the County Court of Bell County unless by this Act committed to the Judge of the County Court at Law No. 2.

Sec. 2. The Commissioners Court of Bell County, by order duly entered of record, shall prescribe not less than four terms each year for the County Court at Law No. 2 of Bell County.

Sec. 3. (a) As soon as practicable after this Act becomes effective, the Commissioners Court of Bell County shall appoint a judge to the County Court at Law No. 2 of Bell County. The judge appointed serves until January 1, 1977, and until his successor has qualified. At the general election in 1976, a successor shall be elected to serve until January 1, 1979. At the general election in 1978 and every fourth year thereafter, there shall be elected by the qualified voters of Bell County a judge of the County Court at Law No. 2 of Bell County for a regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution.

(b) The Judge of the County Court at Law No. 2 of Bell County must have been a duly licensed and practicing member of the State Bar of Texas for not less than three years, be well informed in the laws of this state, and must have resided and been actively engaged in the practice of law in Bell County for a period of not less than two years prior to his election or appointment. During his term of office the Judge may not appear and plead as an attorney at law in any court of record in this state.

(c) If any vacancy occurs in the office of the Judge of the County Court at Law No. 2, the commissioners court shall appoint the Judge of the County Court at Law No. 2, who must have the same qualifications prescribed in Subsection (b) of this section, and the appointee holds office until January 1st of the year following the next general election and until his successor has been duly elected and qualified.

(d) The Judge of the County Court at Law No. 2 shall execute a bond and take the oath of office

prescribed by law for county judges. He may be removed from office in the same manner and for the same causes as a county judge.

(e) The Judge of the County Court at Law No. 2 shall receive a salary in an amount determined by the commissioners court not to exceed the salary prescribed by the commissioners court for the County Judge of Bell County. Such salary shall be paid in equal monthly installments out of the county treasury on order of the commissioners court. The Judge of the County Court at Law No. 2 shall assess the fees prescribed by law for county judges, which shall be collected by the clerk of the court and paid into the county treasury, and which may not be paid to the judge.

(f) A special judge of the County Court at Law No. 2 may be appointed in the manner provided by law for the appointment of a special county judge. A special judge must have the same qualifications, and is entitled to the same rate of compensation, as the regular judge.

(g) The Judge of the County Court at Law No. 2 shall be a member of the Juvenile Board of Bell County, and for this additional work as a member of the juvenile board he shall be allowed compensation in like manner as other members of said juvenile board, such compensation to be determined and fixed by order of the commissioners court and to be paid in addition to any other compensation to which he is entitled under the provisions of law.

Sec. 4. (a) The County Attorney, County Clerk, and Sheriff of Bell County, Texas, shall serve as County Attorney, Clerk, and Sheriff, respectively, of the County Court at Law No. 2 of Bell County. Those serving shall perform the duties, and are entitled to the compensation, fees, and allowances, prescribed by law for their respective offices in Bell County.

(b) The Judge of the County Court at Law No. 2 may appoint an official court reporter, who must meet the qualifications prescribed by law for that office and who is entitled to the compensation fixed by the Commissioners Court of Bell County.

Sec. 5. (a) Practice in the County Court at Law No. 2 of Bell County shall conform to that prescribed by law for the County Court of Bell County.

(b) The Judge of each of the County Courts at Law or the County Court of Bell County may, in his discretion, either in term-time or in vacation, on motion of any party or on agreement of the parties, or on his own motion, transfer any cause, civil or criminal, on his docket to the docket of either of those courts, and the judges of those courts may, in their discretion, exchange benches from time to time. Whenever a judge of one of those courts is

disqualified, he shall transfer the case from his court to one of the other courts, and either judge may, in his own courtroom, try and determine any case or proceeding pending in either of the county courts at law or the county court, without having the case transferred, or may sit in the other court and there hear and determine any case there pending, and each judgment and order shall be entered in the minutes of the court in which the case is pending. The judges may try different cases in the same court at the same time and each may occupy his own courtroom or the room of any county court at law or the county court. In case of absence, sickness, or disqualification of the judge of either of the county courts at law or the county court, either of the other judges may hold court for him. Either of the judges may hear any part of any case or proceeding pending in either of the county courts at law or the county court and determine the same or may hear and determine any question in any case, and either judge may complete the hearing and render judgment in the case. In cases transferred to one of the county courts at law or the county court by order of the judge of one of the other courts, all process, writs, bonds, recognizances, or other obligations issued or made in the cases shall be returned to and filed in the court to which transfer is made. All bonds executed and recognizances entered into in the cases shall bind the parties for their appearance or to fulfill the obligations of such bonds or recognizances at the terms of the court to which the cases are transferred as fixed by law and by this Act. All processes issued or returned before transfer of the cases, as well as all bonds and recognizances taken in the cases, shall be valid and binding as though originally issued out of the court to which the transfer is made.

(c) Jurors regularly impaneled for the week by the District Courts of Bell County, Texas, may at the request of either the Judge of the County Court, the County Court at Law, or the County Court at Law No. 2 be made available by the district judges in the numbers requested and shall serve for the week in either the County Court, the County Court at Law, or the County Court at Law No. 2.

[Acts 1975, 64th Leg., p. 79, ch. 37, §§ 1 to 5, eff. April 3, 1975. Amended by Acts 1975, 64th Leg., p. 670, ch. 283, § 1, eff. May 20, 1975.]

DENTON COUNTY

Art. 1970-352a. County Court at Law No. 2 of Denton County

Creation and Jurisdiction

Sec. 1. (a) The County Court at Law No. 2 of Denton County is created on the date determined under Section 10 of this Act.

(b) The County Court at Law No. 2 has the same jurisdiction over all causes and proceedings, civil and criminal, original and appellate, as prescribed by law for county courts and has jurisdiction concurrent with the County Court at Law of Denton County in matters and cases, civil and criminal, original and appellate. However, it does not have jurisdiction over causes and proceedings concerning roads, bridges, and public highways which are within the jurisdiction of the commissioners court of Denton County.

(c) The County Court at Law No. 2 of Denton County has jurisdiction in civil cases where the matter in controversy exceeds \$500 and does not exceed \$20,000, exclusive of interest, as provided by general law.

(d) The County Court at Law No. 2 of Denton County has the general jurisdiction of a probate court within the limits of Denton County, concurrent with the jurisdiction of the County Court of Denton County and the County Court at Law of Denton County in such matters and proceedings.

(e) The County Court of Denton County shall have and retain, concurrently with the County Court at Law of Denton County and the County Court at Law No. 2 of Denton County, the general jurisdiction of a probate court, but shall have no other jurisdiction, criminal or civil, original or appellate. The county judge of Denton County shall be the judge of the County Court of Denton County. All ex officio, executive, ministerial, and administrative duties of the county judge of Denton County shall continue to be exercised by the county judge of Denton County, but he or she may not act in any proceeding of a judicial nature except probate matters.

Terms and Practice

Sec. 2. The County Court at Law No. 2 of Denton County shall sit in the county seat of Denton County and shall hold continuous terms which commence on the first Monday in January and on the first Monday in July of each year. Each term of court continues until the next succeeding term begins. The practice in the court and appeals and writs of error to and from the court shall be as prescribed by the laws and rules relating to the county courts.

Judge

Sec. 3. (a) There shall be elected, by the qualified voters of Denton County, a judge of the County Court at Law No. 2, who shall be a regularly licensed attorney at law in this state, shall be a resident citizen of Denton County, and shall have been actively engaged in the practice of law in this state for a period of not less than two years next preceding his or her election and shall hold office for four years and until a successor is elected and has

qualified. As soon as this court is created, the commissioners court of Denton County shall appoint a judge to the County Court at Law No. 2 of Denton County, who shall hold the office as judge until the next general election and until a successor is elected and has qualified. Beginning at the general election in 1982 and every fourth year thereafter, there shall be elected a judge of the County Court at Law No. 2 for the regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution. A vacancy in the office of judge of County Court at Law No. 2 of Denton County shall be filled by the appointment of the commissioners court of Denton County and when so filled, the judge shall hold office until the next general election and until a successor is elected and has qualified.

(b) The judge of the County Court at Law No. 2 shall execute a bond and take the oath of office as required by law relating to county judges.

(c) A special judge of any county court at law in Denton County may be appointed or elected as provided by law relating to the county courts and to the judges thereof, who shall be compensated in the same manner as provided for special judges of the county courts.

(d) The judge of the County Court at Law No. 2 of Denton County may be removed from office in the same manner and for the same causes as provided by law for the county judges.

Compensation and Fees

Sec. 4. (a) The judge of the County Court at Law No. 2 of Denton County may receive an annual salary not to exceed 90 percent of the total annual salary paid to judges of the district courts having jurisdiction in Denton County, the amount of which shall be fixed by the commissioners court of Denton County. The salary shall be paid in the same manner and from the same funds as prescribed by law for payment of the salary of the county judge and judge of the County Court at Law of Denton County.

(b) The judge of the County Court at Law No. 2 shall assess the fees prescribed by law for county judges, which shall be collected by the clerk of the court and paid into the county treasury and which may not be paid to the judge.

Writ Power

Sec. 5. The County Court at Law No. 2 of Denton County, or the judge thereof, has the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary to the enforcement of jurisdiction of the court, to issue writs of habeas corpus in cases where the offense charged is in the jurisdic-

tion of the court or any other court in the county of inferior jurisdiction to the County Court at Law No. 2, and to punish for contempt under the provisions that are provided by the general laws governing county courts. The judge has all powers, duties, immunities, and privileges that are provided by general law for judges of courts of record and for judges of county courts at law. The judge shall be a magistrate and conservator of the peace.

Court Officials

Sec. 6. (a) The county clerk of Denton County shall be the clerk of the County Court at Law No. 2 of Denton County, and as clerk of the court, he or she shall have the same powers, duties, privileges, and immunities as are provided by law for county clerks.

(b) The county attorney or the criminal district attorney, if there is no county attorney, and the sheriff of Denton County shall serve as county attorney, or criminal district attorney, and sheriff, respectively, of the County Court at Law No. 2 of Denton County. They shall perform the duties and are entitled to the compensation, fees, and allowances, prescribed by law for their respective offices.

(c) The judge of the County Court at Law No. 2 shall appoint an official shorthand reporter for the court, who shall have the qualifications provided by law for official court reporters, shall be a sworn officer of the court, and shall hold office at the pleasure of the judge. The duties of the reporter shall be the same as provided by general law for reporters of the district courts, and the salary of the reporter shall be set by the commissioners court and paid monthly by the commissioners court out of any funds available for the purpose.

Jurors

Sec. 7. (a) The jurisdiction and authority vested by law in the county courts, and the judges thereof, for the drawing, selection, and service of jurors shall also be exercised by the County Court at Law No. 2 and the judge thereof. Jurors summoned for either of the county courts at law or the county court may, by order of the judge of the court in which they are summoned, be transferred to either of the other courts for service and may be used as if summoned for the court to which they are thus transferred. Upon the concurrence of the judges of the county courts at law and the county judge, jurors may be summoned for service in all of those courts and shall be used interchangeably in all of those courts.

(b) Jurors regularly impaneled for the week by the district court or courts may on request of either the county judge or the judge of either of the county courts at law be made available by the district judge or judges in such numbers as may be requested for service for the week in either or all of the county

courts at law or the county court, and such jurors shall serve in the county court and the county courts at law the same as if they had been drawn and selected as is otherwise provided by law.

Courtroom and Seal

Sec. 8. (a) The commissioners court shall provide suitable quarters for the County Court at Law No. 2.

(b) The seal of the court shall be the same as provided by law for county courts, except that the seal shall contain the words "County Court at Law No. 2 of Denton County, Texas."

Transfer of Cases and Exchange of Benches

Sec. 9. (a) When the County Court at Law No. 2 is created, all civil and criminal cases and matters pending before the County Court of Denton County are transferred to the County Court at Law No. 2.

(b) The judges of the county court and the county courts at law may transfer cases to and from the dockets of the respective courts. However, no case may be transferred from one court to another court without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred.

(c) On the transfer of all cases specified in Subsection (a) of this section to the County Court at Law No. 2, and in cases transferred to any of the courts by order of the judge of another court, all processes, writs, bonds, recognizances, or any other obligation issued or made in the case shall be returned to and filed in the court to which transfer is made. All bonds executed and recognizances entered into those cases shall bind the parties for their appearance or to fulfill the obligations of such bonds or recognizances at the term of the court to which the case is transferred as fixed by law. All processes issued or returned before transfer of the cases, as well as all bonds and recognizances taken before the transfer shall be valid and binding as though originally issued out of the court to which the transfer is made.

(d) The county judge and judges of the county courts at law may freely exchange benches and courtrooms with each other in matters within their jurisdiction so that if one is ill, disqualified, or is otherwise absent, either of the other judges may hold court for such judge without the necessity of transferring the case involved. Any judge may hear all or any part of a case pending in the county court or in a county court at law, but only in matters within the judge's jurisdiction, and may rule and enter orders on and continue, determine, or render judgment on all or any part of the case without the necessity of transferring it to the judge's own docket. However, the judge of any court may not sit or act in a case unless it is within the jurisdiction of

that judge's court. Each judgment and order shall be entered in the minutes of the court in which the case is pending. This provision for the exchange of benches by and between the judge of the county court and the judges of the county courts at law is cumulative of and in addition to the provisions in this Act for the selection and appointment of a special judge of the county court at law.

Date Created

Sec. 10. This Act takes effect and the County Court at Law No. 2 of Denton County is created on January 1, 1982, or on a date determined by the commissioners court by an order entered in its minutes, whichever date is earlier.

[Acts 1979, 66th Leg., p. 927, ch. 425, §§ 1 to 10, eff. Aug. 27, 1979.]

PARKER COUNTY

Art. 1970-353. Parker County; Jurisdiction of County Court

Sec. 1. The County Court of Parker County shall have and exercise the general jurisdiction of a probate court, shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards; grant letters testamentary and of administration; settle the accounts of executors, administrators, and guardians; transact all business pertaining to the estates of deceased persons, minors, lunatics, persons non compos mentis, and common drunkards, including the partition, settlement, and distribution of estates of deceased persons pending in such court; conduct lunacy hearings; apprentice minors as provided by law, and issue all writs necessary for the enforcement of its own jurisdiction; punish for contempt under such provisions as now or may be provided for by general law governing county courts throughout the state; and in addition thereto, the County Court of Parker County and the judge thereof, shall have all original and appellate civil and criminal jurisdiction as normally exercised by county courts under the constitution and general laws of this state. All present and future statutes pertaining to probate matters and eminent domain enacted by the Legislature of the State of Texas shall be operative in Parker County as fully as though this statute had not been enacted.

Sec. 2. All concurrent jurisdiction between the County Court of Parker County and the 43rd District Court previously existing by authority of this article is hereby abolished.

Sec. 3. Jurisdiction over juvenile matters in Parker County shall be as established by the constitution and general laws of this state.

Sec. 4. The District Clerk of Parker County shall file, within 30 days after the effective date of this amendment, with the County Clerk of Parker Coun-

ty, all original papers in cases herein transferred to the County Court of Parker County and all judge's dockets and certified copies of any interlocutory judgment or other order entered in the minutes of the 43rd District Court in a case transferred. The county clerk shall immediately docket all such cases on the docket of the County Court of Parker County in the same manner and place as each stands on the docket of the district court. It shall not be necessary that the county clerk refile any papers heretofore filed by the district clerk, but papers in the case bearing the file mark of the district clerk prior to the time of the transfer shall be held to have been filed in the case as of the date filed without being refiled by the county clerk. The district clerk in cases so transferred shall accompany the papers with a certified bill of costs, and against all costs deposit, the district clerk shall charge accrued fees due the district clerk and the remainder of the deposit, if any, the district clerk shall pay to the county court as a deposit in the particular case for which the deposit was made. Credit shall be given all litigants for all jury fees paid in the district court.

Sec. 5. Repealed by Acts 1977, 65th Leg., p. 677, ch. 257, § 3, eff. May 25 1977.

[Amended by Acts 1977, 65th Leg., p. 676, ch. 257, § 1, eff. May 25, 1977.]

ANGELINA COUNTY

Art. 1970-355. County Court at Law of Angelina County

Sec. 1.

[See Compact Edition, Volume 3 for text of 1(a)]

(b) The county court at law has the same jurisdiction over all causes and proceedings, civil, criminal, and probate, original and appellate, prescribed by law for county courts, and its jurisdiction is concurrent with that of the County Court of Angelina County. The county court at law also has jurisdiction concurrent with the district court in eminent domain cases as provided by general law and in civil cases when the matter in controversy exceeds \$500 and does not exceed \$10,000, exclusive of interest.

[See Compact Edition, Volume 3 for text of 1(c) to 3]

Sec. 4.

[See Compact Edition, Volume 3 for text of 4(a) to (c)]

(d) The judge of the county court at law shall receive a salary of not less than \$14,000 per year. Such salary shall be paid in equal monthly installments out of the county treasury on order of the commissioners court. The judge of the county court at law shall assess the fees prescribed by law for county judges, which shall be collected by the clerk

of the court and paid into the county treasury, and which may not be paid to the judge.

[See Compact Edition, Volume 3 for text of 4(e) to 7]

[Amended by Acts 1977, 65th Leg., p. 1480, ch. 602, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1727, ch. 688, § 14, eff. Aug. 29, 1977.]

VICTORIA COUNTY

Art. 1970-356. County Court at Law of Victoria County

[See Compact Edition, Volume 3 for text of 1 to 3]

Sec. 4.

[See Compact Edition, Volume 3 for text of 4(a) to (c)]

(d) The judge of the County Court at Law of Victoria County shall receive the same salary, to be paid from the same fund and in the same manner, as the County Judge of Victoria County. The Commissioners Court of Victoria County may provide traveling expenses, office expenses, and administrative and clerical help which it deems necessary.

[See Compact Edition, Volume 3 for text of 4(e)]

Sec. 5.

[See Compact Edition, Volume 1 for text of 5(a)]

(b) The judge of the county court at law may appoint an official court reporter who shall have the same qualifications and whose duties shall in every respect be the same as now provided by law. The official court reporter is entitled to compensation fixed by the Commissioners Court of Victoria County.

[See Compact Edition, Volume 3 for text of 5(c) to 7]

[Amended by Acts 1977, 65th Leg., p. 1757, ch. 705, §§ 1, 2, eff. June 15, 1977.]

Art. 1970-356a. County Court at Law No. 2 of Victoria County.

Creation

Sec. 1. The County Court at Law No. 2 of Victoria County is created.

Jurisdiction

Sec. 2. (a) The County Court at Law No. 2 has the same jurisdiction over all causes and proceedings, civil, criminal, juvenile, and probate, original and appellate, prescribed by law for county courts, and its jurisdiction is concurrent with that of the County Court of Victoria County and the County Court at Law of Victoria County. This provision does not affect the jurisdiction of the commissioners court or of the county judge of Victoria County as the presiding officer of the commissioners court as

to roads, bridges, and public highways within the jurisdiction of the commissioners court or the county judge as presiding officer.

(b) The County Court at Law No. 2 has jurisdiction concurrent with the district court in eminent domain cases and in civil cases when the matter in controversy exceeds \$500 and does not exceed \$20,000, exclusive of interest.

(c) The County Court at Law No. 2, or its judge, has the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court. It may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court of inferior jurisdiction in the county. The court and judge have the power to punish for contempt as prescribed by law for county courts. The judge has all other powers, duties, immunities, and privileges provided by law for county court judges.

(d) The county judge of Victoria County is the judge of the County Court of Victoria County. All ex officio duties of the county judge shall be exercised by the judge of the County Court of Victoria County unless by this Act committed to the judges of the county courts at law.

Terms

Sec. 3. The terms of the County Court at Law No. 2 are the same as those for the County Court of Victoria County.

Judge

Sec. 4. (a) The judge of the County Court at Law No. 2 must be a duly licensed and practicing member of the State Bar of Texas who has been a bona fide resident of Victoria County, and actively engaged in the practice of law in Victoria County for a period of not less than two years prior to his appointment or election.

(b) When this court is created, the Commissioners Court of Victoria County shall appoint a judge to the County Court at Law No. 2, who shall serve until the next general election and until his or her successor is elected and has qualified. At the general election in 1982 and every fourth year thereafter, there shall be elected by the qualified voters of Victoria County a judge of the County Court at Law No. 2 for a regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution. A vacancy in the office shall be filled by the Commissioners Court of Victoria County until the next general election. The judge of the County Court at Law No. 2 may be removed from office in the same manner and for the same causes as provided by the laws of this state for removal of county judges.

(c) The judge of the County Court at Law No. 2 shall execute a bond and take the oath of office prescribed by law for county judges.

(d) The judge of the County Court at Law No. 2 shall receive a salary not to exceed 90 percent of the amount paid a district court judge having jurisdiction in Victoria County. The Commissioners Court of Victoria County may provide traveling expenses, office expenses, and administrative and clerical help which it deems necessary.

(e) A special judge of the County Court at Law No. 2 with the same qualifications as the regular judge may be appointed in the manner provided by law for the appointment of a special county judge. If a judge of the County Court at Law No. 2 is disqualified to try a case pending in his court, the parties or their attorneys may agree on the selection of a special judge for the case. A special judge is entitled to the same rate of compensation as the regular judge.

(f) The judge of the County Court at Law No. 2 shall be a member of the juvenile board in Victoria County and shall be entitled to additional compensation for the additional duties hereby imposed, to be fixed by the commissioners court and paid in 12 equal installments out of the general fund or other available fund of the county. Such compensation shall be in addition to all other compensation provided in this Act.

Personnel

Sec. 5. (a) The criminal district attorney, county clerk, and sheriff of Victoria County shall serve as criminal district attorney, clerk, and sheriff, respectively, of the County Court at Law No. 2. They shall perform the duties, and are entitled to the compensation, fees, and allowances, prescribed by law for their respective offices.

(b) The judge of the County Court at Law No. 2 may appoint an official court reporter who shall have the same qualifications and whose duties shall in every respect be as provided by law. The official court reporter is entitled to compensation fixed by the Commissioners Court of Victoria County.

Practice

Sec. 6. Practice in the County Court at Law No. 2 shall conform to that prescribed by law for the County Court of Victoria County.

Jurors

Sec. 7. (a) The laws which govern the drawing, selection, service, and pay of jurors for county courts apply to the County Court at Law No. 2.

(b) Jurors regularly impaneled for a week by the district court or courts may, on request of either the county judge or a judge of the county courts at law,

be made available and shall serve for the week in either the county court or county courts at law.

Seal

Sec. 8. The seal of the court shall contain the words "County Court at Law No. 2 of Victoria County," but in other respects is identical with the seal of the County Court of Victoria County.

Transfer of Cases

Sec. 9. (a) The judges of the county court and the county courts at law may transfer cases to and from the dockets of their respective courts in order that the business may be equally distributed between them. However, no case may be transferred from one court to the other without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred.

(b) In cases transferred to any of the courts by order of the judge of another court, all processes, writs, bonds, recognizances, or other obligations issued or made in the cases shall be returned to and filed in the court to which the transfer is made. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of such bonds or recognizances at the terms of the court to which the cases are transferred to as are fixed by law. All processes issued or returned before transfer of the cases as well as all bonds and recognizances before taken in the cases shall be valid and binding as though originally issued out of the court to which the transfer is made.

Exchange of Benches

Sec. 10. The county judge and the judges of the county courts at law may freely exchange benches and courtrooms with each other so that if one is ill, disqualified, or otherwise absent, the other may hold court for him or her without the necessity of transferring the case involved. Any of these judges may hear all or any part of a case pending in the county court or a county court at law and may rule and enter orders on and continue, determine, or render judgment on all or any part of the case without the necessity of transferring it to his or her own docket. However, a judge may not sit or act in a case unless it is within the jurisdiction of his or her court. Each judgment and order shall be entered in the minutes of the court in which the case is pending.

Effective Date

Sec. 11. The County Court at Law No. 2 of Victoria County is created on January 1, 1982, or on a date determined by the commissioners court by an order entered in its minutes, whichever date is earlier.

[Acts 1979, 66th Leg., p. 1007, ch. 443, §§ 1 to 11, eff. Aug. 27, 1979.]

BRAZORIA COUNTY

Art. 1970-357. County Courts at Law Nos. 1 and 2 of Brazoria County

Sec. 1.

[See Compact Edition, Volume 3 for text of 1(a)]

(b) The County Court at Law No. 1 of Brazoria County and the County Court at Law No. 2 of Brazoria County have the same jurisdiction over all causes and proceedings, civil, criminal, and probate, original and appellate, prescribed by law for county courts, and their jurisdiction is concurrent with that of the County Court of Brazoria County. Each county court at law has jurisdiction concurrent with the district court in eminent domain cases, in civil cases when the matter in controversy exceeds \$500 and does not exceed \$10,000, exclusive of interest, and in proceedings under Title 3 of The Family Code.¹

¹ Family Code, § 51.01 et seq.

[See Compact Edition, Volume 3 for text of 1(c) to 2]

Sec. 3.

[See Compact Edition, Volume 3 for text of 3(a) to (d)]

(e) The Judge of the County Court at Law No. 1 of Brazoria County and the Judge of the County Court at Law No. 2 of Brazoria County shall each receive compensation prescribed by the Commissioners Court of Brazoria County in an amount not less than \$26,500 per year. The salary shall be paid in equal monthly installments out of the county treasury on order of the commissioners court. The Judge of the County Court at Law No. 1 of Brazoria County and the Judge of the County Court at Law No. 2 of Brazoria County shall assess the fees prescribed by law for county judges, which shall be collected by the clerk of the court and paid into the county treasury, and which may not be paid to the judges.

[See Compact Edition, Volume 3 for text of 3(f) to 6]

Sec. 7. The Judge of the County Court at Law No. 1 of Brazoria County and the Judge of the County Court at Law No. 2 of Brazoria County shall be members of the Juvenile Board of Brazoria County.

[Amended by Acts 1975, 64th Leg., p. 812, ch. 316, §§ 1 and 2, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1638, ch. 686, § 1, eff. Aug. 27, 1979.]

HAYS COUNTY

Art. 1970-358. County Court at Law of Hays County

[See Compact Edition Volume 3, for text of 1]

Sec. 2. (a) The county court at law has the same jurisdiction over all causes and proceedings, civil,

criminal, original, and appellate, prescribed by the law for county courts, and its jurisdiction is concurrent with that of the County Court of Hays County. The county court at law has jurisdiction concurrent with the district court in eminent domain cases and in civil cases when the amount in controversy exceeds \$500 and does not exceed \$20,000, exclusive of interest. The county court at law, the County Court of Hays County, and the district court in Hays County have jurisdiction over juvenile matters, and any of those courts may be designated a juvenile court. The county court at law does not have jurisdiction over causes and proceedings concerning roads, bridges, and public highways which are within the jurisdiction of the commissioners court or County Court of Hays County.

[See Compact Edition, Volume 3, for text of 2(b) to (d)]

(e) In addition to the jurisdiction conferred on the County Court at Law of Hays County by the other provisions of this Act, the county court at law has concurrent jurisdiction with the district court in Hays County in suits and causes involving family law matters, including adoptions; birth records; removal of disability of minority or coverture; change of name of persons; divorce and marriage annulment cases, including the adjustment of property rights, custody and support of minor children involved, temporary support pending final hearing, and every other matter incident to divorce or annulment proceedings; and independent actions involving child welfare, custody, support and reciprocal support, dependency, neglect, and delinquency; and independent actions involving controversies between parent and child and between husband and wife. The provisions in this subsection do not diminish the jurisdiction of the district court in Hays County, and the district court shall retain and continue to exercise the jurisdiction that is conferred by law on district courts.

[See Compact Edition Volume 3, for text of 3]

Sec. 4. (a) There shall be elected a judge of the County Court at Law of Hays County who must have been a duly licensed and practicing member of the State Bar of Texas for not less than four years, who must be well informed in the laws of this state, and who must have resided and been actively engaged in the practice of law in Hays County for a period of not less than one year prior to the general election. Beginning at the general election in 1974 and every four years thereafter, the qualified voters of the county shall elect a judge who holds office for four years and until his successor has been duly elected and has qualified.

[See Compact Edition Volume 3, for text of 4(b) to (f)]

Sec. 5. (a) The criminal district attorney, county clerk, and sheriff of Hays County shall serve as criminal district attorney, clerk, and sheriff, respectively, of the County Court at Law of Hays County, except that the district clerk shall serve as clerk of the county court at law in cases enumerated in Section 2(e) of this Act and shall establish a separate docket for the county court at law. The Commissioners Court of Hays County may employ as many assistant district attorneys, deputy sheriffs, and bailiffs as are necessary to serve the court created by this Act. Those serving shall perform the duties, and are entitled to the compensation, fees, and allowances prescribed by law for their respective offices in Hays County.

[See Compact Edition Volume 3, for text of 5(b) and (c)]

Sec. 6. (a) Practice in the County Court at Law of Hays County shall conform to that prescribed by law for the County Court of Hays County, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings in the county court at law involving those matters of concurrent jurisdiction enumerated in Section 2(e) of this Act shall be governed by the provisions of this Act and the laws and rules pertaining to district courts, general or special, as well as county courts. If a case enumerated in Section 2(e) of this Act is tried before a jury, the jury shall be composed of 12 members.

(b) The judges of the county court and the county court at law may transfer cases to and from the dockets of their respective courts in order that the business may be equally distributed between them. All cases within the concurrent jurisdiction of the county court at law and the district court may be instituted in or transferred between the county court at law and the district court in Hays County. However, no case may be transferred from one court to the other without the consent of the judge of the court to which it is transferred; and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred.

[See Compact Edition Volume 3, for text of 6(c)]

(d) In cases transferred to any of the courts by order of the judge of another court, all processes, writs, bonds, recognizances, or other obligations issued or made in the cases shall be returned to and filed in the court to which the transfer is made. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of such bonds or recognizances at the terms of the court to which the

cases are transferred as are fixed by law. All processes issued or returned before transfer of the cases as well as all bonds and recognizances before taken in the cases shall be valid and binding as though originally issued out of the court to which the transfer is made.

[See Compact Edition Volume 3, for text of 7]

[Amended by Acts 1979, 66th Leg., p. 953, ch. 429, §§ 1 to 4, eff. Aug. 27, 1979.]

BRAZOS COUNTY

Art. 1970-359. County Court at Law of Brazos County

Sec. 1. On January 1, 1977, the County Court at Law of Brazos County is created.

Sec. 2. (a) The county court at law has jurisdiction over all causes and proceedings, original and appellate, civil, criminal, juvenile, and probate, prescribed by law for county courts.

(b) The county court at law has the general jurisdiction of a probate court within the limits of Brazos County, and its jurisdiction is concurrent with that of the County Court of Brazos County in probate, administrations, guardianship, and mental illness proceedings. The County Court of Brazos County shall have no other jurisdiction, civil or criminal, original or appellate. This provision does not affect the jurisdiction of the Commissioners Court or the County Judge of Brazos County as the presiding officer of the commissioners court.

(c) The county court at law has jurisdiction concurrent with the district court in eminent domain cases, in juvenile proceedings if designated to serve as juvenile court, and in civil cases when the matter in controversy exceeds \$500 and does not exceed \$10,000, exclusive of interest.

(d) The county court at law, or its judge, has the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court. It may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court of inferior jurisdiction in the county. The court and judge have the power to punish for contempt as prescribed by law for county courts. The judge of the county court at law has all other powers, duties, immunities, and privileges provided by law for county court judges.

(e) The County Judge of Brazos County is the judge of the County Court of Brazos County. All ex officio duties of the county judge shall be exercised by the judge of the County Court of Brazos County unless by this Act committed to the judge of the county court at law.

Sec. 3. The terms of the County Court at Law of Brazos County are the same as those for the County Court of Brazos County.

Sec. 4. (a) The judge of the County Court at Law of Brazos County must be a duly licensed and practicing member of the State Bar of Texas who has been a bona fide resident of Brazos County, and actively engaged in the practice of law in Brazos County for a period of not less than two years prior to his appointment or election.

(b) At the general election in 1976, there shall be elected by the qualified voters of Brazos County a judge of the court created by this Act for a two-year term beginning on January 1, 1977. Every four years thereafter, this officer shall be elected by the qualified voters of Brazos County for a regular four-year term as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution. Any vacancy in the office shall be filled by the Commissioners Court of Brazos County, and the appointee holds office until January 1st of the year following the next general election and until his successor has been duly elected and has qualified. The judge of the county court at law may be removed from office in the same manner and for the same causes as provided by the laws of this state for removal of county judges.

(c) The judge of the County Court at Law of Brazos County shall execute a bond and take the oath of office prescribed by law for county judges.

(d) The judge of the County Court at Law of Brazos County shall receive a salary to be determined by the Commissioners Court of Brazos County in an amount not less than the salary of the county judge of Brazos County and to be paid from the same fund and in the same manner as other county officials. He shall be entitled to traveling expenses and necessary office expenses, including administrative and clerical help, in the same manner as is allowed the county judge. The commissioners court shall provide adequate courtroom and office space for the judge of the County Court at Law of Brazos County.

(e) A special judge of the county court at law with the same qualifications as the regular judge may be appointed in the manner provided by law for the appointment of a special county judge. If a judge of the county court at law is disqualified to try a case pending in his court, the parties or their attorneys may agree on the selection of a special judge for the case. A special judge is entitled to the same rate of compensation as the regular judge.

Sec. 5. (a) The county attorney, county clerk, and sheriff in Brazos County shall serve as county attorney, clerk, and sheriff, respectively, of the County Court at Law of Brazos County. They shall

perform the duties, and are entitled to the compensation, fees, and allowances prescribed by law for their respective offices.

(b) The judge of the county court at law may appoint an official court reporter, who must meet the qualifications prescribed by law for that office and who is entitled to the compensation fixed by the Commissioners Court of Brazos County.

(c) The seal of the court shall contain the words "County Court at Law of Brazos County," but in other respects is identical with the seal of the County Court of Brazos County.

Sec. 6. (a) Practice in the County Court at Law of Brazos County shall conform to that prescribed by law for county courts.

(b) After the effective date of this Act, all cases of concurrent jurisdiction provided for in this Act may be instituted in or transferred between the courts having concurrent jurisdiction.

(c) The Judge of the County Court at Law of Brazos County or the Judge of the County Court of Brazos County may, in his discretion, either in term-time or in vacation, on motion of any party or on agreement of the parties, or on his own motion, transfer any probate matter on his docket to the docket of the other court. The judges of the courts may, in their discretion, in any probate matter exchange benches from time to time. Whenever a judge in one of the courts is disqualified in a probate matter, he shall transfer the matter from his court to the other court. Either judge may, in his own courtroom, try and determine any probate matter pending in either court, without having the case transferred, or may sit in the other court and there hear and determine any probate matter there pending. Each judgment and order shall be entered in the minutes of the court in which the matter is pending. The judges may try different probate matters in the same court at the same time and each may occupy his own courtroom or the courtroom of the other. In case of absence, sickness, or disqualification of either judge, the other judge may hold court for him in any probate matter. Either of the judges may hear any part of or question in any probate matter pending in either of the courts and determine the matter or question. Either judge may complete the hearing and render judgment in the case. In any matter transferred by order of the judge of one of the courts, all process, writs, bonds, recognizances, or other obligations issued or made in the matter shall be returned to and filed in the court to which the transfer is made. All bonds executed and recognizances entered into in the matter shall bind the parties for their appearance or to fulfill the obligations of the bonds or recognizances at the terms of the court to which the matter is transferred

to as are fixed by law and by this Act. All processes issued or returned before transfer of the matter as well as all bonds and recognizances before taken shall be valid and binding as though originally issued out of the court to which the transfer may be made.

Sec. 7. (a) The laws that govern the drawing, selection, service, and pay of jurors for county courts apply to the county court at law.

(b) Jurors regularly impaneled for a week by the district court may, on request of the judge of the county court at law, be made available and shall serve for the week in the county court at law. [Acts 1975, 64th Leg., p. 110, ch. 50, eff. Jan. 1, 1977.]

Section 8 of the 1975 Act amended Acts 1959, 56th Leg., p. 4, ch. 2 (art. 1970-310 note) and § 9 thereof provided: "With the exception of Section 4, Subsections (a) and (b), this Act becomes effective on January 1, 1977."

WEBB COUNTY

Art. 1970-360. County Court at Law of Webb County

Sec. 1. The County Court at Law of Webb County is created. It shall sit in Laredo.

Sec. 2. The County Court at Law of Webb County has the same jurisdiction over all causes and proceedings, civil and criminal, juvenile and probate, original and appellate, prescribed by law for county courts. However, it does not have jurisdiction over causes and proceedings concerning roads, bridges, and public highways and the general administration of county business which is now within the jurisdiction of the Commissioners Court of Webb County. The county court at law also has concurrent jurisdiction with the County Court of Webb County in all matters of probate, and shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and habitual drunkards, and shall grant letters testamentary and of administration, settle accounts of administrators, executors, and guardians, transact all business pertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the settlement, partition, and distribution of the estates of deceased persons, and apprentice minors as provided by law.

Sec. 3. (a) The County Court at Law of Webb County has jurisdiction concurrent with the district court in eminent domain cases and in civil cases when the matter in controversy exceeds \$500 and does not exceed \$10,000, exclusive of interest.

(b) In addition to the jurisdiction conferred on the County Court at Law of Webb County by the other provisions of this Act, the county court at law has concurrent civil jurisdiction with the district courts of Webb County in suits, causes, and matters involving adoptions, removal of disability of minority and coverture, wife and child desertion, delinquent, ne-

glected, or dependent child proceedings, Uniform Reciprocal Enforcement of Support Act, and all jurisdiction, powers, and authority now or hereafter placed in the district or county courts under the juvenile and child welfare laws of this state; and of all divorce, marriage, and annulment cases, including the adjustment of property rights and custody and support of minor children involved therein, alimony pending final hearing, and any and every other matter incident to divorce or annulment proceedings as well as independent actions involving child custody or support of minors, change of name of persons, and all other cases involving justiciable controversies and differences between spouses, or between parents, or between them, or one of them, and their minor children, or between any of these and third persons; corporations, trustees, or other legal entities, which are now or may hereafter be within the jurisdiction of the district or county courts; all cases in which children are alleged or charged to be dependent and neglected children or delinquent children as provided by law, and the county court at law and its judge have power to issue writs of habeas corpus, mandamus, injunction, and all writs necessary to enforce its jurisdiction. The provisions in this subsection do not diminish the jurisdiction of the several district courts in Webb County, and the district courts shall retain and continue to exercise such jurisdiction as is now or may be hereafter conferred by law, and the jurisdiction given in this subsection is concurrent with the jurisdiction of the district courts.

Sec. 4. The County Court of Webb County shall have and retain concurrently with the court created by this Act the general jurisdiction of a probate court. The county court shall have no other jurisdiction, civil or criminal, original or appellate. All ex officio duties of the county judge shall be exercised and retained by the judge of the County Court of Webb County, except as provided by this Act or otherwise provided by law.

Sec. 5. The county court at law, or its judge, has the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court. It may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court of inferior jurisdiction in the county. The court and judge have the power to punish for contempt as prescribed by law for county courts. The judge of the county court at law has all other powers, duties, immunities, and privileges provided by law for county court judges, except that such judge of the county court at law shall in no way have any authority over the administrative business of Webb County which is now performed by the County Judge of Webb County.

Sec. 6. The County Court at Law of Webb County shall hold six terms of court each year, commencing on the first Monday in January, March, May, July, September, and November of each year and each term shall continue until the business of the court has been disposed of. However, no term of the court shall continue beyond the date fixed for the commencement of its new term, except on an order entered on its minutes during the term extending the term for any particular cause therein specified.

Sec. 7. (a) The judge of the county court at law shall have been a bona fide resident of Webb County for two years prior to his appointment or election and shall be a qualified voter in Webb County. He shall be a licensed attorney in this state who has been actively engaged in the practice of law for a period of five years prior to this appointment or election.

(b) The judge of the county court at law shall not engage in the private practice of law after his appointment or election.

(c) When this Act becomes effective, the Commissioners Court of Webb County shall appoint a judge to the County Court at Law of Webb County. The judge appointed must have the qualifications prescribed in Subsection (a) of this section and serves until the general election in 1976 and until his successor has been duly elected and has qualified. At the general election in 1976, there shall be elected a judge of the county court at law for a term ending on December 31, 1978. At the general election in 1978 and every fourth year thereafter there shall be elected by the qualified voters of Webb County a judge of the County Court at Law of Webb County for a regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution.

(d) A vacancy occurring in the office of the judge of county court at law shall be filled by the Commissioners Court of Webb County, and the appointee shall hold office until the next general election and until his successor is elected and has qualified.

(e) The judge of the county court at law shall execute a bond and take the oath of office prescribed by law for county judges. He may be removed from office in the same manner and for the same causes as a county judge.

(f) The judge of the county court at law shall receive a salary of not less than \$20,000 per annum and no more than \$30,000 per annum, to be paid out by the county treasury by order of the commissioners court, and the salary shall be paid monthly in equal installments. The judge of the county court at law shall be entitled to traveling expenses and necessary office expenses, including administrative and clerical help, in the same manner as is allowed

the county judge. The judge of the County Court at Law of Webb County shall assess the same fees as are now prescribed or may be established by law, relating to the county judge's fees, all of which shall be collected by the clerk of the court and shall be paid into the county treasury on collection, and no part of which shall be paid to the judge, but he shall draw the salary as specified in this section.

(g) A special judge of the county court at law with the same qualifications as the regular judge may be appointed or elected in the manner provided by law for the appointment or election of a special county judge. If a judge of the county court at law is disqualified to try a case pending in his court, the parties or their attorneys may agree on the selection of a special judge for the case. A special judge is entitled to the same rate of compensation as the regular judge.

Sec. 8. (a) The District Attorney of the 49th Judicial District and the Sheriff of Webb County shall serve as district attorney and sheriff, respectively, of the County Court at Law of Webb County, except that the County Attorney of Webb County shall handle and prosecute all juvenile, child welfare, and mental health cases and the other civil cases where the State of Texas is a party. The District Clerk of Webb County shall serve as clerk of the county court at law in the cases enumerated in Section 3 of this Act, and the County Clerk of Webb County shall serve as clerk of the county court at law in cases enumerated in Section 2 of this Act. These officials, either personally or by the appointment of a deputy or assistant, shall perform the duties and responsibilities of their office and are entitled to the compensation, fees, and allowances, prescribed by law for their respective offices. The commissioners court may employ as many deputy sheriffs and bailiffs as are necessary to serve the court.

(b) The judge of the county court at law shall appoint an official court reporter who shall have the same qualifications and whose duties shall in every respect be the same as now provided by law. The official court reporter is entitled to the compensation fixed by the Commissioners Court of Webb County.

Sec. 9. (a) As soon as practicable following the effective date of this Act, the county clerk shall establish a separate docket for the court created by this Act from among pending matters filed originally in the County Court of Webb County and shall transfer those matters to the docket of the court created by this Act, and the district clerk shall establish a separate docket for the court created by this Act from among pending matters filed originally in the district courts of Webb County and may transfer a sufficient number of those matters to the docket of the court created by this Act to equalize

the dockets. Equalization of case load shall be the primary objective in establishing the initial case docket for the county court at law.

(b) On the transfer of all cases specified in Subsection (a) of this section to the county court at law, and in cases transferred to any of the courts in Webb County by order of the judge of another court, all processes, writs, bonds, recognizances, or other obligations issued or made in the cases shall be returned to and filed in the court to which the transfer is made. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of the bonds or recognizances at the terms of the court to which the cases are transferred as are fixed by law. All processes issued or returned before transfer of the cases as well as all bonds and recognizances before taken in the cases shall be valid and binding as though originally issued out of the court to which the transfer is made.

(c) The judge of the county court and the judge of the county court at law may transfer cases to and from the dockets of their respective courts, in matters within their jurisdiction, in order that the business may be equally distributed between them. All cases of concurrent jurisdiction enumerated or included in Section 3 of this Act may be instituted in or transferred between the district courts of Webb County and the County Court at Law of Webb County. However, no case may be transferred from one court to the other without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred.

(d) The county judge and the judge of the county court at law may freely exchange benches and courtrooms with each other in matters within their jurisdiction so that if one is ill, disqualified, or otherwise absent, the other may hold court for him without the necessity of transferring the case involved. Either judge may hear all or any part of a case pending in the county court or county court at law, but only in matters within his jurisdiction, and may rule and enter orders on and continue, determine, or render judgment on all or any part of the case without the necessity of transferring it to his own docket. However, the judge of either court may not sit or act in a case unless it is within the jurisdiction of his court. Each judgment and order shall be entered in the minutes of the court in which the case is pending. This provision providing for the exchange of benches by and between the judge of the county court and the judge of the county court at law is cumulative of and in addition to the provisions herein provided for the selection and appointment of a special judge of the county court at law.

Sec. 10. (a) Practice in the county court at law shall conform to that prescribed by general law for county courts, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings in the county court at law involving those matters of concurrent jurisdiction enumerated in Subsection (b), Section 3 of this Act shall be governed by the provisions of this Act and the laws and rules pertaining to district courts, general or special, as well as county courts. If a case enumerated in Subsection (b), Section 3 of this Act is tried before a jury, the jury shall be composed of 12 members.

(b) The laws which govern the drawing, selection, service, and pay of jurors for county courts apply to the county court at law.

(c) Jurors regularly impaneled for a week by the district court or courts may, on request of either the county judge or the judge of the county court at law, be made available and shall serve for the week in either the county court or county court at law.

Sec. 11. The Commissioners Court of Webb County shall furnish and equip a suitable courtroom and office space for the court created by this Act.

Sec. 12. The seal of the court created by this Act shall be the same as that provided by law for county courts, except the seal shall contain the words "County Court at Law of Webb County."

[Acts 1975, 64th Leg., p. 152, ch. 65, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 389, ch. 180; § 2, eff. May 15, 1979.]

NACOGDOCHES COUNTY

Art. 1970-361. County Court at Law of Nacogdoches County

Sec. 1. On the effective date of this Act, the County Court at Law of Nacogdoches County is created.

Sec. 2. (a) The county court at law has jurisdiction over all causes and proceedings, civil, criminal, and probate, original and appellate, prescribed by law for county courts. The County Court of Nacogdoches County shall have no jurisdiction over the matters of which jurisdiction is given to the county court at law by this Act. This provision does not affect the jurisdiction of the Commissioners Court or the County Judge of Nacogdoches County as the presiding officer of the Commissioners Court.

(b) The county court at law has jurisdiction concurrent with the district court in eminent domain cases and in civil cases when the matter in controversy exceeds \$500 and does not exceed \$5,000, exclusive of interest.

(c) The county court at law, or its judge, has the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court. It may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court of inferior jurisdiction in the county. The court and judge have the power to punish for contempt as prescribed by law for county courts. The judge of the county court at law has all other powers, duties, immunities, and privileges provided by law for county court judges.

(d) The County Judge of Nacogdoches County is the judge of the County Court of Nacogdoches County. All ex officio duties of the county judge shall be exercised by the judge of the County Court of Nacogdoches County unless by this Act committed to the judge of the county court at law.

Sec. 3. The terms of the County Court at Law of Nacogdoches County shall begin on the first Mondays in January, April, July, and October in each year, and each term of the court shall continue in session until the convening of the next succeeding term.

Sec. 4. (a) The judge of the County Court at Law of Nacogdoches County must be a duly licensed and practicing member of the State Bar of Texas who has been a bona fide resident of Nacogdoches County for two years prior to his appointment or election and actively engaged in the practice of law in the State of Texas for a period of not less than five years prior to his appointment or election.

(b) When this Act becomes effective, the Commissioners Court of Nacogdoches County shall appoint a judge to the County Court at Law of Nacogdoches County. The judge appointed must have the qualifications prescribed in Subsection (a) of this section and serves until January 1 of the year following the next general election and until his successor has been duly elected and has qualified. At the general election in 1978 and every fourth year thereafter, there shall be elected by the qualified voters of Nacogdoches County a judge of the County Court at Law of Nacogdoches County for a regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution. Any vacancy in the office shall be filled by the Commissioners Court of Nacogdoches County, and the appointee holds office until January 1 of the year following the next general election and until his successor has been duly elected and has qualified. The judge of the county court at law may be removed from office in the same manner and for the same causes as provided by the laws of this state for removal of county judges.

(c) The judge of the County Court at Law of Nacogdoches County shall execute a bond and take the oath of office prescribed by law for county judges.

(d) The judge of the County Court at Law of Nacogdoches County shall receive an annual salary to be fixed by the Commissioners Court of Nacogdoches County at an amount not less than \$15,000 or more than 80 percent of the total annual salary paid to the judge of the 145th Judicial District of Texas. This sum shall be paid in equal monthly installments out of the county treasury of Nacogdoches County on orders from the commissioners court. Additionally, he shall be entitled to reasonable traveling expenses and necessary office expenses, including administrative and clerical help. The judge of the County Court at Law of Nacogdoches County shall charge the fees prescribed by law for county judges, which shall be collected by the clerk of the court and paid into the county treasury. During his term of office, the judge of the County Court at Law of Nacogdoches County shall diligently discharge the duties of his office on a full-time basis and shall not engage in the private practice of law.

(e) A special judge of the county court at law with the same qualifications as the regular judge may be appointed in the manner provided by law for the appointment of a special county judge. If a judge of the county court at law is disqualified to try or recuses himself from trying a case pending in his court, the parties or their attorneys may agree on the selection of a special judge for the case. A special judge is entitled to the same rate of compensation as the regular judge.

Sec. 5. (a) The County Attorney, County Clerk, and Sheriff of Nacogdoches County shall serve as county attorney, clerk, and sheriff, respectively, of the County Court at Law of Nacogdoches County. They shall perform the duties and are entitled to the compensation, fees, and allowances prescribed by law for their respective offices.

(b) The judge of the County Court at Law of Nacogdoches County may appoint an official shorthand reporter for the court who shall be a sworn officer of the court and shall hold his office at the pleasure of the court. All provisions of the general laws of Texas relating to the appointment of a reporter for the district court shall apply, so far as applicable, to the official shorthand reporter authorized to be appointed by the judge of the County Court at Law of Nacogdoches County. The reporter shall be entitled to the same fees and shall perform the same duties as provided in the general laws and in addition shall receive a salary, not to exceed the compensation paid to the official shorthand reporter of the district court of Nacogdoches County, to be determined by the judge of the county court at law

and paid out of the county treasury on order of the commissioners court.

(c) The seal of the court shall contain the words "County Court at Law of Nacogdoches County," but in other respects is identical with the seal of the County Court of Nacogdoches County.

Sec. 6. (a) Practice in the County Court at Law of Nacogdoches County shall conform to that prescribed by general law for county courts.

(b) All cases and matters, civil, criminal, and probate, original and appellate, pending before the County Court of Nacogdoches County on the effective date of this Act are transferred to the County Court at Law of Nacogdoches County. All processes, writs, bonds, recognizances, and other obligations issued or made in the cases transferred shall be returned to and filed in the county court at law. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of such bonds or recognizances at the terms of the county court at law as fixed by law. All processes issued or returned before transfer of the cases as well as all bonds and recognizances before taken in the cases shall be valid and binding as though originally issued out of the county court at law.

Sec. 7. The laws which govern the drawing, selection, service, and pay of jurors for county courts apply to the county court at law.

[Acts 1975, 64th Leg., p. 248, ch. 99, eff. April 30, 1975.]

COLLIN COUNTY

Art. 1970-362. County Court at Law of Collin County

Sec.1. The County Court at Law of Collin County is created.

Sec. 2. (a) The county court at law has jurisdiction over all causes and proceedings, civil, criminal, juvenile, and probate, original and appellate, prescribed by law for county courts.

(b) The county court at law has the general jurisdiction of a probate court within the limits of Collin County, and its jurisdiction is concurrent with that of the County Court of Collin County in probate, administrations, guardianship, and mental-illness proceedings. The County Court of Collin County has the general jurisdiction of a probate court but does not have jurisdiction over matters of eminent domain or other original civil or criminal jurisdiction or appellate civil or criminal jurisdiction. All future statutes pertaining to probate matters enacted by the legislature shall be operative in Collin County as fully as though this statute had not been enacted. The County Judge of Collin County is the judge of

the County Court of Collin County. All ex officio duties of the county judge shall be exercised by the judge of the County Court of Collin County unless by this Act committed to the judge of the county court at law.

(c) The county court at law has jurisdiction concurrent with the district court in eminent-domain cases and in civil cases when the matter in controversy exceeds \$500 and does not exceed \$5,000, exclusive of interest.

(d) The county court at law, or its judge, has the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court. It may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court of inferior jurisdiction in the county. The court and judge have the power to punish for contempt as prescribed by law for county courts. The judge of the county court at law has all other powers, duties, immunities, and privileges provided by law for county court judges.

Sec. 3. The terms of the county court at law shall commence on the first Monday in January and on the first Monday in July of each year. Each term of court continues until the next succeeding term begins.

Sec. 4. (a) The judge of the County Court at Law of Collin County must be a duly licensed and practicing member of the State Bar of Texas who has been a bona fide resident of Collin County and actively engaged in the practice of law in Collin County for a period of not less than two years prior to his appointment or election.

(b) When this Act becomes effective, the Commissioners Court of Collin County shall appoint a judge to the County Court at Law of Collin County. The judge appointed serves until the general election in 1976 and until his successor is duly elected and has qualified. At the general election in 1976, there shall be elected a judge of the county court at law for a term ending on December 31, 1978. At the general election in 1978 and every four years thereafter, the judge of the county court at law shall be elected for a regular four-year term as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution. Any vacancy occurring in the office of the judge of the county court at law shall be filled by the Commissioners Court of Collin County, and the appointee shall hold office until the next general election and until his successor is duly elected and has qualified.

(c) The judge of the county court at law shall execute a bond and take the oath of office prescribed by law for county judges. He may be re-

moved from office in the same manner and for the same causes as a county judge.

(d) The judge of the County Court at Law of Collin County shall receive an annual salary to be fixed by the Commissioners Court of Collin County at an amount not less than \$18,000 nor more than 80 percent of the total annual salary paid to the judge of a district court having jurisdiction in Collin County. The salary shall be paid in equal monthly installments out of the county treasury on order of the commissioners court. The judge of the county court at law shall assess the fees prescribed by law for county judges, which shall be collected by the clerk of the court and paid into the county treasury and which may not be paid to the judge.

(e) The judge of the County Court at Law of Collin County is a member of the Juvenile Board of Collin County.

(f) A special judge of the county court at law may be appointed or elected in the manner provided by law for the appointment or election of a special county judge. A special judge must have the same qualifications, and is entitled to the same rate of compensation, as the regular judge.

(g) During his term of office, the judge of the county court at law shall diligently discharge the duties of his office on a full-time basis and shall not engage in the private practice of law.

Sec. 5. (a) The Criminal District Attorney, County Clerk, and Sheriff of Collin County shall serve as criminal district attorney, clerk, and sheriff, respectively, of the County Court at Law of Collin County. They shall perform the duties and are entitled to the compensation, fees, and allowance prescribed by law for their respective offices.

(b) The judge of the county court at law may appoint an official court reporter, who must meet the qualifications prescribed by law for that office and who is entitled to the compensation fixed by the Commissioners Court of Collin County.

(c) The seal of the court shall contain the words "County Court at Law of Collin County," but in other respects is identical with the seal of the County Court of Collin County.

Sec. 6. (a) Practice in the County Court at Law of Collin County shall conform to that prescribed by general law for county courts.

(b) The laws which govern the drawing, selection, service, and pay of jurors for the county courts apply to the county court at law.

Sec. 7. All cases and matters within the jurisdiction of the County Court at Law of Collin County pending before the 199th District Court on the effective

date of this Act are transferred to the County Court at Law of Collin County. All processes, writs, bonds, recognizances, and other obligations issued or made in the cases transferred shall be returned to and filed in the county court at law. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of such bonds or recognizances at the terms of the county court at law as fixed by law. All processes issued or returned before transfer of the cases as well as all bonds and recognizances before taken in the cases shall be valid and binding as though originally issued out of the county court at law. If, in a civil or criminal case within the jurisdiction of the County Court at Law of Collin County on appeal from the 199th District Court, the court of civil appeals, the supreme court, or the court of criminal appeals enters judgment remanding the case for a new trial or for further proceedings, the case shall be remanded to the County Court at Law of Collin County, and all jurisdiction in respect to that particular case shall thereafter vest in the county court at law. The county clerk and district clerk shall promptly take all necessary steps to effect the transfer of a certified bill of cost and any unused cost deposit or jury fee, all original papers, and certified copies of interlocutory judgments or orders in the cases transferred and shall docket the cases on the docket of the county court at law in the same manner and place as each stands on the docket of the 199th District Court. This Act does not affect final judgments heretofore rendered by the 199th District Court pertaining to matters and causes transferred to the county court at law by this Act, and the district court retains jurisdiction to enforce those final judgments.

[Acts 1975, 64th Leg., p. 375, ch. 166, eff. Jan. 1, 1976.]

Section 8 of the 1975 Act amended §§ 1 to 3 of art. 5139HHH; § 9 repealed subssecs. (b) to (e) of art. 199a, § 3.028; and § 10 provided: "The effective date of this Act is January 1, 1976."

Art. 1970-362a. County Court at Law No. 2 of Collin County

Text of article effective January 1, 1981

Creation

Sec. 1. The County Court at Law No. 2 of Collin County is created.

Jurisdiction: Writ Power

Sec. 2. (a) The county court at law created by this Act has jurisdiction over all causes and proceedings, civil, criminal, juvenile, and probate, original and appellate, prescribed by law for county courts, and its jurisdiction is concurrent with the jurisdiction of the County Court at Law of Collin County.

(b) The county court at law created by this Act has the general jurisdiction of a probate court within the limits of Collin County, and its jurisdiction is

concurrent with that of the County Court of Collin County and the County Court at Law of Collin County in probate, administrations, guardianship, and mental-illness proceedings. The County Court of Collin County has the general jurisdiction of a probate court but does not have jurisdiction over matters of eminent domain or other original civil or criminal jurisdiction or appellate civil or criminal jurisdiction. All future statutes pertaining to probate matters enacted by the legislature shall be operative in Collin County as fully as though this statute had not been enacted. The County Judge of Collin County is the judge of the County Court of Collin County. All *ex officio* duties of the county judge shall be exercised by the judge of the County Court of Collin County unless by this Act committed to the judges of the county courts at law.

(c) The county court at law created by this Act has jurisdiction concurrent with the district court in eminent-domain cases and in civil cases when the matter in controversy exceeds \$500 and does not exceed \$20,000, exclusive of interest.

(d) The county court at law created by this Act, or its judge, has the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court. It may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court of inferior jurisdiction in the county. The court and judge have the power to punish for contempt as prescribed by law for county courts. The judge of the county court at law created by this Act has all other powers, duties, immunities, and privileges provided by law for county court judges.

Terms

Sec. 3. The terms of the court created by this Act shall commence on the first Monday in January and on the first Monday in July of each year. Each term of court continues until the next succeeding term begins.

Judge

Sec. 4. (a) The judge of the County Court at Law No. 2 of Collin County must be a duly licensed and practicing member of the State Bar of Texas who has been a bona fide resident of Collin County and actively engaged in the practice of law in Collin County for a period of not less than two years prior to his appointment or election.

(b) When this Act becomes effective, the Commissioners Court of Collin County shall appoint a judge to the County Court at Law No. 2 of Collin County. The judge appointed serves until the general election in 1980 and until his successor is duly elected and has qualified. At the general election in 1980, there

shall be elected a judge of the court created by this Act for a term ending on December 31, 1982. At the general election in 1982 and every four years thereafter, the judge of the county court at law shall be elected for a regular four-year term as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution. Any vacancy occurring in the office of the judge of the court created by this Act shall be filled by the Commissioners Court of Collin County, and the appointee shall hold office until the next general election and until his successor is duly elected and has qualified.

(c) The judge of the court created by this Act shall execute a bond and take the oath of office prescribed by law for county judges. The judge may be removed from office in the same manner and for the same causes as a county judge.

(d) The judge of the County Court at Law No. 2 of Collin County shall receive an annual salary to be fixed by the Commissioners Court of Collin County at an amount not more than 90 percent of the total annual salary paid to the judges of the district courts having jurisdiction in Collin County. The salary shall be paid in equal monthly installments out of the county treasury on order of the commissioners court. The judge of the court created by this Act shall assess the fees prescribed by law for county judges, which shall be collected by the clerk of the court and paid into the county treasury and which may not be paid to the judge.

(e) The judge of the County Court at Law No. 2 of Collin County is a member of the Juvenile Board of Collin County.

(f) A special judge of the court created by this Act may be appointed or elected in the manner provided by law for the appointment or election of a special county judge. A special judge must have the same qualifications, and is entitled to the same rate of compensation, as the regular judge.

(g) During his or her term of office, the judge of the court created by this Act shall diligently discharge the duties of the office on a full-time basis and not engage in the private practice of law.

Personnel; Seal

Sec. 5. (a) The criminal district attorney, county clerk, and sheriff of Collin County shall serve as criminal district attorney, clerk, and sheriff, respectively, of the County Court at Law No. 2 of Collin County. They shall perform the duties and are entitled to the compensation, fees, and allowance prescribed by law for their respective offices.

(b) The judge of the court created by this Act shall appoint an official court reporter, who must meet the qualifications prescribed by law for that office and who is entitled to the compensation fixed by the Commissioners Court of Collin County.

(c) The seal of the court shall contain the words "County Court at Law No. 2 of Collin County," but in other respects is identical with the seal of the County Court of Collin County.

Practice; Jurors

Sec. 6. (a) Practice in the County Court at Law No. 2 of Collin County shall conform to that prescribed by general law for county courts.

(b) The laws which govern the drawing, selection, service, and pay of jurors for the county courts apply to the court created by this Act.

Transfer of Cases

Sec. 7. (a) The judges of the County Court at Law of Collin County and the County Court at Law No. 2 of Collin County may transfer cases to and from the dockets of their respective courts, in matters within their jurisdiction, in order that the business may be equally distributed between them. However, no case may be transferred from one court to another without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred.

(b) In cases transferred to either of the county courts at law by order of the judge of the other court, all processes, writs, bonds, recognizances, or other obligations issued or made in the cases shall be returned to and filed in the court to which the transfer is made. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of the bonds or recognizances at the terms of the court to which the cases are transferred as fixed by law. All processes issued or returned before transfer of the cases, as well as all bonds and recognizances taken before transfer, shall be valid and binding as though originally issued out of the court to which the transfer is made.

Exchange of Benches

Sec. 8. The judges of the County Court at Law of Collin County and the County Court at Law No. 2 of Collin County may freely exchange benches and courtrooms with each other in matters within their jurisdiction so that if one is ill, disqualified, or otherwise absent, the other may hold court for him or her without the necessity of transferring the case involved. Either judge may hear all or any part of a case pending in the County Court at Law of Collin County or the County Court at Law No. 2 of Collin County, but only in matters within their jurisdiction, and may rule and enter orders on and continue, determine, or render judgment on all or any part of the case without the necessity of transferring it to his or her own docket. However, a judge may not sit or act in a case unless it is within the jurisdiction

of his or her court. Each judgment and order shall be entered in the minutes of the court in which the case is pending. The provisions providing for the exchange of benches by and between the judges are cumulative of and in addition to the provisions provided in this Act for the selection and appointment of a special judge of the court created by this Act. [Acts 1979, 66th Leg., p. 836, ch. 375, §§ 1 to 8, eff. Jan. 1, 1981.]

MONTGOMERY COUNTY

Art. 1970-363. County Court at Law No. 1 of Montgomery County

Sec. 1. On the effective date of this Act, the County Court at Law No. 1 of Montgomery County is created.

Sec. 2. (a) The county court at law has the same jurisdiction over all causes and proceedings, civil, criminal, juvenile, and probate, original and appellate, prescribed by law for the County Court of Montgomery County, and its jurisdiction is concurrent with that of the County Court of Montgomery County.

(b) The county court at law shall have and exercise original concurrent jurisdiction with the justice courts in all criminal matters which by the general laws of this state are conferred on justice courts. This Act does not deprive the justice courts of the jurisdiction now conferred on him by law, but grants concurrent original jurisdiction to the County Court at Law No. 1 of Montgomery County over the matters specified in this Act. This Act does not deny the right of appeal to the County Court at Law No. 1 of Montgomery County from the justice court where the right of appeal to the county court now exists by law.

(c) The county court at law has jurisdiction concurrent with the district court in eminent domain cases and in civil cases when the matter in controversy exceeds \$500 and does not exceed \$5,000, exclusive of interest.

Sec. 3. (a) The county court at law or its judge may issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court. It may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court of inferior jurisdiction in the county. The court and judge have the power to punish for contempt as prescribed by law for county courts. The judge of the county court at law has all other powers, duties, immunities, and privileges provided by law for county court judges.

(b) The County Judge of Montgomery County is the judge of the County Court of Montgomery County. All ex officio duties of the county judge shall be exercised by the judge of the County Court of Montgomery County unless by this Act committed to the judge of the county court at law.

(c) The judge of the County Court at Law No. 1 of Montgomery County is a member of the Montgomery County Juvenile Board.

Sec. 4. The terms of the County Court at Law No. 1 of Montgomery County are the same as those for the County Court of Montgomery County.

Sec. 5. (a) The judge of the County Court at Law No. 1 of Montgomery County must be a duly licensed and practicing member of the State Bar of Texas for not less than five years who has resided in and been actively engaged in the practice of law in Montgomery County for a period of not less than two years prior to his appointment or election, and shall be well informed in the laws of the state.

(b) When this Act becomes effective, the Commissioners Court of Montgomery County shall appoint a judge to the County Court at Law No. 1 of Montgomery County. The judge appointed must have the qualifications prescribed in Subsection (a) of this section and serves until January 1 of the year following the next general election and until his successor has been duly elected and has qualified. At the next general election after the effective date of this Act, a judge shall be elected to serve until January 1, 1979. At the general election in 1978 and every fourth year thereafter, there shall be elected by the qualified voters of Montgomery County a judge of the County Court at Law No. 1 of Montgomery County for a regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution. Any vacancy in the office shall be filled by the Commissioners Court of Montgomery County, and the appointee holds office until January 1 of the year following the next general election and until his successor has been duly elected and has qualified.

(c) During his term of office, the judge shall not engage in the private practice of law while serving as the county court at law judge.

(d) The judge of the County Court at Law No. 1 of Montgomery County shall execute a bond and take the oath of office prescribed by law for county judges. He may be removed from office in the same manner and for the same causes as a county judge.

(e) The judge of the County Court at Law No. 1 of Montgomery County shall receive a salary to be determined by the Commissioners Court of Montgomery County in an amount not less than the salary of the County Judge of Montgomery County. He shall be entitled to traveling expenses and neces-

sary office expenses, including administrative and clerical help, in the same manner as is allowed the county judge.

(f) A special judge of the county court at law may be appointed in the manner provided by law for the appointment of a special county judge when the judge of the county court at law is disqualified. A special judge must have the same qualifications as the judge of the county court at law and is entitled to the same rate of compensation as the regular judge.

Sec. 6. (a) The County Attorney of Montgomery County shall represent the state in all prosecutions in the County Court at Law No. 1 of Montgomery County, as provided by law for prosecutions in the county court.

(b) The County Clerk and Sheriff of Montgomery County shall serve as clerk and sheriff, respectively, of the County Court at Law No. 1 of Montgomery County. The Commissioners Court of Montgomery County may employ as many additional deputy sheriffs and clerks as are necessary to serve the court created by this Act. Those serving shall perform the duties, and are entitled to the compensation, fees, and allowances prescribed by law for their respective offices in Montgomery County.

(c) The judge of the county court at law shall appoint an official court reporter, who must meet the qualifications prescribed by law for that office and who is entitled to the compensation fixed by the Commissioners Court of Montgomery County, and shall serve at the pleasure of the judge of the county court at law.

Sec. 7. (a) Practice in the County Court at Law No. 1 of Montgomery County shall conform to that prescribed by law for the County Court of Montgomery County.

(b) The judges of the county court and the county court at law may transfer cases to and from the dockets of their respective courts in order that the business may be equally distributed between them. However, no case may be transferred from one court to the other without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred.

(c) The county judge and the judge of the county court at law may freely exchange benches and courtrooms with each other so that if one is ill, disqualified, or otherwise absent, the other may hold court for him without the necessity of transferring the case involved. Either judge may hear all or any part of a case pending in the county court or county court at law and may rule and enter orders on and continue, determine, or render judgment on all or

any part of the case without the necessity of transferring it to his own docket. However, the judge of either court may not sit or act in a case unless it is within the jurisdiction of his court. Each judgment and order shall be entered in the minutes of the court in which the case is pending.

(d) In cases transferred to either of the courts by order of the judge of the other court, all processes, writs, bonds, recognizances, or other obligations issued or made in the cases shall be returned to and filed in the court to which the transfer is made. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of such bonds or recognizances at the terms of the court to which the cases are transferred as are fixed by law. All processes issued or returned before transfer of the cases as well as all bonds and recognizances before taken in the cases shall be valid and binding as though originally issued out of the court to which the transfer is made.

Sec. 8. The jurisdiction and authority now vested by law in the County Court of Montgomery County and the judge thereof for the drawing, selection, and service of jurors shall also be exercised by the County Court at Law No. 1 of Montgomery County and the judge of the county court at law. Jurors summoned for either of the courts may by order of the judge of the court in which they are summoned be transferred to the other court for service and may be used as if summoned for the court to which they may be transferred. On concurrence of the Judge of the County Court at Law No. 1 of Montgomery County and the Judge of the County Court of Montgomery County, jurors may be summoned for service in both courts and shall be used interchangeably in both courts. All summons for petit jurors for all civil and criminal cases under existing laws at the time this Act takes effect shall be as valid as if no change had been made, and the persons constituting such jury panels shall be required to appear and serve at the ensuing term of the courts as fixed by this Act, and their acts as jurors shall be as valid as if they had been selected as jurors in the court for which they were originally drawn.

Sec. 9. (a) The Commissioners Court of Montgomery County shall furnish and equip a suitable courtroom and office space for the county court at law.

(b) The county court at law shall have a seal identical with the seal of the County Court of Montgomery County, except that it shall contain the words "County Court at Law No. 1 of Montgomery County."

Sec. 10. This Act becomes effective on July 1, 1975.

[Acts 1975, 64th Leg., p. 439, ch. 186, eff. Sept. 1, 1975.]

FORT BEND COUNTY

Art. 1970-364. County Court at Law of Fort Bend County

Sec. 1. (a) The County Court at Law of Fort Bend County is created.

(b) The county court at law has the same jurisdiction over all causes and proceedings, civil, criminal, juvenile, and probate, original and appellate, prescribed by law for county courts and its jurisdiction is concurrent with that of the County Court of Fort Bend County.

(c) The county court at law has jurisdiction concurrent with the district court in eminent domain cases and in civil cases when the matter in controversy exceeds \$500 and does not exceed \$5,000, exclusive of interest, as provided by general law.

(d) The county court at law, or its judge, may issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court; and may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court, or of any other court of inferior jurisdiction in the county. The court and judge also have the power to punish for contempt as prescribed by law for county courts.

(e) The County Judge of Fort Bend County is the judge of the County Court of Fort Bend County. All ex officio duties of the county judge shall be exercised by the judge of the County Court of Fort Bend County unless by this Act committed to the judge of the county court at law.

Sec. 2. The terms of the County Court at Law of Fort Bend County are the same as those for the County Court of Fort Bend County.

Sec. 3. (a) The judge of the County Court at Law of Fort Bend County shall be a qualified voter of Fort Bend County. He shall be a regularly licensed attorney at law in this state, and shall have resided in this state and have been actively engaged in the practice of law or as the judge of a court for a period of not less than three years next preceding his appointment of election.

(b) On the effective date of this Act the Commissioners Court of Fort Bend County shall make the initial appointment of the judge, who shall serve until the general election in 1976 and until his successor shall be duly elected and has qualified. At the general election in 1976, there shall be elected a judge of the county court at law for a term ending on December 31, 1978. At the general election in 1978 and every four years thereafter, the judge of the county court at law shall be elected for a regular four year term as provided in Article V, Section 30 and Article XVI, Section 65 of the Texas Constitu-

tion. Any vacancy occurring in the office of the judge of the County Court at Law of Fort Bend County shall be filled by the Commissioners Court of Fort Bend County, and the appointee shall hold office until the next general election and until his successor is duly elected and has qualified.

(c) The judge of the county court at law shall execute a bond and take the oath of office prescribed by law for county judges. He may be removed from office in the same manner and for the same causes as a county judge.

(d) The judge of the county court at law shall receive a salary in an amount not less than \$18,000, and other compensation for office expense, travel expense, service on the juvenile board, and other allowances paid by the county. The salary shall be paid in equal monthly installments out of the county treasury on order of the commissioners court. The judge of the county court at law shall assess the fees prescribed by law for county judges, which shall be collected by the clerk of the court and paid into the county treasury, and which may be paid to the judge.

(e) A special judge of the county court at law may be appointed or elected in the manner provided by law for the appointment or election of a special county judge. A special judge must have the same qualifications and is entitled to the same rate of compensation, as the regular judge.

Sec. 4. (a) The Criminal District Attorney, County Clerk, and Sheriff of Fort Bend County shall serve as criminal district attorney, clerk, and sheriff, respectively, of the County Court at Law of Fort Bend County. The Commissioners Court of Fort Bend County may employ as many additional assistant criminal district attorneys, deputy sheriffs, and clerks as are necessary to serve the court created by this Act. Those serving shall perform the duties and are entitled to the compensation, fees, and allowances, prescribed by law for their respective offices in Fort Bend County.

(b) The judge of the county court at law may appoint an official court reporter, who must meet the qualifications prescribed by law for that office and who is entitled to the compensation fixed by the Commissioners Court of Fort Bend County.

Sec. 5. (a) Practice in the County Court at Law of Fort Bend County shall conform to that prescribed by law for the County Court of Fort Bend County.

(b) The judges of the county court and the county court at law may transfer cases to and from the dockets of their respective courts so that the business may be equally distributed between them. However, no case may be transferred from one court

to the other without the consent of the judge of the court to which it is transferred, and no case may be transferred to the county court at law unless it is within the jurisdiction of that court.

(c) Jurors regularly impaneled for the week by the district courts of Fort Bend County, may, at the request of either the judge of the county court or of the county court at law, be made available by the district judges in the numbers requested and shall serve for the week in either or both the county court or the county court at law.

Sec. 6. The judge of the County Court at Law of Fort Bend County shall be a member of the Juvenile Board of Fort Bend County and receive the same additional compensation for service on the juvenile board as paid by Fort Bend County to the County Judge of Fort Bend County for acting as a member of the juvenile board.

Sec. 7. The effective date of this Act is November 1, 1975.

[Acts 1975, 64th Leg., p. 797, ch. 308, eff. Nov. 1, 1975. Amended by Acts 1979, 66th Leg., p. 205, ch. 115, § 1, eff. Aug. 27, 1979.]

HOUSTON COUNTY

Art. 1970-365. County Court at Law of Houston County

Sec. 1. On the effective date of this Act, the County Court at Law of Houston County is created.

Sec. 2. (a) The county court at law has jurisdiction over all causes and proceedings, civil, criminal, and probate, original and appellate, prescribed by law for county courts. The County Court of Houston County shall have no jurisdiction over the matters of which jurisdiction is given to the county court at law by this Act. This provision does not affect the jurisdiction of the Commissioners Court or the County Judge of Houston County as the presiding officer of the commissioners court.

(b) The county court at law has jurisdiction concurrent with the district court in eminent domain cases and in civil cases when the matter in controversy exceeds \$500 and does not exceed \$5,000, exclusive of interest.

(c) The county court at law, or its judge, has the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court. It may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court of inferior jurisdiction in the county. The court and judge have the power to punish for contempt as prescribed by law for county courts. The judge of the county court at law has all other

powers, duties, immunities, and privileges provided by law for county court judges.

(d) The County Judge of Houston County is the judge of the County Court of Houston County. All ex officio duties of the county judge shall be exercised by the judge of the County Court of Houston County unless by this Act committed to the judge of the county court at law.

Sec. 3. The terms of the County Court at Law of Houston County shall begin on the first Mondays in January, April, July, and October in each year, and each term of the court shall continue in session until the convening of the next succeeding term.

Sec. 4. (a) The judge of the County Court at Law of Houston County must be a duly licensed and practicing member of the State Bar of Texas who has been a bona fide resident of Houston County for two years prior to his appointment or election and actively engaged in the practice of law in the State of Texas for a period of not less than five years prior to his appointment or election.

(b) When this Act becomes effective, the Commissioners Court of Houston County shall appoint a judge to the County Court at Law of Houston County. The judge appointed must have the qualifications prescribed in Subsection (a) of this section and serves until January 1st of the year following the next general election and until his successor has been duly elected and has qualified. At the general election in 1978 and every fourth year thereafter, there shall be elected by the qualified voters of Houston County a judge of the County Court at Law of Houston County for a regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution. Any vacancy in the office shall be filled by the Commissioners Court of Houston County, and the appointee holds office until January 1st of the year following the next general election and until his successor has been duly elected and has qualified. The judge of the county court at law may be removed from office in the same manner and for the same causes as provided by the laws of this state for removal of county judges.

(c) The judge of the County Court at Law of Houston County shall execute a bond and take the oath of office prescribed by law for county judges.

(d) The judge of the County Court at Law of Houston County shall receive an annual salary to be fixed by the Commissioners Court of Houston County. This sum shall be paid in equal monthly installments out of the county treasury of Houston County on orders from the commissioners court. Additionally, he shall be entitled to reasonable traveling expenses and necessary office expenses, including administrative and clerical help. The judge of the

County Court at Law of Houston County shall charge the fees prescribed by law for county judges, which shall be collected by the clerk of the court and paid into the county treasury. During his term of office, the judge of the County Court at Law of Houston County shall diligently discharge the duties of his office on a full-time basis and shall not engage in the private practice of law.

(e) A special judge of the county court at law with the same qualifications as the regular judge may be appointed in the manner provided by law for the appointment of a special county judge. If a judge of the county court at law is disqualified to try or excuses himself from trying a case pending in his court, the parties or their attorneys may agree on the selection of a special judge for the case. A special judge is entitled to the same rate of compensation as the regular judge.

Sec. 5. (a) The county attorney, county clerk, and sheriff of Houston County shall serve as county attorney, clerk, and sheriff, respectively, of the County Court at Law of Houston County. They shall perform the duties and are entitled to the compensation, fees, and allowances prescribed by law for their respective offices.

(b) The judge of the County Court at Law of Houston County may appoint an official shorthand reporter for the court, who shall be a sworn officer of the court and shall hold his office at the pleasure of the court. All provisions of the general laws of Texas relating to the appointment of a reporter for the district court shall apply, so far as applicable, to the official shorthand reporter authorized to be appointed by the judge of the County Court at Law of Houston County. The reporter shall be entitled to the same fees and shall perform the same duties as provided in the general laws and in addition shall receive a salary not to exceed the compensation paid to the official shorthand reporter of the district court of Houston County, to be determined by the judge of the county court at law and paid out of the county treasury on order of the commissioners court.

(c) The seal of the court shall contain the words "County Court at Law of Houston County," but in other respects is identical with the seal of the County Court of Houston County.

Sec. 6. (a) Practice in the County Court at Law of Houston County shall conform to that prescribed by general law for county courts.

(b) All cases and matters, civil, criminal, and probate, original and appellate, pending before the County Court of Houston County on the effective date of this Act are transferred to the County Court at Law of Houston County. All processes, writs, bonds, recognizances, and other obligations issued or

made in the cases transferred shall be returned to and filed in the county court at law. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of such bonds or recognizances at the terms of the county court at law as fixed by law. All processes issued or returned before transfer of the cases as well as all bonds and recognizances before taken in the cases shall be valid and binding as though originally issued out of the county court at law.

Sec. 7. The laws which govern the drawing, selection, service, and pay of jurors for county courts apply to the county court at law.

[Acts 1975, 64th Leg., p. 1953, ch. 644, eff. Sept. 1, 1975.]

HENDERSON COUNTY

Art. 1970-366. County Court at Law of Henderson County

Sec. 1. On the date determined by the provisions of Section 8 of this Act, the County Court at Law of Henderson County is created.

Sec. 2. (a) The county court at law has the same jurisdiction over all causes and proceedings, civil and criminal, original and appellate, as prescribed by law for county courts, and its jurisdiction in those matters is concurrent with that of the County Court of Henderson County. This provision does not affect the jurisdiction of the Commissioners Court or of the County Judge of Henderson County as the presiding officer of the commissioners court as to roads, bridges, public highways, and all other matters which are now within the jurisdiction of the commissioners court or the county judge as presiding officer. The County Court of Henderson County shall retain the general jurisdiction of a probate court and the county court at law does not have probate jurisdiction.

(b) The county court at law has jurisdiction concurrent with the district court in eminent domain cases and in civil cases when the matter in controversy exceeds \$500 and does not exceed \$5,000, exclusive of interest.

(c) The county court at law, or its judge, has the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court. It may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court of inferior jurisdiction in the county. The court and judge have the power to punish for contempt as prescribed by law for county courts. The judge of the county court at law has all other powers, duties, immunities, and privileges provided by law for county court judges.

(d) The County Judge of Henderson County is the judge of the County Court of Henderson County. All ex officio duties of the county judge shall be exercised by the judge of the County Court of Henderson County.

Sec. 3. The terms of the County Court at Law of Henderson County are the same as those for the County Court of Henderson County.

Sec. 4. (a) The judge of the County Court at Law of Henderson County must be a duly licensed and practicing member of the State Bar of Texas. He may not actively engage in the private practice of law while serving as judge of the county court at law.

(b) The judge of the county court at law may be removed from office in the same manner and for the same causes as provided by the laws of this state for removal of county judges.

(c) The judge of the County Court at Law of Henderson County shall execute a bond and take the oath of office prescribed by law for county judges.

(d) The judge of the County Court at Law of Henderson County shall receive a salary to be determined by the Commissioners Court of Henderson County in an amount not less than \$20,000 per year nor more than \$25,000 per year and to be paid from the same fund and in the same manner as other county officials. In addition to a salary, the commissioners court may provide office and traveling expenses which it deems necessary. The judge of the county court at law shall charge the fees prescribed by law for county judges, which shall be collected by the clerk of the court and paid into the county treasury.

(e) A special judge of the county court at law with the same qualifications as the regular judge may be appointed in the manner provided by law for the appointment of a special county judge. If a judge of the county court at law is disqualified to try a case pending in his court, the parties or their attorneys may agree on the selection of a special judge for the case. A special judge is entitled to the same rate of compensation as the regular judge.

Sec. 5. (a) The county attorney, county clerk, and sheriff of Henderson County shall serve as county attorney, clerk, and sheriff, respectively, of the County Court at Law of Henderson County. They shall perform the duties and are entitled to the compensation, fees, and allowances prescribed by law for their respective offices.

(b) The judge of the county court at law may appoint an official court reporter who shall have the same qualifications and whose duties shall in every respect be the same as now provided by law. The

official court reporter is entitled to the compensation fixed by the Commissioners Court of Henderson County.

(c) The seal of the court shall contain the words "County Court at Law of Henderson County," but in other respects is identical with the seal of the County Court of Henderson County.

Sec. 6. (a) Practice in the County Court at Law of Henderson County shall conform to that prescribed by law for the County Court of Henderson County.

(b) The judges of the county court and the county court at law may transfer cases to and from the dockets of their respective courts in order that the business may be equally distributed between them. However, no case may be transferred from one court to the other without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred.

(c) The county judge and the judge of the county court at law may freely exchange benches and courtrooms with each other so that if one is ill, disqualified, or otherwise absent, the other may hold court for him without the necessity of transferring the case involved. Either judge may hear all or any part of a case pending in the county court or county court at law and may rule and enter orders on and continue, determine, or render judgment on all or any part of the case without the necessity of transferring it to his own docket. However, the judge of either court may not sit or act in a case unless it is within the jurisdiction of his court. Each judgment and order shall be entered in the minutes of the court in which the case is pending.

(d) In cases transferred to either of the courts by order of the judge of the other court, all processes, writs, bonds, recognizances, or other obligations issued or made in the cases shall be returned to and filed in the court to which the transfer is made. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of such bonds or recognizances at the terms of the court to which the cases are transferred to as are fixed by law. All processes issued or returned before transfer of the cases as well as all bonds and recognizances before taken in the cases shall be valid and binding as though originally issued out of the court to which the transfer is made.

Sec. 7. (a) The laws which govern the drawing, selection, service, and pay of jurors for county courts apply to the county court at law.

(b) Jurors regularly impaneled for a week by the district court or courts may, on request of either the county judge or the judge of the county court at law, be made available and shall serve for the week in either the county court or county court at law.

Sec. 8. (a) It is expressly provided that the provisions of this Act shall not become effective until the Commissioners Court of Henderson County enters an order adopting the same.

(b) When this Act becomes effective, the Commissioners Court of Henderson County shall have the option of either appointing a judge to the County Court at Law of Henderson County or allowing said judge to be elected at the next general election. If a judge is appointed, said judge serves until the next general election and until his successor has been duly elected and has qualified. If a judge is appointed or elected as provided herein and completes an unexpired term, then said judge shall stand for election at the next general election and every fourth year thereafter for a regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution. If this Act is made effective and a judge of the County Court at Law is elected for the first time to a regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution, said judge shall stand for election every fourth year thereafter as provided in said sections of the Constitution. Any vacancy in the office shall be filled by the Commissioners Court of Henderson County until the next general election. The judge of the county court at law may be removed from office in the same manner and for the same causes as provided by the laws of this state for the removal of county judges.

Sec. 9. The Henderson County Commissioners Court is hereby empowered to submit the question of creating a county court at law for Henderson County to a vote of the people of Henderson County at any countywide general or special election. [Acts 1975, 64th Leg., p. 1971, ch. 654, eff. June 19, 1975.]

WALKER COUNTY

Art. 1970—367. County Court at Law of Walker County

Sec. 1. There is hereby created a county court at law in Walker County, Texas. It shall sit in Huntsville and shall be known as the County Court at Law of Walker County.

Sec. 2. The County Court at Law of Walker County has the same jurisdiction over all causes and proceedings, civil and criminal, juvenile and probate, original and appellate, prescribed by law for county courts. However, it does not have jurisdiction over

causes and proceedings concerning roads, bridges, and public highways and the general administration of county business which is now within the jurisdiction of the Commissioners Court of Walker County. The county court at law has concurrent jurisdiction with the County Court of Walker County in all matters of probate, and shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and habitual drunkards, and shall grant letters testamentary and of administration, settle accounts of administrators, executors, and guardians, transact all business pertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the settlement, partition, and distribution of the estates of deceased persons, and apprentice minors as provided by law.

Sec. 3. (a) The County Court at Law of Walker County has jurisdiction concurrent with the district court in eminent domain cases and in civil cases when the matter in controversy exceeds \$500 and does not exceed \$10,000, exclusive of interest.

(b) In addition to the jurisdiction conferred on the County Court at Law of Walker County by the other provisions of this Act, the county court at law has concurrent civil jurisdiction with the district court of Walker County in suits, causes, and matters involving adoptions, removal of disability of minority and coverture, wife and child desertion, delinquent, neglected, or dependent child proceedings, Uniform Reciprocal Enforcement of Support Act, and all jurisdiction, powers, and authority now or hereafter placed in the district or county courts under the juvenile and child welfare laws of this state; and of all divorce and marriage annulment cases, including the adjustment of property rights and custody and support of minor children involved therein, temporary support pending final hearing, and any and every other matter incident to divorce or annulment proceedings as well as independent actions involving child custody or support of minors, change of name of persons, and all other cases involving justiciable controversies and differences between spouses, or between parents, or between them, or one of them, and their minor children, or between any of these and third persons, corporations, trustees, or other legal entities, which are now or may hereafter be within the jurisdiction of the district or county courts; all cases in which children are alleged or charged to be dependent and neglected children or delinquent children as provided by law, and the county court at law and its judge have power to issue writs of habeas corpus, mandamus, injunction, and all writs necessary to enforce its jurisdiction. The provisions in this subsection do not diminish the jurisdiction of the district court in Walker County, and the district court shall retain and continue to exercise such jurisdiction as is now or may be here-

after conferred by law, and the jurisdiction given in this section is concurrent with the jurisdiction of the district court.

Sec. 4. The county court at law, or its judge, has the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, execution, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court. It may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court of inferior jurisdiction in the county. The court and judge have the power to punish for contempt as prescribed by law for county courts. The judge of the county court at law has all other powers, duties, immunities, and privileges provided by law for county court judges, except that such judge of the county court at law shall in no way have any authority over the administrative business of Walker County which is now performed by the County Judge of Walker County.

Sec. 5. The County Court of Walker County shall have and retain concurrently with the court created by this Act the general jurisdiction of a probate court. The county court shall have no other jurisdiction, civil or criminal, original or appellate. All ex officio duties of the county judge shall be exercised and retained by the judge of the County Court of Walker County, except as provided by this Act or otherwise provided by law.

Sec. 6. The County Court at Law of Walker County shall hold four terms of court each year which terms shall begin on the first Mondays in January, April, July, and October in each year, and each term of the court shall continue in session until the convening of the next succeeding term.

Sec. 7. (a) The judge of the county court at law shall have been a bona fide resident of Walker County for two years prior to his appointment or election and shall be a qualified voter in Walker County. He shall be a licensed attorney in this state who has been actively engaged in the practice of law for a period of five years prior to his appointment or election.

(b) The judge of the county court at law shall not engage in the private practice of law after his appointment or election.

(c) When this Act becomes effective, the Commissioners Court of Walker County shall appoint a judge to the County Court at Law of Walker County. The judge appointed must have the qualifications prescribed in Subsection (a) of this section and shall serve until the general election in 1978 and until his successor has been duly elected and has qualified. At the general election in 1978 and every fourth year thereafter, there shall be elected by the

qualified voters of Walker County a judge of the County Court at Law of Walker County for a regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution.

(d) A vacancy occurring in the office of the judge of county court at law shall be filled by the Commissioners Court of Walker County and the appointee shall hold office until the next general election and until his successor is elected and has qualified.

(e) The judge of the county court at law shall execute a bond and take the oath of office prescribed by law for county judges. He may be removed from office in the same manner and for the same causes as a county judge.

(f) The judge of the county court at law shall receive a salary of not less than 83 percent of the annual salary of the district judge in Walker County, to be paid by the county treasurer by order of the commissioners court, and the salary shall be paid monthly in equal installments. The judge of the county court at law shall be entitled to traveling expenses and necessary office expenses, including administrative and clerical help, in the same manner as is allowed the county judge. The judge of the County Court at Law of Walker County shall assess the same fees as are now prescribed or may be established by law, relating to the county judge's fees, all of which shall be collected by the clerk of the court and shall be paid into the county treasury on collection, and no part of which shall be paid to the judge, but he shall draw the salary as specified in this section.

(g) A special judge of the county court at law with the same qualifications as the regular judge may be appointed or elected in the manner provided by law for the appointment or election of a special county judge. If a judge of the county court at law is disqualified to try a case pending in his court, the parties or their attorneys may agree on the selection of a special judge for the case. A special judge is entitled to the same rate of compensation as the regular judge.

Sec. 8. (a) The County Attorney, County Clerk, and Sheriff of Walker County shall serve as county attorney, clerk and sheriff respectively of the County Court at Law of Walker County, except that the District Clerk of Walker County shall serve as clerk of the county court at law in the cases enumerated in Subsection (b), Section 3 of this Act. These officials, either personally or by the appointment of a deputy or assistant, shall perform the duties and responsibilities of their office and are entitled to the compensation, fees, and allowances prescribed by law for their respective offices. The commissioners court may employ as many deputy sheriffs and bailiffs as are necessary to serve the court.

(b) The judge of the county court at law may appoint an official court reporter who shall have the same qualifications and whose duties shall in every respect be the same as now provided by law, which reporter shall serve at the pleasure of the judge of the county court at law. The official court reporter is entitled to the compensation fixed by the Commissioners Court of Walker County. The judge of the county court at law may, in lieu of appointing an official court reporter, contract for the services of a court reporter under guidelines to be established by the commissioners court.

Sec. 9. (a) As soon as practicable following the effective date of this Act, the county clerk shall establish a separate docket for the court created by this Act from among pending matters filed originally in the County Court of Walker County and shall transfer those matters to the docket of the court created by this Act, and the district clerk shall establish a separate docket for the court created by this Act from among pending matters filed originally in the district court in Walker County and may transfer a sufficient number of those matters to the docket of the court created by this Act to equalize the dockets. Equalization of case load shall be the primary objective in establishing the initial case docket for the county court at law.

(b) On the transfer of all cases specified in Subsection (a) of this section to the county court at law, and in cases transferred to any of the courts in Walker County by order of the judge of another court, all processes, writs, bonds, recognizances, or other obligations issued or made in the cases shall be returned to and filed in the court to which the transfer is made. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of the bonds or recognizances at the terms of the court to which the cases are transferred as are fixed by law. All processes issued or returned before transfer of the cases as well as all bonds and recognizances before taken in the cases shall be valid and binding as though originally issued out of the court to which the transfer is made.

(c) The judge of the county court and the judge of the county court at law may transfer cases to and from the dockets of their respective courts in matters within their jurisdiction. All cases of concurrent jurisdiction enumerated or included in Section 3 of this Act may be instituted in or transferred between the district court in Walker County and the county court at law in Walker County. However, no case may be transferred from one court to the other without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred.

(d) The county judge and the judge of the county court at law may freely exchange benches and court-rooms with each other in matters within their jurisdiction so that if one is ill, disqualified, or otherwise absent, the other may hold court for him without the necessity of transferring the case involved. Either judge may hear all or any part of a case pending in the county court or county court at law, but only in matters within his jurisdiction, and may rule and enter orders on and continue, determine, or render judgment on all or any part of the case without the necessity of transferring it to his own docket. However, the judge of either court may not sit or act in a case unless it is within the jurisdiction of his court. Each judgment and order shall be entered in the minutes of the court in which the case is pending. This provision providing for the exchange of benches by and between the judge of the county court and the judge of the county court at law is cumulative of and in addition to the provisions herein provided for the selection and appointment of a special judge of the county court at law.

Sec. 10. (a) Practice in the county court at law shall conform to that prescribed by general law for county courts, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearing in the county court at law involving those matters of concurrent jurisdiction enumerated in Subsection (b), Section 3 of this Act shall be governed by the provisions of this Act and the laws and rules pertaining to district courts, general or special, as well as county courts. If a case enumerated in Subsection (b), Section 3 of this Act is tried before a jury, the jury shall be composed of 12 members.

(b) The laws which govern the drawing, selection, service, and pay of jurors for county courts apply to the county court at law.

(c) Jurors regularly impaneled for a week by the district court or courts may, on request of the judge of the county court at law, be made available and shall serve for the week in the county court at law.

Sec. 11. The Commissioners Court of Walker County shall furnish and equip a suitable courtroom and office space for the court created by this Act.

Sec. 12. The seal of the court created by this Act shall be the same as that provided by law for county courts, except the seal shall contain the words "County Court at Law of Walker County." The County Court at Law of Walker County shall be a court of record.

Sec. 13. Appeals in all civil cases from judgments and orders of the county court at law shall be to the Court of Civil Appeals as is now or may be

hereafter provided for appeals from district and county courts and in all criminal cases shall be to the Court of Criminal Appeals.

Sec. 14. All cases appealed from the justice courts and other inferior courts in Walker County shall be made direct to the County Court at Law of Walker County, unless otherwise provided by law.

Sec. 15. The effective date of this Act is September 1, 1977.

[Acts 1977, 65th Leg., p. 139, ch. 68, §§ 1 to 15, eff. Sept. 1, 1977.]

COMAL COUNTY

Art. 1970-368. County Court at Law of Comal County

Sec. 1. There is created a court in Comal County to be known as the County Court at Law of Comal County.

Sec. 2. (a) The county court at law has the same jurisdiction over all causes and proceedings, civil and criminal, original and appellate, as is prescribed by the constitution and general laws of the state for county courts. The county court at law has jurisdiction concurrent with the district court in Comal County in juvenile matters and proceedings and in all civil and criminal matters and proceedings, original and appellate, for which jurisdiction was transferred from the county court to the district court by Chapter 35, Acts of the 18th Legislature, Regular Session, 1883. The county court at law has jurisdiction concurrent with the district court in eminent domain cases and in civil cases when the amount in controversy exceeds \$500 and does not exceed \$10,000, exclusive of interest, as provided by general law. The county court at law does not have jurisdiction over causes and proceedings concerning roads, bridges, and public highways and the general administration of county business which is now within the jurisdiction of the commissioners court of Comal County.

(b) The county court at law has the general jurisdiction of a probate court within the limits of Comal County, and its jurisdiction is concurrent with that of the County Court of Comal County in probate matters and in proceedings.

(c) The county court at law, or its judge, has the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court, and to issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court, or of any other court in the county of inferior jurisdiction. The court and judge also have the power to punish for contempt as prescribed by law for county courts. The judge of the county court at law has all other

powers, duties, immunities, and privileges provided by law for county court judges, and he is a magistrate and conservator of the peace.

(d) The County Judge of Comal County is the judge of the County Court of Comal County. All ex officio duties of the county judge shall be exercised by the judge of the County Court of Comal County except insofar as the same are, by this Act, committed to the judge of the County Court at Law of Comal County.

(e) In addition to the jurisdiction conferred on the county court at law by the other provisions of this Act, the county court at law has concurrent jurisdiction with the district courts in Comal County in suits and causes involving family law matters, including adoptions; birth records; removal of disability of minority and coverture; change of name of persons; divorce and marriage annulment cases, including the adjustment of property rights, custody and support of minor children involved, temporary support pending final hearing, and every other matter incident to divorce or annulment proceedings; and independent actions involving child welfare, custody, support and reciprocal support, dependency, neglect, and delinquency; and independent actions involving controversies between parent and child and between husband and wife. The provisions in this subsection do not diminish the jurisdiction of the district courts in Comal County, and the district courts shall retain and continue to exercise the jurisdiction that is conferred by law on district courts.

Sec. 3. The terms of the County Court at Law of Comal County are the same as those for the County Court of Comal County, Texas.

Sec. 4. (a) There shall be elected, by the qualified voters of the county, a judge of the County Court at Law of Comal County, who must have been a duly licensed and practicing member of the State Bar of Texas for not less than five years, who must be well informed in the laws of this state, and who must have resided and been actively engaged in the practice of law in Comal County for a period of not less than one year prior to the general election. The judge elected holds office for four years and until his successor has been duly elected and has qualified. During his term of office, the judge shall not engage in the private practice of law.

(b) When this Act becomes effective, the Commissioners Court of Comal County shall appoint a judge to the County Court at Law of Comal County. The judge appointed must have the qualifications prescribed in Subsection (a) of this section and serves until the next general election and until his successor has been duly elected and has qualified. Beginning at the general election in 1978 and every fourth year thereafter, there shall be elected a judge of the

county court at law for a regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution. A vacancy occurring in the office of the judge of the County Court at Law of Comal County may be filled by appointment by the commissioners court, and the appointee holds office until the next general election and until his successor has been duly elected and has qualified.

(c) The judge of the County Court at Law of Comal County shall execute a bond and take the oath of office prescribed by law for county judges. He may be removed from office in the same manner and for the same causes as a county judge.

(d) The Commissioners Court of Comal County shall fix the salary of the judge of the County Court at Law of Comal County. The judge shall assess the fees prescribed by law for county judges, which shall be collected by the clerk of the court and paid into the county treasury, and which may not be paid to the judge.

(e) A special judge of the county court at law may be appointed or elected as provided by law for county courts. A special judge is entitled to the same rate of compensation as the regular judge.

(f) If a judge of the county court at law is disqualified to try a case pending in his court, the parties or their attorneys may agree on the selection of a special judge for the case. The special judge selected is entitled to the compensation provided in Subsection (e) of this section.

Sec. 5. (a) The county attorney, county clerk, and sheriff of Comal County shall serve as county attorney, county clerk, and sheriff, respectively, of the County Court at Law of Comal County, except that the district clerk of Comal County shall serve as clerk of the county court at law in the cases enumerated in Subsection (e) of Section 2 of this Act and shall establish a separate docket for the county court at law. The Commissioners Court of Comal County may employ as many assistant county attorneys, deputy sheriffs, and bailiffs as are necessary to serve the court created by this Act. Those serving shall perform the duties, and are entitled to the compensation, fees, and allowances prescribed by law for their respective offices in Comal County.

(b) The judge of the county court at law may appoint an official court reporter who serves at the pleasure of the judge and who is entitled to the compensation fixed by the commissioners court. The official court reporter must have the qualifications prescribed by law for district court reporters.

(c) The seal of the court shall contain the words "County Court at Law of Comal County," but in other respects is identical with the seal of the County Court of Comal County.

Sec. 6. (a) Practice in the County Court at Law of Comal County shall conform to that prescribed by law for the County Court of Comal County, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings in the county court at law involving those matters of concurrent jurisdiction enumerated in Subsection (e), Section 2, of this Act shall be governed by the provisions of this Act and the laws and rules pertaining to district courts, general or special, as well as county courts. If a case enumerated in Subsection (e), Section 2, of this Act is tried before a jury, the jury shall be composed of 12 members.

(b) The judges of the county court and the county court at law may transfer cases to and from the dockets of their respective courts, in matters within their concurrent probate jurisdiction, in order that the business may be equally distributed between them. All cases of concurrent jurisdiction enumerated or included in Subsection (a) or (e) of Section 2 of this Act may be instituted in or transferred between the district court in Comal County and the County Court at Law of Comal County. However, no case may be transferred from one court to another court without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred.

(c) The county judge and the judge of the county court at law may freely exchange benches and courtrooms with each other so that if one is ill, disqualified, or otherwise absent, the other may hold court for him without the necessity of transferring the cause or proceeding. Either judge may hear all or any part of a cause or proceeding pending in the county court or county court at law, and he may rule or enter orders on and continue, determine, or render judgment on all or any part of the cause or proceeding without the necessity of transferring it to his own docket. However, the judge of either court may not sit or act in any cause or proceeding unless it is within the jurisdiction of his court. Each judgment and order shall be entered in the minutes of the court in which the matter is pending.

(d) In cases transferred to any of the courts by order of the judge of another court, all processes, writs, bonds, recognizances, or other obligations issued or made in the cases shall be returned to and filed in the court to which the transfer is made. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of such bonds or recognizances at the terms of the court to which the cases are transferred as are fixed by law. All processes issued or returned before transfer of the cases as well as all bonds and recognizances before taken in the cases shall be valid and binding as

though originally issued out of the court to which the transfer is made.

Sec. 7. (a) The jurisdiction and authority now vested by law in the county clerk and the county judge of Comal County for the drawing, selection, and service of jurors and talesmen shall also be exercised by the county court at law and its judge.

(b) Jurors regularly impaneled for a week by the district court or courts may, on request of either the county judge or the judge of the county court at law, be made available and shall serve for the week in either the county court or county court at law.

Sec. 8. This Act shall take effect July 15, 1977. [Acts 1977, 65th Leg., p. 284, ch. 137, §§ 1 to 8, eff. July 15, 1977. Amended by Acts 1979, 66th Leg., p. 34, ch. 23, §§ 1 to 3, eff. March 22, 1979.]

TOM GREEN COUNTY

Art. 1970-369. County Court at Law of Tom Green County

Sec. 1. The County Court at Law of Tom Green County is created.

Sec. 2. (a) The county court at law has jurisdiction in all causes and proceedings, civil, criminal, juvenile, and probate, original and appellate, over which by the constitution and general laws of the state the county courts have jurisdiction, and its jurisdiction is concurrent with that of the county court of Tom Green County. This provision does not affect the jurisdiction of the commissioners court or of the county judge of Tom Green County as the presiding officer of the commissioners court. The county judge of Tom Green County shall be the judge of the county court of Tom Green County. All ex officio duties of the county judge shall be exercised by the judge of the county court of Tom Green County unless by this Act committed to the judge of the county court at law.

(b) The county court at law has jurisdiction concurrent with the district court in eminent domain cases as provided by general law and in civil cases when the matter in controversy exceeds \$500 and does not exceed \$10,000, exclusive of interest.

Sec. 3. The county court at law or its judge may issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court. It may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court of inferior jurisdiction in the county. The court and judge have the power to punish for contempt as prescribed by law for county courts. The judge of the county court at law has all other

powers, duties, immunities, and privileges provided by law for county court judges.

Sec. 4. The terms of the county court at law are the same as those for the county court of Tom Green County.

Sec. 5. (a) The judge of the county court at law shall have been a bona fide resident of Tom Green County for two years prior to his appointment or election. He shall be a licensed attorney in this state who has been actively engaged in the practice of law for a period of five years prior to this appointment or election. He shall devote his entire time to the duties of his office and shall not engage in the private practice of law while in office.

(b) When this court is created, the commissioners court shall appoint a judge to the county court at law who shall serve until the next general election and until his successor is duly elected and has qualified. At the general election in 1978 or 1982, and every fourth year thereafter, there shall be elected by the qualified voters of Tom Green County a judge of the county court at law for a regular term of four years, as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution. A vacancy in the office of the judge of the county court at law shall be filled by appointment by the commissioners court, and the appointee holds office until January 1 of the year following the next general election and until his successor is duly elected and has qualified.

(c) The judge of the county court at law shall execute a bond and take the oath of office prescribed by law for county judges. He may be removed from office in the same manner and for the same causes as a county judge.

(d) The judge of the county court at law may receive a salary to be set by the commissioners court to be paid in equal monthly installments out of the county treasury by the commissioners court. He may be entitled to traveling expenses and necessary office expenses, including administrative and clerical help, in the same manner as is allowed the county judge. The judge of the county court at law shall assess the same fees as are now prescribed or may be established by law relating to the county judge's fees, all of which shall be collected by the clerk of the court and shall be paid into the county treasury on collection.

(e) A special judge of the county court at law may be appointed in the manner provided by law for the appointment of a special county judge when the judge of the county court at law is disqualified. A special judge must have the same qualifications as the judge of the county court at law and is entitled to the same rate of compensation as the regular judge.

Sec. 6. (a) The county attorney, county clerk, and sheriff of Tom Green County shall serve as county attorney, clerk, and sheriff, respectively, of the county court at law. These officials, either personally or by the appointment of a deputy or assistant, shall perform the duties and responsibilities of their offices and are entitled to the compensation, fees, and allowances prescribed by law for their respective offices. The commissioners court may employ as many deputy sheriffs and bailiffs as are necessary to serve the court.

(b) The judge of the county court at law may appoint an official court reporter, who must meet the qualifications prescribed by law for that office, who is entitled to the compensation fixed by the Commissioners Court of Tom Green County, and who shall serve at the pleasure of the judge of the county court at law. Except where inconsistent with this Act, all general laws relating to court reporters apply to the official court reporter of the county court at law. The reporter shall be available for matters being considered in the county court and in the district courts in Tom Green County, with the approval of the judge of the county court at law.

Sec. 7. (a) Practice in the county court at law shall conform to that prescribed by law for the county court.

(b) In order that the business may be equally distributed between the courts, the judges of the county court at law and the county court may transfer cases to and from the dockets of their respective courts and the judges of the county court at law and the district courts may transfer cases to and from the dockets of their respective courts. However, no case may be transferred from one court to another court without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred.

(c) The county judge and the judge of the county court at law may, in their discretion, exchange benches from time to time, and either of the judges may, in his own courtroom, try and determine any case or proceeding pending in either of the courts without having the case transferred, or may sit in either of the courts and there hear and determine any case there pending, and each judgment and order shall be entered in the minutes of the court in which the case is pending. The judges may try different cases in the same court at the same time and each may occupy his own courtroom or the room of any other court. In case of absence, sickness, or disqualification of either of the judges, the other judge may hold court for him. Either of the judges may hear any part of any case or proceeding pending in either of the courts and determine the same or

may hear and determine any question in any case, and either of the judges may complete the hearing and render judgment in the case. However, the judge of either court may not sit or act in a case unless it is within the jurisdiction of his court.

(d) In cases transferred to any of the courts by order of the judge of another court, all processes, writs, bonds, recognizances, or other obligations issued or made in the cases shall be returned to and filed in the court to which the transfer is made. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of such bonds or recognizances at the terms of the court to which the cases are transferred as are fixed by law. All processes issued or returned before transfer of the cases as well as all bonds and recognizances before taken in the cases shall be valid and binding as though originally issued out of the court to which the transfer is made.

Sec. 8. The laws that govern the drawing, selection, service, and pay of jurors for county courts apply to the county court at law. A general panel of jurors, or jurors impaneled for a week by a district court, may be made available and shall serve for the week in the county court at law.

Sec. 9. (a) The Commissioners Court of Tom Green County shall furnish and equip a suitable courtroom and office space for the county court at law.

(b) The county court at law shall have a seal identical with the seal of the county court of Tom Green County, except that it shall contain the words "County Court at Law of Tom Green County."

Sec. 10. The County Court at Law of Tom Green County is created on January 1, 1980, or on a date determined by the commissioners court by an order entered in its minutes, whichever date is earlier. [Acts 1977, 65th Leg., p. 688, ch. 260, §§ 1 to 10, eff. Aug. 29, 1977.]

MIDLAND COUNTY

Art. 1970-370. County Court at Law of Midland County

Sec. 1. The County Court at Law of Midland County is created on the date determined by the provisions of Section 10a of this Act.

Sec. 2. (a) The county court at law has jurisdiction in all causes and proceedings, civil, criminal, juvenile, and probate, original and appellate, over which by the constitution and general laws of the state the county courts have jurisdiction, and its jurisdiction is concurrent with that of the County Court of Midland County. This provision does not

affect the jurisdiction of the commissioners court or of the county judge of Midland County as the presiding officer of the commissioners court. The county judge of Midland County shall be the judge of the county court of Midland County. All ex officio duties of the county judge shall be exercised by the judge of the county court of Midland County unless by this Act committed to the judge of the county court at law.

(b) The county court at law has jurisdiction concurrent with the district court in eminent domain cases and in civil cases when the matter in controversy exceeds \$500 and does not exceed \$5,000, exclusive of interest, as provided by general law.

Sec. 3. The county court at law or its judge may issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court. It may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court of inferior jurisdiction in the county. The court and judge have the power to punish for contempt as prescribed by law for county courts. The judge of the county court at law has all other powers, duties, immunities, and privileges provided by law for county court judges.

Sec. 4. The terms of the county court at law are the same as those for the County Court of Midland County.

Sec. 5. (a) The judge of the county court at law must be a duly licensed and practicing member of the State Bar of Texas who has resided in and been actively engaged in the practice of law in Midland County for a period of not less than two years prior to his appointment or election.

(b) When this Act becomes effective, the commissioners court shall appoint a judge to the county court at law who shall serve until the next general election and until his successor is duly elected and has qualified. At the general election in 1978 and every fourth year thereafter, there shall be elected by the qualified voters of Midland County a judge of the county court at law for a regular term of four years beginning on January 1, 1979, as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution. A vacancy in the office of the judge of the county court at law shall be filled by appointment by the commissioners court, and the appointee holds office until January 1 of the year following the next general election and until his successor is duly elected and has qualified.

(c) The judge of the county court at law shall execute a bond and take the oath of office prescribed by law for county judges. He may be re-

moved from office in the same manner and for the same causes as a county judge.

(d) The judge of the county court at law shall receive a salary to be set by the commissioners court and to be paid in equal monthly installments out of the county treasury by the commissioners court. He shall be entitled to traveling expenses and necessary office expenses, including administrative and clerical help, in the same manner as is allowed the county judge. The judge of the county court at law shall assess the same fees as are now prescribed or may be established by law relating to the county judge's fees, all of which shall be collected by the clerk of the court and shall be paid into the county treasury on collection.

(e) A special judge of the county court at law may be appointed or elected in the manner provided by law for the appointment or election of a special county judge. A special judge must have the same qualifications as the judge of the county court at law and is entitled to the same rate of compensation as the regular judge.

Sec. 6. (a) The county attorney, county clerk, and sheriff of Midland County shall serve as county attorney, clerk, and sheriff, respectively, of the county court at law. These officials, either personally or by the appointment of a deputy or assistant, shall perform the duties and responsibilities of their offices and are entitled to the compensation, fees, and allowances prescribed by law for their respective offices. The commissioners court may employ as many deputy sheriffs and bailiffs as are necessary to serve the court.

(b) The judge of the county court at law may appoint an official court reporter, who must meet the qualifications prescribed by law for that office, who is entitled to the compensation fixed by the Commissioners Court of Midland County, and who shall serve at the pleasure of the judge of the county court at law. Except where inconsistent with this Act, all general laws relating to court reporters apply to the official court reporter of the county court at law. The reporter shall be available for matters being considered in the county court and in the district courts in Midland County, with the approval of the judge of the county court at law.

Sec. 7. (a) Practice in the county court at law shall conform to that prescribed by law for the county court.

(b) In order that the business may be equally distributed between the courts, the judges of the county court at law and the county court may transfer cases to and from the dockets of their respective courts and the judges of the county court at law and the district courts may transfer cases to and from

the dockets of their respective courts. However, no case may be transferred from one court to another court without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred.

(c) The county judge and the judge of the county court at law may freely exchange benches and courtrooms with each other so that if one is ill, disqualified, or otherwise absent, the other may hold court for him without the necessity of transferring the case involved. Either judge may hear all or any part of a case pending in the county court or county court at law and may rule and enter orders on and continue, determine, or render judgment on all or any part of the case without the necessity of transferring it to his own docket. However, the judge of either court may not sit or act in a case unless it is within the jurisdiction of his court. Each judgment and order shall be entered in the minutes of the court in which the case is pending.

(d) In cases transferred to any of the courts by order of the judge of another court, all processes, writs, bonds, recognizances, or other obligations issued or made in the cases shall be returned to and filed in the court to which the transfer is made. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of such bonds or recognizances at the terms of the court to which the cases are transferred to as are fixed by law. All processes issued or returned before transfer of the cases as well as all bonds and recognizances before taken in the cases shall be valid and binding as though originally issued out of the court to which the transfer is made.

Sec. 8. The laws that govern the drawing, selection, service, and pay of jurors for county courts apply to the county court at law. A general panel of jurors, or jurors impaneled for a week by a district court, may be made available and shall serve for the week in the county court at law. A general panel of jurors or jurors impaneled for a week by a district court or summoned for the county court or county court at law may, on request of a justice of the peace, be made available in such numbers as may be requested for service in the justice court and shall serve in the justice court as if summoned for the justice court to which they are transferred.

Sec. 9. (a) The Commissioners Court of Midland County shall furnish and equip a suitable courtroom and office space for the county court at law.

(b) The county court at law shall have a seal identical with the seal of the county court of Midland County, except that it shall contain the words "County Court at Law of Midland County."

Sec. 10. The judge of the county court at law is a member of the Midland County Juvenile Board.

Sec. 10a. The County Court at Law of Midland County is created on January 1, 1980, or on an earlier date determined by the Commissioners Court of Midland County by an order entered in its minutes, finding and determining that the conditions of the dockets of the district courts serving Midland County require the creation of the county court at law to properly dispose of cases arising in Midland County. In determining the need of a county court at law, the commissioners court may submit the question in a nonbinding referendum to the voters of Midland County at any countywide general election or special election called for that purpose.

[Acts 1977, 65th Leg., p. 1626, ch. 640, §§ 1 to 10a, eff. Jan. 1, 1978. Amended by Acts 1979, 66th Leg., p. 48, ch. 27, § 1, eff. April 3, 1979.]

Section 12 of the 1977 Act provides that the provisions of this Act take effect on January 1, 1978.

RANDALL COUNTY

Art. 1970-371. County Court at Law of Randall County

Sec. 1. The County Court at Law of Randall County is created on the date determined by the provisions of Section 13 of this Act.

Sec. 2. The County Court at Law of Randall County, concurrently with the County Court of Randall County, has jurisdiction over all causes and proceedings, civil and criminal, juvenile and probate, original and appellate, prescribed by the constitution and general laws of this state for county courts. However, it does not have jurisdiction over causes and proceedings concerning roads, bridges, and public highways and the general administration of county business which is now within the jurisdiction of the Commissioners Court of Randall County.

Sec. 3. The County Court at Law of Randall County has jurisdiction concurrent with the district court in eminent domain cases and in civil cases when the matter in controversy exceeds \$500 and does not exceed \$10,000, exclusive of interest.

Sec. 4. In addition to the jurisdiction conferred on the County Court at Law of Randall County by the other provisions of this Act, the county court at law has concurrent civil jurisdiction with the district courts of Randall County in suits, causes, and matters involving adoptions, removal of disability of minority and coverture, wife and child desertion, delinquent, neglected, or dependent child proceedings, Uniform Reciprocal Enforcement of Support Act, and all jurisdiction, powers, and authority now or hereafter placed in the district or county courts under the juvenile and child welfare laws of this state; and of all divorce, marriage, and annulment cases, including the adjustment of property rights

and custody and support of minor children involved therein, temporary support pending final hearing, and any and every other matter incident to divorce or annulment proceedings as well as independent actions involving child custody or support of minors, change of name of persons, and all other cases involving justiciable controversies and differences between spouses, or between parents, or between them, or one of them, and their minor children, or between any of these and third persons; corporations, trustees, or other legal entities, which are now or may hereafter be within the jurisdiction of the district or county courts; all cases in which children are alleged or charged to be dependent and neglected children or delinquent children as provided by law, and the county court at law and its judge have power to issue writs of habeas corpus, mandamus, injunction, and all writs necessary to enforce its jurisdiction. The provisions in this subsection do not diminish the jurisdiction of the several district courts in Randall County, and the district courts shall retain and continue to exercise such jurisdiction as is now or may be hereafter conferred by law, and the jurisdiction given in this subsection is concurrent with the jurisdiction of the district courts.

Sec. 5. The county court at law, or its judge, has the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court. It may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court of inferior jurisdiction in the county. The court and judge have the power to punish for contempt as prescribed by law for county courts. The judge of the county court at law has all other powers, duties, immunities, and privileges provided by law for county court judges, except that such judge of the county court at law shall in no way have any authority over the administrative business of Randall County which is now performed by the County Judge of Randall County.

Sec. 6. The county court at law shall hold two continuous terms which commence on the first Monday in January and on the first Monday in July of each year. Each term of court continues until the next succeeding term begins.

Sec. 7. (a) The judge of the county court at law shall be a qualified voter in Randall County. He shall be a licensed attorney in this state who has been actively engaged in the practice of law for a period of five years prior to his appointment or election.

(b) The judge of the county court at law shall not engage in the private practice of law after his appointment or election.

(c) When this court is created, the Commissioners Court of Randall County shall appoint a judge to the County Court at Law of Randall County. The judge appointed serves until the next general election and until his successor is duly elected and has qualified. Beginning at the general election in 1978 or 1982 and every fourth year thereafter, there shall be elected by the qualified voters of Randall County a judge of the county court at law for a regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution.

(d) A vacancy occurring in the office of the judge of county court at law shall be filled by the Commissioners Court of Randall County, and the appointee shall hold office until the next general election and until his successor is elected and has qualified.

(e) The judge of the county court at law shall execute a bond and take the oath of office prescribed by law for county judges. He may be removed from office in the same manner and for the same causes as a county judge.

(f) The judge of the county court at law may receive a salary to be set by the commissioners court and to be paid out of the county treasury by the commissioners court. The salary may be paid in equal monthly installments. The judge of the county court at law may be entitled to traveling expenses and necessary office expenses, including administrative and clerical help, in the same manner as is allowed the county judge. The judge of the county court at law shall assess the same fees as are now prescribed or may be established by law, relating to the county judge's fees, all of which shall be collected by the clerk of the court and shall be paid into the county treasury on collection, and no part of which shall be paid to the judge.

(g) A special judge of the county court at law with the same qualifications as the regular judge may be appointed or elected in the manner provided by law for the appointment or election of a special county judge. If a judge of the county court at law is disqualified to try a case pending in his court, the parties or their attorneys may agree on the selection of a special judge for the case. A special judge is entitled to the same rate of compensation as the regular judge.

Sec. 8. (a) The criminal district attorney and sheriff of Randall County shall serve as district attorney and sheriff, respectively, of the County Court at Law of Randall County. The district clerk of Randall County shall serve as clerk of the county court at law in cases enumerated in Sections 3 and 4 of this Act, and the county clerk of Randall County shall serve as clerk of the county court at law in cases enumerated in Section 2 of this Act. These officials, either personally or by the appointment of

a deputy or assistant, shall perform the duties and responsibilities of their office and are entitled to the compensation, fees, and allowances prescribed by law for their respective offices. The commissioners court may employ as many deputy sheriffs and bailiffs as are necessary to serve the court.

(b) The judge of the county court at law shall appoint an official court reporter who shall have the same qualifications and whose duties shall in every respect be the same as now provided by law. The official court reporter is entitled to the compensation fixed by the Commissioners Court of Randall County.

Sec. 9. (a) As soon as practicable after this court is created, the county clerk shall establish a separate docket for the court created by this Act from among pending matters filed originally in the County Court of Randall County and shall transfer those matters to the docket of the court created by this Act, and the district clerk shall establish a separate docket for the court created by this Act from among pending matters filed originally in the district courts of Randall County and may transfer a sufficient number of those matters to the docket of the court created by this Act to equalize the dockets. Equalization of case load shall be the primary objective in establishing the initial case docket for the county court at law.

(b) On the transfer of all cases specified in Subsection (a) of this section to the county court at law, and in cases transferred to any of the courts in Randall County by order of the judge of another court, all processes, writs, bonds, recognizances, or other obligations issued or made in the cases shall be returned to and filed in the court to which the transfer is made. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of the bonds or recognizances at the terms of the court to which the cases are transferred as are fixed by law. All processes issued or returned before transfer of the cases as well as all bonds and recognizances before taken in the cases shall be valid and binding as though originally issued out of the court to which the transfer is made.

(c) The judge of the county court and the judge of the county court at law may transfer cases to and from the dockets of their respective courts, in matters within their jurisdiction, in order that the business may be equally distributed between them. All cases of concurrent jurisdiction enumerated in Sections 3 and 4 of this Act may be instituted in or transferred between the districts courts of Randall County and the County Court at Law of Randall County. However, no case may be transferred from one court to another without the consent of the

judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred.

(d) The county judge and the judge of the county court at law may freely exchange benches and courtrooms with each other in matters within their jurisdiction so that if one is ill, disqualified, or otherwise absent, the other may hold court for him without the necessity of transferring the case involved. Either judge may hear all or any part of a case pending in the county court or county court at law, but only in matters within their jurisdiction, and may rule and enter orders on and continue, determine, or render judgment on all or any part of the case without the necessity of transferring it to his own docket. The district judges and the judge of the county court at law may freely exchange benches and courtrooms with each other in matters within their concurrent jurisdiction so that if one is ill, disqualified, or otherwise absent, another may hold court for him without the necessity of transferring the case involved. Either of the judges may hear all or any part of a case pending in the district court or county court at law, but only in matters within their jurisdiction, and may rule and enter orders on and continue, determine, or render judgment on all or any part of the case without the necessity of transferring it to his own docket. However, a judge may not sit or act in a case unless it is within the jurisdiction of his court. Each judgment and order shall be entered in the minutes of the court in which the case is pending. The provisions providing for the exchange of benches by and between the judges are cumulative of and in addition to the provisions herein provided for the selection and appointment of a special judge of the county court at law.

Sec. 10. (a) Practice in the county court at law shall conform to that prescribed by general law for county courts, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings in the county court at law involving those matters of concurrent jurisdiction enumerated in Section 4 of this Act shall be governed by the provisions of this Act and the laws and rules pertaining to district courts, general or special, as well as county courts. If a case enumerated in Section 4 of this Act is tried before a jury, the jury shall be composed of 12 members.

(b) The laws which govern the drawing, selection, service, and pay of jurors for county courts apply to the county court at law.

(c) Jurors regularly impaneled for a week by the district court or courts may, on request of either the county judge or the judge of the county court at law, be made available and shall serve for the week in either the county court or county court at law.

Sec. 11. The Commissioners Court of Randall County shall furnish and equip a suitable courtroom and office space for the court created by this Act.

Sec. 12. The seal of the court created by this Act shall be the same as that provided by law for county courts, except the seal shall contain the words "County Court at Law of Randall County."

Sec. 13. The County Court at Law of Randall County is created on January 1, 1980, or on a date determined by the commissioners court by an order entered on its minutes, which ever date is earlier. [Acts 1977, 65th Leg., p. 1723, ch. 688, §§ 1 to 13, eff. Aug. 29, 1977.]

REEVES COUNTY

Art. 1970-372. County Court at Law of Reeves County

Sec. 1. The County Court at Law of Reeves County is created on the date determined by the provisions of Section 20 of this Act. It shall sit in Pecos, Texas.

Sec. 2. (a) The County Court at Law of Reeves County has jurisdiction in all matters and causes, civil, criminal, juvenile, and probate, original and appellate, over which, by the general laws of the state, the county court of the county would have jurisdiction. This provision does not affect the jurisdiction of the commissioners court, or of the County Judge of Reeves County as the presiding officer of the commissioners court, as to roads, bridges, and public highways, and matters which are now in the jurisdiction of the commissioners court or the judge thereof.

(b) The County Court at Law of Reeves County has jurisdiction concurrent with the district court in eminent domain cases, as provided by general law, and in civil cases when the matter in controversy exceeds \$500 and does not exceed \$10,000, exclusive of interest.

(c) The County Court at Law of Reeves County has concurrent civil jurisdiction with the district court in Reeves County in suits, causes, and matters involving adoptions, removal of disability of minority and coverture, and all divorce and marriage annulment cases, including the adjustment of property rights and custody and support of minor children involved therein, temporary support pending final hearing, and any and every other matter incident to divorce or annulment proceedings as well as independent actions involving child support and custody of minors, and change of name of persons. This court and the judge thereof shall have the power to issue writs of habeas corpus, mandamus, injunction, and all writs necessary to enforce its jurisdiction.

(d) Nothing in this Act shall diminish the jurisdiction of the district courts in Reeves County, and the

district courts shall retain and continue to exercise such jurisdiction as is now or may be hereafter conferred by law, and the jurisdiction given in this Act is concurrent with the jurisdiction of the district courts.

Sec. 3. The County Court of Reeves County shall have no jurisdiction, civil, criminal, juvenile, or probate, original or appellate. All ex officio duties of the county judge shall be exercised and retained by the judge of the County Court of Reeves County, except insofar as same shall by this Act be committed to the County Court at Law of Reeves County.

Sec. 4. The laws which govern the drawing, selection, service, and pay of jurors for county courts apply to the County Court at Law of Reeves County. Jurors regularly impaneled for a week by the district court may, on request of the judge of the county court at law, be made available and shall serve for the week in the county court at law.

Sec. 5. (a) Practice in the county court at law shall conform to that prescribed by general law for county courts, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings in the county court at law involving those matters of concurrent jurisdiction enumerated in Subsection (c) of Section 2 of this Act shall be governed by the provisions of this Act and the laws and rules pertaining to district courts, general and special, as well as county courts. If a case enumerated in Subsection (c) of Section 2 is tried before a jury, the jury shall be composed of 12 members.

(b) The county court at law shall have the same terms of court as the district court sitting in Reeves County as presently established or as they may hereinafter be changed.

(c) The county court at law, or its judge, has the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court. It may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court of inferior jurisdiction in the county. The court and judge have the power to punish for contempt as prescribed by law for county courts.

Sec. 6. At the general election in 1978 and every four years thereafter, there shall be elected a judge of the County Court at Law of Reeves County who shall have been a duly licensed and practicing member of the State Bar of Texas for not less than five years, who shall be well informed in the laws of the state, who shall have resided in and been actively engaged in the practice of law in Reeves County for a period of not less than two years prior to the

general election, and who shall hold his office for four years and until his successor shall have been duly elected and qualified. When this court is created, the commissioners court shall appoint a judge of the County Court at Law of Reeves County who shall have the qualifications prescribed in this section and who shall serve until December 31, 1978, and until his successor shall be duly elected and qualified. A vacancy thereafter occurring in the office of the judge of the County Court at Law of Reeves County shall in like manner be filled by the commissioners court, with the appointee to hold office until the next succeeding general election and until his successor shall be duly elected and qualified.

Sec. 7. The judge of the County Court at Law of Reeves County may receive a salary in an amount determined by the commissioners court, not to exceed 90 percent of the total salary paid the district judge, to be paid out by the county treasurer by order of the commissioners court. The salary shall be paid monthly in equal installments. The judge of the county court at law is entitled to traveling expenses and necessary office expenses, including administrative and clerical help. The judge of the County Court at Law of Reeves County shall assess the same fees as are now prescribed by law relating to the county judge's fees, all of which shall be collected by the clerk of the court, shall be paid into the county treasury on collection, and no part of which shall be paid to the judge.

Sec. 8. The judge of the County Court at Law of Reeves County shall execute a bond and take the oath of office as required by law relating to county and district judges.

Sec. 9. The judge of the county court at law shall not engage in the practice of law in this or any other court in the State of Texas.

Sec. 10. The judge of the County Court at Law of Reeves County may be removed from office in the same manner and for the same causes as any county judge may be removed under the laws of this state.

Sec. 11. A special judge of the County Court at Law of Reeves County may be appointed or elected as provided by law relating to county courts. In the case of a disqualification of the judge of the county court at law to try a case pending in this court, the parties or their attorneys may agree on the selection of a special judge to try the case. A special judge, whether appointed, elected, or selected by the parties, shall receive, as compensation for each day he actively serves, an amount equal to 1/365th of the annual salary of the judge of the County Court at Law of Reeves County, to be paid out of the general fund of the county by the commissioners court.

Sec. 12. The county attorney of Reeves County shall represent the state in the County Court at Law of Reeves County as provided by law for prosecutions in county court, and shall be entitled to the fees prescribed by law for prosecutors in the county court.

Sec. 13. The sheriff of Reeves County shall in person or by deputy attend the court when required by the judge thereof.

Sec. 14. The county clerk of Reeves County shall be the clerk of the County Court at Law of Reeves County, except that the district clerk of Reeves County shall be the clerk of the county court at law in all those cases enumerated in Subsection (c), Section 2, of this Act.

Sec. 15. The judge of the County Court at Law of Reeves County shall appoint an official shorthand reporter for the court who shall be well-skilled in his profession and shall be a sworn officer of the court and shall hold his office at the pleasure of the court. The reporter shall take the oath required of official court reporters, and shall receive a salary to be set by the commissioners court of Reeves County and to be paid out of the county treasury of Reeves County, as other county officials are paid, in equal monthly installments. All other provisions of Chapter 13, Title 42, Revised Civil Statutes of Texas, 1925, as amended, and as the same may hereafter be amended, and all other provisions of the law relating to official court reporters shall apply insofar as they are applicable to the official shorthand reporter authorized in this Act to be appointed and insofar as they are not inconsistent with this Act.

Sec. 16. The seal of the court shall be the same as that provided by law for county courts, except the seal shall contain the words "County Court at Law of Reeves County." The commissioners court of Reeves County shall furnish and equip a suitable courtroom and office space for the court created by this Act.

Sec. 17. All cases of concurrent jurisdiction may be instituted in or transferred between the district court of Reeves County and the County Court at Law of Reeves County.

Sec. 18. All cases appealed from the justice courts and other inferior courts in Reeves County shall be appealed to the County Court at Law of Reeves County under the provisions governing such appeals to the county courts. The laws of the State of Texas, the rules of procedure, and the rules of evidence shall be applicable to and control trials and proceedings in the County Court at Law of Reeves County, and shall be applicable to and govern the proceedings in and appeals to and appeals from the County Court at Law of Reeves County.

Sec. 19. When the county court at law is created, all cases and matters pending before the County Court of Reeves County are transferred to the County Court at Law of Reeves County. All processes, writs, bonds, recognizances, and other obligations issued or made in the cases transferred shall be returned to and filed in the county court at law. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of such bonds or recognizances at the terms of the county court at law as fixed by law. All processes issued or returned before transfer of the cases as well as all bonds and recognizances before taken in the cases shall be valid and binding as though originally issued out of the county court at law.

Sec. 20. The County Court at Law of Reeves County is created on January 1, 1978, or on a date determined by the commissioners court by an order entered in its minutes, whichever date is earlier. [Acts 1977, 65th Leg., p. 1736, ch. 692, §§ 1 to 20, eff. June 15, 1977.]

VAL VERDE COUNTY

Art. 1970-373. County Court at Law of Val Verde County

Creation

Sec. 1. The County Court at Law of Val Verde County is created on the date determined by the provisions of Section 17 of this Act. It shall sit in Del Rio, Texas.

Jurisdiction

Sec. 2. (a) The County Court at Law of Val Verde County has jurisdiction concurrently with the County Court of Val Verde County in all matters and causes, civil, criminal, juvenile and probate, original and appellate, over which, by the constitution and general laws of the state, the county court has jurisdiction. This provision does not affect the jurisdiction of the commissioners court, or of the county judge of Val Verde County as the presiding officer of the commissioners court, as to roads, bridges, and public highways, and matters which are now in the jurisdiction of the commissioners court or the judge thereof, or the administrative business of Val Verde County that is now performed by the county judge of Val Verde County.

(b) The County Court at Law of Val Verde County has concurrent jurisdiction with the district court in civil cases when the matter in controversy exceeds \$500 and does not exceed \$10,000, exclusive of interest.

(c) The County Court at Law of Val Verde County has concurrent civil jurisdiction with the district court of Val Verde County in suits, causes and matters involving adoptions, termination of parental

rights, removal of disability of minority and cover-
ture, all divorce and marriage annulment cases, in-
cluding the adjustment of property rights and custo-
dy and support of minor children involved therein,
temporary support pending final hearing, and any
and every other matter incident to divorce or annul-
ment proceedings as well as independent actions
involving child support and custody of minors, and
change of name of persons.

(d) The county court at law has the concurrent
jurisdiction with the district court that is specified in
this section, which concurrent jurisdiction does not
diminish the jurisdiction of the district court in Val
Verde County, and the district court shall retain and
continue to exercise the jurisdiction that is conferred
by law on district courts.

Jurors

Sec. 3. The laws that govern the drawing, selec-
tion, service, and pay of jurors for county courts
apply to the county court at law. Jurors regularly
impaneled for a week by the district court may, on
request of the judge of the county court at law, be
made available and shall serve for the week in the
county court at law.

Practice and Procedure

Sec. 4. Practice in the county court at law shall
conform to that prescribed by general law for coun-
ty courts, except that practice and procedure, rules
of evidence, issuance of process and writs, and all
other matters pertaining to the conduct of trials and
hearings in the county court at law involving those
matters of concurrent jurisdiction enumerated in
Section 2(c) of this Act shall be governed by the
provisions of this Act and the laws and rules pertain-
ing to district courts, general and special, as well as
county courts. If a case enumerated in Section 2(c)
is tried before a jury, the jury shall be composed of
12 members.

Terms

Sec. 5. The county court at law shall have the
same terms of court as the district court sitting in
Val Verde County as presently established or as they
may be changed.

Writ Power

Sec. 6. The county court at law, or its judge, has
the power to issue writs of injunction, mandamus,
sequestration, attachment, garnishment, certiorari,
supersedeas, and all writs necessary for the enforce-
ment of the jurisdiction of the court. It may issue
writs of habeas corpus in cases where the offense
charged is within the jurisdiction of the court or of
any other court of inferior jurisdiction in the county.
The court and judge have the power to punish for
contempt as prescribed by law for county courts.

Election; Vacancy; Qualifications

Sec. 7. At the general election in 1982 and every
four years thereafter, there shall be elected by the
qualified voters of Val Verde County a judge of the
county court at law, who shall have been a duly
licensed and practicing member of the State Bar of
Texas for not less than five years, who shall be well
informed in the laws of the state, who shall have
resided in and been actively engaged in the practice
of law in Val Verde County for a period of not less
than two years prior to the general election, and
who shall hold office for four years and until his
successor is elected and has qualified. When this
court is created, the commissioners court shall ap-
point a judge of the county court at law, who shall
have the qualifications prescribed in this section and
who shall serve until the next general election and
until his successor is elected and has qualified. A
vacancy thereafter occurring in the office of the
judge of the county court at law shall in like manner
be filled by the commissioners court, with the ap-
pointee holding office until the next succeeding gen-
eral election and until his successor is elected and
has qualified.

Compensation

Sec. 8. The judge of the county court at law may
receive an annual salary to be determined by the
commissioners court in an amount not less than
\$20,000 and not more than 90 percent of the total
compensation paid the district judge. The salary
shall be paid monthly in equal installments by the
county treasurer by order of the commissioners
court. The judge of the county court at law is
entitled to traveling expenses and necessary office
expenses, including administrative and clerical help.
The judge of the county court at law shall assess the
same fees as are now prescribed by law relating to
the county judge's fees, all of which shall be collect-
ed by the clerk of the court, shall be paid into the
county treasury on collection, and no part of which
shall be paid to the judge.

Bond and Oath

Sec. 9. The judge of the county court at law
shall execute a bond and take the oath of office as
required by law relating to county and district
judges.

Private Practice Prohibited

Sec. 10. The judge of the county court at law
shall not engage in the private practice of law after
his appointment or election.

Removal

Sec. 11. The judge of the county court at law
may be removed from office in the same manner and
for the same causes as any county judge may be
removed under the laws of this state.

Special Judge

Sec. 12. A special judge of the county court at law may be appointed or elected as provided by law relating to county courts. In the case of a disqualification of the judge of the county court at law to try a case pending in this court, the parties or their attorneys may agree on the selection of a special judge to try the case. A special judge, whether appointed, elected, or selected by the parties, shall receive, as compensation for each day he actively serves, an amount equal to $\frac{1}{365}$ of the annual salary of the judge of the county court at law, to be paid out of the general fund of the county by the commissioners court.

Personnel

Sec. 13. (a) The county attorney of Val Verde County shall represent the state in the county court at law as provided by law for prosecutions in county court, and shall be entitled to the fees prescribed by law for prosecutors in the county court.

(b) The sheriff of Val Verde County shall in person or by deputy attend the court when required by the judge thereof.

(c) The county clerk of Val Verde County shall be the clerk of the county court at law, except that the district clerk of Val Verde County shall be the clerk of the county court at law in all those cases enumerated in Section 2(c) of this Act.

(d) The judge of the county court at law shall appoint an official shorthand reporter for the court, who shall have the qualifications required by law, shall be a sworn officer of the court, and shall hold the office at the pleasure of the court. The reporter shall take the oath required of official court reporters, and shall receive a salary to be set by the commissioners court of Val Verde County and to be paid out of the county treasury, as other county officials are paid, in equal monthly installments. All other provisions of the law relating to official court reporters shall apply insofar as they are applicable to the official shorthand reporter authorized in this Act to be appointed and insofar as they are not inconsistent with this Act.

Seal and Courtroom

Sec. 14. The seal of the court shall be the same as that provided by law for county courts, except the seal shall contain the words "County Court at Law of Val Verde County." The commissioners court of Val Verde County may furnish and equip a suitable courtroom and office space for the court created by this Act.

Transfer of Cases

Sec. 15. (a) On the first day of the court's existence, the county clerk shall establish a separate docket for the court created by this Act from among

pending matters filed originally in the County Court of Val Verde County, by transferring the odd-numbered suits to the docket of the court created by this Act and leaving the even-numbered suits in the county court.

(b) The judge of the county court and the judge of the county court at law may transfer cases to and from the dockets of their respective courts, in matters within their jurisdiction, in order that the business may be equally distributed between them. All cases of concurrent jurisdiction enumerated in Section 2(b) and 2(c) of this Act may be instituted in or transferred between the district courts of Val Verde County and the County Court at Law of Val Verde County. However, no case may be transferred unless it is within the jurisdiction of the court to which it is transferred, and no case may be transferred from one court to another without the consent of the judge of the court to which it is transferred.

Exchange of Benches

Sec. 16. The county judge and the judge of the county court at law may freely exchange benches and courtrooms with each other in matters within their jurisdiction so that if one is ill, disqualified, or otherwise absent, the other may hold court for him without the necessity of transferring the case involved. Either judge may hear all or any part of a case pending in the county court or county court at law, but only in matters within their jurisdiction, and may rule and enter orders on and continue, determine, or render judgment on all or any part of the case without the necessity of transferring it to his own docket. However, a judge may not sit or act in a case unless it is within the jurisdiction of his court. Each judgment and order shall be entered in the minutes of the court in which the case is pending. The provisions providing for the exchange of benches by and between the judges are cumulative of and in addition to the provisions herein provided for the selection and appointment of a special judge of the county court at law.

Effective Date

Sec. 17. The County Court at Law of Val Verde County is created on January 1, 1982, or on a date determined by the commissioners court by an order entered in its minutes, whichever date is earlier. [Acts 1979, 66th Leg., p. 341, ch. 156, §§ 1 to 17, eff. Aug. 27, 1979.]

WISE COUNTY

Art. 1970-374. County Court at Law of Wise County

Sec. 1. The County Court at Law of Wise County is created. The court shall sit in Decatur, Texas.

Sec. 2. (a) The County Court at Law of Wise County has the same jurisdiction over all causes and

proceedings, civil and criminal, juvenile and probate, original and appellate, prescribed by law for county courts, and its jurisdiction in those matters is concurrent with that of the County Court of Wise County. This provision does not affect the jurisdiction of the commissioners court or the county judge of Wise County as the presiding officer of the commissioners court.

(b) The county court at law has jurisdiction concurrent with the district court in eminent domain cases and in civil cases when the matter in controversy exceeds \$500 and does not exceed \$5,000, exclusive of interest.

(c) The county court at law or its judge has the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court. It may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court of inferior jurisdiction in the county. The court and judge have the power to punish for contempt as prescribed by law for county courts. The judge of the county court at law has all other powers, duties, immunities, and privileges provided by law for county court judges.

(d) The county judge of Wise County is the judge of the County Court of Wise County. All ex officio duties of the county judge shall be exercised by the judge of the County Court of Wise County unless this Act provides otherwise.

Sec. 3. The term of the county court at law is continuous on an annual basis, beginning on January 1 of each year and concluding on December 31 of the same year.

Sec. 4. (a) The judge of the county court at law must be a duly licensed and practicing member of the State Bar of Texas who has been a bona fide resident of Wise County for six months prior to his appointment or election.

(b) When this Act becomes effective, the commissioners court shall appoint a judge to the county court at law to serve until January 1 of the year following the next general election and until his successor has been duly elected and has qualified. At the next general election after the effective date of this Act, a judge shall be elected to serve until January 1, 1981. At the general election in 1982 and every fourth year thereafter, there shall be elected by the qualified voters of Wise County a judge of the County Court at Law of Wise County for a regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution. A vacancy in the office shall be filled by the commissioners court and the appointee holds

office until January 1 of the year following the next general election and until his successor has been duly elected and has qualified. The judge of the county court at law may be removed from office in the same manner and for the same causes as provided by the laws of this state for removal of county judges.

(c) The judge of the county court at law shall execute a bond and take the oath of office prescribed by law for county judges.

(d) The judge of the county court at law shall receive an annual salary in an amount to be fixed by the commissioners court, which shall not exceed 90 percent of the amount paid district judges from the General Revenue Fund of the state and which shall be paid in equal monthly installments out of the county treasury of Wise County on orders from the commissioners court. Additionally, he shall be entitled to reasonable traveling expenses and necessary office expenses, including administrative and clerical help. The judge of the county court at law shall charge the fees prescribed by law for county judges, which shall be collected by the clerk of the court and paid into the county treasury.

(e) A special judge of the county court at law with the same qualifications as the judge of the county court at law may be appointed in the manner provided by law for the appointment of a special county judge. A special judge is entitled to the same rate of compensation as the regular judge.

Sec. 5. (a) The county attorney, county clerk, and sheriff of Wise County shall serve in their respective capacities in the county court at law. They shall perform the duties and are entitled to the compensation, fees, and allowances prescribed by law for their respective offices.

(b) The judge of the county court at law may appoint an official shorthand reporter for the court who shall be a sworn officer of the court and shall hold his office at the pleasure of the court. All provisions of the general laws of Texas relating to the appointment of a reporter for the district court shall apply, so far as applicable, to the official shorthand reporter authorized to be appointed by the judge of the county court at law. The reporter shall be entitled to the same fees and shall perform the same duties as provided in the general laws and in addition shall receive a salary, not to exceed the compensation paid to the official shorthand reporter of the district court of Wise County, to be determined by the judge of the county court at law and paid out of the county treasury on order of the commissioners court.

(c) The seal of the court shall contain the words "County Court at Law of Wise County," but in other respects is identical with the seal of the county court of Wise County.

Sec. 6. (a) Practice in the county court at law shall conform to that prescribed by general law for county courts.

(b) The laws which govern the drawing, selection, service, and pay of jurors for county courts apply to the county court at law.

(c) Jurors regularly impaneled for a week by the district court or courts may, on request of the judge of the county court at law, be made available and shall serve for the week in the county court at law.

Sec. 7. (a) In order that the business may be equally distributed between the courts, the judges of the county court at law and the county court may transfer cases to and from the dockets of their respective courts and the judges of the county court at law and the district courts may transfer cases to and from the dockets of their respective courts. However, no case may be transferred from one court to another court without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred.

(b) The county judge and the judge of the county court at law may, in their discretion, exchange benches from time to time, and either of the judges may, in his own courtroom, try and determine any case or proceeding pending in either of the courts without having the case transferred, or may sit in either of the courts and there hear and determine any case there pending, and each judgment and order shall be entered in the minutes of the court in which the case is pending. The judges may try different cases in the same court at the same time and each may occupy his own courtroom or the room of any other court. In case of absence, sickness, or disqualification of either of the judges, the other judge may hold court for him. Either of the judges may hear any part of any case or proceeding pending in either of the courts and determine the same or may hear and determine any question in any case, and either of the judges may complete the hearing and render judgment in the case. However, the judge of either court may not sit or act in a case unless it is within the jurisdiction of his court.

(c) In cases transferred to any of the courts by order of the judge of another court or by Section 10 of this Act, all processes, writs, bonds, recognizances, or other obligations issued or made in the cases transferred shall be returned to and filed in the court to which the transfer is made. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of such bonds or recognizances at the terms of the court to which the cases are transferred as fixed by law. All processes issued or returned before transfer of the cases as well as all

bonds and recognizances before taken in the cases shall be valid and binding as though originally issued out of the court to which the transfer is made.

Sec. 8. The judge of the county court at law is a member of the juvenile board of Wise County.

Sec. 9. The commissioners court shall furnish and equip a suitable courtroom and office space for the court created by this Act.

Sec. 10. All cases and matters, civil, criminal, and probate, original and appellate, pending before the County Court of Wise County on the effective date of this Act are transferred to the County Court at Law of Wise County.

[Acts 1979, 66th Leg., p. 418, ch. 192, §§ 1 to 10, eff. Sept. 1, 1979.]

GREGG COUNTY

Art. 1970-375. County Court at Law of Gregg County

Creation

Sec. 1. The County Court at Law of Gregg County is created on the date determined under Section 11 of this Act.

Jurisdiction

Sec. 2. (a) The County Court at Law of Gregg County, concurrently with the County Court of Gregg County, has jurisdiction over all causes and proceedings, civil and criminal, juvenile and probate, original and appellate, prescribed by the constitution and general laws of this state for county courts. However, it does not have jurisdiction over causes and proceedings concerning roads, bridges, and public highways and the general administration of county business which is now within the jurisdiction of the Commissioners Court of Gregg County.

(b) The County Court at Law of Gregg County has concurrent jurisdiction with the district court in eminent domain cases and in civil cases when the matter in controversy exceeds \$500 and does not exceed \$20,000, exclusive of interest.

Writ Power

Sec. 3. The county court at law, or its judge, has the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court. It may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court of inferior jurisdiction in the county. The court and judge have the power to punish for contempt as prescribed by law for county courts. The judge of the county court at law has all other powers, duties, immunities, and privileges provided

by law for county court judges, except that such judge of the county court at law shall in no way have any authority over the administrative business of Gregg County which is now performed by the County Judge of Gregg County.

Terms

Sec. 4. The county court at law shall hold two continuous terms which commence on the first Monday in January and on the first Monday in July of each year. Each term of court continues until the next succeeding term begins.

Judge

Sec. 5. (a) The judge of the county court at law shall be a qualified voter in Gregg County. He shall be a licensed attorney in this state who has been actively engaged in the practice of law for a period of five years prior to his appointment or election.

(b) The judge of the county court at law shall not engage in the private practice of law after his appointment or election.

(c) When this court is created, the Commissioners Court of Gregg County shall appoint a judge to the County Court at Law of Gregg County. The judge appointed serves until the next general election and until his successor is duly elected and has qualified. Beginning at the general election in 1982 and every fourth year thereafter, there shall be elected by the qualified voters of Gregg County a judge of the county court at law for a regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution.

(d) A vacancy occurring in the office of the judge of county court at law shall be filled by the Commissioners Court of Gregg County, and the appointee shall hold office until the next general election and until his successor is elected and has qualified.

(e) The judge of the county court at law shall execute a bond and take the oath of office prescribed by law for county judges. He may be removed from office in the same manner and for the same causes as a county judge.

(f) The judge of the County Court at Law of Gregg County and the county judge of Gregg County shall receive an annual salary to be set by the commissioners court in an amount not to exceed 90 percent of the total annual salary paid to the judges of the district courts having jurisdiction in Gregg County. The salary may be paid in equal monthly installments. The judge of the county court at law may be entitled to traveling expenses and necessary office expenses, including administrative and clerical help, in the same manner as is allowed the county judge. The judge of the county court at law shall assess the same fees as are prescribed by law relating to county judges' fees, all of which shall be collected by the clerk of the court and shall be paid

into the county treasury on collection, and no part of which shall be paid to the judge.

(g) A special judge of the county court at law with the same qualifications as the regular judge may be appointed or elected in the manner provided by law for the appointment or election of a special county judge. If a judge of the county court at law is disqualified to try a case pending in his court, the parties or their attorneys may agree on the selection of a special judge for the case. A special judge is entitled to the same rate of compensation as the regular judge.

Court Officials and Personnel

Sec. 6. (a) The criminal district attorney and sheriff of Gregg County shall serve as district attorney and sheriff, respectively, of the County Court at Law of Gregg County. The district clerk of Gregg County shall serve as clerk of the county court at law in cases enumerated in Section 2(b), and the county clerk of Gregg County shall serve as clerk of the county court at law in cases enumerated in Section 2(a) of this Act. These officials, either personally or by the appointment of a deputy or assistant, shall perform the duties and responsibilities of their office and are entitled to the compensation, fees, and allowances prescribed by law for their respective offices. The commissioners court may employ as many deputy sheriffs and bailiffs as are necessary to serve the court.

(b) The judge of the county court at law shall appoint an official court reporter who shall have the same qualifications and whose duties shall in every respect be the same as now provided by law. The official court reporter is entitled to the compensation fixed by the Commissioners Court of Gregg County.

(c) The judge of the County Court at Law of Gregg County, Texas, with the consent of the commissioners court, may employ a secretary, the secretary being entitled to a salary as determined by the commissioners court.

Transfer of Cases and Exchange of Benches

Sec. 7. (a) As soon as practicable after this court is created, the county clerk shall establish a separate docket for the court created by this Act from among pending matters filed originally in the County Court of Gregg County and shall transfer those matters to the docket of the court created by this Act, and the district clerk shall establish a separate docket for the court created by this Act from among pending matters filed originally in the district courts of Gregg County and may transfer a sufficient number of those matters to the docket of the court created by this Act to equalize the dockets. Equalization of case load shall be the primary objective in establishing the initial case docket for the county court at law.

(b) The judge of the county court and the judge of the county court at law may transfer cases to and from the dockets of their respective courts, in matters within their jurisdiction, in order that the business may be equally distributed between them. All cases of concurrent jurisdiction enumerated in Section 2(b) of this Act may be instituted in or transferred between the district courts of Gregg County and the County Court at Law of Gregg County. However, no case may be transferred from one court to another without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred.

(c) On the transfer of all cases specified in Subsection (a) of this section to the county court at law, and in cases transferred to any of the courts in Gregg County by order of the judge of another court, all processes, writs, bonds, recognizances, or other obligations issued or made in the cases shall be returned to and filed in the court to which the transfer is made. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of the bonds or recognizances at the terms of the court to which the cases are transferred as are fixed by law. All processes issued or returned before transfer of the cases as well as all bonds and recognizances before taken in the cases shall be valid and binding as though originally issued out of the court to which the transfer is made.

(d) The county judge and the judge of the county court at law may freely exchange benches and courtrooms with each other in matters within their jurisdiction so that if one is ill, disqualified, or otherwise absent, the other may hold court for him without the necessity of transferring the case involved. Either judge may hear all or any part of a case pending in the county court or county court at law, but only in matters within their jurisdiction, and may rule and enter orders on and continue, determine, or render judgment on all or any part of the case without the necessity of transferring it to his own docket. Each judgment and order shall be entered in the minutes of the court in which the case is pending. The provisions for the exchange of benches by and between the judges are cumulative of and in addition to the provisions in this Act for the selection and appointment of a special judge of the county court at law.

Practice and Jurors

Sec. 8. (a) Practice in the county court at law shall conform to that prescribed by general law for county courts.

(b) The laws which govern the drawing, selection, service, and pay of jurors for county courts apply to the county court at law.

(c) Jurors regularly impaneled for a week by the district court or courts may, on request of either the county judge or the judge of the county court at law, be made available and shall serve for the week in either the county court or county court at law.

Courtroom

Sec. 9. The Commissioners Court of Gregg County shall furnish and equip a suitable courtroom and office space for the court created by this Act.

Seal

Sec. 10. The seal of the court created by this Act shall be the same as that provided by law for county courts, except the seal shall contain the words "County Court at Law of Gregg County."

Effective Date

Sec. 11. The County Court at Law of Gregg County is created on January 1, 1981, or on a date determined by the commissioners court by an order entered on its minutes, whichever date is earlier. [Acts 1979, 66th Leg., p. 889, ch. 409, §§ 1 to 11, eff. Aug. 27, 1979.]

MEDINA COUNTY

Art. 1970-376. County Court at Law of Medina County

Creation

Sec. 1. The County Court at Law of Medina County is created on the date determined by Section 10 of this Act.

Jurisdiction

Sec. 2. (a) The County Court at Law of Medina County has jurisdiction over all causes and proceedings, civil and criminal, juvenile and probate, original and appellate, prescribed by the constitution and general laws of the state for county courts, and its jurisdiction is concurrent with the jurisdiction of the County Court of Medina County. It does not have jurisdiction over causes and proceedings concerning roads, bridges, and public highways and the general administration of county business which is now within the jurisdiction of the Commissioners Court of Medina County.

(b) The County Court at Law of Medina County has jurisdiction concurrent with the district court in eminent domain cases and in civil cases when the matter in controversy exceeds \$500 and does not exceed \$20,000, exclusive of interest, as provided by general law.

(c) In addition to the jurisdiction conferred on the County Court at Law of Medina County by the other provisions of this Act, the county court at law has concurrent jurisdiction with the district courts in Medina County in suits and causes involving family law matters, including adoptions; birth records; re-

removal of disability of minority or coverture; change of name of persons; divorce and marriage annulment cases, including the adjustment of property rights, custody and support of minor children involved, temporary support pending final hearing, and every other matter incident to divorce or annulment proceedings; and independent actions involving child welfare, custody, support and reciprocal support, dependency, neglect, and delinquency; and independent actions involving controversies between parent and child and between husband and wife. The provisions in this subsection do not diminish the jurisdiction of the district courts in Medina County, and the district courts shall retain and continue to exercise the jurisdiction that is conferred by law on district courts.

(d) The county court at law, or its judge, has the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court. It may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court of inferior jurisdiction in the county. The court and judge have the power to punish for contempt as prescribed by law for county courts. The judge of the county court at law has all other powers, duties, immunities, and privileges provided by law for county court judges, except that such judge of the county court at law shall in no way have any authority over the administrative business of Medina County which is now performed by the county judge of Medina County.

Terms

Sec. 3. The county court at law shall hold two continuous terms which commence on the first Monday in January and on the first Monday in July of each year. Each term of court continues until the next succeeding term begins.

Judge

Sec. 4. (a) The judge of the county court at law shall be a qualified voter in Medina County, shall have been a resident of Medina County for two years, and shall be a licensed attorney in this state who has been actively engaged in the practice of law or has been a judge of a court in this state, or both combined, for four years prior to the judge's appointment or election.

(b) When this court is created, the governor shall appoint a judge to the county court at law, who shall serve until the next general election after he or she takes office, and until his or her successor is elected and has qualified. Beginning at the general election in 1982 and every fourth year thereafter, there shall be elected by the qualified voters of Medina County a judge of the county court at law for a regular

term of four years as provided by Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution.

(c) After the initial appointment, a vacancy occurring in the office of the judge of the county court at law shall be filled by the Commissioners Court of Medina County, and the appointee shall hold office until the next general election and until his or her successor is elected and has qualified.

(d) The judge of the county court at law shall execute a bond and take the oath of office prescribed by law for county judges. The judge may be removed from office in the same manner and for the same causes as a county judge.

(e) The judge of the county court at law shall receive a salary to be set by the commissioners court and to be paid out of the county treasury by the commissioners court in an amount not to exceed 90 percent of the amount paid a district judge having jurisdiction in Medina County. The salary shall be paid in equal monthly installments. The judge of the county court at law shall be entitled to traveling expenses and necessary office expenses, including administrative and clerical help, in the same manner as is allowed the county judge. The judge of the county court at law shall assess the same fees as are now prescribed or may be established by law, relating to the county judge's fees, all of which shall be collected by the clerk of the court and shall be paid into the county treasury on collection, and no part of which shall be paid to the judge.

(f) A special judge of the county court at law with the same qualifications as the regular judge may be appointed or elected in the manner provided by law for the appointment or election of a special county judge. If a judge of the county court at law is disqualified to try a case pending in his or her court, the parties or their attorneys may agree on the selection of a special judge for the case. A special judge is entitled to the same rate of compensation as the regular judge.

Personnel

Sec. 5. (a) The county attorney, county clerk, and sheriff of Medina County shall serve as county attorney, clerk, and sheriff, respectively, for the county court at law, except that the district clerk of Medina County shall serve as clerk of the county court at law in cases enumerated in Section 2(c) of this Act and shall establish a separate docket for the county court at law. These officials, either personally or by the appointment of a deputy or assistant, shall perform the duties and responsibilities of their office and are entitled to the compensation, fees, and allowances prescribed by law for their respective offices. The commissioners court may employ as many deputy sheriffs and bailiffs as are necessary to serve the court.

(b) The judge of the county court at law shall appoint an official court reporter who shall have the same qualifications and whose duties shall in every respect be as provided by law for official court reporters. The official court reporter is entitled to the compensation fixed by the Commissioners Court of Medina County.

Transfer of Cases and Judges

Sec. 6. (a) As soon as practicable after this court is created, the county clerk shall establish a separate docket for the court created by this Act from among pending matters filed originally in the county court, and shall transfer those matters to the docket of the court created by this Act, and the district clerk shall establish a separate docket for the court created by this Act from among pending matters filed originally in the district courts of Medina County and may transfer a sufficient number of those matters to the docket of the court created by this Act to equalize the dockets. Equalization of case load shall be the primary objective in establishing the initial case docket for the county court at law.

(b) The judge of the county court and the judge of the county court at law may transfer cases to and from the dockets of their respective courts, in matters within their jurisdiction, in order that the business may be equally distributed between them. All cases of concurrent jurisdiction enumerated in Section 2(c) of this Act may be instituted in or transferred between the district courts of Medina County and the County Court at Law of Medina County. However, no case may be transferred from one court to another without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred.

(c) On the transfer of all cases specified in Subsection (a) of this section to the county court at law, and in cases transferred to any of the courts in Medina County by order of the judge of another court, all processes, writs, bonds, recognizances, or other obligations issued or made in the cases shall be returned to and filed in the court to which the transfer is made. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of the bonds or recognizances at the terms of the court to which the cases are transferred as fixed by law. All processes issued or returned before transfer of the cases, as well as all bonds and recognizances taken before transfer, shall be valid and binding as though originally issued out of the court to which the transfer is made.

(d) The county judge and the judge of the county court at law may freely exchange benches and courtrooms with each other in matters within their jurisdiction so that if one is ill, disqualified, or otherwise

absent, the other may hold court for him or her without the necessity of transferring the case involved. Either judge may hear all or any part of a case pending in the county court or county court at law, but only in matters within their jurisdiction, and may rule and enter orders on and continue, determine, or render judgment on all or any part of the case without the necessity of transferring it to his or her own docket. However, a judge may not sit or act in a case unless it is within the jurisdiction of his or her court. Each judgment and order shall be entered in the minutes of the court in which the case is pending. The provisions providing for the exchange of benches by and between the judges are cumulative of and in addition to the provisions here-in provided for the selection and appointment of a special judge of the county court at law.

Practice and Procedure

Sec. 7. (a) Practice in the county court at law shall conform to that prescribed by general law for county courts, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings in the county court at law involving those matters of concurrent jurisdiction enumerated in Section 2(c) of this Act shall be governed by the provisions of this Act and the laws and rules pertaining to district courts, general or special, as well as county courts. If a case enumerated in Section 2(c) of this Act is tried before a jury, the jury shall be composed of 12 members.

(b) The laws which govern the drawing, selection, service, and pay of jurors for county courts apply to the county court at law.

(c) Jurors regularly impaneled for a week by the district court or courts may, on request of either the county judge or the judge of the county court at law, be made available and shall serve for the week in either the county court or county court at law.

Courtroom

Sec. 8. The commissioners court shall furnish and equip a suitable courtroom and office space for the court created by this Act.

Seal

Sec. 9. The seal of the court created by this Act shall be the same as that provided by law for county courts, except the seal shall contain the words "County Court at Law of Medina County."

Date of Creation

Sec. 10. The County Court at Law of Medina County is created on January 1, 1980, or on a date determined by the commissioners court by an order entered on its minutes, whichever date is earlier. [Acts 1979, 66th Leg., p. 931, ch. 426, §§ 1 to 11, eff. Aug. 27, 1979.]

TITLE 42

COURTS—PRACTICE IN DISTRICT AND COUNTY

CHAPTER ONE. INSTITUTION, PARTIES AND VENUE

3. PARTIES TO SUITS

Art. 1994. Suit and Representation by Next Friend

Minors, lunatics, idiots or non compos mentis persons who have no legal guardian may sue and be represented by "next friend" under the following rules:

1. In such cases when a judgment is recovered for money or other personal property, the court may by order entered of record, authorize such next friend or other person to take charge of such money or other property for the use and benefit of the plaintiff when he has executed a proper bond (in the sum at least double the value of the property), payable to the county judge, conditioned that he will pay said money with lawful interest thereon or deliver said property and its increase to the person entitled to receive the same when ordered by the court to do so, and that he will use such money or property for the benefit of the owner under the direction of the court. The bond shall be in a sum at least double the value of the property and money recovered, with the exception that a bond which is executed by the next friend or other person taking charge of the money or property, as principal, and by a solvent surety company authorized under the laws of Texas to execute such bonds, as surety, shall be in a sum equal to the value of the property and money recovered.

2. The judge of the court in which the judgment is rendered upon an application and hearing, in termtime or vacation, may provide by decree for an investment of the funds accruing under such judgment. Such decree, if made in vacation, shall be recorded in the minutes of the succeeding term of the court.

3. The person who takes such money or property shall receive such compensation as the court may allow and shall make such disposition thereof as the court may order; and he shall return such money or property into court upon the order of the court.

4. If any person has an interest in such recovery, the court may hear evidence as to such interest, and order such claim, or such part as is

deemed just, to be paid to whoever is entitled to receive the same.

5. If not otherwise invested in the manner provided in this article, any moneys recovered by the plaintiff, regardless of the amount, may be invested as follows by either the next friend or the Clerk of the Court:

(a) in savings accounts or certificates of any savings and loan association domiciled in this State provided such accounts are insured by the Federal Savings & Loan Insurance Corporation; or

(b) in interest-bearing time deposits in any bank doing business in this State provided the payment of such time deposits is insured by the Federal Deposit Insurance Corporation; and if such moneys are so invested in such manner as to prevent the withdrawal of such moneys from the financial institution in which they are invested without an order of the court no bond shall be required of the "next friend" in respect to such moneys until the same are withdrawn from such financial institution, at which time the court shall order such bond to be made as may be appropriate under the other provisions of this article, or the court may order such funds turned over directly to the person entitled thereto upon the court finding that the previous disability had ceased to exist.

6. If not otherwise invested in the manner provided in this article, the judge of the court in which the judgment is rendered upon application of the next friend or a duly appointed guardian ad litem for the minor, or either or both of them, after hearing and upon a finding that the best interests of the minor would be served thereby, may by decree entered of record direct the clerk to deliver any funds accruing under such judgment to any trust company or state or national bank in Texas having trust powers, as trustee, to be held and invested as a trust estate for the benefit of such minor, under such terms and provisions of trust as may be provided by the court; provided, however, that any decree establishing such a trust estate shall contain the following trust provisions, in addition to such other terms, provisions, conditions, or limitations not inconsistent therewith as may be established by the court:

(a) the minor shall be the sole beneficiary of such trust;

(b) the trustee shall be authorized to disburse such amounts of the corpus, income, or both, of the trust as may be reasonably necessary in the sole discretion of the trustee to provide for the health, education, support, or maintenance of the beneficiary. Any income not so distributed by the trustee shall be added to the corpus of the trust;

(c) the trust shall provide for termination of the trust upon the death of the beneficiary or upon the beneficiary attaining a stated age, which shall not exceed 25 years of age. Upon termination, the then existing trust principal and any undistributed income shall be paid to the beneficiary or to the personal representative of the estate of a deceased beneficiary;

(d) the trust shall provide that the trustee serve without bond and that the trustee receive reasonable compensation, to be paid out of the income or corpus of the trust, or both, upon application and approval of the court. Any trust established by the court pursuant to this article may provide for distributions of a stated percentage of the then existing trust corpus prior to termination of the trust, as the beneficiary from time to time attains a particular stated age, and may also provide that all distributions and all uses and applications of trust funds, either income or corpus, may be made directly to or expended for the benefit of the beneficiary without the intervention of any legal guardian or other legal representative, and that the trustee may pay any income or principal distribution to or for the benefit of a beneficiary directly to such beneficiary; to the legal or natural guardian or person having custody of such beneficiary; or directly for the maintenance or support of such beneficiary. Any trust established by the court pursuant to this article shall not be subject to revocation by the beneficiary or any guardian of the beneficiary's estate, but shall remain subject to amendment, modification, or revocation by the court at any time prior to termination of the trust. If any trust established hereunder is revoked by the court prior to the beneficiary attaining the age of 18, the court may enter such further or additional orders concerning the trust corpus and any undistributed income as may be authorized by this article. If any trust established hereunder is revoked by the court after the beneficiary has attained the age of 18, after payment of all proper and necessary expenses, the trust corpus and any undistributed income shall be delivered to the beneficiary. Any trust established pursuant to this article shall take precedence over any existing law or statute concerning minors or their property, and such trust shall continue in full force and effect until terminated or revoked

notwithstanding the appointment of a guardian of the estate for such minor or such minor attaining his majority.

[Amended by Acts 1979, 66th Leg., p. 1761, ch. 713, § 33, eff. Aug. 27, 1979.]

4. VENUE

Art. 1995. Venue, General Rule

No person who is inhabitant of this State shall be sued out of the county in which he has domicile except in the following cases:

[See Compact Edition, Volume 3 for text of 1 to 5]

6. Executors, administrators, etc.—If the suit is against an executor, administrator or guardian, as such, to establish a money demand against the estate which he represents, the suit may be brought in the county in which such estate is administered, or if the suit is against an executor, administrator or guardian growing out of a negligent act or omission of the person whose estate the executor, administrator or guardian represents, the suit may be brought in the county where the negligent act or omission of the person whose estate the executor, administrator or guardian represents occurred.

[See Compact Edition, Volume 3 for text of 7 to 9]

9a. Negligence.—A suit based upon negligence per se, negligence at common law or any form of negligence, active or passive, may be brought in the county where the act or omission of negligence occurred or in the county where the defendant has his domicile. The venue facts necessary for plaintiff to establish by the preponderance of the evidence to sustain venue in a county other than the county of defendant's residence are:

1. That an act or omission of negligence occurred in the county where suit was filed.

2. That such act or omission was that of the tort-feasor, in person, or that of his servant, agent or representative acting within the scope of his employment, or that of the person whose estate the defendant represents as executor, administrator, or guardian.

3. That such negligence was a proximate cause of plaintiff's injuries.

[See Compact Edition, Volume 3 for text of 10 to 31]

[Amended by Acts 1977, 65th Leg., p. 856, ch. 322, § 1, eff. Aug. 29, 1977.]

CHAPTER THREE. CITATION

Article
2039b. Citation of Nonresidents for Tax Purposes.

Art. 2028. Against Cities, Towns, Villages and School Districts

Sec. 1. In suits against an incorporated city, town or village, the citation may be served on the mayor, clerk, secretary or treasurer thereof.

Sec. 2. In suits against a school district the citation may be served on the president of the school board or the superintendent.

[Amended by Acts 1977, 65th Leg., p. 1277, ch. 499, § 1, eff. June 15, 1977.]

Art. 2031b. Service of Process Upon Foreign Corporations and Nonresidents

[See Compact Edition, Volume 3 for text of 1 to 3]

Sec. 4. For the purpose of this Act, and without including other acts that may constitute doing business, any foreign corporation, joint stock company, association, partnership, or non-resident natural person shall be deemed doing business in this State by entering into contract by mail or otherwise with a resident of Texas to be performed in whole or in part by either party in this State, or the committing of any tort in whole or in part in this State. The act of recruiting Texas residents, directly or through an intermediary located in Texas, for employment inside or outside of Texas shall be deemed doing business in this State.

[See Compact Edition, Volume 3 for text of 5 to 7]

[Amended by Acts 1979, 66th Leg., p. 522, ch. 245, § 1, eff. Aug. 27, 1979.]

Art. 2039b. Citation of Nonresidents for Tax Purposes**Acceptance of Benefits Relating to Taxation Deemed Equivalent to Appointment of Agent**

Sec. 1. In addition to any procedures for citation provided under Rule 117a, Texas Rules of Civil Procedure, the acceptance by a nonresident of this state, or by a person who was a resident of this state at the time of the accrual of a cause of action but who subsequently removes therefrom, of the rights, privileges, and benefits extended by law to such person(s) of owning, having, or claiming an interest in property, real or personal, subject to taxation by the State of Texas and its legal subdivisions, or any of them, shall be deemed equivalent to appointment by such nonresident of the comptroller of public accounts of this state or his successor in office, to be his true and lawful attorney and agent upon whom may be served all lawful process in any civil action or proceeding now pending or hereafter instituted against such nonresident(s) growing out of taxation by the state and its legal subdivisions, or any of them, of property in which such nonresident(s) owned, had, or

claimed a taxable interest on the first day of any tax year(s) for which taxes on such property have not been paid. Such service of process, as herein provided, shall have the same effect as if made personally on the defendant within the State of Texas.

Manner and Method of Service

Sec. 2. Service of process under this Act shall be in the same manner and method as that prescribed in Chapter 125, Acts of the 41st Legislature, Regular Session, 1929, as last amended by Chapter 502, Acts of the 56th Legislature, Regular Session, 1959 (compiled as Article 2039a of Vernon's Texas Civil Statutes), which relates to citation of nonresident motor vehicle operators by serving the chairman of the state highway commission; provided, however, in the service of such process certified mail shall be used rather than registered mail.

"Nonresidents" Defined

Sec. 3. "Nonresidents" as used in this Act includes corporations, partnerships and all other legal entities or representatives owning, having, or claiming a taxable interest in such property at the time(s) specified in Section 1 hereof.

Severability Clause

Sec. 4. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application, and to this end the provisions of this Act are declared to be severable.

[Acts 1975, 64th Leg., p. 1900, ch. 607, eff. Sept. 1, 1975.]

CHAPTER SIX. CERTAIN DISTRICT COURTS**Art. 2093e. Assignment Clerk of Districts Courts of Bexar County**

A majority of the Judges of the 37th, 45th, 57th, 73rd, 150th, 131st, 166th, 144th, 175th, 186th, 187th, 224th, 225th, 226th, and 227th District Courts may appoint an Assignment Clerk to serve said Courts in Bexar County under the presiding Judge of said District Courts in the coordination, setting and disposing of cases on the general docket. Such Assignment Clerk shall perform such duties as are assigned to him by said Judges in connection with the coordination, setting and disposing of cases. The Assignment Clerk shall receive reasonable compensation to be determined by the Judges of those Courts, not to exceed 70 percent of the salary paid by the state to the Judges of those Courts. The Commissioners Court of such County shall provide for the payment of the salary of the Assignment Clerk out of the general fund or the jury fund of said County. The appointment shall be for a term of two (2) years, but he shall be subject to dismissal by a majority of said Judges for inefficiency or misconduct.

[Amended by Acts 1975, 64th Leg., p. 1936, ch. 633, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1762, ch. 710, § 1, eff. Aug. 29, 1977.]

CHAPTER SEVEN. THE JURY

4. THE JURY IN THE COURT

Article

Art. 2137a. Permanent Exemption for Elderly.

1. JURIES IN CERTAIN COUNTIES

Art. 2094. Selecting Names for Jury Wheel

Between the first and fifteenth days of August of each year, in each county in this State, the tax collector, sheriff, county clerk, and district clerk of the county, each in person or represented by one of his deputies, shall meet at the county courthouse and reconstitute the jury wheel, using as the sole and mandatory source, all names on the voter registration lists from all precincts in the county and the register of permanently exempt persons maintained by the tax collector under Article 2137a.

[Amended by Acts 1979, 66th Leg., p. 253, ch. 131, § 2, eff. Aug. 27, 1979.]

Art. 2100a. Selection in Counties with Aid of Mechanical or Electronic Means; Adoption of Plan

[See Compact Edition, Volume 3 for text of 1 and 2(a)]

(b) It shall specify that the sources from which names are to be taken for jury purposes are all voter registration lists from all precincts in the county and the register of permanently exempt persons maintained by the county tax collector under Article 2137a.

[See Compact Edition, Volume 3 for text of 2(c) to 3]

[Amended by Acts 1979, 66th Leg., p. 253, ch. 131, § 3, eff. Aug. 27, 1979.]

Art. 2101. Interchangeable Juries

The provisions of this article shall be applicable only to such counties of this State as may now maintain three or more district courts, or in which three or more district courts may be hereafter established. A criminal court in any county with jurisdiction in felony cases shall be considered a district court within the meaning of this article. The "Interchangeable Jury Law" shall not apply to a selection of jurors in lunacy cases or in capital cases.

[See Compact Edition, Volume 3 for text of 1 to 5]

6. A. Notwithstanding any other provision of this article, in a county in which two district courts have jurisdiction, both district judges may meet together at such times as they may agree upon and determine approximately the number of jurors that are reasonably necessary for jury service in the district courts of the county for each week for as many weeks in advance as they deem proper, and

may order the drawing of such number of jurors for each of said weeks, which jury is known as the general panel of jurors for service in both district courts for the respective weeks for which they are designated to serve. Both judges shall act together in carrying out the provisions of this section. They may increase or diminish the number of jurors to be selected for any week and may order the jurors drawn for as many weeks in advance of service as they deem proper. From time to time they shall designate the judge to whom the general panel shall report for duty, and the designated judge, for the time he is chosen to act, shall organize the juries and have immediate supervision and control of them. The jurors, after being regularly drawn from the wheel, shall be served by the sheriff to appear and report for jury service before the judge so designated, who shall hear the excuses of the jury and swear them in for service for the week that they are to serve to try all cases that may be submitted to them in either of the district courts. The jurors, when impaneled, constitute a general jury panel for service as jurors in both district courts in the county and shall be used interchangeably. In the event of a deficiency of jurors at any given time to meet the requirement of either court, the judge having control of the general panel shall order such additional jurors to be drawn from the wheel as may be sufficient to meet the emergency, but such jurors shall act only as special jurors and shall be discharged as soon as their services are no longer needed. Resort to the wheel shall be had in all cases to fill out the general panel.

B. With the approval of both district judges, jurors impaneled under the provisions of Subdivision A of this subsection may constitute a general jury panel for service as jurors in all county courts and statutory county courts in the county, in addition to service as jurors in both district courts, and in such event, shall be used interchangeably in all district and county courts.

C. The provisions of this subsection are cumulative of and in addition to the methods now authorized by law for the selection of a jury panel in the counties herein named, and the adoption of the method provided in this subsection is entirely optional with and in the discretion of the district judges of any such county coming under the terms of this law. [Amended by Acts 1975, 64th Leg., p. 330, ch. 137, § 1, eff. May 8, 1975.]

3. JURY FOR THE WEEK

Art. 2122. Pay of Jurors

(a) Each grand juror and each petit juror in a civil or criminal case in a district or criminal district court, county court, county court at law, or justice court is entitled to receive not less than \$6 nor more

than \$30 for each day or fraction of a day that he serves as a juror. The commissioners court of each county shall determine annually, within the minimum and maximum prescribed in this subsection, the amount of per diem for jurors, which shall be paid out of the jury fund of the county. A person who responds to the process of a court, but who is excused from petit jury service by the court for any cause after being tested on voir dire, is entitled to receive not less than \$6 nor more than \$30 for each day or fraction of a day that he attends court in response to such process.

[See *Compact Edition, Volume 3 for text of (b)*]
[Amended by Acts 1975, 64th Leg., p. 1353, ch. 510, § 1, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 881, ch. 401, § 1, eff. Aug. 27, 1979.]

4. THE JURY IN COURT

Art. 2133. Qualifications

All persons both male and female eighteen years of age or older are competent jurors, unless disqualified under some provision of this chapter. No person shall be qualified to serve as a juror who does not possess the following qualifications:

1. He must be a citizen of the State and of the county in which he is to serve and qualified under the Constitution and laws to vote in said county.
2. He must be of sound mind and good moral character.
3. He must be able to read and write, except as otherwise provided herein.
4. He must not have served as a juror for six (6) days during the preceding six (6) months in the District Court, or during the preceding three (3) months in the County Court.
5. He must not have been convicted of a felony.
6. He must not be under indictment or other legal accusation of theft or of any felony.

A person who is legally blind is not disqualified to serve as a juror in a civil case solely by reason of his legal blindness, but is subject to a challenge for cause in a civil case unless, in the opinion of the court and all parties to the suit and the prospective juror, his legal blindness does not render him unfit to act as a juror in that particular case. If a party to the suit challenges a prospective juror by reason of his legal blindness, it shall not count as one of that party's peremptory challenges.

Whenever it shall be made to appear to the court that the requisite number of jurors able to read and write cannot be found within the county, the court may dispense with the exception provided for in the third subdivision; and the court may in like manner dispense with the exception provided for in the fourth subdivision, when the county is so sparsely

populated as to make its enforcement seriously inconvenient.

Where the word "he" is used in this Section it shall be used in the generic term so as to include both male and female persons.

In this Article, "legally blind" shall mean having not more than 20/200 of visual acuity in the better eye with correcting lenses, or visual acuity greater than 20/200 but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees. [Amended by Acts 1975, 64th Leg., p. 474, ch. 202, § 1, eff. Sept. 1, 1975.]

Art. 2135. Jury Service

All competent jurors are liable to jury service, except the following persons:

1. All persons over sixty-five (65) years of age.
 2. All persons who have legal custody of a child or children under the age of ten (10) years if jury service by that person would necessitate leaving the child or children without adequate supervision.
 3. All students of public or private secondary schools.
 4. Every person who is enrolled and in actual attendance at an institution of higher education.
- [Amended by Acts 1979, 66th Leg., p. 804, ch. 363, § 1, eff. Aug. 27, 1979.]

Art. 2137a. Permanent Exemption for Elderly

Eligibility for Permanent Exemption

Sec. 1. A person who is exempt from jury service on the ground of being over 65 years of age may establish a permanent exemption from jury service on that ground by claiming the exemption as provided by this article.

Claim Filed with Tax Assessor-Collector

Sec. 2. (a) A person may claim the permanent exemption by filing with the county tax assessor-collector at any time a signed statement affirming that he or she is over 65 years of age and desires a permanent exemption on that ground.

(b) The statement may be filed by mail or by personal delivery.

Claim Filed with Court Clerk

Sec. 3. (a) A person summoned for jury service who files a statement with the court clerk under Section 1, Article 2137, claiming an exemption from jury service on the ground of being over 65 years of age, may claim the permanent exemption by including in the statement a declaration that he or she desires a permanent exemption on that ground.

(b) Promptly after a statement claiming the permanent exemption is filed, the court clerk with whom it is filed shall have a copy delivered to the county tax assessor-collector.

Register of Permanently Exempt Persons

Sec. 4. The county tax assessor-collector shall maintain a current register indicating the name of each claimant who is entitled to the permanent exemption from jury service.

Permanently Exempt Persons Excluded from Jury List

Sec. 5. The names of persons listed on the register of persons permanently exempt from jury service may not be placed in the jury wheel or otherwise used in preparing the record of names from which a jury list is selected.

Rescission of Permanent Exemption

Sec. 6. (a) The claimant of a permanent exemption from jury service under this article may rescind the exemption at any time by filing a signed request for rescission with the county tax assessor-collector.

(b) Rescission does not affect a person's right to claim the permanent exemption at a later time. [Added by Acts 1979, 66th Leg., p. 252, ch. 131, § 1, eff. Aug. 27, 1979.]

CHAPTER EIGHT. TRIAL OF CAUSES

5. CASE TO JURY

Art. 2194a. Bringing Meals into Jury Room

(a) Whenever the judge deems it advisable, in order to expedite the final disposition of any district court civil case for which a jury is empaneled, to keep the jury together for deliberation rather than to dismiss it for meals, he shall have the power to draw a warrant on the jury fund or other appropriate fund of the county in which the case is being tried, to cover the cost of buying meals and bringing same into the jury room. However, not more than Three Dollars (\$3) may be spent per meal for any juror.

[See Compact Edition, Volume 3 for text of (b)]
[Amended by Acts 1977, 65th Leg., p. 670, ch. 253, § 1, eff. Aug. 29, 1977.]

CHAPTER NINE. JUDGMENTS AND REMITTITUR

Art. 2212b. Indemnity Provisions in Mineral Agreements Where Negligence Attributable to Indemnitee

[See Compact Edition, Volume 3 for text of 1 to 3]

Sec. 4. (a) The provisions of this Act do not apply to loss or liability for damages, or any other expenses, arising from:

(1) death or bodily injury to persons or injury to property resulting from radioactivity;

(2) injury to property resulting from pollution;

(3) injury to property resulting from reservoir or underground damage; or

(4) death or bodily injury or injury to property resulting from the performance of services to control a wild well so as to protect the safety of the general public and/or to prevent depletion of vital natural resources. The term "wild well" as used in this section means any well from which the escape of oil and/or gas is unintended and cannot be controlled by the equipment used in normal drilling practice.

[See Compact Edition, Volume 3 for text of 4(b) to 5]

[Amended by Acts 1979, 66th Leg., p. 511, ch. 237, § 1, eff. May 17, 1979.]

Art. 2226. Attorney's Fees

Any person, corporation, partnership, or other legal entity having a valid claim against a person or corporation for services rendered, labor done, material furnished, overcharges on freight or express, lost or damaged freight or express, or stock killed or injured, or suits founded upon a sworn account or accounts, or suits founded on oral or written contracts, may present the same to such persons or corporation or to any duly authorized agent thereof; and if, at the expiration of 30 days thereafter, payment for the just amount owing has not been tendered, the claimant may, if represented by an attorney, also recover, in addition to his claim and costs, a reasonable amount as attorney's fees. The usual and customary fees in such cases shall be presumed to be reasonable, but such presumption may be rebutted by competent evidence. In a proceeding before the court, or in a jury case where the issue of amount of attorney's fees is submitted to the court for determination by agreement, the court may in its discretion take judicial knowledge of the usual and customary fees in such matters and of the contents of the case file without receiving further evidence. The provisions hereof shall not apply to contracts of insurers issued by insurers subject to the provisions of the Unfair Claim Settlement Practices Act (Article 21.21-2, Insurance Code), nor shall it apply to contracts of any insurer subject to the provisions of Article 3.62, Insurance Code, or to Chapter 387, Acts of the 55th Legislature, Regular Session, 1957, as amended (Article 3.62-1, Vernon's Texas Insurance Code), or to Article 21.21, Insurance Code, as amended, or to Chapter 9, Insurance Code, as amended, and each such article or chapter shall be and remain in full force and effect. This Act shall be liberally construed to promote its underlying purposes.

[Amended by Acts 1977, 65th Leg., p. 153, ch. 76, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 718, ch. 314, § 1, eff. June 6, 1979.]

Section 2 of the 1979 amendatory act provided:

"This Act is remedial in character and is intended to apply to all pending and future actions, regardless of the time of institution thereof or of the accrual of any cause of action asserted."

CHAPTER TWELVE. APPEAL AND WRIT OF ERROR

Art. 2250. Appeal from Interlocutory Order

An appeal shall lie from an interlocutory order of the District, County Court at Law, or County Court:

1. Appointing a receiver or trustee in any cause;
2. Overruling a motion to vacate an order appointing a receiver or trustee in any case; or
3. Certifying or refusing to certify a class in a suit brought pursuant to Rule 42 of the Texas Rules of Civil Procedure.

[Amended by Acts 1979, 66th Leg., p. 348, ch. 159, § 1, eff. Aug. 27, 1979.]

CHAPTER THIRTEEN. GENERAL PROVISIONS

1. MISCELLANEOUS

Article

2292m. Bailiff in the 30th, 78th, and 89th District Courts.

2292n. Bailiff of County Court of Harrison County.

3. OFFICIAL COURT REPORTER

2324b. Regulation and Certification of Court Reporters.

2326a-1. Travel Expenses and Per Diem Payments to Visiting Court Reporters.

5. JUDICIAL COUNCIL

2326j-29a. Compensation and Expenses of Reporter for 31st Judicial District.

2328b. Office of Court Administration of the Texas Judicial System.

1. MISCELLANEOUS

Art. 2292m. Bailiff in the 30th, 78th, and 89th District Courts

Bailiffs Appointed by Judges

Sec. 1. The judges of the 30th, 78th, and 89th District Courts shall appoint a person to serve their respective courts as bailiff.

Evidence of Appointment

Sec. 2. An order signed by the appointing judge entered in the minutes of the court shall be evidence of appointment of the bailiff.

Qualifications

Sec. 3. To be eligible for appointment to the office of bailiff, a person must be a resident of Wichita County and at least 21 years old.

Term of Office

Sec. 4. The bailiff holds office at the will of the judge.

Duties

Sec. 5. A person appointed bailiff is an officer of the court. Such person shall perform in the 30th, 78th, or 89th District Court, as the case may be, all duties imposed on bailiffs under the general laws of Texas and shall perform other duties required by the judge of the court.

Compensation

Sec. 6. The bailiff shall be paid out of the general fund of Wichita County a salary set by the judge and approved by the commissioners court. [Acts 1977, 65th Leg., p. 744, ch. 278, §§ 1 to 6, eff. Aug. 29, 1977.]

Art. 2292n. Bailiff of County Court of Harrison County

Bailiff Appointed by Judge

Sec. 1. The judge of the County Court of Harrison County shall appoint a person to serve his court as bailiff.

Evidence of Appointment

Sec. 2. An order signed by the judge entered in the minutes of the court shall be evidence of the appointment of the bailiff.

Qualifications

Sec. 3. To be eligible for appointment to the office of bailiff, a person must be a resident of Harrison County and at least 21 years old.

Term of Office

Sec. 4. The bailiff holds office at the will of the judge.

Duties; May be Deputized

Sec. 5. (a) A person appointed bailiff is an officer of the court. He shall perform in the County Court of Harrison County all duties imposed on bailiffs under the general laws of Texas and shall perform other duties required by the judge of the court.

(b) The sheriff of Harrison County, on the request of the judge, shall deputize the person who is bailiff of the county court, in addition to other deputies authorized by law.

Compensation

Sec. 6. The bailiff shall be paid a salary in an amount to be set by the judge, not to exceed the salary of a deputy sheriff of the county, and to be paid out of the general fund of Harrison County. [Acts 1977, 65th Leg., p. 1527, ch. 620, §§ 1 to 6, eff. Aug. 29, 1977.]

Art. 2320b. Receivers of Mineral Interests Owned by Nonresidents or Absentees

[See Compact Edition, Volume 3 for text of 1 and 2]

Execution of Mineral Leases; Assignment of Outstanding Undivided Mineral Leasehold Interest; Unitization Agreements; Payment and Application of Consideration

Sec. 3. Such receiver, under the orders of the court, shall have power, authority and duty, subsequent to his appointment and from time to time thereafter, to (1) execute and deliver to a lessee, or successive lessees, mineral leases on such outstanding mineral interests, (2) to execute and deliver to a lessee, or successive lessees, an assignment of any such outstanding undivided mineral leasehold interest, and (3) to enter into any unitization agreement which has been duly authorized by the Railroad Commission of Texas. Such receiver shall execute such leases or assignments, or enter into such unitization agreements forthwith upon the entry of any such decree by the District Court. The money consideration, if any, to be paid for the execution of the aforementioned leases, assignments and/or unitization agreements by such receiver, shall be paid over to the clerk of the District Court in which the cause is pending, prior to the execution of the instrument by the receiver, and thereafter, after applying such money consideration, if any, to costs that may have accrued in such cause, the district clerk shall retain the balance of such funds for the use and benefit of such nonresident or unknown owners of such mineral interests or leasehold interests, as the case may be, and any future payments paid under such mineral lease, assignment of leasehold interest or unitization agreement, shall be paid directly into the registry of the court and impounded for the use and benefit of such nonresident and unknown owners.

[See Compact Edition, Volume 3 for text of 4 and 5]

[Amended by Acts 1979, 66th Leg., p. 374, ch. 169, § 1, eff. Aug. 27, 1979.]

3. OFFICIAL COURT REPORTER**Art. 2321. Appointment and Examination**

Each judge of a court of record shall appoint an official court reporter who shall be a sworn officer of the court and shall hold office at the pleasure of the court.

[Amended by Acts 1977, 65th Leg., p. 1158, ch. 438, § 17, eff. Aug. 29, 1977.]

Art. 2324. Duty of Reporter

Each Official Court Reporter shall upon request:

Attend all sessions of the court; take full shorthand notes of all oral testimony offered in cases tried in said court, together with all objections to the

admissibility of the evidence, the rulings and remarks of the court thereon, and all exceptions thereto; take full shorthand notes of closing arguments when requested to do so by the attorney for any party to such case, together with all objections to such arguments, the rulings and remarks of the court thereon, and all exceptions thereto;

Preserve all shorthand notes taken in said court for future use or reference for three full years, and furnish to any person a transcript of all such evidence or other proceedings, or any portion thereof as such person may order, upon the payment to the official shorthand reporter of the fees provided by the judge.

When any party to any suit reported by any such reporter shall desire a transcript of the evidence in said suit, said party may apply for same by written demand, and the reporter shall make up such transcript and shall receive as compensation therefor a reasonable amount, subject to the approval of the judge of the court if objection is made thereto, taking into consideration the difficulty and technicality of the material to be transcribed and the time within which the transcript is requested to be prepared. The original transcript fee charged shall pay for the original plus one copy of the transcript, and additional copies may be purchased for a fee per page not in excess of one-third ($\frac{1}{3}$) of the original cost per page. In addition such reporter may make a reasonable charge, subject to the approval of the trial court if objection shall be made thereto, for postage and/or express charges paid; photostating, blue-printing or other reproduction of exhibits; indexing; and preparation for filing and special binding of original exhibits. Provided further, that in case any such reporter shall charge in excess of the fees herein allowed by the judge, whether by accident or design, he shall, on demand filed with the court, make refund of the excess to the party to which it is due. Provided, however, that the Supreme Court of Texas under its rulemaking authority shall provide for the duties and fees of court reporters in all civil judicial proceedings, except as provided by law.

[Amended by Acts 1975, 64th Leg., p. 826, ch. 319, § 1, eff. May 27, 1975.]

Art. 2324b. Regulation and Certification of Court Reporters

Certificate Required

Sec. 1. No person may be appointed an official court reporter or deputy court reporter or may engage in the practice of shorthand reporting for use in litigation in the courts of this state unless that person is the holder of a certificate in full force and effect issued by the Supreme Court of Texas.

Penalties

Sec. 2. A person engaging in the practice of shorthand reporting who violates the provisions of Section 1 of this Act is guilty of a Class A misdemeanor, and each day of violation shall constitute a separate offense.

Definition

Sec. 3. In this Act, "the practice of shorthand reporting for use in litigation in the courts of this state" means the making of a verbatim record of an oral court proceeding, deposition, or proceeding before a grand jury, referee, or court commissioner by means of written symbols or abbreviations in shorthand or machine shorthand writing or oral stenography.

Texas Court Reporters Committee; Creation; Membership

Sec. 4. There is hereby created the Texas Court Reporters Committee to consist of the following nine members appointed by the supreme court:

- (1) one active district judge who shall serve as the committee's chairman;
- (2) two active members of the State Bar who have been practicing members of the bar during more than five consecutive years next preceding their appointment; and
- (3) three active official court reporters and three active free-lance court reporters who have been engaged in the practice of shorthand reporting for use in litigation in the courts of this state during more than five consecutive years next preceding their appointment.

Terms of Office

Sec. 5. The regular term of office of committee members shall be six years, but initially the terms of two court reporters and one attorney shall expire on December 31, 1978, and the terms of two court reporters and one attorney shall expire on December 31, 1980, and the terms of two court reporters and the district judge shall expire on December 31, 1982.

Successors; Vacancies

Sec. 6. Committee members shall hold office until the appointment and qualification of their successors. An interim vacancy shall be filled for the unexpired portion of the term in the same manner as the appointment at the expiration of a full term. Committee members may succeed themselves in office only if they have served less than three consecutive years.

Compensation; Expenses

Sec. 7. Committee members shall receive no compensation for their services but are entitled to receive actual and necessary expenses for traveling and other necessary expenses incurred in the discharge of their duties as members of the committee.

Meetings, Hearings, Examinations; Quorum; Records

Sec. 8. The committee may hold its meetings, hearings, examinations, and other proceedings at such times and places as it shall determine but shall meet in Austin, Texas, at least once each year. Five members constitute a quorum for the transaction of business. The committee shall keep a complete record of all of its proceedings and all certificates issued, renewed, or revoked, together with a detailed statement of receipts and disbursements.

Executive Functions; Subcommittees; Employees

Sec. 9. The committee is charged with the executive functions necessary to effectuate the purposes of this Act under such rules as may be promulgated by the supreme court. The committee may appoint subcommittees as it deems necessary or proper. The committee may employ the employees it deems necessary for the performance of the duties and exercise of the powers conferred on the committee and may pay from funds available to it all expenses reasonably necessary to effectuate the purposes of this Act.

Application for Examination; Fee

Sec. 10. Each applicant for a certificate under this Act shall file an application with the committee at least 30 days before the date fixed for examination, accompanied by the required fee. The fee for an examination given by the committee shall be fixed by the committee, subject to the approval of the supreme court.

Initial Certificate Fee; Renewals

Sec. 11. (a) Each person to whom a certificate is issued shall, as a condition precedent to its issuance and in addition to any other fee which may be payable, pay the initial certificate fee which shall be fixed by the committee, subject to approval by the supreme court.

(b) Each certificate issued under this Act that has not been renewed shall expire at the date of the second anniversary of the date of the issuance of the certificate. To renew a certificate, the certificate holder shall, on or before the expiration date of the certificate, pay the renewal fee which shall be fixed by the committee, subject to approval by the supreme court.

Powers and Duties of Committee

Sec. 12. (a) The committee shall have the powers and duties enumerated in Subsections (b) through (e) of this section.

(b) The committee shall administer tests to determine the qualifications of persons applying for certificates under this Act. Each test shall be given in two parts to be designated Part A and Part B. Part A shall be composed of five minutes of two-voice

dictation of questions and answers given at 225 words per minute, five minutes of dictation of jury charge given at 200 words per minute, and five minutes of dictation of selected literary material given at 180 words per minute. Each applicant shall personally take down the test, either in his own writing or his own voice, and shall reduce to writing the takedown on either a manual or electric typewriter. The minimum passing grade on each section of Part A of the test shall be 95 percent accuracy. An error shall be charged for each wrong word, for each omitted word, for each added word not dictated, for each contraction where read as two words, for two words where read as a contraction, for each misplaced word, for each misplaced period that would materially alter the sense of a group of words or a sentence, for each misspelled word, for each plural or singular where the opposite was dictated, and for each wrong number. The use of a dictionary will be permitted during Part A of the test. Applicants will be allowed three hours to complete the transcription of Part A of the test. If time permits, the applicant may review his transcript but shall use only his original takedown from which his transcript was prepared to review the transcript. Part B of the test shall consist of objective questions touching on elementary aspects of court reporting, spelling, and grammar. The use of a dictionary will not be permitted during Part B of the test. The minimum passing grade on Part B will be 75 percent. Anyone discovered cheating on the tests is disqualified and will not be eligible for retesting for a period of two years.

(c) The committee shall charge and collect from all applicants for certificates and renewal of certificates the fees provided in this Act.

(d) The committee shall determine the qualifications and pass on the eligibility of all persons applying for certificates under this Act.

(e) The committee shall certify to the supreme court the applicants that are determined on examination by the committee to be qualified in professional shorthand reporting.

(f) Rules not inconsistent with this section may be promulgated by the supreme court.

Revocation of Certificate; Grievance Procedures

Sec. 13. (a) On a verified complaint, the committee may revoke any certificate issued under this Act for unprofessional conduct or other sufficient cause after notice and opportunity of a hearing. The notice shall state the cause for the contemplated revocation and the time and place of the hearing and shall be mailed to the registered address of the holder of the certificate at least 30 days before the hearing. Each committee member is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, and take evidence

and require the production of any records concerning any matter within the jurisdiction of the committee, at the direction of a majority of the committee. The committee shall reduce to writing a summary of the evidence given before it and shall make a written finding of the facts thereon. A certificate may be revoked for fraud, dishonesty, corruption, willful violation of duty, having become incompetent to continue to perform the duties as a court reporter, or fraud or misrepresentation in obtaining a certificate under this Act. A disciplinary action of the committee may be appealed by the aggrieved person on trial de novo, with or without a jury, to the district court in the county of the aggrieved person's residence. If the aggrieved party is the official court reporter or deputy court reporter of the court in which the proceeding would be heard, the presiding judge of the administrative judicial district shall appoint the judge of another court or a retired judge to hear and determine the complaint. The committee shall not have the power to suspend a certificate issued under this Act.

(b) A person desiring to file a complaint against a court reporter holding a certificate under this Act shall obtain from the committee a complaint form, which shall be completed and signed under oath, attaching thereto any pertinent documentary evidence. On receipt of the form properly executed, it is the duty of the committee to duplicate and furnish copies of the complaint and attachments to the committee.

(c) Within 30 days from the date the verified complaint is received by the committee, it shall set a date for the hearing, if a hearing is deemed advisable by the committee, and shall immediately notify the certificate holder of the date of the hearing.

(d) The committee shall govern the treatment of the request for continuances with regard to hearings before the committee.

(e) Rules not inconsistent with this section may be promulgated by the supreme court. At the hearing, the committee will adhere to the general rules of evidence applicable before the district courts of the state.

(f) Five members of the committee shall constitute a quorum. The chairman or his designee shall preside at the hearings.

(g) A copy of the findings and rulings of the committee shall be forwarded to the complainant and the aggrieved person.

Employment of Noncertified Reporters

Sec. 14. Nothing in this Act shall be construed to prohibit the employment of a shorthand reporter not holding a certificate until a certified shorthand reporter is available. Oral depositions, however, may be reported by a person not certified under this Act

only if the noncertified reporter delivers to the parties or their counsel present at the deposition an affidavit that no certified shorthand reporter is then available or, on stipulation on the record at the commencement of the deposition, by the parties or their counsel present at the deposition. The provisions of this section do not apply to depositions taken outside this state for use in this state.

Persons Excluded from Act

Sec. 15. The provisions of this Act shall not apply to a party to the litigation involved, his attorney, or to a full-time employee of either.

Certification of Present Reporters

Sec. 16. (a) No examination shall be required of an applicant who is an official court reporter of any court of record in this state as of the effective date of this Act, and said applicant shall be issued a certificate by the supreme court.

(b) Upon application to the committee, no examination shall be required of any court reporter who can verify that prior to the effective date of this Act said applicant had been actively engaged in the practice of shorthand reporting for use in litigation in the courts of this state. Upon approval by the committee, the supreme court shall issue its certificate.

(c) On certification, a court reporter is entitled to use the title "Certified Shorthand Reporter" or the abbreviation "CSR." A certified shorthand reporter may administer oaths to witnesses anywhere in this state.

[Acts 1977, 65th Leg., p. 1155, ch. 438, §§ 1 to 16, eff. Aug. 29, 1977.]

Art. 2326a. Expenses and Manner of Payment

All official shorthand reporters and deputy official shorthand reporters of the District Courts of the State of Texas composed of more than one county, when engaged in the discharge of their official duties in any county in this state other than the county of their residence shall, in addition to the compensation now provided by law for their services, be allowed their actual and necessary expenses while actually engaged in the discharge of such duties, not to exceed the sum of Fifteen Dollars (\$15.00) per day for hotel bills, and not to exceed Six Cents (6¢) a mile when traveling by railroad or bus lines, and not to exceed Sixteen Cents (16¢) a mile when traveling by private conveyance in going to and returning from the place where such duties are discharged, traveling the nearest practical route. Such expenses shall be paid after the completion of each term of court by the respective counties of the Judicial District for which they are incurred, each county paying the expenses incidental to its own regular or special term of court, and said expenses shall be paid to the

official or deputy official shorthand reporter by the Commissioners Court of the county, out of the general fund of the county, upon the sworn statement of the reporter, approved by the Judge.

Provided there shall not be paid to any such official shorthand reporter, or his deputy, more than Two Thousand Dollars (\$2,000.00) in any one year under the provisions of this Act; provided further, that in districts containing two counties only, the expenses herein allowed shall never exceed Four Hundred Dollars (\$400.00) per annum; in districts containing three counties only, the expenses herein allowed shall never exceed Eight Hundred Dollars (\$800.00) per annum; in districts containing four counties only, the expenses herein allowed shall never exceed One Thousand, Four Hundred Dollars (\$1,400.00) per annum; in districts containing five or more counties the expenses herein allowed shall never exceed Two Thousand Dollars (\$2,000.00) per annum.

The account for such services herein provided for shall be sworn to in duplicate by the reporter, and approved by the District Judge, and one copy of said account shall be filed by the reporter with the clerk of the District Court of the county where the Judge of the district resides.

Whenever a special term of any District Court in this state is convened and the services of an additional official or deputy official shorthand reporter is required, then this Act shall also apply to said shorthand reporter so employed by the Judge of said special term, and all expenses as herein provided shall be allowed and paid said shorthand reporter so employed for said special term by the county where in said special term is convened and held, and shall be in addition to the expenses herein provided for the official or deputy official shorthand reporter of the district.

Provided, however, that whenever any official or deputy official shorthand reporter is called upon to report the proceedings of any special term of court, or on account of the sickness of any official shorthand reporter of any Judicial District, necessitating the employment of a shorthand reporter from some other county within the state, then the shorthand reporter so employed shall receive and be paid all actual and necessary expenses in going to and returning from the place where he or she may be called on to report the proceedings of any regular or special terms of court.

[Amended by Acts 1977, 65th Leg., p. 310, ch. 144, § 1, eff. May 13, 1977.]

Art. 2326a-1. Travel Expenses and Per Diem Payments to Visiting Court Reporters

Sec. 1. A visiting official shorthand reporter or deputy official shorthand reporter from another ju-

dicial district who is required to leave the county of his residence to report the proceedings as a substitute for the official reporter of the county visited is entitled to receive his actual and necessary expenses in going to and returning from the place where he is called on to report the proceedings and, in addition to his regular salary from the county or counties in which the reporter is regularly employed, is entitled to receive a per diem payment of \$30 for each day, or part of a day, which the reporter spends outside the county of his residence in the performance of the duties as a substitute court reporter.

Sec. 2. The traveling expense and per diem payment provided in this Act shall be paid to the substitute court reporter or deputy court reporter by the commissioners court of the county visited, out of the general fund of the county, on the sworn statement of the reporter, approved by the district judge presiding in the court where the proceedings were reported.

[Acts 1977, 65th Leg., p. 1756, ch. 704, §§ 1, 2, eff. June 15, 1977.]

Art. 2326j-13. Repealed by Acts 1973, 62nd Leg., p. 291, ch. 137, § 3, eff. May 18, 1973

See, now, arts. 2326j-13a and 3912k note.

Art. 2326j-13a. Compensation of Reporter for 23rd Judicial District

Sec. 1. The official court reporter of the 23rd Judicial District may receive a salary not to exceed \$16,500 per annum, in addition to all travel expenses, transcript fees, and all other compensation provided by law to be paid to the official court reporter. The specific amount of the salary of the official court reporter may be fixed by the district judge of such judicial district and approved by the commissioners courts of the counties in the district.

Sec. 2. The salary of the official court reporter as herein fixed shall be paid monthly by the respective counties composing any of said judicial district in accordance with the proportion fixed, made, and determined by the district judge of said judicial district as to the amount to be paid monthly by each county in the judicial district. Such salary shall be paid out of the general fund or out of the jury fund, or out of any fund available for the purpose. [Amended by Acts 1979, 66th Leg., p. 970, ch. 434, § 1, eff. Aug. 27, 1979.]

Section 2 of the 1979 amendatory act provided:

"Section 3, Chapter 622, Acts of the 62nd Legislature, Regular Session, 1971 (Article 3912k, Vernon's Texas Civil Statutes), applies to the 130th Judicial District."

Art. 2326j-29. Repealed by Acts 1978, 65th Leg., 2nd C.S., p. 21, ch. 9, § 3, eff. Nov. 7, 1978

Art. 2326j-29a. Compensation and Expenses of Reporter for 31st Judicial District

Sec. 1. Notwithstanding the provisions of any local or general law to the contrary, the judge of the 31st Judicial District shall determine and order, on the basis of annual case loads in each county, the proportionate amount of the salary set by the judge for the official shorthand reporter of the 31st Judicial District to be paid by each county in the judicial district. The amount of the salary allocated to each county in the 31st Judicial District shall be paid monthly out of the general fund, jury fund, or other fund available for the purpose, as determined by the commissioners court.

Sec. 2. The official shorthand reporter shall, in addition, receive allowances for actual and necessary meals and traveling and hotel expenses while actually engaged in the discharge of the reporter's duties. These allowances may be in the same amounts as are allowed for employees of the State of Texas. The expenses shall be paid by the respective counties of the judicial district for which they are incurred, each county paying the expense incidental to its own regular or special term of court, and the expenses shall be paid to the official shorthand reporter by the commissioners court of the county out of the general fund of the county on the sworn statement of the reporter approved by the judge.

[Acts 1978, 65th Leg., 2nd C.S., p. 21, ch. 9, §§ 1, 2, eff. Nov. 7, 1978.]

Art. 2327. In County Court

When either party to a civil case pending in the county court or county court at law applies therefor, the judge thereof shall appoint a certified shorthand reporter, to report the oral testimony given in such case. A certified shorthand reporter shall be appointed to report the oral testimony given in any contested probate matter heard in a county court. In a county in which no certified shorthand reporter is a resident, a noncertified shorthand reporter or stenographer shall be appointed to report the oral testimony. The reporter or stenographer shall take the oath required of official court reporters, and shall receive not less than five dollars per day, to be taxed and collected as costs. In such cases the provisions of this title with respect to the preparation of the statement of facts, the time to be allowed therefor, and for the presentation to the opposite party, and the approving and filing thereof by the court, shall apply to all statements of facts in civil and probate cases tried in said courts, and all provisions of law governing statement of facts and bills of exception to be filed in district courts and the use of same on appeal, shall apply to civil and probate cases tried in said courts.

[Amended by Acts 1979, 66th Leg., p. 1761, ch. 713, § 32, eff. Aug. 27, 1979.]

5. JUDICIAL COUNCIL

Art. 2328a. Judicial Council

Creation; Purposes

Sec. 1. There is hereby created the Texas Judicial Council for the continuous study of and report upon the organization, rules, procedure and practice of the judicial system of the State of Texas, the work accomplished and the results produced by that system and its various parts, and methods for its improvement.

Application of Sunset Act

Sec. 1a. The Texas Civil Judicial Council is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the council is abolished, and this Act expires effective September 1, 1987.

¹ Article 5429k.

[See Compact Edition, Volume 3 for text of 2]

Sec. 3. The ex officio members of the Council shall consist of the following: (1) the Chief Justice of the Supreme Court of Texas, who shall remain a member as long as he holds the position of Chief Justice; (2) the Presiding Judge of the Court of Criminal Appeals, who shall remain a member as long as he holds the position of Presiding Judge; (3) two Justices of the Courts of Civil Appeals, to be designated by the Governor for overlapping four-year terms, one to be designated in January, 1971, for a four-year term and one to be designated in January, 1973, for a four-year term with the replacement in each case to be designated by the Governor in January of odd-numbered years; (4) two presiding judges of the administrative judicial districts, to be designated by the Governor for four-year terms, one to be designated in January, 1971, for a four-year term and one to be designated in January, 1973, for a four-year term, with the replacement in each case to be designated by the Governor in January of odd-numbered years; (5) the Chairman and the immediate past Chairman of the Senate Jurisprudence Committee; and (6) the Chairman and the immediate past Chairman of the House Judiciary Committee. The Chief Justice of the Supreme Court may from time to time designate some other Justice of that Court to act in his stead, and at his pleasure, as member of the Council. The Presiding Judge of the Court of Criminal Appeals may from time to time designate some other Judge of that Court to act in his stead, and at his pleasure, as member of the Council. The foregoing references to justices and judges, other than the Chief Justice of the Supreme Court and the Presiding Judge of the Court of Criminal Appeals, include respectively such retired justices and judges of the same grade as are legally eligible for assignment to part-time judicial duties. In the event the Chairman of the Senate Jurispru-

dence Committee or the Chairman of the House Judiciary Committee is reappointed to such position, his immediate predecessor shall continue to serve on the Council as immediate past Chairman, it being the intent of the Legislature that two members of the Senate and two members of the House be at all times members of the Council; provided, however, that in the case of legislative members, cessation of membership in the Legislature shall not terminate their membership on the Council, but they shall continue to serve for their full term notwithstanding their cessation of membership in the Legislature. In the event of a vacancy in a legislative membership, such vacancy shall be filled for the unexpired term only by the presiding officer of the appropriate house of the Legislature, and vacancies in other official memberships shall be filled in the same manner as the original appointment and for the unexpired term only. Ex officio members of the Council shall be entitled to all the privileges of full membership thereon and shall be regarded and treated in every respect as full members thereon.

[See Compact Edition, Volume 3 for text of 4]

Duties of Council

Sec. 5. It shall be the duty of the Council:

1. To make a continuous study of the organization of the courts; the rules and methods of procedure and the practice of the judicial system of the State; of the work accomplished, the results attained and the uniformity of the discretionary powers of the courts, to the end that procedure may be simplified, business expedited, and justice better administered.
2. To receive and consider suggestions from judges, public officers, members of the bar, and citizens, touching remedies for faults in the administration of justice.
3. To formulate methods for simplifying judicial procedure, expediting the transaction of judicial business, and correcting faults in the administration of justice.
4. To gather judicial statistics and other pertinent data from the several judges and other court officials of the State.
5. To make a complete detailed report, on or before December 1st of each year, to the Governor and to the Supreme Court, of all its proceedings, suggestions and recommendations, and such supplemental reports from time to time as the Council may deem advisable. All such reports shall be considered public reports and may be given to the press as soon as filed.
6. To make investigations and reports upon such matters, touching the administration of justice as may be referred to the Council by the Supreme Court or the Legislature.

7. To hold one meeting in each calendar year, and such other meetings as may be ordered by the Council or under its authority, and at such time and place as may be designated by it or under its authority.

[See Compact Edition, Volume 3 for text of 6 to 8]

[Amended by Acts 1975, 64th Leg., p. 150, ch. 64, §§ 1, 2, eff. April 24, 1975; Acts 1977, 65th Leg., p. 1851, ch. 735, § 2.140, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 78, ch. 49, § 1, eff. April 11, 1979.]

6. CIVIL JUDICIAL COUNCIL

Art. 2328b. Office of Court Administration of the Texas Judicial System

Definitions

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

- (1) "Court" means any tribunal forming a part of the judicial branch of government.
- (2) "Trial court" means any tribunal forming a part of the judicial branch of government with the exception of the supreme court, the court of criminal appeals, and the courts of civil appeals.
- (3) "Office of Court Administration" means the Office of Court Administration of the Texas Judicial System.

Promulgation of Rules

Sec. 2. The supreme court shall promulgate rules of administration for the efficient administration of justice in this state and other rules necessary for the enforcement of this Act. When promulgating rules of administration for the efficient administration of criminal justice in this state, the supreme court will seek the advice of the court of criminal appeals.

Creation of Office; Direction and Supervision; Duties

Sec. 3. (a) The Office of Court Administration of the Texas Judicial System is hereby created.

(b) The office of court administration shall operate under the direction and supervision of the supreme court. It shall perform the duties provided in this Act and such other duties as may be directed by the supreme court and shall provide the necessary staff functions for the efficient operation of the Texas Judicial Council.

Administrative Director

Sec. 4. (a) The supreme court shall appoint the administrative director of the courts, who shall serve at the will of the court and shall be subordinate to, and act by authority of and under the direction of, the chief justice of the supreme court. The administrative director shall direct the operations of the office of court administration and, as an additional

duty of his office, shall serve as executive director of the Texas Judicial Council. He shall serve in such other capacities as may be directed by the supreme court or the chief justice.

(b) The administrative director shall devote full time to his official duties.

Employment of Personnel

Sec. 5. The administrative director, with the approval of the chief justice, shall employ such personnel as are necessary for the efficient operation of the office of court administration and of the Texas Judicial Council.

Duties of Administrative Director

Sec. 6. Under the direction and supervision of the chief justice, the administrative director shall implement the provisions of this Act and the rules of administration and other rules promulgated by the supreme court for the efficient administration of justice in this state. He shall:

- (1) assist the justices and judges of the various courts in discharging their administrative duties;
- (2) consult with and assist the administrative judges in discharging their duties under provisions of law and rules promulgated by the supreme court;
- (3) make such recommendations to the supreme court as may be appropriate for the implementation of this Act;
- (4) examine the administrative and business methods and systems employed in the offices of the clerks of court and other offices related to and serving the courts and make recommendations for necessary improvement and recommend forms and other documents used to record the business of the courts;
- (5) examine the state of the dockets and practices and procedures of the courts and make recommendations for the promotion of the orderly and efficient administration of justice;
- (6) prepare and submit budget estimates of state appropriations necessary for the maintenance and operation of the judicial system, and study and make recommendations on the expenditure of state funds appropriated for the maintenance and operation of the judicial system;
- (7) consult with and assist the clerks of court and other officers and employees of the courts and of offices related to and serving the courts to provide for the efficient administration of justice;
- (8) consult with and make recommendations to the court administrators and court coordinators of the courts of the state to provide for uniform

administration and promote the efficient administration of justice in all courts of the state;

(9) perform such additional duties as may be assigned by the supreme court and by the chief justice; and

(10) prepare an annual report of the activities of his office to be published in the annual report of the Texas Judicial Council.

Clerical Personnel

Sec. 7. The authority of the courts to appoint clerical personnel is not limited by any provision of this Act.

Judge Acting Without Potential Jurisdiction

Sec. 8. Neither this Act nor any rule adopted under this Act may be construed to authorize a judge to act in a case of which his own court would not have potential jurisdiction under the constitution and laws of this state.

Judicial Discretion

Sec. 9. Neither this Act nor any rules adopted under its authority shall be construed to authorize any infringement upon the judicial discretion of any judge of the state in the trying of a case properly before his court.

[Acts 1977, 65th Leg., p. 98, ch. 45, §§ 1 to 9, eff. April 5, 1977.]

TITLE 43

COURTS—JUVENILE

Article

- 2338-1.1. Jurisdiction of District and County Courts; Actions of Juvenile Judge Not Licensed as Attorney.
- 2338-1c. Appointment of Retired Special Juvenile Court or Domestic Relations Court Judge to Sit for Regular Family District Court Judge.
- 2338-1d. Master in Domestic Relations Court in Counties Over 1,500,000.
- 2338-9b.2. Masters in Dallas County Domestic Relations Courts.

Art. 2338-1.1. Jurisdiction of District and County Courts; Actions of Juvenile Judge Not Licensed as Attorney

Each district court, county court, and statutory county court exercising any of the constitutional jurisdiction of either a county court or a district court has jurisdiction over juvenile matters and may be designated a juvenile court. Any action taken by a juvenile judge not licensed as an attorney by the State of Texas shall be subject to the trial de novo and appeal provisions as authorized by Sections 51.04, 51.18, and 56.01 of the Family Code. [Acts 1979, 66th Leg., p. 387, ch. 178, § 1, eff. Aug. 27, 1979.]

Art. 2338-1c. Appointment of Retired Special Juvenile Court or Domestic Relations Court, Judge to Sit for Regular Family District Court Judge

Absent, Disabled or Disqualified Regular Judge;
Crowded Docket

Sec. 1. (a) When the regular judge of a Family District Court as created by the Family District Court Act in this state is absent or is from any cause disabled or disqualified from presiding, a retired judge of a special juvenile court or a domestic relations court may be appointed by the presiding judge of the administrative judicial district in which the appointed judge resides to sit for the regular judge of a Family District Court within the geographic limits of the respective administrative judicial district, provided the retired judge voluntarily retired from office and certifies his willingness to serve.

(b) When the docket of a Family District Court in this state becomes so excessive that the presiding judge of the administrative judicial district in which that court is located deems it an emergency, a retired judge of a special juvenile court or a domestic relations court residing within the geographic limits of the respective administrative judicial district, who meets the qualifications set out in Subsec-

tion (a) of this section, may be appointed by the presiding judge to sit for the regular judge for as long as the emergency exists.

(c) A presiding judge may, with the consent of a retired judge of a special juvenile court or a domestic relations court, within his district make an assignment outside of his judicial district with the specific authorization of the presiding judge of the district in which that assignment is made.

Bond and Oath of Retired Judge

Sec. 2. A retired judge appointed to sit for a regular judge under the provisions of this Act shall execute the bond and take the oath of office which is required by law for the regular judge for whom he is sitting.

Power and Jurisdiction

Sec. 3. A retired judge appointed under the provisions of this Act has all the power and jurisdiction of the court and the regular judge for whom he is sitting and may sign orders, judgments, decrees, or other process of any kind as "Judge Presiding" when acting for the regular judge.

Compensation

Sec. 4. A retired judge appointed to sit for the regular judge under the provisions of this Act shall receive for the services actually performed the same amount of salary which the regular judge is entitled to receive for such services. The amount to be paid for such services shall be paid in the same manner as the regular judge is paid on certification by the presiding judge of the administrative judicial district that the retired judge has rendered the services and is entitled to receive the salary. Such payment shall be made from the item in the judiciary section, comptrollers department, of the appropriations act providing for payment of salaries of district judges and criminal district judges. This Act does not entitle the retired judge of a special juvenile court or a domestic relations court to participate in the state Judicial Retirement System. No part of the amount paid to a retired judge sitting for the regular judge shall be deducted or paid out of the salary of the regular judge.

Cumulative Effect

Sec. 5. The provisions of the Act are cumulative of all laws pertaining to the election or appointment of a special judge, and if, in addition to a retired

judge appointed to sit temporarily for a regular judge, a special judge is needed, he shall be appointed or elected as now authorized by law.

[Acts 1975, 64th Leg., p. 1816, ch. 552, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 1989, ch. 794, § 2, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 670, ch. 297, § 1, eff. Aug. 27, 1979.]

Art. 2338-1d. Master in Domestic Relations Court in Counties Over 1,500,000

Authorization to Appoint Master; Termination; Qualifications; Compensation

Sec. 1. (a) Each judge of a court of domestic relations in a county of more than 1,500,000 population or any successor court thereto may appoint a master as provided in this Act. The services of the master may be terminated if the performance of his duties is unsatisfactory to the judge of the court, by which the master was appointed.

(b) A master shall be an attorney licensed to practice law in the State of Texas and shall be a citizen of this state. The compensation for a master shall be fixed by the judge of the court making such appointment. If the judge of the court determines that the parties litigant are unable to defray the costs of the master's compensation, such costs shall be paid out of the jury fund of the county.

Matters Referred to a Master

Sec. 2. If the judge of a court of domestic relations in such county or any successor court thereto deems it advisable, he may appoint a master and refer to the master any civil case involving motions of contempt for failure or refusal to pay child support, temporary support, or separate maintenance; motions for failure or refusal to comply with court orders concerning visitation with children growing out of separate maintenance and divorce actions; motions for changes of conservatorships; motions for revision of child-support payments; and motions for revision of visitation privileges.

Powers

Sec. 3. (a) In all cases designated in Section 2 of this Act, the judge of a court of domestic relations in a county of more than 1,500,000 population or any successor court thereto may authorize the master to hear evidence, to make findings of fact thereon, to formulate conclusions of law, and to recommend judgment to be entered in such cases. In all cases referred to the master, the order of reference may specify or limit the powers of the master and may direct him to report only on particular issues, or to do or perform particular acts, or to receive and report on evidence only, and may fix the time and place for beginning and closing hearings and for filing reports.

(b) Subject to the limitations and specifications stated in the order, the master shall have the power to regulate all proceedings in every hearing before him and to do all acts and take all measures necessary and proper for the efficient performance of his duties under the order. He may require the production of evidence before him on all matters embraced in the reference, and he may rule on the admissibility of evidence, unless otherwise directed by the order of reference. He has the authority to issue summons for the appearance of witnesses and to swear the witnesses for the hearing and may examine them himself. A witness appearing before him that is duly sworn is subject to the penalties of perjury. If a witness after being duly summoned fails to appear or having appeared refuses to answer questions, on certification of such refusal to the referring court, the court may issue attachment against the witness and may fine or imprison the witness.

Report to Referring Judge; Notice to Parties

Sec. 4. On the conclusion of the hearing in each case, the master shall transmit to the referring judge all papers relating to the case, together with his findings and a statement that notice of his findings and of the right to a hearing before the judge has been given to all adult principals, minors, or parents, guardians, or custodians of any minor whose case has been heard by the master. This notice may be given at the hearing or otherwise as the referring court directs.

Disposition by Referring Judge

Sec. 5. After it is filed, the referring court may adopt, modify, correct, reject, or reverse the master's report or recommit it for further information as the court may deem proper and necessary in the particular circumstances of the case. Where judgment has been recommended, the court in its discretion may approve the recommendation and hear further evidence before rendition of judgment.

Hearing by Judge upon Request

Sec. 6. Adult principals or a minor child or his parents, guardians, or custodians are entitled to a hearing by the judge of the referring court if within three days after receiving notice of the findings of the master they file a request with the court for a hearing. The referring court may allow the hearing at any time.

Failure to Request Hearing

Sec. 7. If no hearing before the judge of the referring court is requested or the right to such hearing is waived, the findings and recommendations of the master become the decree of the court when adopted by an order of the judge.

Notice of Hearing by Master

Sec. 8. Prior to the hearing by the master, the parties litigant shall be given due notice as provided by law of the time and place of the hearing.

Jury Trial

Sec. 9. In any proceeding where a jury trial has been demanded, the master shall refer the case back to the referring court for a full hearing before the court and jury, subject to the usual rules of the court in such cases.

Appointment of Master not Mandatory

Sec. 10. Nothing in this Act shall be interpreted to require any judge of a court of domestic relations to appoint a permanent or standing master to serve in such court.

[Acts 1977, 65th Leg., p. 1222, ch. 471, §§ 1 to 10, eff. June 15, 1977.]

Art. 2338-3. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(1), eff. Sept. 1, 1977

Prior to repeal, §§ 5 and 6(a) were amended by Acts 1977, 65th Leg., p. 1787, ch. 715, §§ 1, 2.
See, now, the Family District Court Act, art. 1926a.

Art. 2338-3a. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(2), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338-4. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(c), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338-5. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(3), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338-6. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(c), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338-7. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(4), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338-7a. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(5), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338-8. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(6), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338-9. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(7), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338-9a. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(8), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338-9b. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(22), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338-9b.1. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(31), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338-9c. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(26), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338-10. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(9), eff. Sept. 1, 1977

Prior to repeal, § 2 of this article was amended by Acts 1975, 64th Leg., p. 1941, ch. 636, § 4; Acts 1977, 65th Leg., p. 1612, ch. 629, § 4.
See, now, the Family District Court Act, art. 1926a.

Art. 2338-11. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(10), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338-11a. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(11), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338-11b. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(24), eff. Sept. 1 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338-13. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(12), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338-14. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(13), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338-15. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(15), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338-15a. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(16), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338-15b. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(23), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338-15c. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(25), eff. Sept. 1, 1977

Prior to repeal of this article, § 11 was reenacted and amended by Acts 1977, 65th Leg., p. 1292, ch. 510, § 1.

See, now, the Family District Court Act, art. 1926a.

Art. 2338-16. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(17), eff. Sept. 1, 1977

Prior to repeal, § 2 of this article was amended by Acts 1975, 64th Leg., p. 1332, ch. 496, § 3 and § 10 was amended by Acts 1975, 64th Leg., p. 1188, ch. 446, § 1.

See, now, the Family District Court Act, art. 1926a.

Art. 2338-17. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(18), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338-18. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(19), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338-18a. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(27), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338-19. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(20), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338-20. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(21), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338-21. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(28), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338-22. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(29), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338-23. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(30), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

TITLE 44

COURTS—COMMISSIONERS

2. POWERS AND DUTIES

Article

- 2351f-2. Counties of 6500 or Less; Ownership, Operation, and Maintenance of Cemeteries.
- 2352g. Water Supply or Sewage System in Matagorda County.
- 2352h. Contracts or Agreements for Water Supply or Sewer System in Counties Over 800,000.
- 2368a.2. Public Property Finance Act.
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- 2368a-13. Validation of Time Warrants in Counties of Less than 1,000,000.
- 2370b-2. Auxiliary Courts in Counties of 1,200,000 or More.
- 2370c-2. Criminal Justice Facilities in Certain Counties and Cities.
- 2370c-3. Justice Centers Located on State Line.
- 2372d-6. Lease and Sale of Land for Hotel in Conjunction With County Convention Center in Counties Over 700,000.
- 2372h-7. Liability Insurance for County Officers and Employees.
- 2372q-1. Regulation of Private Water Companies in Counties Over 1,500,000.
- 2372s-3. Parking on County Property.
- 2372s-4. Parking Regulations and Purchase of Equipment by Counties of 235,000 or More.
- 2372u. Regulation of Outdoor Lighting and Subdivisions Near Major Astronomical Observations.
- 2372v. Regulation of Massagers and Massage Establishments.
- 2372w. Regulation of Location of Sexually Oriented Commercial Activities by Cities and Counties.
- 2372x. Closing Gulf Beaches for Special Events.

1. COMMISSIONER COURTS

Art. 2344. Seal

Each commissioners court shall have a seal, whereon shall be engraved either a star with five points or a design selected by the court and approved by the secretary of state, and the words, "Commissioners Court, _____ County, Texas," (the blank to be filled with the name of the County) which seal shall be kept by the clerk of said court and used in authentication of all official acts of the court, or of the presiding officer or clerk of said court, in all cases where a seal may be necessary for the authentication of any of said acts.

[Amended by Acts 1975, 64th Leg., p. 42, ch. 21, § 1, eff. March 20, 1975.]

2. POWERS AND DUTIES

Art. 2351a-6. Rural Fire Preventing Districts

[See Compact Edition, Volume 3 for text of 1 to 11]

Limitation on Indebtedness; Assessment of Property; Election; Ballots

Text of section effective January 1, 1982

Sec. 12. No indebtedness shall be contracted in any one year in excess of funds then on hand or

which may be satisfied out of current revenues for the year. The Board of Fire Commissioners shall annually levy and cause to be assessed and collected a tax upon all properties, real and personal, situated within the district and subject to district taxation, in an amount not to exceed three cents (3¢) on the One Hundred Dollars (\$100) valuation for the support of the district, and for the purposes authorized in this Act. Such tax levy shall be certified to the County Tax Assessor-Collector, who shall be the Assessor-Collector for the district.

For text of section effective until January 1, 1982, see Compact Edition Volume 3

[See Compact Edition, Volume 3 for text of 13 to 18]

Dissolution of District; Petition; Notice of Hearing

Sec. 19. (a) When it is proposed to dissolve a Rural Fire Prevention District created under this Act, a petition shall be presented to the Board of Fire Commissioners for the district signed by not less than one hundred (100) of the qualified voters who own taxable real property within the district. If there are less than one hundred (100) such voters, a majority of those qualified voters who own taxable real property in the district must sign the petition.

(b) If the petition is in proper form the Board of Fire Commissioners shall set the day, place, and hour when it will hear and consider the petition.

(c) The Board of Fire Commissioners shall issue notices of the hearing which shall include:

- (1) the name of the district;
- (2) a description of the district's boundaries;
- (3) the proposal that the district be dissolved; and
- (4) the place, date, and time of the hearing on the petition.

(d) The notice shall be published in a newspaper of general circulation in the district once a week for two (2) consecutive weeks. The first published notice must appear at least twenty (20) days before the date of the hearing.

Hearing of Petition; Appeal

Sec. 20. (a) The Board of Fire Commissioners shall hear the petition and all issues concerning the dissolution of the district. Any person interested may appear before the board and oppose or support

the proposed dissolution. The board shall grant or deny the petition.

(b) Any person or owner of real or personal property situated within the district may appeal the decision of the Board of Fire Commissioners to a district court in one (1) of the counties in which the district is located.

Election to Confirm Dissolution

Sec. 21. (a) On granting the petition, the board shall call an election to confirm the dissolution of the district.

(b) The election shall be held not less than thirty (30) days nor more than sixty (60) days after the date of the board's decision on the petition.

(c) Notice of the election shall be given in the same manner as required by Section 19 of this Act. The notice shall include:

- (1) the proposition to be submitted to the voters;
- (2) the classification of voters who are authorized to vote; and
- (3) the time and place for holding the election.

(d) The ballot shall be printed to provide for voting for or against the following: "Dissolving the Rural Fire Prevention District."

(e) The presiding judge of each voting place shall supervise the counting of all votes cast and shall certify the results to the Board of Fire Commissioners within ten (10) days after the date of the election. A copy of the results shall be filed with the County Clerk in any county in which the district is located and shall become a public record.

(f) If the majority of the voters voting in the election vote to dissolve the district, the Board of Fire Commissioners shall declare the result and proceed with dissolution.

(g) If the proposition to dissolve the district fails to carry at the election, the Board of Fire Commissioners may not order another election for the same purpose within one (1) year after the result is announced.

(h) After the dissolution of a Rural Fire Prevention District, no election may be held to create a new Rural Fire Prevention District within the boundaries of the old district for a period of one (1) year.

Administration of Property, Debts and Assets

Sec. 22. (a) The Board of Fire Commissioners shall continue to control and administer the property, debts, and assets of the district until all funds have been disposed of and all debts of the district have been paid or settled.

(b) The Board of Fire Commissioners may not dispose of the district's assets except for due com-

ensation unless debts are transferred to another governmental entity or agency embracing the district or within the district, and the transfer will benefit the citizens of the district.

Text of subsection effective until January 1, 1982

(c) After issuing the dissolution order the Board of Fire Commissioners shall:

- (1) determine the debt, if any, owed by the district;
- (2) correct the last approved assessment rolls of the district by adding any property accidentally left off before the dissolution petition was decided upon; and
- (3) levy and collect a tax on the property included in the correct tax roll in proportion of the debt to the value of the property.

Text of subsection effective January 1, 1982

(c) After issuing the dissolution order the Board of Fire Commissioners shall:

- (1) determine the debt, if any, owed by the district; and
- (2) levy and collect a tax on the property included in the tax roll of the district in proportion of the debt to the value of the property.

(d) Each taxpayer may pay the tax at once, and the Board of Fire Commissioners shall have suit instituted, if necessary, to enforce payment of taxes and to foreclose liens to secure the payment of taxes due the district.

(e) When all outstanding debts and obligations of the district are paid, the Board of Fire Commissioners shall order the secretary of the district to return all unused tax money to the taxpayers of the district on a pro rata basis. A taxpayer may request that his share of surplus tax money be credited to his county taxes. The board shall direct the secretary to transmit any funds so requested to the County Tax Assessor-Collector.

(f) After all debts have been paid and all assets and funds have been disposed of as provided in this Act, the Board of Fire Commissioners shall file a written report with the Commissioners Court of each county in which all or part of the district is located setting forth a summary of the actions taken by the Board of Fire Commissioners in the dissolution of the district. Within ten (10) days after receiving the report and after determining that the requirements of this Act have been fulfilled, each of the Commissioners Courts shall enter an order finding the Rural Fire Prevention District dissolved, and on entry of the order, the fire commissioners shall be discharged from liability under their bonds, and the district shall be officially dissolved.

[Amended by Acts 1977, 65th Leg., p. 1417, ch. 575, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 2316, ch. 841, § 4(f), (w), eff. Jan. 1, 1982.]

Art. 2351e. Repealed by Acts 1977, 65th Leg., p. 1658, ch. 654, § 6, eff. June 15, 1977

See, now, arts. 2351f-1, 2351f-2.

Art. 2351f. Repealed by Acts 1977, 65th Leg., p. 1658, ch. 654, § 5, eff. June 15, 1977

See, now, arts. 2351f-1, 2351f-2.

Art. 2351f-1. Perpetual Trust Fund to Maintain Cemeteries

[See Compact Edition, Volume 3 for text of 1 to 7]

Sec. 8. Except as provided for counties with a population of 6,500 or less, the trustee, the commissioners court, and other elected public officials of the county are hereby prohibited from paying or using any public funds, or using county employees or county equipment and property for the purpose of maintenance and upkeep of neglected and unkept public and private cemeteries.

Sec. 9. If on September 1, 1976, a county owned a cemetery and continued to own it on January 1, 1979, or if during 1976 a county used county funds, employees, equipment, or property for the maintenance and upkeep of a county-owned cemetery, the county may continue to own the cemetery or to provide for its maintenance and upkeep, or both, and the prohibition stated in Section 8 of this Act does not apply. A county exercising the power granted herein shall file with the secretary of state a certified copy of its commissioners court certifying that such county qualifies under this section. Such order shall be kept in a register entitled "County-Owned and-Operated Cemeteries."

[Amended by Acts 1977, 65th Leg., p. 1658, ch. 654, § 4, eff. June 15, 1977; Acts 1979, 66th Leg., p. 497, ch. 228, § 1, eff. May 17, 1979.]

Art. 2351f-2. Counties of 6,500 or Less; Ownership, Operation, and Maintenance of Cemeteries

Sec. 1. A county with a population of 6,500 or less according to the last preceding federal census may own, operate, and maintain cemeteries and may sell the right of burial within the cemetery. The sale of the right of burial is exempt from the requirements of Article 1577, Revised Civil Statutes of Texas, 1925, as amended. Revenue received from the sale of the right of burial may be used for the purchase of additional land to be used for cemetery purposes and for general upkeep of county cemetery property.

Sec. 2. The commissioners court of a county subject to this Act may spend money in the general fund for the purpose of maintenance and upkeep of public cemeteries in the county, and may dedicate up to one-eighth of the maximum allowable tax levy to that purpose.

Sec. 3. The commissioners court of a county subject to this Act shall serve as the Cemetery Board of the county and be responsible for the management of the cemetery property.

[Acts 1977, 65th Leg., p. 1657, ch. 654, §§ 1 to 3, eff. Aug. 29, 1977.]

Art. 2352g. Water Supply or Sewage System in Matagorda County

Sec. 1. Matagorda County, acting through its commissioners court, may acquire or construct and may operate a water supply or sewage system serving parts of the county outside the limits of an incorporated city or town.

Sec. 2. Matagorda County may enter management or lease agreements with another public or private entity for operation of a county water or sewage system acquired or constructed under this Act.

Sec. 3. Matagorda County may apply for and receive grants or other assistance from any state or federal governmental entity for the purposes of this Act.

[Acts 1977, 65th Leg., p. 1625, ch. 639, §§ 1 to 3, eff. Aug. 29, 1977.]

Art. 2352h. Contracts or Agreements for Water Supply or Sewer System in Counties Over 800,000

Contract or Agreement with District

Sec. 1. The commissioners court of a county having a population of more than 800,000, according to the last preceding federal census, may enter into contracts or other agreements with any district created under Article III, Sections 52(b)(1) and (2), or Article XVI, Section 59, of the Texas Constitution under which the district will provide and operate a water supply or sewage system or both in parts of the county outside the limits of an incorporated city or town in the county.

Distribution of Federal and State Funds

Sec. 2. The commissioners court, by order, may distribute to a district that is a party to a contract or agreement under Section 1 of this Act, federal funds and state water conservation and development funds received by the county. Funds distributed by the commissioners court under this section shall be used only for the construction, renovation, and maintenance of a water supply or sewage system or both that is covered by a contract or other agreement made by the county under this Act.

Acts and Services to be Within District Powers

Sec. 3. The acts performed by and the services provided by a district under a contract or agreement under this Act must be within the scope of the

powers, duties, and purposes of the district as provided by the laws under which the district was created.

Jeopardization of Quality of Service Prohibited

Sec. 4. No contract or agreement may be entered into under this Act if it will jeopardize the quality of service provided by the district to those persons residing in the district as determined by the Texas Department of Water Resources.

Contract or Agreement Covering City or Town Extraterritorial Jurisdiction; Approval

Sec. 5. Before a district and a county may enter into a contract or agreement under this Act covering any of the extraterritorial jurisdiction of a city or town as defined in the Municipal Annexation Act, as amended (Article 970a, Vernon's Texas Civil Statutes), the parties must submit the contract or agreement to the city or town and must receive the approval of the city or town for the contract.

Area Outside District; Use of Funds Prohibited

Sec. 6. If a contract or agreement under this Act covers an area that is not located within the boundaries of the contracting district, no funds of the district may be used to carry out the provisions of the contract or agreement.

Approval of Contract or Agreement

Sec. 7. Before the parties to a contract or agreement under this Act enter into a binding contract or agreement, the parties shall submit the contract or agreement to and shall have it approved by the Texas Department of Water Resources. The Texas Department of Water Resources shall examine the contract or agreement to assure that the interests of the residents of the district will be served and protected and may submit suggested changes to the parties for inclusion in the contract or agreement before the department gives its final approval. [Acts 1979, 66th Leg., p. 496, ch. 227, §§ 1 to 7, eff. May 17, 1979.]

Art. 2368a. Requirements Governing Advertising for Bids by Counties and Cities

[See Compact Edition, Volume 3 for text of 1]

Competitive Bidding for Contracts for Public Works; Notice to Bidders; Advertisement; Exceptions; Conflicting Provisions; Noncompliance With Law

Text of section as amended by Acts 1979, 66th Leg., p. 540, ch. 256, § 1, and by Acts 1979, 66th Leg., p. 1902, ch. 770, § 8

Sec. 2. (a) No county, acting through its Commissioners Court, and no city in this state shall hereafter make any contract calling for or requiring an expenditure or payment in an amount set forth in Subsection (b) of this section out of any fund or funds of any city or county or subdivision of any county creating or imposing an obligation or liability

of any nature or character upon such county or any subdivision of such county, or upon such city, without first submitting such proposed contract to competitive bids.

(b) The amount of money requiring competitive bidding under Subsection (a) of this section is:

(1) more than Three Thousand Dollars (\$3,000.00) for any city with a population of less than eighty thousand (80,000), according to the most recent federal census, or any county or subdivision of a county; or

(2) more than Five Thousand Dollars (\$5,000.00) for any city with a population of eighty thousand (80,000) or more, according to the most recent federal census.

(c) Notice of the time and place when and where such contracts shall be let shall be published in such county (if concerning a county contract or contracts for such subdivision of such county) and in such city, (if concerning a city contract), once a week for two (2) consecutive weeks prior to the time set for letting such contract, the date of the first publication to be at least fourteen (14) days prior to the date set for letting said contract; and said contract shall be let to the lowest responsible bidder. The court and/or governing body shall have the right to reject any and all bids, and if the contract is for the construction of public works, then the successful bidder shall be required to give a good and sufficient bond in the full amount of the contract price, for the faithful performance of such contract, executed by some surety company authorized to do business in this state in accordance with the provisions of Article 5160, Revised Statutes of 1925, and the amendments thereto. However, the city or county in making any contract calling for or requiring the expenditure or payment of less than Fifty Thousand Dollars (\$50,000.00) may, in lieu of the bond requirement, provide in the contract that no money will be paid to the contractor until completion and acceptance of the work by the city or county. If there is no newspaper published in such county, the notice of the letting of such contract by such county shall be given by causing notice thereof to be posted at the County Court House door for fourteen (14) days prior to the time of letting such contract. If there is no newspaper published in such city, then the notice of letting such contract shall be given by causing notice thereof to be posted at the City Hall for fourteen (14) days prior to the time of letting such contract. Provided, that in case of public calamity, where it becomes necessary to act at once to appropriate money to relieve the necessity of the citizens, or to preserve the property of such county, subdivision, or city, or when it is necessary to preserve or protect the public health of the citizens of such county or city, or in case of unforeseen damage

to public property, machinery or equipment, this provision shall not apply; and provided further, as to contracts for personal or professional services; work done by such county or city and paid for by the day, as such work progresses; and the purchase of land and right-of-way for authorized needs and purposes, the provisions hereof requiring competitive bids shall not apply and in such cases the notice herein provided shall be given but only with respect to an intention to issue time warrants with right of referendum as contemplated in Sections 3 and 4 hereof respectively.

(d) Provisions in reference to notice to bidders, advertisement thereof, requirements as to the taking of sealed bids based upon specifications for public improvements or purchases, the furnishing of surety bonds by contractors and the manner of letting of contracts, as contained in the charter of a city, if in conflict with the provisions of this Act, shall be followed in such city notwithstanding any other provisions of this Act.

(e) Any and all such contracts or agreements hereafter made by any county or city in this state, without complying with the terms of this Section, shall be void and shall not be enforceable in any court of this state and the performance of same and the payment of any money thereunder may be enjoined by any property taxpaying citizen of such county or city.

Competitive Bidding for Contracts for Public Works; Notice to Bidders; Advertisement; Exceptions; Conflicting Provisions; Noncompliance with Law

Text of section as amended by Acts 1979, 66th Leg., p. 1902, ch. 770, § 8, and by Acts 1979, 66th Leg., p. 2147, ch. 824, § 1

Sec. 2. (a) No county, acting through its Commissioners Court, and no city in this state shall hereafter make any contract calling for or requiring the expenditure of payment of Three Thousand Dollars (\$3,000.00) or more out of any fund or funds of any city or county or subdivision of any county creating or imposing an obligation or liability of any nature or character upon such county or any subdivision of such county, or upon such city, without first submitting such proposed contract to competitive bids. Notice of the time and place when and where such contracts shall be let shall be published in such county (if concerning a county contract or contracts for such subdivision of such county) and in such city, (if concerning a city contract), once a week for two (2) consecutive weeks prior to the time set for letting such contract, the date of the first publication to be at least fourteen (14) days prior to the date set for letting said contract; and said contract shall be let to the lowest responsible bidder. The court and/or governing body shall have the right to reject any and all bids, and if the contract is for the construction of public works, then the successful

bidder shall be required to give a good and sufficient bond in the full amount of the contract price, for the faithful performance of such contract, executed by some surety company authorized to do business in this state in accordance with the provisions of Article 5160, Revised Statutes of 1925, and the amendments thereto. However, the city or county in making any contract calling for or requiring the expenditure of payment of Three Thousand Dollars (\$3,000.00) or more and less than Fifty Thousand Dollars (\$50,000.00) may, in lieu of the bond requirement, provide in the contract that no money will be paid to the contractor until completion and acceptance of the work by the city or county. If there is no newspaper published in such county, the notice of the letting of such contract by such county shall be given by causing notice thereof to be posted at the County Court House door for fourteen (14) days prior to the time of letting such contract. If there is no newspaper published in such city, then the notice of letting such contract shall be given by causing notice thereof to be posted at the City Hall for fourteen (14) days prior to the time of letting such contract. Provided, that in case of public calamity, where it becomes necessary to act at once to appropriate money to relieve the necessity of the citizens, or to preserve the property of such county, subdivision, or city, or when it is necessary to preserve or protect the public health of the citizens of such county or city, or in case of unforeseen damage to public property, machinery or equipment, this provision shall not apply; and provided further, as to contracts for personal or professional services; work done by such county or city and paid for by the day, as such work progresses; and the purchase of land and right-of-way for authorized needs and purposes, the provisions hereof requiring competitive bids shall not apply and in such cases the notice herein provided shall be given but only with respect to an intention to issue time warrants with right of referendum as contemplated in Sections 3 and 4 hereof respectively.

(b) Provisions in reference to notice to bidders, advertisement thereof, requirements as to the taking of sealed bids based upon specifications for public improvements or purchases, and the manner of letting of contracts, as contained in the charter of a city, if in conflict with the provisions of this Act, shall be followed in such city notwithstanding any other provisions of this Act.

(c) The provisions of this Act and of Article 5160, Revised Statutes of 1925, as amended, relating to the furnishing of surety bonds by contractors may be adopted by ordinance of the governing body of a city, notwithstanding conflicting city charter provisions.

(d) Any and all such contracts or agreements hereafter made by any county or city in this state,

without complying with the terms of this Section, shall be void and shall not be enforceable in any court of this state and the performance of same and the payment of any money thereunder may be enjoined by any property taxpaying citizen of such county or city.

[See Compact Edition, Volume 3 for text of 2a to 11a]

[Amended by Acts 1979, 66th Leg., p. 540, ch. 256, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1902, ch. 770, § 8, eff. June 13, 1979; Acts 1979, 66th Leg., p. 2147, ch. 824, § 1, eff. June 14, 1979.]

Art. 2368a.1. Certificate of Obligation Act

[See Compact Edition, Volume 3 for text of 1]

Definitions

Sec. 2.

[See Compact Edition, Volume 3 for text of 2(a) to 2(d)]

(e) "County means a political subdivision of the State of Texas created and established under Article IX, Section 1, of the Constitution of Texas.

[See Compact Edition, Volume 3 for text of 2(f) to 5]

Competitive Bids; Notice; Publication; Change Orders, Payment of Added Cost; Rejection of Bids; Performance Bond

Sec. 6. (a) Except as provided herein, the governing body of an issuer shall hereafter make no contract calling for or requiring the expenditure or payment or creating or imposing an obligation or liability of any nature upon such city, county, or subdivision of the county in an amount set forth in Subsection (a-1) of this section without first submitting such proposed contract to competitive bids.

(a-1) The amount of money requiring competitive bidding under Subsection (a) of this section is:

(1) more than \$3,000 for any city with a population of less than 80,000, according to the most recent federal census, or any county or subdivision of a county; or

(2) more than \$5,000 for any city with a population of 80,000 or more, according to the most recent federal census.

[See Compact Edition, Volume 3 for text of 6(b) and 6(c)]

(d) The governing body shall have the right to reject any and all bids, and if the contract is for the construction of public works and is for or requires the expenditure of the amount of money requiring competitive bidding under Subsection (a-1) of this section, then the successful bidder shall be required to give a good and sufficient payment and performance bond each in the full amount of the contract price, executed by some surety company authorized

to do business in this State in accordance with the provisions of Article 5160, Revised Civil Statutes of Texas, 1925, as amended.

[See Compact Edition, Volume 3 for text of 7]

Constructing or Equipping Jail

Sec. 7A. (a) Certificates issued for payment of any contractual obligation to be incurred for constructing or equipping a jail may be sold for cash subject to the same restrictions and conditions applicable to the sale of certificates for cash under Section 7 of this Act.

(b) Section 6 of this Act, relating to advertisement for competitive bids, is applicable to the incurring of contractual obligations for constructing or equipping a jail under this section.

[See Compact Edition, Volume 3 for text of 8 to 11]

[Amended by Acts 1979, 66th Leg., p. 542, ch. 256, § 2, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 664, ch. 292, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1902, ch. 770, § 8, eff. June 13, 1979.]

Art. 2368a.2. Public Property Finance Act

Short Title

Sec. 1. This Act shall be known and may be cited as the Public Property Finance Act.

Purpose

Sec. 2. The legislature finds and determines that the acquisition, use, and purchase of property by governmental agencies and the financing of such activities are necessary to the efficient and economic operation of government. This Act facilitates a public purpose by furnishing governmental agencies with a feasible means to acquire, use, purchase, and finance public property.

Definitions

Sec. 3. In this Act:

(1) "City" means any city, town, or village incorporated in this state, whether governed by the general laws of the state or the laws pertaining to home-rule cities.

(2) "Conservation and reclamation district" means any district or authority organized or operating pursuant to Article XVI, Section 59, or Article III, Section 52, of the Texas Constitution.

(3) "Contract" means an agreement entered into pursuant to this Act.

(4) "County" means a political subdivision of the State of Texas created and established under Article IX, Section 1, of the Texas Constitution.

(5) "Governing body" means the board, council, commission, agency, court, or other body or group that is authorized by law to acquire property for each respective governmental agency.

(6) "Governmental agency" means any city, county, school district, conservation and reclamation district, hospital organization, or other political subdivision of the State of Texas.

(7) "Hospital organization" means any district, authority, board, or joint board organized pursuant to the laws of this state for hospital purposes.

(8) "Net effective interest rate" means, with reference to a contract, the interest amount deemed by the governing body of a governmental agency to accrue on a contract and shall be calculated as simple interest.

(9) "Net interest cost" means the total of all interest to accrue and come due on a contract through the last date a payment is due on the contract, plus any discount or minus any premium included in the contract price or principal sum.

(10) "Person" means any individual, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.

(11) "Property" means personal property, appliances, equipment, facilities or furnishings, or an interest therein, whether movable or fixed, deemed by the governing body of the governmental agency to be necessary, useful, or appropriate to one or more purposes of the governmental agency, but shall not include real property.

(12) "School district" means any independent school district, common school district, community college district, junior college district, or regional college district organized pursuant to the laws of this state.

Authority to Contract for Property

Sec. 4. (a) The governing body of a governmental agency is authorized to execute, perform, and make payments under contracts with any person for use, acquisition, or purchase of any property. The contracts may be on the terms and conditions that are deemed appropriate by the governing body. Contracts may be in the form of a lease, a lease with option or options to purchase, installment purchase, or any other form deemed appropriate by the governing body. All contracts shall be obligations of the governmental agency. The contracts may be for a term approved by the governing body, and in each case, the contract may contain an option or options to renew or extend the term and may be made payable from a pledge of all or any part of any revenues, funds, or taxes or revenues, or funds and taxes available to the governmental agency for its public purposes.

(b) Each contract which retains to the governing body of the governmental agency the continuing right to terminate at the expiration of each budget

period of the governmental agency during the term of the contract shall be considered to be a commitment of the governmental agency's current revenues only. All applicable constitutional requirements of approval by the voters shall be met. The contracts may provide for the payment of interest on the unpaid amounts of the contract at a rate or rates and may contain prepayment provisions, termination penalties, and such other provisions as shall be determined within the discretion of the governing body of the governmental agency. Subject only to applicable constitutional restrictions, the governing body has authority to obligate taxes or revenues for the full term of the contract for the payment of the contract. The net effective interest rate on any such contract shall not exceed the net effective interest rate at which public securities may be issued in accordance with Chapter 3, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 717k-2, Vernon's Texas Civil Statutes).

Compliance with Other Acts

Sec. 5. Each governmental agency currently subject thereto shall comply with the terms of Chapter 163, General Laws, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Article 2368a, Vernon's Texas Civil Statutes), in entering into contracts, including the requirement that certain contracts be awarded pursuant to public bids, except that it is not necessary for a governmental agency to submit the question of entering into a contract to a referendum.

Approved and Registered Contracts

Sec. 6. After a contract providing for payment aggregating \$100,000 or more by a governmental agency is authorized by the governing body, the contract and the record relating to the contract may, at the discretion of the governmental agency, be submitted to the attorney general for his examination as to the validity of the contract. If the contract has been made in accordance with the constitution and laws of the state, the attorney general shall approve the contract, and the contract then shall be registered by the comptroller of public accounts. After the contract has been approved by the attorney general and registered by the comptroller of public accounts, the validity of the contract is incontestable for any cause. The legal obligations of the lessor, vendor, or supplier of the property to the governmental agency shall not be diminished in any respect by the approval and registration of a contract.

Contract as Authorized Investment

Sec. 7. A contract entered into pursuant to this Act is a legal and authorized investment for banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies, fiduciaries, and trustees, and for the

sinking funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas.

Term of Contracts

Sec. 8. A contract may have any term not to exceed 25 years.

Construction and Effect of Act

Sec. 9. This Act is wholly sufficient authority within itself for entering into contracts and the performance of the other acts and procedures authorized by this Act, without reference to any other laws, or any restrictions or limitations contained therein, except as specifically provided in this Act. When contracts are entered into under this Act, then to the extent of any conflict or inconsistency between any provisions of this Act and any provisions of any other law, the provisions of this Act shall prevail and control, except that any governmental agency may use the provisions of any other law, not in conflict with the provisions of this Act, to the extent convenient or necessary to carry out any power or authority, express or implied, granted by this Act. This Act shall be liberally construed to effectuate its purpose. Notwithstanding any contrary provision, this Act does not apply to a contract solely for the construction of improvements to real property.

[Acts 1979, 66th Leg., p. 1839, ch. 749, §§ 1 to 9, eff. Aug. 27, 1979.]

Art. 2368a.3. Competitive Bidding on Public Works Contracts

Applicability

Sec. 1. This Act applies to:

- (1) a county;
- (2) an incorporated city, town, or village;
- (3) a common or independent school district;
- (4) a special district or authority created under Article III, Section 52, or Article XVI, Section 59, Texas Constitution;
- (5) a hospital district or authority;
- (6) a housing authority; or
- (7) an agency or instrumentality of a unit of government described in one of the preceding subdivisions.

Procedure for Bidding

Sec. 2. If a governmental entity covered by this Act is required by statute to award a contract for the construction, repair, or renovation of a structure, road, highway, or other improvement or addition to real property on the basis of competitive bids, such bidding shall be accomplished as provided herein.

Advertisement for Bids

Sec. 3. (a) The governmental entity shall advertise for bids. The advertisement for bids must include a notice that:

- (1) describes the work;
- (2) states where the bidding documents, plans, specifications, or other data may be examined by all bidders; and
- (3) states the time and place for submitting bids and the time and place that bids will be opened.

(b) The advertisement must be published as required by law. If no legal requirement for publication exists, the advertisement must be published at least twice in one or more newspapers of general circulation in the county or counties where the work is to be performed. The second publication must be no later than the 10th day before the first day on which bids may be submitted.

(c) The governmental entity must mail a notice containing the information required under Subsection (a) of this section to any organization that:

- (1) requests in advance that notices for bids be sent to it;
- (2) agrees in writing to pay the actual cost of mailing the notice; and
- (3) certifies that it circulates notices for bids to the construction trade in general.

(d) The governmental entity shall mail a notice required under Subsection (c) of this section not later than the date on which the first newspaper advertisement under this section is published.

Opening of Bids

Sec. 4. Bids may be opened only by the governing body at a public meeting or by an officer or employee of the governmental entity at or in an office of the governmental entity.

Award of Bid

Sec. 5. A governmental entity shall have the right to reject any and all bids. Contracts covered by this Act shall be awarded to the lowest, responsible bidder, but a contract may not be awarded to a bidder who is not the lowest bidder unless prior to the award each lower bidder is given notice of the proposed award and is given an opportunity to appear before the governing body of the governmental entity or the designated representative of the governing body and present evidence concerning the bidder's responsibility.

Effect of Noncompliance

Sec. 6. A contract awarded in violation of this Act is void.

General Provisions

Sec. 7. (a) To the extent a municipal home-rule charter conflicts with this Act, the charter prevails.

(b) The provisions of the Professional Services Procurement Act (Article 664-4, Vernon's Texas Civil Statutes) are not affected by this Act.

(c) This Act does not apply to a contract which does not call for or require the expenditure of more than \$10,000 out of the funds of the governmental entity.

Repealer

Sec. 8. The last sentence of Section 2 of the Bond and Warrant Law of 1931 (Article 2368a, Vernon's Texas Civil Statutes) and all of Section 2(e) of The Certificate of Obligation Act of 1971 (Article 2368a.1, Vernon's Texas Civil Statutes) following the word "Texas" are repealed.

[Acts 1979, 66th Leg., p. 1901, ch. 770, §§ 1 to 8, eff. June 13, 1979.]

Art. 2368a-13. Validation of Time Warrants in Counties of Less than 1,000,000

Sec. 1. The governmental acts and proceedings performed by the commissioners court of any county with a population of less than 1,000,000, according to the most recent federal census, in authorizing the issuance of time warrants are validated in all respects as of the date of the act or proceeding if the time warrants were issued after August 1, 1976. Time warrants issued in connection with the proceedings are validated according to their terms and as of the date they were issued. The acts, proceedings, or time warrants issued in connection with them may not be held invalid because they were not performed in accordance with law.

Sec. 2. This Act does not apply to any matter involved in litigation on the date this Act takes effect if the litigation ultimately results against the legality of the matter. This Act does not apply to any matter that has been nullified by a final judgment of a court of competent jurisdiction.

[Acts 1977, 65th Leg., p. 2010, ch. 803, §§ 1, 2, eff. Aug. 29, 1977.]

Art. 2370b. County Office, Courts and Jail Buildings; Construction, Improvement, etc.

Power to Acquire, Construct, Reconstruct, Remodel, Etc., Buildings

Sec. 1. Whenever the Commissioners Court of any county determines that the county courthouse is not adequate in size or facilities to properly house all county and district offices and all county and district courts and all justice of the peace courts for the precincts in which the courthouse is situated, and to adequately store all county records and equipment (including voting machines) and/or that the county jail is not adequate in size or facilities to properly confine prisoners and other persons who may be legally confined or detained in a county jail, the

Commissioners Court may purchase, construct, reconstruct, remodel, improve and equip, or otherwise acquire an office building or buildings, or courts building or buildings, or jail building or buildings (in addition to the existing courthouse and/or jail), or an additional building or buildings in which any one or more of the county or district offices or county, district or justice of the peace courts, or the county jail or any other county facilities or functions may be housed, conducted and maintained; and may purchase and improve the necessary site or sites therefor, and may use such building or buildings for any or all of such purposes, provided that any such building or buildings so acquired shall be located in the county seat, but provided that any regional jail facility built according to the provisions of Section 4(h), The Interlocal Cooperation Act, as amended (Article 4413(32c), Vernon's Texas Civil Statutes), may be located outside the county seat, and further provided that no justice of the peace court shall be housed, conducted or maintained in any such building if said building is located out of the boundaries of the precinct of such justice of the peace court.

[See Compact Edition, Volume 3 for text of 2 to 6]

[Amended by Acts 1977, 65th Leg., p. 1619, ch. 634, § 1, eff. Aug. 29, 1977.]

Art. 2370b-2. Auxiliary Courts in Counties of 1,200,000 or More

The commissioners court in any county with a population of 1,200,000 or more according to the last preceding federal census may authorize specific geographic locations within the county other than the county courthouse as auxiliary courts for purposes of conducting nonjury proceedings and may designate those locations as auxiliary county seats for such purposes.

[Acts 1977, 65th Leg., p. 1203, ch. 465, § 1, eff. Aug. 29, 1977.]

Art. 2370b-3. Office Buildings or Jails Outside County Seat

Sec. 1. The commissioners court of any county may provide one or more office buildings or jail facilities at any place in the county outside the county seat in the same manner as the commissioners court may provide for these facilities at the county seat. The commissioners court may provide office space in a building provided under this Act for any county or precinct office, except courts required by law to sit at the county seat. Each county officer shall maintain an office at the county seat in which the officer shall keep all original records of the office.

Sec. 2. The office building or jail may be provided for by the issuance of bonds, as is provided by

Chapters 1 and 2, Title 22, Revised Civil Statutes of Texas, 1925, as amended,¹ or by the issuance of other evidences of indebtedness, in the same manner as bonds or evidences of indebtedness for courthouses and jails at county seats.

Sec. 3. The authority granted by this Act is in addition to that provided by other laws.

[Acts 1979, 66th Leg., p. 28, ch. 18, §§ 1 to 3, eff. Sept. 1, 1979.]

¹ Articles 701 et seq. and 718 et seq.

Art. 2370c-2. Criminal Justice Facilities in Certain Counties and Cities

Eligible Counties and Cities

Sec. 1. This Act shall apply to any county in this state and to any city in such county which city is not the county seat of such county but has a population of more than 17,500 according to the last preceding federal census.

Authorization

Sec. 2. Counties and cities to which this Act is applicable are hereby authorized jointly or severally to own, construct, equip, enlarge, and maintain a building or buildings in such city to constitute a criminal justice center providing facilities of a public nature with relation to or incidental in the administration of criminal justice, including, without limitation, accommodations for the handling, processing, and detention of prisoners, and offices for state, county, and city administrative and judicial officials, courtrooms, garages, and parking areas.

Contracts

Sec. 3. Such county and city shall have authority to specify by contract the purpose, terms, rights, objectives, duties, and responsibilities of each of the contracting parties, including the amount, or proportionate amount, of money to be contributed by each for land acquisition, building acquisition, construction, and equipment; the method or methods by which such moneys are to be provided; the account or accounts in which such money is to be deposited; the party which shall award construction or other contracts or that such contracts shall be awarded by action of both parties; and the manner in which disbursements shall be authorized. Such contract may further provide for the creation of an administrative agency or may designate one of the parties to supervise the accomplishment of the purposes of the contract and to operate and maintain the joint facilities, and any administrative agency so created or party so designated shall have authority to employ personnel and engage in other administrative activities as necessary in accomplishing the purposes of the contract and in operating and maintaining the joint facilities.

Methods of Meeting Costs

Sec. 4. The county and city contract may specify that moneys required of them in meeting the cost of providing the criminal justice center shall be derived from current income and funds on hand budgeted by them for such purpose, or through the authorization and issuance of bonds by either or both the county and city under the procedures prescribed for the issuance of general obligation bonds for other public buildings and purposes, or by the issuance by either or both the county and the city of certificates of obligation under the provisions of Article 2368a-1,¹ Vernon's Texas Civil Statutes, or by a combination of those methods. In lieu of or in combination with the employment of taxing power in the payment of such bonds or certificates of obligation, same may be payable from and secured by income derived from the criminal justice center facilities, including that from leases and from the proceeds of parking or other fees. In the financing of the facilities herein authorized eligible counties and cities jointly or severally may accept grants, gratuities, advances, and loans from the United States, the State of Texas, or any of their agencies, any private or public corporation, or any other person.

Office Facilities

Sec. 5. As applicable to counties eligible to employ the provisions of this Act, any county officer, in addition to the office he maintains at the county seat, may maintain office facilities in the herein authorized criminal justice center notwithstanding provisions of Article 1605, Revised Civil Statutes of Texas, 1925, as amended, or any other law limiting the location of county offices to the county seat of their respective counties.

[Acts 1975, 64th Leg., p. 1966, ch. 650, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 756, ch. 285, § 1, eff. Aug. 29, 1977.]

¹ So in enrolled bill; probably should read "2368a.1".

Art. 2370c-3. Justice Centers Located on State Line

Definitions

Sec. 1. In this Act:

(1) "Law" means a statute of a state, a written opinion of a court of record, a municipal ordinance, an order of a county commissioners court, or a rule authorized by and lawfully adopted pursuant to a statute.

(2) "Municipality" means an incorporated city or town.

Authorization for Contract

Sec. 2. (a) A county in this state and a municipality in that county, both located on the state line, may contract with an adjoining county and any municipality in that county located on the other side of the state line for the joint construction, financing,

operation, and management of a justice center to be located on the state line. The contracting municipality in this state need not be the county seat of the contracting county in this state. The county and municipality in this state may contract for the center to contain:

(1) courtrooms and office space needed by municipal, justice, county, district, and appellate courts;

(2) jail, lockup, and other detention facilities;

(3) federal, county, precinct, and municipal offices for prosecuting attorneys and other personnel as needed;

(4) adult or juvenile probation offices;

(5) any other offices that either county or municipality is separately authorized or required to operate or provide; or

(6) parking space, dining areas, and other facilities incidental to operation of the center.

(b) A court of civil appeals or a district, county, justice, or municipal court having jurisdiction in the county or municipality in which a part of the center is located may maintain offices and courtrooms and hold proceedings at the center, except that no justice court other than the justice court for the precinct in which the part of the center in this state is located may maintain an office and courtroom in the center.

(c) A court of this state may not hold proceedings in the part of the center located in the other state. Courts of the other state may hold proceedings in the part of the center in this state.

Financing

Sec. 3. The governing body of a Texas municipality or Texas county contracting as provided by Section 1 of this Act may finance its share of the construction, financing, operation, or management of the center by any means that it could finance the type of facilities in the center to be used or provided by it. The contract may take advantage of the availability of federal funds to finance any part of the center.

Management of Center

Sec. 4. The contracting parties may specify in the contract the manner of determining the persons responsible for:

(1) the operation, alteration, maintenance, cleaning, and repair of the facilities;

(2) the employment of center personnel;

(3) the purchase of materials, supplies, tools, and other equipment to be jointly used by offices provided or used by the contracting parties;

(4) preparing reports to the governing bodies of the contracting parties;

(5) joint record-keeping, communications, or dispatch systems; and

(6) the performance of any other powers or duties relating to operation of the center.

Personnel

Sec. 5. The contracting parties may provide in the contract the manner of determining the personnel policies and employment benefit programs for center personnel.

Jail Management

Sec. 6. The contract must provide that the sheriffs of the two counties are jointly responsible for operation of any jail, lockup, or other detention facility in the center and the custody, care, and treatment of persons in custody in the facility or must provide for the hiring of a jailer with those responsibilities.

Law Applicable to the Center

Sec. 7. (a) Except as otherwise provided by this Act, the law of both states regarding rights, duties, liabilities, privileges, and immunities arising from conduct applies to conduct in any part of the center. If, however, it is impossible for a person to conform his or her conduct in the center to the law of both states, that person may choose which state's law governs that conduct. If a person chooses to conform his or her conduct in the center to the law of the other state, the conflicting law of this state does not apply to that conduct.

(b) The physical plant of the center and equipment and facilities used by personnel of both states employed at the center are constructively present in both states.

(c) Except as provided by Subsection (d) of this section, property in any part of the center that is owned by or in the possession of a person in custody or summoned to appear in the center is constructively present in the state under the law of which the person was taken into custody or summoned to appear.

(d) Possession of property that constitutes an offense committed in the center is conduct to which Subsection (a) of this section applies. A person's exercise of a duty in regard to property in the center is conduct to which Subsection (a) of this section applies.

(e) Property that is ordered by a court to be produced in the center or that is in the possession of a peace officer or a party to a proceeding for use as evidence before a court holding a proceeding in the center is constructively present in the state of the court.

(f) Property in the center that is not covered by Subsection (c), (d), or (e) of this section is constructively present in both states.

(g) The law of a state in which property is constructively present applies to that property to the

same extent that that law would apply if the property were actually present in that state. If property is constructively present in only one state, the law of the state in which the property is not constructively present may be applied to that property only to the extent that that law would apply if the property were actually outside that state.

(h) Except as otherwise provided by this Act, the courts of both states have concurrent jurisdiction over the geographic area of both states in the center, but the state in which a prosecution is first instituted for an offense committed in the center retains jurisdiction to apply that state's law to the exclusion of the other state's jurisdiction, unless the prosecution is terminated without jeopardy attaching under the law of the state of the first prosecution. For the purposes of this Act, a prosecution is commenced in this state on the filing of an indictment, information, or complaint, and the attachment of jeopardy in this state is determined by Article 27.05, Code of Criminal Procedure, 1965, as amended.

Arrest, Extradition, and Service of Process

Sec. 8. (a) A person who is in the center in the custody of a peace officer or center personnel under Texas law:

(1) is constructively present in Texas while that person is in custody in the part of the center in the other state;

(2) may be prosecuted for an offense against Texas law without extradition of that person; and

(3) may be personally served in any part of the center for a proceeding in Texas.

(b) A person who is in the center in the custody of a peace officer or center personnel under the law of the other state:

(1) is constructively present in the other state while that person is in custody in the part of the center in Texas;

(2) may not be prosecuted for an offense against Texas law without extradition of that person; and

(3) may not be personally served with process in any part of the center for a proceeding in Texas.

(c) Texas agrees that a person who is in the center in the custody of a peace officer or center personnel under the law of the other state may be prosecuted for an offense against the law of the other state without extradition of that person. Texas agrees that a person who is in the center in the custody of a peace officer or center personnel under the law of the other state may be personally served with process in any part of the center for a proceeding in the other state.

(d) Center personnel or a peace officer of either state may transfer across the state line in the center a person in custody in the center under the law of

either state and may exercise control over that person on both sides of the state line in the center.

(e) A person in the center who has not been confined in the center, taken to the center under arrest, or summoned to appear in the center may be arrested in any part of the center for an offense against the law of either state without extradition of that person. Extradition of a person who was arrested in the center under those circumstances is not required in order to prosecute the person for an offense against the law of either state if the person is physically present in any part of the center or the state of the prosecution at the time of the prosecution.

(f) A person who is summoned to appear in the center under Texas law:

(1) is constructively present in Texas while that person is appearing under the summons in the part of the center in the other state;

(2) without extradition, may be arrested in any part of the center for an offense against Texas law and prosecuted for that offense if that person is physically present in any part of the center or Texas at the time of the prosecution; and

(3) may be personally served with process in any part of the center for a proceeding in Texas.

(g) A person who is summoned to appear in the center under the law of the other state:

(1) is constructively present in the other state while that person is appearing under the summons in the part of the center in Texas;

(2) without extradition, may not be arrested under Texas law in any part of the center for an offense against Texas law; and

(3) may not be personally served with process in any part of the center for a proceeding in Texas.

(h) Texas agrees that a person who is summoned to appear in the center under the law of the other state may be arrested in any part of the center for an offense against the law of the other state and prosecuted for that offense without extradition if that person is physically present in any part of the center or the other state at the time of the prosecution. Texas agrees that a person who is summoned to appear in the center under the law of the other state may be personally served with process in any part of the center for a proceeding in the other state.

(i) If a person in the center is constructively present in one state under this section, the law of the state in which the person is not constructively present may be applied to that person only to the extent that that law would apply if the person were actually outside that state. However, the law applicable to that person's conduct in the center is governed by Section 7 of this Act, and whether extradi-

tion is required to arrest or prosecute that person for an offense committed in the center is governed by Section 8 of this Act.

(j) If the other state enacts legislation as provided in Section 9 of this Act, a peace officer of Texas may:

(1) arrest a person under Texas law in the part of the center in the other state for an offense against Texas law if that peace officer would be authorized to make that arrest in the part of the center in Texas; and

(2) arrest a person under the law of the other state in any part of the center for an offense against the law of the other state if a peace officer of the other state would be authorized to make that arrest in the part of the center in the other state.

(k) Texas agrees that a peace officer of the other state may arrest a person under Texas law in any part of the center for an offense against Texas law if a peace officer of Texas would be authorized to make that arrest in the part of the center in Texas.

(l) Texas agrees that a peace officer of the other state may arrest a person under the law of the other state in the part of the center in Texas for an offense against the law of the other state if that peace officer would be authorized to make that arrest in the part of the center in the other state.

(m) Notwithstanding Sections 3 and 6, Article 51-13, Code of Criminal Procedure, 1965, the governor of this state may recognize a demand for the extradition of a person charged with crime in the other state if the demand alleges that any element of the offense occurred in any part of the center.

Other State's Legislation

Sec. 9. A county and a municipality in this state may contract with a county and a municipality in an adjoining state as provided by Sections 2 and 3 of this Act only if the other state enacts legislation relating to the establishment of a justice center pursuant to a contract as provided in those sections that:

(1) provides for joint responsibility of the sheriffs of the two counties over the operation of a jail, lockup, or other detention facility in the center and persons in custody in the facility, or the hiring of a jailer with those responsibilities;

(2) provides for the application and enforcement of the law of both states in the manner provided by Section 7 of this Act;

(3) provides that a person in custody in the center under Texas law may be prosecuted for an offense against Texas law without extradition of that person, as provided by Section 8 of this Act;

(4) provides that a person in custody in the center under Texas law may not be prosecuted for

an offense against the law of the other state without extradition of that person or personally served with process in the center for a proceeding in the other state;

(5) provides that a person summoned to appear in the center under Texas law may not be personally served with process in any part of the center for a proceeding in the other state and may be arrested in any part of the center for an offense against Texas law and prosecuted for that offense without extradition of the person if the person is physically present in any part of the center or Texas at the time of the prosecution, as provided by Section 8 of this Act;

(6) provides that a person summoned to appear in the center under Texas law may not be arrested in any part of the center for an offense against the law of the other state;

(7) provides that center personnel or a peace officer of either state may transfer across the state line in the center a person in custody in the center under the law of either state and may exercise control over that person on both sides of the state line in the center, as provided by Section 8 of this Act;

(8) provides that a person in the center who is not confined in the center, taken to the center under arrest, or summoned to appear in the center may be arrested in any part of the center for an offense against the laws of either state without extradition of that person, and that extradition of a person who was arrested in the center under those circumstances is not required in order for the person to be prosecuted for an offense against the law of either state if the person is physically present in any part of the center or the state of the prosecution at the time of the prosecution, as provided by Section 8 of this Act;

(9) authorizes a peace officer of either state, under Texas law, to arrest a person in any part of the center for an offense against Texas law if a peace officer of Texas would be authorized to make that arrest in the part of the center in Texas, as provided by Section 8 of this Act; and

(10) authorizes a peace officer of either state, under the law of the other state, to arrest a person in any part of the center for an offense against the law of the other state if a peace officer of the other state would be authorized to make that arrest in the part of the center in the other state, as provided by Section 8 of this Act.

[Acts 1979, 66th Leg., p. 1878, ch. 760, §§ 1 to 9, eff. Aug. 27, 1979.]

Art. 2372d-6. Lease and Sale of Land for Hotel in Conjunction With County Convention Center in Counties Over 700,000

Lease of County Property

Sec. 1. The commissioners court of any county with a population of more than 700,000 according to the most recent federal census is authorized to lease real property owned by such county and the air rights above such real property owned by such county to private persons, corporations, or associations as provided in this Act.

Use of Leased Property

Sec. 2. The commissioners court is authorized to lease real property owned by the county, as well as the air rights above such property, to private persons, corporations, or associations for the construction, maintenance, and operation of a privately owned hotel and related facilities which are operated in conjunction with an existing convention center owned by the county.

Effect of Existing Bond Indentures

Sec. 3. The commissioners court may lease the real property and air rights thereto, as provided herein, notwithstanding that the real property leased is presently encumbered by existing revenue bond indentures. In leasing the county-owned land or the air rights thereto, the commissioners court shall abide by all applicable terms and conditions of the existing revenue bond indentures, except such terms as are waived by the holders of the revenue bonds.

Creation of Encumbrance Prohibited

Sec. 4. No lease of county-owned land or air rights thereto hereunder shall in any way subject the county-owned land to a mortgage or encumbrance not heretofore existing and any lease executed hereunder shall specifically provide that such county-owned land shall not be deemed to be encumbered or mortgaged by any lease executed hereunder, or any agreement executed in connection with such lease.

Land May not be Mortgaged

Sec. 5. The county-owned land which may be leased hereunder shall not be in any way pledged or mortgaged (other than by existing revenue bond indentures or refunding or other release of existing revenue bond indentures), by any lease or agreement executed hereunder, and the county executing a lease hereunder shall not in any way lend its credit to any private corporation, association, or person in connection with a lease executed hereunder.

Duration of Lease

Sec. 6. Any lease entered into hereunder by the commissioners court is authorized to be initially for

the term of any mortgage covering the construction of the hotel and related facilities and is authorized to provide an option to renew thereafter in the parties constructing, owning, or operating the hotel or related facilities for such term as the parties may mutually agree.

Lease Terms and Conditions

Sec. 7. Any lease hereunder of county-owned property or air rights thereto shall be leased upon a competitive bid and for a consideration of not less than the fair market lease value and may otherwise be upon such terms and conditions as the parties may mutually agree upon consistent with the constitution and laws of this state.

Sale of Property

Sec. 8. (a) Notwithstanding any other provisions of the law to the contrary, the commissioners court is specifically authorized to enter an agreement hereunder to provide for the sale of specified county-owned land to a private association, corporation, or individual once the following conditions have been fulfilled:

(1) all existing revenue bond obligations have been fully discharged to bond holders;

(2) a hotel has been built on the land in conjunction with an existing convention center and the operation of the hotel has been continuous for at least five years from its inception;

(3) the parties mutually agree to a sale of the realty and air rights thereto;

(4) the county receives an adequate sale price which is fair under the then existing market conditions for the sale of the land and any air rights thereto.

(b) The commissioners court may impose such deed restrictions or reverters as may be advisable to preserve the use of the land for a purpose consistent with the construction, expansion, ownership, and operation of a hotel and related facilities in conjunction with a convention center.

(c) The sale of the land may include land appurtenant to the land upon which said hotel or related facilities have been built.

Contracts: Parties, Purposes

Sec. 9. The power of the commissioners court to enter into agreements and contracts hereunder shall extend to one or more private associations, corporations, or individuals for all or any of the following purposes: construction of a hotel and related facilities, ownership of a hotel and related facilities, and operation, maintenance, and expansion of a hotel and related facilities.

Expenditure of Tax Revenue

Sec. 10. In agreements and contracts authorized by this Act, the commissioners court may expend tax funds consistent with the provisions of this Act and other provisions of state law, but the commitment and expenditure of tax funds must be from current revenues of the county.

[Acts 1979, 66th Leg., p. 2007, ch. 786, §§ 1 to 10, eff. Aug. 27, 1979.]

Art. 2372h-4. Payroll Deductions; Authorized Purposes

Sec. 1. (a) The commissioners court of any county of 20,000 or more population may authorize payroll deductions to be made from the wages and salaries of county employees, on each employee's written request, to a credit union, to pay membership dues in a labor union or a bona fide employees association, and to pay fees for parking in county owned facilities.

(b) Each employee requesting a deduction under this Act shall submit to the county auditor a written request indicating the amount to be deducted from the employee's wages or salary and to transfer the withheld funds to the credit union, proper labor union or employees association, or county funds. The request shall remain in effect until the county auditor receives written notice of revocation signed by the employee.

(c) The amount deducted from an employee's wages or salary for the purpose stated in this Act shall not be more than the amount stipulated in the written request.

(d) Participation in the program authorized by this Act is voluntary on the part of any county employee and the county.

Sec. 2. The provisions of this Act shall not alter, amend, modify, or repeal any of the provisions of Chapter 135, Acts of the 50th Legislature, 1947 (Article 5154c, Vernon's Texas Civil Statutes).

Sec. 3. Public funds shall not be used to defray the administrative cost of making the deductions authorized under this Act, except those deductions relating to payment for parking. The credit union, labor union or employees association shall pay the full and complete administrative cost, if any, as determined and approved by the commissioners court of the deductions made for their benefit under this Act.

[Amended by Acts 1975, 64th Leg., p. 2355, ch. 724, § 1, eff. Sept. 1, 1975.]

Art. 2372h-6. Civil Service System in Counties of 200,000 or More

[See Compact Edition, Volume 3 for text of 1]

Establishment of Civil Service

Sec. 2. Any county having a population of 200,000 or more inhabitants according to the last preceding federal census may establish a county civil service system under the provisions of this Act to cover all employees of the county.

[See Compact Edition, Volume 3 for text of 3 to 7]

Powers of Commission

Sec. 8.

[See compact Edition, Volume 3 for text of 8(a) and (b)]

(c) The commission may not make a rule or enforce any existing rule requiring retirement at any age below 70. If a commission rule sets a mandatory retirement age, an employee who reaches that age may have his employment extended on application to and approval by the commissioners court on a year to year basis.

[See Compact Edition, Volume 3 for text of 9 to 13]

[Amended by Acts 1977, 65th Leg., p. 654, ch. 244, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 864, ch. 326, § 1, eff. Aug. 29, 1977.]

Art. 2372h-7. Liability Insurance for County Officers and Employees

Sec. 1. A county may insure such of its officers and employees, including county and precinct peace officers as may be designated by the county commissioners court, against liability to a third person arising from the performance of official duties or duties of employment by purchasing policies of liability insurance from an insurer authorized to do business in this state.

Sec. 2. Insurance purchased by a county under the provisions of this Act shall be on forms approved by the State Board of Insurance.

[Acts 1977, 65th Leg., p. 1657, ch. 653, §§ 1, 2, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 1831, ch. 744, § 4, eff. June 13, 1979.]

Art. 2372p-2. Personal Bond Offices

[See Compact Edition, Volume 3 for text of 1 to 3]

Sec. 4. (a) If a court releases an accused on personal bond on a personal bond office's recommendation, the court shall assess a personal bond fee of \$20 or of three percent of the amount of the bail fixed for the accused, whichever is greater. The court may waive the fee or assess a lesser fee if good cause is shown.

[See Compact Edition, Volume 3 for text of 4(b) and (c)]

[Amended by Acts 1977, 65th Leg., p. 1914, ch. 765, § 1, eff. Aug. 29, 1977.]

Art. 2372p-3. Licensing and Regulation of Bail Bondsmen

[See Compact Edition, Volume 3 for text of 1 and 2]

Requirements of License

Sec. 3.

[See Compact Edition, Volume 3 for text of 3(a) and (b)]

(c) The provisions of this Act do not apply to the execution of bail bonds in counties having a population of less than 110,000 according to the last preceding federal census.

[See Compact Edition, Volume 3 for text of 3(d) and 4]

County Bail Bond Board

Sec. 5. (a) There is hereby created in all counties having a population of 110,000 or more, according to the last preceding federal census, a County Bail Bond Board.

[See Compact Edition, Volume 3 for text of 5(b) to 11]

Other Procedural Provisions

Sec. 12.

[See Compact Edition, Volume 3 for text of 12(a)]

(b) Any licensee under this Act may execute bail bonds in the county in which his license is issued and, after being certified by the sheriff in his county, may present a bail bond to any sheriff in the state having custody of the accused person named therein, except that a sheriff of a county having a population in excess of 110,000 according to the last preceding federal census may require that all bail bonds be executed by persons licensed in that county.

[See Compact Edition, Volume 3 for text of 12(c) to 16]

[Amended by Acts 1975, 64th Leg., p. 1194, ch. 451, §§ 1 to 3, eff. June 19, 1975; Acts 1979, 66th Leg., p. 202, ch. 111, §§ 1 to 3, eff. Aug. 27, 1979.]

Art. 2372q-1. Regulation of Private Water Companies in Counties Over 1,500,000

Definitions

Sec. 1. In this Act:

(1) "Commissioners court" means the commissioners court of any county with a population of

more than 1,500,000, according to the last preceding federal census.

(2) "Private water company" means a privately owned entity organized under the laws of this state for the purpose of furnishing a water supply or sewer services or both to the public, to cities and towns including home-rule cities, or to special districts, counties, or other political subdivisions of the state.

Assumption of Regulatory Authority Over Rates and Services; Rates Schedule

Sec. 2. (a) The rates and services of a private water company in a county with a population of more than 1,500,000, according to the last preceding federal census, shall be regulated by the commissioners court as provided in this Act, if:

(1) the private water company is charging or proposes to charge residential rates in any service area which exceed by 30 percent or more the highest residential rates charged by the water department of the largest city in the county; or

(2) a petition is submitted to the commissioners court signed by at least 30 percent of the persons residing, according to the last preceding federal census, in one or more of the service areas served by a private water company requesting that the commissioners court exercise regulatory authority over the company serving them.

(b) To determine whether or not the commissioners court should assume regulatory authority over a private water company under Subdivision (1), Subsection (a) of this section, each private water company operating inside the boundaries of a county with a population of more than 1,500,000, according to the last preceding federal census, on the effective date of this Act shall submit to the commissioners court copies of all rate schedules in effect on the effective date of this Act. After examining these rate schedules, the commissioners court shall determine and issue an order designating which private water companies within the county will be under its regulatory authority as a result of the provisions of Subdivision (1), Subsection (a) of this section.

(c) After the initial determination under Subsection (b) of this section, each private water company that is not operating under the regulatory authority of the commissioners court shall submit copies of each new or changed rate schedule that it plans to adopt at least 30 days before the rates are to take effect so that the commissioners court may make a determination whether or not the private water company will come under the regulatory authority of the commissioners court under Subdivision (1), Subsection (a) of this section. The commissioners court shall issue an order within 10 days after the schedules are filed stating whether or not the company will be brought under regulatory authority of the commissioners court.

(d) If the commissioners court finds that a private water company qualifies for regulation by it under Subsection (a) of this section, it shall issue its order assuming regulatory authority over the company, and the regulatory authority of the commissioners court shall take effect 15 days after the order is issued.

Filing of Rate Schedules; Proposed Changes

Sec. 3. (a) Each private water company over which the commissioners court assumes regulatory authority shall file with the commissioners court copies of all of its schedules of rates and charges and proposed schedules of rates and charges within 15 days after the commissioners court assumes regulatory authority unless this information has already been filed under some other section of this Act.

(b) A private water company regulated under this Act which proposes to change any of its rates, charges, or both shall file with the commission copies of the proposed schedules of rates, charges, or both at least 40 days before they are to take effect.

Hearing

Sec. 4. On receiving schedules of existing or proposed rates, charges, or both from a private water company under the regulatory authority of the commissioners court, the commissioners court shall set a time, place, and date for a public hearing to consider approval of the rates, charges, or both and shall issue notice as provided in this Act. The hearing shall be held not earlier than 25 nor later than 30 days after the date the schedules are filed.

Notice of Hearing

Sec. 5. (a) Notice of a hearing shall be posted in at least one public place in each service area affected by or to be affected by the proposed rates, charges, or both and at the courthouse in the place for posting notice of meetings of the commissioners court.

(b) Notice of the hearing shall be published at least one time in a newspaper of general circulation in each service area affected by or to be affected by the rates, charges, or both.

(c) The private water company whose rates, charges, or both are being considered at the hearing shall be given notice by certified mail return receipt requested.

(d) Notice required by this section shall be given at least 10 days before the day of the hearing.

Access to Books, Records and Information of Water Company

Sec. 6. The commissioners court and its employees and agents are entitled to access to all books, records, and other information of a private water company which may be necessary for the commissioners court to determine if it may exercise regula-

tory authority under Section 2(a)(1) of this Act and to carry out its regulatory authority under this Act.

Inspection of Files and Information Gathered

Sec. 7. At least 10 days before the date set for the hearing, the commissioners court shall make all files and information gathered by it and its employees and agents relating to the matter to be heard available for inspection during regular office hours.

Personal Appearance at Hearing; Recess

Sec. 8. (a) Any person who desires to appear at the hearing and present testimony, evidence, exhibits, or other information may do so in person, by counsel, or both.

(b) The commissioners court may recess the hearing from day to day.

Compelling Testimony; Oaths; Subpoenas

Sec. 9. The commissioners court may compel the testimony of any person necessary to carry out the provisions of this Act, and may administer oaths to persons who appear to testify before the commissioners court. Also, the commissioners court may issue subpoenas to compel the testimony of any persons and the production of any documents or information necessary to carry out the provisions of this Act.

Determination; Written Order

Sec. 10. (a) Within 30 days after the conclusion of the hearing, the commissioners court shall determine whether or not to approve the schedules of rates, charges, or both that were considered at the hearing and if the schedules are to be adopted, shall decide on any modifications in the schedules that the commissioners court considers necessary based on its own investigation and evidence and information gathered at the hearing.

(b) On making a determination, the commissioners court shall issue a written order stating its determination and the reasons for its determination.

Fair Return on Value of Property; Public Relations Expenses

Sec. 11. (a) No rate or charge determined by the commissioners court may yield more than a fair return on the fair value of property used and useful in rendering service to the public and no return on a rate or charge may exceed eight percent a year.

(b) In making a determination on a rate, charge, or both, the commissioners court shall not include in the basis for establishment of the rate, charge, or both any amounts spent by the private water company for advertising or other public relations expenses.

Appeal

Sec. 12. Orders of the commissioners court issued under this Act may be appealed to a district court in

the county in which the commissioners court has jurisdiction.

Rules and Regulations

Sec. 13. (a) The commissioners court, after notice and hearing, may adopt by order any rules and regulations that it considers necessary to carry out the provisions of this Act.

(b) The commissioners court by rules and regulations may adopt reasonable standards to be followed by private water companies operating under its regulatory authority in delivering their services to the public.

Annual Report of Water Company

Sec. 14. (a) Each private water company under the regulatory authority of the commissioners court shall file with the commissioners court before January 1 of each year a report which shall include:

(1) the amount of a lien or mortgage on any property of the company;

(2) other indebtedness of the company and the consideration for it;

(3) the actual cost of the visible physical property of the company and the date it was installed and the present value of it with land, machinery, buildings, pipes, mains, and other items of property being listed separately; and

(4) the annual cost of operating the facilities of the company including amounts paid for actual salaries; labor; fixed charges including interest, taxes, and insurance; fuel; extension and repairs; maintenance; damages, claims, or suits for damages; and miscellaneous expenses.

(b) If machinery or equipment of the company is abandoned, worn out, or its use discontinued within the preceding year, this shall be stated in the report together with the original cost and the present value.

(c) The report shall state the gross earnings of the company including revenues from every source and shall state each item separately and the amount received by the company.

Civil Penalty

Sec. 15. A private water company that violates any provision of this Act or any rule, regulation, or order of the commissioners court is subject to a civil penalty of not less than \$50 nor more than \$1,000 for each act of violation and for each day of violation to be recovered as provided in this Act.

Injunctive Relief or Civil Penalty

Sec. 16. (a) Whenever it appears that a private water company has violated or is violating, or is threatening to violate, any provision of this Act, or any rule, regulation, or order of the commissioners

court, the commissioners court may have a civil suit instituted in a district court in the county in which the commissioners court has jurisdiction for injunctive relief to restrain the person from continuing the violation or threat of violation, or for the assessment and recovery of a civil penalty of not less than \$50 nor more than \$1,000 for each act of violation and for each day of violation, or for both injunctive relief and civil penalty.

(b) On application for injunctive relief and a finding that a person is violating or threatening to violate any provisions of this Act or any rule, regulation, or order of the commissioners court, the district court shall grant the injunctive relief the facts may warrant.

(c) At the request of the commissioners court, the county attorney shall institute and conduct a suit in the name of the county for injunctive relief or to recover the civil penalty, or both, as authorized in Subsection (a) of this section.

[Acts 1975, 64th Leg., p. 1946, ch. 640, eff. Sept. 1, 1975.]

Art. 2372r. Repealed by Acts 1975, 64th Leg., p. 114, ch. 52, § 1, eff. April 18, 1975

See, now, art. 6145.1.

Art. 2372s. Parking Stations Near Courthouses in Counties Over 800,000

Power to Construct and Operate Parking Stations; Leases

Sec. 1. The commissioners court of any county with a population in excess of 800,000 according to the most recent federal census upon finding that it is to the best interest of the county and its inhabitants shall have the power to construct, enlarge, furnish, equip and operate a parking station in the vicinity of the courthouse of the county. It is further authorized from time to time to lease said parking station to a person or corporation on such terms as the commissioners court shall deem appropriate.

[See Compact Edition, Volume 3 for text of 2 to 9]

[Amended by Acts 1977, 65th Leg., p. 379, ch. 188, § 1, eff. Aug. 29, 1977.]

Art. 2372s-1. Regulation of Parking in Certain Courthouse Parking Lots

Sec. 1. This Act shall apply in every county having a population of not less than 12,500 nor more than 13,000, and in every county having a population of not less than 14,000 nor more than 14,100, and in every county having a population of not less than 15,000 nor more than 15,340, and in every county having a population of not less than 18,093 nor more than 18,099, and in every county having a population of not less than 27,800 nor more than 28,000, and in every county having a population of not less than 140,000 nor more than 180,000, according to the last preceding federal census.

Sec. 2. The commissioners court is authorized to purchase such equipment as is necessary and make and enforce regulations for parking in county-owned or county-leased parking lots in, under, adjacent to, or near the county courthouse. The commissioners court may in its discretion contract with the city for enforcement of the regulations and likewise the city in its discretion may contract with the county. The Sheriff's Department of such counties is hereby authorized to enforce any and all regulations passed by the Commissioners Court.

Sec. 3. A person who violates a regulation authorized by this Act is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$1 nor more than \$20.

[Acts 1965, 59th Leg., p. 802, ch. 387, eff. June 9, 1965. Amended by Acts 1969, 61st Leg., p. 2453, ch. 820, §§ 1, 2, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1844, ch. 542, § 108, eff. Sept. 1, 1971.]

Art. 2372s-3. Parking on County Property

Adoption of Regulations

Sec. 1. The commissioners court of a county by order may adopt regulations as to the parking of vehicles on property owned or leased by the county.

Regulations

Sec. 2. Regulations adopted under this Act may:

- (1) limit the use of parking spaces to certain vehicles or types of vehicles;
- (2) limit the time a vehicle may remain parked in a specific space or area; and
- (3) prohibit the parking of vehicles in certain areas.

Signs

Sec. 3. If parking is restricted or prohibited in a place, the county shall erect at the place one or more appropriately worded signs reasonably calculated to inform the drivers of vehicles of the restriction or prohibition. No sign is required to indicate that parking is prohibited on a lawn or other area that does not appear to be a place intended for use as a parking area.

Violations; Defenses

Sec. 4. An individual who parks a vehicle in violation of a regulation adopted under this Act commits a Class C misdemeanor. It is a defense to prosecution under this section that:

- (1) the place where the actor parked is one where a sign or signs are required by Section 3 of this Act; and
- (2) a sign or signs meeting the requirements of Section 3 of this Act were not in place at the time the actor parked.

Towing and Storing of Vehicles

Sec. 5. A county may provide for the towing away and storing at the owner's expense of any vehicle parked in violation of regulations adopted under this Act. This section does not authorize the towing away of a vehicle that is parked under circumstances where the person parking it would have a defense to prosecution under Section 4 of this Act. [Acts 1975, 64th Leg., p. 569, ch. 228, eff. May 20, 1975.]

Art. 2372s-4. Parking Regulations and Purchase of Equipment by Counties of 235,000 or More

Sec. 1. The commissioners court of a county having a population of 235,000 or more inhabitants, according to the last preceding federal census, may purchase necessary equipment and make and enforce parking regulations for parking in a county-owned or county-leased parking lot in, under, adjacent to, or near the county courthouse.

Sec. 2. (a) The commissioners court may contract with the governing body of the city in which the county seat is located for enforcement of the parking regulations promulgated under the provisions of Section 1 of this Act.

(b) The sheriff's department of the county may enforce parking regulations promulgated under the provisions of Section 1 of this Act.

Sec. 3. A person who violates a parking regulation promulgated under the provisions of Section 1 of this Act commits a misdemeanor and on conviction is punishable by a fine of not less than \$1 nor more than \$20.

[Acts 1975, 64th Leg., p. 2198, ch. 702, eff. Sept. 1, 1975.]

Art. 2372t. Emergency Ambulance Service in Counties of 9,800 to 20,000

Sec. 1. The commissioners court of any county with a population in excess of 9,800 inhabitants but less than 20,000, according to the last preceding federal census, may provide within the county for emergency ambulance service, including all necessary equipment, personnel, and maintenance for the service.

[See Compact Edition, Volume 3 for text of 2 to 5]

[Amended by Acts 1979, 66th Leg., p. 576, ch. 266, § 1, eff. May 24, 1979.]

Art. 2372u. Regulation of Outdoor Lighting and Subdivisions Near Major Astronomical Observatories

Definitions

Sec. 1. In this Act:

- (1) "Major astronomical observatory" means a facility established for making scientific observa-

tion of astronomical phenomena and equipped with a telescope having an aperture at least 75 inches in diameter.

(2) "Outdoor lighting" means any type of lighting equipment, fixed or movable, designed or used for illumination outside of buildings or homes, including lighting for billboards, street lights, searchlights used for advertising purposes, externally or internally illuminated on- or off-site advertising signs, and area-type lighting. It does not include lighting equipment required by law to be installed on motor vehicles, or lighting required for the safe take-off and landing of aircraft.

County Regulatory Authority

Sec. 2. (a) To protect against the use of outdoor lighting in a way that interferes with scientific astronomical research, the commissioners court of a county may adopt orders regulating the installation and use of outdoor lighting within the unincorporated territory located within the same county and within 75 miles of a major astronomical observatory, regardless of whether the observatory is in the county.

(b) Orders adopted under this section may:

(1) require that a permit be obtained from the county for the installation or use of certain types of outdoor lighting, and establish fees for the issuance of permits;

(2) prohibit the use of those types of outdoor lighting found to be incompatible with the effective use of the observatory;

(3) establish requirements for the shielding of outdoor lighting; and

(4) regulate the times during which various types of outdoor lighting may be used.

Regulation of Subdivisions

Sec. 3. (a) This section applies only to real estate subdivisions subject to the plat-approval authority of a commissioners court and located within 75 miles of a major astronomical observatory.

(b) A commissioners court may adopt orders establishing standards applicable to proposed subdivisions designed to minimize the interference with observatory activities from outdoor lighting. The commissioners court may not approve a plat of a proposed subdivision that does not meet those requirements.

Standards May Vary

Sec. 4. Orders adopted under this Act may apply more stringent standards in areas where the impact of outdoor lighting on activities of the observatory is greater.

Adoption of Orders

Sec. 5. No orders may be adopted by a commissioners court under this Act, unless:

(a) a request for such orders be made by the Director of McDonald Observatory; then

(b) such requested orders may be adopted by a commissioners court after a public hearing has been held on the proposed order; of which

(c) at least two weeks public notice has been given of such hearing.

Exemption

Sec. 6. No outdoor lighting in existence or under construction on the effective date of this Act shall be subject to the provisions of this Act.

Enforcement; Penalty

Sec. 7. (a) An individual, corporation, or association that violates an order adopted under this Act commits a Class C misdemeanor.¹

(b) A county or district attorney may sue in the district court to enjoin violation of this Act.

(c) Both civil and criminal enforcement may be used against the same conduct.

[Acts 1975, 64th Leg., p. 102, ch. 44, eff. Sept. 1, 1975.]

¹ Penal Code, § 12.23.

Art. 2372v. Regulation of Massagers and Massage Establishments

Definitions

Sec. 1. In this Act:

(1) "Massage" means the rubbing, kneading, tapping, compression, vibration, application of friction, or percussion of the human body or parts of it by hand or with an instrument or apparatus.

(2) "Massager" means an individual who administers massages for compensation.

(3) "Massage establishment" means a business establishment where massagers practice massage.

(4) "Unincorporated territory" means the territory outside the corporate limits of an incorporated city or town.

Adoption of Regulations; Penalty for Violations

Sec. 2. (a) The commissioners court of any county by order may adopt regulations applicable to the practice of massage and operation of massage establishments in unincorporated territory in the county.

(b) Regulations adopted under this Act may:

(1) require the licensure by the county of massagers and massage establishments and establish reasonable requirements and fees for obtaining a license;

(2) establish standards applicable to the practice of massage and the operation of massage establishments designed to protect public health;

(3) provide procedures for suspending or cancelling the licenses of massagers and massage establishments for violation of a regulation adopted under this Act, for the conviction of an offense defined in Chapter 43, Penal Code, or for the conviction of any other offense reasonably indicating the licensee's unfitness to practice massage or operate a massage establishment;

(4) provide for the inspection of massage establishments;

(5) provide reasonable standards for clothing worn by persons employed by a massage establishment; and

(6) establish any other reasonable procedures or prohibitions consistent with the police power to protect the public health and safety and to prevent violations of state law.

(c) A person who violates a regulation adopted under this Act commits a Class B misdemeanor.

Exemptions from Act

Sec. 3. (a) Ordinances adopted under this Act do not apply to a licensed physical therapist, a licensed athletic trainer, a licensed cosmetologist, or a licensed barber performing functions authorized under the license held, nor do ordinances adopted under this Act apply to a licensed physician or chiropractor, or any individual working under the direct supervision of a licensed physician or chiropractor, while engaged in practicing the healing arts.

(b) Ordinances adopted under this Act do not apply to the administration of massage for therapeutic purposes in a hospital, nursing home, or other health care facility.

Inspection and Licensing Officer; Enforcement

Sec. 4. The county commissioners court shall designate the sheriff of the county as the inspection and licensing officer under this Act. Any peace officer certified by the State of Texas may enforce the regulations.

Severability

Sec. 5. In case any one or more of the sections, provisions, clauses, or words of the Act or the application of such sections, provisions, clauses, or words to any situation or circumstance shall for any reason be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect any other sections, provisions, clauses, or words of the Act or the application of such sections, provisions, clauses, or words to any other situation or circumstance, and it is intended that the Act shall be severable and shall be construed and applied as if any such invalid or unconstitutional section, provision, clause, or word had not been included herein.

[Acts 1977, 65th Leg., p. 651, ch. 242, §§ 1 to 5, eff. May 25, 1977.]

Art. 2372w. Regulation of Location of Sexually Oriented Commercial Activities by Cities and Counties

Findings and Purpose

Sec. 1. (a) The legislature finds that the unrestricted location of certain sexually oriented commercial enterprises may be detrimental to the public health, safety, and welfare by contributing to the decline of residential and business neighborhoods and the growth of criminal activity. The purpose of this Act is to provide local governments a means of remedying this problem.

(b) This Act neither enhances nor diminishes the authority of local governments to regulate commercial enterprises covered by this Act with regard to matters other than their location.

Definitions

Sec. 2. In this Act "city" means an incorporated city, town, or village and includes a home-rule city.

Authority to Regulate

Sec. 3. (a) A city by ordinance or a county by order of the commissioners court may adopt regulations restricting the location of massage parlors, nude studios, modeling studios, love parlors, and other similar commercial enterprises whose major business is the offering of a service which is intended to provide sexual stimulation or sexual gratification to the customer.

(b) Nothing in this Act is intended to authorize the regulation of any bookstore, movie theatre, or business licensed to sell alcoholic beverages, nor does it authorize regulation of any business:

(1) operated by or employing licensed psychologists, licensed physical therapists, licensed athletic trainers, licensed cosmetologists, or licensed barbers engaged in performing functions authorized under the license held; or

(2) operated by or employing licensed physicians or licensed chiropractors engaged in practicing the healing arts.

(c) City regulations apply only inside the city's corporate limits. County regulations apply only to the parts of the county outside the corporate limits of a city.

Scope of Regulations; Permits; Fees; Application of Comprehensive Zoning Procedures

Sec. 4. (a) Regulations adopted under this Act may restrict the location of regulated enterprises to particular areas, restrict the density of regulated enterprises, or prohibit the operation of a restricted enterprise within a certain distance of a school, regular place of religious worship, residential neighborhood, or other specified land use the governing body of the city or county finds to be inconsistent with the operation of a restricted establishment.

(b) The city or county may require the obtaining of a permit for the operation of a restricted establishment. The city or county may charge a fee for the permit, but the fee may not exceed the actual cost of processing the permit application.

(c) A city that has in effect a comprehensive zoning ordinance adopted under Chapter 283, Acts of the 40th Legislature, Regular Session, 1927, as amended (Article 1011a, et seq., Vernon's Texas Civil Statutes), must comply with all applicable procedural requirements of that statute in adopting regulations under this Act within the scope of that statute.

Violations; Injunctions; Penalties

Sec. 5. (a) A city or county may sue in the district court to enjoin the violation of a regulation adopted under this Act.

(b) Violation of a county regulation adopted under this Act is a Class B misdemeanor.

(c) In a city that has a comprehensive zoning ordinance as described in Subsection (c), Section 4, of this Act, a violation of an ordinance adopted under this Act is punishable by the same penalty prescribed for a violation of the zoning ordinance. In all other cities, violation of an ordinance adopted under this Act is a Class B misdemeanor.

Effect on Other Laws

Sec. 6. This Act does not legalize anything prohibited under the Penal Code or other state law.

Severability

Sec. 7. If any provision of this Act or its application to any person or circumstances is held invalid for any reason, the invalidity does not affect any other provision or application of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

[Acts 1979, 66th Leg., p. 498, ch. 229, §§ 1 to 7, eff. May 17, 1979.]

Art. 2372x. Closing Gulf Beaches for Special Events

In a county in which there is a public beach or a beach to which a substantial portion of the public has free access, located on a bay or inlet of the Gulf of Mexico, the commissioners court by order may close a portion of the beach for a maximum of three days a year to allow one or more nonprofit organizations to hold events on the beach to which the public is invited and for which a nominal admission fee may be charged.

[Acts 1979, 66th Leg., p. 585, ch. 274, § 1, eff. May 24, 1979.]

TITLE 45

COURTS—JUSTICE

CHAPTER ONE. JUSTICES AND JUSTICE COURTS

Art. 2385. Jurisdiction

Justice courts shall, in addition to their other powers and duties, have and exercise original jurisdiction in civil matters of all cases where the amount in controversy is five hundred dollars, or less, exclusive of interest, of which exclusive original jurisdiction is not given to the district or county courts, and of cases of forcible entry and detainer, and to foreclose mortgages and enforce liens on personal property, where the amount in controversy is within their jurisdiction.

[Amended by Acts 1979, 66th Leg., p. 846, ch. 377, § 1, eff. June 6, 1979.]

CHAPTER TWO. INSTITUTION OF SUIT

Art. 2390. Suits, Where Brought

Every suit in the justice court shall be commenced in the county and precinct in which the defendant or one or more of the several defendants resides, except in the following cases and such other cases as are or may be provided by law:

1. Cases of forcible entry and detainer must be brought in the precinct where the premises, or a part thereof, are situated.

2. Suits against executors, administrators and guardians as such must be brought in the county in which such administration or guardianship is pending, and in the precinct in which the county seat is situated.

3. Suits against counties must be brought in such county and in the precinct in which the county seat is situated.

In the following cases the suit may, at the plaintiff's option, be brought either in the county and precinct of the defendant's residence or in that provided in each exception:

4. (a) Suits upon a contract in writing promising performance at any particular place, may be brought in the county and precinct in which such contract was to be performed, provided that in all suits to recover for labor actually performed, suit may be brought and maintained where such labor is performed, whether the contract for same be oral or in writing.

(b) Suits by creditors upon contracts for goods, services, or loans, intended primarily for personal, family, household, or agricultural use may only be brought in the county and precinct in which the contract was signed or in the county and precinct of the defendant's residence, notwithstanding any provision in the contract to the contrary.

5. Suits for the recovery of rents may be brought in the county and precinct in which the rented premises, or a part thereof are situated.

6. Suits for damages for torts may be brought in the county and precinct in which the injury was inflicted.

7. Suits against transient persons may be brought in any county and precinct where such defendant is to be found.

8. Suits against non-residents of the State or persons whose residence is unknown, may be brought in the county and precinct where the plaintiff resides.

9. Suits for the recovery of personal property may be brought in any county and precinct in which the property may be.

10. Suits against private corporations, associations and joint stock companies may be brought in any county and precinct in which the cause of action or a part thereof arose, or in which such corporation, association or company has an agency or representative, or in which its principal office is situated.

11. Suits against railroad and canal companies, or the owners of any line of transportation vehicles of any character, for any injury to person or property upon the road, canal, or line of vehicles of the defendant, or upon any liability as a carrier, may be brought in any precinct through which the road, canal or line of vehicles may pass, or in any precinct where the route of such railroad, canal, or vehicle may begin or terminate.

12. Suits against fire, marine or inland insurance companies may be brought in any county and precinct in which any part of the insured property was situated; and suits against life and accident insurance companies or associations may be brought in the county and precinct in which the persons insured, or any of them resided at the time of such injury or death.

13. Suits against the owners of a steamboat or other vessel may be brought in any county or

precinct where such steamboat or vessel may be found, or where the cause of action arose or the liability was contracted or accrued. In every suit commenced in a county or precinct in which the defendants or one of them may reside, it shall be affirmatively shown in the citation or pleading, if any, that such suit comes within one of the exceptions named in this article.

[Amended by Acts 1977, 65th Leg., p. 1963, ch. 783, § 1, eff. June 16, 1977.]

CHAPTER THREE. APPEARANCE AND TRIAL

Art. 2428. Repealed by Acts 1975, 64th Leg., p. 1353, ch. 510, § 2 eff. Sept. 1, 1975

See, now, art. 2122.

CHAPTER SEVEN. SMALL CLAIMS COURT

Art. 2460a. Creation; Jurisdiction; Procedure

[See *Compact Edition, Volume 3 for text of 1 to 10*]

Judgments Not Claimed by Plaintiff

Sec. 10a. (a) If a judgment against a defendant has not been paid and the whereabouts of the plaintiff who was awarded the judgment are unknown, the defendant shall use due diligence to locate the plaintiff, which includes sending a letter by regis-

tered or certified mail, return receipt requested, to the plaintiff at his last known address and the address appearing in the plaintiff's statement of his claim and any other records of the court.

(b) If, after the use of due diligence, the plaintiff is not located, the defendant may deposit payment of the judgment into the court in trust for the plaintiff and obtain a release of the judgment, which release shall be executed without delay by the judge of said court on behalf of the plaintiff.

(c) All trust funds paid into the court, as provided in this section, shall be paid over by the judge at least once a month to the county clerk to be deposited in and withdrawn from the clerk's trust fund account in the county depository for trust funds in the possession of the county clerk, in the same manner as trust funds deposited in county and district courts to abide the result of a legal proceeding are deposited and withdrawn.

(d) If the plaintiff does not claim the payment of his judgment within two (2) years from the date of its deposit in the county clerk's trust fund account, the money shall escheat to the state.

[See *Compact Edition, Volume 3 for text of 11 to 14*]

[Amended by Acts 1975, 64th Leg., p. 1826, ch. 563, § 1, eff. Sept. 1, 1975.]

TITLE 46

CREDIT ORGANIZATIONS

1. CREDIT UNIONS

CHAPTER 1. SHORT TITLE, DEFINITION AND PURPOSES

Article

- 2461-1.01. Short Title.
- 2461-1.02. Definition and Purposes.
- 2461-1.03. Effect of Headings.

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- 2461-2.01. Incorporators.
- 2461-2.02. Articles of Incorporation.
- 2461-2.03. Filing of Articles of Incorporation.
- 2461-2.04. Effect of Issuance of Certificate of Incorporation.
- 2461-2.05. Requirement Before Commencing Business.
- 2461-2.06. Right to Amend Articles of Incorporation and Bylaws.
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- 2461-5.07. Audits.
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1. CREDIT UNIONS

The Credit Union Act, formerly set out in this Title as Articles 2461-1 to 2461-49, was enacted by Acts 1969, 61st Leg., p. 540, ch. 186, §§ 1 to 49. Former Articles 2461 to 2484d, regulating Rural Credit Unions, were repealed by § 50 of the 1969 Act.

Acts 1975, 64th Leg., p. 2240, ch. 707, § 1, revised and amended the 1969 Act, as herein set out, to consist of Articles 2461-1.01 to 2461-11.17.

For disposition of subject matter of repealed Articles 2461-1 to 2461-49, see Table, post.

DISPOSITION TABLE

Showing where subject matter of former Articles 2461-1 to 2461-49 is now covered by Articles 2461-1.01 to 2461-11.17, as revised and amended by Acts 1975, 64th Leg., p. 2240, ch. 707, § 1.

1969 Articles	1975 Articles	1969 Articles	1975 Articles
2461-1	2461-1.02	2461-21	2461-6.05
2461-2(a)	2461-2.01	2461-22	2461-6.06
2461-2(a)(1)	2461-2.02	2461-23	2461-6.07
2461-2(a)(2), (3)	2461-2.03	2461-24	2461-8.01
2461-2(b)	2461-2.05	2461-25	2461-9.01
2461-3	2461-2.06	2461-26	2461-9.02
2461-4	2461-2.07	2461-27	2461-9.03
2461-5	2461-4.01	2461-28	2461-10.03
	2461-4.02	2461-29	2461-2.09
2461-6	2461-3.01	2461-30	—
2461-7	—	2461-31	—
2461-8	2461-2.02(4)	2461-32	2461-11.12
2461-9	2461-3.02	2461-33	—
2461-10(a)	2461-5.01	2461-34	2461-10.04
2461-10(b)	2461-5.03(c)	2461-35	2461-5.09
2461-11(a)	2461-5.03	2461-35A	2461-10.01
	2461-5.04	2461-36	2461-10.02
2461-11(b)	—	2461-37	2461-2.08
2461-11(c)	2461-5.02	2461-38	2461-11.01
2461-11(d)	2461-5.02	2461-39	2461-11.02
2461-11(e)	2461-5.04(d)	2461-40	2461-11.02
2461-12	2461-5.03	2461-41	2461-11.03
	2461-5.06	2461-42	2461-11.04
2461-13	2461-5.08	2461-43	—
2461-14	2461-5.05	2461-44	2461-11.05
2461-15(a)	2461-7.01	2461-45	—
2461-15(b)	—	2461-46	2461-11.06
2461-15(c)	2461-7.01	2461-47(a)	2461-11.08
2461-15(d)	2461-7.02		2461-11.15
2461-15(e)	2461-7.01	2461-47(b)	2461-11.09
2461-15(f)	—		2461-11.11
2461-15(g)	2461-7.01		2461-11.15
2461-15(h)	2461-7.05	2461-47(c)	2461-11.13
2461-15(i)	—	2461-47(d)	2461-11.07
2461-15(j)	2461-7.06		2461-11.10
2461-16	2461-5.07	2461-47(e)	2461-11.07
2461-17	2461-5.06(a)	2461-47(f)	2461-11.10
2461-18	2461-6.02	2461-48	2461-11.16
2461-19	2461-6.04	2461-49	—
2461-20	2461-6.03		

CHAPTER 1. SHORT TITLE, DEFINITION
AND PURPOSES

Art. 2461-1.01. Short Title

This Act may be cited as the Texas Credit Union Act.
[Acts 1975, 64th Leg., p. 2219, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-1.02. Definition and Purposes

In this Act:

(1) "Credit union" means a voluntary, cooperative, nonprofit savings institution, incorporated

under this Act for the purposes of encouraging thrift among its members, creating a source of credit at a fair and reasonable rate of interest, and providing an opportunity for its members to use and control their own money in order to improve their economic and social condition.

(2) "Commission" means the Credit Union Commission.

(3) "Commissioner" means the Credit Union Commissioner.

(4) "Department" means the Credit Union Department.

(5) "Deputy commissioner" means the Deputy Credit Union Commissioner.

[Acts 1975, 64th Leg., p. 2219, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-1.03. Effect of Headings

The division of this Act into chapters and sections and the use of section and chapter headings are solely for convenience and have no legal effect in construing this Act.

[Acts 1975, 64th Leg., p. 2219, ch. 707, § 1, eff. Sept. 1, 1975.]

CHAPTER 2. ORGANIZATION PROCEDURE

Art. 2461-2.01. Incorporators

Any seven or more adult persons, a majority of whom are residents of this state, and all of whom share a definable community of interest, may act as incorporators of a credit union by signing, verifying, and delivering in duplicate to the commissioner articles of incorporation for the credit union.

[Acts 1975, 64th Leg., p. 2219, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-2.02. Articles of Incorporation

The articles of incorporation shall set forth:

(1) the name which contains the words "credit union" and is different from that of any other existing credit union;

(2) the name of the town or city and county where the proposed credit union will have its principal place of business;

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

(4) the fiscal year of the credit union, which ends on December 31 of each calendar year;

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

(6) the name and address of each incorporator and the number of shares subscribed by each; and

(7) the number of directors constituting the initial board of directors and the names and addresses of the persons who will serve as directors until the first annual meeting or until their duly elected successors are elected and qualify.

[Acts 1975, 64th Leg., p. 2219, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-2.03. Filing of Articles of Incorporation

(a) The incorporators shall file with the commissioner:

(1) a duplicate of the original articles of incorporation;

(2) a duplicate of the original bylaws for the general operation of the credit union; and

(3) biographical information concerning each member of the original board of directors, entered on forms prescribed by the commissioner and signed by each member.

(b) With the approval of the commission, the commissioner shall set a uniform charter fee and uniform investigation and report charges for all credit unions. The department shall publish the fees and rates for charges set by the commissioner.

(c) The commissioner may investigate the charter application, bylaws, and the biographical information concerning each director named in the application to determine whether the proposed credit union and its initial board of directors meet the requirements of this Act and of the regulations promulgated under this Act.

(d) If the proposed credit union or its initial board of directors does not meet the requirements of this Act and of the regulations promulgated under this Act, the commissioner shall deny the application in writing. If the incorporators file a written notice of appeal with the commission within 30 days after denial of the application, the commission shall set a date for a hearing on the application. On that date, the commission shall hold a hearing in accordance with the regulations promulgated under this Act.

(e) If the commissioner determines that all statutory requirements and regulations have been satisfied, or if on a hearing the commission determines that they have been satisfied, the commissioner shall issue a certificate of incorporation and shall return copies of the articles of incorporation and bylaws to the incorporators.

[Acts 1975, 64th Leg., p. 2219, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-2.04. Effect of Issuance of Certificate of Incorporation

The corporate existence of a credit union begins at the time the commissioner issues a certificate of incorporation. The certificate of incorporation is conclusive evidence of the incorporators' compliance with the requirements of this Act and of the credit union's incorporation under this Act.

[Acts 1975, 64th Leg., p. 2219, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-2.05. Requirement Before Commencing Business

A credit union may not transact any business or incur any indebtedness, except such as is incidental to its organization or to obtaining subscriptions to or payment for its shares, until:

(1) it has received minimum paid-in capital of at least \$1,000;

(2) it has a membership of at least 100 persons; and

(3) it has so notified the department.

[Acts 1975, 64th Leg., p. 2219, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-2.06. Right to Amend Articles of Incorporation and Bylaws

A credit union may amend its articles of incorporation or its bylaws in the manner provided in its bylaws. A credit union shall submit amendments to its articles of incorporation or bylaws to the commissioner in duplicate. Amendments to articles of incorporation or bylaws become effective at the time the commissioner issues a certificate of approval. [Acts 1975, 64th Leg., p. 2219, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-2.07. Restrictions on Use of Name

No person, corporation, partnership, or association, other than a credit union or association of credit unions organized under this Act or the Federal Credit Union Act, may use a name or title containing the words "credit union" or any derivation thereof, represent itself as a credit union, or conduct business as a credit union. Violation of this section constitutes a misdemeanor punishable by a fine of not more than \$5,000, by confinement in jail for not more than two years, or both. The commissioner may petition a court of competent jurisdiction to enjoin a violation of this section.

[Acts 1975, 64th Leg., p. 2219, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-2.08. Place of Business

A credit union shall maintain a principal place of business and shall file with the commissioner a statement specifying the post office address of its principal place of business. If a credit union gives the commissioner prior written notification, a credit union may establish at locations other than its principal place of business additional offices that are reasonably necessary to furnish services to its members. [Acts 1975, 64th Leg., p. 2219, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-2.09. Reports

On or before February 1 of each year, each credit union organized under this Act shall report to the department on a form supplied by the department for this purpose. On filing the report, a credit union shall pay to the commissioner a filing fee of \$10, except no credit union chartered within the preceding six-month period is required to pay a filing fee. The department may, in its discretion, require a credit union to file additional reports. If a credit union does not file a report within 15 days after February 1 of any year, the commissioner shall charge the credit union a late fee of \$5 for each day that the report is in arrears, except the commissioner may waive payment of the late fee for good cause shown.

[Acts 1975, 64th Leg., p. 2219, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-2.10. Exemption from Certain Taxes

Each credit union organized under this Act is exempt from all franchise and other license taxes. The intangible property of a credit union organized under this Act is not taxable by the state or any of its political subdivisions.

[Acts 1975, 64th Leg., p. 2219, ch. 707, § 1, eff. Sept. 1, 1975.]

CHAPTER 3. MEMBERSHIP

Art. 2461-3.01. Membership Defined

(a) Membership in a credit union is limited to the incorporators and other persons who:

(1) share a definable community of interest, in accordance with the bylaws of the credit union, including a community of interest based on occupation, association, or residence;

(2) have paid an entrance fee if one is required by the bylaws;

(3) have subscribed to and paid for one or more shares; and

(4) have complied with any other requirements contained in the articles of incorporation and bylaws.

(b) For the purposes of Subsection (a) of this section, the State of Texas acting through the state comptroller as administrator of the State of Texas deferred compensation program or a political subdivision acting through the appropriate officer of the political subdivision as administrator of the political subdivision's deferred compensation program shall be considered a person for membership qualifications in order to fund a deferred compensation program. Notwithstanding the provisions of Subsection (a) of this section, the payment of an entrance fee may not be a membership requirement for the State of Texas or a political subdivision funding a deferred compensation program.

[Acts 1975, 64th Leg., p. 2219, ch. 707, § 1, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1543, ch. 665, § 2, eff. Aug. 27, 1979.]

Art. 2461-3.02. Meetings of Members

Members of a credit union shall hold annual and special meetings at the time, place, and in the manner provided in the bylaws. At all meetings, each member has only one vote, regardless of his shareholdings. No member may vote by proxy, except a member that is an organization may be represented and vote by one of its members or shareholders who is authorized, in writing, by the organization's governing body to represent the organization.

[Acts 1975, 64th Leg., p. 2219, ch. 707, § 1, eff. Sept. 1, 1975.]

CHAPTER 4. POWERS OF CREDIT UNION

Art. 2461-4.01. General Powers

Subject to the provisions of this Act, the articles of incorporation, and the bylaws of the credit union, each credit union organized under this Act may:

- (1) make contracts;
- (2) sue and be sued in the name of the credit union;
- (3) adopt and use a common seal and alter its seal at pleasure;
- (4) purchase, hold, lease, or dispose of property necessary or incidental to its operations, subject to regulations issued by the commissioner;
- (5) require the payment of an entrance or membership fee not to exceed \$1;
- (6) receive from its members payments on shares or deposits and to conduct Christmas clubs, vacation clubs, and other thrift programs for the membership;
- (7) act as fiscal agent of the United States, under such regulations as the secretary may promulgate, as agent for any instrumentality of the United States, and as agent of this state or any governmental division or instrumentality of this state;
- (8) lend its funds to its members in the manner provided in this Act;
- (9) purchase or otherwise provide insurance for the benefit or convenience of its members;
- (10) borrow money from any source, but if, after incurring a debt, the total debt of the credit union will exceed an amount equal to 25 percent of its shares, deposits, and surplus, the debt may not be incurred without the prior approval of the commissioner, and the commissioner shall grant or deny a request for approval under this subsection within 10 days after it is made;
- (11) act under the order or appointment of any court of record, without giving bond, as guardian, receiver, trustee, executor, administrator, custodian, or as depository for any money paid into court for members; act as depository for any money constituting the estates of deceased members; accept funds or money for deposit by fiduciaries, trustees, or receivers, if managing or holding funds in behalf of a credit union or one or more members of the credit union; accept funds or money for deposit by building and loan associations, savings departments of banks, commercial banks, savings banks and trust companies, or insurance companies if the membership or the primary ownership of the institutions, associations, or companies is confined or restricted to or for the benefit of credit unions and their members or organizations of credit unions, or if the institutions, associations, or companies are designed to

serve or otherwise assist credit union operations; and act as custodian of individual retirement accounts, custodian of pension funds of self-employed individuals or of the sponsor of a credit union, or as trustee under pension and profit-sharing plans; and all powers granted under the provisions of this subsection are subject to standards prescribed by regulations promulgated under this Act;

(12) invest funds in the manner provided in this Act;

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

(14) hold membership in other credit unions organized under this Act or other laws, subject to rules and regulations promulgated by the commissioner, and hold membership in other organizations as may be approved by the board of directors;

(15) declare dividends, pay interest on deposits, and pay interest refunds to borrowers in the manner provided in this Act;

(16) impress a lien on the shares and accumulation of dividends and interest of any member to the extent of any loans made to the member directly or indirectly, or on which the member is surety, and for any other obligations due by the member;

(17) change its principal place of business to another place in the state, or change the location in the state of any subsidiary places of business, on giving written notice to the commissioner;

(18) collect, receive, and disburse money in connection with the sale of travelers checks, money orders, and similar instruments, and for other purposes that may provide benefit or convenience for its members, and for those purposes, levy incident charges;

(19) levy a charge not to exceed reasonable administrative costs for each check negotiated to the credit union by a member or other person if the check is returned by the drawee bank because it is drawn against insufficient funds, there is a stop payment order, the account on which it is drawn is closed, or it is drawn against uncollected funds, or if it is returned for a similar reason; this charge is in addition to interest authorized by law and is not a part of the interest collected or agreed to be paid on a subject loan under any state law that limits the rate of interest that may be charged in any transaction, but the charge is an expense of administration;

(20) make donations or contributions to any nonprofit, civic, charitable, or community organization as authorized by the board of directors

subject to rules and regulations promulgated by the commissioner and subject to federal or state laws regulating these contributions;

(21) operate as a central credit union, with the approval of the commissioner; and

(22) cause any or all records kept by the credit union to be copied or reproduced by any photostatic, photographic, electronic, or microfilming process that correctly and permanently copies, reproduces, or forms a medium for copying or reproducing the original record on a file or other durable material, subject to any regulations promulgated by the commissioner, and dispose of the original record. Any copy or reproduction shall be deemed to be an original record for all purposes and shall be treated as an original record in all courts or administrative agencies for the purpose of its admissibility in evidence. A facsimile, exemplification, or certified copy shall, for all purposes, be deemed a facsimile, exemplification, or certified copy of the original record.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-4.02. Incidental Powers

A credit union may exercise all powers necessary or appropriate to accomplish the purposes for which the credit union is organized. A credit union may exercise the powers granted corporations organized under the laws of this state, including those powers necessary or requisite to enable the credit union to promote and carry on most effectively its purposes. [Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-4.03. Conformity to Federally Chartered Credit Unions

The commissioner by rule or regulation may authorize credit unions organized under this Act to engage in any activity in which the credit unions could engage if they were operating as federally chartered credit unions at the time authority is granted, if on investigation or hearing, the commissioner finds it necessary to preserve and protect the welfare of the credit unions and to promote the general economy of this state.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

CHAPTER 5. DIRECTION OF AFFAIRS

Art. 2461-5.01. Management

The business and affairs of a credit union are managed by a board of directors of not less than five members, by a credit committee of not less than three members, and by those officers prescribed in the bylaws of the credit union.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-5.02. Certificate of Election

The chairman of the board and the secretary shall execute a certificate of election that sets forth the names and addresses of the officers, directors, and committee members elected or appointed, and shall file a copy of the certificate of election with the department within 30 days after the election or appointment.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-5.03. Board of Directors

(a) Directors of the credit union are elected at an annual membership meeting, by and from the membership, and in the manner provided in the bylaws.

(b) The duties of the board of directors are prescribed by the bylaws.

(c) The terms of the members of the board of directors are prescribed in the bylaws.

(d) The board of directors shall elect from its own number a chairman, who shall preside at all meetings of the board. The board shall elect from its own members a treasurer and secretary of the credit union.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-5.04. Officers

(a) The officers of a credit union consist of:

(1) a chairman of the board;

(2) a chief executive officer in charge of operations whose title is president, who may or may not be a member of the board of directors;

(3) a treasurer;

(4) a secretary; and

(5) such other officers as may be prescribed in the bylaws.

(b) The board of directors may employ or shall designate the president, who may or may not be, in the discretion of the board, the same person as the treasurer or credit manager. The treasurer and the secretary may be the same person, but the president and secretary may not be the same person.

(c) The board of directors shall elect the officers of the credit union at the time and in the manner prescribed by the bylaws.

(d) Each officer shall serve for one year or until his successor is elected and qualifies.

(e) The duties of the officers are prescribed in the bylaws.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-5.05. Credit Committee; Credit Manager; Loan Officers

(a) The board of directors shall appoint a credit committee in the manner prescribed by the bylaws.

(b) The terms of the members of the credit committee are prescribed in the bylaws.

(c) The credit committee shall supervise the making of loans to members.

(d) The credit committee shall meet at least once a month or more frequently if the business of the credit union requires.

(e) A credit union may not make a loan unless it has been considered by the credit committee and approved by a majority of the credit committee present at the meeting at which the loan is considered.

(f) The credit committee may appoint one or more loan officers and delegate to each loan officer the power to approve loans. At least once a month, each loan officer shall furnish to the credit committee a record of each loan approved or not approved by the loan officer during the month preceding the date of the meeting of the credit committee. The loan officer may make loans without the necessity for any meetings other than those prescribed in this subsection and without the necessity of the prior approval by any members of the credit committee, if the bylaws permit. The credit committee shall consider and act on all applications for loans not approved by the loan officer within 30 days after the date the application or request for loan is forwarded to the credit committee.

(g) With the approval of the board of directors, the president may appoint a credit manager to serve in lieu of the credit committee. The credit manager, if so appointed, shall supervise the making of loans to members and shall have the same powers, duties, rights, and prerogatives extended the credit committee under the provisions of this section. A credit union may have only one credit manager, who may be the same person as the president.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-5.06. Compensation and Bond

(a) No director may receive compensation, directly or indirectly, for serving as a director or committee member. Directors may receive reimbursement for actual expenses incurred in carrying out their duties.

(b) The board of directors shall purchase from a surety company authorized to do business in this state a blanket security bond covering all officers, employees, members of official committees, attorneys at law, and other agents of the credit union to protect the credit union against loss caused by the failure of a person to faithfully perform his duties. [Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-5.07. Audits

(a) The board of directors shall make or cause to be made a comprehensive annual audit of the books

and affairs of the credit union, in accordance with established principles and regulations promulgated by the commissioner, and shall submit a summary of the audit to the members of the credit union at the next annual membership meeting. The board shall report the results of the audit to the department. The board of directors shall make or cause to be made any supplementary audits or examinations that it deems necessary. The board of directors shall make or cause to be made verifications of the accounts of the members with the records of the credit union if required by regulations promulgated by the commissioner.

(b) If the representative examiners from the department find that the board of directors is not acting in accordance with this Act and the regulations issued under it, the commissioner may appoint an independent committee from outside the credit union and its membership to perform an audit, the costs and expenses of which are borne by the credit union.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-5.08. Misconduct and Penalties for Misconduct

(a) No person may demand or receive, directly or indirectly, any bonus, commission, or other consideration on account of the making of a loan or investment or the purchase of any asset by a credit union.

(b) Any officer, director, committee member, loan officer, or employee of a credit union who knowingly permits a loan to be made to a nonmember or participates in a loan to a nonmember commits a Class B misdemeanor. Additionally, the offender is primarily liable to the credit union for the amount illegally loaned. The illegality of the loan is no defense in any action of the credit union to recover on the loan. Extension of credit to a nonmember for the sale of real or personal property owned by the credit union or for the sale of assets acquired in liquidation or repossession shall not be construed as a loan to a nonmember.

(c) Any officer, director, committee member, loan officer, or employee of a credit union, or any person who knowingly permits or participates in a loan in violation of this Act, the bylaws of the credit union, or rules and regulations of the commissioner, other than a loan in violation of Subsection (b) of this section, commits a felony of the third degree.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-5.09. Officers, Directors, and Employees; Cease and Desist; Removal; Appeal

(a) The commissioner may find that an officer, director, or employee of a credit union, or the credit

union itself, acting through any authorized person, has:

- (1) violated the provisions of this Act or any other law or regulation applicable to credit unions;
 - (2) refused to comply with the provisions of this Act or any other law or regulation applicable to credit unions;
 - (3) willfully neglected to perform duties, or committed a breach of trust or fiduciary duty;
 - (4) committed any fraudulent or questionable practice in the conduct of the credit union's business which endangers the credit union's reputation or threatens its solvency;
 - (5) refused to submit to examination under oath;
 - (6) conducted business in an unsafe or unauthorized manner; or
 - (7) violated any conditions of its charter or of any agreement entered with the commissioner or the department.
- (b) If the commissioner makes any of these findings, he shall give notice in writing to the credit union and the offending officer, director, or employee, stating the particular violations or practices found. The commissioner shall call a meeting of the directors of the credit union and lay before them the findings and demand a discontinuance of the violations and practices found.
- (c) If the commissioner finds that an order to cease and desist is necessary and in the best interest of the credit union involved and its depositors, creditors, and members, then at the directors' meeting above provided or within 30 days thereafter the commissioner may serve on the credit union, its board of directors, and any offending officers, directors, or employees, a written order to cease and desist from the violations and practices enumerated in the order and to take such affirmative action as may be necessary to correct the conditions resulting from the violations or practices. The cease and desist order is effective immediately if the commissioner finds that immediate and irreparable harm is threatened to the credit union, its depositors, or members; otherwise, the order shall state the effective date, not less than 10 days after delivery or mailing of the notice. Unless the credit union or directors file a notice of appeal with the commissioner within 10 days after the delivery or mailing of notice, whichever is the case, the order is final. A copy of the order shall be entered in the minutes of the directors, who shall certify to the commissioner in writing that each has read and understood the order.
- (d) If the commissioner subsequently finds by examination or other credible evidence that the offending officer, director, or employee has continued violations or practices previously charged and found by

the commissioner, after notice and demand made under Subsection (b) of this section, and further finds that removal from office or employment is necessary and in the best interest of the credit union and its depositors, creditors, and members, then the commissioner may serve the officer, director, or employee with an order of removal. The order shall state the grounds for removal with reasonable certainty and shall effect immediate suspension from office or employment. Unless the credit union, the director, or the person removed files a notice of appeal with the commissioner within 10 days after the delivery or mailing of notice, whichever is the case, the order of removal is effective and final as of the date of suspension, and the person removed may not hold office, be employed by, or participate in the affairs of the credit union. A copy of the order shall be entered in the minutes of the directors, and an officer shall acknowledge receipt of the order and certify to the commissioner that the person has been removed from office.

(e) If the person removed files a timely appeal, the commissioner shall set a time and place for hearing the appeal, giving reasonable notice to the person removed. The commission may adopt any rules or procedures necessary to govern the fair hearing and adjudication of the questions appealed.

(f) If, after a cease and desist order or an order of removal becomes effective and final, a credit union or its board of directors or any duly authorized officer of the credit union fails or refuses to comply with an order, then the commissioner may, after giving notice, assess a civil penalty against the credit union in an amount not to exceed \$100 for each day the credit union is in violation of the order. If a credit union fails to pay the penalty assessed, the commissioner may institute a suit for collection of the civil penalty in a district court of Travis County. [Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

CHAPTER 6. CAPITAL ACCOUNTS

Art. 2461-6.01. Capital

The capital of a credit union consists of the aggregate amount of the share and deposit accounts of its members plus all reserves and undivided earnings of the credit union.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-6.02. Share Accounts

(a) Share accounts consist of payments made by members on shares, all of which are common shares of one class, subscribed, paid for, and transferred in the manner prescribed by the bylaws.

(b) Without qualifying any other statutory right to a setoff or lien, and subject to any contractual

provisions accepted by the credit union, a credit union has a lien on the shares or deposits of a member for any sum due to the credit union from the member or for any loan endorsed by the member.

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

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-6.03. Deposit Accounts

Deposit accounts, if any, are operated in accordance with the policies and conditions prescribed by the board of directors.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-6.04. Thrift Club Accounts

Christmas clubs, vacation clubs, and other thrift programs, if provided for the use of members, are operated in accordance with the policies and conditions prescribed by the board of directors.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-6.05. Multiple-party Accounts

(a) A member may designate any person, organization, association, corporation, or partnership to hold shares, deposits, and thrift club accounts with the member in joint tenancy. One or more or all of the joint tenants may make deposits and withdrawals subject to the terms of a multiple-party account agreement accepted by the credit union. A credit union shall maintain all multiple-party account agreements as a permanent part of the records pertaining to multiple-party accounts. At least one party to a multiple-party account must be a member of the credit union in which the account is established. No joint tenant, unless also a member, may vote, obtain loans, or hold office in the credit union. Payment of part or all of a multiple-party account to any one or more of the joint tenants discharges, to the extent of the payment, the liability of the credit union to all.

(b) The net contribution of a party to a multiple-party account as of any given time is the sum of all deposits or shares made by or for the party, less all withdrawals made by or for the party which have not been paid to or applied to the use of any other party, plus a pro rata share of any interest or dividends included in the current balance. The net contribution includes, in addition, any share or deposit of life insurance proceeds added to the account by reason of the death of the party whose net contribution is in question. During the lifetime of all parties to a multiple-party account, unless the multiple-party account agreement with the credit union provides otherwise, sums on deposit or in share accounts may be paid on the demand of one or more

parties even though it is presumed that sums on deposit or in share accounts belong to the parties in proportion to the net contributions by each to the sums on deposit or in share accounts. Unless the multiple-party account agreement with the credit union provides otherwise, and in the absence of satisfactory proof of the net contributions, those who are parties from time to time shall be presumed to own the joint account in equal undivided interests.

(c) The death of any party to a multiple-party account has no effect on the beneficial ownership of the account, other than to transfer the decedent's right in the account to the estate of the decedent, unless the account is a survivorship account or trust account established in accordance with the laws and with the constitution of this state and the bylaws of the credit union. Nothing in this Act otherwise prevents a credit union from operating the account in accordance with the terms of the multiple-party account agreement.

(d) A multiple-party account payable to two or more persons, jointly or severally, that does not expressly provide that there is a right of survivorship, is presumed to be a nonsurvivorship account.

(e) Without qualifying any other statutory right to a setoff or lien, and subject to any contractual provisions accepted by the credit union, when a party to a multiple-party account is indebted to a credit union, the credit union has a right to set off against the entire amount of the account.

(f) Nothing in this Act shall be construed as in conflict with the laws of the United States or of the State of Texas as those laws govern the taxation of multiple-party accounts.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-6.06. Minor Accounts

A credit union may issue shares or deposits in the name of a minor, and a minor may withdraw the shares or deposits. Payments made on withdrawals by a minor are valid. A minor may vote in the meetings of the members if permitted by the bylaws, except no minor may vote through his parent or guardian. No minor is eligible for any office or committee membership within the credit union unless the bylaws specify otherwise.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-6.07. Trust Accounts

A credit union may issue shares or deposits in the name of a member in trust for a beneficiary, including a minor, but no beneficiary, unless the beneficiary is also a member, may vote, obtain loans, hold office, or be required to pay an entrance fee. Payment of part or all of the shares or deposits to a

member shall, to the extent of the payment, discharge the liability of the credit union to the member and the beneficiary, and the credit union shall be under no obligation to see the application of the payment. If a member to whom shares or deposits are issued or held in trust dies, and the credit union has no other written evidence of the existence or terms of any trust, the credit union shall pay the shares or deposits and any dividends or interest to the beneficiary or to the legal representative of the beneficiary; otherwise, the credit union shall administer and distribute the shares or deposits so issued or held under the provisions of the trust agreement, a copy of which must remain on file with the credit union until termination of the trust.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-6.08. Third Party Claims

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

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

CHAPTER 7. LOANS

Art. 2461-7.01. Purpose, Terms, and Interest Rate

If made in accordance with rules and regulations promulgated by the commissioner, a credit union may make loans to members for such purposes and on such security and terms as the credit committee, credit manager, or loan officer approves, at rates of interest not exceeding one percent per month on the unpaid monthly balance. Every loan must be evidenced by a written instrument.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-7.02. Loan Limit

No credit union may make a loan or aggregate of loans to any one member in an amount greater than 10 percent of the unimpaired capital and surplus of the credit union.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-7.03. Line of Credit

The credit committee, an authorized loan officer, or the credit manager may approve in advance a line

of credit, and may grant advances to a member within the limit of the extension of credit. If a line of credit has been approved, no additional loan applications are required if the aggregate obligation does not exceed the limit of the extension of credit. [Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-7.04. Participation Loans and Other Loan Programs

(a) A credit union may participate in loans to members jointly with other credit unions, corporations, or financial organizations.

(b) A credit union may participate in guaranteed loan programs of the federal and state governments. [Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-7.05. Loans to Officials

(a) A credit union may make loans and extend lines of credit to its directors, employees, loan officers, credit manager, and to members of its credit committee, if:

(1) the loan complies with the requirements of this Act with respect to loans to other borrowers and is not on terms more favorable than those extended to other borrowers; and

(2) the board of directors approves the loan, if the loan or aggregate of outstanding loans to any one person is greater than \$2,500, plus pledged shares and deposits.

(b) A credit union may permit a director, employee, loan officer, credit manager, and member of its credit committee to act as comaker, guarantor, or endorser of a loan to another member, unless the loan standing alone or added to any outstanding loan or loans to the comaker, guarantor, or endorser exceeds \$2,500, plus pledged shares and deposits, in which case approval of the board of directors is required.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-7.06. Prepayment Privilege

Any loan may be paid or prepaid in whole or in part, without penalty, during regular working hours on any day on which the credit union is open for business.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

CHAPTER 8. INVESTMENTS

Art. 2461-8.01. Investment of Funds

A credit union may invest funds not used in loans to members:

(1) in capital shares, obligations, participation certificates, or preferred stock issues of any agen-

cy, association, or company organized either as a stock company, mutual association, membership corporation, or trust company, if the membership or ownership of the agency, association, or company is confined or restricted to credit unions and their members or organizations of credit unions, and if the agency, association, or company is designed to serve or otherwise assist credit union operations; in loans to any credit union association or corporation, national or state, of which the credit union is a member; and investments in any one agency, association, or company of the type described in this subsection may not exceed an aggregate amount of five percent of the credit union's total assets or the amount of its reserve fund, whichever is less;

(2) in obligations of the State of Texas or any of its political subdivisions;

(3) in certificates of deposit or passbook accounts issued by a state or national bank, or issued by a building and loan association or a savings and loan association, subject to regulations promulgated by the commissioner;

(4) in securities, obligations, participations, or other instruments of, issued by, or fully guaranteed as to principal and interest by, the federal government or any of its agencies, or in any trust or trusts established for investing directly or collectively in the same;

(5) in loans to other credit unions in an amount not to exceed 25 percent of the total dollar amount of the capital of the lending credit union, or to any trust or trusts established for lending directly or collectively to credit unions;

(6) in purchases from any liquidating credit union, in accordance with rules and regulations promulgated by the commissioner, of notes made by individual members of the liquidating credit union at such prices as may be agreed to by the commissioner, or by the liquidating agent or board of directors of the liquidating credit union and the board of directors of the purchasing credit union.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

CHAPTER 9. RESERVE ALLOCATIONS; DIVIDENDS; SHARE REDUCTION

Art. 2461-9.01. Reserve Allocations

(a) The commissioner shall, with the approval of the commission, promulgate rules and regulations prescribing reserve allocations and requiring credit unions to maintain any reserves necessary to protect the interests of their members.

(b) The reserve fund belongs to the credit union. The credit union shall use its reserve fund to meet all losses except those resulting from an excess of expenses over income. The credit union may not

distribute its reserve fund except on liquidation of the credit union or in accordance with a plan approved by the department. The board of directors may increase, or if the fund equals or exceeds the percentage established by regulations promulgated under this Act, may decrease the proportion of the gross income to be placed in the reserve fund, and may transfer part or all of the undivided earnings to the reserve fund.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-9.02. Dividends

The board of directors of a credit union may declare a dividend from undivided earnings in accordance with rules and regulations promulgated by the commissioner.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-9.03. Share Reduction

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

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

CHAPTER 10. CHANGE IN CORPORATE STATUS

Art. 2461-10.01. Suspension

(a) If the commissioner finds that the capital of a credit union is seriously impaired, or that it is conducting its affairs in an unsafe, unauthorized, or unlawful manner, or that it refuses to submit to examination, the commissioner may take possession of the property and business of the credit union and retain possession until the commissioner permits it to resume business or orders its liquidation. Simultaneously, the commissioner shall cause notice of suspension to be given to the board of directors and shall call for a hearing within 10 days, at which hearing the board of directors may show cause why the suspension should not be continued or the credit union should not be liquidated. The board of directors may waive this hearing.

(b) If the commissioner, after issuing notice of suspension and providing opportunity for a hearing, rejects the credit union's plan to continue operations,

the commissioner may issue a notice of involuntary liquidation and appoint a liquidating agent who shall proceed as provided in Section 10.02 of this Act. [Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-10.02. Liquidation

(a) When the commissioner finds that the interests of depositors and creditors of a credit union are seriously jeopardized through insolvency or imminent insolvency and that it is to the best interest of the depositors and creditors that the credit union be closed and its assets liquidated, the commissioner may close and liquidate the credit union.

(b) Unless involuntary liquidation has already been initiated by the commissioner, a majority of the credit union members present at a meeting specially called to consider the matter, but not less than a quorum, may vote to dissolve and liquidate the credit union if a notice of the special meeting was mailed to the members of the credit union at least 10 days prior to the meeting. Immediately after the mailing of a notice of a special meeting called to consider the matter of liquidation, the credit union shall cease to operate except for the purposes of accepting payments on loans or other obligations due the credit union. If the vote to dissolve and liquidate the credit union passes, the credit union may do no further business except that incidental to liquidation. The chairman of the board or the president and the secretary shall, within five days following the meeting and the affirmative vote to dissolve and liquidate, notify the department of intention to liquidate and shall include a list of the names of the directors and officers of the credit union together with their addresses. Notwithstanding the provisions of this subsection, the commissioner may appoint a liquidating agent to act for the board of directors of the credit union in liquidation if it is found that it is to the best interests of the depositors and creditors to do so.

(c) At any time within five days after the commissioner has closed any credit union under the provisions of Subsection (a) of this section or has appointed a liquidating agent to act for the board of directors under the provisions of Subsection (b) of this section, the credit union acting through its directors may sue in the district court of the county in which the credit union is located to enjoin the commissioner from liquidating the credit union. The court may, without notice or hearing, restrain the commissioner from liquidating the assets of such credit union pending hearing of the suit on the merits, and shall, in that event, instruct the commissioner to hold the assets of the credit union in the commissioner's possession pending final disposition of the suit. The commissioner may, with approval of the court, take such actions as may be necessary or proper to prevent loss or depreciation in the value of the assets.

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

(d) The credit union in liquidation shall continue in existence for the purpose of discharging its debts, collecting and distributing its assets, and doing all acts required in order to wind up its business, and may sue and be sued for the purpose of enforcing such debts and obligations until its affairs are fully adjusted. The board of directors or the liquidating agent shall use the assets of the credit union to pay, in the following order:

- (1) expenses incidental to liquidation including any surety bond that may be required;
- (2) any liability due nonmembers;
- (3) depositors;
- (4) thrift club accounts as provided in this Act; and
- (5) distributions to members proportionate to the shares held by each member as of the date liquidation was voted.

(e) A liquidating agent may, subject to the control and supervision of the commissioner and under the rules and regulations promulgated by the commissioner:

- (1) receive and take possession of the books, records, assets, and property of the credit union in liquidation; sell, enforce collection of, and liquidate all assets and property; compound all bad or doubtful debts; sue in the name of the liquidating agent or in the name of the credit union in liquidation; and defend actions brought against the liquidating agent or against the credit union;
- (2) receive, examine, and pass on all claims against the credit union in liquidation, including claims of members on shares;
- (3) make distribution and payment to creditors and members as their interests may appear; and
- (4) execute such documents and papers and do such other acts and things that the liquidating agent may deem necessary or desirable to discharge his duties.

(f) Subject to the control and supervision of the commissioner and under the rules and regulations promulgated by the commissioner, the board of directors or liquidating agent of a credit union in liquidation shall:

- (1) cause notice to be given to creditors and members to present and make legal proof of their

claims, which notice must be published once a week in each of three successive weeks in a newspaper of general circulation in each county where the credit union in liquidation maintained an office or branch for the transaction of business on the date it ceased unrestricted operations; except that when the aggregate book value of the assets and property of the credit union in liquidation is less than \$10,000, the commissioner shall declare the credit union in liquidation to be a "no publication" liquidation, and publication notice to creditors and members is not required in such case;

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

(3) in a "no publication" liquidation, determine from all sources available, and within the limits of available funds of the credit union, the amounts due to creditors and members, and after 60 days have elapsed from the date of notification to the department of a voluntary liquidation or from the date of appointment of the liquidating agent distribute the funds of the credit union to creditors and members ratably and as their interests may appear.

(g) The commissioner shall prescribe the certificate to be completed by the liquidating agent or by the board of directors attesting to liquidation, that distribution has been made and that liquidation has been completed. The commissioner, on receipt and approval of the certificate, shall cancel the charter of the credit union. The corporate existence of the credit union shall continue for a period of three years from the date of cancellation of its charter, during which period the liquidating agent, or any duly appointed successor, or such persons as the commissioner may designate, may act on behalf of the credit union for the purpose of paying, satisfying, and discharging any existing liabilities or obligations, collecting and distributing its assets, and doing all other acts required to adjust and wind up its business and affairs, and it may sue and be sued in its corporate name.

(h) No liquidating agent, officer, director, or employee of a credit union in liquidation may acquire any of the assets of the credit union or purchase any loans of the credit union. None of these persons may obtain from the liquidation any compensation or profit for personal benefit, whether directly, indirectly, for the benefit of any member of the person's family or any person associated with the person, or for the benefit of any business enterprise with which the person is associated, except for the credit union in liquidation. The liquidating agent may receive such reasonable compensation as may be set forth in the contract of employment, and nothing in this Act shall prevent compensation of the liquidating agent or those salaried employees and salaried officers of the credit union during the pendency of the liquidation, which payments shall be considered expenses incidental to liquidation. Any person who participates in a violation of this subsection commits a misdemeanor punishable by a fine of not more than \$1,000 and not less than \$100, or by confinement in jail for not more than six months, or both.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-10.03. Merger

(a) A credit union may, with the approval of the department, merge with any other credit union under the existing charter of the other credit union, pursuant to a plan agreed to by the majority of the board of directors of each credit union joining in the merger and approved by the affirmative vote of a majority of the members of each credit union present at the meetings of members called for that purpose. The commissioner may waive the requirement that the plan be approved by a majority of the members of the credit unions.

(b) After agreement by the directors and approval by the members of each credit union, the president and secretary of each credit union shall execute a certificate of merger containing the following information:

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

(2) the vote of the board of directors in favor of and against the adoption of the plan;

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

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

(5) the vote of the membership in favor of and against approval of the plan; and

(6) the name of the surviving credit union.

(c) The merging credit union shall submit the certificates and a copy of the plan of merger to the department. On approving the merger, the depart-

ment shall return the certificates and plan to the merging credit unions.

(d) After a merger is effected, all property, property rights, and interests of the merged credit union vest in the surviving credit union without deed, endorsement, or other instrument of transfer, and all debts, obligations, and liabilities of the merged credit union are assumed by the surviving credit union under whose charter the merger is effected.

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

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-10.04. Conversion

The commissioner shall promulgate regulations to permit the conversion of a credit union organized under this Act to a federal credit union, and the conversion of a federal credit union to a credit union organized under this Act.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

CHAPTER 11. REGULATORY BODY

Art. 2461-11.01. Credit Union Commission

(a) The Credit Union Commission consists of six members, all of whom are from state-chartered credit unions. The commission shall consult with, advise, and make recommendations to the commissioner. The jurisdiction, authority, powers, and duties previously conferred and imposed by law on the Banking Commissioner in relation to the management, control, regulation, and general supervision of credit unions are conferred and imposed on the commission and commissioner.

(b) The Credit Union Department is composed of the Credit Union Commission and a Credit Union Commissioner, together with other officers and employees within the department. The department shall supervise and shall regulate, as provided in this Act, all credit unions organized under the laws of the State of Texas. The department shall periodically make comprehensive studies of the statutes of this state as they pertain to credit union operations. The commissioner shall report the recommendations of the department when and as necessary to the legislature for consideration. As of December 31 of each year the department shall report annually to the governor the receipts and disbursements of the department for each calendar year, and shall report to the appropriate committees of the house of representatives and of the senate within the first 60 days of each regular session of the legislature.

(c) The Credit Union Commission is subject to the Texas Sunset Act;¹ and unless continued in exist-

ence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1983.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 1841, ch. 735, § 2.068, eff. Aug. 29, 1977.]

¹ Article 5429k.

Art. 2461-11.02. Qualifications of Members

All members of the commission must have a minimum of five years' active experience in the operation of a credit union. No two members of the commission may be residents of the same state senatorial district.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-11.03. Appointment and Terms of Members

The members of the commission are appointed by the governor, with the advice and consent of the senate, for terms of six years, with the terms of two members expiring every two years. As of the effective date of this Act, the terms of the respective members of the Credit Union Commission then serving shall continue until their normal expiration dates.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-11.04. Vacancies

In the event of the death, resignation, or removal of a member of the commission, or if a member ceases to have the qualifications necessary to original appointment, the governor, with the advice and consent of the senate, shall appoint a qualified person to fill the unexpired term.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-11.05. Expenses of Members

Each member of the commission is entitled to reimbursement of the reasonable expenses incurred in the performance of his official duties.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-11.06. Meetings

(a) The commission shall hold regular meetings at least two times each year. The chairman of the commission, the commissioner, or any three members of the commission may call special meetings. The commission may adopt rules and regulations governing the time and place of meetings, the character of notice of special meetings, and the conduct of all meetings, including the form in which minutes of the meetings are maintained.

(b) A majority of the membership of the commission constitutes a quorum for the purpose of transacting any business.

(c) The commission shall annually elect one of its members to serve as chairman. The chairman shall preside at all meetings of the commission.

(d) The commissioner shall attend meetings of the commission and shall preside in the absence of the chairman. The commissioner may not vote at any meeting.

(e) No commission member may act on matters under consideration which specifically relate to any credit union incorporated under Chapter 2 of this Act in which the member of the commission is an officer, director, or shareholder.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-11.07. Rulemaking Power

(a) The commissioner, with the approval of the commission, shall promulgate general rules and regulations pursuant to this Act and from time to time may amend the same. The rules and regulations shall apply to all credit unions organized under this Act.

(b) The commissioner and the commission may not promulgate rules and regulations in contradiction of existing rules and regulations until notice of the terms or substance of the proposed rule or regulation or amendment is submitted, in writing, to all credit unions subject to regulation. Each credit union may, within 60 days after the date of issuance of the notice, submit, in writing, comments or questions relevant to the proposed rule or regulation to the commissioner. The commission shall consider the written comments or questions submitted by the credit union, together with relevant materials available from the files and records of the department. The commission may hold a public hearing if necessary. The commission shall promulgate rules and regulations in writing. The commissioner, with the approval of the commission, shall promulgate rules and regulations governing the conduct of any public hearings.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-11.08. Credit Union Commissioner

The commission shall appoint, by at least four affirmative votes, a Credit Union Commissioner who shall serve as an employee and at the pleasure of the commission. The commissioner must have at least 5 years' practical experience within the 10 years immediately prior to his appointment. The experience may consist of experience in the executive management of a credit union or in the employment of a credit union regulatory agency.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-11.09. Deputy Credit Union Commissioner

Subject to the approval of the commission, the commissioner may appoint a Deputy Credit Union Commissioner. The deputy commissioner must meet the same qualifications as does the commissioner. The deputy commissioner, if any, shall serve at the pleasure of the commissioner. He may exercise all the powers and prerogatives of the commissioner and shall perform all the duties of the commissioner during the commissioner's absence or inability to act or otherwise at the direction of the commissioner. [Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-11.10. Powers of Credit Union Commissioner

(a) On the appointment and qualification of a commissioner, the commissioner shall supervise and regulate all credit unions doing business in this state, except federal credit unions organized and existing under federal law, in accordance with this Act and the rules and regulations promulgated under this Act.

(b) The commissioner shall enforce the provisions of this Act and the rules and regulations promulgated from time to time.

(c) With the approval of the commission, the commissioner shall levy and collect all supervision fees, penalties, charges, and revenues required to be paid by credit unions.

(d) The commissioner shall submit to the commission at least once a year a full and complete report of the receipts and expenditures of the department. The commission may require more frequent reports. The commission shall adopt and from time to time amend, budgets that direct the purposes and prescribe the amounts for which the fees, penalties, charges, and revenues may be expended or levied.

(e) The commissioner, with the approval of the commission, shall promulgate rules and regulations requiring credit unions doing business within the state to provide or cause to be provided share and deposit insurance for members and depositors.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-11.11. Credit Union Examiners

Subject to recruitment and qualifications approved by the commission, the commissioner shall appoint credit union examiners in sufficient number to perform fully the duties and responsibilities under this Act and the laws of this state.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-11.12. Annual Examination

The department, by and through its duly appointed examiners, shall perform an examination of the books and records of each credit union subject to this Act at least once each year. Each credit union shall furnish the examiner full access to all books, papers, securities, records, and other sources of information under the control of the credit union. The examiner may administer oaths. The examiner shall report the results of each examination on a form prescribed by the commissioner and approved by the commission. The examiner shall include in the report a general statement of the affairs and condition of the credit union. The department shall send a copy of the report to the board of directors of the credit union examined within 30 days after the examination. Each credit union shall pay an examination fee based on the costs of performing the examination.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-11.13. Oaths of Office; Bond

The commissioner, the deputy commissioner, if any, each credit union examiner, and every other officer and employee of the commission, shall, before assuming the duties of office, take an oath and make fidelity bond in the sum of \$10,000 payable to the governor and all successors in the office of governor, in individual, schedule, or blanket form, executed by a surety appearing on the list of approved sureties acceptable to the United States government. Each oath and bond required under this Act must be in a form approved by the commission. The premiums for the bond are paid out of the funds of the department.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-11.14. Defense by Attorney General

The attorney general shall defend any action brought against any member of the commission or against any of its officers or employees by reason of the official act or omission of the person, whether or not the person is a member, officer, or employee of the commission at the time of the initiation of the action. Venue for any actions taken against the

commission, its officers, or employees lies in Travis County.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-11.15. Compensation of Employees

The commissioner, the deputy commissioner, if any, each examiner, and every other officer of the commission, except commission members, are employees of the commission, subject to its orders and directions, and are entitled to receive compensation fixed by the commission, but in no event may any employee receive compensation exceeding that paid to the governor. The compensation is paid from funds of the department.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-11.16. Transfers to General Revenue Fund

The department shall transfer \$1,000 each year to the general revenue fund to cover the costs of governmental service rendered by other departments.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-11.17. Exemption from Securities Laws

Credit unions, their officers, employees, and agents in the sale, issuance, or offering of savings and share accounts of any credit union and their deposit and share accounts, whether state or federally chartered, are exempt from the registration provisions of the laws of this state, other than this Act, which provide for the supervision, registration, or regulation in connection with the sale, issuance, or offering of securities as the term is defined in Section 4, Securities Act, as amended (Article 581-4, Vernon's Texas Civil Statutes). The sale, issuance, or offering of any such accounts or shares is legal without any action or approval on the part of any official, other than the credit union commissioner, authorized to license, regulate, or supervise the sale, issuance, or offering of securities.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

TITLE 47

DEPOSITORIES

CHAPTER ONE. STATE DEPOSITORIES

Article
2525a. Application of Sunset Act.

Art. 2525a. Application of Sunset Act

The State Depository Board is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished effective September 1, 1983.

[Added by Acts 1977, 65th Leg., p. 1842, ch. 735, § 2.072, eff. Aug. 29, 1977.]

¹ Article 5429k.

Art. 2530. Deposit of Securities

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

A State Depository bank shall also have the option of depositing said pledged securities with the Federal Reserve Bank of Dallas; such securities to be held by said Bank to secure funds deposited by the State Treasurer in the State Depository bank. When such pledged securities are so deposited and subject to the approval of the Board, the Federal Reserve Bank of Dallas may apply book entry procedures to the pledged securities so held. The records of the Fed-

eral Reserve Bank of Dallas shall at all times reflect the name of the State Depository bank for whose account the pledged securities are so deposited, and an Advice of Transaction shall be issued by the Federal Reserve Bank of Dallas to the State Treasurer and the State Depository bank.

A custodian bank, holding in trust securities of a State Depository bank pledged to secure funds deposited by the State Treasurer in the State Depository bank as provided above, shall also have the option of depositing said pledged securities with the Federal Reserve Bank of Dallas provided that the Federal Reserve Bank of Dallas is the third party to the transaction; such securities to be held by said Federal Reserve Bank to secure funds deposited by the State Treasurer in the State Depository bank. When such pledged securities held by a custodian bank are so deposited, and, subject to the approval of the Board, the Federal Reserve Bank of Dallas may apply book entry procedures to the pledged securities so held. The records of the Federal Reserve Bank of Dallas shall at all times reflect the name of the custodian bank for whose account the pledged securities are so deposited, and an Advice of Transaction or other document evidencing each deposit of securities shall be issued by the Federal Reserve Bank of Dallas to the custodian bank. The custodian bank shall immediately issue and deliver to the State Treasurer controlled trust receipts for said pledged securities. The trust receipt shall reflect that the custodian bank has deposited with the Federal Reserve Bank of Dallas the pledged securities held in trust for the State Depository bank.

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

If, in any case, or at any time, such bonds or other securities are not satisfactory security, in the opinion of the Board, for the deposits made under this Act, they may require such additional security to be given as will be satisfactory to them. Said Board shall, from time to time inspect such bonds and see that the same are actually kept in the vaults of the State Treasury and in said custodian banks. If the

pledged securities are deposited with the Federal Reserve Bank of Dallas, the Board shall conduct such audits and inspections of the records of the Federal Reserve Bank of Dallas as may be reasonably necessary to verify the existence of and proper accounting for said pledged securities. In the event that any State Depository shall fail to pay deposits or any part thereof on the check of the Treasurer, he shall have the power to forthwith realize upon such bonds or other securities deposited by said bank, and disburse the money arising therefrom, according to law, upon the warrants drawn by the Comptroller upon the funds for which said bonds or other securities were secured. Any bank making deposits of bonds or other securities with the Treasurer under the provisions of this Act may cause such bonds or other securities to be endorsed or stamped, as they may deem proper, so as to show that they are

deposited as collateral and not transferable, except as herein provided.

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

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

[Amended by Acts 1975, 64th Leg., p. 1021, ch. 390, § 1, eff. June 19, 1975; Acts 1977, 65th Leg., p. 560, ch. 196, § 1, eff. May 20, 1977.]

TITLE 51

ELEEMOSYNARY INSTITUTIONS

CHAPTER ONE. GENERAL PROVISIONS

Art. 3183a. Repealed by Acts 1977, 65th Leg., p. 2690, ch. 871, art. I, § 2(a)(4), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Natural Resources Code.

CHAPTER TWO. STATE HOSPITALS

Article

3196a-1. Admission of Patients Eligible for Service Under Department of Health Program.

3201c. Security at San Antonio State Hospital.

3201-4. Transfer of Control of East Texas Chest Hospital.

Art. 3184. Superintendent, Qualifications

Sec. 1. The Superintendent of the Austin State Hospital, San Antonio State Hospital, Wichita Falls State Hospital, Big Springs State Hospital, Rusk State Hospital, Terrell State Hospital, Kerrville State Hospital, Vernon Center and the Texas Research Institute of Mental Sciences shall meet such requirements for eligibility for appointment as Superintendent as the Board, by substantive rule adopted in accordance with the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), may adopt.

Sec. 2. In adopting requirements for eligibility for appointment as Superintendent, the Board shall give appropriate consideration to the desirability of the need if possible of a physician authorized to practice medicine in Texas who has experience in the treatment of mental disease and who has proven administrative experience and ability. In appointing superintendents, the Commissioner shall give preferential consideration to a qualified candidate who is authorized to practice medicine in Texas who shall have experience in the treatment of mental diseases and who has proven administrative experience and ability.

Sec. 3. If no such physician as described in Section 2 is available, the Board may appoint as Superintendent of the institutions described in Section 1 of this Act a person of proven administrative experience and ability, however, prior to said appointment, the Board shall have authority and shall promulgate appropriate rules and regulations to insure that all duties of admitting patients, providing appropriate

medical care and treatment and determinations whether a patient has recovered to the extent that cure is effected or the patient no longer needs to be restrained and should be discharged, or that it would be in the best interest of patients that he or she should be sooner released prior to the period of detention, as well as all medical decisions are only made by physicians licensed to practice medicine in Texas.

Sec. 4. This Act shall not be construed to:

- (a) authorize the Department or any person, other than a duly licensed physician, acting within the scope of his or her license, to engage, directly or indirectly, in the practice of medicine; or
- (b) authorize the Department, or any person to regulate, interfere, or intervene in any manner in the practice of medicine.

[Amended by Acts 1979, 66th Leg., p. 1797, ch. 730, § 2, eff. Aug. 27, 1979.]

Art. 3185. Repealed by Acts 1979, 66th Leg., p. 607, ch. 283, § 2, eff. Aug. 27, 1979

Art. 3196a. Classes of Patients Admitted

[See Compact Edition, Volume 4 for text of 1]

Persons Chargeable with Expenses of Patients

Sec. 2. Where the patient has no sufficient estate of his own, he shall be maintained at the expense:

Of the husband or wife of such person, if able to do so;

Of the father or mother of such person, if able to do so, provided such person is less than 18 years old.

[See Compact Edition, Volume 4 for text of 3 to 7]

[Amended by Acts 1977, 65th Leg., p. 264, ch. 125, § 1, eff. Aug. 29, 1977.]

Art. 3196a-1. Admission of Patients Eligible for Services Under Department of Health Program

(a) The Texas Board of Health may admit to any hospital under its supervision a patient who is eligible to receive patient services under a program of the Texas Department of Health and who will benefit from the hospitalization.

(b) Admission to a hospital as authorized by this Act is subject to the availability of appropriate space after the needs of eligible tuberculosis and chronic respiratory disease patients have been met and to the availability of trained medical personnel for the necessary medical care and treatment.

(c) The board may enter into contracts and make rules necessary to implement this Act.

(d) This Act does not require the board or department to admit a patient to a particular hospital, guarantee the availability of space at any hospital, or provide treatment for a particular medical need at any hospital.

[Acts 1979, 66th Leg., p. 1523, ch. 657, § 1, eff. Aug. 27, 1979.]

Art. 3201a-3. Pilot Program for Treatment of Respiratory Diseases; Harlingen State Chest Hospital and San Antonio State Chest Hospital

[See Compact Edition, Volume 4 for text of 1]

Number of Patients; Persons Treated; Payment of Charges
Sec. 2.

[See Compact Edition, Volume 4 for text of 2(a) and (b)]

(c) Repealed by Acts 1975, 64th Leg., p. 2194, ch. 700, § 3, eff. June 21, 1975.

[See Compact Edition, Volume 4 for text of 3 to 6]

Disposition of Fees and Charges

Sec. 6A. Fees and charges collected by each hospital for physicians' services shall be retained locally and shall be used only for the purpose of recruiting, retaining, and supplementing the salaries of the hospital's medical staff. Distribution of fees and charges for physicians' services shall be subject to rules and regulations adopted by the medical staff, not inconsistent with the laws of this state regulating the practice of medicine.

[See Compact Edition, Volume 4 for text of 7]
[Amended by Acts 1975, 64th Leg., p. 2194, ch. 700, §§ 2 and 3, eff. June 21, 1975.]

Art. 3201a-4. Transfer of Control of East Texas Chest Hospital

Intent of Act

Sec. 1. By this Act the legislature does intend:

(1) that the East Texas Chest Hospital shall continue to serve as a "state tuberculosis hospital" under the terms and provisions of the Texas Tuberculosis Code;¹

(2) that the Texas Department of Health Resources² shall continue to have the authority and

power to assign and send tuberculosis patients to the East Texas Chest Hospital for treatment and/or hospitalization under the terms and provisions of the Texas Tuberculosis Code;

(3) that The University of Texas System shall provide and pay for the care and treatment of tuberculosis patients in the East Texas Chest Hospital out of such funds as the legislature may appropriate for the hospital to use for that purpose;

(4) that The University of Texas System shall honor and perform all existing contracts heretofore entered into by, for, or on behalf of the East Texas Chest Hospital, including but not limited to the existing contracts covering the training and education of osteopathic resident physicians at the East Texas Chest Hospital;

(5) that if future contracts are required to provide for the care and treatment of the outpatients of the East Texas Chest Hospital, The University of Texas System shall pay for that care and treatment out of such funds as the legislature may appropriate for such hospital to use for that purpose, or The University of Texas System shall transfer to the Texas Department of Health Resources, out of such funds as the legislature may appropriate for the East Texas Chest Hospital to use for that purpose, money to pay for the care and treatment of the outpatients of that hospital, whichever may be appropriate; and

(6) that except for the transfer of the governance and management of the East Texas Chest Hospital from the Texas Board of Health Resources to The University of Texas System, the power and authority of the Texas Department of Health Resources to examine, diagnose, isolate, quarantine, hospitalize, treat, and/or otherwise care for tuberculosis patients under the terms and provisions of the Texas Tuberculosis Code shall remain undiminished, unchanged, and in full force and effect.

¹ Article 4477-11.

² Name changed to Department of Health; see art. 4418g.

Transfer of Control to University of Texas System

Sec. 2. From and after the effective date of this Act, the governance, operation, management, control, and ownership of the East Texas Chest Hospital and all land, buildings, facilities, improvements, equipment, supplies, and property comprising said hospital shall be, and are hereby, transferred from the Texas Board of Health Resources to the Board of Regents of The University of Texas System. Said hospital, land, buildings, facilities, improvements, equipment, supplies, and property shall be governed, operated, managed, and controlled pursuant to such powers, duties, and responsibilities as are now, or as may be hereafter, conferred by law upon the Board of Regents of The University of Texas System for the governance, management, and control of the component institutions comprising said system.

Transfer of Appropriations and Funds

Sec. 3. All appropriations heretofore or hereafter made by the legislature for the use and benefit of the East Texas Chest Hospital under the governance of the Texas Board of Health Resources shall be transferred to the Board of Regents of The University of Texas System for the use and benefit of such hospital, and all other funds held for the use and benefit of the East Texas Chest Hospital shall be similarly transferred.

Validation of Contracts

Sec. 4. All contracts heretofore entered into in behalf of the East Texas Chest Hospital, or in names previously used by such hospital, are hereby ratified, confirmed, and validated for and on its behalf.

Use and Name of Hospital

Sec. 5. The Board of Regents of The University of Texas System is authorized to use the East Texas Chest Hospital as a teaching hospital and is authorized to change the name of the hospital, if and when deemed appropriate, so as to conform to the policies, rules, and regulations of said board.

Chest Diseases

Sec. 6. It shall continue to be the policy of the State of Texas to provide a program of treatment of the citizens of this state who are affected with chest diseases, and in pursuance of that policy the East Texas Chest Hospital shall among other functions continue to serve as the primary facility in this state to conduct research, develop diagnostic and treatment techniques and procedures, provide training and teaching programs, and provide diagnosis and treatment for both inpatients and outpatients with respect to all chest diseases.

Application of Tuberculosis Code

Sec. 7. The East Texas Chest Hospital shall among other functions continue to serve as a "state tuberculosis hospital" under the terms and provisions of the Texas Tuberculosis Code (Article 4477-11, Vernon's Texas Civil Statutes), but insofar as applicable to the East Texas Chest Hospital, Subsections (b) through (e) of Section 12 and all of Section 15, Texas Tuberculosis Code (Article 4477-11, Vernon's Texas Civil Statutes), are repealed.

Repealer

Sec. 8. Chapter 528, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 4477-13, Vernon's Texas Civil Statutes), is repealed, and all other laws or parts of laws in conflict with this Act are repealed to the extent of such conflict.

Effective Date

Sec. 9. The effective date of this Act shall be September 1, 1977.

Severability

Sec. 10. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other provision or application of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

[Acts 1977, 65th Leg., p. 752, ch. 282, §§ 1 to 10, eff. Sept. 1, 1977.]

Art. 3201c. Security at San Antonio State Hospital

The Texas Department of Mental Health and Mental Retardation shall establish and enforce security measures at the San Antonio State Hospital to ensure that the patients in that institution do not leave without authorization and that patients absent without authorization are returned as quickly as practicable. Among other measures, the department shall provide for a daily check to determine if any patients are absent and for immediate reporting to local law enforcement officials of a patient who is absent without authorization.

[Acts 1979, 66th Leg., p. 575, ch. 265, § 1, eff. May 24, 1979.]

CHAPTER THREE. OTHER INSTITUTIONS

TEXAS SCHOOL FOR THE BLIND

Article

3207d. Repealed.

WACO CENTER FOR YOUTH

3255c. Transfer of Land Facilities and Functions; Change of Name.

SAN ANTONIO STATE SCHOOL

3263g. San Antonio State School.

TEXAS SCHOOL FOR THE BLIND

Arts. 3207a to 3207c. Repealed by Acts 1979, 66th Leg., p. 2429, ch. 842, art. 1, § 2(1), eff. Sept. 1, 1979

Acts 1979, 66th Leg., ch. 842, repealing these articles, enacts the Human Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Human Resources Code.

Prior to repeal, art. 3207a was amended by:

Acts 1975, 64th Leg., p. 2383, ch. 734, §§ 12, 26, 27.

Acts 1977, 65th Leg., p. 1846, ch. 735, § 2.102.

Acts 1979, 66th Leg., p. 675, ch. 301, §§ 1, 2, 8(a).

Section 9(a) of Acts 1979, 66th Leg., p. 679, ch. 301, provided:

"The governor shall appoint three new members to the State Commission for the Blind immediately after the effective date of this Act. In making those appointments, the governor shall designate one appointee to serve for a term expiring January 1, 1981, one to serve for a term expiring January 1, 1983, and one to serve for a term expiring January 1, 1985."

Art. 3207d. Repealed by Acts 1979, 66th Leg., p. 679, ch. 301, § 8(a), eff. May 31, 1979; Acts 1979, 66th Leg., p. 2429, ch. 842, art. 1, § 2(1), eff. Sept. 1, 1979

Acts 1979, 66th Leg., ch. 842, repealing this article, enacts the Human Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Human Resources Code.

The repealed article, relating to early identification and registry of blind and visually handicapped, was added by Acts 1975, 64th Leg., p. 2382, ch. 734, § 11.

WACO CENTER FOR YOUTH

Art. 3255c. Transfer of Land, Facilities and Functions; Change of Name

Transfer of Waco State Home

Sec. 1. The custody, control, and management of the land, buildings, and facilities of the Waco State Home are transferred to the Texas Department of Mental Health and Mental Retardation effective September 1, 1979.

Change of Name

Sec. 2. Effective September 1, 1979, the name of the Waco State Home is changed to the Waco Center for Youth.

Purpose of Center

Sec. 3. The Waco Center for Youth shall be used as a residential treatment facility for emotionally disturbed juveniles who:

(1) have been committed to a facility of the Texas Department of Mental Health and Mental Retardation under the provisions of the Texas Mental Health Code, as amended;¹ or

(2) are under the managing conservatorship of the Texas Department of Human Resources and have been committed to the Waco Center for Youth under the provisions of the Texas Mental Health Code, as amended.

(3) No emotionally disturbed juvenile who has been found to have engaged in delinquent conduct or conduct indicating a need for supervision under Title 3 of the Texas Family Code² will be admitted to the Waco Center for Youth.

¹ Article 5547-1 et seq.

² Family Code, § 51.01 et seq.

Educational Services

Sec. 4. The Texas Department of Mental Health and Mental Retardation will provide free, appropriate educational services for all clients who reside at the Waco Center for Youth. The cost of such services will be paid by the Texas Department of Mental Health and Mental Retardation from funds appropriated for that purpose to said facility. No client of said facility, other than those who are legal residents of the Waco Independent School District, will receive educational services from the Waco Independent School District without the prior approval of the superintendent of said school district.

Disposition of Property

Sec. 5. The Texas Youth Council and the Texas Board of Mental Health and Mental Retardation by

agreement shall provide for the transfer or retention by the Texas Youth Council of all items of state property now located at the Waco State Home, including furniture, equipment, vehicles, tools, supplies, linens, machinery, and utensils. The Texas Youth Council and the Texas Board of Mental Health and Mental Retardation shall inform the State Board of Control of the disposition made of all such property on or before September 1, 1979.

Transfer of Funds

Sec. 6. (a) From funds appropriated to the Texas Youth Council for the Waco State Home for the biennium ending August 31, 1979, the Texas Youth Council may transfer to the Texas Department of Mental Health and Mental Retardation an amount determined by agreement between the Texas Youth Council and the Texas Department of Mental Health and Mental Retardation. Any of these funds may be used by the Texas Department of Mental Health and Mental Retardation for renovation, remodeling, and alteration of buildings and facilities and purchase of equipment for the Waco Center for Youth as required to house emotionally disturbed clients or for the payment of salaries for personnel involved in the planning, development, or provision of services to emotionally disturbed clients at the facility.

(b) The Texas Department of Human Resources may transfer funds from its Fund 117, Federal Public Welfare Administrative Fund, to the Texas Department of Mental Health and Mental Retardation in an amount determined by agreement between the Texas Department of Human Resources and the Texas Department of Mental Health and Mental Retardation to be used for renovation, remodeling, and alteration of buildings and facilities and purchase of equipment for the Waco Center for Youth as required to house emotionally disturbed clients.

Department May Take Possession

Sec. 7. For the purposes of renovation, remodeling, and alteration of the buildings and facilities of the Waco State Home, the Texas Department of Mental Health and Mental Retardation may take possession of any such building or facility prior to September 1, 1979, with the prior written approval of the Texas Youth Council.

[Acts 1979, 66th Leg., p. 1360, ch. 611, §§ 1 to 7, eff. Aug. 27, 1979.]

SAN ANTONIO STATE SCHOOL

Art. 3263g. San Antonio State School

Sec. 1. There is hereby established the San Antonio State School for the education, care, and treatment of mentally retarded persons. The Texas Department of Mental Health and Mental Retardation may enter into agreements with the State Depart-

ment of Health for use of the excess facilities of the San Antonio Chest Hospital in the operation of the school.

Sec. 2. The Texas Department of Mental Health and Mental Retardation shall appoint personnel necessary to operate and maintain the school and to adequately treat the persons admitted within the

limits of legislative appropriations. The Texas Department of Mental Health and Mental Retardation shall admit persons and shall provide for their care and maintenance under the state laws, rules, and regulations governing the admission and care of mentally retarded persons.

[Acts 1975, 64th Leg., p. 2163, ch. 695, §§ 1 and 2, eff. June 21, 1975.]

TITLE 52

EMINENT DOMAIN

Art. 3265. Rule of Damages

[See Compact Edition, Volume 4 for text of 1 to 5]

6. Where a plaintiff after filing a petition in condemnation, desires to dismiss or abandon the proceedings, said plaintiff shall by a motion filed to the judge of the court be heard thereon, and the court hearing the same shall make an allowance to the landowner for all necessary and reasonable attorneys', appraisers', and photographers' fees and all other expenses incurred to the date of such hearing on said motion; provided, however, after a special commissioners hearing has been held and the special commissioners have made an award, the plaintiff will not be permitted to dismiss the condemnation proceedings merely to file a new petition in condemnation involving substantially the same taking against the landowner in an effort to secure a lower commissioners award from a second special commissioners hearing. If the plaintiff does dismiss and files a second petition in condemnation to condemn from the same landowner the same substantial interest in the land as in the first petition in condemnation, the landowner is entitled to three (3) times the amount of all expenses allowed the landowner prior

to the dismissal of the first petition in condemnation. The court will not appoint new commissioners under the second petition in condemnation, but the court will merely enter the special commissioners award as previously found under the first petition in condemnation as the award of the special commissioners in the second petition filed by the plaintiff.

7. The owner of the land who is actually and physically displaced and permanently moved from his dwelling or place of business shall be entitled to, as a separate item of damages, the reasonable moving expenses for personal property when personal property is moved from a place of residence or from a place of business, but the maximum distance of movement to be considered shall be fifty (50) miles. In no event shall such expenses exceed the market value of such personal property; provided, however, that the provisions of this section shall not apply in any condemnation proceeding whether before special commissioners or the court where the owner is entitled to reimbursement for moving expenses under other existing law.

[Amended by Acts 1979, 66th Leg., p. 449, ch. 206, § 1, eff. May 17, 1979.]

TITLE 52A

ENGINEERS

Art. 3271a. Texas Engineering Practice Act

[See Compact Edition, Volume 4 for text of 1 to 3]

Application of Sunset Act

Sec. 3a. The State board of Registration for Professional Engineers is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1981.

¹ Article 5429k.

Qualifications of Members of Board

Sec. 4. Each member of the Board shall be a citizen of the United States and a resident of this State for a period of 10 years prior to appointment, and shall have been engaged in the practice of the profession of engineering for at least 10 years, two years of which may be credited for graduation from an approved engineering school. Responsible charge of engineering teaching and the teaching of engineering shall be considered as the practice of professional engineering as defined by this Act for purposes of this section and for all other purposes in regard to the administration and enforcement of this Act.

[See Compact Edition, Volume 4 for text of 5 to 10]

Roster of Registered Engineers

Sec. 11. A roster showing the names and places of business of all registered professional engineers shall be prepared and published by the Board each biennium at a time determined by the Board. Copies of this roster shall be furnished without charge to any engineer licensed by the Board on the written request of the engineer, placed on file with the Secretary of State, and furnished to any person upon written request who tenders a reproduction fee set by the Board in an amount not to exceed Five Dollars (\$5.00).

[See Compact Edition, Volume 4 for text of 12 and 12a]

Applications and Registration Fees

Sec. 13. Applications for registration shall be on forms prescribed and furnished by the Board, shall

contain statements made under oath, showing the applicant's education and a detailed summary of his actual engineering work, and shall contain not less than five (5) references, of whom three (3) or more shall be engineers having personal knowledge of his engineering experience.

The registration fee for professional engineers shall be Fifty Dollars (\$50.00).

[See Compact Edition, Volume 4 for text of 14 and 15]

Expirations and Renewals

Sec. 16. It shall be the duty of the Board to notify every person registered under this Act of the date of the expiration of his certificate and the amount of the fee that shall be required for its renewal for one year; such notice shall be mailed at least one month in advance of the date of the expiration of said certificate. Renewal may be effected by the payment of a renewal fee set by the Board not to exceed Forty-five Dollars (\$45.00). The Board is hereby given authority and duty to determine the amount of such renewal fee required to effectively carry out the administration and enforcement of all the provisions of this Act. Failure on the part of any registered engineer to renew his certificate annually shall not deprive such person of the right of renewal, but the fee to be paid for the renewal of a certificate when the renewal is past due shall be increased ten per cent (10%) for each month or fraction of a month that renewal payment is delayed; provided, however, that the maximum fee for delayed renewal shall not exceed twice the normal renewal fee.

[See Compact Edition, Volume 4 for text of 16.1 to 25]

[Amended by Acts 1975, 64th Leg., p. 299, ch. 129, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 964, ch. 362, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1836, ch. 735, § 2.033, eff. Aug. 29, 1977.]

Sections 2 and 3 of Acts 1977, 65th Leg., p. 965, ch. 362, provided:

"Sec. 2. If any section, subsection, paragraph, sentence, clause, phrase, or word is held invalid, such holdings shall not affect the validity of the remaining portions of this Act, and the legislature hereby declares it would have passed such remaining portions of this Act despite such invalidity of any part thereof.

"Sec. 3. All laws or parts of laws in conflict or inconsistent herewith are hereby repealed to the extent of such conflict or inconsistency only."

TITLE 53

ESCHEAT

Art. 3272b. Duties of Depositories of Dormant or Inactive Accounts

[See Compact Edition, Volume 4 for text of 1 to 3]

Report to State Treasurer

Sec. 4. On or before May 1st of the year following the first publication required by this Article, the depository shall submit in duplicate copies a report to the State Treasurer listing the names of all such depositors or creditors whose names were published, whose whereabouts and the whereabouts of any owner of such deposit or credit still remain unknown, and each of whose deposits or accounts still remain in a dormant or inactive status. Such report shall set forth in alphabetical order the name and last known address of the depositor or creditor, the date and amount appearing to be due each depositor or creditor when the account first became dormant or inactive, or on January 1, 1959, whichever date is later, the amount credited to such account at the time of the report, the date of the last transaction with the depositor or creditor, and its identification number, if any. If the amount then credited to an account is less than the amount of the initial dormant deposit or inactive account, except for its share of publication costs, the reason for such reduction shall be stated.

The subscribing officer shall certify under oath that the report is a complete and correct statement of all dormant deposits and inactive accounts held by the depository subject to the reporting provisions of Section 4 of Article 3272b; that the existence and whereabouts of the listed depositors or creditors are unknown to the depository; and that the listed depositors or creditors have not asserted any claim or exercised any act of ownership with respect to the reported accounts during the past seven (7) years.

Together with the foregoing report, the depository shall deliver to the State Treasurer a sum equal to the total amount of the accounts listed in the report, and the State Treasurer shall sign a receipt therefor and shall assume custody thereof. The State shall be responsible for the safekeeping thereof, and any depository delivering such deposits or accounts to the State Treasurer under this Act is relieved of all liability for any claim which then exists or which may thereafter arise or be made in respect to the property.

State Conservator Fund

Sec. 5. All funds received by the State Treasurer under the provisions of this Article or from the escheat of any deposit, credit, account or other property held by any bank or other institution covered by Section 1(a) hereof shall be deposited into a separate fund to be known as the "State Conservator Fund," from which there shall be set aside and maintained a revolving expense fund of Twenty-five Thousand Dollars (\$25,000) for the purpose of paying expenses incurred by the State Treasurer in the enforcement of the provisions of this Article, including the expense of publications, forms, notices, examinations, travel, and employment of necessary personnel; and thereafter any amounts remaining unpaid to owners shall be transferred to the Available School Fund; provided that the State Conservator Fund shall never be reduced below Two Hundred and Fifty Thousand Dollars (\$250,000). This sum shall remain available for payments to those who may at any time in the future establish their ownership or right as herein provided to any deposit or account delivered to the State Treasurer under this Act. The moneys in such fund over Fifty Thousand Dollars (\$50,000) shall be invested from time to time by the State Treasurer in investments which are approved by law for the investment of any State funds, and the income thereof shall be and become a part of the said State Conservator Fund. The expense fund of Twenty-five Thousand Dollars (\$25,000) is hereby appropriated to the State Treasurer for the purposes above stated for the biennium ending August 31, 1963.

The State Banking Commissioner shall transfer to the State Treasurer for deposit in the State Conservator Fund all dormant deposits and other funds formerly owned by or deposited in liquidated depositories which have been held by the Commissioner for more than twenty (20) years and of which the whereabouts of the depositors, creditors or owners have been unknown to him for more than twenty (20) years. Upon delivery, together with a certificate of such facts under oath of the State Banking Commissioner, the funds shall be subject to conservation and disposition under the terms of this Article. The State Banking Commissioner shall deliver to the State Treasurer a record of the names of the liquidated depositories, and the names and last

known addresses of the depositors and creditors and the amounts of the deposits, credits, or other funds.

The State Treasurer shall compile an alphabetical list containing the name and last known address of each depositor or creditor listed on the depository reports and the amount of each depositor account. The State Treasurer shall revise the list not later

than June 1 of each year. The list shall be available for public inspection at all reasonable business hours.

[See Compact Edition, Volume 4 for text of 6 to 10]

[Amended by Acts 1975, 64th Leg., p. 638, ch. 263, §§ 1, 2, eff. Sept. 1, 1975.]

TITLE 55

EVIDENCE

1. WITNESSES AND EVIDENCE

Article

3737g. Advance Payment to Tort Claimants; Introduction of Evidence.

3737h. Necessity of Services and Reasonableness of Charges.

1. WITNESSES AND EVIDENCE

Art. 3712a. Interpreters for Deaf Persons

(a) In all civil cases or in the taking of depositions, where a party or a witness is a deaf person, he shall have the proceedings of the trial interpreted to him in any language that he can understand, including but not limited to sign language, by an interpreter appointed by the court, whose qualifications have been approved by the State Commission for the Deaf. In this Act, "deaf person" means a person who has a hearing impairment, regardless of whether the person also has a speech impairment, that inhibits the person's comprehension of the proceedings or communication with others.

(b) In any case where an interpreter is required to be appointed by the court under this Act, the court shall not commence proceedings until the appointed interpreter is in court in a position not exceeding 10 feet from and in full view of the deaf person.

(c) The interpreter appointed under the terms of this Act shall be required to take an oath that he will make a true interpretation to the deaf person of all the proceedings of the case in a language that he understands; and that he will repeat the deaf person's answer to questions to counsel, court, or jury, in the English language, in his best skill and judgment. When a deaf person communicates through an interpreter to a person under such circumstances that the communication would be privileged and the deaf person could not be compelled to testify as to the communications, the privilege applies to the interpreter as well.

(d) Interpreters appointed under this Act shall be paid a reasonable fee determined by the court after considering the recommended fees of the State Commission for the Deaf. When travel of the interpreter is involved all the actual expenses of travel, lodging, and meals incurred by the interpreter pertaining to the case he is appointed to serve shall be paid at the same rate applicable to state employees. The fee and expenses shall be paid from the general fund of the county in which the case was instituted.

(e) On the court's motion or the motion of a party, the court may order testimony of a deaf witness and the interpretation of that testimony by the interpreter visually, electronically recorded for use in verification of the transcription of the reporter's notes. The clerk of the court shall include the recording in the appellate record if requested by a party.

[Amended by Acts 1979, 66th Leg., p. 397, ch. 186, § 2, eff. May 15, 1979.]

Art. 3731a. Official Written Instruments, Certificates, Records, Returns and Reports; Proceedings of the State Legislature; Foreign Laws

[See Compact Edition, Volume 4 for text of 1]

Proceedings of the State Legislature

Sec. 1a. All available written or electronic records of the proceedings of the state legislature which are required by the rules of the respective houses to be preserved may be attested by the presiding officer of each house or by a deputy designated by him for such purpose. The attested records or copies or duplications thereof shall be, so far as relevant, admitted in the courts of this state as evidence of the matters stated therein, subject to the provisions of Section 3 of this Act, without the necessity of the presence in the court of the presiding officer or deputy designated to attest, preserve, or display the records, copies, or duplications.

[See Compact Edition, Volume 4 for text of 2 and 3]

Authentication of Copy

Sec. 4. Such writings or electronic records may be evidenced by an official publication thereof or by a copy or electronic duplication attested by the officer having the legal custody of the record, or by his deputy. Except in the case of a copy of an official writing or official electronic recording from a public office of this State or a subdivision thereof, the attestation shall be accompanied with a certificate that the attesting officer has the legal custody of such writing. If the office in which the record is kept is within the United States or within a territory or insular possession subject to the dominion of the United States, the certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticat-

ed by the seal of his office. If the office in which the record is kept is in a foreign state or country, the certificate may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the United States, or by any officer of a United States military government, stationed in the foreign state or country in which the record is kept, and authenticated by the seal of his office. In the case of the matters in Section 2a, the substance, contents, and/or wording of any of such matters may also be evidenced by certification, as to existence on a particular date or dates by the governmental head of such country or his secretary, or such country's attorney (such as attorney general) or assistant attorney or chief legal head, or the president, leader or head of its or one of its law-making bodies or the secretary thereof; or judge or any justice of any appellate court of such country and if none, judge or any justice of one or any one of its highest judicial tribunals. All such attested and certified instruments and the contents of the certificate and the title of the person making same, shall be evidence of the matters, statements, representations and title contained therein.

[See Compact Edition, Volume 4 for text of 5 and 6]

[Amended by Acts 1975, 64th Leg., p. 666, ch. 280, § 1, eff. Sept. 1, 1975.]

Art. 3737g. Advance Payment to Tort Claimants; Introduction of Evidence

Purpose of Act

Sec. 1. The purpose of this Act is to promote the making of advance payments for economic loss to claimants without permitting the introduction of evidence of advance payments on the issue of liability or damages during subsequent litigation, but permitting the allowance of advance payments as a credit against any sum judicially established as a claimant's total damages. The making of periodic payments to claimants for medical expenses, wages lost, and property damaged, often without taking any form of release, will avoid delays in and promote payments for economic loss to persons in need.

"Advance Payment" Defined

Sec. 2. In this Act, "advance payment" includes but is not limited to, any partial payment or payments made by any person, corporation, or insurer to another which is predicated on possible tort liability for medical, surgical, hospital, or rehabilitation services, facilities, or equipment; loss of earnings; out-of-pocket expenses; bodily injury; death; or property damage, loss, or destruction.

Inadmissibility of Evidence of Advance Payment at Trial

Sec. 3. In any civil action in which a party or someone on his behalf, such as his insurer, has made an advance payment prior to trial, any evidence of or concerning the advance payment shall be inadmissible at the trial on liability or damages in any action brought by the claimant, his survivor, or his personal representative to recover damages for personal injuries or related damages, for wrongful death of another, or for property damage or destruction.

Admissibility of Evidence of Advance Payment after Verdict or Decision; Right to Jury Trial Undenied

Sec. 4. If an action results in a jury verdict or decision of the court for damages in favor of a party, the party against whom the verdict or decision is entered may introduce evidence of advance payments after the verdict or decision and before final judgment, and the court shall then reduce the amount awarded to the claimant by the amount of the advance payment proved to have been made prior to trial. Such advance payments shall not be permitted as a reduction of the amount awarded unless there is evidence at the trial on liability that the party to whom the advance payments were made suffered loss as described in Section 2 herein, equal to or exceeding the amount of such advance payments. Nothing in this Act shall be construed to deny to any party his constitutional right to trial by jury on the amount of the credit at a time subsequent to the trial on liability and damages.

Application of Act

Sec. 5. This Act applies to any action filed after the effective date of this Act, regardless of the site of the accident, location of property, or residence of the parties.

Statute of Limitations Tolloed

Sec. 6. The making of an advance payment tolls the running of the statute of limitations until the last payment is made unless the person making the advance payment notifies the recipient in writing at the time of each payment that the applicable statute of limitations is not tolled.

[Acts 1975, 64th Leg., p. 962, ch. 364, §§ 1 to 6, eff. June 19, 1975.]

Art. 3737h. Necessity of Services and Reasonableness of Charges

Sec. 1. (a) In a civil action other than an action on sworn account, the amount charged for services by a person or institution, when supported by affidavit that the charges reflected in the affidavit were reasonable at the time and place that the services were rendered and that the services were necessary, is sufficient evidence to support a finding of fact by judge or jury that the services were necessary or that the amount charged was reasonable, or both. The affidavit shall be taken before an officer autho-

rized to administer oaths, shall be made by a person who rendered the services or who is in charge of records that show the services rendered and the charges made, and shall include an itemized statement of the services and the charges.

(b) As a condition precedent to applicability of Subsection (a) of this Section 1, the party asserting such applicability, or such party's attorney of record, shall file the affidavit provided for in said Subsection (a) with the clerk of the court and shall serve a copy thereof on each other party to the cause, or such other party's attorney of record, at least 14 days prior to the day on which presentation of evidence at trial of the cause commences. As a condition precedent to controverting a claim covered by an affidavit so filed and served, any party intending to controvert all or part of any such claim shall, within 10 days after receipt of such party's copy of such affidavit, or with leave of court first had and obtained at any time prior to commencement of evidence at trial of the cause, file a counter-affidavit

with the clerk of the court and serve a copy thereof on each other party to the cause, or such other party's attorney of record. The counter-affidavit shall give reasonable notice of the basis upon which the party filing it intends at trial to controvert all or part of the claim covered by the initial affidavit. The counter-affidavit shall be taken before a person authorized to administer oaths and may be made upon information and belief by the party filing it, or such party's attorney of record. When a counter-affidavit is so filed and served, then Subsection (a) of this Section 1 shall thereafter have no force or effect at the trial of the cause.

Sec. 2. This Act does not apply to civil actions in which judgment was rendered prior to the effective date of this Act, nor to attorney fees charged in the trial of the cause or preparation thereof.

[Acts 1979, 66th Leg., p. 1778, ch. 721, §§ 1, 2, eff. Aug. 27, 1979.]

TITLE 56

EXECUTION

Article

3827a. Collection of Judgments by Court Proceedings.

Art. 3810. Sales Under Deed of Trust

All sales of real estate made under powers conferred by any deed of trust or other contract lien shall be made in the county in which such real estate is situated. Where such real estate is situated in more than one county then notices as herein provided shall be given in both or all of such counties, and the real estate may be sold in either county, and such notice shall designate the county where the real estate will be sold. Notice of such proposed sale shall be given by posting written notice thereof at least 21 days preceding the date of the sale at the courthouse door of the county in which the sale is to be made, and if the real estate is in more than one county, one notice shall be posted at the courthouse door of each county in which the real estate is situated.

In addition, the holder of the debt to which the power is related shall at least 21 days preceding the date of sale serve written notice of the proposed sale by certified mail on each debtor obligated to pay such debt according to the records of such holder. Service of such notice shall be completed upon deposit of the notice, enclosed in a postpaid wrapper, properly addressed to such debtor at the most recent address as shown by the records of the holder of the debt, in a post office or official depository under the care and custody of the United States Postal Service. The affidavit of any person having knowledge of the facts to the effect that such service was completed shall be prima facie evidence of the fact of service. Such sale shall be made at public vendue between the hours of 10:00 a. m. and 4:00 p. m. of the first Tuesday in any month.

[Amended by Acts 1975, 64th Leg., p. 2354, ch. 723, § 1, eff. Jan. 1, 1976.]

Section 2 of the 1975 amendatory act provided: "This Act shall become effective on January 1, 1976, and it shall apply only to sales made after that date."

Art. 3827a. Collection of Judgments by Court Proceedings

(a) A judgment creditor whose judgment debtor is the owner of property, including present or future rights to property, which cannot readily be attached or levied on by ordinary legal process and is not exempt from attachment, execution, and every type of seizure for the satisfaction of liabilities, is entitled to aid from a court of appropriate jurisdiction by injunction or otherwise in reaching the property to satisfy the judgment.

(b) The court may order the property of the judgment debtor referred to in Subsection (a) of this section, together with all documents or records related to the property, that is in or subject to the possession or control of the judgment debtor to be turned over to any designated sheriff or constable for execution or otherwise applied toward the satisfaction of the judgment. The court may enforce the order by proceedings for contempt or otherwise in case of refusal or disobedience.

(c) The court may appoint a receiver of the property of the judgment debtor referred to in Subsection (a) of this section, with the power and authority to take possession of and sell the nonexempt property and to pay the proceeds to the judgment creditor to the extent required to satisfy the judgment.

(d) These proceedings may be brought by the judgment creditor in the same suit in which the judgment is rendered or in a new and independent suit.

(e) In a proceeding under this section, a judgment creditor is entitled to recover reasonable costs, including attorney's fees.

[Acts 1979, 66th Leg., p. 1555, ch. 671, § 1, eff. June 13, 1979.]

TITLE 57

EXEMPTIONS

1. PROPERTY EXEMPT FROM FORCED SALE

Art. 3836. Personal Property Exempt from Satisfaction of Liabilities

(a) Personal property (not to exceed an aggregate fair market value of \$15,000 for each single, adult person, not a constituent of a family, or \$30,000 for a family) is exempt from attachment, execution and every type of seizure for the satisfaction of liabilities, except for encumbrances properly fixed thereon, if included among the following:

(1) furnishings of a home, including family heirlooms, and provisions for consumption;

(2) all of the following which are reasonably necessary for the family or single, adult person, not a constituent of a family: implements of farming or ranching; tools, equipment, apparatus (including a boat), and books used in any trade or profession; wearing apparel; two firearms and athletic and sporting equipment;

(3) all passenger cars and light trucks, as those terms are defined by Section 2, Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes), that are not held or used for production of income or, whether held or used for production of income or not, any

two of the following categories of means of travel: two animals from the following kinds with a saddle and bridle for each: horses, colts, mules, and donkeys; a bicycle or motorcycle; a wagon, cart, or dray, with harness reasonably necessary for its use; an automobile or station wagon; a truck cab; a truck trailer; a camper-truck; a truck; a pickup truck;

(4) livestock and fowl not to exceed the following in number and forage on hand reasonably necessary for their consumption: 5 cows and their calves, one breeding-age bull, 20 hogs, 20 sheep, 20 goats, 50 chickens, 30 turkeys, 30 ducks, 30 geese, 30 guineas;

(5) a dog, cat, and other household pets;

(6) the cash surrender value of any life insurance policy in force for more than two years to the extent that a member or members of the family of the insured person or a dependent or dependents of a single, adult person, not a constituent of a family, is beneficiary thereof;

(7) current wages for personal services.

[See Compact Edition, Volume 4 for text of (b) to (d)]

[Amended by Acts 1979, 66th Leg., p. 688, ch. 302, § 2, eff. May 31, 1979.]

TITLE 59

FEEBLE MINDED PERSONS—PROCEEDINGS IN CASE OF

Art. 3871b. Repealed by Acts 1977, 65th Leg., p.
797, ch. 294, § 69, eff. Jan. 1, 1978

See, now, the Mentally Retarded Persons Act, classified as art. 5547-300.

TITLE 60

FEEDING STUFF

Art. 3881e. Commercial Feed Control Act of 1957
[See Compact Edition, Volume 4 for text of 1
to 6]

Inspection Fee

Sec. 7. (a) For the purpose of administering the Texas Commercial Feed Control Act of 1957, including the cost of equipment and facilities and the cost of inspecting, analyzing, and examining commercial feed manufactured for sale, sold, offered or exposed for sale or otherwise distributed in this state, and the expense of experiments and research relative to the value thereof, persons engaged in the manufacture, sale, or distribution of commercial feeds or the components of commercial feeds shall pay to the Director, at his office in College Station, Texas, an inspection fee of Twelve Cents (12¢) per ton on all such commercial feed. With the approval of the Board of Regents of The Texas A & M University System, the Director may reduce or increase the inspection fee in increments of one cent (1¢) per fiscal year, as needed, to a minimum of Ten Cents (10¢) or a maximum of Twenty-five Cents (25¢) per ton. The inspection fee herein levied shall be deposited in the State Treasury and shall there be set apart as a special fund to be known as the Feed Control Fund, and shall be used with the approval and consent of the Board of Directors of the Agricultural and Mechanical College of Texas for the purposes stated in this Section 7(a) of this Act.

(b) The procedure for paying the inspection fee shall, subject to the approval and consent of the Director, be either by the use of tax tags (or certificates) or by means of the tonnage reporting system or by a combination of both such procedures, and shall, in addition to regulations which the Director is herewith authorized to issue, be in compliance with all the provisions of this Act.

(c) When the inspection fee is to be paid by the use of the tax tag (or certificate) on any commercial feed which is manufactured for sale, sold, or offered for sale, or otherwise distributed in this state, the manufacturer or any other person who causes it to be manufactured for sale or who sells the same or offers it for sale or makes delivery or distribution of any such commercial feed within the State of Texas, shall affix to each container or package of such commercial feed, except customer-formula feed, and to the invoice of such customer-formula feed distributed in bulk or otherwise, and to the invoice of each

lot of such other commercial feed distributed in bulk, a tag (or certificate), to be furnished by the Director, stating that all charges specified in this Article have been paid, and containing the information provided for in Section 6 of this Act. The Director is hereby authorized, empowered, and directed to prescribe the form and denomination of such tags and certificates; provided, however, that if at any time the actual cost to the Feed Control Service of tags (or certificates), including the printing and handling thereof, should be in excess of fifty percent (50%) of the amount of the inspection fee as provided in this Section 7, the Director may, after giving reasonable notice in such manner as he deems desirable, charge all persons who cause commercial feed to be manufactured, sold, exposed, or offered for sale or otherwise distributed, for the total actual cost of such tags (or certificates) in addition to the inspection fee; and provided further, that on individual containers of five (5) pounds or less, a manufacturer or other person may for each state fiscal year (September 1st to August 31st, inclusive) or any fractional part thereof, pay in advance a fee of Twenty-five Dollars (\$25.00) for each brand of commercial feed manufactured for sale, sold, offered for sale or otherwise distributed in this state, and such manufacturer or other person shall not be required to affix official tags (or certificates) to such containers of the brands of commercial feed so registered.

(d) When the inspection fee is to be paid by means of the Tonnage Reporting System, the Director is authorized, at his discretion and under such rules and regulations as he may promulgate, to prescribe and furnish such forms and to require the filing of such reports, and shall issue permits bearing a number assigned by the Director on application therefor to any person who manufactures, sells, offers for sale, or who otherwise distributes or has available for distribution in this state, regardless of the manner, means or circumstances as to its entry, presence or existence within this state, any commercial feed. Each applicant for the issuance of a permit must deposit with the Director cash in the amount of One Thousand Dollars (\$1,000.00) or securities acceptable to and approved by the Director of a value of at least One Thousand Dollars (\$1,000.00), or must post with the Director a surety bond payable to the State of Texas in the amount of One Thousand Dollars (\$1,000.00), executed by a corporate surety company authorized to do business in Texas and approved by

the Director, conditioned upon the faithful performance of the provisions of this Article; or must post with the Director a bond with at least two good and sufficient and solvent personal sureties, payable to the State of Texas in the amount of One Thousand Dollars (\$1,000.00) and approved by the Director, conditioned upon the faithful performance of the provisions of this Article. Each such bond shall be in such form and be effective for such period of time as the Director may prescribe. In addition to all other provisions of this Act, each person who is issued a permit to sell, offer for sale, or otherwise distribute commercial feed and pay the inspection fee in accordance with the tonnage reporting system shall:

(1) Maintain and furnish such records as the Director may require to reflect accurately the total tonnage of all feed handled, and the portion of such tonnage that is sold, offered for sale, or otherwise distributed as commercial feed and is subject to the inspection fee. The Director or his duly authorized representatives shall have permission to examine the records of the permittee at all reasonable times. All records shall be preserved and retained in usable condition, and shall be available for examination by the Director or his representatives for a period of not less than two (2) years unless otherwise authorized by the Director, and the Director may require the retention of such records for a period of more than two years in instances where it is deemed desirable to do so.

(2) File in the office of the Director at College Station, Texas, within thirty (30) days after the close of each quarter year ending with the last day of November, February, May, and August, sworn reports covering the tonnage of all feed sold during the preceding quarter together with the payment of tax due for such quarter. A penalty of

ten per cent (10%) of any tax which is not paid within the time allowed shall be added to the amount of the tax due, and the amount of the tax and the penalty shall constitute a debt, and shall be recoverable out of the bond hereinbefore referred to; provided that the Director may, if he deems it desirable to do so, require additional reports for the purpose of identification and verification of records.

(3) When located outside of the State of Texas and when distributing commercial feed in the State of Texas, maintain in the State of Texas the records and information required by this Section 7(d) of this Act or pay all costs incurred in the auditing of records at a location outside of the state. The Director is authorized and directed to revoke the permit and cancel all registrations of any permittee who fails to comply with this requirement. Itemized statements of costs incurred in any such audits shall be furnished the permittee by the Director promptly upon completion of any such audit, and he must pay the same within thirty (30) days from the date of such statement.

(4) Affix to each container or package of such commercial feed, except customer-formula feed, and to the invoice of each lot of commercial feed, except customer-formula feed, sold or otherwise distributed in bulk a printed statement setting forth the information provided for in Section 6(a) and (b) of this Act.

(5) Affix to the invoice of each customer-formula feed sold or otherwise distributed a statement setting forth the information provided for in Section 6(c) of this Act.

[See Compact Edition, Volume 4 for text of 7(e) to 20]

[Amended by Acts 1977, 65th Leg., p. 1629, ch. 641, § 1, eff. Aug. 29, 1977.]

TITLE 61

FEES OF OFFICE

CHAPTER ONE. GENERAL PROVISIONS

Article

3883i-3. Compensation of Judges of Probate Court; Counties of Not Less Than 700,000

3912l. Secretarial Personnel of District, County or Precinct Officers.

Art. 3883i. Maximum and Minimum Salaries; Certain Precinct, County and District Officials in Certain Counties

[See Compact Edition, Volume 4 for text of 1 to 3B]

Sec. 4.

[See Compact Edition, Volume 4 for text of 4 and 4(a)]

Counties of 150,000 to 170,000

(b) In each county of the State of Texas governed by Section 4 and Subsection 4(a) hereof and having a population of at least one hundred fifty thousand (150,000) but less than one hundred seventy thousand (170,000) according to the last preceding federal census where the County Judge is compensated on a salary basis, the Commissioners Court shall fix the yearly salary of the County Judge at a sum not less than 90 percent of the total salary, including supplements, paid any District Judge sitting in Galveston County; providing that no salary covered by this Act shall be set at a lower figure than that actually paid on the effective date of this Act and further providing that this subsection shall be cumulative of all other laws pertaining to the compensation of County Judges.

[See Compact Edition, Volume 4 for text of 5 to 7a]

Counties of 1,200,000 to 1,500,000

Sec. 8(a). In all counties of this State having a population of not less than one million, two hundred thousand (1,200,000) inhabitants and not more than one million, five hundred thousand (1,500,000) inhabitants, according to the last preceding Federal Census, the Commissioners Court shall fix the salaries of county officials as follows:

The Commissioners Court of each county to which this Subsection (a) applies may fix the salary of each of the Judges of the Probate Courts, Judges of the County Courts at Law, and Judges of the County Criminal Courts at Law at

an amount not to exceed One Thousand Dollars (\$1,000) less per annum than the total annual salary received by Judges of the District Courts in such counties, which shall be paid in twelve (12) equal monthly installments.

[See Compact Edition, Volume 4 for text of 8(b)]

Counties of 750,000 to 1,000,000

(c) In all counties of this state having a population of not less than 750,000 nor more than 1,000,000 according to the last preceding Federal Census, the Commissioners Court shall fix the annual salaries of county courts at law judges in an amount not less than \$25,000 annually and not to exceed nine-tenths of the total annual salary, including supplements, paid any district judge sitting in the county. Salaries fixed by this Section shall be payable in equal monthly installments. Nothing in Chapter 622, Acts of the 62nd Legislature, Regular Session, 1971, as amended (Article 3912k, Vernon's Texas Civil Statutes), applies to judges of the county courts at law.

[See Compact Edition, Volume 4 for text of 8(d) to 18]

[Amended by Acts 1975, 64th Leg., p. 1333, ch. 496, § 4, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 2353, ch. 722, § 1, eff. June 21, 1975; Acts 1977, 65th Leg., p. 187, ch. 93, § 1, eff. May 2, 1977.]

Art. 3883i-2. Compensation of Judges; Counties of Not Less Than 1,200,000

Sec. 1. In all counties of this State having a population of not less than one million, two hundred thousand (1,200,000) inhabitants, according to the last preceding Federal census, the Commissioners Court shall fix the salary of each of the Judges of the County Courts at Law, Judges of the County Criminal Courts at Law, and the Judge of the County Criminal Court of Appeals at not less than One Thousand Dollars (\$1,000) less per annum than the total annual salary, including supplements, received by Judges of the District Courts in such counties, which shall be paid in twelve (12) equal monthly installments. The salary of each of the Judges of the Probate Courts shall be fixed by the Commissioners Courts at not less than the total annual salary, including supplements, received by the Judges of the District Courts in such counties, which shall be paid in twelve (12) equal monthly installments.

Sec. 2. In all counties of this State having a population of not less than one million, five hundred thousand (1,500,000) inhabitants, according to the last preceding Federal census, the Commissioners Court shall fix the salary of the County Judge at not less than One Thousand Dollars (\$1,000) more per annum than the total annual salary received by Judges of the County Courts at Law and Judges of the County Criminal Courts at Law in such counties, which shall be paid in twelve (12) equal monthly installments. The salary of each of the Judges of the Probate Courts shall be fixed by the Commissioners Court at not less than the total annual salary, including supplements, received by the Judges of the District Courts in such counties, which shall be paid in twelve (12) equal monthly installments. [Amended by Acts 1977, 65th Leg., p. 1111, ch. 410, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 535, ch. 250, § 1, eff. May 24, 1979; Acts 1979, 66th Leg., p. 1639, ch. 686, § 4, eff. Aug. 27, 1979.]

Art. 3883i-3. Compensation of Judges of Probate Court; Counties of Not Less Than 700,000

In all counties of this state having a population of not less than 700,000 inhabitants, according to the last preceding federal census, the salary of each of the judges of the probate courts shall be fixed by the commissioners court at not less than the total annual salary, including supplements, received by the judges of the district courts in such counties, which shall be paid in 12 equal monthly installments. [Acts 1979, 66th Leg., p. 1640, ch. 686, § 5, eff. Aug. 27, 1979.]

Art. 3886h. Compensation of District Attorneys, Assistants, Investigators, Secretaries and Office Personnel in 34th District

Sec. 1. The District Attorney of the Thirty-fourth Judicial District may be paid a salary in an amount not to exceed the total salary and supplemental compensation paid from the state and county funds to the Judge of the Thirty-fourth Judicial District of Texas. The amount of county contributions to the salary paid by the State of Texas to the District Attorney of the Thirty-fourth Judicial District shall be fixed by the Commissioners Court of El Paso County. The salaries of Assistant District Attorneys, Investigators, secretaries, and other office personnel shall be fixed by the District Attorney, subject to approval of the Commissioners Court of El Paso County.

Sec. 2. The Commissioners Court of El Paso County, Texas, in said Thirty-fourth Judicial District, is hereby authorized to pay the salaries of the Assistant District Attorneys, Investigators, secretaries, and other office personnel as provided in Section 1 of this Act, and to supplement the salary

of the District Attorney paid by the State of Texas in such an amount that the total salary paid shall not exceed the maximum provided for in Section 1 hereof. Nothing shall affect the present existing law relating to the manner of selecting and determining the number of Assistant District Attorneys and Investigators except as herein provided.

[Amended by Acts 1975, 64th Leg., p. 276, ch. 118, § 1, eff. Sept. 1, 1975.]

Art. 3912e. Method of Compensation of District and Certain Designated County and Precinct Officers

[See Compact Edition, Volume 4 for text of 1 to 12]

Commissioners' Court to Fix Salaries of Certain Officers; Increase

Sec. 13.

[See Compact Edition, Volume 4 for text of 13(a)]

(b) In those counties wherein the county officials are on a salary basis and in which counties there is a criminal district attorney or a county attorney performing the duties of a district attorney, there shall be deposited in the officers salary fund on the first day of September, January and May of each year, such sums as may be apportioned to such county under the provisions of this Act out of the available appropriations, made by the Legislature for such purposes; provided, however, that in counties wherein the Commissioners Court is authorized to determine whether county officers shall be compensated on a salary basis, no apportionment shall be made to such county until the Comptroller of Public Accounts shall have been notified of the order of the Commissioners Court that the county officers of such county shall be compensated on a salary basis for the fiscal year. It shall be the duty of the Comptroller of Public Accounts to annually apportion to such counties any monies appropriated for said year for such apportionment; each such county entitled to participate in such apportionment shall receive for the benefit of its officers salary fund or funds its proportionate part of the appropriation which shall be distributed among the several counties entitled to participate therein, on the basis of the per capita population of each such county according to the last preceding Federal Census; provided the annual apportionment for such purposes shall be determined as follows: the apportionment shall not exceed Ten Cents (10¢) per capita of said population in those counties under eighty five hundred (8500) inhabitants; the apportionment shall not exceed Seven and One-half Cents (7½¢) per capita of said population in those counties having a population of not less than eighty five hundred (8500) and not more than nineteen thousand (19,000) inhabitants; the apportionment shall not exceed Five Cents (5¢)

per capita of said population in those counties having a population of not less than nineteen thousand and one (19,001) and not more than seventy five thousand (75,000) inhabitants and the apportionment shall not exceed Four Cents (4¢) per capita in those counties having a population of over seventy five thousand (75,000) inhabitants. Provided the provisions of this Act shall also apply to Harris County for the constitutional office of the District Attorney for the Criminal District Court of Harris County at not to exceed Four Cents (4¢) per capita. The Comptroller shall, at the option of the criminal district attorney, pay directly to the criminal district attorney in all counties with a population in excess of six hundred thousand (600,000) inhabitants according to the last preceding Federal Census a sum equal to the sum authorized in the general appropriations bill for district attorneys. Such sum shall be paid in twelve (12) equal installments on the first day of each month. Any such sums so paid shall be deducted from any sum due to said county under the provisions of this Act. In no event shall the total salary and allowances of the criminal district attorney of any such county from all sources be less than the salary of such criminal district attorney paid by said county on the effective date of this Act.

[See Compact Edition, Volume 4 for text of 13(c) to 23]

[Amended by Acts 1977, 65th Leg., p. 1489, ch. 604, § 1, eff. Aug. 29, 1977.]

Section 7 of the Public Prosecutors Act (Art. 332b-4) provides that § 13(b) of this article continues in force only as to those counties and district attorneys not subject to said Act.

The 1977 Act, amending § 13(b) of this article, provides in §§ 2 and 3 as follows:

"Sec. 2. All laws or portions thereof in conflict with the provisions of this Act are hereby repealed to the extent of such conflict.

"Sec. 3. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision."

Art. 3912f-7. Longevity Pay for Deputy Sheriffs in Counties of Not Less Than 150,000

(a) The commissioners court of each county in this state with a population of not less than 150,000, according to the last preceding federal census, shall provide longevity pay for each commissioned deputy of the sheriff's department in accordance with this Act.

(b) Each commissioned deputy shall receive, in addition to his regular compensation, longevity pay of not less than \$5 per month for each year of service in the department. Years of service in excess of 25 do not count for the purposes of this subsection.

[See Compact Edition, Volume 4 for text of (c)]

[Amended by Acts 1977, 65th Leg., p. 1091, ch. 400, § 1, eff. Aug. 29, 1977.]

Section 2 of the 1977 amendatory act provided:

"In counties required for the first time to provide longevity pay for deputy sheriffs because of this amendatory Act, the requirement is not mandatory until the first day of the first county fiscal year beginning after this Act takes effect."

Art. 3912k. County and Precinct Officials and Employees Who Are Paid Wholly From County Fund; Compensation, Expenses and Allowances

[See Compact Edition, Volume 3 for text of 1]

Justices of the Peace; Courtrooms and Offices; Supplies and Equipment

Sec. 1a. In addition to the compensation and expenses provided for in Section 1 of this Act, the commissioners court of each county may furnish, and equip with necessary telephone, equipment, and supplies, a suitable courtroom and office space for each justice of the peace in the county.

[See Compact Edition, Volume 3 for text of 2 to 10]

[Amended by Acts 1979, 66th Leg., p. 1039, ch. 468, § 1, eff. Aug. 27, 1979.]

Section 1 of Acts 1979, 66th Leg., p. 970, ch. 434, amended art. 2326j-13a, relating to compensation of court reporters of the 23rd and 130th judicial districts; section 2 of that act provided:

"Section 3, Chapter 622, Acts of the 62nd Legislature, Regular Session, 1971 (Article 3912k, Vernon's Texas Civil Statutes), applies to the 130th Judicial District."

Art. 3912l. Secretarial Personnel of District, County or Precinct Offices

The commissioners court of any county is hereby authorized, when in their judgment the financial condition of the county and the staff needs of a district, county, or precinct officer justify doing so, to enter an order to hire and provide compensation for adequate secretarial personnel of any district, county, or precinct officer.

[Acts 1975, 64th Leg., p. 381, ch. 170, § 1, eff. May 8, 1975.]

CHAPTER TWO. ENUMERATION

Article

Art. 3916A. Fee for Expedited Handling.

Art. 3914. Secretary of State

The Secretary of State is authorized and required to charge for the use of the State the following other fees:

For each commission to every officer elected or appointed in this State, Two Dollars (\$2), except a notary public commission, Four Dollars (\$4).

For each official certificate, Two Dollars (\$2).

For each warrant of requisition, Two Dollars (\$2).

For each remission of fine or forfeiture, One Dollar (\$1).

For copies of any paper, document, or record in this office, fifty cents (50¢) per legal size page.

For recording each contract for the conditional sale, lease or hire of railroad equipment and rolling stock, and for recording each description of performance of such contract, Five Dollars (\$5);

and for entering such declaration on the margin of the record of such contract, One Dollar (\$1).

For recording each certificate of consolidation of cities, and for recording each certificate of adoption of a city charter or amendment under the "Home Rule Act," fifty cents (50¢) per legal size page; provided such fee shall not be less than Two Dollars (\$2).

[Amended by Acts 1977, 65th Leg., p. 1291, ch. 509, § 1, eff. Aug. 29, 1977.]

Section 2 of the 1977 Act provided:

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

Art. 3916A. Fee for Expedited Handling

(a) The secretary of state is authorized to set and collect a fee for:

(1) the expedited handling of a certified record search pursuant to Chapter 9 or 35, Business & Commerce Code or Article 1.07C, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, not to exceed \$5; and

(2) the expedited filing or reviewing of a document relating to a profit or nonprofit corporation, professional corporation or association, cooperative association, or limited partnership, not to exceed \$10.

(b) Fees under Subdivision (2) of Subsection (a) of this article shall be collected in advance. All fees shall be deposited in the State Treasury to the credit of the General Revenue Fund.

[Added by Acts 1979, 66th Leg., p. 441, ch. 201, § 1, eff. Aug. 27, 1979.]

Sections 2 and 3 of the 1979 Act provided:

"Sec. 2. Notwithstanding the requirements of Article 3916A, Revised Civil Statutes of Texas, 1925, as added by this Act, the secretary of state may deposit fees collected for expedited handling of certified record searches and for expedited filing or reviewing of documents for the remainder of the biennium ending August 31, 1979, in the Secretary of State Operating Expense Account and may use the funds as provided by legislative appropriation for use of that account.

"Sec. 3. Any imposition, collection, and expenditure of a fee for expedited handling of a certified record search or for expedited filing or reviewing of a document by the secretary of state prior to the effective date of this Act is hereby validated."

Art. 3918. Land Commissioner

The Land Commissioner is authorized and required to charge, for the use of the state, the following fees:

FILING FEES

Deed transferring one (1) tract of land or a decree of court relating to one (1) tract of land—for each file affected	\$ 3.00
Affidavit of Ownership	3.00
Original Field Notes	3.00
Relinquishment Act Oil and Gas Lease	5.00
Transfer or Release of each Mineral Award, Mineral Prospect Permit,	

Grazing Lease, or Mineral Lease or part thereof—for each file affected	3.00
Servicing and Filing Easement—State-owned Land	5.00
Servicing and Filing Grazing Lease—State-owned Land	1.00
Prospect Permits	1.00

PREPARATION OF CERTIFICATES OF FACT

Certificates of Facts involving examination of one (1) file	4.00
Each additional file	1.50
Each other certificate not otherwise provided for	3.00

CERTIFIED PHOTOSTATIC COPIES

Certificate of the class of Toby Scrip ..	2.50
All other Land Certificates	1.00
Applications for Survey	1.50
Field Notes, 2 pages or less	1.50
Each additional page of field notes	1.00
Certificate of Correction	1.00
Surveyors' Report—per page	1.00
Mineral Application	1.50
Vacancy Application	2.00
Mineral Permit or Mineral Lease	2.50
Purchase Application and Obligation ..	1.50
Purchase Application, surveyed land ...	1.00
Obligation for Deferred Payment on Land	1.00
File Wrapper	1.00
Proof of Occupancy	1.50
Deed, Bond for Title, Power of Attorney, Decree of Court or other similar instrument, 4 pages or less	2.50
Each additional page	1.00
Patent	1.50
Deed of Acquittance	1.50
Affidavit of Settlement, Non-settlement and Rebuttal Affidavits, each	1.00
Other Affidavits	1.50
Grazing Lease Application or Contract Letters and Impressions of Letters—One page	1.00
Each additional page50
Extract of Muster Roll, Traveling Land Board Reports, Clerk's returns relating to Land Certificates, Patent Delivery Books, School Land Sales, records and books and other similar records, each	2.50
Copy of any record, document or papers in the English language not otherwise provided for herein, per page	1.00
Plain or certified copy of any other paper, document or record in any other language than the English—per page	1.00
Veterans Purchase Contract	2.00
Veterans Title Policy	1.50
Title Opinions, 2 pages or less	1.00
Each additional page	1.00

MAPS

Blue Print, White Print, or other Cloth Map of any county	6.00
Blue or White Print Paper Map of any county	3.00
Blue Print, White Print, or other Cloth Map of an inland bay	7.00
Blue or White Print Paper Map of an inland bay	3.50
Blue Print, White Print, or other Cloth Map of Gulf of Mexico	10.00
Blue or White Print Paper Map of Gulf of Mexico	5.00
Certificate on either Cloth or Paper Map Plain or certified copy of a portion of a map or sketch or plat made by print or hand, and for a working sketch, the fee shall be determined by the amount of material used and the time consumed, at the rate of, per hour	1.00
When an examination of the records of the General Land Office, other than maps or filed papers, is desired by one (1) person or where search is necessary to compile information, minimum fee to be charged of One Dollar (\$1); and if the information is extended beyond thirty (30) minutes, an additional sum shall be charged at the rate of, per hour (except where examination is made for the purpose of purchasing copies)	3.00
	2.00

MAPS AND SKETCHES

18" x 10"	1.00
18" x 12"	1.25
18" x 15"	1.50
18" x 20"	2.00
18" x 24"	2.50

SPANISH TRANSLATIONS

Translation of any Spanish document such as Titles and field notes, Three Cents (3¢) per word, provided that no charge shall be less than	5.00
Certificate of Fact concerning Spanish Titles	5.00

PATENT AND DEED OF ACQUITTANCE FEES

Patent Fee	15.00
Deed of Acquittance Fee	15.00

[Amended by Acts 1975, 64th Leg., p. 580, ch. 236, § 1, eff. May 20, 1975.]

Art. 3927. District Clerk

The clerks of the district courts shall receive the following fees for their services:

(1) The fees in this Subsection shall be due and payable, and shall be paid at the time suit or action is filed.

For each suit filed, including appeals from inferior courts -- \$25.00

For each cross action, intervention, contempt action or motion for new trial filed ----- \$15.00

For issuing each subpoena, including one (1) copy thereof, when requested at the time a suit or action is filed ----- \$ 4.00

For issuing each citation or other writ or process not otherwise provided for, including one (1) copy thereof, when requested at the time a suit or action is filed ----- \$ 8.00

For issuing each additional copy of any process, not otherwise provided for, when requested at the time a suit or action is filed ----- \$ 4.00

(2) The fees in this Subsection shall be due and payable at the time or times of performance or request for performance of services; shall be an obligation of the party to the suit or action initiating the request, and shall be additional to the fees provided for in Subsection (1) of this Act; provided, however, that the District Clerk may accept bond or bonds as security therefor.

For issuing each subpoena not provided for in Subsection (1), including one (1) copy thereof ----- \$ 4.00

For issuing each citation, commission for deposition, writ of execution, order of sale, writ of execution and order of sale, writ of injunction, writ of garnishment, writ of attachment, writ of sequestration not provided for in Section 1, or any other writ or process not otherwise provided for, including one (1) copy thereof when required by law ----- \$ 8.00

For issuing each additional copy of any writ or process not otherwise provided for --- \$ 4.00

For searching the files or records, fees may be charged:

a. To locate any one cause when the person re-

questing same does not furnish the docket number of said cause, or

b. To ascertain the existence or nonexistence of any instrument or record in his office ----- \$ 5.00

For issuing certificate to any fact or facts contained in the records of his office ----- \$ 2.00

For issuing deposition each one hundred (100) words ----- \$.20

For issuing interrogatories with certificate and seal, per page or portion thereof ----- \$ 1.00

For abstracting judgment -- \$ 4.00

For approving each bond ---- \$ 4.00

For making a copy, other than a photocopy, of all records, judgments, orders, pleading, or papers on file or of record in his office, whether certified or not, for any person applying for same, including the certificate and seal, per page or portion thereof ----- \$ 1.00.

For making a copy of the type described in the preceding item, if the copy is made by a photocopying machine, per page or portion thereof, not to exceed ----- \$ 1.00

[Amended by Acts 1977, 65th Leg., p. 608, ch. 219, § 1, eff. May 24, 1977; Acts 1979, 66th Leg., p. 667, ch. 295, § 1, eff. Aug. 27, 1979.]

Art. 3927b. Repealed by Acts 1979, 66th Leg., p. 15, ch. 7, § 1, eff. March 5, 1979

Art. 3928. Other Fees of District Clerk

The District Clerk shall also receive the following fees:

1. Whenever in any suit a certified or uncertified copy of any petition or any other instrument, judgment or order is necessary in the District Court, it shall be lawful for the plaintiff or defendant to prepare such copy and submit the same to the District Clerk, who shall be entitled to a fee of Ten (10¢) Cents per page, for his services in comparing same with the original. If a certified copy is necessary, he shall attach his certificate of true copy, and for such service he shall receive One (\$1.00) Dollar for each certificate and seal.

2. In matters relating to estates of deceased persons and minors, when the same are transacted in the District Court he shall receive the same fees that are allowed therefor to County Clerks.

3. For the care and preservation of the records of his office, keeping the necessary indexes, and other labor of the like kind, to be paid out of the County Treasury on the order of the Commissioners' Court, such sum as said Court shall determine.

4. For such other duties prescribed, authorized, and/or permitted by the Legislature for which no fee is set by the Legislature, reasonable fees shall be charged.

[Amended by Acts 1979, 66th Leg., p. 667, ch. 295, § 1, eff. Aug. 27, 1979.]

Art. 3930. County Clerk and County Recorders

County clerks and county recorders are hereby authorized and required to collect the following fees for services rendered by them to all persons, firms, corporations, legal entities, governmental agencies and/or governmental representatives:

Fees for County Clerk and County Recorder Records and Miscellaneous Services

(1) For filing, or filing and registering, including indexing, each instrument, document, legal paper, or record (excepting notaries public records, marriage records, vital statistics records, and those instruments, documents, legal papers and records filed in the county civil courts records, or in the county criminal courts records, or in the probate courts records, and those instruments, documents, legal papers and records filed and recorded in the real property records in the office of the county clerk, and those instruments the filing fee for which is fixed in the Business & Commerce Code), authorized, permitted, or required, to be filed, or filed and registered, in the personal property, chattels and personal records in the office of the county clerk and county recorder, a fee or fees, as follows:

(a) For each such instrument, document, legal paper, or record, a fee, which shall be in addition to any and all specific fee or fees provided for in any and all other statute or statutes, of ----- \$ 2.00

(2) For filing and recording, including indexing not more than five (5) names, each instrument, document, legal paper, or record (excepting map records, condominium records, notaries public records, marriage records, vital statistics records, and those instruments, documents, legal papers and records filed in the county civil courts records, or in the county criminal courts records, or in the probate courts records, or in the personal property, chattels and personal records in the office of the County Clerk) authorized, permitted, or required, to be filed and recorded in the real property records in the office of the coun-

ty clerk and county recorder, a fee, or fees, as follows, which fee, or fees, shall be in addition to any specific fee, or fees, provided for in any other statute, or statutes:

(a) For the first page, a fee of ----- \$ 3.00

(b) Plus, for each additional page, or part of a page, on which there are visible marks of any kind, a fee of ----- \$ 2.00

(c) Plus a fee for each 8½" x 14", or part thereof, of attachment or rider, to be charged for each such attachment or rider, of ----- \$ 2.00

(d) Plus, for each additional name that has to be indexed in excess of a total of five (5) names indexed for all records in which an instrument, document, paper or record must be indexed, a fee of ----- \$ 0.25

(e) Provided, however, that a county clerk and county recorder who files, registers, or records by copying the instrument manually, and not by a photocopy, photostatic or microphotographic process, in his discretion may substitute, in lieu of the per page fee prescribed by this Act, for each page of such a legal instrument, document or paper having more than 500 words on it, a fee per one hundred words of ----- \$ 0.20

(3) For issuing each certified copy (except certified copy of map records and condominium records), notice, statement, license where the fee for issuing the license is not specifically provided by statute, or any other instrument, document, or paper authorized, permitted, or required, to be issued by said county clerk or county recorder, except as otherwise provided in Section 1, of this Act:

For each page, or part of a page, a fee, to be paid in cash at the time each order is placed, of ----- \$ 1.00 plus \$1.00 for the county clerk's certificate.

However, nothing in this Act shall be construed to limit or deny to any person, firm, or corporation, full and free access to any papers, documents, proceedings and records referred to in this Act, the right of such parties to read and examine the same, and to copy information from any microfilm or other photographic image, or other copy thereof under reasonable rules and regulations of the county clerk at all rea-

sonable times during the hours the county clerk's office is open to the public, and without making payment of any charge, being hereby established and confirmed.

(4) For issuing each certified copy of birth certificate or death certificate a fee of ----- \$ 3.00

(5) For approving bond, except notarial bonds and bonds required to be approved in County Civil Courts, County Criminal Courts and Probate Courts, a fee, to be paid at the time of said approval, of ----- \$ 3.00

(6) For all clerical work in having appointment of notary public made, administering oaths and qualifying the notary public, and approving, filing and recording notarial bond, a fee (does not include the fee for the Secretary of State), to be paid at the time the executed oath and bond is filed, of ----- \$ 4.00

(7) For issuing each marriage license, including all and every service relating thereto and including, but not limited to, preparing the application, filing health certificates, administering oaths, filing waivers and orders of county judge, issuing license and recording all papers including the return of the license, a total fee, to be paid at the time the license is issued, of ----- \$ 7.50

(8) For registering a brand, including indexing, search, and issuing the certificate, a fee of ----- \$ 5.00

(9) For administering each oath, with or without a seal of clerk, except oaths required to be administered in duties as Clerk of County Civil Courts, County Criminal Courts and Probate Courts, a fee of \$ 1.00

(10) For such other duties prescribed, authorized, and/or permitted by the Legislature for which no fee is set by this Act, reasonable fees shall be charged.

[Amended by Acts 1977, 65th Leg., p. 763, ch. 291, § 1 eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1133, ch. 543, § 1, eff. Aug. 27, 1979.]

Art. 3930a-1. County Clerks and County Recorders—Other Services

(1) In addition to the fees authorized and required by Article 3930 of this title, as amended, county clerks and county recorders are authorized and required to collect the fees specified by this article for services rendered by them to all persons, firms, corporations, legal entities, governmental agencies, and governmental representatives. Unless other-

wise specified, each fee shall be collected at the time the service is rendered.

(2) A total fee of \$7.50 shall be collected for services rendered in connection with the execution of each declaration of informal marriage under Section 1.92 of the Family Code.

[Amended by Acts 1977, 65th Leg., p. 765, ch. 291, § 2, eff. Aug. 29, 1977.]

Art. 3930(b). County Clerks and Clerks of County Courts

Sec. 1. County clerks and clerks of county courts are hereby authorized and required to collect the following fees for services rendered by them to all persons, firms, corporations, legal entities, governmental agencies and/or governmental representatives:

A. Fees for County Civil Court Dockets

(1) For each cause or action, or docket in County Civil Courts: for filing, or filing and registering, or filing and recording, and for docketing and including taxing costs for each and all applications, complaints, petitions, returns, documents, papers, legal instruments, records and/or proceedings; for issuing, including the recording of the return thereon, each and all citations, notices, subpoenas, commissions to take depositions, executions while the docket is still open, garnishments before judgments, orders, writs, processes, or any and all other instruments, documents or papers authorized, permitted or required to be issued by said county clerk or said clerk of county courts on which a return must be recorded; for all attendances in court as clerk of court; for impaneling a jury; for swearing witnesses; for approving bonds involved in court actions; for administering oaths; and for all other clerical duties in connection with such county civil court docket:

(a) For each original cause or suit in a County Civil Court, including, but not limited to, appeals from Justice of the Peace Courts or Corporation Courts and transfers of causes or suits from other jurisdictions, a fee to be due and payable, and to be paid by the plaintiff or plaintiffs, or appellant or appellants, at the time said cause or suit is filed, started or initiated, which fee is to be paid but one time in each cause or docket, or suit, and which fee excludes the items listed in Paragraphs B, C, D, and E of this Section 1:

(i) For causes or dockets involving damages, debts, specific performance of contracts and agreements, pleas of privilege, appeals from Justice of the

Peace Courts and Corporation courts, for appeals from driver's license suspension, and other causes of action not otherwise listed in this Paragraph A(1)(a): a fee of ----- \$10.00

(ii) For eminent domain, or condemnation proceedings, with or without objections: a fee of ----- \$25.00

(iii) For garnishments after judgment: a fee of ----- \$12.50

(b) For each interpleading, or cross-action, or any other action other than the original action, in a cause or suit in a County Civil Court, a fee to be due and payable, and to be paid by the party or parties starting or initiating each such interpleading, or other action, or cross-action, at the time of starting or initiating each such cross-action or interpleading, or other action, which fee is to be paid but one time for each such cross-action, or interpleading, or other action, but excluding items listed in Paragraphs B, C, D and E of this Section 1: a fee of ----- \$10.00

B. Fees for Probate Court Dockets

(1) For each cause or action, or docket in Probate Courts: for filing, or filing and registering, or filing and recording, and for docketing and including taxing costs for each and all applications, wills, complaints, petitions, returns, documents, papers, legal instruments, records and/or proceedings; for issuing, including the recording of the return thereon, each and all citations, notices, subpoenas, commissions to take depositions, orders, writs, processes, or any and all other instruments, documents, or papers authorized, permitted or required to be issued by said county clerk or said clerk of probate courts on which a return must be recorded; for all attendances in court as clerk of court; for swearing witnesses; for approving bonds involved in court actions; for administering oaths; and for all other clerical duties in connection with such probate court docket:

(a) For each original cause or action in a Probate Court, a fee to be due and payable and to be paid by the party or parties starting or initiating said cause or estate action, or with the permission of the court, payable at the time of qualifying of the legal or personal representative of such cause or estate action, or when a Veterans' Ad-

ministration Chief Attorney is attorney of record in a cause, payable when the legal or personal representative of such cause or estate action receives funds with which to make such payment, for such services for the period of time as shown, and which fee excludes the items listed in Paragraphs A, B(1)(b), B(1)(d), C, D and E of this Section 1:

(i) For probating will with independent executor; for administration with will attached, for administration of an estate, for guardianship or receivership of an estate, for muniment of title, a fee for one year from the starting or initiating such cause of action: a fee of \$25.00

(ii) For community survivors: a total fee of \$20.00

(iii) For small estates: a total fee of \$ 5.00

(iv) For affidavits of heirship, including filing of affidavit, after approval by Judge, in Small Estates Records in the Recorder's Office: a total fee of \$ 7.50

(v) For mentally ill: Total costs for all services listed in Article 5547—13, Article 5547—14 and Article 5547—15, Vernon's Civil Statutes of Texas, shall be in the amount of \$40.00

(b) For each probate docket remaining open after its first anniversary date, the following fees shall be paid in cash at the time earned, which fee shall be separate and apart from other fees listed in Paragraphs A, B, C, D and E of this Section 1 hereof:

(i) For filing, or filing and recording, of each instrument of writing, legal document, paper or record in an open Probate Docket after its first anniversary date: a fee of \$ 4.00

(ii) For approving and recording each bond relating only to an open Probate Docket after said Docket's first anniversary date, a fee of \$ 3.00

(iii) For administering each oath relating to an open Probate Docket after said Docket's first anniversary date, a fee of \$ 2.00

(c) For each adverse action or contest, other than the filing of a claim against an estate, in a clause or docket in a probate court, a fee to be due and

payable and to be paid by the party or parties starting or initiating such adverse action or contest, but excluding other items listed in Paragraphs A, B, C and D of this Section 1, of \$25.00

(d) For filing and entering each claim against an estate in the claim docket, a fee, to be paid by claimant at the time of filing such claim, of \$ 2.00

C. Where no cause is pending, as is contemplated in Section 1, Paragraphs A and B hereof, the clerk shall charge as follows for the hereinafter listed services, for issuing (including recording of the returns thereon), each citation, notice, commission to take depositions, execution, order, writ, process, or any other instrument, document, or paper authorized, permitted or required to be issued by said county clerk or said clerk of county courts on which a return must be recorded:

(i) For issuing each such instrument, document, or paper, including the original and one copy and the recording of the return, a fee, to be paid at the time each order is placed, of \$ 4.00

(ii) For issuing for the same docket at the same time more than one set of one original and one copy of the same instrument, document, or paper, including recording the return thereon, a fee, per set, to be paid at the time the order is placed, of \$ 4.00

D. For issuing each certificate, certified copy, notice, statement, transcript, or any other instrument, document, or paper authorized, permitted; or required, to be issued by said county clerk or clerk of county courts on which there is no return to be recorded:

For each page, or part of a page, a fee, to be paid at the time each order is placed, of \$ 1.00 plus \$1.00 for the clerk's certificate.

However, nothing in this Act shall be construed to limit or deny to any person, firm, or corporation, full and free access to any papers, documents, proceedings, and records referred to in this Act, the right of such parties to read and examine the same, and to copy information from any microfilm or other photographic image, or other copy thereof under reasonable rules and regulations of the county clerk at all reasonable times during the hours the county clerk's office is open to the public, and

without making payment of any charge, being hereby established and confirmed.

E. For issuing each Letter Testamentary, Letter of Guardianship, Letter of Administration and each Abstract of Judgment a fee of ---- \$ 2.00

F. For filing and keeping "Wills Held for Safekeeping", a fee, to be paid at the time said wills are filed, of ----- \$ 5.00

Sec. 2. If the final judgment has not been entered for a docket, or cause, in a county civil court on the date this Act becomes effective, the amount of costs for such docket, or cause, accruing to such effective date shall be paid in full before final judgment is filed or recorded, and no further costs shall accrue in each such docket, or cause, after said effective date, except that the fees specified in Paragraphs A(1)(a)(iii), A(1)(b), C, D, and E of Section 1, for items and services therein specified shall apply after said effective date to each of such dockets, or such causes, and shall be paid in accordance with the provisions of said paragraphs. If the final judgment has not been entered for a docket, or cause, or estate action, in a probate court on the date this Act becomes effective, the amount of costs for such docket, or cause, or estate action, accruing to such effective date shall be paid in full, and no further costs shall accrue, prior to the next anniversary date of such docket, or cause, or estate action, except that the fees specified in Section 1, Paragraphs B(1)(b), B(1)(c), B(1)(d), and C, D, and E of Section 1, for items and services therein specified shall apply after said effective date to such dockets, or such causes, or such estate actions, and shall be paid in accordance with the provisions of said paragraphs. Any deposit balance or balances left after applying all costs accrued through the date this Act becomes effective, including the adjustments stipulated hereinabove, for a docket, or cause, shall be refunded without delay and all further fees and charges shall be paid for at the time of filing, or issuing, or otherwise becoming due and payable. Said clerk shall continue to collect, at the time said fees or costs accrue, or are earned, or are payable, all fees, or costs, authorized, or required, to be collected by said clerk, including, but not limited to: law library fees, county judge's fees, county judge's commissions, jury fees, and fees for state officials.

[Amended by Acts 1977, 65th Leg., p. 765, ch. 291, § 3, eff. Aug. 29, 1977.]

Art. 3930(c). Specifications for Legal Papers for Filing and for Recording

Sec. 1. (a) Each legal paper offered or presented to a county clerk and county recorder for filing or

for recording other than fees authorized in Article 3930(b), Revised Civil Statutes of Texas, 1925, should meet the requirements specified in Subsections (b) through (g) of this section.

(b) A page is defined as one side of a sheet of paper, no more than 8½ inches wide and 14 inches long, of sufficient weight and substance that printing or typing or handwriting thereon will not smear or "bleed-through," and the paper shall be suitable otherwise for reproducing from it a readable record by photocopy or photostatic or microphotographic process or processes used in the offices of county clerks.

(c) A clearly identifying heading, similar to the headings on most commercially supplied printed forms, shall be placed at the top of the first page to identify the type or kind of legal paper.

(d) Printing and typing and handwriting shall be clearly legible.

(e) Names shall be legibly typed or printed immediately under each signature.

(f) All photostats, photocopies, and other types of reproduction shall have black printing, typing, or handwriting on a white background, commonly known as positive prints.

(g) Riders and attachments shall not be larger than the size of the page as defined in this article. Not more than one rider or attachment shall be included in or attached to a page.

Sec. 2. (a) The filing fee or recording fee for each page of a legal paper which is offered or presented for filing or for recording to a county clerk or county recorder and which fails to meet the requirements for, or which is deficient in, one or more of the items specified in Section 1 of this article, shall be equal to twice the regular filing fee or recording fee provided by statute for that page.

(b) When a page of a legal paper has more riders or attachments than one, the filing fee or recording fee for each attachment in excess of one is twice the regular filing fee or recording fee provided by statute.

(c) When a page of a legal paper has one or more riders or attachments larger than the size of a page as defined in Section 1(b) of this article, the filing fee or recording fee for each oversized attachment is twice the regular filing fee or recording fee provided by statute for the attachment.

[Added by Acts 1977, 65th Leg., p. 768, ch. 291, § 4, eff. Jan. 1, 1978.]

Art. 3933a. Sheriffs and Constables

(a) Sheriffs and Constables shall receive the following fees:

For each person, corporation or legal entity, on whom service of citation, subpoena, summons, or process not otherwise provided for, is performed or attempted and return made, including mileage, if any, a fee of

- (a) Small Claims Courts \$ 5.00
- (b) Justice Courts \$ 8.00
- (c) All other Courts \$10.00

For executing or attempting to execute each writ of garnishment, injunction writ, distress warrant, writ of attachment, writ of sequestration, writ of execution, order of sale, writ of execution and order of sale, or writ not otherwise provided for, and making return thereon including mileage, if any, a fee of

- (a) Small Claims Courts \$ 6.00
- (b) Justice Courts \$10.00
- (c) All other Courts \$12.00

For posting written notices in public places, as may be required by law, a fee for posting each location including mileage, if any \$5.00

For the taking and approving of bonds as may be required by law, and returning same to the court as may be required, a fee of \$6.00

For each case tried in District or County Court, a jury fee of \$5.00

For executing a deed to each purchaser of real estate under execution or order of sale, a fee of \$6.00

For executing a bill of sale to each purchaser of personal property under an execution or order of sale, when demanded by purchaser a fee of \$6.00

Collecting money on an execution or an order of sale, when the same is made by a sale, for the first One Hundred Dollars (\$100) or less, ten percent (10%); for the second One Hundred Dollars (\$100), seven percent (7%); for all sums over Two Hundred Dollars (\$200) and not exceeding One Thousand Dollars (\$1,000), four percent (4%); for all sums over One Thousand Dollars (\$1,000) and not exceeding Five Thousand Dollars (\$5,000), two percent (2%); for all sums over Five Thousand Dollars (\$5,000), one percent (1%).

When the money is collected by the Sheriff or Constable without a sale, one-half (1/2) of the above rates shall be allowed him.

(b) An officer who is unable to effect service of a document referred to in Subsection (a) of this section

may not return the document unexecuted prior to its expiration unless its return is requested by the court or by the litigant at whose request it was issued or by the litigant's attorney.

(c) A Sheriff or Constable is not entitled to a fee under Subsection (a) of this section for the attempted service of citation, subpoena, summons, or process unless the officer who attempted to serve the instrument actually went to each place where the court or litigant requesting service directed that service be attempted and the officer was not able to find the person to be served at that place. In no case may a Sheriff or Constable be paid more than one fee under Subsection (a) of this section for attempted service of the same instrument, regardless of the number of times service is attempted.

[Amended by Acts 1975, 64th Leg., p. 1297, ch. 488, § 1, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1103, ch. 519, § 1, eff. June 11, 1979.]

Art. 3935. Justice of the Peace

Justices of the peace are required to collect the following fees for services rendered by them to all persons, firms, corporations, legal entities, governmental agencies, or governmental representatives:

A. Fee before entry of judgment:

For each original cause or action, cross-action, third-party action or intervention in the justice civil courts: for filing, or filing and registering, or filing and recording, and for docketing and including taxing costs for each and all applications, complaints, petitions, returns, documents, papers, legal instruments, records or proceedings; for issuing, including the recording of the return thereon, each and all citations, notices, subpoenas, commissions to take depositions, orders, writs, processes, or any and all other instruments, documents or papers authorized, permitted or required to be issued by the justices of the peace on which a return must be recorded; for causing juries to be summoned and swearing them, and receiving and recording jury verdicts; for swearing witnesses; for approving bonds involved in court actions; for administering oaths; for rendering and recording judgment; and for all other clerical duties in connection with such justice of the peace court docket: a fee of \$ 7.00

The fee is due and payable, and is to be paid by the plaintiff or plaintiffs, or the party or parties initiating the action, cross-action, third-party action, intervention, or other action, at the time of starting each action, cross-action, third-party ac-

tion, intervention, or other action, and is to be paid but one time for each action, cross-action, third-party action, intervention, or other action.

B. Fees after entry of judgment:

For making and certifying a transcript of the entries on their dockets, and filing the transcript, together with the original papers in the case, in the proper court, in each case of appeal or certiorari, a fee of ----- \$ 2.00

For issuing abstract of judgment, a fee of ----- 1.00

For issuing and recording a return thereon, for each execution, order of sale, writ of restitution, or other writ or process not otherwise herein provided for, a fee of ----- 2.00

For issuing each certificate, certified copy, notice, statement, or any other instrument, document, or paper authorized, permitted, or required to be issued by the justices of the peace on which there is no return to be recorded:

For each page or part of a page, a fee, to be paid at the time each order is placed, which shall not exceed the costs for copies as designated by the State Board of Control in accordance with Section 9(a), Article 6252-17a, Vernon's Texas Civil Statutes.

For issuing each certificate, certified copy, notice, statement, or any other instrument, document, or paper authorized, permitted, or required

to be issued by the justices of the peace on which there is no return to be recorded:

For each page or part of a page, a fee, to be paid at the time each order is placed, which shall not exceed the costs for copies as designated by the State Board of Control in accordance with Section 9(a), Article 6252-17a, Vernon's Texas Civil Statutes.

[Amended by Acts 1977, 65th Leg., p. 655, ch. 245, § 1, eff. Aug. 29, 1977.]

Arts. 3937 to 3940.

Repeal

These articles are repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Art. 3946a. River Authority Directors

Each Director of Boards of Directors of river authorities of the state created by the Legislature by special law pursuant to the provisions of Section 59 of Article 16 or Section 52 of Article 3 of the Texas Constitution shall receive as fees of office the sum of not more than Fifty Dollars (\$50) for each day of service necessary to discharge his duties, plus actual expenses, provided that such compensation and expenses are approved by vote of the Board of Directors. Each Director shall file with the Secretary or Treasurer a statement showing the amount due him each month or as soon thereafter as practicable before check shall be issued therefor.

[Amended by Acts 1975, 64th Leg., p. 164, ch. 68, § 1, eff. April 24, 1975.]

TITLE 62

FENCES

Arts. 3954-1 to 3954-4. Repealed by Acts 1977,
65th Leg., p. 2690, ch. 871, art. I,
§ 2(a)(5), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

TITLE 63

FIRE ESCAPES

Article

3972b. Applicability.

3972c. Compliance.

Art. 3972b. Applicability

The provisions of Title 63, as amended, shall not be applicable and shall have no force or effect on construction in any city or town which has adopted and has in effect a nationally recognized model building code governing such construction if such building code in effect in any city or town requires at least one or more one-hour fire-resistive means of escape having a total width equivalent to or greater than the total exit width required by the present "Fire Escapes," Title 63, Articles 3955-3972, Revised Civil Statutes of Texas, 1925, as amended, in all structures of three or more stories.

[Added by Acts 1975, 64th Leg., p. 1162, ch. 435, § 1, eff. Sept. 1, 1975.]

Section 2 of the 1975 Act added art. 3972c; §§ 3 to 5 thereof provided:
"Sec. 3. Notwithstanding Sections 1 and 2, any city may enact additional standards that are not in conflict with the provisions of this Act.

"Sec. 4. The provisions of this Act shall be severable, and if any section or part hereof shall be declared unconstitutional, void, or inoperative in any way, said declaration shall not affect the remaining sections or parts of this Act.

"Sec. 5. All laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict."

Art. 3972c. Compliance

Any construction heretofore completed in accordance with the provisions and requirements of a nationally recognized model building code shall be deemed for all purposes to have complied with all of the provisions and requirements contained in Title 63, as amended, if such building code in effect in any city or town requires at least one or more one-hour fire-resistive means of escape having a total width equivalent to or greater than the total exit width required by the present "Fire Escapes," Title 63, Articles 3955-3972, Revised Civil Statutes of Texas, 1925, as amended, in all structures of three or more stories.

[Added by Acts 1975, 64th Leg., p. 1163, ch. 435, § 2, eff. Sept. 1, 1975.]

Section 1 of the 1975 Act added art. 3972b; see notes under art. 3972b for text of §§ 3 to 5.

TITLE 67

FISH, OYSTER, SHELL, ETC.

Arts. 4016 to 4075c. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(2), eff. Sept. 1, 1975

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing these articles, enacts the Parks and Wildlife Code.

Prior to repeal, art. 4075b was amended by Acts 1975, 64th Leg., p. 1336, ch. 499, §§ 1 to 7 and Acts 1975, 64th Leg., p. 1855, ch. 580, §§ 1 to 3. Said Acts were incorporated into the Parks and Wildlife Code by Acts 1975, 64th Leg., p. 1212, ch. 456, §§ 13 and 20.

TITLE 68A

GOOD NEIGHBOR COMMISSION OF TEXAS

Art. 4101-2. Good Neighbor Commission

Creation of Commission; Members; Terms; Absence From Meetings

Sec. 1. There is hereby created the Good Neighbor Commission of Texas which shall be composed of nine (9) members, each of whom shall be a citizen of the United States and a resident of the State of Texas, and shall be appointed by the Governor with advice and consent of the Senate. Each member must have expertise in one or more of the following areas: international trade and tourism, industrial development, education and research, diplomacy, or Hispanic culture, law, sociology, economics, or language. Each two (2) years the Governor shall appoint three (3) members of this Commission for a term of six (6) years. No person shall be eligible to appointment to the Commission who has contributed more than \$1,000 on behalf of the political candidacy of the Governor who makes the appointments under this Act, or to any political action committee supporting such candidacy. The appointments made under this Act shall be made without regard to race, creed, sex, religion, or national origin. Failure by any member to attend at least one-half of the regularly scheduled meetings of the Commission will cause his position on the Commission to be automatically vacated.

Open Meetings; Administrative Procedure

Sec. 1a. The Commission shall comply with all provisions of the state open meetings act, as amended (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

Application of Sunset Act

Sec. 1b. The Good Neighbor Commission is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1991.

[See Compact Edition, Volume 4 for text of 2]

Executive Director; Staff; General Counsel

Sec. 3. (a) The Commission shall appoint an executive director who serves at the will of the Commission. The executive director is the executive head of the Commission and performs its administrative functions.

(b) The executive director may employ staff members necessary for administering the functions of the Commission.

(c) If the Commission employs a general counsel, the counsel shall be prohibited from lobbying for the agency employing such counsel.

Powers

Sec. 4. (a) The Commission shall have the power to:

(1) elect from its members a chairman and other such officers as it may be deemed desirable. All officers of the Commission shall serve as such only during the pleasure of the Commission;

(2) hold such meetings at such times as the Commission may designate;

(3) appoint committees from its membership and prescribe their duties;

(4) appoint consultants and committees to the Commission;

(5) make rules and regulations for its government and that of its officers and committees; and prescribe the duties of its officers, consultants and employees. If the appropriate standing committees of both houses of the legislature acting under Section 5(g), Administrative Procedure and Texas Register Act, transmit to the Commission statements opposing adoption of a rule under this section, the rule may not take effect;

(6) provide information to individuals and governmental entities about the nations of the Western Hemisphere and their citizens and about Texans of Hispanic heritage for the purpose of advancing inter-American understanding and goodwill;

(7) provide language translation services to State agencies and other governmental entities and assist State agencies in disseminating information to the public about bilingual publications;

(8) sponsor and provide administrative guidance to the Pan American Student Forum for the purpose of encouraging the study and appreciation of the peoples and nations of the Western Hemisphere and the multilingual and multicultural traditions of this State;

(9) assist private, nonprofit organizations whose objectives are the establishment of friendly relations in inter-American affairs; and

(10) gather information, conduct investigations, and perform research relating to inter-American affairs and accept grants for this purpose.

(b) If requested to do so by the Governor, the Commission shall:

(1) gather information about matters of mutual interest to this State and the nations of the Western Hemisphere;

(2) maintain connections with the governors of nations of the Western Hemisphere and act as a source of information about State affairs for the consular corps stationed in this State;

(3) research, develop, or implement interstate compacts relating to relations between states sharing international borders or experiencing problems related to international borders;

(4) represent the Governor at public events, make arrangements for State officers to appear at public events, and receive dignitaries from Western Hemisphere countries;

(5) serve as protocol advisor or interpreter at meetings between State officers and officers of Western Hemisphere countries;

(6) gather information in cooperation with governmental entities and interagency task forces about the relationship between this State and Western Hemisphere countries or their citizens; and

(7) establish and maintain offices in Mexico to provide information to the people of Mexico about this State and to promote a mutually beneficial relationship between Mexico and this State.

(c) A member, executive director, or staff person of the Commission may not negotiate any agreement or contract with any individual or business entity from a foreign country or a foreign government unless the member, executive director, or staff person has the Commission's prior approval to do so. An agreement or contract negotiated in accordance with this subsection is valid only after approval by the Commission.

Offices; Reports

Sec. 5. The Commission shall maintain its office in the City of Austin and shall hold at least one

meeting each year in the city of Austin. On or before the first day of December of each year the Commission shall make in writing a complete and detailed report to the Governor and to the presiding officer of each House of the Legislature of its activities and shall include in the report an accounting of all funds received by the Commission, including funds received from the Pan American Student Forum or received for hospitality or special events.

Expenses

Sec. 6. Members of the Commission are entitled to reimbursement for actual and necessary expenses incurred in performing the functions of the Commission. Reimbursement to members shall be paid upon verified and itemized accounts approved by the chairman of the Commission. The necessary clerical and other expenses of the Commission shall be paid in like manner.

[See Compact Edition, Volume 3 for text of 7]

Deposit of Funds; Audit

Sec. 7a. (a) Except as provided by Subsection (b) of this section, funds received by the Commission shall be deposited in the State Treasury to the credit of the General Revenue Fund.

(b) Funds received by the Commission from the Pan American Student Forum, including funds received as part of a Pan American Student Forum scholarship program, shall be deposited in financial institutions selected by the Commission. The Commission shall administer the funds to finance activities, including scholarship programs, of the Pan American Student Forum.

(c) The Commission's accounting books and records relating to funds deposited in financial institutions are subject to audit by the State auditor. The Commission shall furnish to the State auditor any information requested by the auditor for an audit. [Amended by Acts 1977, 65th Leg., p. 1833, ch. 735, § 2.007, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1825, ch. 741, §§ 1, 2, eff. Sept. 1, 1979.]

Section 3 of the 1979 amendatory act provided:

"A person holding office as a member of the Good Neighbor Commission of Texas on the effective date of this Act continues to hold the office for the term for which the person was originally appointed."

TITLE 70

HEADS OF DEPARTMENTS

Chapter	Article
12. Conservatorship Board	4413(203)

CHAPTER ONE. SECRETARY OF STATE

Article
4330a. Application of Sunset Act.

Art. 4330a. Application of Sunset Act

The office of secretary of state is subject to the Texas Sunset Act,¹ but it is not abolished under that Act. The office shall be reviewed under the Texas Sunset Act during the period in which state agencies abolished effective September 1 of 1989 and of every 12th year after 1989 are reviewed.

[Added by Acts 1977, 65th Leg., p. 1856, ch. 735, § 2.173, eff. Aug. 29, 1977.]

¹ Article 5429k.

CHAPTER TWO. COMPTROLLER OF PUBLIC ACCOUNTS

Article
4344c. Temporary Transfer of Surplus Cash.
4348b. Taxpayer Assistance to Victims of Natural Disasters.
4359a. Signature on Pay Warrants After Change in Office.
4351b. Miscellaneous Claims.
4366c. School Taxing Ability Protection Fund.

Art. 4344. Certain Duties

Among other duties the Comptroller shall:

1. Procure a seal with words "Comptroller's Office, State of Texas" engraved around the margin and a five-pointed star in the center, which shall be used as the seal of his office to authenticate all his official acts, except warrants drawn on the State Treasury.

2. Adopt such regulations not inconsistent with the constitution and laws as he may deem essential to the speedy and proper assessment and collection of the revenues of the State.

3. Superintend the fiscal concerns of the State, as the sole accounting officer thereof, and manage the same in the manner required by law.

4. Require all accounts presented to him for settlement not otherwise provided for by law to be made on forms prescribed by him, all such accounts to be verified by affidavit as to their correctness, and he may administer the oath himself in any case in which he may deem it necessary.

5. Prescribe and furnish the form to be used by all persons in the collection of the public revenue and the mode and manner of keeping and stating their accounts.

6. Prescribe forms of the same class, kind and purpose so as to be uniform in size, arrangement, matter and form.

7. From time to time require all persons receiving money or having the disposition or management of any property of the State, of which an account is kept in his office, to render statements thereof to him.

8. Require all persons who have received and not accounted for any money belonging to the State to settle their accounts.

9. Keep and settle all accounts in which the State is interested, including all moneys received by the State as interest and other payments on land and office fees of his and other departments of the State government, and all other moneys received by the State from whatever source and for whatever purpose.

10. Examine and settle the accounts of all persons indebted to the State and certify the amount or balance to the Treasurer, and direct and superintend the collection of all moneys due the State.

11. Audit the claims of all persons against the State in cases where provision for the payment thereof has been made by law, unless the audit of any such claim is otherwise specially provided for.

12. Keep a book to register and index all audited claims against the State, and on the meeting of the regular session of the Legislature make a minute report of the same to both houses thereof, giving the names and amounts of all audited claims.

13. Keep and state all accounts between this State and the United States.

14. Keep journals through which all entries are made in the ledger.

15. Remit or make an allowance to each tax collector in the auditing of his accounts for all sums of money which, in his judgment, have been illegally assessed.

16. Draw warrants on the Treasurer for the payment of all moneys directed by law to be paid out of the Treasury.

17. Suggest plans for the improvement and management of the general revenue.

18. Preserve the books, records, papers and other things belonging in his office and deliver the same in good condition to his successor.

19. Have the authority to accept federal moneys for any state agency not otherwise restricted by statute or by rider or special provision in the General Appropriations Act. These moneys may only be accepted if the agency has certified to the Comptroller the agency will be responsible for compliance with all applicable federal and state laws.

[Amended by Acts 1979, 66th Leg., p. 150, ch. 82, § 1, eff. April 26, 1979.]

Section 7 of the 1979 amendatory act provided:

"On January 1, 1980, all books and records, property, and personnel in the office of the comptroller of public accounts that are involved or used in administration of ad valorem taxation are transferred to the State Property Tax Board. The state auditor shall resolve any dispute over what property, books, or records are subject to this section, and the auditor's decision is final."

Art. 4344c. Temporary Transfer of Surplus Cash

Sec. 1. The comptroller of public accounts, with the consent of the State Treasurer, may transfer surplus cash, excluding constitutionally dedicated revenues, between funds in the State Treasury. Those transfers are authorized to allow effective management of the cash flow of the General Revenue Fund and to avoid temporary cash deficiency in the General Revenue Fund. The comptroller shall return the surplus cash to the fund from which it was transferred as soon as practicable. The comptroller shall preserve the fund equity and the State Treasurer shall allocate the depository interest as if the transfers had not been made.

Sec. 2. If the comptroller submits a statement to the governor and to the legislature under Article III, Section 49a, of the Texas Constitution when surplus cash transferred under this article is in the General Revenue Fund, in that statement the comptroller shall indicate that the transferred surplus cash:

- (1) is in the General Revenue Fund;
 - (2) is a liability of the General Revenue Fund;
- and
- (3) is not available for appropriation by the legislature.

[Added by Acts 1979, 66th Leg., p. 101, ch. 61, § 1, eff. April 19, 1979.]

Art. 4348a. Preparation of Financial Statements and Itemized Estimates; Probable Receipts and Disbursements; Committee on State Revenue Estimates

[See Compact Edition, Volume 4 for text of a and b]

c. The Committee on State Revenue Estimates is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the committee is abolished effective September 1, 1989.

[Amended by Acts 1977, 65th Leg., p. 1855, ch. 735, § 2.169, eff. Aug. 29, 1977.]

¹ Article 5429k.

Art. 4348b. Taxpayer Assistance to Victims of Natural Disasters

The comptroller may assist any taxpayer in reconstructing and recompiling business records that are damaged or destroyed by natural disaster.

[Added by Acts 1979, 66th Leg., p. 336, ch. 153, § 2, eff. May 11, 1979.]

Art. 4350. Warrants on Treasurer

No warrant shall be issued to any person indebted or owing delinquent taxes to the State, or to his agent or assignee, until such debt or taxes are paid.

[Amended by Acts 1977, 65th Leg., p. 1715, ch. 682, § 1, eff. June 15, 1977.]

Art. 4351b. Miscellaneous Claims

Comptroller of Public Accounts to Pay Miscellaneous Claims

Sec. 1. The comptroller shall pay, from available funds appropriated for that purpose, miscellaneous claims, including but not limited to state ad valorem tax refund claims, qualified under Section 3 of this Act.

Comptroller of Public Accounts to Maintain Records

Sec. 2. The comptroller shall maintain records of all transactions made under authority of this Act. The records must show

- (1) the amount of each miscellaneous claim paid, the identity of each claimant, and the purpose for which each claim was made; and
- (2) the identity of the fund or account against which the claim is to be charged.

Qualification of Claims

Sec. 3. (a) Under the authority of this Act the comptroller shall pay only those claims for which no appropriation otherwise exists.

(b) No warrant may be prepared for the payment of a miscellaneous claim until the claim has been

- (1) verified and substantiated by the administrator of the special fund or account against which the claim is to be charged;
- (2) audited by the state auditor; and
- (3) verified by the attorney general as a legally enforceable obligation of the State of Texas.

Limitation

Sec. 4. (a) No single claim, nor any aggregate of claims by any single claimant, in an amount in excess of \$10,000 may be paid during any biennium under the authority of this Act.

(b) For purposes of this section, all claims which were originally held by one person shall be considered as held by a single claimant, without regard to whether those claims were subsequently assigned or otherwise transferred.

[Acts 1975, 64th Leg., p. 443, ch. 187, §§ 1 to 4, eff. May 13, 1975.]

Art. 4359. Pay Warrants Register

The Comptroller shall provide a pay warrant register for each class of pay warrants, each volume of which shall be appropriately designated by class, number or otherwise. When a pay warrant is prepared, it shall be registered in the pay warrant register for the class to which it belongs; and such registry shall consist of an entry of the amount of the warrant, name of the payee, appropriation to which charged, and such other information as may be deemed advisable by the Comptroller. After a warrant has been prepared and registered as herein provided it shall be checked against the claim, and the warrant number shall be entered on the claim papers. The initials of the person checking the warrant with the claim shall be written on both the warrant and the claim, and the warrant together with the claim upon which it is based shall be passed to the Comptroller for his signature, except as provided by Article 4359a, Revised Civil Statutes of Texas, 1925, as added, or for the signature of such person as may be authorized by law to sign the same in his stead; and such warrant together with a copy of the warrant register shall then be passed to the State Treasury and registered in the Treasury, and signed, except as provided by Article 4359a, Revised Civil Statutes of Texas, 1925, as added, by the State Treasurer or some person authorized by law to sign for him, and returned to the Comptroller's Department. Such warrant shall then be delivered by the Comptroller to the person entitled to receive it, and the Comptroller shall at his option take a receipt therefor and file the receipt in his office. The Comptroller shall also keep a "warrants cancelled register" in which shall be entered the details of all warrants cancelled.

It is hereby provided that a department, court, school, or other state agency may prepare and present payroll claims to the Comptroller prior to the end of the payroll period, which said payroll claims shall be verified by affidavit as to services theretofore actually performed within such payroll period prior to the date of such payroll claims; and such payroll claims need not be verified by affidavit as to any services to be performed during such payroll period subsequent to the date of such payroll claims. Such claims when so presented shall be prepared and approved as otherwise provided below. The Comptroller shall accept such payroll claim when presented and prepare warrants in payment thereof prior to date such claims become due and payable, and hold such warrants for delivery until the claims become due and payable. Such warrants shall be dated as of the due date of the claim and shall not be delivered to the claimant until the end of the pay period. The Treasurer is hereby authorized to countersign such warrants and to make such entry as to properly take them into account. In order that such warrants may

be ready for delivery at the end of the pay period the Comptroller is authorized to make such rules and regulations as may be necessary for filing payroll claims in advance of the pay period, and for the preparation and writing of warrants in payment thereof to adequately and properly achieve such purpose.

One person shall be designated by the Comptroller as Chief of the Claims Division, and such person shall prepare or be responsible for the preparation of all pay warrants, and shall be accountable to the Comptroller for warrants coming into his possession. [Amended by Acts 1979, 66th Leg., p. 207, ch. 117, § 2, eff. May 9, 1979.]

Art. 4359a. Signature on Pay Warrants after Change in Office

If by resignation, death, or other reason a person ceases to hold or perform the duties of the office of comptroller or treasurer, existing stocks of pay warrants bearing that person's printed name, signature, or facsimile signature may be used in accordance with this section until they are exhausted. If they are used, the person holding or performing the duties of the office of comptroller shall cause them to be issued with a strike through the obsolete printed name, signature, or facsimile signature; with the printed name of the person currently holding or performing the duties of the office of comptroller or treasurer substituted for the obsolete name, signature, or facsimile signature; and with the following inscription: "Printed name authorized by law." The inscription shall appear on the warrants near the printed name of the person currently holding or performing the duties of the office of comptroller or treasurer.

[Added by Acts 1979, 66th Leg., p. 207, ch. 117, § 1, eff. May 9, 1979.]

Section 4 of the 1979 Act provided:

"Stocks of pay warrants that exist on the effective date of this Act and that contain the printed name, signature, or facsimile signature of a person who held or performed the duties of the office of comptroller or treasurer before the effective date of this Act may be used in accordance with this Act."

Art. 4365. Duplicate Warrants

The Comptroller, when satisfied that any original warrant drawn upon the State Treasurer has been lost, destroyed, or stolen, or that the payee's endorsement on the original warrant has been forged, or when any certificate or other evidence of indebtedness approved by the auditing board of the State has been lost, is authorized to issue a duplicate warrant in lieu of the original warrant or a duplicate or a copy of such certificate, or other evidence of indebtedness in lieu of such original; but no such duplicate warrant, or other evidence of indebtedness, shall issue until the applicant has filed with the Comptroller his affidavit, stating that he is the true owner of such instrument, and that the same is in fact lost, destroyed, or stolen, or that the payee's

endorsement on the instrument has been forged, and shall also file with the Comptroller his bond in double the amount of the claim with two or more good and sufficient sureties, payable to the Governor, to be approved by the Comptroller, and conditioned that the applicant will hold the State harmless and return to the Comptroller, upon demand being made therefor, such duplicates or copies, or the amount of money named therein, together with all costs that may accrue against the State on collecting the same. Provided, however, that any state department, court, school, school district, or other state agency, or federal agency, shall not be required to make bond for the issuance of duplicate warrants. The head of such state agency or federal agency and one other person connected with the handling of warrants for such agency shall be required to make the affidavit for duplicate to issue in case of lost or destroyed warrant belonging to such agency. In the case of a stolen warrant or a warrant on which the payee's endorsement has been forged, if the Comptroller is satisfied that the warrant is in the possession of the appropriate law enforcement officials, and if the applicant is the same person as the payee, the Comptroller may issue the duplicate warrant without requiring a bond. Any entity, other than a law enforcement official, that has possession of a stolen warrant or a warrant on which the payee's endorsement has been forged shall immediately deliver the warrant to the issuing agency or the Comptroller upon request. The agency or Comptroller shall then issue a receipt for the warrant. After the issuance of said duplicate or copy if the Comptroller should ascertain that the same was improperly issued, or that the applicant or party to whom the same was issued was not the owner thereof, he shall at once demand the return of said duplicate or copy if unpaid, or the amount paid out by the State, if so paid; and, upon failure of the party to return same or the amount of money called for, suit shall be instituted upon said bond in Travis County. The Comptroller shall adopt rules, regulations, and forms regarding the issuance of duplicate warrants. [Amended by Acts 1977, 65th Leg., p. 265, ch. 126, § 1, eff. Aug. 29, 1977.]

Art. 4366b. Federal Revenue Sharing Trust Fund
[See Compact Edition, Volume 4 for text of 1 and 2]

Sec. 3. In order to insure that the State of Texas obtains the full benefit of the Federal Revenue Sharing Trust Fund, the Comptroller of Public Accounts of the State of Texas is hereby authorized to invest any cash held in such fund, which is determined to be in excess of cash requirements for current expenditures, in United States Government securities, in direct obligations of or obligations the principal and interest of which are guaranteed by the United States of America, in direct obligations

of or participation certificates guaranteed by the Federal Intermediate Credit Bank, Federal Land Banks, Federal National Mortgage Association, Federal Home Loan Banks, and Banks for Cooperatives, in savings and loans insured by the Federal Savings and Loan Insurance Corporation, in certificates of deposit of any bank or trust company the deposits of which are fully secured by a pledge of securities of any of the kind hereinabove specified, in any other securities made eligible for such investment by other laws and constitutional provisions, or in any combination of the foregoing.

[Amended by Acts 1977, 65th Leg., p. 1717, ch. 684, § 1, eff. Aug. 29, 1977.]

Art. 4366c. School Taxing Ability Protection Fund

Sec. 1. The School Taxing Ability Protection Fund is established as a special fund in the state treasury. The fund may be appropriated to finance formulas designed to protect school districts against estimated revenue losses resulting from implementation of Article VIII, Sections 1-b(c), 1-b(d) and 1-d-1 of the Texas Constitution.

Sec. 2. Money appropriated from the School Taxing Ability Protection Fund shall be allocated to school districts on the basis of formulas, conditions, and limitations prescribed by law.

Sec. 3. As soon as possible, consistent with sound management of state funds, the comptroller shall transfer from the general revenue fund to the School Taxing Ability Protection Fund the sum of \$450 million for use in the 1979-80 and 1980-81 school years.

Sec. 4. The Act takes effect only if and when the constitutional amendment proposed by H.J.R. No. 1, 65th Legislature, 2nd Called Session, 1978, is adopted.

[Added by Acts 1978, 65th Leg., 2nd C.S., p. 22, ch. 10, §§ 1 to 4.]

H.J.R. No. 1 was adopted by vote of the people at an election held on Nov. 7, 1978.

CHAPTER THREE. STATE TREASURER

Article

4381a. Time and Demand Deposit Records and Annual Reports.
 4386c-1. Disposition of Money Collected or Received by the Department of Agriculture.

Art. 4371. Money Paid Out, How

The Treasurer shall countersign, except as provided by Article 4359a, Revised Civil Statutes of Texas, 1925, as added, and pay all warrants drawn by the Comptroller on the Treasury which are authorized by law. No money shall be paid out of the Treasury except on the warrants of the Comptroller, and no warrant shall be paid by the Treasurer unless presented for payment within two years from the

close of the fiscal year in which such warrant was issued, but claims for the payment of such warrants may be presented to the Legislature for appropriations to be made from which such claims may be paid.

[Amended by Acts 1979, 66th Leg., p. 207, ch. 117, § 2, eff. May 9, 1979.]

Art. 4375. Employés

The Treasurer shall appoint a First Assistant who shall be required to give bond with a good and solvent surety company authorized to do business in this State, in the sum of twenty-thousand dollars, payable to and to be approved by the Governor, and conditioned as is the bond of the State Treasurer, and shall appoint such other employés and clerks as may be authorized by law. All such employés, whether clerks or otherwise, who, as a part of their duties, handle any money, drafts, checks, bills of exchange, warrants, or securities or other evidences of debt which are, or may be, convertible into money, shall give bond with a good and solvent surety company authorized to do business in this State, payable to the Treasurer in such sum as he may require, conditioned that he or she will faithfully execute and perform the duties of his or her position. The Treasurer shall employ security officers to provide needed security services at the Treasury Department and may commission the officers as peace officers. The security officers shall give bond in the same manner required by this Article of employés who handle money as part of their duties. The cost and expense incident to the execution of the bond of the First Assistant and of the bonds of the respective employés shall be paid by the State by appropriation.

[Amended by Acts 1977, 65th Leg., p. 618, ch. 227, § 1, eff. May 24, 1977; Acts 1979, 66th Leg., p. 505, ch. 235, § 1, eff. May 17, 1979.]

Art. 4376. First Assistant To Act

Whenever the Treasurer from sickness, unavoidable absence or other cause is not able to act, the first assistant shall sign except as provided by Article 4359a, Revised Civil Statutes of Texas, 1925, as added, his own name as "Acting Treasurer" and do such other acts and things as the State Treasurer himself might legally do. The legal acts and signatures of such first assistant as Acting Treasurer, shall be as valid as the acts and signatures of the Treasurer himself.

[Amended by Acts 1979, 66th Leg., p. 207, ch. 117, § 2, eff. May 9, 1979; Acts 1979, 66th Leg., p. 505, ch. 235, § 2, eff. May 17, 1979.]

Art. 4381a. Time and Demand Deposit Records and Annual Reports

Sec. 1. The state treasurer shall maintain accurate records of the daily balances of, and the interest

income from, funds deposited by the state treasurer or the state depository board in time and demand deposit accounts in each bank acting as a state depository. The treasurer shall maintain and preserve these records according to the provisions of the Preservation of Essential Records Act (Article 5441d, Vernon's Texas Civil Statutes), and of Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

Sec. 2. The treasurer annually shall make a complete report to the legislature and to the governor of the amounts of interest income earned on funds deposited by the state treasurer or the state depository board in each bank acting as a state depository. The report shall contain the following: (a) the name of each bank serving as a state depository during the fiscal year; (b) for each bank, the balance at the beginning of the fiscal year, the balance at the end of the fiscal year, and the average daily balance in demand deposit accounts placed by the state treasurer or the state depository board; (c) for each bank, the balance at the beginning of the fiscal year, the balance at the end of the fiscal year, and the average daily balance in time deposit accounts placed by the state treasurer or the state depository board, and the amount of interest income earned on these accounts; and (d) the totals of these amounts aggregated for all state depositories.

[Acts 1979, 66th Leg., p. 2011, ch. 788, §§ 1, 2, eff. June 13, 1979.]

Art. 4386b to 4386b-3. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(3), eff. Sept. 1, 1975

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing these articles, enacts the Parks and Wildlife Code.

Art. 4386c-1. Disposition of Money Collected or Received by the Department of Agriculture

Sec. 1. Regardless of any other law previously enacted, all money collected or received by the Texas Department of Agriculture shall be deposited in the state treasury to the credit of the General Revenue Fund.

Sec. 2. The unexpended and unencumbered balance of the Special Department of Agriculture Fund on September 1, 1977, is transferred to the General Revenue Fund.

Sec. 3. This Act takes effect September 1, 1977. [Acts 1977, 65th Leg., p. 687, ch. 259, §§ 1 to 3, eff. Sept. 1, 1977.]

Art. 4388. Daily Statement from Departments

The State Treasurer shall receive daily from the head of each Department, each of whom is specifically charged with the duty of making same daily, a

detailed list of all persons remitting money the status of which is undetermined or which is awaiting the time when it can finally be taken into the Treasury, together with the actual remittances which the Treasurer shall cash and place in his vaults or in legally authorized depository banks, if the necessity arises. The report from the General Land Office shall include all money for interest, principal and leases of school, university, asylum and other lands. A deposit receipt shall be issued by the Comptroller for the daily total of such remittances from each Department; and the cashier of the Treasurer's Department shall keep a cash book, to be called "suspense cash book," in which to enter these deposit receipts, and any others issued for cash received for which no deposit warrants can be issued, or when their issuance is delayed. As soon as the status of money so placed with the Treasurer on a deposit receipt is determined, it shall be transferred from the suspense account by placing the portion of it belonging to the State in the Treasury by the issuance of a deposit warrant, and the part found not to belong to the State shall be refunded. When deposit warrants are issued, they shall be entered in this cash book, as well as any refunds, and the balance shall represent the aggregate of the items still in suspense. Refunds shall be made in a manner similar to that in present use, except that separate series of warrants shall be used for making such refunds, to be called "refund warrants," and such warrants shall be written and signed, except as provided by Article 4359a, Revised Civil Statutes of Texas, 1925, as added, by the Comptroller and countersigned, except as provided by Article 4359a, Revised Civil Statutes of Texas, 1925, as added, by the Treasurer and charged against the suspense funds to which they apply. Such warrants shall then be returned to the Comptroller and delivered by him to the person entitled to receive them.

[Amended by Acts 1979, 66th Leg., p. 207, ch. 117, § 2, eff. May 9, 1979.]

Art. 4393a. Trust Funds

Sec. 1. All moneys and other securities placed in the hands of the State Treasurer in trust for any legal purpose shall be received by the State Treasurer on a deposit receipt issued by the State Comptroller as provided in Article 4354, Revised Civil Statutes of Texas, 1925, as amended by House Bill No. 495, Chapter 243, Acts of the Regular Session, 42nd Legislature. Such moneys or other securities shall be held in trust by the State Treasurer in like manner as the Departmental Suspense Account is held under Article 4388, Revised Civil Statutes of Texas, 1925, as amended by House Bill No. 493, Chapter 242, Acts of the Regular Session, 42nd Legislature. Such moneys or other securities shall be withdrawn by trust and suspense draft in the case of money, and withdrawal authorization in the case of

other securities, which instruments shall be issued serially and signed, except as provided by Article 4359a, Revised Civil Statutes of Texas, 1925, as added, by the State Comptroller. Any and all moneys received in trust, or for any legal purpose for which a state deposit warrant has not or cannot immediately be issued, shall be handled by the Treasurer in the same manner as items deposited in departmental suspense accounts. All moneys and securities now held in trust in the State Treasury shall immediately be transferred to the trust and suspense section of the state's accounting, and thenceforth transferred, refunded or disposed of according to the provisions of this Act. Adequate registers, ledgers and files shall be maintained by the State Treasurer, and by the State Comptroller, to account for the receiving and disposing of all trust and suspense moneys and other securities, which registers and ledgers shall be known as "Trust and Suspense Record."

Nothing herein shall be construed as amending Section 2 of House Bill No. 684, Chapter 3, Acts of the Regular Session, 46th Legislature;¹ nor as amending Senate Bill No. 89, Chapter 324, Acts of the Regular Session of the 48th Legislature.² [Amended by Acts 1979, 66th Leg., p. 207, ch. 117, § 3, eff. May 9, 1979.]

¹ Article 4379b.

² Article 6674q-1 et seq.

CHAPTER FOUR. ATTORNEY GENERAL

Article

4412b. Defense of District Judges.

Art. 4399. Whom to Advise

The Attorney General at the request of the Governor, or the head of any department of the State government, including the heads and boards of penal and eleemosynary institutions, and all other State boards, regents, trustees of the State educational institutions, committees of either branch of the Legislature, county auditors authorized by law, and the chairman of the governing board of any river authority, shall give them written advice upon any question touching the public interest, or concerning their official duties. He shall advise the several district and county attorneys of the State, in the prosecution and defense of all actions in the district or inferior courts, wherein the State is interested, whenever requested by them, after said attorney shall have investigated the question, and shall with such question, also submit his brief. He shall advise the proper legal authorities in regard to the issuance of all bonds that the law requires shall be approved by him. He is hereby prohibited from giving legal advice or written opinions to any other than the officers or persons named herein.

[Amended by Acts 1977, 65th Leg., p. 1302, ch. 512, § 1, eff. Aug. 29, 1977.]

Art. 4405. Repealed by Acts 1975, 64th Leg., p. 568, ch. 226, § 1, eff. May 20, 1975

Art. 4412b. Defense of District Judge, Grand Juror or Commissioner

(a) The Attorney General of Texas is responsible for defending a state district judge in any action or suit in the federal courts in which the judge is a defendant because of his office as district judge if the district judge requests the attorney general's assistance in the defense of the suit.

(b) The attorney general is responsible for defending a state grand jury commissioner or a state grand juror in an action or suit in the federal courts in which the commissioner or the juror is a defendant if:

(1) the suit involves an act of the defendant while in the performance of his duties as a grand jury commissioner or a grand juror; and

(2) the commissioner or the juror requests the attorney general's assistance in the defense of the suit.

[Acts 1975, 64th Leg., p. 659, ch. 275, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 186, ch. 92, § 1, eff. Aug. 29, 1977.]

CHAPTER FOUR-A. STATE AUDITOR

- 4413a-8a. Application of Sunset Act.
- 4413a-14A. Subpoenas Issued by Committee.
- 4413a-14B. Service of Subpoena; Enforcement.
- 4413a-14C. Compensation of Witnesses.

Art. 4413a-7b. Repealed by Acts 1975, 64th Leg., p. 591, ch. 242, § 7, eff. May 20, 1975

See, now, art. 41b.

Art. 4413a-8a. Application of Sunset Act

The Legislative Audit Committee is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the committee is abolished effective September 1, 1989.

[Added by Acts 1977, 65th Leg., p. 1854, ch. 735, § 2.161, eff. Aug. 29, 1977.]

¹ Article 5429k.

Art. 4413a-14. Examination of State Departments; Reports; Recommendations

In addition to the other duties provided for the State Auditor, he shall thoroughly examine all departments of the State Government with special regard to their activities and the duplication of efforts between departments and the quality of service being rendered by subordinate employees in each of the several departments.

Upon completing the examination of any department, he shall furnish the chief executive officer and governing body thereof with a report of, among other things, (a) the efficiency of the subordinate

employees; (b) the status and condition of all public funds in charge of such department; (c) the amount of duplication between work done by the departments so examined and other departments of the State Government; (d) the expense of operating the department; (e) breaches of trust and duty, if any, by an officer, department, institution, board, bureau, or other custodian or disbursement officer of public funds; (f) any suggested changes looking toward economy and reduction of number of clerical and other employees, and the elimination of duplication and inefficiency. Copies of each report shall be filed with the Governor, the Lieutenant-Governor, the Speaker of the House of Representatives, the Secretary of State, and each member of the Legislature.

The State Auditor shall file an annual report with the Governor; copies of such report shall be filed with the Speaker of the House, the Lieutenant-Governor, and in the office of the Secretary of State. Such annual report shall contain, among other things, copies of, or the substance of reports made to the various departments, bureaus, institutions, and boards, as well as a summary of changes made in the system of accounts and records thereof.

Reports shall also contain specific recommendations to the Legislature for the amendment of existing laws or the passage of new laws designed to improve the functioning of various departments, boards, bureaus, institutions or agencies of State Government to the end that more efficient service may be rendered and the cost of government reduced.

All recommendations submitted by the State Auditor shall be confined to those matters properly coming within his jurisdiction, which is to see that the laws passed by the Legislature dealing with the expenditure of public moneys are in all respects carefully observed, and that the attention of the Legislature is directed to all cases of violation of the law and to those instances where there is need for change of existing laws or the passage of new laws to secure the efficient spending of public funds. The State Auditor shall not include in his recommendations to the Legislature any recommendations as to the sources from which taxes shall be raised to meet the governmental expense.

All reports by the State Auditor shall call attention to any funds, which, in his opinion, have not been expended in accordance with law or appropriations by the Legislature; and shall make recommendations to the Legislature as to the manner or form of appropriations, which will avoid any such improper expenditure of money in the future.

Each of the auditings herein provided for shall be made and concluded as directed by the Legislative Audit Committee, and in accordance with the terms of this Act; but shall be concluded and reports

thereof made not later than thirty (30) days before the convening of each Regular Session of the Legislature. The Committee shall direct the Auditor to make any special audit or investigation that in its judgment is proper or necessary to carry out the purpose of this Act, or to assist the Legislature in the proper discharge of its duties.

The Committee shall direct the printing or mimeographing of such number of any reports as it thinks necessary and proper.

All reports filed by the Secretary of State shall be open to public inspection.

[Amended by Acts 1979, 66th Leg., p. 2071, ch. 810, § 8, eff. June 13, 1979.]

Art. 4413a-14A. Subpoenas Issued by Committee

(a) At the request of the state auditor or on its own motion the Legislative Audit Committee may subpoena witnesses or any books, records, or other documents reasonably necessary to carrying out an examination under this Act.¹

(b) Each subpoena must be signed by the chairman or secretary of the committee.

[Acts 1943, 48th Leg., p. 429, ch. 293, § 8A, added by Acts 1979, 66th Leg., p. 236, ch. 123, § 1, eff. May 9, 1979.]

¹ Articles 4366, 4413a-8 to 4413a-24.

Art. 4413a-14B. Service of Subpoena; Enforcement

(a) On the request of the chairman or secretary, the sergeant-at-arms or an assistant sergeant-at-arms of either house of the legislature or any peace officer shall serve a subpoena issued under this Act.¹ The officer shall serve the subpoena in the same manner as a subpoena issued by a district court is served.

(b) If the person to whom a subpoena is directed fails to comply, the committee may bring suit in the district court to enforce the subpoena. If the court determines that good cause exists for the issuance of the subpoena, the court shall order compliance. The court may modify the requirements of a subpoena that the court determines are unreasonable. Failure to comply with the order of the district court is punishable as contempt.

[Acts 1943, 48th Leg., p. 429, ch. 293, § 8B, added by Acts 1979, 66th Leg., p. 236, ch. 123, § 1, eff. May 9, 1979.]

¹ Articles 4366, 4413a-8 to 4413a-24.

Art. 4413a-14C. Compensation of Witnesses

The Legislative Audit Committee may provide for the compensation of subpoenaed witnesses. The amount of compensation may not exceed the amount paid to a witness subpoenaed by a district court in a civil proceeding.

[Acts 1943, 48th Leg., p. 429, ch. 293, § 8C, added by Acts 1979, 66th Leg., p. 236, ch. 123, § 1, eff. May 9, 1979.]

CHAPTER FOUR-B. INTERSTATE COOPERATION

Article

4413b. Regulation of Style and Format of Agency Periodic Reports to Governor or Legislature.

Art. 4413b. Regulation of Style and Format of Agency Periodic Reports to Governor or Legislature

Sec. 1. In this Act, "agency" means a department, board, commission, office, or other entity in the executive, legislative, or judicial branch of state government, and includes a public university, senior college, or junior college.

Sec. 2. The state auditor shall promulgate and distribute rules prescribing the style and format of all periodic reports that agencies are required by law to make to the governor, the legislature, or any officer, committee, or agency of the legislature. The rules shall include restrictions on the quality or price of paper used, style or method of printing or typesetting, binding, illustrations, photographs, and other matters relevant to the cost of producing the reports, with the objective of minimizing the cost of the reports without impairing the ability of agencies to make effective reports.

Sec. 3. In making periodic reports referred to in Section 2 of this Act, each agency shall comply with the rules promulgated by the state auditor, and the comptroller shall refuse to issue a warrant to pay any expense incurred by an agency in violation of the rules.

[Acts 1977, 65th Leg., p. 138, ch. 67, §§ 1 to 3, eff. April 18, 1977.]

Art. 4413b-1. Commission Established; Composition; Functions; Governor's Committee

[See Compact Edition, Volume 4 for text of 1 and 2]

Application of Sunset Act

Sec. 2a. The Texas Commission on Interstate Cooperation is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1983.

¹ Article 5429k.

[See Compact Edition, Volume 4 for text of 3 to 10]

[Amended by Acts 1977, 65th Leg., p. 1843, ch. 735, § 2.077, eff. Aug. 29, 1977.]

CHAPTER FOUR-C. SOUTHERN INTERSTATE NUCLEAR COMPACT

Art. 4413c-1. Southern Interstate Nuclear Compact

[See Compact Edition, Volume 4 for text of 1 and 2]

Application of Sunset Act

Sec. 2a. The office of Southern Interstate Nuclear Compact Board Member for Texas is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the office is abolished, and this Act expires effective September 1, 1983.

¹ Article 5429k.

[See Compact Edition, Volume 4 for text of 3 to 6]

[Amended by Acts 1977, 65th Leg., p. 1841, ch. 735, § 2.064, eff. Aug. 29, 1977.]

CHAPTER FOUR-D. STATE-FEDERAL RELATIONS

Art. 4413d-1. Division of State-Federal Relations

[See Compact Edition, Volume 4 for text of 1]

Application of Sunset Act

Sec. 1a. The office of State-Federal Relations is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the office is abolished, and this Act expires effective September 1, 1983.

¹ Article 5429k.

[See Compact Edition, Volume 4 for text of 2 to 4]

Compensation

Sec. 5. The director and staff are entitled to the compensation and transportation allowances provided for in the General Appropriations Acts. The Director and Deputy Director of the Office of State-Federal Relations may also receive a per diem allowance in addition to the regular compensation and transportation allowances as may be provided for by the Legislature in the General Appropriations Acts.

[See Compact Edition, Volume 3 for text of 6 and 7]

[Amended by Acts 1977, 65th Leg., p. 1842, ch. 735, § 2.076, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 799, ch. 358, § 1, eff. Sept. 1, 1979.]

CHAPTER FOUR-E. ENERGY AND WATER RESOURCE CONSERVATION

Article

4413e-1. Repealed.

Art. 4413e-1. Repealed by Acts 1979, 66th Leg., p. 2007, ch. 785, § 9, eff. June 13, 1979

The repealed article, derived from Acts 1977, 65th Leg., p. 322, ch. 155, related to an interstate compact for the conservation and utilization of natural energy and water resources.

See, now, Natural Resources Code, § 142.001 et seq.

CHAPTER FIVE. DEPARTMENT OF PUBLIC SAFETY

Article

4413(1a). Application of Sunset Act.

4413(17a). Supplemental Pay for Certain Commissioned Officers.

Art. 4413(1a). Application of Sunset Act

The Department of Public Safety is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the department is abolished effective September 1, 1987.

[Added by Acts 1977, 65th Leg., p. 1850, ch. 735, § 2.129, eff. Aug. 29, 1977.]

¹ Article 5429k.

Art. 4413(17a). Supplemental Pay for Certain Commissioned Officers

If a commissioned officer of the Department of Public Safety who holds a classified position is required to be on duty more than 40 hours during any one or more calendar weeks which end during a calendar month, or is required to appear in court at any time during a calendar month, he shall receive for that month, in addition to his regular monthly salary as provided by legislative appropriation, a supplement not to exceed 10 percent of his regular salary.

[Added by Acts 1977, 65th Leg., p. 1377, ch. 548, § 1, eff. Aug. 29, 1977.]

Art. 4413(29c). Licensing Commercial Driver-Training Schools and Instructors

[See Compact Edition, Volume 4 for text of 1 to 13]

Driver-Training Instruction for Hire in Licensed School

Sec. 14. No motor vehicle driver-training instruction shall be conducted for hire or tuition unless in a licensed commercial driver-training school or one of its branch offices except as set out in Section 2 and in counties with a population of less than 50,000 where driver-training instruction may be given by a supervisory instructor or instructor not connected with or in a commercial driver-training school.

[See Compact Edition, Volume 4 for text of 15]

[Amended by Acts 1975, 64th Leg., p. 1839, ch. 569, § 1, eff. June 19, 1975.]

Art. 4413(29aa). Commission on Law Enforcement Officer Standards and Education

[See Compact Edition, Volume 4 for text of 1]

Application of Sunset Act

Sec. 1a. The Commission on Law Enforcement Officer Standards and Education is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1987.

¹ Article 5429k.

Powers of Commission

Sec. 2. The Commission shall have the authority and power to:

(a) Promulgate rules and regulations for the administration of this Act including the authority to require the submission of reports and information by any state, county, or municipal agency within this state which employs peace officers.

(b) Establish minimum educational, training, physical, mental and moral standards for admission to employment as a peace officer:

- (1) in permanent positions, and
- (2) in temporary or probationary status.

(c) Certify persons as being qualified under the provisions of this Act to be peace officers or to be jailers or guards of county jails.

(d) Certify persons as having qualified as law enforcement officer instructors under such conditions as the Commission may prescribe.

(e) Establish minimum curriculum requirements for preparatory, in-service and advanced courses and programs for schools or academies operated by or for the state or any political subdivisions thereof for the specific purpose of training peace officers or recruits for the position of a peace officer or for training jailers and guards of county jails or recruits for those positions.

(f) Consult and cooperate with counties, municipalities, agencies of this state, other governmental agencies, and with universities, colleges, junior colleges, and other institutions concerning the development of peace officer training schools and programs of courses of instruction.

(g) Approve, or revoke the approval of, institutions and facilities for schools operated by or for the state or any political subdivision thereof for the specific purpose of training peace officers or jailers and guards of county jails or recruits for those positions, and issue certificates of approval to such institutions and revoke such certificates of approval.

(h) Operate schools and facilities thereof and conduct courses therein, both preparatory, in-ser-

vice, basic and advanced courses, for peace officers and recruits for the position of peace officer as the Commission may determine.

(i) Contract with other agencies, public or private, or persons, as the Commission deems necessary for the rendition and affording of such services, facilities, studies and reports as it may require to cooperate with municipal, county, state and federal law enforcement agencies in training programs, and to otherwise perform its functions.

(j) Make or encourage studies of any aspect of law enforcement, including police administration.

(k) Conduct and stimulate research by public and private agencies which shall be designed to improve law enforcement and police administration.

(l) Employ an Executive Director and such other personnel as may be necessary in the performance of its functions.

(m) Visit and inspect all institutions and facilities conducting courses for the training of peace officers and recruits for the position of peace officer and make evaluations as may be necessary to determine if they are complying with the provisions of this Act and the Commission's rules and regulations.

(n) Adopt and amend rules and regulations, consistent with law, for its internal management and control.

(o) Accept any donations, contributions, grants or gifts from private individuals or foundations or the federal government.

(p) Report annually to the Governor and to the Legislature at each regular session on its activities, with its recommendations relating to any matter within its purview, and make such other reports as it deems desirable.

(q) Meet at such times and places in the State of Texas as it deems proper; meetings shall be called by the Chairman upon his own motion, or upon the written request of five members.

(r) Establish procedures for the revocation of certificates issued to a peace officer or to a jailer or a guard of a county jail under the provisions of this Act.

Reserve Officers; Minimum Standards; Probationary Appointments

Sec. 2A. (a) The Commission on Law Enforcement Officer Standards and Education shall establish minimum training standards for all reserve law enforcement officers.

(b) A person who has not satisfactorily completed preparatory training in law enforcement at a school that is operated by or approved by the Commission is eligible to be appointed as a reserve law enforcement officer only on a probationary basis. A proba-

tionary reserve law enforcement officer who fails to complete the required training within the probationary period must be removed from the position and may not be reappointed on a probationary basis unless 12 months have passed since the date of removal from the position and the Commission approves reappointment. The probationary period expires six months after the date of the original appointment except that:

(1) if a probationary reserve law enforcement officer is enrolled in and attending approved law enforcement training at the end of the six-month period, the probationary period is extended until the reserve law enforcement officer completes or ceases to attend the training course; and

(2) if a probationary reserve law enforcement officer is appointed in a regional planning commission area in which no approved course is offered during the six-month period, the probationary period is extended until the date the first course in that area is offered and, if the reserve law enforcement officer enrolls in and attends the course, until the date on which the reserve law enforcement officer completes or ceases to attend the course.

(c) The Commission shall establish minimum physical, mental, educational, and moral standards for all reserve law enforcement officers.

Reporting Standards and Procedures

Sec. 2B. (a) The Commission shall establish such reporting standards and procedures for matters of employment and termination of peace officers by law enforcement agencies, for matters concerning the activities of certified training academies, and for other matters it deems necessary for the administration of this Act.

(b) The Commission shall furnish each agency and certified training academy with the required reporting forms.

(c) The chief administrative officer of a law enforcement agency or certified training academy shall be responsible for compliance with the reporting standards and procedures.

[See Compact Edition, Volume 4 for text of 3 to 5]

Peace Officers; Tenure; Probationary Appointments; Training
Sec. 6.

[See Compact Edition, Volume 4 for text of 6(a)]

(b) A person who has not satisfactorily completed preparatory training in law enforcement at a school that is operated by or approved by the Commission is eligible to be appointed as a peace officer only on a probationary basis. A probationary peace officer who fails to complete the required training within

the probationary period must be removed from office and may not be reappointed on a probationary basis unless 12 months have passed since the date of removal from office and the Commission approves reappointment. The probationary period expires six months after the date of the original appointment except that:

(1) if a probationary peace officer is enrolled in and attending approved law enforcement training at the end of the six-month period, the probationary period is extended until the peace officer completes or ceases to attend the training course; and

(2) if a probationary peace officer is employed in a regional planning commission area in which no approved course is offered during the six-month period, the probationary period is extended until the date the first course in that area is offered and, if the peace officer enrolls in and attends the course, until the date on which the peace officer completes or ceases to attend the course.

(c) In addition to the requirements of Subsection (b) of this section, the Commission, by rules and regulations, may establish other qualifications for the employment of peace officers, including minimum age, education, physical standards, citizenship, good moral character, experience, and such other matters as relate to the competence and reliability of persons to assume and discharge the responsibilities of peace officers, and the Commission shall prescribe the means of presenting evidence of fulfillment of these requirements. No person shall be appointed as a peace officer unless, before appointment, the Commission certifies that he is qualified to be a peace officer. A person desiring Commission certification must file an application with the Commission in accordance with Commission rule.

[See Compact Edition, Volume 4 for text of 6(d)]

(e) Any person who accepts appointment as a peace officer, or any person who appoints or retains an individual as a peace officer, in violation of Subsections (b) or (c) of this section or in violation of Section 7A of this Act shall be guilty of a misdemeanor and upon conviction shall be fined not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00).

[See Compact Edition, Volume 3 for text of 6(f) and 6(g)]

(h) "Peace officer," for the purposes of this Act, means only a person so designated by Article 2.12, Code of Criminal Procedure, 1965, and by Section 51.212, Texas Education Code.

Revocation of Certificate

Sec. 6A. The Commission may revoke a certificate issued to a peace officer or to a jailer or guard

of a county jail under the provisions of this Act if the Commission determines that the holder of the certificate has violated a rule, regulation, requirement, specification, or other standard established by the Commission. The Commission shall revoke a certificate issued to a peace officer or to a jailer or guard of a county jail under the provisions of this Act if the holder of the certificate is convicted in any state or federal court of a felony.

Training Programs for Peace Officers and Jailers

Sec. 7. (a) The Commission shall establish and maintain peace officer training programs and training programs in the operation of county jails to be conducted by its own staff or through such agencies and institutions as the Commission may deem appropriate.

[See Compact Edition, Volume 3 for text of 7(b)]

Peace Officer Qualifications; Psychological and Emotional Health
Text of section as added by Acts 1979, 66th Leg., p. 1140, ch. 546, § 1

Sec. 7A. (a) A person may not be certified by the Commission as qualified to be a peace officer or be appointed as a peace officer unless, before certification and appointment, the person is examined by a licensed psychologist or a licensed physician and is declared in writing by the psychologist or physician to be in satisfactory psychological and emotional health to be a peace officer. The psychologist's or physician's declaration is not public information.

(b) The examining psychologist or physician shall be selected by the agency desiring to appoint a person as a peace officer.

(c) The agency desiring to appoint a person as a peace officer shall forward a copy of the psychologist's or physician's declaration to the Commission with the person's application for Commission certification. The Commission shall keep the copy on file.

Jailers and Guards; Training Requirements; Exceptions; Temporary Appointees; Certification

Text of section as added by Acts 1979, 66th Leg., p. 1293, ch. 599, § 4

Sec. 7A. (a) A jailer or a guard of a county jail serving under permanent appointment before September 1, 1979, is not required to meet the requirements of Subsections (b) and (c) of this section as a condition of continued employment, nor does the failure of a jailer or guard to fulfill the requirements of this section make the person ineligible for a promotional examination for which the person is otherwise eligible. Those jailers and guards have satisfied the requirements of this section by their experience. Those jailers or guards are eligible to attend training courses in the operation of a county jail subject to the rules of the Commission. This subsection applies to a jailer or guard who was

employed in a county jail before September 1, 1979, and whose employment was terminated before that date because of failure to satisfy educational standards adopted under Section 14, Chapter 480, Acts of the 64th Legislature, 1975 (Article 5115.1, Vernon's Texas Civil Statutes), except that:

(1) this subsection does not apply to an individual who attempted to satisfy those standards by taking an examination and because he or she committed a dishonest act regarding the examination, failed to pass or was not permitted to complete the examination; and

(2) this subsection does not apply to an individual if he or she attempted to prove compliance with those standards with a forged document.

(b) After September 1, 1979, a person may not be appointed as a jailer or guard of a county jail, except on a temporary or probationary basis, unless the person has satisfactorily completed a preparatory program of training in the operation of a county jail at a school approved or operated by the Commission. A jailer or guard of a county jail who has received a temporary or probationary appointment on or after September 1, 1979, and who fails to satisfactorily complete a basic course in the operation of a county jail, as prescribed by the Commission, within a one-year period from the date of his original appointment, forfeits his position and shall be removed from the position. The temporary or probationary employment may not be extended beyond one year by renewal of appointment or otherwise, except that after the lapse of one year from the date of the person's forfeiture and removal, the sheriff may petition the Commission for reinstatement of the person to temporary or probationary employment.

(c) In addition to the requirements of Subsection (b) of this section, the Commission may make rules about other qualifications for a jailer or guard of a county jail, including minimum age, education, physical and mental standards, citizenship, good moral character, experience, and other matters that relate to competence and reliability. The Commission shall prescribe the means of presenting evidence of fulfillment of these requirements. A person may not be appointed as a jailer or guard of a county jail unless the person fulfills these requirements.

(d) The Commission shall issue a certificate to a person who has fulfilled the requirements of Subsections (b) and (c) of this section. An applicant who presents evidence required by the Commission's rules of satisfactory completion of a program or course of instruction in another jurisdiction that is equivalent in content and quality to that required by the Commission may be issued a certificate.

(e) A person who knowingly accepts appointment as a jailer or guard of a county jail or a person who knowingly appoints or retains an individual as a

jailer or guard of a county jail who is not certified under this section commits an offense. An offense under this section is punishable by a fine of not less than \$100 nor more than \$1,000.

[See Compact Edition, Volume 4 for text of 8]

Convicted Felons as Peace Officers, Jailers, or Guards

Sec. 8A. (a) No person who has been convicted of a felony under the laws of this state, another state, or the United States may be certified by the Commission as qualified to be a peace officer, or a jailer or guard at a county jail.

(b) Final conviction of a felony under the laws of this state, another state, or the United States disqualifies a person previously certified by the Commission as qualified to be a peace officer, or a jailer or guard at a county jail, and the Commission shall immediately revoke the certification of a person so convicted.

[See Compact Edition, Volume 4 for text of 9 and 9A]

Law Enforcement Officer Standards and Education Fund

Sec. 9B. (a) There is hereby created and established in the State Treasury a special fund to be known as the Law Enforcement Officer Standards and Education Fund to be used by the Commission in administering this Act and performing other duties imposed on the Commission by law.

(b) The sum of One Dollar (\$1.00) shall be paid as costs of court, in addition to other taxable court costs, by any person convicted of any criminal offense. Convictions arising under the traffic laws of this state are specifically included as follows:

(1) any offense defined in Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes); and

(2) any offense defined in the Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes), except Sections 34, 76, 77, 78, 79, 80, 81, 93, 94, 95, 96, and 97 of that Act.

(c) Court costs due under this section shall be collected in the same manner as other fines or costs are collected in the case.

(d) The officer collecting the costs in a municipal court case shall keep separate records of the funds collected as costs under this section, and shall deposit the funds in the municipal treasury. The officer collecting the costs in a justice, county, and district court case shall keep separate records of the funds collected as costs under this section, and shall deposit the funds in the county treasury.

(e) All officers collecting court costs under this section shall file the reports required by Articles 1001 and 1002, Code of Criminal Procedure, 1925.

(f) The custodians of the municipal and county treasuries shall keep records of the amount of funds on deposit collected under this section, and shall on the tenth day of December, March, June and September of each year remit to the Comptroller of Public Accounts the funds collected under this section during the preceding quarter. Each city and county collecting funds under this section is hereby authorized to retain five percent (5%) of the funds collected by them as a service fee for said collection.

(g) The Comptroller of Public Accounts shall deposit the funds received by him under this section in the Law Enforcement Officer Standards and Education Fund.

(h) The Comptroller of Public Accounts shall, on requisition of the Commission, draw warrants from time to time on the State Treasury for the amount specified in the requisition, not exceeding, however, the amount in the fund at the time of making a requisition. All money expended by the Commission in the administration of this Act and in performing the duties otherwise imposed upon it by law, shall be specified and determined by itemized appropriation in the general appropriations bill for the Commission on Law Enforcement Officer Standards and Education, and not otherwise. At the end of each state fiscal year, any unused portion of the money in this special fund, except those funds theretofore appropriated to the Commission to administer this Act and to perform the duties otherwise imposed on it by law for the next fiscal year, shall be paid into the state General Revenue Fund.

(i) This Act takes effect September 1, 1977.

[Amended by Acts 1975, 64th Leg., p. 637, ch. 262, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1807, ch. 547, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1808, ch. 547, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1809, ch. 549, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 246, ch. 114, § 1, eff. Sept. 1, 1977; Acts 1977, 65th Leg., p. 876, ch. 328, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1851, ch. 735, § 2.136, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 499, ch. 230, § 1, eff. May 17, 1979; Acts 1979, 66th Leg., p. 1140, ch. 546, §§ 1, 2, eff. Sept. 1, 1979; Acts 1979, 66th Leg., p. 1150, ch. 555, § 1, eff. June 11, 1979; Acts 1979, 66th Leg., p. 1293, ch. 599, §§ 1 to 5, eff. Sept. 1, 1979.]

Art. 4413(29bb). Private Investigators and Private Security Agencies Act

SUBCHAPTER A. GENERAL PROVISIONS

Short Title

Sec. 1. This Act may be cited as the Private Investigators and Private Security Agencies Act.

Definitions

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

(1) "Board" means the Texas Board of Private Investigators and Private Security Agencies.

(2) "Person" includes individual, firm, association, company, partnership, corporation, nonprofit organization, institution, or similar entity.

(3) "Investigations company" means any person who engages in the business or accepts employment to obtain or furnish information with reference to:

(a) crime or wrongs done or threatened against the United States of America or any state or territory of the United States of America;

(b) the identity, habits, conduct, business, occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputation, or character of any person;

(c) the location, disposition, or recovery of lost or stolen property;

(d) the cause or responsibility for fires, libels, losses, accidents, damages or injuries to persons or to property; or

(e) the securing of evidence to be used before any court, board, officer, or investigating committee.

(4) "Guard company" means any person engaging in the business of or undertaking to provide a private watchman, guard, or street patrol service on a contractual basis for another person and performing any one or more of the following or similar functions:

(a) prevention of intrusion, entry, larceny, vandalism, abuse, fire, or trespass on private property;

(b) prevention, observation, or detection of any unauthorized activity on private property;

(c) control, regulation, or direction of the flow or movements of the public, whether by vehicle or otherwise, only to the extent and for the time directly and specifically required to assure the protection of property; or

(d) protection of individuals from bodily harm.

(5) "Alarm systems company" means any person that sells, installs, services, or responds to burglar alarm signal devices, burglar alarms, television cameras, still cameras or any other electrical, mechanical, or electronic device used to prevent or detect burglary, theft, shoplifting, pilferage, and other losses of that type.

(6) "Armored car company" means any person that provides secured transportation and protection from one place or point to another place or point of money, currency, coins, bullion, securities, bonds, jewelry, or other valuables.

(7) "Courier company" means any person that transports or offers to transport under armed guard from one place or point to another place or point documents, papers, maps, stocks, bonds, checks, or any other item that requires expeditious delivery.

(8) "Guard dog company" means any person that places, leases, rents, or sells an animal for the purpose of protecting property and/or any person or company that is contracted to train an animal for the purpose of protecting property.

(9) "Security services contractor" means any guard company, alarm systems company, armored car company, courier company or guard dog company as defined herein.

(10) "Security department of a private business" means the security department of any person, if the security department has as its general purpose the protection and security of its own property and grounds, and if it does not offer or provide security services to any other person.

(11) "Private investigator" means any person who performs one or more services as described in Section 2(3) of this Act.

(12) "Undercover agent" means an individual hired by another individual, partnership, corporation, or other business entity to perform a job in and/or for that individual, partnership, corporation, or other business entity, and while performing such job, to act as an undercover agent, an employee, or an independent contractor of a licensee, but supervised by a licensee.

(13) "Private security officer" means any individual employed by a security services contractor or the security department of a private business to perform the duties of a security guard, security watchman, security patrolman, armored car guard, courier guard, or alarm systems response runner.

(14) "Manager" means in the case of a corporation, an officer or supervisor, or in the case of a partnership, a general or unlimited partner meeting the experience qualifications set forth in Section 14 of this Act for managing a security services contractor or an investigations company.

(15) "License" means a permit granted by the board entitling a person to operate as a security services contractor or investigations company.

(16) "Branch office license" means a permit granted by the board entitling a person to operate as a security services contractor or investigations company at a location other than the principal place of business as shown in the board records.

(17) "Licensee" means any person to whom a license is granted under this Act.

(18) "Security officer commission" means an authorization granted by the board to an individual employed as a private security officer to carry a handgun.

(19) "Commissioned security officer" means any private security officer to whom a security officer commission has been issued by the board.

(20) "Branch office" means an office established or maintained at some place other than the principal place of business as shown in board records and identified to the public as a place from which business is conducted, solicited, or advertised.

(21) "Registration" means a permit granted by the board to an individual to perform the duties of a private investigator, manager, or branch office manager.

(22) "Registrant" means an individual who has filed an application with the board to perform the duties of a private investigator, manager, or branch office manager.

(23) "Handgun" has the meaning given in Section 46.01(5), Penal Code.

(24) "Director" means the director of the Texas Board of Private Investigators and Private Security Agencies.

(25) "Alarm systems response runner" means a person who responds to the first signal of entry.

Exceptions

Sec. 3. (a) This Act does not apply to:

(1) a person employed exclusively and regularly by one employer in connection with the affairs of an employer only and where there exists an employer-employee relationship; provided, however, any person who shall carry a handgun in the course of his employment shall be required to obtain a private security officer commission under the provisions of this Act;

(2) an officer or employee of the United States of America, or of this State or a political subdivision of either, while the employee or officer is engaged in the performance of official duties;

(3) a person who has full-time employment as a peace officer as defined by Article 2.12, Code of Criminal Procedure, 1965, who receives compensation for private employment on an individual or an independent contractor basis as a patrolman, guard, or watchman if such person is:

(a) employed in an employee-employer relationship; or

(b) employed on an individual contractual basis;

(c) not in the employ of another peace officer; and

(d) not a reserve peace officer;

(4) a person engaged exclusively in the business of obtaining and furnishing information for purposes of credit worthiness or collecting debts or ascertaining the financial responsibility of applicants for property insurance and for indemnity or surety bonds, with respect to persons, firms, and corporations;

(5) an attorney-at-law in performing his duties;

(6) admitted insurers, insurance adjusters, agents, and insurance brokers licensed by the State, performing duties in connection with insurance transacted by them;

(7) a person who engages exclusively in the business of repossessing property that is secured by a mortgage or other security interest;

(8) a locksmith who does not install or service detection devices, does not conduct investigations, and is not a security service contractor;

(9) a person who owns and installs burglar detection or alarm devices on his own property or, if he does not charge for the device or its installation, installs it for the protection of his personal property located on another's property, and does not install the devices as a normal business practice on the property of another;

(10) an employee of a cattle association who is engaged in inspection of brands of livestock under the authority granted to that cattle association by the Packers and Stockyards Division of the United States Department of Agriculture;

(11) the provisions of this Act shall not apply to common carriers by rail engaged in interstate commerce and regulated by state and federal authorities and transporting commodities essential to the national defense and to the general welfare and safety of the community;

(12) registered professional engineers practicing in accordance with the provisions of the Texas Engineering Practice Act;¹

(13) a person whose sale of burglar alarm signal devices, burglary alarms, television cameras, still cameras, or other electrical, mechanical, or electronic devices used for preventing or detecting burglary, theft, shoplifting, pilferage, or other losses is exclusively over-the-counter or by mail order;²

Text of subsection as added by Acts 1979, 66th Leg., p. 518, ch. 242, § 1

(14) a person who holds a license or other form of permission issued by an incorporated city or town to practice as an electrician and who installs fire or smoke detectors in no building other than a single family or multifamily residence.

Text of subsection as added by Acts 1979, 66th Leg., p. 2179, ch. 830, § 3

(14) a person or organization in the business of building construction that installs electrical wiring and devices that may include in part the installation of a burglar alarm or detection device if:

(A) the person or organization is a party to a contract that provides that the installation will be performed under the direct supervision of

and inspected and certified by a person or organization licensed to install and certify such an alarm or detection device and that the licensee assumes full responsibility for the installation of the alarm or detection device; and

(B) the person or organization does not service or maintain burglar alarms or detection devices; or

(15) response to a burglar alarm or detection device by a law enforcement agency or by a law enforcement officer acting in an official capacity.

(b) Licensees and employees of licensees under the provisions of this Act shall not be required to obtain any authorization, permit, franchise, or license from or pay any other fee or franchise tax to or post a bond in any city, county, or other political subdivision of this State to engage in business or perform any service authorized under this Act.

(c) Except as otherwise specifically provided in this subsection, no city, county, or other political subdivision of this State shall impose any charge, service charge, fee, or any other type of payment for the use of city, county, or other public facilities in connection with businesses or services rendered by the licensees under this Act, except that any city or town may levy and collect reasonable charges for the use of central alarm installations located in a police office, that is owned, operated, or monitored by such city or town. Provided further, that any city or town may require discontinuation of service of any alarm signal device which, because of mechanical malfunction or faulty equipment, causes at least five false alarms in any 12-month period. Such city or town may cause the disconnection of any such device until the same is repaired to the satisfaction of the appropriate municipal official, and the city or town may levy and collect reasonable inspection and reinspection fees in connection therewith. "Mechanical malfunction" and "faulty equipment" shall not relate, for the purposes of this section, to false alarms caused by human error or an act of God.

(d) Although under the provisions of this Act the security department of a private business that hires or employs an individual in the capacity of a private security officer to possess a handgun in the course and scope of his duties is required to make application for a security officer commission for the individual according to the provisions of this Act, the security department of a private business shall not be required to make application to the board for any license under this Act.

¹ Article 3271a.

² Acts 1979, 66th Leg., p. 518, ch. 242, § 1, here inserted "or".

SUBCHAPTER B. ADMINISTRATION

Creation of Board

Sec. 4. (a) A Texas Board of Private Investigators and Private Security Agencies is created to

carry out the functions and duties conferred on it by this Act.

(b) The position of director of the Texas Board of Private Investigators and Private Security Agencies is created. He shall serve as chief administrator of the board. He shall not be a member of the board, but shall be a full-time employee of the board, fully compensable in an amount to be determined by the Legislature. The director shall perform such duties as may be prescribed by the board, and shall have no financial or business interests, contingent or otherwise, in any security services contractor or investigations company.

(c) All legal process and all documents required by law to be served upon or filed with the board shall be served or filed with the director at the designated office of the board. All official records of the board or affidavits by the director as to the content of such records shall be prima facie evidence of all matters required to be kept by the board.

(d) The Texas Board of Private Investigators and Private Security Agencies is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1981.

¹ Article 5429k.

Board Membership

Sec. 5. The board is composed of the following members:

(1) the director of the Texas Department of Public Safety or his designated representative shall serve as an ex officio member of such board, and such service shall not jeopardize the individual's official capacity with the State of Texas;

(2) the Attorney General or his designated representative shall serve as an ex officio member of such board, and such service shall not jeopardize the individual's official capacity with the State of Texas;

(3) one city or county law enforcement officer shall be appointed by the Governor, with the advice and consent of the Senate;

(4) two members shall be appointed by the Governor, with the advice and consent of the Senate, who are citizens of the United States and residents of the State of Texas; and

(5) three members shall be appointed by the Governor with the advice and consent of the Senate, who are licensed under this Act, who have been engaged for a period of five consecutive years as a private investigator or security services contractor, and who are not employed by the same person as any other member of the board.

Oath of Office

Sec. 6. (a) The members of the board appointed by the Governor and confirmed by the Senate shall take the constitutional oath of office before an officer authorized to administer an oath within this state.

(b) Upon presentation of the oath, together with the certificate of appointment, the secretary of state shall issue commissions to appointees as evidence of their authority to act as members.

Terms of Office

Sec. 7. (a) The appointed members of the board serve staggered six-year terms, and the terms of two appointed members expire on January 31 of each odd-numbered year. Each appointed members shall hold office until his successor is appointed and has qualified.

(b) The director of the Department of Public Safety and the attorney general, or their representatives, serve on the board during their terms of office and shall perform the duties required of members of the board by this Act in addition to those duties required of them in other official capacities.

Vacancies

Sec. 8. The governor, with the advice and consent of the Senate, shall fill vacancies occurring among appointed members of the board with appointments for the duration of the unexpired term.

Designated Representatives

Sec. 9. (a) The Attorney General and the director of the Department of Public Safety may delegate to a personal representative from their respective offices the authority and duty to represent them on the board.

(b) The designated representative may exercise all of the powers, duties, and responsibilities of the member while engaged in the performance of official board business, but a member is responsible for the acts and decisions of his delegated representative.

Compensation of Board Members

Sec. 10. The members of the board shall serve without pay but shall be reimbursed for their necessary and actual expenses. The number of employees and the salaries of each shall be fixed in the General Appropriations Bill.

Rules of Procedure and Seal

Sec. 11. (a) The board shall have the following powers and duties:

(1) to determine the qualifications of licensees, registrants, and commissioned security officers as provided in this Act;

(2) to investigate alleged violations of the provisions of this Act and of any rules and regulations adopted by the board;

(3) to promulgate all rules and regulations necessary in carrying out the provisions of this Act after giving 30 days' notice to interested parties of proposed rules and regulations and an opportunity for the parties to express their views and be represented by an attorney;

(4) to establish and enforce standards governing the safety and conduct of persons licensed, registered, and commissioned under the provisions of this Act; and

(5) to provide for grievances and appeal procedures for persons whose license, registration, or security officer commission is revoked or suspended, or who is denied an application for a license, registration, or security officer commission, or who has received any other penalty or sanction by the board.

(b) The board shall have a seal, the form of which it shall prescribe.

Subpoenas and Injunctions

Sec. 11A. (a) In the conduct of any investigation conducted under the provisions of this Act, the board may issue subpoenas to compel the attendance of witnesses and the production of pertinent books, accounts, records, and documents. The officer conducting a hearing may administer oaths and may require testimony or evidence to be given under oath.

(b) No witness is privileged to refuse to testify to any fact, or to produce any paper, respecting which he is properly examined by the officer conducting the hearing. Any person called upon to testify or to produce papers upon any matter properly under inquiry by the board, who refuses to so testify or produce papers upon the ground that his testimony or the production of papers would incriminate him or tend to incriminate him, shall nevertheless be required to testify or to produce papers, but when so required under these objections he is not subject to indictment or prosecution for any transaction, matter, or thing concerning which he truthfully testifies or produces evidence.

(c) If a witness refuses to obey a subpoena or to give any evidence relevant to proper inquiry by the board, then the board may petition a district court of the county in which the hearing is held to compel the witness to obey the subpoena or to give the evidence. The court shall immediately issue process to the witness and shall hold a hearing on the petition as soon as possible. If the witness then refuses, without reasonable cause or legal grounds, to be examined or to give any evidence relevant to proper inquiry by the board, the court shall punish the witness for contempt.

(d) Investigators employed by the board are authorized to take statements under oath in any investigation of a matter covered by this Act.

(e) The board may sue in district court to enjoin a violation of this Act. The attorney general shall represent the board in injunction actions.

Revocation, Suspension, etc.

Sec. 11B. (a) The board may revoke or suspend any registration, license, or security officer commission, reprimand any registrant, licensee, or commissioned security officer, or deny an application for a registration, license, or security officer commission, or renewal thereof on proof:

(1) that the applicant, licensee, commissioned security officer, or registrant has violated any provisions of this Act or of the rules and regulations promulgated under this Act;

(2) that the applicant, licensee, commissioned security officer, or registrant has committed any act resulting in conviction of a felony or a crime involving moral turpitude;

(3) that the applicant, licensee, commissioned security officer, or registrant has practiced fraud, deceit, or misrepresentation;

(4) that the applicant, licensee, commissioned security officer, or registrant has made a material misstatement in the application for or renewal of a license, registration, or security officer commission;

(5) that the applicant, licensee, commissioned security officer, or registrant has demonstrated incompetence or untrustworthiness in his actions.

(b) The board shall, before acting under Subsection (a) of this section provide 30 days' written notice to the applicant, licensee, commissioned security officer, or registrant of the charges and give him an opportunity to request a hearing before the board and be represented by an attorney. A hearing shall be scheduled by the board on such request.

(c) In the event that the board denies the application for, or revokes or suspends any license, security officer commission, or registration, or imposes any reprimand, the board's determination shall be in writing and officially signed. The original copy of the determination when so signed, shall be filed with the board and copies shall be mailed to the applicant, licensee, commissioned security officer, or registrant, and the complainant within two days after the filing.

(d) The board may suspend any registration on conviction in this state or any other state or territory of the United States, or in any foreign country, of a felony for a period not exceeding 30 days pending a hearing and a determination of charges. If the licensee is a corporation, proof of actual participation and knowledge on the part of the registrant is

required. If the hearing is adjourned at the request of the registrant, the suspension may be continued for an additional period of the adjournment.

Organization and Meetings of the Board

Sec. 12. (a) The board shall meet within 30 days after the effective date of this Act, and thereafter at regular intervals to be decided by a majority vote of the board.

(b) The board, including the representative of the director of the Department of Public Safety if he so designates one, shall elect from among its members a chairman, vice-chairman, and secretary to serve two-year terms commencing on September 1, of each odd-numbered year. The chairman, or in his absence, the vice-chairman, shall preside at all meetings of the board and perform the other duties prescribed in this Act.

(c) A majority of the board constitutes a quorum to transact business.

(d) At the first meeting, the board shall specify the date and place of the first examinations for licenses to be held.

SUBCHAPTER C. LICENSES

License Required and False Representation Prohibited

Sec. 13. (a) It shall be unlawful and punishable as provided in Section 44 of this Act for any person to engage in the business of, or perform any service as an investigations company, guard company, alarm systems company, armored car company, courier company, or guard dog company or to offer his services in such capacities or engage in any business or business activity required to be licensed by this Act unless he has obtained a license under the provisions of this Act.

(b) It is unlawful and punishable as provided in Section 44 of this Act for any person to represent falsely that he is employed by a licensee or represent falsely that he is licensed, registered, or commissioned.

(c) It shall be unlawful and punishable as provided in Section 44 of this Act for any individual to make application to the board as manager or to serve as manager of an investigations company, guard company, alarm systems company, armored car company, courier company, or guard dog company unless the individual intends to maintain and maintains that supervisory position on a daily basis for the company.

Qualifications

Sec. 14. (a) An applicant for a license or his manager must:

- (1) be at least 18 years of age;
- (2) be a citizen of the United States;

(3) not have been convicted in any jurisdiction of any felony or any crime involving moral turpitude for which a full pardon has not been granted;

(4) not have been declared by any court of competent jurisdiction incompetent by reason of mental defect or disease and has not been restored;

(5) not be suffering from habitual drunkenness or from narcotics addiction or dependence;

(6) not have been discharged from the armed services of the United States under other than honorable conditions;

(7) be of good moral character;

(8) be in compliance with any other reasonable qualifications that the board may fix by rule.

(b) An applicant who applies for a license to engage in the business of an investigations company or his manager shall have three (3) years consecutive experience prior to the date of said application in the investigative field, as an employee, manager, or owner of an investigations company or other requirements as shall be set by the board. The experience of the applicant must be reviewed by the board or by the director, and determined to be adequate to qualify the applicant to engage in the business of an investigations company.

(c) An applicant who applies for a license to engage in the business of a security services contractor or his manager shall have two (2) consecutive years experience prior to the date of said application in each security services field for which he applies, as an employee, manager, or owner of a security services contractor or other requirements as shall be set by the board. The experience of the applicant must have been obtained legally and must be reviewed by the board or by the director and determined to be adequate to qualify the applicant to engage in the business of a security services contractor.

Application and Examination

Sec. 15. (a) An application for a license under this Act shall be in the form prescribed by the board. The application shall include:

(1) the full name and business address of the applicant;

(2) the name under which the applicant intends to do business;

(3) a statement as to the general nature of the business in which the applicant intends to engage;

(4) a statement as to the classification under which the applicant desires to be qualified;

(5) the full name and residence address of each of its partners, officers, and directors, and its manager, if the applicant is an entity other than an individual;

(6) two recent photographs of a type prescribed by the board of the applicant, if the applicant is an individual, or of each officer and of each partner or shareholder who owns a 25 percent or greater interest in the applicant, if the applicant is an entity;

(7) one classifiable set of fingerprints of the applicant, if the applicant is an individual, or of each officer and of each partner or shareholder who owns a 25 percent or greater interest in the applicant, if the applicant is an entity;

(8) a verified statement of his experience qualifications in the particular field of classification in which he is applying;

(9) a letter from the police department and a letter from the sheriff's department of the city and county wherein the applicant resides concerning the character of the applicant and containing any objection or recommendation as to his application; and a letter from the Texas Department of Public Safety setting forth the record of any convictions of any applicant for a felony or a crime involving moral turpitude; and

(10) any other information, evidence, statements, or documents as may be required by the board.

(b) An application for a license under this Act shall include the Social Security number of the one making application.

(c) The board may require an applicant or his manager to demonstrate qualifications in his field of classification by an examination to be determined by the board.

(d) Payment of the application fee prescribed by this Act entitles the applicant or his manager to one examination without further charge. If the person fails to pass the examination, he shall not be eligible for any subsequent examination except upon payment of the reexamination fee which shall be set by the board in an amount not in excess of the renewal fee for the license classification for which license application was originally made.

Classification of License

Sec. 16. (a) No person may engage in any operation outside the scope of his license.

(b) For the purpose of defining the scope of licenses, the following license classifications are established:

(1) Class A: investigations company license, covering operations as defined in Subdivision (3), Section 2, of this Act;

(2) Class B: security services contractor license, covering operations as defined in Subdivision (9), Section 2, of this Act;

(3) Class C: covering the operations included within Class A and Class B.

(c) A person licensed only as a security services contractor may not make any investigation except as incidental to the theft, loss, embezzlement, misappropriation, or concealment of any property which he has been hired or engaged to protect.

(d) A Class A, B, or C license does not authorize the licensee to perform any services for which he has not qualified. The board shall indicate on the license which services the licensee is authorized to perform, and the licensee may not perform any service not indicated on the license.

Fees

Sec. 17. (a) The fee for making application for an original Class A or Class B license is \$150, and \$75 of the fee is not refundable.

(b) The fee for making application for an original Class C license is \$225, and \$75 of the fee is not refundable.

(c) The fee for renewing an original license is the same as the original license fee.

(d) The fee to reinstate a suspended license is \$100.

(e) The fee for an original branch office license as defined in Subdivision (20), Section 2 of this Act is \$100. The renewal fee for a branch office license is \$100.

(f) The fee for changing the business name of a licensee is \$50.

(g) The delinquency fee for not renewing a license in the month prior to its expiration date is \$100.

Manager to Control Business

Sec. 18. (a) The business of each licensee shall be operated under the direction and control of one manager, and no licensee shall make application to qualify more than one individual to serve as manager.

(b) No person shall act as a manager of a licensee until he has complied with each of the following:

(1) demonstrated his qualifications by a written examination;

(2) made a satisfactory showing to the board that he has the qualifications prescribed by Section 14 of this Act, and that none of the facts stated in Subsection (a), Section 11B, of this Act exist as to him.

(c) If the manager, who has qualified as provided in this section, ceases to be manager for any reason whatsoever, the licensee shall notify the board in writing within 14 days from such cessation. If notice is given, the license shall remain in force for a reasonable length of time to be determined by the rules of the board pending the qualifications as provided in this Act, of another manager. If the licensee fails to notify the board within the 14-day

period, his license shall be subject to suspension or revocation.

(d) When the individual on the basis of whose qualifications a license under this Act has been obtained ceases to be connected with the licensee for any reason whatsoever, the business may be carried on for such temporary period and under such terms and conditions as the board shall provide by regulation.

(e) If a manager lacks the experience to qualify to manage all categories of service included in a license or application, a supervisor qualified as required in Subsection (b) of this section must be responsible for each service for which the manager is unqualified.

Handgun; Security Officer Commission

Sec. 19. (a) It is unlawful and punishable as provided in Section 44 of this Act:

(1) for an individual employed as a private security officer to knowingly carry a handgun during the course of performing his duties as a private security officer if the board has not issued him a security officer commission under this section; or

(2) for any person to hire or employ an individual or for any individual to accept employment in the capacity of a private security officer to carry a handgun in the course and scope of his duties unless the private security officer is issued a security officer commission by the board.

(b) The board, with the concurrence of the Texas Department of Public Safety, may issue a security officer commission to an individual employed as a uniformed private security officer provided the geographical scope of the security officer commission is restricted to one named county in the State of Texas and all counties contiguous to the named county, except as allowed in Subsection (c) of this section.

(c) The board, with the concurrence of the Texas Department of Public Safety, may issue a security officer commission that is broader in geographical scope within the State of Texas than that specified in Subsection (b) of this section if the broader scope is shown to be in the public interest and necessary to the performance of the duties of the private security officer.

(d) The board, with the concurrence of the Texas Department of Public Safety, shall issue a security officer commission to a qualified employee of an armored car company that is a carrier that has a permit from the proper federal or state regulatory authority to conduct the armored car business in accordance with the permit or certificate. A security officer commission issued to an employee of an armored car company shall be broad enough in its geographical scope to cover the county or counties in this state in which the armored car company has a permit or certificate to conduct its business.

(e) The employer of a private security officer who makes application for a security officer commission shall submit an application to the board on a form provided by the board. A \$15 fee shall accompany each application for a security officer commission.

(f) No security officer commission may be issued to any individual who is under 18 years of age, who is a convicted felon, or who has committed any act which if committed by a licensee would be grounds for suspension or revocation of a license under this Act.

(g) The board shall send a copy of each application for a security officer commission to the Texas Department of Public Safety and to the sheriff of the county and the chief of police of the principal city of the county in which the applicant resides. A sheriff or chief of police who wishes to object to the issuance of a security officer commission to a particular applicant may do so by mailing or otherwise delivering a written statement of his objection and his reasons to the board. If the board decides to issue a security officer commission over the objections of a sheriff or chief of police, it shall mail a notice of its decision to the objecting officer and give him an opportunity to request a hearing before the board to contest the board's decision. If the objecting officer files a request for a hearing within 30 days after the date the notice was mailed to him, the board shall set the matter for a hearing. The board may not issue a security officer commission over the objection of a sheriff or chief of police unless it finds at the hearing that there is good cause to issue the commission over the objection or, if no hearing is requested, until the time for requesting a hearing has passed.

(h) Each security officer commission issued under this section shall be in the form of a pocket card designed by the board, and shall identify the licensee or the security department of a private business by whom the holder of the security officer commission is employed. A security officer commission expires on the date the license of the licensee who employs the officer expires or, if the officer is employed by the security department of a private business, one year after the date it is issued. No charge may be imposed for the pocket card, but an annual renewal fee for a commission is \$10.

(i) If the holder of the security officer commission terminates his employment with the licensee or the security department of a private business or transfers his residence to another county, he must return the pocket card to his employer and his employer must return the pocket card to the board within 14 days of the date of termination of the employment or transfer of business.

(j) The board shall provide by rule the procedure by which a licensee or the security department of a private business may issue a temporary security

officer commission to a private security officer who has made application to the board for a security officer commission.

(k) Subsection (a) of this section does not apply to the holder of a valid temporary security officer commission issued under this section if the holder is in uniform and in possession of only one handgun and engaged in the performance of his duties.

(l) The board may suspend or deny a security officer commission if the holder or applicant is indicted for a felony or for a misdemeanor involving moral turpitude.

Training Programs

Sec. 20. (a) The board shall establish training programs to be conducted by agencies and institutions approved by the board. The board may approve training programs conducted by licensees if the licensees offer the courses listed in Subsection (b) of this section, and if the instructors of the training program are qualified instructors approved by the board. The board shall approve a training program conducted by the security department of a private business to train its own personnel, without regard to its curriculum, if it is adequate for the business' security purposes.

(b) The basic training course approved by the board shall consist of a minimum of 30 hours and shall include:

- (1) legal limitations on the use of handguns and on the powers and authority of a private security officer;
- (2) familiarity with this Act;
- (3) field note taking and report writing;
- (4) range firing and procedure, and handgun safety and maintenance; and
- (5) any other topics of security officer training curriculum which the board deems necessary.

(c) The board shall develop a commissioned security officer training manual to be used in the instructing and training of commissioned security officers.

(d) The board shall promulgate all rules necessary to administer the provisions of this section concerning the training requirements of this Act.

(e) The board may not issue a security officer commission to an applicant employed by a licensee unless the applicant submits evidence satisfactory to the board that:

- (1) he has completed the basic training course at a school or under an instructor approved by the board;
- (2) he meets all qualifications established by this Act and by the rules of the board;
- (3) he has satisfied his handgun training instructor that he has attained a minimum average

marksmanship competency of 160 out of 300 on an "Army L" target or a minimum of 80 out of 150 on an F.B.I. Silhouette target (N.R.A. B-27), at 50 feet with 10 shots slow fire, 10 shots time fire, and 10 shots double-action.

(f) The board may not issue a security officer commission to an applicant employed by the security department of a private business unless the applicant submits evidence satisfactory to the board that:

(1) he has completed an approved training course conducted by the security department of the business; and

(2) he meets all qualifications established by this Act and by the rules of the board.

(g) In addition to the requirements of Subsections (e) and (f) of this section, the board by rules and regulations shall establish other qualifications for persons who are employed by licensees or the security department of a private business in positions requiring the carrying of handguns. These qualifications may include physical and mental standards, standards of good moral character, and other requirements that relate to the competency and reliability of individuals to carry handguns. The board shall prescribe appropriate forms and rules and regulations by which evidence that the requirements are fulfilled is presented.

(h) The board shall prescribe appropriate rules and regulations for the maintenance of records relating to persons issued security officer commissions by the board.

Psychological Testing

Sec. 20A. The board shall contract with one or more licensed psychologists practicing to study the feasibility of developing psychological and emotional standards of applicants for a private security officers commission and the possibility of developing an examination that will test those standards. If the examination can be validated, the board shall implement the examination by January 1, 1981. In the event no examination is being utilized by the board by January 1, 1981, it shall be incumbent upon the legislature to review this section.

Failure to Pass Psychological Test; Licensee or Private Business Security Department Held Harmless and Defense Provided

Sec. 20B. Should an applicant for a private security commission file legal action against a licensee or a security department of a private business as a result of failing to pass a psychological and emotional standards examination approved by the board, the State of Texas agrees to hold harmless and provide legal defense for the licensee or the security department of a private business.

Form of Licenses

Sec. 21. A license or a branch office license, when issued, shall be in the form prescribed by the board, and shall include:

- (1) the name of the licensee;
- (2) the name under which the licensee is to operate; and
- (3) the number and date of the license.

Posting

Sec. 22. (a) The license shall at all times be posted in a conspicuous place in the principal place of business of the licensee.

(b) Each branch office license shall at all times be posted in a conspicuous place in each branch office of the licensee.

Change of Address and New Officers

Sec. 23. Notification to the board shall be made within 14 days after the change of address of the principal place of business of a licensee, the change of address of a branch office, or the change of a business name under which a licensee does business. A licensee shall within 14 days after such change, notify the board of any and all changes of his address, of the name under which he does business and of any changes in its officers or partners.

License Not Assignable

Sec. 24. A license issued under this Act is not assignable unless the assignment is approved in advance by the board. The fee for assignment of a license is \$100.

Termination of License

Sec. 25. The board shall prescribe by rule the procedure under which a license issued under this Act may be terminated. The fee for the termination of a license under this Act shall be established by the board in an amount not to exceed \$5.

Notice to Local Officials

Sec. 26. Notice of the issuance, revocation, reinstatement, or expiration of every license, commission, or registration card issued by the board shall be furnished to the sheriff of the county and the chief of police of the principal city of the county in which every person regulated under this Act resides.

Licensee Responsible for Conduct of Employees

Sec. 27. A licensee may be legally responsible for the conduct in the business of each employee while the employee is performing his assigned duties for the licensee.

Divulgence of Information

Sec. 28. (a) Any licensee or officer, director, partner, or manager of a licensee shall divulge to any law enforcement officer or district attorney, or

his representative, any information he may acquire as to any criminal offense, but he shall not divulge to any other person except as he may be required by law so to do, any information acquired by him except at the direction of the employer or client for whom the information was obtained.

(b) No licensee or officer, director, partner, manager, or employee of a licensee shall knowingly make any false report to his employer or client for whom information was being obtained.

(c) No written report shall be submitted to a client except by the licensee, qualifying manager, or a person authorized by one or either of them, and such person submitting the report shall exercise diligence in ascertaining whether or not the facts and information in such a report are true and correct.

(d) No licensee or officer, director, partner, manager, or employee of a licensee shall use a title, or wear a uniform, or use an insignia, or use an identification card, or make any statement with the intent to give an impression that he is connected in any way with the federal government, a state government, or any political subdivision of a state government.

Employee Records

Sec. 29. Each licensee shall maintain a record containing such information relative to his employees as may be prescribed by the board.

Advertisements

Sec. 30. Every advertisement by a licensee soliciting or advertising business shall contain his company name and address and license number as they appear in the records of the board.

Branch Offices

Sec. 31. (a) Each licensee shall file in writing with the board the address of each branch office, and within 14 days after the establishment, closing, or changing of location of a branch office shall notify the board in writing of such fact.

(b) Upon application of a licensee the board shall issue a branch office license. The fee for a branch office license shall be \$100; the fee for a renewal for such license shall be \$100.

Registration of Employees or Private Investigators

Sec. 32. (a) Every employee of a licensee who is employed as a private investigator, manager, or branch office manager must be registered with the board within 14 days after the commencement of such employment.

(b) The minimum age of a person registered under this section shall be 18 years of age.

(c) The board may promulgate by rule any additional qualifications of an individual registered under this section as a private investigator, manager, or branch office manager.

Application for Registration

Sec. 33. The application for registration shall be verified and shall include:

(1) the full name, residence address, residence telephone number, date and place of birth, and the Social Security number of the employee;

(2) a statement listing any and all names used by the employee, other than the name by which he is currently known, together with an explanation setting forth the place or places where each name was used, the date or dates of each use, and a full explanation of the reasons why each such name was used. If the employee has never used a name other than that by which he is currently known, this fact shall be set forth in the statement;

(3) the name and address of the employer and the date the employment commenced and a letter from the licensee requesting that the employee be registered under his license;

(4) the title of the position occupied by the employee and a description of his duties;

(5) two recent photographs of the employee, of a type prescribed by the board, and two classifiable sets of his fingerprints;

(6) a letter from the police department and a letter from the sheriff's department of the city and county wherein the applicant resides concerning the character of the applicant and containing any objection or recommendation as to his application;

(7) such other information, evidence, statements, or documents, as may be required by the board.

Pocket Card

Sec. 34. A pocket card of such size, design, and content as may be determined by the board shall be issued to each registrant under this Act. The date of issuance shall be noted on such pocket card, and the date of expiration shall also be noted. Such pocket card shall contain a color photograph and signature of the registrant.

Undercover Agents: Exemption

Sec. 35. Notwithstanding any other provision of this Act, employees of a licensee who are employed exclusively as undercover agents shall not be required to register under this Act with the board.

Pocket Card: Annual Renewal

Sec. 36. The pocket card of each registrant expires on the date the license of the licensee who employs the registrant expires. On notification

from the board the month before expiration of the registrant's pocket card, each registrant shall file for renewal of registration on a form designed by the board.

Pocket Card: Return

Sec. 37. When an individual to whom a pocket card has been issued under Section 32 of this Act terminates his position, he shall return the pocket card to the licensee within five days after his date of termination.

Cancellation

Sec. 38. Within seven days after the licensee has received the pocket card of a terminated registered employee, the licensee shall mail or deliver the pocket card to the board for cancellation, along with a letter from the licensee stating the date the registered employee terminated, the date the licensee received the pocket card of the terminated registered employee, and the cause for which or the conditions under which the registered employee terminated.

Registration Fee

Sec. 39. The registration fee for private investigators, managers, supervisors, and branch office managers required by this Act is \$15. The annual renewal registration fee for private investigators, managers, and branch office managers required by this Act is \$15.

Bonds and Insurance Filed for Licensee

Sec. 40. (a) No license shall be issued under this Act unless the applicant files with the board a surety bond executed by a surety company authorized to do business in this State in the sum of Ten Thousand Dollars (\$10,000) conditioned to recover against the principal, its servants, officers, agents and employees by reason of its wrongful or illegal acts in conducting such business licensed under this Act; in addition to the surety bond required hereunder, every applicant for a license shall, prior to the issuance of the same, file with the board proof of a policy of public liability insurance in the sum of not less than Fifty Thousand Dollars (\$50,000) conditioned to compensate any person for damages, including but not limited to bodily injuries, caused by wrongful acts of the principal, its servants, officers, agents and employees in the conduct of any business licensed by this Act.

(b) No license shall be issued under this Act unless the applicant files with the board proof of a policy of public liability insurance in the form of a certificate of insurance executed by an insurer authorized to do business in this state and countersigned by a local recording agent licensed in this state. The policy of public liability insurance shall be conditioned to pay on behalf of the licensee all sums which the licensee

becomes legally obligated to pay as damages because of bodily injury, limit of liability Fifty Thousand Dollars (\$50,000), property damage, limit of liability Twenty-five Thousand Dollars (\$25,000), and personal injury, limit of liability Fifty Thousand Dollars (\$50,000), caused by an occurrence involving the principal, its servants, officers, agents, or employees in the conduct of any business licensed under this Act.

Action on Bonds to Recover Damages

Sec. 41. The bond required by this Act shall be made payable to the State of Texas, and anyone so injured by the principal, its servants, officers, agents and employees, shall have the right and be permitted to sue directly upon this obligation in their own names, and this obligation shall be subject to successive suits for recovery until complete exhaustion of the face amount hereof.

Suspension for Failure to File Surety Bond or Insurance

Sec. 42. (a) Every licensee shall at all times maintain on file with the board the surety bond and certificate of insurance required by this Act in full force and effect and upon failure to do so, the license of such licensee shall be forthwith suspended and shall not be reinstated until an application therefor, in the form prescribed by the board, is filed together with a proper bond, insurance certificate, or both.

(b) The board may deny the application notwithstanding the applicant's compliance with this section:

(1) for any reason which would justify refusal to issue or a suspension or revocation of a license; or

(2) for the performance by applicant of any practice while under suspension for failure to keep his bond or insurance certificate in force, for which a license under this Act is required.

(c) Bonds executed and filed with the board pursuant to this Act shall remain in force and effect until the surety has terminated future liability by a 30-day notice to the board.

(d) Insurance certificates executed and filed with the board pursuant to this Act shall remain in force and effect until the insurer has terminated future liability by a 10-day notice to the board.

Cash Deposited in Lieu of Surety Bond

Sec. 43. The sum of \$10,000 in cash may be deposited with the State of Texas, in lieu of the surety bond required by this Act.

SUBCHAPTER D. ENFORCEMENT PROVISIONS

Penal Provisions

Sec. 44. Any person who knowingly falsifies the fingerprints or photographs submitted under Subdivisions (6) and (7) of Subsection (a), Section 15, is guilty of a felony and upon conviction is punishable by imprisonment in the penitentiary for not more than five years. Any person who violates any of the other provisions of this Act is guilty of a misdemeanor or punishable by fine not to exceed \$500 or by imprisonment in the county jail not to exceed one year, or both.

Expiration and Renewal of License

Sec. 45. (a) A license issued under this Act expires at 12 midnight on the last day of the 11th month after the month in which it is issued.

(b) Removal of a license shall not prohibit the bringing of disciplinary proceedings for an act committed before the effective date of the renewal.

(c) The renewal period for a license is the month preceding the month in which it expires.

Expiration Dates of Licenses; Proration of Fees

Sec. 46. The board by rule may adopt a system under which the expiration date of a license may be changed at renewal time so that a licensee may pay only that portion of the license renewal fee which is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

Activity During Suspension of License

Sec. 47. A suspended license is subject to expiration and shall be renewed as provided in this Act, but such renewal does not entitle the licensee, while the license remains suspended and until it is reinstated, to engage in the licensed activity, or in any other activity or conduct in violation of the order or judgment by which the license was suspended.

Reinstatement of a Revoked License

Sec. 48. A revoked license may not be reinstated.

Notification of Conviction for Felony or Crime Involving Moral Turpitude

Sec. 49. The Texas Department of Public Safety shall notify the board, and the police department and the sheriff's department of the city and county wherein any person licensed, commissioned, or registered under this Act resides of the conviction of such person for a felony or a crime involving moral turpitude.

Expiration of Licenses and New Licenses

Sec. 50. (a) A license which is not renewed within one year after its expiration may not be renewed, restored, reinstated, or reissued thereafter.

(b) The holder of the license may obtain a new license only on compliance with all of the provisions of this Act relating to the issuance of an original license.

[Amended by Acts 1975, 64th Leg., p. 788, ch. 303, § 1, eff. May 27, 1975; Acts 1975, 64th Leg., p. 1312, ch. 494, §§ 1 to 49, eff. July 19, 1975; Acts 1977, 65th Leg., p. 1836, ch. 735, § 2.032, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1871, ch. 746, §§ 1 to 25, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 518, ch. 242, § 1, eff. May 17, 1979; Acts 1979, 66th Leg., p. 1041, ch. 471, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1811, ch. 738, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 2179, ch. 830, §§ 2 to 4, eff. Sept. 1, 1979.]

Section 27 of Acts 1977, 65th Leg., ch. 746 provided:

"A person licensed on the effective date of this Act may continue to offer the services he is currently offering without reapplication or additional qualifications."

Section 2 of Acts 1979, 66th Leg., p. 519, ch. 242, provided:

"Section 3(a), Private Investigators and Private Security Agencies Act (Article 4413(29bb), Vernon's Texas Civil Statutes), as amended by this Act, does not affect any right or duty that matured, any penalty that was incurred, any civil or criminal liability that arose, or any proceeding that began before the effective date of this Act."

Section 2 of Acts 1979, 66th Leg., p. 1042, ch. 471, provided:

"Section 20(b), Private Investigators and Private Security Agencies Act (Article 4413(29bb), Vernon's Texas Civil Statutes), as amended by this Act, applies only to an individual who completes a basic training course after the effective date of this Act."

Art. 4413(29cc). Polygraph Examiners Act

[See Compact Edition, Volume 4 for text of 1 to 4]

Creation of the Board

Sec. 5.

[See Compact Edition, Volume 4 for text of 5(a) to (d)]

(e) The Polygraph Examiners Board is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1981.

¹ Article 5429k.

[See Compact Edition, Volume 4 for text of 6 to 30]

[Amended by Acts 1977, 65th Leg., p. 1836, ch. 735, § 2.031, eff. Aug. 29, 1977.]

CHAPTER SEVEN. INTERGOVERNMENTAL COOPERATION

Article

4413(32e). Joint Advisory Committee on Government Operations.
4413(32f). Closeup Act.

Art. 4413(32). Interagency Cooperation Act

[See Compact Edition, Volume 4 for text of 1 to 3]

Written Agreement or Contract

Sec. 4. Before any services may be rendered or received, a written agreement or contract shall be entered into, specifying the kinds and amounts of services to be rendered, the bases for calculating

reimbursable costs, and the maximum amount of the costs during the time period covered by the agreement. In emergency situations for the defense or safety of the civil population, or in planning and preparation therefor, or in cooperative efforts, proposed by the Governor, for the economic development of the State, or where the amount involved is less than Three Hundred and Fifty Dollars (\$350), no written contract or advance approval by the Board of Control is required. To be valid, the written agreement or contract must have the advance approval of the administrator of the State agencies which are parties thereto, and of the Board of Control.

[See Compact Edition, Volume 4 for text of 5 to 7]

[Amended by Acts 1979, 66th Leg., p. 1803, ch. 735, § 1, eff. Aug. 27, 1979.]

Art. 4413(32a). Interagency Planning Councils

[See Compact Edition, Volume 4 for text of 1 to 3]

Sec. 4. (a) The Governor shall establish a Division of Planning Coordination within his office.

(b) Responsibilities of the Division of Planning Coordination.

(1) The Division shall coordinate the activities of the Interagency Planning Councils. The several councils may participate jointly in studies providing information common to all planning efforts.

(2) The Division shall serve as the State Clearinghouse on all state agency applications for federal grant or loan assistance, and shall be notified of all applications for federal grant or loan assistance prior to actual submittal of such applications.

(3) The Division may provide for the review and comment of all state plans of state agencies required as a condition for federal assistance and may provide for the review and comment on all state agency applications for grant or loan assistance.

(4) The Division shall establish policies and guidelines for the effective review and comment on such state plans and applications for federal grant or loan assistance.

(5) The Division shall cooperate with the Legislative Budget Board in developing information requirements pertaining to the review and comment process.

[Amended by Acts 1975, 64th Leg., p. 1403, ch. 544, § 1, eff. Sept. 1, 1975.]

Section 2 of the 1975 Act provided:
"This Act takes effect September 1, 1975."

Art. 4413(32b). Intergovernmental Cooperation Act

[See Compact Edition, Volume 4 for text of 1 to 4]

Application of Sunset Act

Sec. 4a. The Texas Advisory Commission on Intergovernmental Relations is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1983.

¹ Article 5429k.

Membership; Duties

Sec. 5. The commission shall be composed of twenty-four appointed members and two ex officio members as follows: four county officials, four city officials, two public school officials, two representatives of other political subdivisions, two federal officials residing in Texas and responsible for federal programs operating in the State, and four private citizens all appointed by the Governor; three State Senators appointed by the Lieutenant Governor; three State Representatives appointed by the Speaker of the House; and the Lieutenant Governor (ex officio) and Speaker of the House of Representatives (ex officio). The duties to be performed by each public official or employee appointed to the commission or serving ex officio shall be considered duties in addition to those otherwise required by that person's office.

[See Compact Edition, Volume 4 for text of 6]

Terms of Office; Vacancies; Records

Sec. 7. (a) Appointed members of the commission shall hold office for staggered terms of six years, with the terms of eight appointed members, including one Senator and one Representative, expiring on the first day of September in each odd-numbered year.

[See Compact Edition, Volume 4 for text of 7(b) to 13]

[Amended by Acts 1975, 64th Leg., p. 165, ch. 69, §§ 1, 2, eff. April 24, 1975; Acts 1977, 65th Leg., p. 1842, ch. 735, § 2.075, eff. Aug. 29, 1977.]

Art. 4413(32c). Interlocal Cooperation Act

[See Compact Edition, Volume 4 for text of 1 and 2]

Definitions

Sec. 3. As used in this Act:

(1) "local government" means a county; a home rule city or a city, village, or town organized under the general laws of this state; a special district; a school district; a junior college district; any other legally constituted political subdivision of the

State of Texas or any adjoining state; or a combination of political subdivisions.

[See Compact Edition, Volume 4 for text of 3(2) to 3A]

Authority to Make Interlocal Contracts and Agreements
Sec. 4.

[See Compact Edition, Volume 4 for text of 4(a) to (c)]

(d) The contracting parties to any interlocal contract or agreement shall have full authority to create an administrative agency or designate an existing political subdivision for the supervision of performance of an interlocal contract or agreement and any administrative agency so created or political subdivision so designated shall have the authority to employ personnel and engage in other administrative activities and provide other administrative services necessary to execute the terms of any interlocal contract or agreement. For purposes of this Act any body politic and corporate organized under the laws of this state shall be considered a political subdivision.

(e) The contracting parties to any interlocal contract or agreement shall have full authority to contract with state departments and agencies as defined in Article 4413(32), Vernon's Texas Civil Statutes, or any similar department or agency of an adjoining state. The contracting parties to interlocal contract or agreement shall have specific authority to contract with the Department of Corrections for the construction, operation and maintenance of a regional correctional facility provided that title to the land on which said facility is to be constructed is deeded to the Department of Corrections and provided further that a contract is executed by and between all the parties as to payment for the housing, maintenance and rehabilitative treatment of persons held in jails who cannot otherwise be transferred under authority of existing statutes to the direct responsibility of the Department of Corrections.

[See Compact Edition, Volume 4 for text of 4(f) and (g)]

(h)(1) By resolution of the governing body, a political subdivision of the state may contract with other political subdivisions of the state to participate in the ownership, construction, and operation of a regional jail facility. The regional jail shall be located within the geographic boundaries of one of the participating political subdivisions, but the regional jail need not be located in a county seat.

(2) Prior to acquisition and construction of the regional jail facility, bonds to finance the acquisition and construction of the facility shall be issued by the participating subdivisions in the manner prescribed by law for issuance of permanent improvement bonds.

(3) The participating political subdivisions may establish by agreement that the police chief or sheriff of the political subdivision in which the regional jail is located shall be appointed as jailer of the facility and shall have authority to supervise the operation and maintenance of the jail, that a committee composed of the sheriff or police chief of each participating political subdivision may be established to appoint a jailer to supervise the maintenance and operation of the jail, or that each police chief or sheriff may continue the supervision and responsibility over the prisoners he has incarcerated in the regional jail facility. The participating political subdivisions may also employ or authorize the jailer to employ additional personnel necessary to operate and maintain the facility.

(4) When an agreement is established pursuant to Subdivision (3) of this subsection, prisoners incarcerated in the regional jail shall be under the supervision of the person designated to have responsibility for the supervision of the regional jail. If a prisoner is transferred back to the originating political subdivision from a regional jail, the appropriate law enforcement official in the originating political subdivision shall assume supervision and responsibility for the prisoner.

(5) While a prisoner is incarcerated in a regional jail facility, a sheriff or police chief not assigned to supervise the regional jail is not liable for the escape of the prisoner or for any injury or damage caused by or to the prisoner unless the escape, injury, or damage is directly caused by the sheriff or police chief.

(6) A jailer in charge of a regional jail and any assistant jailers he may employ must be commissioned peace officers.

[See Compact Edition, Volume 4 for text of 5]

Emergency Assistance

Sec. 5A. (a) A local government may provide emergency assistance to another local government, regardless of whether the local governments have previously agreed or contracted to provide that kind of assistance, if:

(1) in the opinion of the presiding officer of the governing body of the local government desiring emergency assistance, a state of civil emergency exists in the local government that requires assistance from another local government and the presiding officer requests the assistance; and

(2) before the emergency assistance is rendered, the governing body of the local government that is to provide the assistance, by resolution or other official action, has authorized the local government to provide the assistance.

(b) This section does not apply to emergency assistance rendered by law enforcement officers under

Section 2, Chapter 81, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 999b, Vernon's Texas Civil Statutes).

[See Compact Edition, Volume 4 for text of 6 to 8]

[Amended by Acts 1975, 64th Leg., p. 1235, ch. 460, §§ 1 to 3, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1619, ch. 634, § 2, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1362, ch. 612, § 1, eff. Aug. 27, 1979.]

Section 4 of the 1975 amendatory act provided:
"Any law in conflict with this Act is hereby repealed to the extent of the conflict."

Art. 4413(32e). Joint Advisory Committee on Government Operations

Purpose

Sec. 1. The purpose of this Act is to promote the economical delivery of the services provided by state government by means of a comprehensive review of governmental structure and administration.

Definitions

Sec. 2. In this Act:

(1) "Committee" means the Joint Advisory Committee on Government Operations.

(2) "Departments and Agencies" means all departments, bureaus, agencies, boards, commissions, and other instrumentalities of the executive branch of the state government.

Creation of Committee

Sec. 3. There is created the Joint Advisory Committee on Government Operations.

Membership

Sec. 4. (a) The committee consists of the lieutenant governor, the speaker of the house of representatives, the secretary of state, and other members appointed as provided by this section.

(b) The governor shall appoint nine persons, none of whom may be members of the house or of the senate.

(c) The lieutenant governor shall appoint three members of the senate.

(d) The speaker of the house of representatives shall appoint three members of the house of representatives.

Terms and Vacancies

Sec. 5. (a) The initial members of the committee shall take office within 30 days after the effective date of this Act and shall serve until the expiration of the committee.

(b) Vacancies among the appointed members shall be filled for the unexpired terms in the same manner as the original appointments were made.

Compensation

Sec. 6. (a) Legislative members of the committee shall serve without additional compensation. Each member shall be reimbursed from the appropriate fund of the member's respective house for travel, subsistence, and other necessary expenses incurred in performing the duties of the committee.

(b) Persons appointed pursuant to Section 4(b) of this Act shall serve without compensation but shall be reimbursed for travel, subsistence, and other necessary expenses from appropriations made by the legislature to the committee.

(c) The duties to be performed by each public official or employee appointed to the committee shall be considered duties in addition to those otherwise required by that person's office.

Officers

Sec. 7. The lieutenant governor shall serve as chairman of the committee. The speaker of the house of representatives shall serve as vice-chairman of the committee.

Quorum

Sec. 8. Ten members of the committee shall constitute a quorum for the conduct of business.

Duties

Sec. 9. The committee shall:

(1) examine and evaluate the organization and methods of operation of the departments and agencies of state government;

(2) develop proposals for improving the structure and administration of state government in order to assure the delivery of governmental services at the lowest possible cost;

(3) recommend policies and programs to minimize creation of new departments and agencies of state government and to control the growth of existing departments and agencies; and

(4) recommend suspension of government programs and services that duplicate and exceed in cost those same services offered by private business.

Powers

Sec. 10. The committee or any subcommittee of its membership designated by the chairman may:

(1) appoint and fix the compensation of necessary staff, including the retention of independent auditors;

(2) hold open hearings, take testimony, and administer oaths or affirmations to witnesses;

(3) secure directly from any department or agency of state government any information deemed necessary for the implementation of this Act;

(4) make findings and issue reports in the execution of the duties imposed by Section 9 of this Act.

Appropriations; Private Funds

Sec. 11. The legislature shall appropriate money necessary to carry out the provisions of this Act in the General Appropriations Act for the biennium ending August 31, 1977, or in special appropriation acts for the purpose. Private funds including public or private foundation funds may be used to defray the cost of conducting any of the affairs of the committee upon authorization by the committee.

Cooperation of Other Departments and Agencies

Sec. 12. (a) The Texas Legislative Council, the Legislative Budget Board, the Legislative Audit Committee, the Advisory Commission on Intergovernmental Relations, and the Division of Planning Coordination shall, through their respective administrative officers, furnish staff assistance to the committee upon request.

(b) Each department and agency of state government is directed to furnish assistance and information to the committee upon request.

Reports; Recommendations; Dissolution

Sec. 13. The committee may make an interim report on its progress, together with any specific recommendations it may deem desirable, to any session of the 64th Legislature, and shall make its final report to the 65th Legislature not later than 30 days after that legislature is organized. Unless extended by the 65th Legislature, the committee is dissolved on May 31, 1977.

[Acts 1975, 64th Leg., p. 949, ch. 357, §§ 1 to 13, eff. June 19, 1975.]

Art. 4413(32f). Closeup Act

Short Title

Sec. 1. This Act may be cited as the Texas Closeup Act.

Definitions

Sec. 2. In this Act:

- (1) "Board" means the Texas Closeup Board;
- (2) "Program" means the Texas Closeup Program.

Creation of Program

Sec. 3. The Texas Closeup Program is created. Under this program, 11th and 12th grade students and supervising teachers from participating school districts and private institutions may be brought to Austin in order to observe and evaluate state government.

Texas Closeup Board

Sec. 4. (a) Control of the program is vested in the Texas Closeup Board, which is composed of nine members appointed by the governor with the advice and consent of the senate. The term of office of members is six years, and the terms shall be staggered at two-year intervals. In making the initial appointments, the governor shall designate three members for terms expiring on January 31 of each of the succeeding three consecutive odd-numbered years.

(b) Vacancies in the offices of members must be filled by appointment by the governor for the unexpired term.

(c) The board shall elect from among its members a chairman to serve for a term of one year.

(d) The board shall have its office in Austin.

(e) Members of the board serve without compensation but shall be reimbursed for actual and necessary expenses incurred in carrying out official duties.

(f) Five members constitute a quorum for the transaction of business.

(g) The Texas Closeup Board shall expire on December 31, 1981, unless its existence is extended prior to that date by legislative action.

Duties of Board

Sec. 5. The board shall in conjunction with the board and executive officers of the Closeup Foundation:

- (1) develop the tours, seminars, and other activities of the program;
- (2) promulgate rules necessary for the administration of the program, including rules governing the eligibility requirements for participating students and the compensation to be provided supervising teachers;
- (3) coordinate the program with the National Closeup Foundation;
- (4) prepare and submit annually to the governor and legislature an operating budget; and
- (5) solicit gifts, grants, and endowments from public and private sources.

Executive Director

Sec. 6. (a) The board shall employ an executive director and may delegate to him authority to manage and operate the affairs of the program subject to orders of the board.

(b) The director shall:

- (1) serve as liaison with the board and executive officers of the Closeup Foundation;
- (2) hire adequate staff to carry out the program;

(3) coordinate the program with administrators of participating school districts and private institutions;

(4) develop for board approval a plan to divide the state into regions and select regional coordinators for implementation of the program; and

(5) carry out the orders of the board in the administration and development of the program.

Texas Closeup Advisory Council

Sec. 7. (a) There is created the Texas Closeup Advisory Council, to be composed of the following members:

- (1) the governor;
- (2) the lieutenant governor;
- (3) the secretary of state;
- (4) the comptroller of public accounts;
- (5) the treasurer;
- (6) the commissioner of the General Land Office;
- (7) the attorney general;
- (8) the chairman of the Railroad Commission of Texas;
- (9) the chief justice of the Supreme Court;
- (10) the presiding judge of the Court of Criminal Appeals;
- (11) the speaker of the house;
- (12) two members of the senate, appointed biennially for two-year terms by the lieutenant governor;
- (13) five members of the house of representatives, appointed biennially for two-year terms by the speaker of the house;
- (14) the commissioner of education; and
- (15) one representative from each teacher, school administrator, school board, or other professional organization involved in high school education, as determined by the board, appointed by the board for a term of two years.

(b) The governor or his designee from among the other members shall serve as chairman of the advisory council.

(c) The advisory council shall meet at least once a year and at other times it considers necessary.

(d) The advisory council shall advise and assist the board in the development and implementation of the program and shall recommend changes in the program considered necessary in order to improve its services and functions.

Grants and Gifts; No State Funds

Sec. 8. The board may accept and administer, without appropriation, grants and gifts from the federal government and from any foundation, trust fund, corporation, individual, or organization for the

use and benefit of the program. No state funds may be specifically appropriated to support the program.

Contract for Services

Sec. 9. The board may contract with individuals, federal, state, and local government agencies, and corporations or associations to provide services necessary to the administration of the program.

[Acts 1977, 65th Leg., p. 2035, ch. 814, §§ 1 to 9, eff. June 16, 1977; Acts 1979, 66th Leg., p. 1037, ch. 466, § 1, eff. Aug. 27, 1979.]

**CHAPTER NINE. COMMISSIONS
AND AGENCIES**

Article

- 4413(34a). Coordination of Regulatory Agency Functions.
- 4413(34b). Aircraft Pooling Act.
- 4413(34c). Investment of Local Funds.
- 4413(42a). Joint Advisory Committee on Educational Services to the Deaf.
- 4413(42b). Repealed.
- 4413(47). Expired.
- 4413(47a). Repealed.
- 4413(47b). Energy Development Act of 1977.
- 4413(47c). Energy and National Resources Advisory Council.
- 4413(48). Repealed.

Art. 4413(33a). Distribution of State Agency Publications

Secs. 1 to 3. [Amends § 17(e) of art. 5446a and art. 5442a; repeals art. 5442]

Definitions

Sec. 4. In this Act:

(1) "Person" means an individual, association, or corporation.

(2) "Publication" means printed matter containing news or other information. It includes magazines, newsletters, newspapers, pamphlets, and reports.

(3) "State agency" means any department, commission, board, office, or other agency that:

(A) is in the executive branch of state government;

(B) has authority that is not limited to a geographical portion of the state; and

(C) was created by the constitution or a statute of the state.

Publication Request Forms

Sec. 5. (a) Each state agency that distributes publications to any person or other state agency shall distribute a publication request form on request or with each copy of the last publication that it distributes before January 1 of each year.

(b) The publication request form provides a means of requesting a state agency's publications.

(c) The comptroller of public accounts shall have the publication request forms printed and shall furnish the forms to each state agency that distributes publications. The comptroller shall furnish the forms in sufficient quantities to enable each state agency annually to distribute a form to each person or state agency that receives a publication.

Publication Distribution List

Sec. 6. (a) If a state agency receives a completed publication request form or a written request for its publications, the agency may place the name of the requestor on its publication distribution list.

(b) A state agency shall compile a distribution list after January 1 of each year from the forms and written requests received for publications for that calendar year.

(c) A state agency may not place the name of a person, state agency, or other entity on the publication distribution list unless the distributing agency has received a completed publication request form or a written request for publications from that person, state agency, or other entity.

Distribution of Publications

Sec. 7. Except as provided by Section 5 of this Act, a state agency may not distribute a publication to a person, state agency, or other entity unless the name of the person, agency, or entity appears on the distributing agency's publication distribution list.

Distribution to Those Not on the List

Sec. 8. (a) A state agency may distribute a copy of a publication to a person, state agency, or other entity that is not listed on the publication distribution list if the person, agency, or entity:

- (1) has orally or in writing requested a specific copy of a publication prior to or after this Act; or
- (2) is a newly elected or appointed state officer, newly appointed executive head of a state agency, or newly established state agency.

(b) A state agency shall send to the Legislative Reference Library five copies of each publication that it distributes. The library shall make available to its users the publications of each state agency.

Filing the Publication Request List

Sec. 9. Before March 1 of each year, each state agency that distributes publications shall file a copy of its publication distribution list with the comptroller of public accounts. When filed, the lists are public information.

Application

Sec. 10. Sections 4 through 9 of this Act do not apply to the distribution of information that is required by law.

Effective Date

Sec. 11. (a) Except as provided by Subsection (b) of this section, Sections 4 through 9 of this Act take effect September 1, 1979.

(b) Sections 7 and 8 of this Act take effect January 1, 1980.

[Acts 1979, 66th Leg., p. 1776, ch. 720, §§ 4 to 6, 9, eff. Sept. 1, 1979; §§ 7, 8, eff. Jan. 1, 1980; §§ 10, 11, eff. Aug. 27, 1979.]

Art. 4413(34). Repealed by Acts 1975, 64th Leg., p. 2063, ch. 678, § 5, eff. June 20, 1975

The repealed article, creating the Mass Transportation Commission, was derived from Acts 1969, 61st Leg., p. 1825, ch. 615. See, now, arts. 6663b, 6663c.

Art. 4413(34a). Coordination of Regulatory Agency Functions

Sec. 1. In this Act, "regulatory agency" means a constitutionally or statutorily created department, commission, board, office, or other agency that:

- (1) is in the executive branch of state government;
- (2) has authority not limited to a geographical part of the state; and
- (3) has authority to grant, deny, renew, suspend, or revoke a license, permit, certificate, registration, or other form of permission to engage in an occupation or to operate a business.

Sec. 2. (a) Before a regulatory agency inspects, surveys, investigates, or requires a report to be filed by a regulated individual or business, the executive head of the agency shall determine if that agency's or another regulatory agency's previous inspection, survey, investigation, or reporting requirement has gathered information about the individual or business that substantially satisfies the present information need of the agency. If so, the regulatory agency may not inspect, survey, investigate, or require a report to be filed by the individual or business.

(b) The executive head of a regulatory agency, on request, shall release to the executive head of another regulatory agency any information not made confidential by statute and within the requesting regulatory agency's statutory jurisdiction about a regulated individual or business that it gathers in an inspection, survey, or investigation of the individual or business or in a report filed by the individual or business.

(c) The executive head of a regulatory agency shall coordinate its inspections, surveys, investigations, and reporting requirements within the agency and with those of other regulatory agencies to avoid the duplication of those functions.

[Acts 1979, 66th Leg., p. 1800, ch. 732, §§ 1, 2, eff. Aug. 27, 1979.]

Art. 4413(34b). Aircraft Pooling Act**Short Title**

Sec. 1. This Act may be cited as the State Aircraft Pooling Act.

Definitions

Sec. 2. In this Act:

(1) "Agency" means an office, department, board, commission, institution, or other agency to which legislative appropriations are made. The term does not include any institution, component, or agency which owns and operates an airport approved by the Federal Aeronautics Administration.

(2) "Board" means the State Aircraft Pooling Board.

Board

Sec. 3. The State Aircraft Pooling Board is created.

Composition

Sec. 4. (a) The board is composed of:

- (1) an appointee of the governor;
- (2) an appointee of the lieutenant governor;
- (3) an appointee of the speaker of the house of representatives;
- (4) a representative of the State Board of Control designated from time to time by the chairman of the State Board of Control; and
- (5) a representative of the State Auditor's Office designated from time to time by the state auditor.

(b) The three appointed members of the board hold office for staggered terms of six years, with the term of one member expiring on January 31 of each odd-numbered year. A vacancy shall be filled by the original appointing authority for the unexpired portion of the term.

(c) The representatives of the State Board of Control and the State Auditor's Office are ex officio, nonvoting members of the board and serve only in an advisory capacity.

Chairman, Meetings, etc.

Sec. 5. (a) The voting members of the board shall biennially elect one of them as chairman.

(b) The board shall adopt rules to govern the calling and holding of meetings and the conduct of business.

(c) Two voting members of the board constitute a quorum.

Staff

Sec. 6. The board may employ and compensate staff as provided by legislative appropriation or may

utilize staff provided by the State Board of Control or the State Auditor's Office.

Aircraft Subject to Act

Sec. 7. All aircraft owned or leased by the state are subject to the provisions of this Act.

Aircraft Transferred to Board

Sec. 8. The custody, control, operation, and maintenance of all aircraft owned or leased by the state are transferred to the board.

Powers of Board

Sec. 9. (a) The board shall establish and operate a pool for the custody, control, operation, and maintenance of all aircraft owned or leased by the state. The board may purchase aircraft with funds appropriated for the purpose.

(b) The board by interagency contract may lease state-owned aircraft to an agency. The agency which was the prior owner or lessee of an aircraft shall have first option to lease that aircraft from the board. The lease may provide for operation or maintenance, or both, by the board or by the agency.

(c) Whenever funds appropriated to an agency may be expended for the lease of an aircraft, the lease must be executed by the board or approved by order of the board.

(d) To the extent that aircraft are available, the board shall provide transportation on request to state officers and employees who are traveling on official business; provided the agency leasing an aircraft shall be given first option on use of the aircraft except in cases of state emergency.

Facilities

Sec. 10. The board may acquire appropriate facilities for the accommodation of all aircraft owned or leased by the state. The facilities may be purchased or leased as determined by the board to be most economical for the state and as provided by legislative appropriations. The facilities may include adequate hangar space, an indoor passenger waiting area, a flight-planning area, communications facilities, and other related and necessary facilities. No state agency shall acquire such facilities without permission from the board.

[Acts 1979, 66th Leg., p. 1833, ch. 746, §§ 1 to 10, eff. Sept. 1, 1979.]

Art. 4413(34c). Investment of Local Funds**Definitions**

Sec. 1. In this Act:

(1) "Local funds" means public funds in the custody of a state agency or political subdivision that are not required by law to be deposited in the state treasury and that the agency or subdivision has legal authority to invest.

(2) "State agency" means an office, department, commission, board, or other agency, including an institution of higher education or a river authority, that is a part of any branch of state government.

(3) "Political subdivision" means a county, incorporated city or town, or special purpose district.

Rules Governing Investment of Local Funds

Sec. 2. Each state agency or political subdivision shall adopt rules governing the investment of local funds of the agency or subdivision. The rules shall clearly specify the scope of authority of officers and employees of the agency or subdivision that are designated to invest the local funds.

Designation of Investment Officers

Sec. 3. (a) If an officer is not assigned the function by law, a state agency or political subdivision by rule, order, ordinance, or resolution shall designate one or more officers or employees of the agency or subdivision to be responsible for the investment of local funds.

(b) No person may deposit, withdraw, invest, transfer, or otherwise manage local funds of a state agency or political subdivision that are eligible for investment without express written authority of the governing body or chief executive officer of the agency or subdivision.

Internal Management Reports

Sec. 4. At least once each year, the investment officer of a state agency or political subdivision shall prepare a written report concerning the agency's or subdivision's local funds investment transactions for the preceding year and describing in detail the investment position of the agency or subdivision as of the date of the report. If the agency or political subdivision has two or more investment officers, those officers shall prepare the report jointly. The report shall be signed by each investment officer and shall be delivered to the governing body and the chief executive officer of the agency or subdivision.

Private Auditors

Sec. 5. Notwithstanding any other provision of law, a state agency shall employ private auditors if authorized to do so by the Legislative Audit Committee on its own initiative or upon request of the governing body of the agency.

Investment Rate of Return

Sec. 6. A state agency or political subdivision shall invest local funds in investments that yield the highest possible rate of return while providing necessary protection of the principal consistent with the operating requirements as determined by the governing body.

Investments Authorized or Prohibited by Other Law

Sec. 7. This section does not prohibit an investment specifically authorized by other law nor authorize an investment specifically prohibited by other law.

[Acts 1979, 66th Leg., p. 2071, ch. 810, §§ 1 to 7, eff. June 13, 1979.]

Art. 4413(35). Commission on Fire Protection Personnel Standards and Education

[See Compact Edition, Volume 4 for text of 1]

Application of Sunset Act

Sec. 1a. The Commission on Fire Protection Personnel Standards and Education is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1987.

¹ Article 5429k.

Powers

Sec. 2. The commission shall have the authority and power to:

- (1) promulgate rules and regulations for the administration of this Act including the authority to require the submission of reports and information by any state, county, or municipal agency within this State which employs fire protection personnel;
- (2) establish minimum educational, training, physical, mental, and moral standards for admission to employment as fire protection personnel in permanent positions or in temporary or probationary status;
- (3) certify persons as being qualified under the provisions of this Act to be fire protection personnel;
- (4) certify persons as having qualified as fire protection instructors under such conditions as the commission may prescribe;
- (5) establish minimum curriculum requirements for preparatory, in-service and advanced courses and programs for schools or academies operated by or for the State or any political subdivisions thereof for the specific purpose of training fire protection personnel or recruits for the position of fire protection personnel;
- (6) consult and cooperate with counties, municipalities, agencies of this State, other governmental agencies, and with universities, colleges, junior colleges, and other institutions concerning the development of fire protection personnel training schools and programs of courses of instruction;
- (7) approve, or revoke the approval of, institutions and facilities for schools operated by or for the State or any political subdivision thereof for the specific purpose of training fire protection

personnel or recruits for the position of fire protection personnel, and issue certificates of approval to such institutions and revoke such certificates of approval;

(8) operate schools and facilities thereof and conduct courses therein, both preparatory, in-service, basic, and advanced courses, for fire protection personnel and recruits for the position of fire protection personnel as the commission may determine;

(9) contract with other agencies, public or private, or persons, as the commission deems necessary for the rendition and affording of such services, facilities, studies, and reports as it may require to cooperate with municipal, county, state, and federal agencies in training programs, and to otherwise perform its functions;

(10) make or encourage studies of any aspect of fire protection, including fire administration;

(11) conduct and stimulate research by public and private agencies which shall be designed to improve fire protection and fire administration;

(12) employ an executive director and such other personnel as may be necessary in the performance of its functions;

(13) visit and inspect all institutions and facilities conducting courses for the training of fire protection personnel and recruits for the position of fire protection personnel and make evaluations as may be necessary to determine if they are complying with the provisions of this Act and the commission's rules and regulations;

(14) adopt and amend rules and regulations, consistent with state law, for its internal management and control;

(15) accept any donations, contributions, grants, or gifts from private individuals or foundations or the federal government;

(16) report annually to the Governor and to the Legislature at each regular session on its activities, with its recommendations relating to any matter within its purview, and make such other reports as it deems desirable;

(17) meet at such times and places in the State of Texas as it deems proper, meetings to be called by the chairman upon his own motion, or upon the written request of five members; and

(18) establish minimum standards for protective clothing and equipment for fire protection personnel, with which every state, county, and municipal agency that employs fire protection personnel may comply.

[See Compact Edition, Volume 4 for text of 3 to 5]

Personnel Qualifications and Standards; Rules;
Certificate; Penalty

Sec. 6.

[See Compact Edition, Volume 4 for text of 6(a) to (g)]

(h) The commission shall formulate and publish the requirements for certification as a marine fireman by September 1, 1978. After September 1, 1978, no person may be appointed as a marine fireman except on a probationary basis unless the person has completed training prescribed by the commission. A marine fireman who is appointed on a probationary basis after September 1, 1978, must complete the prescribed training within a two-year period from the date of appointment. Marine firemen serving under permanent appointment and with five or more years of service on September 1, 1978, have satisfied the training requirements by their experience. A marine fireman serving under permanent appointment and with less than five years of experience on September 1, 1978, must complete the prescribed training by September 1, 1980. For the purposes of this Act, a marine fireman is one who works for a fire department and aboard fireboats and fights fires which occur on or adjacent to a waterway, waterfront, channel, or turning basin.

(i) A person who accepts appointment as a marine fireman or a person who appoints a marine fireman in violation of Subsection (h) of this section shall be guilty of a misdemeanor and on conviction shall be fined not less than \$100 nor more than \$1,000.

[See Compact Edition, Volume 4 for text of 7 to 10]

[Amended by Acts 1977, 65th Leg., p. 755, ch. 283, § 1, eff. May 27, 1977; Acts 1977, 65th Leg., p. 1851, ch. 735, § 2.138, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 847, ch. 378, § 1, eff. Aug. 27, 1979.]

Art. 4413(36). Motor Vehicle Commission Code

SUBCHAPTER A. GENERAL PROVISIONS

[See Compact Edition, Volume 4 for text of 1.01 and 1.02]

Definitions

Sec. 1.03. In this Act, unless the context requires a different definition:

(1) "Motor vehicle" means every fully self-propelled vehicle which has as its primary purpose the transport of a person or persons, or property, on a public highway, and having two or more wheels.

[See Compact Edition, Volume 4 for text of 1.03(2) to (7)]

(8) "Franchise" means one or more contracts under which (A) the franchisee is granted the right to sell new motor vehicles manufactured or distributed by the franchisor; (B) the franchisee as an independent business is a component of franchisor's distribution system; (C) the franchisee is substantially associated with franchisor's trademark, tradename and commercial symbol; (D) the franchisee's business is substantially reliant on franchisor for a continued supply of motor vehicles, parts, and accessories for the conduct of its business; or (E) any right, duty, or obligation granted or imposed by this Act is affected.

[See Compact Edition, Volume 4 for text of 1.03(9)]

(10) "Broker" means a person who, for a fee, commission, or other valuable consideration, arranges or offers to arrange a transaction involving the sale, for purposes other than resale, of a new motor vehicle, and who is not:

(A) a dealer or a bona fide agent or employee of a dealer;

(B) a representative or a bona fide agent or employee of a representative;

(C) a distributor or bona fide agent or employee of a distributor; or

(D) at any point in the transaction the bona fide owner of the vehicle involved in the transaction.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

[See Compact Edition, Volume 4 for text of 2.01]

Application of Sunset Act

Sec. 2.01a. The Texas Motor Vehicle Commission is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1991.

¹ Article 5429k.

Members of Commission

Sec. 2.02. The Commission shall consist of nine persons appointed by the Governor with the advice and consent of the Senate.

Qualifications of Members

Sec. 2.03. (a) Each member of the Commission shall be a citizen of the United States and a resident of this State. Five members shall be dealers, no two of which are franchised to sell the motor vehicles manufactured or distributed by the same person or a subsidiary or affiliate of the same person. Four members shall be persons from the public who are not licensed hereunder and who do not have, except as consumers, interests in any business that manufactures, distributes, or sells new motor vehicles.

(b) The persons initially appointed to the Commission as dealer-members shall be persons whose principal occupation has been as franchised new motor vehicle dealers in this State for at least ten years. The dealer-members appointed to the Commission after the initial appointments are made shall be licensed dealers under this Act.

(c) The office of a member is automatically vacated and shall be filled as any other vacancy, if:

(1) the person is a dealer-member of the Commission and ceases to be a licensed dealer under this Act;

(2) the person is a public member of the Commission and acquires an interest in a business that manufactures, sells, or distributes new motor vehicles;

(3) the member becomes an officer, employee, or paid consultant of a trade association in the new motor vehicle industry; or

(4) a person related to the member within the second degree by consanguinity or affinity becomes an officer, employee, or paid consultant of a trade association in the new motor vehicle industry.

Terms of Members

Sec. 2.04. (a) Except as provided by Subsections (b) and (c) of this section, the members of the Commission shall hold office for terms of six years, with the terms of three members expiring on January 31 of each odd-numbered year. The Governor shall make the appointments in such a way that there are always four members on the Commission from the public at large. No person shall serve two consecutive full six-year terms as a member of the Commission.

(b) The Governor shall appoint the three additional members to the Commission before the 91st day after September 1, 1979, and shall designate one to serve a term expiring January 31, 1981, one for a term expiring January 31, 1983, and one for a term expiring January 31, 1985.

(c) A person holding office as a member of the Commission on September 1, 1979, continues to hold the office for which the member was originally appointed. The term of office succeeding a Commission member's term that expires on September 1, 1979, expires on January 31, 1985. The term of office succeeding a Commission member's term that expires on September 1, 1981, expires on January 31, 1987. The term of office succeeding a Commission member's term that expires on September 1, 1983, expires on January 31, 1989.

(d) A term of office shortened under Subsection (c) of this section or the term expiring January 31, 1985, under Subsection (b) of this section is considered a full six-year term for the purpose of the

prohibition against serving two consecutive full six-year terms as a member of the Commission.

[See Compact Edition, Volume 4 for text of 2.05 to 2.07]

Commission Meetings

Sec. 2.08. (a) The Commission shall hold a regular annual meeting in September of each year and elect a chairman and vice-chairman to serve for the ensuing year. The Commission shall have regular meetings as the majority of the members specifies and special meetings at the request of any two members. Reasonable notice of all meetings shall be given as Commission rules prescribe. A majority of the Commission, including at least two of the public members, shall constitute a quorum to transact business.

(b) The Commission is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes).

Executive Director; Staff

Sec. 2.09. (a) The Commission shall employ an executive director who shall be the chief administrative officer of the Commission, who shall maintain all minutes of Commission proceedings, and who shall be custodian of the files and records of the Commission. The executive director shall employ the staff authorized by the Commission. The Commission may by interagency contract utilize assistance of any State agency.

(b) An employee of the Commission is subject to dismissal who has an interest, except as a consumer, or is related within the second degree by consanguinity or affinity to a person who has an interest, except as a consumer, in a business that manufactures, distributes, or sells new motor vehicles.

(c) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9c, Vernon's Texas Civil Statutes), may not act as the general counsel to or serve as a member of the Commission.

Revenues

Sec. 2.10. (a) The Commission shall send all moneys received by it from license fees paid under this Act to the State Treasurer, who shall deposit them in the General Revenue Fund in the State Treasury.

(b) Before September 1 of each year, the Commission shall file a written report with the legislature and the Governor in which the Commission accounts for all funds received and disbursed by the Commission during the preceding year.

(c) The State Auditor shall audit the financial transactions of the Commission during each fiscal year.

[See Compact Edition, Volume 4 for text of 2.11]

SUBCHAPTER C. POWERS AND DUTIES

[See Compact Edition, Volume 4 for text of 3.01]

Rules

Sec. 3.02. The Commission, after hearing, shall make, amend, and enforce rules reasonably required to effectuate the provisions of this Act and govern procedure and practice before the Commission. The Commission shall comply with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). If the appropriate standing committees of both houses of the legislature acting under Section 5(g), Administrative Procedure and Texas Register Act, as added (Article 6252-13a, Vernon's Texas Civil Statutes), transmit to the Commission a statement opposing adoption of a rule under that section, the rule may not take effect or, if the rule has already taken effect, the rule is repealed effective on the date the Commission receives the committees' statement.

[See Compact Edition, Volume 4 for text of 3.03]

Hearings

Sec. 3.04. (a) The Commission shall hear all contested cases, as defined in the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), arising under this Act. The Commission may hold hearings, administer oaths, receive evidence, issue subpoenas to compel the attendance of witnesses and the production of papers and documents related to the hearing, and make findings of fact and decisions in administering the Act and the rules, orders, and other actions of the Commission.

[See Compact Edition, Volume 4 for text of 3.04(b) to 3.04(f)]

(g) All persons whose rights may be affected at any hearing shall have the right to appear personally and by counsel, to cross-examine adverse witnesses and to produce evidence and witnesses in their own behalf. If a hearing is not held before the whole Commission, such person shall have the right to appear before the Commission and present oral argument when the matter comes before them for decision.

(h) A retail buyer of a new motor vehicle may make a complaint concerning defects in a new motor vehicle which are covered by the warranty agreement applicable to the vehicle. Such complaint must be made by letter to the dealer, a copy of which shall be sent to the applicable manufacturer or distribu-

tor, and must specify the defects in the vehicle which are covered by the warranty. The owner may make further complaint by sending to the Commission a copy of the letter. The Commission may hold a hearing on all unsatisfied complaints to determine whether there has been a violation of the Act.

(i) After the Commission schedules a hearing on a complaint made by a retail buyer under this section or by a licensed dealer under Section 4.06(c) of this Act, the Commission may cancel or adjourn the hearing if it determines, by an order entered on the records of the Commission, that the complaint was made for purposes of harassment of the dealer, the applicant, or the Commission.

(j) No dealer member of the Commission may participate in, deliberate on, hear, or consider, or decide any matter involving denial under Section 4.06(c) of this Act of an application to establish a dealership to sell the same motor vehicles manufactured or distributed by the same person or a subsidiary or affiliate of the same person for which the dealer member is franchised.

Enforcement; Contracts; Instruments

Sec. 3.05. The Commission shall conduct investigations and, if appropriate, shall cause legal proceedings to be instituted to enforce this Act and its rules, orders, and decisions, whenever the Commission has reason to believe, through receipt of a complaint or otherwise, that a violation of this Act or a Commission rule, order, or decision has occurred or is likely to occur. Should it appear from any investigation of a possible violation of any other law or regulation that a violation of this Act may have occurred, the matter shall be referred to the Commission to determine whether proceedings under this Act are also appropriate. The Commission may make contracts and execute instruments necessary or convenient to the exercise of its power or performance of its duties.

Complaint Status

Sec. 3.06. The Commission shall keep an information file about each complaint filed with the Commission. If a written complaint is filed with the Commission relating to a licensee under this Act, the executive director of the Commission, at least as frequently as quarterly, shall notify the persons involved of the status of the complaint until it has been resolved.

SUBCHAPTER D. LICENSES

License Required

Sec. 4.01. No person shall engage in business as, serve in the capacity of, or act as a dealer, manufacturer, distributor, or representative in this State without obtaining a license therefor as provided in this Act. All licenses shall expire one year from date of issue.

Expiration Dates of Licenses; Proration of Fees

Sec. 4.01A. The commission by rule shall adopt a system under which licenses expire, beginning in 1981, on various dates during the year. For 1981 only, license fees payable on the date of issuance shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee which is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license fee is payable.

Notice of License Expiration

Sec. 4.01B. The Commission shall notify each person licensed under this Act of the date of license expiration and the amount of the fee required for license renewal. The notice shall be mailed at least thirty days before the date of license expiration.

Dealer Application

Sec. 4.02.

[See Compact Edition, Volume 4 for text of 4.02(a) to (c)]

(d) A dealer licensed hereunder shall promptly notify the Commission of a change in ownership, location or franchise of a dealer, or any other matters the Commission may require by rule. Prior to a change in location of a dealership, a new license must be applied for as in any original application.

Manufacturer, Distributor and Representative Application

Sec. 4.03.

[See Compact Edition, Volume 4 for text of 4.03(a) and (b)]

(c) Each application for a manufacturer's license shall include an instrument setting forth the terms and conditions of all warranty agreements in force and effect on the products it sells in this State to ascertain the degree of protection afforded the retail purchasers of those products and the obligations of dealers in connection therewith as well as the basis for compensating dealers for labor, parts and other expenses incurred in connection with such manufacturer's warranty agreements including a statement of the manufacturer's compliance with Subdivision (9), Section 5.02 of this Act. In addition, all manufacturers shall specify on or with the application the delivery and preparation obligations of their dealers prior to delivery of a new motor vehicle to a retail purchaser and the schedule of compensation to be paid to dealers for the work and service performed by them in connection with such delivery.

[See Compact Edition, Volume 4 for text of 4.03(d) to 4.04]

Fees

Sec. 4.05. (a) The annual license fees for licenses issued hereunder shall be as follows:

(1) For each manufacturer and distributor, \$300.00.

(2) For each dealer who sold more than 200 new motor vehicles during the preceding calendar year, \$100.00.

(3) For each dealer who sold 200 or less new motor vehicles during the preceding calendar year, \$50.00.

(4) For each representative, \$25.00.

[See Compact Edition, Volume 4 for text of 4.05(b)]

Denial, Revocation or Suspension of License

Sec. 4.06. (a) The Commission may deny an application for a license or revoke or suspend an outstanding license, for any of the following reasons:

(1) Proof of unfitness of applicant or licensee under standards set out in this Act or in Commission rules.

(2) Material misrepresentation in any application or other information filed under this Act or Commission rules.

(3) Willful failure to comply with this Act or any rule promulgated by the Commission hereunder.

(4) Failure to maintain the qualifications for a license.

(5) Willfully defrauding any retail buyer to the buyer's damage.

(6) Willful violation of any law relating to the sale, distribution, financing, or insuring of new motor vehicles.

(7) Any act or omission by an officer, director, partner, trustee, or other person acting in a representative capacity for a licensee which act or omission would be cause for denying, revoking, or suspending a license to an individual licensee.

(8) Repeated failure to fulfill written agreements between the licensee and retail buyers of new motor vehicles.

[See Compact Edition, Volume 4 for text of 4.06(b)]

(c) The Commission may deny a dealer application to establish a dealership if the same line-make of new motor vehicle is then represented in the county in which the proposed dealership site is located, or in an area within 25 miles of the proposed dealership site, by a dealer who is in compliance with his franchise agreement with the manufacturer or distributor, is adequately representing the manufacturer or distributor in the sale and service of its new motor vehicles, and good cause is shown why an additional dealer license is not in the public interest, provided that the Commission shall consider the desirability of a competitive marketplace in all determinations made pursuant to this subsection.

[See Compact Edition, Volume 4 for text of 4.06(d) and (e)]

Required Notice to Buyers

Sec. 4.07. (a) A dealer licensed under this Act shall provide notice of the complaint procedures provided by Section 3.04(h) of this Act to each person to whom the dealer sells a new motor vehicle.

(b) The Commission may require its approval of the contents of notices required by Subsection (a) of this section or may prescribe the contents of required notices.

(c) Failure to give the notice required by Subsection (a) of this section is a ground for suspension or revocation of a dealer's license.

SUBCHAPTER E. PROHIBITIONS

Dealers

Sec. 5.01. It shall be unlawful for any dealer to:

(1) Require a retail purchaser of a new motor vehicle as a condition of sale and delivery thereof to purchase special features, equipment, parts, or accessories not ordered or desired by the purchaser, provided such features, equipment, parts, or accessories are not already installed on the new motor vehicle when received by the dealer.

(2) Use false, deceptive, or misleading advertising, in connection with any of the business of a dealer, as defined in Section 17.12 of the Business and Commerce Code, as amended.

(3) Fail to perform the obligations placed on the selling dealer in connection with the delivery and preparation of a new motor vehicle for retail sale as provided in the manufacturer's preparation and delivery agreements on file with the Commission and applicable to such vehicle.

(4) Fail to perform the obligations placed on the dealer in connection with the manufacturer's warranty agreements on file with the Commission.

(5) Operate as a dealer without a currently valid license from the Commission or otherwise violate this Act or rules promulgated by the Commission hereunder.

Manufacturers; Distributors; Representatives

Sec. 5.02. It shall be unlawful for any manufacturer, distributor or representative to:

(1) Require or attempt to require any dealer to order, accept delivery of or pay anything of value, directly or indirectly, for any motor vehicle, appliance, part, accessory or any other commodity unless voluntarily ordered or contracted for by such dealer.

(2) Refuse or fail to deliver in reasonable quantities and within a reasonable time after receipt of an order to a dealer having a franchise agreement

for the retail sale of any motor vehicles sold or distributed by such manufacturer, distributor, or representative, any new motor vehicle or parts or accessories to new motor vehicles as are covered by such franchise if such vehicle, parts or accessories are publicly advertised as being available for delivery or are actually being delivered; provided, however, this provision is not violated if such failure is caused by acts of God, work stoppage or delays due to strikes or labor disputes, freight embargoes or other causes beyond the control of the manufacturer, distributor, or representative.

(3) Notwithstanding the terms of any franchise agreement, terminate or refuse to continue any franchise with a dealer unless (A) the dealer and the Commission have received written notice sixty days before the effective date thereof setting forth the specific grounds for termination or noncontinuance and (B) if the dealer files a protest with the Commission, it is established by a preponderance of evidence at a hearing called by the Commission that there is good cause for the termination or noncontinuance. The Commission shall consider all the existing circumstances in determining good cause, including without limitation the dealer's sales in relation to the market, the dealer's investment and obligations, injury to public welfare, adequacy of service facilities, equipment, parts and personnel of the dealer and other dealers of new motor vehicles of the same line-make, whether warranties are being honored, and compliance with the franchise agreement. Good cause shall not be shown solely by a desire for further market penetration. If a franchise is terminated or not continued, another franchise in the same line-make will be established within a reasonable time unless it is shown to the Commission that the community or trade area cannot reasonably support such a dealership. If this showing is made, no dealer license shall be thereafter issued in the same area unless a change in circumstances is shown.

(4) Use any false, deceptive or misleading advertising, as defined in Section 17.12 of the Business and Commerce Code, as amended.

(5) Notwithstanding the terms of any franchise agreement, prevent any dealer from changing the capital structure of his dealership or the means by or through which he finances the operation thereof, provided that the dealer meets any reasonable capital requirements agreed to by contract of the parties.

(6) Notwithstanding the terms of any franchise agreement, fail to give effect to or attempt to prevent any sale or transfer of a dealer, dealership or franchise or interest therein or management thereof unless it is shown to the Commission after hearing that the result of such sale or transfer will

be detrimental to the public or the representation of the manufacturer or distributor.

(7) Require or attempt to require that a dealer assign to or act as an agent for any manufacturer, distributor or representative in the securing of promissory notes and security agreements given in connection with the sale or purchase of new motor vehicles or the securing of policies of insurance on or having to do with the operation of vehicles sold.

(8) Fail, after complaint and hearing, to perform the obligations placed on the manufacturer in connection with the delivery, preparation and warranty of a new motor vehicle as provided in the manufacturer's warranty, preparation, and delivery agreements on file with the Commission.

(9) Fail to compensate its dealers for the work and services they are required to perform in connection with the dealer's delivery and preparation obligations according to the agreements on file with the Commission which must be found by the Commission to be reasonable, or fail to adequately and fairly compensate its dealers for labor, parts and other expenses incurred by such dealer to perform under and comply with manufacturer's warranty agreements. In no event shall any manufacturer or distributor pay its dealers an amount of money for warranty work that is less than that charged by the dealer to the retail customers of the dealer for nonwarranty work of like kind. All claims made by dealers for compensation for delivery, preparation, and warranty work shall be paid within thirty days after approval and shall be approved or disapproved within thirty days after receipt. When any claim is disapproved, the dealer shall be notified in writing of the grounds for disapproval. The dealer's delivery, preparation, and warranty obligations as filed with the Commission shall constitute the dealer's sole responsibility for product liability as between the dealer and manufacturer.

(10) Operate as a manufacturer, distributor, or representative without a currently valid license from the Commission or otherwise violate this Act or rules promulgated by the Commission hereunder.

(11) Notwithstanding the terms of any franchise agreement, to prevent or refuse to honor the succession to a dealership by any legal heir or devisee under the will of a dealer or under the laws of descent and distribution of this State unless it is shown to the Commission, after notice and hearing, that the result of such succession will be detrimental to the public interest or to the representation of the manufacturer or distributor; provided, however, nothing herein shall prevent a dealer, during his lifetime, from designating any person as his successor dealer, by written instrument filed with the manufacturer or distributor.

Brokers

Sec. 5.03. A person may not act as, offer to act as, or hold himself or herself out to be, a broker.

SUBCHAPTER F. ENFORCEMENT

[See Compact Edition, Volume 4 for text of 6.01 to 6.05]

Application of Other Law

Sec. 6.06. (a) In addition to the other remedies provided by this subchapter, a person who has sustained actual damages as a result of a violation of Section 5.01 or Subdivision (1), (2), (4), (7), (8), or (10), Section 5.02 of Subchapter E of this Code may maintain an action pursuant to the terms of Subchapter E, Chapter 17, Business and Commerce Code.¹

(b) In any action brought against a licensee under Subsection (a) of this section, or for any other type of conduct which is actionable pursuant to the provisions of Subchapter E, Chapter 17, Business and Commerce Code, the \$1,000 limitation set forth in Section 17.50(b)(1) of Subchapter E, Chapter 17, Business and Commerce Code shall be adjusted to reflect any change in the consumer price index after the effective date of this section. The \$1,000 limitation shall be increased or decreased, as applicable, by a sum equal to the amount of the \$1,000 limitation multiplied by the percentage of increase or decrease in the consumer price index between the effective date of this section and the time at which the damages are awarded by final judgment or settlement. The term "consumer price index" means the National Consumer Price Index For All Urban Consumers, or a substantially similar successor, and the court may take judicial notice of said index.

¹ Business and Commerce Code, § 17.41 et seq.

[Amended by Acts 1975, 64th Leg., p. 297, ch. 128, §§ 1, 2, May 6, 1975; Acts 1977, 65th Leg., p. 947, ch. 357, §§ 1 to 5, eff. June 10, 1977; Acts 1977, 65th Leg., p. 1833, ch. 735, § 2.010, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1725, ch. 709, §§ 1 to 25, eff. Sept. 1, 1979.]

Art. 4413(38). Coastal and Marine Council

[See Compact Edition, Volume 4 for text of 1]

Application of Sunset Act

Sec. 1a. The Texas Coastal and Marine Council is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the council is abolished, and this Act expires effective September 1, 1985.

¹ Article 5429k.

[See Compact Edition, Volume 4 for text of 2 to 5]

[Amended by Acts 1977, 65th Leg., p. 1844, ch. 735, § 2.085, eff. Aug. 29, 1977.]

Art. 4413(40). Civil Air Patrol Commission

[See Compact Edition, Volume 4 for text of 1]

Application of Sunset Act

Sec. 1a. The Commission for the Texas Civil Air Patrol is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1981.

¹ Article 5429k.

Powers

Sec. 2. The commission may:

(1) advise the Governor's Division of Disaster Emergency Services as to (i) the deployment of voluntarily offered aviation resources in search and rescue operations and (ii) disaster-related planning, training, and operations under the Texas Disaster Act of 1975 (Article 6889-7, Vernon's Texas Civil Statutes); and

(2) provide assistance to private aviators, including partial reimbursement for funds expended, in meeting the actual costs of aircraft operation requested by the governor or his designee.

Clerical and Administrative Services

Sec. 2a. The Governor's Division of Disaster Emergency Services shall provide clerical and other administrative services to the commission.

[See Compact Edition, Volume 4 for text of 3 to 5]

Duties

Sec. 6. In carrying out the duties and responsibilities of the commission it shall have the following duties:

(a) to meet at such times and places in the State of Texas as it deems proper; meeting shall be called by the chairman upon his own motion, or upon the written request of five members;

(b) to contract with other agencies, public or private, or persons, as it deems necessary for the rendition and affording of such services, facilities, studies, and reports as it may require to exercise the powers granted in Section 2 of this Act as amended. [Amended by Acts 1977, 65th Leg., p. 814, ch. 304, §§ 1, 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1839, ch. 735, § 2.053, eff. Aug. 29, 1977.]

Art. 4413(41). Amusement Machine Commission

Creation; Members; Appointment; Terms

Sec. 1. There is hereby created an agency of the State of Texas which shall be designated as the Texas Amusement Machine Commission; said Commission shall consist of three (3) members to be appointed by the Governor with the advice and consent of the Senate and three (3) ex officio mem-

bers, who shall have the right to vote, to be the Director of the Department of Public Safety, or his nominee; the Commissioner of Consumer Credit, or his nominee; and the Attorney General, or his nominee. None of the three appointed members, shall be or have ever been an "owner" or "operator" of any "coin-operated" machine as those terms are defined in Chapter 13, Title 122A, Taxation—General, Revised Civil Statutes of Texas, as amended.¹ Members of the Commission shall serve for six (6) years. Appointees shall hold office until their successors are appointed and qualified.

[See Compact Edition, Volume 4 for text of 1A]

Application of Sunset Act

Sec. 1B. The Texas Amusement Machine Commission is subject to the Texas Sunset Act;² and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1981.

[See Compact Edition, Volume 4 for text of 2 and 3]

Compensation of Members

Sec. 4. All members of the Commission shall be compensated in an amount of Thirty-five Dollars (\$35.00) per day for each day they are actually engaged in performing their duties whether or not in attendance at a meeting; provided, however, they shall not draw compensation for more than sixty (60) days in any one fiscal year. In addition to the per diem provided for herein, members of the Commission shall be reimbursed for their actual and necessary traveling expenses in the performance of their duties.

[See Compact Edition, Volume 4 for text of 7]

Advisory Committee

Sec. 8. (a) The Commission may create an advisory committee to assist it in the execution of its duties under this Act.

(b) If the Commission creates an advisory committee, it may appoint no more than six persons to the committee. A person is qualified to be appointed to the advisory committee if he engages in any aspect of the coin-operated machine industry.

(c) A member of the advisory committee receives no salary. Each member is entitled to be reimbursed for his actual and necessary traveling and per diem expenses incurred in serving on the committee. [Amended by Acts 1975, 64th Leg., p. 1045, ch. 407, §§ 1 and 2, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1837, ch. 735, § 2.036, eff. Aug. 29, 1977.]

¹ Taxation—General, Art. 13.01 et seq.

² Article 5429k.

Section 3 of the 1975 amendatory act amended Taxation—General, Arts. 13.01 to 13.17; §§ 4 to 6 thereof provided:

"Sec. 4. (a) On the effective date of this Act the terms of all members of the Texas Amusement Machine Commission whose membership is prohibited by Section 1 of this Act shall expire and their positions on the board become vacant. The terms of the remaining members will continue until January 31, 1979; on that date, the governor shall appoint three members for the following terms:

"(1) one member for a term that expires January 31, 1985;

"(2) one member for a term that expires January 31, 1983;

"(3) one member for a term that expires January 31, 1981.

"(b) The governor by appointment shall fill any vacancy for the unexpired term only.

"Sec. 5. This Act takes effect September 1, 1975.

"Sec. 6. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

Art. 4413(42). Repealed by Acts 1979, 66th Leg., p. 1652, ch. 690, § 12, eff. Sept. 1, 1979

Acts 1979, 66th Leg., p. 1652, ch. 690, § 12, repealed this article without reference to amendment of this article by Acts 1979, 66th Leg., p. 399, ch. 186, § 7, which added subsecs. (e) and (f) to § 8, reading:

"(e) The commission shall compile a list of qualified interpreters who are available for assignment by a state agency, a court, or a political subdivision to interpret proceedings for deaf persons. The commission shall disseminate this list to the agencies, courts, political subdivisions, and the general public. The commission shall prescribe the qualifications for interpreters who are to appear on the list and in prescribing those qualifications shall consider interpreters who are certified by the Texas Society of Interpreters for the Deaf or the National Registry of Interpreters for the Deaf, or both.

"(f) The commission by rule shall adopt a schedule of reasonable fees recommended for the payment of interpreters required by law to be provided in proceedings of state agencies, courts, and political subdivisions. In adopting the schedule, the commission shall consider the recommendations of the Texas Society of Interpreters for the Deaf and the National Registry of Interpreters for the Deaf."

Section 12 of Acts 1979, 66th Leg., ch. 690, repealing this article, provided in part:

"The State Commission for the Deaf created by that Act is abolished and its records and property are transferred to the commission created by this Act."

Art. 4413(42a). Joint Advisory Committee on Educational Services to the Deaf

Purpose

Sec. 1. The purpose of this Act is to promote the economical delivery of the educational services to the deaf provided by state governmental educational institutions by means of a comprehensive review of governmental structure and administration.

Definitions

Sec. 2. In this Act:

(1) "Committee" means the Joint Advisory Committee on Educational Services to the Deaf.

(2) "Departments and agencies" means all departments, bureaus, agencies, boards, commissions, and other instrumentalities of the executive branch of state government which provide any type of educational services to the deaf or that train professionals to work with the deaf.

(3) "Professionals" means persons trained as teachers, interpreters, and directors of teacher training programs, and ancillary personnel employed by educational institutions for the deaf.

Creation of Committee

Sec. 3. There is created the Joint Advisory Committee on Educational Services to the Deaf.

Membership

Sec. 4. (a) The committee consists of the lieutenant governor, the speaker of the house of representatives, the secretary of state, and other members appointed as provided by this section.

(b) The governor shall appoint six persons, none of whom may be members of the house or of the senate, two of these members being deaf consumers, two members being parents of deaf consumers, and two members being professionals serving the deaf as defined by this Act.

(c) The lieutenant governor shall appoint one member of the senate.

(d) The speaker of the house of representatives shall appoint one member of the house of representatives.

Terms and Vacancies

Sec. 5. (a) The initial members of the committee shall take office within 30 days after the effective date of this Act and shall serve until the expiration of the committee.

(b) Vacancies among the appointed members shall be filled for the unexpired terms in the same manner as the original appointments were made.

Compensation

Sec. 6. (a) Legislative members of the committee shall serve without additional compensation. Each member shall be reimbursed from the appropriate fund of the member's respective house for travel, subsistence, and other necessary expenses incurred in performing the duties of the committee.

(b) Persons appointed pursuant to Section 4(b) of this Act shall serve without compensation but shall be reimbursed for travel, subsistence, and other necessary expenses from appropriations made by the legislature to the committee.

(c) The duties to be performed by each public official or employee appointed to the committee shall be considered duties in addition to those otherwise required by that person's office.

Officers

Sec. 7. The lieutenant governor shall serve as chairman of the committee. The speaker of the house of representatives shall serve as vice-chairman of the committee.

Quorum

Sec. 8. Six members of the committee shall constitute a quorum for the conduct of business.

Duties

Sec. 9. The committee shall:

(1) examine and evaluate the organization and methods of operation of the departments and agencies of state government related to educational programs for the deaf;

(2) develop proposals for improving the structure and administration of state educational services to the deaf in order to assure the delivery of quality governmental services at the lowest possible cost;

(3) recommend suspension of government programs and services that duplicate and exceed in cost those same services offered by private business; and

(4) make findings and issue reports in the execution of the duties imposed by this section.

Powers

Sec. 10. The committee or any subcommittees of its membership designated by the chairman may:

(1) appoint and fix the compensation of necessary staff;

(2) hold open hearings, take testimony, and administer oaths or affirmations to witnesses;

(3) secure directly from any department or agency of state government any information deemed necessary for the implementation of this Act; and

(4) make findings and issue reports in the execution of the duties imposed by Section 9 of this Act.

Cooperation of Other Departments and Agencies

Sec. 11. (a) The Texas Legislative Council, the Legislative Budget Board, the Legislative Audit Committee, the Texas Advisory Commission on Intergovernmental Relations, and the Division of Planning Coordination shall, through their respective administrative officers, furnish staff assistance to the committee upon request.

(b) Each department and agency of state government is directed to furnish assistance and information to the committee upon request.

Reports; Recommendations; Dissolution

Sec. 12. The committee may make an interim report on its progress, together with any specific recommendations it may deem desirable, to any session of the 65th Legislature, and shall make its final report to the 66th Legislature not later than 30 days after that legislature is organized. Unless extended by the 66th Legislature, the committee is dissolved on May 31, 1979.

[Acts 1977, 65th Leg., p. 1694, ch. 672, §§ 1 to 12, eff. Aug. 29, 1977.]

Acts 1979, 66th Leg., p. 1652, ch. 691, amended various provisions of the Education Code relating to the Texas School for the Deaf. Section 7 of said Act provided:

"The governor shall appoint members to the Council on Educational Services for the Deaf immediately after the effective date of this Act. The governor shall designate three of the members first appointed for terms expiring in 1980, three for terms expiring in 1981, and three for terms expiring in 1982. In each of those years, the term of one deaf person, one parent of a deaf person, and one person who is experienced in working with the deaf shall expire."

Art. 4413(42b). Repealed by Acts 1979, 66th Leg., p. 2443, ch. 842, art. 2, § 24, eff. Sept. 1, 1979

Acts 1979, 66th Leg., ch. 842, repealing this article, enacts the Human Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Human Resources Code.

The repealed article, relating to the Texas Commission for the Deaf, was derived from Acts 1979, 66th Leg., p. 1649, ch. 690, §§ 1 to 12.

Art. 4413(43). Repealed by Acts 1979, 66th Leg., p. 2429, ch. 842, art. 2, § 2(1), eff. Sept. 1, 1979.

Acts 1979, 66th Leg., ch. 842, repealing this article, enacts the Human Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Human Resources Code.

Prior to repeal, this article was amended by Acts 1977, 65th Leg., p. 1847, ch. 735, § 2.110.

Art. 4413(44). Governor's Commission on Physical Fitness

[See Compact Edition, Volume 4 for text of 1 and 2]

Creation; Appointment of Members; Term of Office; Vacancies; Application of Sunset Act

Sec. 3.

[See Compact Edition, Volume 4 for text of 3(a) and (b)]

(c) The Governor's Commission on Physical Fitness is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1989.

¹ Article 5429k.

[See Compact Edition, Volume 4 for text of 4 to 9]

[Amended by Acts 1977, 65th Leg., p. 1854, ch. 735, § 2.159, eff. Aug. 29, 1977.]

Art. 4413(45). Film Commission

[See Compact Edition, Volume 4 for text of 1 and 2]

Application of Sunset Act

Sec. 2a. The Texas Film Commission is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1989.

¹ Article 5429k.

[See Compact Edition, Volume 4 for text of 3 to 5]

[Amended by Acts 1977, 65th Leg., p. 1855, ch. 735, § 2.166, eff. Aug. 29, 1977.]

Art. 4413(47). Expired

This article constituted the Energy Policy Planning Act of 1975, enacted by Acts 1975, 64th Leg., p. 971, ch. 370, which by § 8 thereof expired on September 1, 1977.

See, now, art. 4413(47c).

Art. 4413(47a). Repealed by Acts 1979, 66th Leg., p. 1550, ch. 666, § 15(1), eff. Sept. 1, 1979

The repealed article, the Energy Policy Planning Act of 1977, was derived from Acts 1977, 65th Leg., p. 1990, ch. 795. See, now, art. 4413(47c).

Art. 4413(47b). Energy Development Act of 1977

Short Title

Sec. 1. This Act shall be known as "The Texas Energy Development Act of 1977."

Declaration of Policy

Sec. 2. The legislature finds and declares that:

(1) Texas, the largest producer and consumer of energy among the 50 states, currently relies on oil and gas to supply at least 98 percent of its energy needs. Texas and the United States have less than 10 years' supply of oil and gas reserves based on current rates of production.

(2) Although an end to federal price controls on oil and gas would stimulate greater development of oil and gas supplies, the rapid depletion of these fossil fuels is inevitable.

(3) The nation and the state must develop known resources of more plentiful fuels and begin the shift to total reliance on alternate abundant energy resources.

(4) Development of alternative energy technologies is both an expensive and risky activity which often discourages adequate funding by private sources alone. Precedent exists for government involvement in research, development, and demonstration of new technologies.

(5) While the major responsibility for energy research, development, and demonstration lies with the federal government, federal programs will often overlook projects of regional or state significance in order to concentrate on national priorities. Federal programs often bypass competent local research facilities in preference to federal laboratories or contractors.

(6) Other states have been able to attract federally funded energy development projects with the use of matching funds or seed money. Texas is interested in competing with these other states to secure such projects.

(7) The most effective development of alternate technologies depends on the close cooperation and coordination among federal, state, and local governments and private participants. Such coordination can be enhanced through the planning, programming, and implementation of a state energy development fund.

(8) Funding of energy research and development under this Act should concentrate on technologies which offer the realistic promise of significant energy contributions within 25 years and which are of particular importance to Texas.

Definitions

Sec. 3. In this Act:

(1) "Fund" means the Energy Development Fund created by this Act.

(2) "Council" means the Texas Energy and Natural Resources Advisory Council.

(3) "Person" means an individual, corporation, association, organization, business trust, or any other legal entity.

Creation of the Energy Development Fund

Sec. 4. The Energy Development Fund is created in the state treasury and is composed of funds provided by legislative appropriation, not to exceed \$5 million, plus such additional funds as are received from other sources in accordance with Section 7 of this Act. The fund is created to support research, development, and demonstration of alternate energy supplies and energy conservation technologies of particular importance to Texas.

Texas Energy and Natural Resources Advisory Council

Sec. 5. The Texas Energy and Natural Resources Advisory Council shall be responsible for the proper administration of the Energy Development Fund and shall have the director for energy analysis and development submit to the governor and legislature before March 1 of each odd-numbered year a comprehensive report on the operation of the fund.

Administration of the Fund

Sec. 6. (a) The council shall provide for the administration of the fund.

(b) The council shall promulgate a plan for the development of alternative energy technologies. Such a plan shall prescribe detailed regulations for: submission and solicitation of proposals, evaluation and selection of proposals by an impartial group of technical experts, the disbursement of contracted funds, project cost accounting, and project reporting requirements. Such a plan shall be published within 60 days of the effective date of this Act. Within 90 days thereafter, the council shall adopt the plan following public hearing and appropriate review.

(c) The council may contract with universities, nonprofit institutions, and other persons that meet the criteria for funding adopted by the council.

Additional Sources of Funding

Sec. 7. The council may receive funds from private or public sources for the purposes of this Act.

Sec. 8. Repealed by Acts 1979, 66th Leg., p. 1550, ch. 666, § 15(3), eff. Sept. 1, 1979.

Effective Date

Sec. 9. This Act shall take effect on September 1, 1977.

[Acts 1977, 65th Leg., p. 2091, ch. 838, §§ 1 to 9, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1549, ch. 666, §§ 12, 13, 15(3), eff. Sept. 1, 1979.]

Art. 4413(47c). Energy and Natural Resources Advisory Council

Creation of the Texas Energy and Natural Resources Advisory Council

Sec. 1. (a) The Texas Energy and Natural Resources Advisory Council is established.

(b) The council is composed of 21 members. The members are the following officials: the governor, the lieutenant governor, the speaker of the house of representatives, the attorney general, a member of the Railroad Commission of Texas designated by the Railroad Commission of Texas, a member of the Public Utility Commission of Texas designated by the Public Utility Commission of Texas, the chairman of the Texas Air Control Board, the chairman of the Texas Water Development Board, the chairman of the Parks and Wildlife Commission, the Commissioner of the General Land Office, the commissioner of agriculture, the comptroller of public accounts, the Director of the Bureau of Economic Geology of The University of Texas at Austin, two senators appointed by the lieutenant governor, two members of the house of representatives appointed by the speaker of the house, and four citizens appointed by the governor. Appointees serve at the pleasure of the appointing officer.

(c) The governor and lieutenant governor are co-chairmen of the council. The speaker of the house of representatives is vice-chairman.

(d) Eleven members of the council constitute a quorum.

(e) The council shall meet at least once every three months or at the call of either cochairman. At any time a majority of the council may petition the cochairmen for a meeting of the council at a time certain.

(f) A member of the council is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a member of the council. The lieutenant governor, speaker of the house, senate members on the council, and members of the house of representatives on the council shall be reimbursed from the appropriate fund of the member's respective house of the legislature. Other members shall be reimbursed from the funds of the office or agency in which the member serves. The citizen members are to be reimbursed from the council's funds appropriated for that purpose.

Directors and Staff

Sec. 2. (a) There shall be appointed by the co-chairmen an executive director. The executive director with the approval of the cochairmen may hire directors to assist him in carrying out the duties and functions of the council. The executive director and directors shall serve at the pleasure of the cochairmen.

(b) The executive director shall employ staff necessary to administer the functions of the council and may contract with individuals, consultants, partnerships, corporations, universities, state agencies, and other governmental bodies to provide services necessary to perform the duties of the council.

(c) The executive director shall perform functions relating to the conservation of energy resources or the allocation of fuel products that the governor is responsible for performing as designated by law and that the governor may delegate to the executive director.

(d) The executive director may with the approval of the cochairmen and with the advice of the council issue such orders as may be necessary to implement programs and priorities concerning the allocation and conservation of fuels.

(e) The executive director and the directors may represent the council at state, regional, national, or international energy or natural resource meetings at the cochairmen's request.

(f) All staff responsible for technical assessments or for the development of computer or econometric systems, excluding administrative personnel, must be qualified by academic training and actual work experience in the area of their respective responsibilities.

(g) The executive director and the directors are entitled to compensation as provided by the general appropriations bill.

(h) Compensation for staff members shall be determined according to the classification act for other state employees.

Divisions

Sec. 3. The executive director with the approval of the cochairmen may establish divisions to carry out the functions of the council. The executive director with the approval of the cochairmen may add, remove, or transfer duties among divisions.

Energy Analysis and Development Division

Sec. 4. (a) The energy analysis and development division is established as a division of the council.

(b) The director may contract with the approval of the executive director with individuals, consultants, partnerships, corporations, universities, state agencies, and other governmental bodies to provide services necessary to perform the duties of the division.

(c) The energy analysis and development division shall:

(1) develop and maintain an energy data base system and econometric modeling of the state and nation;

(2) prepare an annual Texas energy outlook report and an assessment of the United States Department of Energy, Energy Information Administration's Annual Report to Congress;

(3) provide energy information and policy analysis for the council and others as the cochairmen may direct;

(4) recommend energy policy positions to the council;

(5) recommend legislation to the council to foster the development of increased energy supplies and more efficient energy systems not inconsistent with other laws of the state;

(6) administer the Texas Energy Development Fund as directed by the council;

(7) maintain an awareness of all energy-related research of importance to this state conducted inside and outside this state in order to promote information exchange and coordination and in order to coordinate and support necessary energy technology research, development, and demonstration;

(8) coordinate and support energy-related technology research, development, and demonstration; and

(9) perform other duties as assigned by the executive director.

Energy Conservation Division

Sec. 5. (a) The energy conservation division is established as a division of the council.

(b) The director may contract with the approval of the executive director with individuals, consultants, partnerships, corporations, universities, state agencies, and other governmental bodies to provide services necessary to perform the duties of the division.

(c) The energy conservation division shall:

(1) provide and develop energy conservation information and policy analysis for the council and others as the cochairman may direct;

(2) recommend energy conservation policy positions to the council;

(3) recommend legislation to the council to foster energy conservation;

(4) coordinate and support energy conservation related technology, research, development, and demonstration; and

(5) perform other duties as assigned by the executive director.

Functions of the Council

Sec. 6. The council shall:

- (1) adopt and continually reassess an energy policy for the state;
- (2) adopt and continually reassess a natural resources policy for the state;
- (3) recommend legislation to the United States Congress and the Texas Legislature implementing energy policy and natural resources policy of the state;
- (4) review existing and proposed actions and policies of federal agencies to determine the energy and natural resources impact on this state and to recommend to the legislature and the governor alternative actions and policies consistent with state energy and natural resources policy;
- (5) adopt a plan and award contracts for the development of alternative energy technologies under the Energy Development Fund;
- (6) represent the governor at state, regional, national, or international energy or natural resources meetings at the governor's request;
- (7) provide staff and technical assistance to the advisory committees;
- (8) adopt a budget and an annual operating plan;
- (9) develop projects and programs to insure proper protection and development of the state's natural resources including the participation of all necessary entities;
- (10) study problems and issues connected with state agency permitting processes; and
- (11) perform such other tasks as may be assigned by the governor and/or accepted by the council.

Advisory Committees

Sec. 7. (a) The cochairmen may appoint advisory committees composed of public officials or private citizens to advise the Texas Energy and Natural Resources Advisory Council.

(b) A member of an advisory committee is not entitled to compensation for services performed as a member of the committee. A member is entitled to reimbursement for actual and necessary expenses incurred in attending meetings of the advisory committee.

(c) The council shall prescribe the operating procedures for advisory committees.

Gifts and Grants

Sec. 8. (a) The executive director may accept on behalf of the state a gift, grant, or donation from any source to be used to administer the council's functions.

(b) A gift, grant, or donation received by the executive director shall be deposited in the State Treasury to the credit of a special fund to be known as the Texas Energy and Natural Resources Advisory Council Fund and may be used only to administer the council's functions.

Report

Sec. 9. Before December 1 of each year, the executive director shall file a report with the governor and the legislature about the activities of the council during the preceding year.

Rules

Sec. 10. The council may adopt rules necessary to accomplish the purposes of this Act.

Application of Sunset Act

Sec. 11. The council is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes). Unless continued in existence as provided by that Act, the council is abolished and this Act expires effective September 1, 1983.

Secs. 12, 13. [Amends subsec. (2) of § 3, and §§ 4 to 7 of art. 4413(47b)]

Abolition and Succession of Agencies

Sec. 14. The Texas Energy Advisory Council, created by Chapter 795, Acts of the 65th Legislature, Regular Session, 1977 (Article 4413(47a), Vernon's Texas Civil Statutes), and the Natural Resources Council are abolished and are succeeded by the Texas Energy and Natural Resources Advisory Council. The records and other property in the custody of the agencies are transferred to the Texas Energy and Natural Resources Advisory Council.

[Acts 1979, 66th Leg., p. 1545, ch. 666, §§ 1 to 11, 14, eff. Sept. 1, 1979.]

Art. 4413(48). Repealed by Acts 1979, 66th Leg., p. 1550, ch. 666, § 15(2), eff. Sept. 1, 1979

The repealed article, the Natural Resources Council Act of 1977, was derived from Acts 1977, 65th Leg., p. 1895, ch. 756. See, now, art. 4413(47c).

CHAPTER TEN. DEPARTMENT OF
COMMUNITY AFFAIRS

Art. 4413(201). Department of Community Affairs

[See Compact Edition, Volume 4 for text of 1 to 3]

Application of Sunset Act

Sec. 3a. The Texas Department of Community Affairs is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the department is abolished, and this Act expires effective September 1, 1983.

¹ Article 5429k.

[See Compact Edition, Volume 4 for text of 4 to 14]

[Amended by Acts 1977, 65th Leg., p. 1842, ch. 735, § 2.073, eff. Aug. 29, 1977.]

CHAPTER ELEVEN. GOVERNOR'S COORDINATING OFFICE FOR THE VISUALLY HANDICAPPED

Article
4413(202). Repealed.

Art. 4413(202). Repealed by Acts 1979, 66th Leg., p. 679, ch. 301, § 8(a), eff. May 31, 1979; Acts 1979, 66th Leg., p. 2429, ch. 842, art. 2, § 2(2), eff. Sept. 1, 1979

Acts 1979, 66th Leg., ch. 842, repealing this article, enacts the Human Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Human Resources Code.

The repealed article, relating to the Governor's Coordinating Office for the Visually Handicapped, was added by Acts 1975, 64th Leg., p. 2386, ch. 734, § 14.

Acts 1979, 66th Leg., p. 679, ch. 301, repealing this article, provided in § 8(b) thereof:

"The Governor's Coordinating Office for the Visually Handicapped is abolished. The records and other property of the abolished office shall be transferred to the appropriate agency under this Act."

CHAPTER TWELVE. CONSERVATORSHIP BOARD

Article
4413(203). Conservatorship Board.

Art. 4413(203). Conservatorship Board

Definitions

Sec. 1. In this Act:

(1) "State agency" means a department, commission, board, office, or other agency, including a university system or an institution of higher education except a public junior college, that:

(A) is in the executive branch of state government;

(B) is or was created by statute; and

(C) does not have statutory geographical boundaries limited to a part of the state.

(2) "Gross fiscal mismanagement" includes:

(A) failure to keep adequate fiscal records;

(B) failure to maintain proper control over assets;

(C) failure to discharge fiscal obligations in a timely manner; and

(D) misuse of state funds.

(3) "State fiscal management policies" means laws or rules relating to:

(A) fiscal recordkeeping and reporting;

(B) use or control of state property;

(C) timely discharge of fiscal obligations; or
(D) use of state funds.

Agencies Exempted

Sec. 2. This Act does not apply to an agency that is under the direction of an elected officer, board, or commission.

Board; Members; Terms

Sec. 3. (a) The State Conservatorship Board is established.

(b) The board consists of three members appointed by the governor with the advice and consent of the senate.

(c) The governor shall appoint to the board only persons who are residents of this state and who are qualified by experience or education in administration or fiscal management. A public officer is ineligible to serve on the board.

(d) Members hold office for terms of six years, with the term of one member expiring on January 31 of each odd-numbered year. In making the initial appointments, the governor shall designate one member for a term expiring on January 31, 1981, one member for a term expiring on January 31, 1983, and one member for a term expiring on January 31, 1985.

Chairman; Meetings

Sec. 4. (a) A majority of the board constitutes a quorum.

(b) The governor shall designate one of the members of the board to serve as chairman for a term, in that capacity, of two years expiring on January 31 of each odd-numbered year.

(c) The board shall meet at the call of the chairman or as provided by board rule. The board shall hold the organizational meeting at the call of the governor.

Compensation; Expenses

Sec. 5. A member of the board may not receive compensation for his service on the board but is entitled to reimbursement for actual and necessary expenses incurred in the performance of official duties.

Administration

Sec. 6. The governor shall provide the board with administrative services. If necessary, the governor may use appropriations made pursuant to Article 4351, Revised Civil Statutes of Texas, 1925, to provide the services.

Finding of Mismanagement; Order of Conservatorship

Sec. 7. If the Legislative Audit Committee finds that a condition of gross fiscal mismanagement exists in a state agency, it shall notify the governor of

its finding. On receipt of the notice, the governor by proclamation may order the board to act as conservator of the agency.

Assumption of Agency Functions

Sec. 8. If the governor directs the board to act as conservator of an agency, the board shall assume all the powers and duties of the officer or officers responsible for policy direction of the agency, and that officer or officers may not act unless authorized to do so by the board.

Board Responsibility; Powers

Sec. 9. (a) As conservator of an agency, the board is responsible for bringing the agency into compliance with state fiscal management policies.

(b) While acting as conservator of an agency, the board may:

(1) terminate any employee if it determines that his or her conduct contributed to the condition that brought about the conservatorship;

(2) employ personnel for the agency;

(3) make organizational or structural changes in the agency that are necessary to alleviate the conditions that brought about the conservatorship; and

(4) contract with entities or persons, whether public or private, for management or administrative services necessary to effect the conservatorship.

(c) The board may delegate all or any part of its powers or duties as conservator, except the adoption of rules, to an entity or person with whom it con-

tracts pursuant to Subdivision (4) of Subsection (b) of this section.

Periodic Reports

Sec. 10. Within 60 days after the date the governor directs the board to act as conservator of an agency and at the end of every subsequent 60-day period until the conservatorship is dissolved, the board shall report on the conservatorship to the governor and the Legislative Audit Committee. The report shall include a description of the measures taken to bring the agency into compliance with state fiscal management policies and an estimate of the progress the board has made in attaining that goal.

Rules

Sec. 11. The board may adopt and enforce rules necessary to administer this Act.

Duration of Conservatorship

Sec. 12. The board's conservatorship of an agency continues until:

(1) the governor issues a proclamation declaring that the condition of gross fiscal mismanagement in the agency no longer exists and that the conservatorship is dissolved; or

(2) the Legislative Audit Committee finds and certifies to the governor that the condition of gross fiscal mismanagement in the agency no longer exists, in which case the conservatorship is dissolved.

[Acts 1979, 66th Leg., p. 796, ch. 357, §§ 1 to 12, eff. June 6, 1979.]

TITLE 71

HEALTH—PUBLIC

Chapter	Article
4D. Hemophilia	4477-30
4E. Cancer	4477-40
20. Natural Death	4590h
21. Medical Liability and Insurance Improvement	4590i

CHAPTER ONE. HEALTH BOARDS AND LAWS

Article
4414aa. Application of Sunset Act.
4418g. Powers, Duties and Functions Transferred to the Department of Health Resources.
4418g-1. The Texas Board of Health Dental Advisory Committee.
4418h. Health Planning and Development Act.
4419f. Childrens Vision Screening Act of 1979.
4437e-2. Hospital Project Financing Act.
4437h. Surveys and Inspections of Health Care Facilities.
4438a. Denial of Emergency Treatment by Hospital Employee for Inability to Pay.
4442a-1. Adult Day Care Act.
4447d-2. Immunization Reminder Notices.
4447e-1. Hypothyroidism.
4447e-2. Sudden Infant Death Syndrome.
4447e-3. Pilot Program to Identify Infants with High Risk of Impaired Hearing.
4447r. Cooperative Associations by Eligible Institutions.
4447s. Disclosure of Agreements for Payment of Laboratory Tests.
4447t. Determination of Death.
4447u. Home Health Services.

Art. 4414a. Department of Health Created

To better protect and promote the health of the people of Texas, the Texas Department of Health is created. The Texas Department of Health consists of the Texas Board of Health, the Commissioner of Health, and an administrative staff.

[Amended by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.07, eff. May 28, 1975; Acts 1977, 65th Leg., p. 1226, ch. 474, § 1, eff. Aug. 29, 1977.]

Art. 4414aa. Application of Sunset Act

The Texas Department of Health Resources¹ is subject to the Texas Sunset Act;² and unless continued in existence as provided by that Act the department is abolished effective September 1, 1985.

[Added by Acts 1977, 65th Leg., p. 1848, ch. 735, § 2.113, eff. Aug. 29, 1977.]

¹ Name changed to Department of Health; see art. 4418g.

² Article 5429k.

Art. 4415a. Appointment, Composition and Terms of the Board

(a) The Board consists of 18 members appointed by the Governor with the advice and consent of the Senate. The Governor shall make appointments so that:

(1) six members are physicians licensed under the laws of this state, each of whom has been engaged in the practice of medicine in this state for at least five years prior to appointment;

(2) two members are hospital administrators with at least five years' experience in hospital administration in this state prior to appointment;

(3) one member is a dentist who is licensed under the laws of this state and who has been engaged in the practice of dentistry for at least five years in this state prior to appointment;

(4) one member is a registered nurse who is licensed to practice professional nursing under the laws of this state and who has been engaged in the practice of nursing in this state for at least five years prior to appointment;

(5) one member is a veterinarian who is licensed under the laws of this state and who has been engaged in the practice of veterinary medicine in this state for at least five years prior to appointment;

(6) one member is a pharmacist who is licensed under the laws of this state and who has been engaged in the practice of pharmacy in this state for at least five years prior to appointment;

(7) one member is a nursing home administrator who is licensed under the laws of this state and who has been engaged as a nursing home administrator in this state for at least five years prior to appointment;

(8) one member is an optometrist who is licensed under the laws of this state and who has been engaged in the practice of optometry in this state for at least five years prior to appointment;

(9) one member holds a civil engineering degree from an accredited university or college, is licensed by the State of Texas as a professional engineer, and has specialized in the practice of sanitary engineering in this state for at least five years prior to appointment;

(10) one member is a doctor of chiropractic who is licensed under the laws of this state and who has been engaged in the practice of chiropractic for at least five years in this state prior to appointment; and

(11) two members are citizens who have none of the qualifications required of the other 16 members.

(b) Except for the initial appointees, members of the Board hold office for staggered terms of six years, with the terms of six members expiring on February 1 of each odd-numbered year. In making the initial appointments, the Governor shall designate six members for terms expiring in 1981, six members for terms expiring in 1979, and six members for terms expiring in 1977.

(c) The Governor shall biennially designate one member as Chairman and one member as Vice-chairman.

[Amended by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.07, eff. May 28, 1975; Acts 1977, 65th Leg., p. 1226, ch. 474, § 1, eff. Aug. 29, 1977.]

Art. 4416a. Quorum and Meetings of the Board

A majority of the members of the Board constitute a quorum for the transaction of business. The Board shall meet at Austin or at other places fixed by the Board at least once each month, on dates to be fixed by the Board, and shall hold such special meetings as may be called by the Chairman. Timely notice of such special meetings shall be given to each member.

[Amended by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.07, eff. May 28, 1975; Acts 1977, 65th Leg., p. 1226, ch. 474, § 1, eff. Aug. 29, 1977.]

Art. 4417a. Compensation and Oath of Office of the Board

The members of the Board receive no fixed salary, but each member shall be allowed, for each and every day in attending the meetings of the Board, the sum of \$50, and said members shall be allowed traveling and other necessary expenses while in the performance of official duty. The members of the Board shall qualify by taking the constitutional oath of office before an officer authorized to administer oaths within this state, and, upon presentation of such oath of office, together with the certificate of their appointment, the Secretary of State shall issue Commissions to them, which shall be evidence of their authority to act as such.

[Amended by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.07, eff. May 28, 1975; Acts 1977, 65th Leg., p. 1226, ch. 474, § 1, eff. Aug. 29, 1977.]

Art. 4418a. Powers and Duties of the Board

(a) The Texas Board of Health shall:

(1) employ the Commissioner of Health, who shall be a person licensed to practice medicine in the State of Texas, who shall serve at the will of the Board;

(2) investigate the conduct of the work of the Department, and for this purpose to have access, at any time, to all books and records thereof, and to require written or oral information from any officer or employee thereof;

(3) adopt rules, not inconsistent with law, for its own procedure, and for the conduct and performance of every duty imposed on the Board, the Department, or the Commissioner of Health by law, a copy of which rules shall be filed in the Department.

(b) The Board may appoint advisory committees to assist the Board in performing its duties. If not otherwise specified by law, a member of an advisory committee appointed by the Board is entitled to receive \$50 for each advisory committee meeting the member attends and the per diem and travel allowance authorized by the General Appropriations Act for state employees. Two members of each advisory committee must be representatives of the general public. A person is eligible to be appointed and to serve as a public member of an advisory committee if the person and the person's spouse are not licensed by an occupational regulatory agency in the health care field, are not employed by any health care facility, agency, or corporation or by a corporation authorized to underwrite health care insurance, do not govern or administer a health care facility, agency, or corporation, and do not have, other than as consumers, a financial interest in a health care facility, agency, or corporation.

[Amended by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.07, eff. May 28, 1975; Acts 1977, 65th Leg., p. 1226, ch. 474, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1533, ch. 659, § 1, eff. Aug. 27, 1979.]

Arts. 4418b to 4418c. Repealed by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.08(1), (2), eff. May 28, 1975

Art. 4418d. Duties of the Commissioner of Health

The Commissioner of Health shall be the executive head of the Department, and he shall, subject to the provisions of this Act, perform the duties assigned to him by the Board.

[Amended by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.07, eff. May 28, 1975; Acts 1977, 65th Leg., p. 1226, ch. 474, § 1, eff. Aug. 29, 1977.]

Art. 4418e. Repealed by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.08(1), eff. May 28, 1975

Art. 4418f. Appropriations, Grants, Donations and Contributions to the Department

For the purpose of carrying out its duties and functions, the Department may apply for, contract for, receive, and expend any appropriations or grants from the state, the federal government, or any other public source, subject to any limitations and conditions prescribed by legislative appropriation. It shall be lawful for the Department to accept donations and contributions, to be expended in the interest of the public health and the enforce-

ment of public health laws. The Commissioners Court of any County shall have the authority to appropriate and expend money from the general revenues of its County for and in behalf of public health and sanitation within its County.

[Amended by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.07, eff. May 28, 1975; Acts 1977, 65th Leg., p. 1226, ch. 474, § 1, eff. Aug. 29, 1977.]

Art. 4418g. Powers, Duties and Functions Transferred to the Department of Health

(a) The Texas Board of Health has all of the powers, duties, and functions granted by law to the State Board of Health, the State Commissioner of Health, the State Department of Health, the Texas Board of Health Resources, and the Texas Department of Health Resources.

(b) Any reference in the law to the Texas Board of Health Resources means the Texas Board of Health.

(c) Any reference in the law to the Texas Department of Health Resources means the Texas Department of Health.

(d) Whenever any law grants a power or imposes a duty on the State Commissioner of Health, the power shall be exercised or the duty performed by the Texas Board of Health or a designee of the Board, subject to the direction and control of the Board.

[Added by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.07, eff. May 28, 1975. Amended by Acts 1977, 65th Leg., p. 1226, ch. 474, § 1, eff. Aug. 29, 1977.]

Art. 4418g-1. The Texas Board of Health Dental Advisory Committee

Appointment, Composition, Terms, Vacancies, and Officers

Sec. 1. (a) The Texas Board of Health Dental Advisory Committee is composed of nine members. The members shall be appointed as follows:

(1) the governor shall appoint four dentists and one dental hygienist licensed under the laws of this state, each of whom has engaged in the practice of dentistry or dental hygiene in this state for at least five years prior to appointment, three of whom are members of the Texas Dental Association, and one of whom is a member of the Gulf States Dental Association, and one of whom is a member of the Texas Dental Hygienists Association;

(2) the State Board of Dental Examiners shall appoint one of its members;

(3) the governor shall appoint two members who are representatives of the general public, who are not licensed dentists, and who do not have, other than as consumers, financial interests in the dental health industry;

(4) on a rotating basis, each of the three dental schools in the state shall appoint one member who is a member of the faculty of the dental school.

(b) Except for the initial appointees, the nine voting members of the advisory committee hold office for staggered terms of six years, with the terms of three members expiring on February 1 of each even-numbered year. The Texas Board of Health shall designate three initial members for terms expiring on February 1, 1984, three initial members for terms expiring on February 1, 1982, and three initial members for terms expiring on February 1, 1980.

(c) A vacancy on the advisory committee for any cause shall be filled by a successor who is appointed in the same manner as his or her predecessor. The successor shall serve for the unexpired term of his or her predecessor.

(d) At a regular meeting in April of each year, the advisory committee shall elect from its membership a chairman, vice-chairman, and secretary.

(e) A member of this advisory committee serves without compensation. A member is not entitled to reimbursement for actual and necessary expenses incurred in performing the duties of the advisory committee.

Application of Sunset Act

Sec. 2. The advisory committee is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes). Unless the advisory committee is continued in existence as provided by that Act, the advisory committee is abolished and this Act expires effective September 1, 1985.

Quorum and Meetings

Sec. 3. A majority of the members of the advisory committee constitute a quorum for the transaction of business. The committee shall meet at Austin or at other places fixed by the committee at least four times per calendar year on dates to be fixed by the committee and shall hold special meetings at the call of the chairman. Timely notice of the special meetings shall be given to each member of the committee.

Oath of Office

Sec. 4. The members of the committee shall qualify by taking the constitutional oath of office before an officer authorized to administer oaths within this state, and on presentation of the oath of office, the secretary of state shall issue commissions to them, which shall be evidence of their authority to act as members of the committee.

Powers and Duties

Sec. 5. The advisory committee shall:

(1) investigate the various public dental service programs in the state, identify the various funding

sources for the programs, and make recommendations to the Texas Board of Health about the best manner in which to administer those funds to provide the maximum use of the funds for the purpose of providing the best dental care possible to the citizens of the state within the available funding levels;

(2) review current rules adopted by the Texas Board of Health and rules proposed by the board relating to dental health care and draft proposed recommended rules relating to dental health care or relating to the conduct and performance of the duties relating to dental health care imposed on the board by law and submit those recommendations to the board for final approval and implementation; and

(3) make investigations and studies of the dental health care delivery system in the state necessary to develop procedures by which the provision of dental services can be coordinated to provide the most economical and effective dental care delivery system to serve the maximum number of patients from current funding levels and submit the procedures to the Texas Board of Health for approval and implementation.

[Added by Acts 1979, 66th Leg., p. 787, ch. 349, § 1, eff. Aug. 27, 1979.]

Art. 4418h. Health Planning and Development Act

SUBCHAPTER A. GENERAL PROVISIONS

Short Title

Sec. 1.01. This Act may be cited as the Texas Health Planning and Development Act.

Policy, Purpose

Sec. 1.02. The policy of this state and the purpose of this Act are to insure that health-care services and facilities are made available to all citizens in an orderly and economical manner and to meet the requirements of, and to implement, the National Health Planning and Resources Development Act of 1974 (P.L. 93-641),¹ the federal rules and regulations promulgated under that Act, and other pertinent federal authority. To achieve this public policy and purpose, it is essential that appropriate health planning activities be undertaken and implemented and that health-care services and facilities be provided in a manner that is cost effective and that is compatible with the health-care needs of the various areas and populations of the state.

¹ 42 U.S.C.A. § 300k et seq.

Definitions

Sec. 1.03. In this Act:

(1) "Applicant" means any person who makes application to the commission pursuant to this Act.

(2) "Application" means a written request for consideration by the commission pursuant to this Act.

(3) "Certificate holder" is the person named in the certificate of need or exemption certificate and any person owning title or interest in the person named in the certificate of need or exemption certificate.

(4) "Certificate of need" means a written order of the commission setting forth the commission's affirmative finding that a proposed project sufficiently satisfies the criteria prescribed for such projects by this Act and by rule of the commission.

(5) "Commission" means the Texas Health Facilities Commission.

(6) "Department" means the Texas Department of Health Resources.

(7) "Development" means those activities, other than planning or predevelopment activities, as determined by rule of the commission, which on their completion result in the consummation of a project or a significant financial commitment toward the consummation of a project, and includes the adoption of ordinances, orders, or resolutions authorizing the issuance of bonds.

(8) "Federal law" includes the National Health Planning and Resources Development Act of 1974 (P.L. 93-641),¹ and Public Laws 79-725,² 88-164,³ 89-749,⁴ 91-515,⁵ and 92-603,⁶ the federal rules and regulations promulgated under those Acts, and other pertinent federal authority.

(9) "Health-care facility," referred to as "facility," includes, regardless of ownership, but is not limited to, a public or private hospital, institution, extended care facility, skilled nursing facility, intermediate care facility, home health agency, outpatient care facility, outpatient surgical and single procedure facility, ambulatory health-care facility, health center, family planning clinic, kidney disease treatment facility, radiation therapy facility, alcoholism and drug treatment facility, health maintenance organization, and other specialized facilities where inpatient or outpatient health-care services for observation, diagnosis, active treatment, or overnight care for patients with obstetrical, medical, mental or psychiatric, surgical, tubercular, alcoholic, chronic, or rehabilitative conditions are provided requiring daily direct supervision by a physician or a practitioner of the healing arts, but does not include the office of those physicians or practitioners singly or in groups in the conduct of their profession.

(10) "Health maintenance organization," referred to as "HMO," has the meaning given the term in the Texas Health Maintenance Organization Act.⁷

(11) "Health systems agency" means a nonprofit private corporation or public regional planning body acting as an instrumentality of the federal government and designated in accordance with federal law and subject to approval of the governor and his periodic review and redesignation.

(12) "Institutional health-care services," referred to as "services," means the health-care services provided in health-care facilities and includes, but is not limited to, inpatient or outpatient services for observation, diagnosis, treatment, or rehabilitation, and all care for patients with obstetrical, medical, surgical, tubercular, mental, alcoholic, chronic, or rehabilitative, or other conditions.

(13) "Party" means any person who by formal intervention or action as determined by rule of the commission participates in the consideration of a specific application by the commission.

(14) "Person" means an individual, sole proprietorship, charity, trust, estate, institution, group, association, firm, joint venture, partnership, joint stock company, cooperative, corporation, the state or a political subdivision or instrumentality of the state, the federal government or a political subdivision or instrumentality of the federal government, any receiver, trustee, assignee, or other similar representative or any other legal entity.

(15) "Project" means services, facility, or HMO requiring a certificate of need or an exemption certificate under this Act.

(16) "Statewide Health Coordinating Council" means the council appointed by the governor in accordance with federal law to advise the department generally on the performance of its functions.

¹ 42 U.S.C.A. § 300k et seq.
² See 42 U.S.C.A. § 201 et seq.
³ 42 U.S.C.A. § 2661 et seq.
⁴ See 42 U.S.C.A. § 246.
⁵ 42 U.S.C.A. § 299 et seq.
⁶ 42 U.S.C.A. § 401 et seq.
⁷ Insurance Code, art. 20A.01 et seq.

Administrative Procedure

Sec. 1.04. The Administrative Procedure and Texas Register Act¹ applies to all proceedings under this Act except to the extent inconsistent with this Act. However, Section 17 of that Act does not apply to proceedings of the commission under this Act.

¹ Article 6252-13a.

Authority of the Governor

Sec. 1.05. As the chief executive and planning officer of this state, the governor is authorized to perform those duties and functions assigned to him by federal law. The governor is authorized to transfer personnel, equipment, records, obligations, appropriations, functions, and duties of his office to the commission or the department.

Interagency Contracts

Sec. 1.06. Agencies, departments, instrumentalities, grantees, political subdivisions, and institutions of higher education of the state shall cooperate with the commission and the department in the performance of their assigned duties and functions.

Limitations on Powers

Sec. 1.07. Nothing in this Act shall be construed to authorize the commission or the department or any employee or official of the commission or the department to:

(1) exercise any supervision or control over the practice of medicine or the manner in which physician's services in private practice are provided, or over the selection, tenure, compensation, or fees of any physician in the delivery of physician's services;

(2) perform any duty or function under the provisions of Title XI of the Social Security Act¹ (Section 249(f) of P.L. 92-603) or rules or regulations promulgated thereunder; or

(3) apply for grants under the provisions of Section 1526, P.L. 93-641.²

¹ 42 U.S.C.A. § 1301 et seq.
² 42 U.S.C.A. § 300m-5.

Health-Related State Agencies: Regional Administration

Sec. 1.08. The Texas Department of Health Resources, the Texas Department of Mental Health and Mental Retardation, the State Department of Public Welfare, and as directed by the governor, other health-related state agencies shall divide the state into regions for administrative or regulatory purposes that coincide with the health service areas established pursuant to P.L. 93-641.¹

¹ 42 U.S.C.A. § 300k et seq.

SUBCHAPTER B. TEXAS HEALTH FACILITIES COMMISSION

Establishment

Sec. 2.01. The Texas Health Facilities Commission is established and is administratively attached to the Texas Department of Health Resources. The department, at the request of the commission, shall provide administrative assistance to the commission; and the department and the commission shall coordinate administrative responsibilities in order to avoid unnecessary duplication of facilities and services. The department, at the request of the commission, shall submit the commission's budget requests to the legislature.

Application of Sunset Act

Sec. 2.01a. The Texas Health Facilities Commission is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished, and Subchapters B and C of this Act expire effective September 1, 1985.

¹ Article 5429k.

Composition

Sec. 2.02. The commission is under the direction of three commissioners appointed by the governor with the advice and consent of the senate. At least one commissioner, at the time of appointment, must be a resident of a county having a population of less than 50,000, according to the last preceding federal decennial census. However, a commissioner by moving to another county does not vacate the office. The governor shall not appoint to the commission any person who is actively engaged as a health care provider or who has any substantial pecuniary interest in a facility.

Terms of Office

Sec. 2.03. Commissioners hold office for staggered terms of six years, with the term of one commissioner expiring on February 1 of each odd-numbered year. In making the initial appointments, the governor shall designate one commissioner for a term expiring February 1, 1977, one for a term expiring February 1, 1979, and one for a term expiring February 1, 1981.

Chairman, Vice-chairman

Sec. 2.04. The governor shall biennially designate one commissioner to serve as chairman and one commissioner to serve as vice-chairman.

Compensation; Expenses

Sec. 2.05. Each commissioner is entitled to a salary within the limits of legislative appropriations and to reimbursement for actual and necessary traveling expenses incurred in performing their official duties.

General Duties of Commission

Sec. 2.06. In addition to the other powers and duties prescribed by this Act, the commission shall:

- (1) administer a state certificate of need program as prescribed by this Act and to comply with federal law;
- (2) promulgate and adopt rules determined to be necessary for the administration and enforcement of Subchapters B and C of this Act;
- (3) issue written orders regarding certificates of need, exemption certificates, declaratory rulings, and other matters which may properly come before it;
- (4) make an annual report to the governor and the legislature of the commission's operations and provide other reports that the governor or the legislature may require;
- (5) administer all funds entrusted to the commission; and
- (6) prescribe the personnel policies for the commission and perform other duties and functions that may be prescribed by law.

Executive Officer

Sec. 2.07. (a) The chairman is the chief executive and administrative officer of the commission.

(b) In addition to the other powers and duties prescribed by this Act, the chairman as chief executive officer of the commission shall:

- (1) administer the duties and functions of the commission;
- (2) employ and remove personnel and prescribe their duties, responsibilities, and compensation; and
- (3) submit through and with the approval of the commission requests for appropriations and other funds to operate the commission.

(c) In the absence of the chairman for any cause, the vice-chairman has the powers and duties assigned to the chairman.

Offices and Divisions

Sec. 2.08. The commission shall establish offices and divisions of the commission that it deems necessary to carry out the functions and duties of the commission. The commission may assign functions and duties to the various offices and divisions, provide for additional offices and divisions, and reorganize the commission if necessary to improve its efficiency or effectiveness.

Funds

Sec. 2.09. For the purpose of carrying out its duties and functions, the commission may apply for, contract for, receive, and expend any appropriations or grants from the state, the federal government, or any other public source, subject to any limitations and conditions prescribed by legislative appropriation.

Review of Institutional Health Services

Sec. 2.10. The commission, after consultation with the department, the Texas Department of Mental Health and Mental Retardation, the State Department of Public Welfare, and other appropriate health-related state agencies, shall review and determine the appropriateness of all institutional health services being offered in the state and shall make public its determinations by filing a report with the secretary of state.

Capital Expenditure Review Program

Sec. 2.11. The commission, when authorized by the governor, may negotiate an agreement with the Secretary of Health, Education, and Welfare on behalf of the State of Texas to administer a state capital expenditure review program pursuant to Section 1122 of the Social Security Act,¹ the federal rules and regulations promulgated under that Act, and other pertinent federal authority, if after thorough review and study, the commission determines

that such a review program would be in the best interest of the people of Texas.

¹42 U.S.C.A. § 1320a-1.

SUBCHAPTER C. STATE CERTIFICATE OF NEED PROGRAM

Services and Facilities Requiring Certificates

Sec. 3.01. (a) Each person must obtain from the commission a certificate of need or an exemption certificate in accordance with this Act for a proposed project to:

- (1) expand or substantially expand a service currently offered or provide a service not currently offered by the facility;
- (2) construct a new facility or change the bed capacity of an existing facility;
- (3) modify an existing facility;
- (4) convert a structure into a health-care facility; or
- (5) organize an HMO.

(b) For purposes of Subsection (a) of this section:

- (1) the determination of a change in the bed capacity of a facility is based on the bed capacity of the facility, at the time of the application; and
- (2) modification includes the acquisition, repair, or replacement of facilities or equipment.

(c) The commission by rule shall define and determine the terms and conditions under which a project comes within the meaning of Subdivisions (1)–(5) of Subsection (a) of this section. In addition, the commission shall promulgate rules for determining the costs of acquiring or modifying facilities or equipment if facilities or equipment are leased or donated.

(d) If a project does not come within the meaning of Subdivisions (1)–(5) of Subsection (a) of this section, a certificate of need or an exemption certificate is not required for the project.

Exemption Certificate

Sec. 3.02. (a) The commission shall issue an exemption certificate exempting a proposed project from the certificate of need requirement when, on petition by the applicant, it is determined that:

- (1) in the case of expansion of services, the proposed project would not substantially expand a service currently offered; or
- (2) in the case of modification of an existing facility, the total cost of the proposed modification will not exceed \$150,000.

(b) The commission shall promulgate rules of procedure whereby a person may make application for and be granted an exemption certificate.

(c) The commission by rule, not inconsistent with Subsection (a) of this section, may establish criteria for determining the eligibility of a project for an exemption certificate.

(d) The commission may prescribe, as conditions to the issuance and continued validity of an exemption certificate, reasonable time limits for development and completion of the project.

(e) If the application for an exemption certificate is denied, the applicant may apply for a certificate of need, and if the application for a certificate of need is denied, the applicant may raise in proceedings for judicial review as provided by this Act any error of the commission in denying the exemption certificate.

Declaratory Ruling

Sec. 3.03. On the application of a person sufficiently describing a proposed project, the commission may issue a declaratory ruling on whether this Act requires a certificate of need or an exemption certificate for the project. If the commission rules that a certificate of need or an exemption certificate is required, the applicant may apply for an exemption certificate or a certificate of need and may seek judicial review of the declaratory ruling only in proceedings to review the denial of a certificate of need as provided by this Act.

Application for Certificate of Need

Sec. 3.04. (a) A person may apply for a certificate of need by submitting a written application to the commission. The application must be prepared in the form and contain the information required in rules promulgated by the commission.

(b) Each application for a certificate of need must be accompanied by the required application fee. All application fees shall be deposited in the state treasury and shall be expended by the commission for the administration and enforcement of this Act.

Application Fee

Sec. 3.05. The maximum application fee is \$7,500 or 2 percent of the total cost of the proposed project, whichever is less, and the minimum application fee is \$25, and within these limits the commission by rule shall establish a schedule of application fees for the various types and sizes of projects, with fees for the more substantial projects set at nearer the maximum and fees for the smaller projects set at nearer the minimum.

Application Review

Sec. 3.06. (a) Each application for a certificate of need shall be reviewed and a determination made within 10 working days after the date of its receipt whether the application complies with the rules governing the preparation and submission of applications.

(b) If the application complies with the rules governing the preparation and submission of applications, the chairman shall, pursuant to commission rules:

(1) declare the application to be sufficient and shall accept and date the application;

(2) schedule a hearing on the application which on a showing of good cause by the applicant or the parties, may be postponed for a reasonable period of time not to exceed 45 days; and

(3) provide written notification to affected persons and to the health systems agency within whose boundary the project is located of the time, place, and matter to be considered at the hearing.

(c) If the application does not comply with the rules governing the preparation and submission of applications, the chairman shall notify the applicant in writing and provide a list of deficiencies.

(d) All applications for certificates of need shall be filed in the commission, indexed, and made available for public inspection.

Publication of Notice by Applicant

Sec. 3.07. (a) The applicant shall publish public notice of the hearing to be held by the commission on an application for a certificate of need in at least one newspaper of general circulation in the locality within which the proposed service or facility would be developed.

(b) The commission shall prescribe the form of publication and the date or dates of publication which shall not be later than 30 days after the application is accepted and dated.

Review by Health Systems Agencies

Sec. 3.08. (a) A health systems agency may review an application transmitted to it and may provide written comments to the commission and to the applicant not later than the 60th day after the day the application is dated.

(b) The review, if any, of an application by a health systems agency must be conducted according to rules promulgated by the commission.

(c) A health systems agency may hold a hearing on an application referred to it. The hearing must be conducted in accordance with rules promulgated by the commission.

(d) If at the time of the application a health systems agency is not currently designated for the area in which the project is to be located, the commission may perform the functions of the health systems agency.

Commission Hearings

Sec. 3.09. (a) The chairman shall designate a hearing officer to conduct a hearing for each dated application. The hearing officer must be an employee of the commission who is an attorney licensed to practice law in this state.

(b)(1) If a health systems agency has submitted written comments concerning an application to the commission and the applicant as provided in Section 3.08 of this Act, a representative or representatives of that agency may present testimony and evidence for or against that application at the hearing. Any other interested party may present evidence or testimony for or against an application pursuant to rules promulgated by the commission. Testimony may be presented orally or in writing.

(b)(2) The commissioner of insurance may review an HMO application and provide written comments to the commission. The review and comment on an HMO application by the commissioner of insurance must be conducted according to rules promulgated by the commission. When written comments are provided on an HMO application, the commissioner of insurance or a representative may participate in the hearing on the application as a party.

(c) The hearing officer shall keep a complete record of each hearing and transmit the record to the commission when completed. Each record must include in addition to any other items required by rules promulgated by the commission:

- (1) evidence received or considered;
- (2) a statement of matters officially noticed;
- (3) objections and rulings thereon;
- (4) staff memoranda or data submitted to or considered by the hearing officer or the commission in connection with the hearing; and
- (5) the recommendations of the hearing officer concerning the approval or disapproval of the application.

(d) The hearing officer shall forward to the commission the complete record of the hearing on an application for a certificate of need as provided by commission rules.

(e) At the request of the applicant and with the concurrence of the commission, an uncontested application may be reviewed by and acted on by the commission without a hearing under rules promulgated by the commission.

Criteria for Review

Sec. 3.10. (a) The commission shall promulgate rules establishing criteria to determine whether an applicant is to be issued a certificate of need for the proposed project.

(b) Criteria established by the commission must include at least the following:

- (1) whether a proposed project is necessary to meet the health-care needs of the community or population to be served;
- (2) whether a proposed project can be adequately staffed and operated when completed;
- (3) whether the cost of a proposed project is economically feasible;

(4) if applicable, whether a proposed project meets the special needs and circumstances for rural or sparsely populated areas; and

(5) if applicable, whether the proposed project meets special needs for special services or special facilities.

(c) In developing criteria the commission shall consider at least the following:

(1) the recommendations, if any, of the Texas Board of Health Resources, the Texas Board of Mental Health and Mental Retardation, the State Board of Public Welfare, and the governing boards of other state agencies;

(2) the relationship of a proposed project to the state health plan, the state medical facilities plan, and the health systems plan and annual implementation plan of the appropriate health systems agency;

(3) the special needs and circumstances of facilities that provide substantial services to indigents;

(4) the special needs and circumstances of facilities that provide a substantial portion of their services to persons residing outside the areas in which the facilities are located;

(5) the possible effects of a project on existing facilities; and

(6) the special needs and circumstances of health maintenance organizations.

Orders of Commission

Sec. 3.11. (a) The commission shall either grant or deny a certificate of need by written order not later than the 90th day following the date of publication of public notice, unless the date of the hearing was delayed pursuant to Section 3.06(b)(2) of this Act, in which case the deadline for the order is extended accordingly, or unless a later date is agreed on in writing by the applicant and the commission.

(b) Copies of the order must be forwarded to the applicant, the appropriate health systems agency, and the parties of record.

(c) Copies of the order and the record of the hearing shall be filed together in the office of the commission, indexed, and made available for public inspection.

(d) The commission may prescribe as conditions to a certificate of need limits on project cost, time periods for development and completion of a project, limits on the scope of the project, and project status reports.

Development May Commence

Sec. 3.12. Development of a project may commence only on the granting of a certificate of need or an exemption certificate.

Forfeiture of Certificate

Sec. 3.13. (a) The order granting a certificate of need constitutes the determination of a need for the health care service or facility and that the certificate holder may commence development and proceed toward completion of the project as expeditiously as possible.

(b) A certificate of need is subject to forfeiture on the following conditions:

(1) automatically, for failure to commence development of an approved project within 180 days after the date of the order. The former certificate holder may petition the commission for the reissuance of the certificate forfeited under this subsection not later than 30 days after the date of forfeiture, and the commission may consider the petition without a hearing. The commission must approve or disapprove the petition by written order within 60 days after the date of receipt of the petition. A written order approving the petition constitutes reissuance of the certificate of need;

(2) after notice and hearing, for failure to proceed with reasonable diligence toward development and completion of the project;

(3) after notice and hearing, on proof that a certificate holder, before completion and operation of the project, has attempted to or has transferred or conveyed more than a two percent interest in the certificate of need or the certificate holder without prior written approval from the commission. Transfers resulting from the death, bankruptcy, insolvency, legal disability, or other good cause as determined by the commission of a certificate holder are exempt from this provision; or

(4) after notice and hearing, for failure of the certificate holder to comply with conditions in the written certificate of need order.

(c) The commission shall promulgate rules prescribing procedures and criteria for forfeiture proceedings.

Violations; Enforcement

Sec. 3.14. (a) A person who commences the development of a project without having a required certificate of need or an exemption certificate is in violation of this Act.

(b) If requested by the commission, the attorney general may institute a legal action to enjoin an alleged violation of this Act or to recover civil penalties as provided by this subchapter.

(c) No agency of the state or any of its political subdivisions may appropriate or grant funds or assist in any way a person, applicant, facility, or certificate holder who is or whose project is in violation of this Act.

(d) No permit to build or license to operate a facility or license to provide a service may be issued for a project or to a person in violation of this Act, by the state or a political subdivision or instrumentality of the state.

(e) A person who violates this Act is subject to a civil penalty of no greater than \$100 for each act of violation and for each day of violation, as the court may deem proper, to be recovered in the manner provided in this subchapter. Such civil penalties assessed for violations of this Act shall be deposited in the State Treasury and shall be expended by the commission for the administration and enforcement of this Act.

(f) A person who has been judicially determined to be in violation of this Act, and who has paid all imposed civil penalties and has made application to the commission for a certificate of need or an exemption certificate, shall not be deemed to be in violation of this Act.

Judicial Review

Sec. 3.15. An applicant or party who is aggrieved by an order of the commission granting or denying a certificate of need is entitled to judicial review under the substantial evidence rule.

SUBCHAPTER D. FUNCTIONS OF DEPARTMENT

Health Planning and Development Agency

Sec. 4.01. The Texas Department of Health Resources is designated as the state health planning and development agency for the State of Texas.

General Powers and Functions

Sec. 4.02. The department shall perform the duties and functions prescribed by state law and, after consultation with the commission, the Texas Department of Mental Health and Mental Retardation, the State Department of Public Welfare, and other appropriate health-related state agencies, those of the state health planning and development agency.

Assistance to Statewide Health Coordinating Council

Sec. 4.03. The department shall assist the Statewide Health Coordinating Council in the performance of its functions.

Preliminary State Health Plan

Sec. 4.04. The department shall prepare, review, and revise a preliminary state health plan.

State Medical Facilities Plan

Sec. 4.05. The department shall prepare and administer a state medical facilities plan. However, no application for assistance under Title XVI of the Public Health Service Act¹ may be considered by the department until the requirements of Subchapters B and C of this Act have been complied with.

¹ 42 U.S.C.A. § 300e et seq.

Authority to Collect Data

Sec. 4.06. (a) The department, after consultation with the commission, shall adopt rules establishing reasonable procedures for the collection and dissemination of data determined to be necessary to facilitate and expedite proper and effective health planning and resource development.

(b) The department shall file, index, and periodically publish in a coherent manner summaries or analyses of the data collected.

(c) Persons who fail to comply with the rules promulgated pursuant to this section are in violation of this Act.

Contracts

Sec. 4.07. With the approval of the governor and after a public hearing, the department may contract with an appropriate state agency to perform specific state health planning and development agency functions of the department.

SUBCHAPTER E. AMENDMENTS AND REPEALS

Sec. 5.01. [Adds § 2.24 to art. 5547-202]

Sec. 5.02. [Amends subsecs. (a), (b) of art. 5547-91]

Sec. 5.03. [Amends subsec. (a) of art. 5547-93]

Sec. 5.04. [Adds § 9A to art. 4437f]

Sec. 5.05. [Adds § 6A to art. 4442c]

Sec. 5.06. [Amends §§ 1 to 5, 8 and adds § 6A to art. 4447c]

Sec. 5.07. [Amends arts. 4414a, 4415a, 4416a, 4417a, 4418a, 4418d, 4418f and adds art. 4418g]

Sec. 5.08. [Repeals arts. 4418b, 4418b-1, 4418c, 4418e, 4442c-1, and § 6 of art. 4447c]

SUBCHAPTER F. TRANSITION PROVISIONS AND MISCELLANEOUS

Transition

Sec. 6.01. Until criteria are developed for the evaluation of certificate of need applications, the existing comprehensive health plans developed by the Governor's Office of Comprehensive Health Planning; areawide comprehensive health plans, the medical facilities plan developed by the State Department of Health, and other plans of state health agencies are to be used to assist in the evaluation of the need for a proposed service or facility.

Pending Projects

Sec. 6.02. (a) A person is eligible for an exemption certificate for a project under this Act who (1) within the period of 365 days immediately preceding

the effective date of this Act filed an application for a health-care facility license, including submission of preliminary plans, and the agency approved the facility's preliminary plans, and (2) within 120 days after the effective date of this Act, applies for an exemption certificate. However, an exemption certificate issued under this section is void on and after February 1, 1976, if before that date the certificate holder has not begun development of the project, and it is void on and after January 15, 1977, if before that date the certificate holder has not placed on file with the commission an affidavit from the building department having jurisdiction indicating that substantial progress has been made on the project and the certificate holder has not placed on file with the commission a valid notice of construction completion indicating a completion date of not later than January 15, 1978, and certifying that the completed project is within the scope of the previously submitted and approved preliminary plans. An exemption certificate issued under this section shall be applicable only to that portion of the project actually completed within the time limits prescribed by this section. The commission may extend the foregoing time limits by not more than a total of one year if good cause is shown why an extension should be granted.

(b) For the purposes of this section, "substantial progress" means: (1) For structures of three or fewer stories, completion of the foundations and footings; the structural frame; the mechanical, electrical, and plumbing rough-in; the rough flooring; the exterior walls and windows; and the finished roof. (2) For structures of more than three stories, in addition to (1) above, a contractor's schedule of work shall be filed with the commission by January 15, 1977. Every three months thereafter, until completion, evidence shall be submitted to the commission that construction is progressing on that schedule.

(c) The commission may promulgate rules determined to be necessary for the administration and enforcement of this section.

Administrative Procedure

Sec. 6.03. Until January 1, 1976, except to the extent inconsistent with this Act, Sections 3, 4, 5, 10-16, and 18-20 of the Administrative Procedure and Texas Register Act¹ are incorporated by reference and made applicable to proceedings of the commission under this Act. However, until January 1, 1976, the provision of Section 10 of that Act requiring publication of rules in the Texas Register is not incorporated or applicable, and in lieu of the provisions of Section 5 that require publication of notices in the Texas Register, the commission by rule shall provide and give notice in a manner that is reasonably calculated to give notice to persons likely to be interested in proposed rules.

¹ Article 6252-13a.

Initial Terms of Reconstituted Board; Transition

Sec. 6.04. (a) In making the initial appointments of members of the Texas Board of Health Resources, as renamed and reconstituted by this Act, the governor shall designate members to serve initial terms as follows:

(1) for terms expiring February 1, 1977, two physicians, one citizen, one hospital administrator, the dentist, and the veterinarian;

(2) for terms expiring February 1, 1979, two physicians, one citizen, the civil engineer, the registered nurse, and the optometrist; and

(3) for terms expiring February 1, 1981, two physicians, the chiropractor, the nursing home administrator, the pharmacist, and one hospital administrator.

(b) The State Board of Health shall continue to function until all of the initial appointees of the board as reconstituted have been appointed and have qualified, or until September 1, 1975, whichever is sooner.

[Acts 1975, 64th Leg., p. 832, ch. 323, §§ 1.01 to 6.04, eff. May 28, 1975. Amended by Acts 1977, 65th Leg., p. 1848, ch. 735, §§ 2, 114, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 506, ch. 236, §§ 1 to 10, eff. May 17, 1979.]

Art. 4419c. Physical Restoration for Crippled Children

Creation of Service; Aid to Needy Children Distinguished

Sec. 1. There is hereby created in the Texas Department of Health a physical restoration service for crippled children under twenty-one (21) years of age and for persons, regardless of age, who have cystic fibrosis. This service shall make provisions for locating, examining and physically restoring crippled children of the State as hereinafter provided. The physical restoration service herein provided for crippled children is separate and distinct from the assistance or aid to needy children.

Eligibility of Children with Cancer; Cancer Defined

Sec. 1A. (a) The department shall provide the medical and rehabilitative services provided for crippled children under this Act for children under 21 years of age who have cancer and who meet the financial eligibility requirements for receiving crippled children's services.

(b) As used in this Act, cancer is defined as a malignant disease characterized by unrestricted growth of abnormal cells, the natural course of which is fatal; cancer includes but is not restricted to leukemia, lymphoma, and histiocytosis. To be eligible for medical and rehabilitative services for cancer as provided in Subsection (a) of this section, the child's condition must be such that it is reasonable to assume that the services provided may cure or arrest the condition (cancer) or prolong the child's period of independent function.

[See Compact Edition, Volume 4 for text of 2]

Sec. 3. The Crippled Children's Division of the State Department of Health is empowered to take census, make surveys and establish permanent records of crippled children and children who have cancer; to procure medical and surgical service for eligible children, provided that only physicians legally qualified to practice medicine and surgery in Texas be employed for purposes of diagnosis and treatment, that not more than the customary minimum fees be paid for such services, and that physicians or surgeons so employed shall be approved by the State Board of Health as qualified to render such service; to select and designate hospitals for the care of children contemplated by this Act, and to take such other steps as may be necessary in order to accomplish the purposes of this Act.

At the discretion of the State Department of Health, transportation, appliances, braces and material necessary in the proper handling of crippled children or children who have cancer may be in part or entirely provided. Such appliances, braces and material, being a part of the care and treatment program and necessary to the physical restoration of the individual crippled child as defined in this Act or a child who has cancer, shall not be considered to be state-owned personal property and shall be excluded from the personal property inventory required of state-owned property; and all such property including appliances, braces and materials, being a part of the care and treatment program, and which are now being accounted for under the provisions of the present system of accounting shall be deleted from and not required after the passage and effective date of this Act. The State Department of Health, however, shall maintain at all times a complete record of such appliances, braces and materials provided and such records shall be verified by the State Auditor.

The State Department of Health is directed to provide in Rules and Regulations, the necessary details for the conduct of this work, in accordance with the purposes of this Act, which shall permit as far as possible, the free choice of patients in their selections of physicians and hospitals, and shall arrange with hospitals, brace departments and other services providing for crippled children's work and children who have cancer, compensation for such services, provided that such fees or charges shall not exceed the average charges for the same services rendered to patients in the hospitals approved for purposes of this Act.

Sec. 4. No child shall be entitled to the care and treatment provided in this Act unless the Texas Department of Health determines that every person who has a legal obligation to provide care and treatment for the child is financially unable to provide for said care and treatment.

A person who has a legal obligation to provide care and treatment for a child and who is financially able to bear a portion of the expenses shall be required to pay for or reimburse the department for a portion of the cost of the services provided by the department to the child for whom the application is made or by whom the services are received. A schedule to govern this required proportional payment or reimbursement of the cost of services shall be included in the department's rules.

Provided further that at least one physician, regularly practicing under the laws of the State of Texas, must certify that the physician has examined said child and recommends said child as coming under the provisions and intent of this Act. Provided further that no employee, agent, or representative of the Department, or other official agent, shall, by virtue of this Act, have any right to enter any home over the objection of the person who has the legal responsibility to provide care and treatment for the child, and nothing in this Act shall be construed as limiting the power of those persons over such child.

Provided further that funds of the Division of Crippled Children's Services may be expended for the care of any patients either under the regular Crippled Children's Program, the Children's Cancer Services Program, or the Cardiac Program who expire while being hospitalized under the State Program for the following:

Transportation of the deceased and a parent or anyone who may accompany the body of the deceased from the hospital to the place of burial designated by the parents.

Expenses incidental to embalming of the deceased as required for transportation.

A casket purchased at the minimum price as required for transportation.

Any other necessary expenses directly related to the care of the body of the deceased and the return of the body to place of burial.

Eligibility for Other Benefits; Reimbursement of Department

Sec. 4A. (a) In this section, "other benefit" means a benefit to which a person is entitled other than a benefit under this Act for payment of the costs of medical care and treatment or burial, including but not limited to the following:

(1) benefits available under:

(A) an insurance policy, group health plan, or prepaid medical care plan;

(B) Title XVIII or Title XIX of the Social Security Act, as amended;¹

(C) the Veterans Administration;

(D) the Civilian Health and Medical Program of the Uniformed Services;

(E) workers' compensation or any other compulsory employers' insurance program; or

(F) a public program created by federal law, state law, or the ordinances or rules of a municipality or political subdivision of the state; or

(2) benefits available from a cause of action for medical expenses to a child applying for or receiving services from the department or a settlement or judgment based on such a cause of action, if the expenses are related to the need for services provided by the program.

(b) A child is not eligible to receive services provided by this Act to the extent that the child or a person who has a legal obligation to support the child is eligible for some other benefit that would pay for the service or part of the service provided by this Act.

(c) An applicant or recipient of services provided by this Act shall inform the department at the time of application or at any time during eligibility and receipt of services of any other benefit to which the child for whom the application is made, the child's parent, the child's managing conservator, or other person who has a legal obligation to support the child may be entitled.

(d) The parent of a child, the managing conservator of a child, or other person who has a legal obligation to support a child who has received services that are covered by some other benefit shall reimburse the department to the extent of the services provided when the other benefit is received.

(e) The department may recover the expenditure for services provided under this Act from a person who does not reimburse the department as required by Subsection (d) of this section or from any third party upon whom there is a possible legal obligation to pay other benefits and to whom notice of the department's interest in the other benefits has been given. At the request of the commissioner of health, the attorney general may bring suit in the appropriate court of Travis County on behalf of the department. The court may award attorney's fees, court costs, and interest accruing from the date the department provides the service to the date the department is reimbursed in a judgment in favor of the department.

¹ 42 U.S.C.A. §§ 1395 et seq., 1396 et seq.

Modification, Suspension, or Termination of Services

Sec. 4B. (a) The department is authorized after notice to the persons affected, for good cause to modify, suspend, or terminate services to any child who has been found to be eligible for services or who is receiving services from the department.

(b) The criteria for departmental action authorized under this section shall be contained in the department's program rules.

[See Compact Edition, Volume 4 for text of 5 to 8]

[Amended by Acts 1979, 66th Leg., p. 168, ch. 92, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1497, ch. 647, §§ 1 to 3, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1512, ch. 653, §§ 1 to 3, eff. June 13, 1979.]

Art. 4419e. Repealed by Acts 1979, 66th Leg., p. 2429, ch. 842, art. 1, § 2(1), eff. Sept. 1, 1979

Acts 1979, 66th Leg., ch. 842, repealing this article, enacts the Human Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Human Resources Code.

Prior to repeal, this article was amended by Acts 1975, 64th Leg., p. 939, ch. 352, §§ 1, 2; Acts 1977, 65th Leg., p. 1203, ch. 466, §§ 1 to 3.

Art. 4419f. Children's Vision Screening Act of 1979

Short Title

Sec. 1. This Act shall be known as and may be cited as "The Texas Children's Vision Screening Act of 1979."

Purpose

Sec. 2. The purpose of children's vision screening is to identify those children who need a thorough eye examination by a professional eye examiner. Such screening is particularly necessary in early childhood since many visual defects will become incurable if detected too late. Screening is not a diagnostic procedure and decisions about the need for treatment can only be made after a professional eye examination. Besides discovering vision defects which may interfere with the child's education, vision screening helps the teacher prepare assessments of the child's educational potential and helps to detect those children who are needing special educational services because of insufficient vision. It shall not be the intent of the legislature to impose any added fiscal implications or additional costs on units of local government.

Definitions

Sec. 3. (a) "Board" means the Texas Board of Health.

(b) "Department" means the Texas Department of Health.

(c) "Vision screening" means a test or battery of tests for rapid determination of the need for a more complete visual examination by an eye specialist.

Children's Vision Screening Required; Exception

Text of section effective September 1, 1980

Sec. 4. (a) It is required for all children enrolling in any public, private, parochial, or denominational school in Texas for the first time, that the parent, managing conservator, or other person having a legal responsibility for the child's support shall submit to the admitting officer of the school within 90

days after admission a certificate which states that the child has either (1) been examined by a physician licensed to practice in the United States or an optometrist licensed to practice in the United States or (2) undergone a vision screening test which has been approved by the board and which discloses the results of the examination or test.

(b) Subject to the exception in Subsection (c) of this section, the board may by rule modify the requirement of Subsection (a) to require the additional periodic examination or screening of children it determines is necessary.

(c) A child may be provisionally admitted to a kindergarten, elementary, or secondary school upon the submission of an affidavit signed by the parent, managing conservator, or person having a legal responsibility for the child's support, that the child will undergo the required vision screening test or examination as rapidly as is feasible.

(d) The requirements of this section are mandatory except in the event that the affected child's parent, managing conservator, or person having a legal responsibility for the child's support presents to the school authorities an affidavit signed by the parent, managing conservator, or person having a legal responsibility for the child's support stating that the visual screening test conflicts with the tenets or practices of a recognized church or religious denomination of which the affiant is an adherent or a member.

(e) The governing body of each school shall ensure that all parents, managing conservators, or persons having a legal responsibility for the support of school children within the jurisdiction of the governing body present the required certificate of examination or screening, or an affidavit of exemption based on religious tenet or practice.

Required Certificate

Text of section effective September 1, 1980

Sec. 5. (a) The certificate required shall be in a form prescribed by the board and shall contain that information which may be required by the board to carry out the intent of this Act.

(b) The certificate may be signed by:

(1) a physician licensed to practice in the State of Texas or an optometrist licensed to practice in the United States who performed the eye examination;

(2) a physician licensed to practice in the State of Texas or an optometrist licensed to practice in the United States who personally supervised a vision screening test; or

(3) health personnel, volunteers, school nurses or aides, or other school personnel who have undergone a special training program in the adminis-

tration of children's vision screening testing which meets the standards approved by the board.

(c) The requirement of Section 4 may be met by an entry made in the official school record of the child which states that the child has undergone a vision screening test which meets the standards set by the board, that the test was administered by a person authorized in this section to sign the required certificate, and which discloses the results of the test.

Examination or Test Records; Reporting

Sec. 6. (a) Each school covered by this Act shall keep an individual eye examination or vision screening record for each student during the period of attendance for each child admitted, and the records shall be open for inspection at all reasonable times by representatives of the local health departments or the Texas Department of Health.

(b) Each school covered by this Act shall cooperate in transferring student's eye examination or vision screening records between other schools. Specific approval from the parent, managing conservator, or other person having a legal responsibility for the child's support is not required prior to making such transfers.

(c) The department shall develop the form for a required annual report of the results of the examinations or tests and the report will be submitted according to the instructions of the board.

Powers of the Texas Board of Health

Sec. 7. (a) The board is authorized to establish a vision screening program in the department.

(b) The board, in consultation with the advisory committee, shall adopt rules to carry out the intent of this Act. These rules shall include, but not be limited to, rules prescribing the following:

(1) form and content of the required certificate;

(2) the closing dates for presenting such certificates;

(3) transfer of individual certificates between schools;

(4) criteria for rescreening and referral;

(5) reporting of results and referrals to the department;

(6) standards required for vision screening tests and screener training courses to ensure excellence and uniformity in the vision screening program.

(c) The board acting through the department and in consultation with the advisory committee shall:

(1) train or approve the training of persons who will administer vision screening tests;

(2) monitor the quality of screening activities in an appropriate manner;

(3) directly or through local health departments or regional public health offices, assist school districts and other organizations in developing programs to provide vision screening for children;

(4) compile and publish statistical analyses of reports relating to examination and screening results and referrals to ascertain the impact of the requirements on public health.

Advisory Committee on Vision Screening

Sec. 8. The board shall appoint an advisory committee on children's vision to consult with and advise the board in determining acceptable technical and professional standards which must be met by any individual or public or private health care entity undertaking to perform the vision screening tests allowed in Section 4 of this Act. The advisory committee will also advise the board on referral and appropriate follow-up.

(a) The advisory committee shall be composed of:

(1) two physicians who are licensed to practice in Texas and whose medical specialty is ophthalmology;

(2) two optometrists who are licensed to practice in Texas, one of whom must be a member of the Texas Optometric Association and one of whom must be a member of the Texas Association of Optometrists; and

(3) two persons to represent the public who have experience in and an interest in children's visual problems.

(b) Except for those first appointed, members are appointed for terms of six years expiring on August 31 of the odd-numbered years. If a vacancy occurs on the committee, the board shall appoint a member to serve the unexpired portion of the term.

(c) The advisory committee shall serve without compensation; however, the committee members may be reimbursed for their actual and necessary expenses incurred while fulfilling their duties as committee members.

(d) The advisory committee, after approval from the department, may from time to time invite the participation of representatives of professional and volunteer organizations in their activities.

Interagency Committee on Children's Vision

Sec. 9. (a) The functioning of the vision screening program shall be assisted by an interagency committee on children's vision. The commissioner of education, the commissioner of human resources, the executive director of the State Commission for the Blind, and the commissioner of health shall appoint one member from their agency to the committee. The committee members shall coordinate preschool and school vision screening programs and the vision health programs in their respective agencies in the

State of Texas. The committee may invite the advisory committee on children's vision, authorized under this Act, to meet with it and to offer professional consultation when requested.

(b) The interagency committee shall select one of its members as chairman and may elect other officers that it considers necessary. The committee may meet as often and at any place that it may decide, but shall meet at least once in each calendar year.

Limitation on Authority

Sec. 10. Nothing in this Act shall be construed as giving anyone authority to require the maintenance of any forms or filing of reports that were not required prior to the passage of this Act.

Initial Appointments

Sec. 11. In making the initial appointments to the advisory committee, the board shall appoint one ophthalmologist and one optometrist for terms expiring on August 31, 1981; one optometrist and a person representing the public for terms expiring August 31, 1983; and one ophthalmologist and a person representing the public for terms expiring August 31, 1985.

Effective Date

Sec. 12. The effective date of this Act is September 1, 1979; provided, however, that the requirements of Section 4 and Section 5 shall not be effective until September 1, 1980.

[Amended by Acts 1979, 66th Leg., p. 2053, ch. 804, §§ 1 to 3, 6 to 12, eff. Sept. 1, 1979; §§ 4, 5, eff. Sept. 1, 1980.]

Art. 4437e. Hospital Authority Act

[See Compact Edition, Volume 4 for text of 1]

Definitions

Sec. 2. As used in this law, "City" means any incorporated city or town in this State;

"Governing Body" means the council, commission or other governing body of a City;

"Authority" means a Hospital Authority created under this Act;

"Board" or "Board of Directors" means the board of directors of the Authority;

"Bond" or "Bonds" means bonds or notes;

"Bond Resolution" means the resolution authorizing the issuance of revenue bonds;

"Trust Indenture" means the mortgage, deed of trust or other instrument pledging revenues of, or creating a mortgage lien on properties, or both, to secure the revenue bonds issued by the Authority;

"Trustee" means the trustee under the Trust Indenture;

"Hospital" or "Hospitals" means any "Hospital Project" as defined in Section 3(g) of Senate Bill No. 243, as enacted, Acts of the 64th Legislature, Regular Session, 1975, as now or hereafter amended.¹

[See Compact Edition, Volume 4 for text of 3]

Board of Directors

Sec. 4. (a) The Authority shall be governed by a Board of Directors consisting of not less than seven (7) nor more than eleven (11) members to be determined at the time of creating the Authority. Unless otherwise provided in the resolution authorizing the issuance of bonds or the Trust Indenture securing them, the number of Directors may be increased or decreased from time to time by amendment to the ordinance creating the Authority adopted by the Governing Body of the City or ordinances creating the Authority adopted by the Governing Bodies of the Cities, but no decrease in number shall have the effect of shortening the term of any incumbent Director. Except as hereinafter in this Section provided, the first Directors shall be appointed by the Governing Body of the City or by the Governing Bodies of the Cities, and they shall serve until their successors are appointed as hereinafter provided. If Authority includes more than one City, each Governing Body shall appoint an equal number of Directors unless otherwise agreed by the Cities. When the Authority issues its revenue bonds the resolution authorizing the issuance of the bonds or the Trust Indenture securing them may prescribe the method of selecting and the term of office of a majority of the members of the Board. The remaining members of the Board shall be appointed by the Governing Body of the City or the Governing Bodies of the Cities for two (2) year terms. The Trust Indenture may also provide that, in event of default as defined in the Trust Indenture, the Trustee may appoint all of the Directors, in which event the terms of the Directors then in office shall automatically terminate. Unless and until provision is made in the Bond Resolution or Indenture in connection with the issuance of bonds for the appointment by other means of part of the Directors, all of the Directors shall be appointed by the Governing Body of the City or each of the Cities, as the case may be, for terms not to exceed two (2) years, but the terms of Directors appointed prior to the issuance of the first issue of revenue bonds shall be subject to the exercise of the provision herein made for appointment of a majority of the members of the Board in connection with the issuance of the bonds. No officer or employee of any such City shall be eligible for appointment as a Director. Directors shall not receive compensation for services but shall be entitled to reimbursement of their expenses incurred in performing such service.

(b) In the event the Authority purchases from a nonprofit corporation a hospital then in existence or in process of construction, the first members of the Board of Directors and their successors shall be determined as provided in the contract of purchase.

Officers; Quorum; Committees; Manager or Executive Director; Lease; Legal Counsel

Sec. 5. The Board of Directors shall elect from among their members a president and vice-president, and shall elect a secretary and a treasurer who may or may not be Directors, and may elect such other officers as may be authorized by Authority's bylaws. The offices of secretary and treasurer may be combined. The president shall have the same right to vote on all matters as other members of the Board. A majority of the members of the Board shall constitute a quorum and when a quorum is present action may be taken by a majority vote of Directors present. If the bylaws so provide, the Board of Directors, by resolution adopted by a majority of the Directors in office, may designate one or more committees, which, to the extent and in the manner provided in such resolution or in the bylaws, shall have and exercise the authority of the Board of Directors in the management of the Authority. Each such committee shall consist of two or more persons who are directors and may have additional nonvoting members who, if such resolution or the bylaws so provide, need not be directors. The Board of Directors may not, however, provide for the delegation to such committees of the Authority of the power to issue bonds, enter into or amend a lease of a Hospital or a management agreement with respect to a Hospital or to employ or discharge a manager or an executive director. The Board may employ a manager or executive director of the Hospital and such other employees, experts and agents as it may see fit, or enter into a management agreement with any person and it may delegate to the manager the power to manage the Hospital and to employ and discharge employees. The Board may lease the Hospital as otherwise provided by law and may employ legal counsel.

Construction, Operation and Equipment of Hospitals; Location; Sale of Property

Sec. 6. (a) The Authority shall have the power to construct, enlarge, furnish and equip Hospitals, purchase existing Hospitals, furnishings and equipment for its Hospitals, and to operate and maintain Hospitals. A Hospital need not be located within the City or Cities.

(b) The Authority may sell any of its property without an election to a political subdivision of the State for the fair market value of the property if:

(1) the Board of Directors has notice of its intention to sell the property, a description of the property, and the scheduled date of the sale pub-

lished in a newspaper or newspapers providing general circulation in the Authority once each week for two consecutive weeks, the first publication at least 14 days before the scheduled date of the sale; and

(2) a petition requesting an election on a proposition for or against the sale, signed by 10 percent or more of the qualified voters residing in the Authority is not presented to the secretary or president of the Board of Directors before the scheduled date of the sale.

(c) If a petition described in Subdivision (2), Subsection (b) of this section is presented to the secretary or president of the Board of Directors before the scheduled date of the sale, the property may be sold to a political subdivision only if an election on the proposition is held and a majority of the qualified voters voting in the election favor the sale. The Board shall call the election on receiving the petition or may call the election on its own motion if no petition is filed. The Board shall determine and the order calling the election shall specify the date, place, or places of holding the election, the form of ballot, and the presiding judge, alternate judge, and clerks for each voting place. Section 9b, Texas Election Code (Article 2.01b, Vernon's Texas Election Code), does not apply to the election. A substantial copy of the election order shall be published in a newspaper or newspapers of general circulation in the Authority once a week for two consecutive weeks, the first publication to appear at least 30 days before the election date. The form of the ballots at the election shall be in conformity with Section 61, Texas Election Code, as amended (Article 6.05, Vernon's Texas Election Code), so that ballots may be cast for or against the following proposition: "The sale of by the Hospital Authority." The Board shall canvass the returns and announce the results. Except as specifically provided in this section, the election shall be governed by the Texas Election Code.

(d) The Board may sell real property acquired by donation, gift, or purchase that the Board determines is not needed for Hospital purposes if the sale does not contravene (1) a trust indenture or bond resolution relating to outstanding bonds of the Authority, or any prior restrictions or limitations placed on the use of the property, or (2) any agreement entered into either prior to or after the effective date of this Section 6(d) between the Authority and a non-profit corporation under the provisions of Senate Bill No. 243, as enacted, Acts of the 64th Legislature, Regular Session, 1975.¹ The Board shall sell the property through sealed bids or at a public auction. If the Board conducts the sale by sealed bids, the Board shall provide notice of the sale in the manner provided by Chapter 455, Acts of the 61st

Legislature, Regular Session, 1969, as amended (Article 5421c-12, Vernon's Texas Civil Statutes). If the Board conducts the sale by public auction, the Board shall publish notice of the sale, including a description of the property and the date, time, and place of the auction, in a newspaper with general circulation in each City of the Authority once a week for three consecutive weeks, the first notice to appear at least 20 days before the auction. Nothing in this Section 6(d) is intended to affect or amend the powers granted to the Authority by Senate Bill No. 243, as enacted, Acts of the 64th Legislature, Regular Session, 1975.

¹ Article 4437e-2.

Revenue Bonds

Sec. 7. The Authority may issue revenue bonds to provide funds for any of its purposes. Such bonds shall be payable from and secured by a pledge of all or any designated part of the revenues to be derived from the operation of the Hospital or Hospitals and any other revenues resulting from the ownership of the Hospital properties. The bonds may be additionally secured by a mortgage or deed of trust on real property of Authority or by a chattel mortgage on its personal property, or by both.

Procedure for Bond Issue; Requisites; Maturity; Sales; Registration

Sec. 8. The bonds shall be authorized by resolution adopted by a majority vote of a quorum of the Board of Directors, and shall be signed by the president or vice-president and countersigned by the secretary, or either or both of their facsimile signatures may be printed thereon. The seal of the Authority shall be impressed or printed thereon. The bonds shall mature serially or otherwise in not to exceed forty (40) years and may be sold at a price and under terms determined by the Board of Directors to be the most advantageous reasonably obtainable, provided that the net effective interest rate as defined by law in Article 717k-2 does not exceed ten per cent (10%) per annum, and within the discretion of the Board, may be made callable prior to maturity at such times and prices as may be prescribed in the resolution authorizing the bonds, and may be made registrable as to principal or has to both principal and interest.

[See Compact Edition, Volume 4 for text of 8a and 9]

Junior Lien Bonds; Parity Bonds

Sec. 10. Bonds constituting a junior lien on the revenues or properties may be issued unless prohibited by the Bond Resolution or Trust Indenture. Parity bonds may be issued under conditions specified in the Bond Resolution or Trust Indenture.

Money Set Aside Out of Bond Sale Proceeds

Sec. 11. Money for the payment of not more than two (2) years interest on the bonds and an amount estimated by the Board to be required for operating expenses during the first year of operation and an amount to fund any bond reserve fund or other reserve funds provided for in the Bond Resolution or Trust Indenture may be set aside for those purposes out of the proceeds from the sale of the bonds.

Refunding Bonds

Sec. 12. Bonds may be issued for the purpose of refunding outstanding bonds in the manner provided in this Act for other bonds, and may be exchanged by the Comptroller of Public Accounts of the State of Texas or sold and the proceeds applied in accordance with the procedure prescribed in Chapter 503, Acts of the Fifty-fourth Legislature² or other applicable law.

[See Compact Edition, Volume 4 for text of 13]

Operation of Hospital; Rates Charged; Creation of Funds; Lease Conditions

Sec. 14. The Hospital shall be operated without the intervention of private profit for the use and benefit of the public. If the Hospital is not being used, operated, or acquired by a nonprofit corporation under the provisions of the Hospital Project Financing Act (Article 4437e-2, Vernon's Texas Civil Statutes) or not leased it shall be the duty of the Board of Directors to charge sufficient rates for services rendered by the Hospital and to utilize other sources of its revenues that revenues will be produced sufficient to pay all expenses in connection with the ownership, operation and upkeep of the Hospital, to pay the interest on the bonds as it becomes due, to create a sinking fund to pay the bonds as they become due, and to create and maintain a bond reserve fund and other funds as provided in the Bond Resolution or Trust Indenture. In the event the Hospital is being used, operated, or acquired by a nonprofit corporation under the provisions of the Hospital Project Financing Act (Article 4437e-2, Vernon's Texas Civil Statutes) or leased, it shall be the duty of the Board of Directors to provide that such nonprofit corporation or the lessee shall charge sufficient rates for services rendered by the Hospital which together with other sources of such nonprofit corporation's or the lessee's revenues will produce revenues sufficient to enable such nonprofit corporation or the lessee to pay all expenses in connection with the operation and upkeep of the Hospital and to make payments or to pay lease rentals to the Authority which will be sufficient, when taken with other pledged sources of the Authority's estimated revenues, to pay the interest on the bonds as it becomes due, to create a sinking fund to pay the bonds as they become due, and to create and main-

tain a bond reserve fund and other funds as provided in the Bond Resolution or Trust Indenture. The Bond Resolution or Trust Indenture may prescribe systems, methods, routines, procedures, and policies under or in accordance with which the hospital shall be operated, and in the event the Hospital is being used, operated, or acquired by a nonprofit corporation or leased, the Authority may delegate to such nonprofit corporation or the lessee the duty to establish the systems, methods, routines, procedures, and policies under or in accordance with which the Hospital shall be operated.

[See Compact Edition, Volume 4 for text of 15 to 17]

Investment of Funds and Proceeds of Bonds

Sec. 18. The law as to the security for and the investment of funds, applicable to Cities, shall control, insofar as applicable the investment of funds belonging to Authority. The Bond Resolution or the Indenture or both may further restrict the making of such investments. In addition to other powers Authority shall have the right to invest the proceeds of its bonds, until such money is needed, in the manner authorized in the Bond Resolution or Indenture, and the proceeds of its bonds may be deposited in such banks and may be paid out pursuant to such terms as may be provided in the Bond Resolution or Trust Indenture.

[See Compact Edition, Volume 4 for text of 19]

[Amended by Acts 1975, 64th Leg., p. 1904, ch. 612, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1309, ch. 517, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1358, ch. 539, § 1, eff. June 15, 1977; Acts 1979, 66th Leg., p. 502, ch. 233, § 1, eff. May 17, 1979; Acts 1979, 66th Leg., p. 1603, ch. 678, § 1, eff. June 13, 1979.]

¹ Classified as art. 4437e-2.

² Article 717k.

Section 2 of the 1975 amendatory act, § 2 of Acts 1977, 65th Leg., p. 1309, ch. 517, and § 2 of Acts 1979, 66th Leg., p. 1604, ch. 678, provided:

"If any word, phrase, clause, sentence or part of this Act shall be held by any court of competent jurisdiction to be invalid or unconstitutional, it shall not affect any other word, phrase, clause, sentence or part of this Act, and such remaining portions shall remain in full force and effect."

Art. 4437e-2. Hospital Project Financing Act

Short Title

Sec. 1. This Act may be cited as the "Hospital Project Financing Act."

Purpose

Sec. 2. It is hereby found, determined, and declared that it is the policy of the State of Texas that the present and prospective health, safety, and general welfare of the people of this state require as a public purpose the promotion and development of new and expanded hospital projects, as defined in this Act. It is essential that the people of this state have access to adequate medical care and health facilities and that such facilities be provided with

appropriate additional means to assist in the development and maintenance of the public health. It is the purpose of this Act to enable certain issuers, as defined in this Act, to provide the facilities and structures, at a reasonable cost, which are determined to be needed by the various issuers; therefore the issuance of revenue bonds and notes by such issuers as herein provided for the promotion of medical care, public health, and medical research, including training and teaching, is hereby declared to be in the public interest and a public purpose. The necessity in the public interest of the provisions herein-after enacted is hereby declared as a matter of legislative determination.

Definitions

Sec. 3. When used in this Act, unless the context requires a different definition:

(a) "Authority" means a hospital authority created and established in accordance with Chapter 472, Acts of the 55th Legislature, 1957, as amended (Article 4437e, Vernon's Texas Civil Statutes); or Chapter 122, Acts of the 58th Legislature, 1963 (Article 4494r, Vernon's Texas Civil Statutes); or any other public health authority presently existing or created hereafter by law in this state.

(b) "City" means any municipal corporation of this state presently existing or created hereafter, whether existing or created by general law or pursuant to a home-rule charter.

(c) "Cost" as applied to a hospital project, as herein defined, means and includes any and all costs of a hospital project, and, without limiting the generality of the foregoing, "cost" as applied to a hospital project and used in this Act shall include the following:

(1) the cost of the acquisition of all land, rights-of-way, options to purchase land, easements, and interests of all kinds in land related to a hospital project;

(2) the cost of the acquisition, construction, repair, renovation, remodeling, or improvement of all buildings and structures to be used as, or in conjunction with, a hospital project;

(3) the cost of site preparation, including the cost of demolishing or removing any buildings or structures the removal of which is necessary or incident to providing a hospital project;

(4) the cost of architectural, engineering, legal, and related services, plans and specifications, studies, surveys, estimates of cost and of revenue, and all other expenses necessary or incident to planning, providing, or determining the feasibility and practicability of a hospital project;

(5) the cost of all machinery, equipment, furniture, and facilities necessary or incident to the

equipping of a hospital project so that it may be placed in operation;

(6) the cost of financing charges and interest prior to and during construction and for a maximum of two years after completion of construction and the start-up costs of a hospital project during construction and for a maximum of two years after completion of construction;

(7) any and all cost incurred in connection with the financing of a hospital project, including without limitation, the cost of financing, legal, accounting, and appraisal fees, expenses, and disbursements; the cost of printing, engraving, and reproduction services; and the cost of the initial or acceptance fee of any trustee or paying agent;

(8) all direct and indirect costs of the issuer, as herein defined, incurred in connection with providing a hospital project, including, without limitation, reasonable sums to reimburse the issuer for time spent by its employees with respect to providing a hospital project and the financing thereof; and

(9) the cost of all fees, charges, and expenses incurred in connection with the authorization, preparation, sale, issuance, and delivery of any bonds or notes issued in accordance with the terms of this Act.

(d) "County" means a political subdivision of the State of Texas created and established under Article IX, Section 1, of the Constitution of Texas.

(e) "District" means a hospital district presently existing or created hereafter under authority of the constitution and laws of Texas.

(f) "Governing body" means, with reference to an issuer, as herein defined, the board of directors, council, commission, commissioners court, trustees, or similar body charged by law with the governance of an issuer.

(g) "Hospital project" means and includes any real, personal, or mixed property, or any interest therein, the financing, refinancing, acquiring, providing, constructing, enlarging, remodeling, renovating, improving, furnishing, or equipping of which is found by the governing body of an issuer to be required or necessary for medical care, research, training, and teaching, any one or all, within this state, irrespective of whether such property is in existence or to be provided after the making of such finding. The use of the singular "hospital project" herein shall also include the plural "hospital projects" unless the context clearly requires a different connotation. Without limiting the generality of the foregoing, and when found by the governing body of an issuer to be so required, necessary, or convenient, "hospital project" shall include the following:

(1) any land, buildings, equipment, machinery, furniture, facilities, and improvements;

(2) any structure suitable for use as a hospital, clinic, health facility, extended care facility, out-patient facility, rehabilitation or recreation facility, pharmacy, medical laboratory, dental laboratory, physicians' office building, or laundry or administrative facility or building related to a health facility or system;

(3) any structure suitable for use as a multi-unit housing facility for medical staff, nurses, interns, other employees of a health facility or system, patients of a health facility, or relatives of patients admitted for treatment or care in a health facility;

(4) any structure suitable for use as a support facility related to a hospital project such as an office building, parking lot or building, or maintenance, safety, or utility facility, and related equipment;

(5) any structure suitable for use as a medical or dental research facility, medical or dental training facility, or any other facility used in the education or training of health care personnel;

(6) any property or material used in the landscaping, equipping, or furnishing of a hospital project and other similar items necessary or convenient for the operation of a hospital project; and

(7) any other structure, facility, or equipment related to, or essential to, the operation of any health facility or system except that a hospital project shall not include any nursing home licensed as such, or which would be required to be licensed as such, under the authority of the State of Texas. "Hospital project" may include any combination of one or more of the foregoing.

(h) "Issuer" means any authority, city, county, or district.

(i) "Non-profit corporation" means (1) a non-profit corporation established under the Texas Non-Profit Corporation Act, as amended (Article 1396-1.01, et seq., Vernon's Texas Civil Statutes), or any other similar statute, or (2) an association, foundation, trust, cooperative, or similar person or organization no part of the net earnings of which inures to the benefit of any private shareholder or individual and which incurs a contractual obligation with an issuer with respect to a hospital project in accordance with the provisions of this Act. The use of the singular "non-profit corporation" herein shall also include the plural "non-profit corporations" unless the context clearly requires a different connotation.

Payment of Bonds or Notes

Sec. 4. Bonds or notes issued in accordance with the provisions of this Act shall not be deemed to constitute general obligations of the State of Texas, the issuer, or any other political subdivision or agency of this state or a pledge of the faith and credit of any of them but such bonds or notes shall be payable solely from revenues of the hospital project for which they are issued and/or from such other revenues as may be provided by a non-profit corporation. No money of the State of Texas or any political subdivision or agency of this state, whether raised from taxation or any other source, except for revenue of the hospital project being financed with the bonds, shall ever be used to pay the principal of, redemption premium, if any, or interest on any revenue bonds or notes or refunding bonds or notes issued under this Act. All such revenue bonds or notes shall contain on the face thereof statements to the effect (a) that neither the State of Texas, the issuer, nor any political subdivision or agency of the State of Texas shall be obligated to pay the same or the interest thereon except from the revenues pledged thereto and (b) that neither the faith, credit, nor the taxing power of the State of Texas, the issuer, or any political subdivision or agency thereof is pledged to the payment of the principal of, redemption premium, if any, or interest on such bonds or notes. The issuer shall not be authorized to incur financial obligations under this Act which cannot be paid from the proceeds of the bonds or notes, revenues derived from operating a hospital project, or any other revenues as may be provided by a non-profit corporation, in accordance with the provisions of this Act. In no event shall any appropriation be made by the Legislature of Texas or any issuer to pay all or any part of any cost of a hospital project or any operating cost of such hospital project in accordance with the provisions of this Act. The issuer shall be paid, out of money from the proceeds of the sale and delivery of its revenue bonds or notes issued in accordance with the provisions of this Act, an amount of money equal to all of the issuer's out-of-pocket expenses and costs in connection with the issuance, sale, and delivery of such bonds or notes, including, without limitation, all financing, legal, printing, and other expenses and costs incurred in issuing such bonds or notes, plus an amount of money equal to the compensation paid any of such issuer's employees for the time such employees spent on activities related to the issuance, sale, and delivery of such bonds or notes. All such costs and expenses shall be deemed to be a "cost" of a hospital project as defined in Section 3(c) of this Act.

Powers of Issuer

Sec. 5. In addition to all other powers which it may now or hereafter have, each issuer is authorized and empowered as follows:

(a) to provide, or cause to be provided by a non-profit corporation, by acquisition (whether by purchase, devise, gift, lease, or any one or more of such methods), construction, or improvement one or more hospital projects located within this state, and within or partially within the issuer's boundaries; provided that with respect to the acquisition of one or more hospital projects, (a) the issuer shall only acquire such hospital project from a non-profit corporation which has been in existence and has operated such hospital project for a period of at least three years prior to the date of acquisition by the issuer and (b) the issuer affirmatively finds that the cost of such hospital project is not more than (1) the actual audited cost of the hospital project to the date of acquisition or (2) the fair market value of the hospital project at the date of acquisition as determined by an appraisal obtained by the issuer, the cost of which appraisal shall be a cost of the hospital project; provided that as to a city, a hospital project may be situated outside its territorial limits if it is within its extraterritorial jurisdiction as provided by the Municipal Annexation Act, as amended (Article 970a, Vernon's Texas Civil Statutes); and further provided that as to a city, a hospital project may be situated within the territorial limits of any other city if the governing body of such other city shall consent to the former city providing such hospital project;

(b) to cause title to a hospital project provided in accordance with the provisions of this Act to be vested in a non-profit corporation; provided that if the governing body of the issuer deems it advisable to so vest title in a non-profit corporation, such issuer may retain a mortgage interest in such hospital project, which mortgage interest shall expire if and when all bonds or notes of the issuer sold to provide such hospital project have been paid or provision has been made for their final payment;

(c) to enter into leases or other contracts with a non-profit corporation with respect to any hospital project whereby such non-profit corporation shall use, operate, or acquire such hospital project, and such leases or contracts may be for such payment and upon such terms and conditions as the governing body may deem advisable; and to sell such hospital project to any non-profit corporation, including a non-profit corporation using such hospital project, such sale to be by installment payments or otherwise, and to be fully consummated if and when all bonds or notes of the issuer issued to provide such hospital project have been paid or provision has been made for their final payment; provided that during the time the bonds or notes or interest thereon remains unpaid there is no failure to make any payments owing under any lease or contract at the time and in the manner as the same become due; and

(d) to refund outstanding obligations, mortgages, or advances issued, made, or given by a non-profit corporation for the cost of a hospital project.

Eminent Domain

Sec. 6. No issuer shall have the power under this Act to acquire any hospital project, or any part thereof, to be sold or leased under this Act, by the exercise of the power of eminent domain. Land previously acquired by an issuer in the exercise of the power of eminent domain may be sold or leased, under the provisions of this Act; provided that the governing body of the issuer determines that (a) such use will not interfere with the purpose for which such land was originally acquired or that such land is no longer needed for such purpose, (b) at least seven years have elapsed since such land was so acquired, and (c) such land was not acquired for park purposes unless such sale or lease of park land has been approved at an election held under the authority of Article 1112, Revised Civil Statutes of Texas, 1925, as amended by Chapter 108, Acts of the 63rd Legislature, 1973.

Issuance of Bonds or Notes

Sec. 7. (a) Each issuer is hereby authorized to provide by resolution, from time to time, for the issuance of negotiable revenue bonds or notes or any other evidences of indebtedness for the purpose of paying all or any part of the cost of a hospital project. The bonds or notes of each issue shall be dated, shall bear interest at such rate or rates, and shall mature at such time or times, not exceeding 40 years from their date, as may be determined by the issuer and may be made redeemable before maturity, at the option of the issuer, at such price or prices and under such terms and conditions as may be determined by the issuer.

(b) The principal of, redemption premium, if any, and the interest on such bonds or notes shall be payable from and secured by a pledge of all or any part of the revenues of the issuer to be derived from the ownership, operation, lease, use, mortgage, and/or sale of the hospital project for which such bonds or notes have been issued and/or from such other revenues, if any, as may be provided by a non-profit corporation, all as specified by the resolution of the governing body or in any trust indenture or other instrument securing the bonds or notes.

(c) One or more series of bonds or notes may be issued for each hospital project or any hospital projects may be combined in one or more series of bonds or notes if the governing body, in the exercise of its discretion, deems the same to be in the best interest of the issuer, but each hospital project may be considered separately with respect to the provisions of Sections 8 and 9 of this Act.

(d) The issuer shall determine the form of the bonds or notes, including any interest coupons to be attached thereto, and shall determine the denomination or denominations of the bonds or notes and the place or places of payment of principal, redemption premium, if any, and interest. Provision may be made for execution of the bonds or notes and coupons, if any, under the provisions of Chapter 204, Acts of the 57th Legislature, 1961, as amended (Article 717j-1, Vernon's Texas Civil Statutes). In cases where any officer whose signature or a facsimile of whose signature shall appear on any bonds, notes, or coupons shall cease to be such officer before the delivery of such bonds or notes, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until such delivery. The bonds or notes may be issued in coupon or in registered form, or both, or may be payable to a specific person, as the issuer may determine, and provisions may be made for the registration of any coupon bonds or notes as to the principal alone and also as to both principal and interest, and provision may be made for the conversion of coupon bonds or notes into registered bonds or notes without coupons and for the reconversion into coupon bonds or notes of any registered bonds or notes without coupons. If the duty of such conversion or reconversion is imposed upon a trustee in a trust agreement, the substituted bonds or notes need not be reapproved by the Attorney General of Texas, and they shall remain incontestable. The issuer shall sell the bonds or notes at such price or prices as shall be determined by the governing body of the issuer.

(e) The proceeds of the bonds or notes shall be used solely for the payment of the cost of the hospital project for which the bonds or notes were issued, and shall be disbursed in such manner and under such restrictions, if any, provided in the resolution authorizing their issuance or in the trust agreement securing the same. If the proceeds of the bonds or notes shall exceed the cost of the hospital project for which the same shall have been issued, the surplus shall be deposited to the credit of the sinking fund for such bonds or notes.

(f) From the proceeds from the sale of the bonds or notes, the governing body may set aside amounts for payments into reserve funds, and provisions for such funds may be made in the resolution authorizing the bonds or notes or any instruments securing the same. The proceeds from the sale of the bonds or notes may be invested: (1) in direct, indirect, or guaranteed obligations of the United States government or its agencies maturing in the manner that may be specified by the resolution authorizing the bonds or notes or any other instrument securing the bonds or notes; or (2) in certificates of deposit of any bank or trust company which deposits are secured by such obligations. Any bank or trust com-

pany with trust powers may be designated by the governing body to act as depository of the proceeds of the bonds or notes or of contract or lease revenues. Such bank or trust company shall furnish such indemnifying bonds or pledge such securities as may be required by the issuer to secure the deposits.

(g) Prior to the preparation or issuance of definitive bonds or notes, the issuer may issue interim receipts or temporary bonds or notes, with or without coupons, exchangeable for definitive bonds or notes when such bonds or notes shall have been executed and are available for delivery. Such interim receipts or temporary bonds or notes shall be for a maximum term of two years. The issuer shall submit such interim receipts or temporary bonds or notes to the Attorney General of Texas in accordance with Subsection (i) of this Section 7.

(h) Bonds or notes may be issued in accordance with the provisions of this Act without obtaining the consent of any department, division, commission, board, bureau, or agency of the State of Texas, and without any proceedings or the happening of any conditions or things other than those proceedings, conditions, or things which are specifically required by this Act.

(i) After issuance of the bonds or notes is authorized and before the bonds or notes may be delivered to the purchaser thereof, the bonds or notes and the proceedings authorizing their issuance and securing the bonds or notes shall be presented to the Attorney General of Texas for examination. Where such bonds or notes recite that they are secured by a pledge of all or any part of the revenues of the issuer to be derived from any lease or other contract, such contracts shall also be submitted to the Attorney General of Texas. If the attorney general finds that such bonds or notes have been duly authorized in accordance with the constitution and laws of the State of Texas and that such contracts, if any, submitted to him securing and relating to the bonds or notes have been made in accordance with the constitution and laws of the State of Texas, he shall approve the bonds or notes and such contracts. The bonds or notes when approved shall be registered by the Comptroller of Public Accounts of the State of Texas. After such approval and registration, the bonds or notes and any and all contracts submitted therewith shall be valid and binding obligations in accordance with their terms, and shall be incontestable in any court or other forum.

(j) Nothing in this Act shall supercede the provisions of the state certificate of need law.

(k) Before authorizing the issuance of any bonds or notes or calling an election on any matters authorized by this Act, the issuer shall deposit with the chief administrative officer of the issuer a full and complete description of any proposed hospital project, including a detailed listing and explanation

of projected costs, the reasons for the hospital project, and the names of the owners of the non-profit corporation for whom the hospital project is to be constructed. All of the information deposited or required to be deposited by this section is public information.

**Resolution for Issuance of Bonds or Notes; Publication;
Protest of Issuance; Election**

Sec. 8. Before issuing any bonds or notes in accordance with the provisions of this Act, the governing body of an issuer shall adopt a resolution declaring its intention to do so and stating the maximum amount of bonds or notes proposed to be issued, the purpose for which the bonds or notes are to be issued, and the tentative date, time, and place at which the governing body proposes to authorize the issuance of such bonds or notes. A substantial copy of such resolution shall be published three times in a newspaper or newspapers of general circulation in the territorial limits of the issuer. The first publication shall be made not more than 45 days prior to the tentative date fixed in such resolution and the third publication shall be made not less than 10 days prior to the tentative date fixed in such resolution for the authorization of the bonds or notes. If at least 5 percent or 20,000 of the qualified electors of the issuer, whichever is less, shall file a written protest against the issuance of such proposed bonds or notes at no later than the close of business the business day before the tentative date specified for the authorization of such bonds or notes, then an election on the question of the issuance of such bonds or notes shall be called and held as herein provided. If no such protest is filed, then such bonds or notes may be issued by the issuer without an election at any time within a period of two years after the tentative date specified in the resolution; provided, however, that the governing body of an issuer, in its discretion, may call an election on such question, in which event it shall not be necessary to publish the notice of its intention to issue bonds or notes as provided herein.

Election on Issuance of Bonds or Notes

Sec. 9. If an election is called, notice thereof shall be published three times in a newspaper or newspapers of general circulation in the territorial limits of the issuer. The first publication shall be made not more than 45 days prior to the date fixed for such election, and the third publication shall be made not less than 10 days prior to the date fixed for such election. The election shall be conducted in accordance with the general laws of Texas pertaining to bond elections in cities, except as modified by the provisions of this Act. The order calling the election shall specify the date of such election, the place or places of holding the election, and the presiding judge and alternate judge for each voting place, and shall provide for clerks as provided in the

Election Code of the State of Texas. The form of ballot shall be in conformity with the applicable provisions of such election code and the ballots shall provide for voting for or against the following proposition: "The issuance of revenue bonds or notes or other evidences of indebtedness for the hospital project or hospital projects." As soon as practicable after such election is held, the governing body of the issuer shall convene and canvass the returns of the election, and in the event a majority of the voters voting in such election approves the proposition, such governing body shall so find and declare and shall be authorized to proceed with the authorization of bonds or notes. No election shall again be called on the proposition of issuing revenue bonds or notes for any hospital project which has been defeated by a majority of the voters voting in an election within six months of the proposed new election, and no bonds or notes shall be issued for any such hospital project until a majority of the voters voting in an election held for that purpose approve the issuance of such bonds or notes.

Leases and Other Contracts; Terms

Sec. 10. Any lease or other contract entered into pursuant to this Act may be for such term as the parties may agree, and may provide that it shall continue in effect until the bonds or notes specified therein, or refunding or substitution bonds or notes issued in lieu of such bonds or notes, are fully paid or provision has been made for their final payment.

Refunding Bonds or Notes

Sec. 11. An issuer is hereby authorized to provide by resolution for the issuance of its revenue refunding bonds or notes for the purpose of refunding any bonds, notes, or other evidences of indebtedness then outstanding, issued to provide a hospital project, which bonds, notes, or evidences of indebtedness may or may not have been issued under the provisions of this Act, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, notes, or evidences of indebtedness. The bonds, notes, or evidences of indebtedness previously issued and to be refunded by the revenue refunding bonds or notes described in this Section 11 need not have been originally issued by the issuer of the revenue refunding bonds or notes. The issuance of such bonds or notes, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties, and obligations of the issuer in respect of the same, shall be governed by the provisions of this Act insofar as the same may be applicable. Within the discretion of the issuer, the refunding bonds or notes may be issued in exchange or substitution for outstanding bonds, notes, or other evidences of indebtedness or may be sold and the proceeds used for the purpose of paying or redeeming

outstanding bonds, notes, or other evidences of indebtedness.

Securing Bonds or Notes by Trust Agreement

Sec. 12. (a) Any bonds or notes issued under the provisions of this Act may be secured by a trust agreement by and between the issuer and a corporate trustee, which may be any trust company or bank having the powers of a trust company within the State of Texas. Any such trust agreement may pledge or assign lease income, contract payments, fees, or any other charges to be received from a non-profit corporation. Such bonds or notes, within the discretion of the governing body of the issuer, may be additionally secured by a mortgage, a deed of trust lien, or other security interest upon a designated hospital project vesting in the trustee power to sell such hospital project for the payment of the indebtedness, power to operate such hospital project, and all other powers and authority for the further security of the bonds or notes.

(b) The trust agreement may evidence a pledge of all or any part of the revenues of the issuer to be derived from the ownership, operation, lease, use, mortgage, and/or sale of any hospital project for the payment of principal of, redemption premium, if any, and interest on such bonds or notes as the same shall become due and payable and may provide for the creation and maintenance of reserves. Any such trust agreement or any resolution providing for the issuance of such bonds or notes may contain such provisions for protecting and enforcing the rights and remedies of the holders thereof as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the issuer and the non-profit corporation in relation to the acquisition of property and the construction, improvement, maintenance, repair, operation, and insurance of the hospital project in connection with which such bonds or notes shall have been issued, and the custody, safeguarding, and application of all money. Any such trust agreement may set forth the rights and remedies of the bondholders or noteholders and of the trustee, and may restrict the individual right of action by bondholders or noteholders as is customary in trust agreements or trust indentures securing bonds and debentures of corporations. In addition to the foregoing, any such trust agreement may contain such provisions as the issuer may deem reasonable and proper for the security of the bondholders or noteholders and may also contain provisions governing the issuance of bonds and notes to replace lost, stolen, or mutilated bonds or notes. All expenses incurred by any issuer in carrying out the provisions of any such trust agreement may be treated as a part of the cost of the operation of the hospital project with respect to which the bonds or notes have been issued.

Default in Payment of Bonds or Notes; Enforcement by Mandamus or by Appointment of Receiver

Sec. 13. Any agreement or contract made in accordance with the provisions of this Act may contain a provision that, in the event of a default in the payment of the principal of, redemption premium, if any, or the interest on bonds or notes issued in accordance with, or relating to, such agreement, or in the performance of any agreement contained in the proceedings, mortgage, or instruments relating to such bonds or notes, such payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect rates, rents, or contract payments and to apply the revenues from the hospital project in accordance with such resolution, mortgage, or instruments.

Foreclosure of Mortgage to Secure Bonds or Notes

Sec. 14. Any mortgage to secure bonds or notes issued in accordance with the provisions of this Act may also provide that, in the event of a default in the payment thereof or the violation of any agreement contained in the mortgage, the property secured by the mortgage may be foreclosed and sold under proceedings in equity or in any other manner now or hereafter permitted by law. Such mortgage may also provide that any trustee under such mortgage or the holder of any of the bonds or notes secured thereby may become the purchaser at any foreclosure sale if the highest bidder therefor.

Members of Governing Body; Method of Selecting and Term of Office

Sec. 15. If an authority issues bonds or notes in accordance with the provisions of this Act, notwithstanding any provision of law, and under no circumstances, shall the method of selecting and the term of office of any of the members of the governing body of such authority be prescribed in the resolution authorizing the issuance of such bonds or notes, the trust agreement securing such bonds or notes, or any other agreement relating to such bonds or notes.

Authority of Governing Body

Sec. 16. Except as limited by the provisions of this Act, each governing body of an issuer shall have full and complete authority with respect to bonds or notes of such issuer, lease agreements in which such issuer is lessor, sales agreements, and all other contracts and the provisions thereof.

Tax Exemption for Bonds or Notes

Sec. 17. In carrying out the purposes of this Act, the issuer will be performing an essential public function and any bonds or notes issued by it and their transfer and the interest therefrom, including any profits made from the sale thereof, shall at all times be free from taxation by the State of Texas or any municipality or political subdivision thereof.

Bonds or Notes as Securities

Sec. 18. Bonds or notes issued under the provisions of this Act, and coupons, if any, representing interest thereon, shall when delivered be deemed and construed to be a "security" within the meaning of Chapter 8, Investment Securities, of the Uniform Commercial Code, as amended (Chapter 8, Title I, Business & Commerce Code),¹ and shall be exempt securities under the Texas Securities Act, as amended (Article 581-1, et seq., Vernon's Texas Civil Statutes). A lease agreement, sales agreement, or other contract under this Act shall not be a security within the meaning of the Texas Securities Act.

¹ Business and Commerce Code, § 8.101 et seq.

Bonds or Notes as Legal and Authorized Investments and Security

Sec. 19. Unless the bonds and notes issued under this Act are ineligible for investments in accordance with the criterion established in other statutes, rulings, or regulations of the State of Texas or the United States, then the bonds and notes under this Act shall be and are hereby declared to be legal and authorized investments for any banks; savings banks; trust companies; building and loan associations; insurance companies; fiduciaries; trustees and guardians; and sinking funds of cities, towns, villages, counties, school districts, and other political corporations or subdivisions of the State of Texas. Such bonds or notes shall be eligible to secure the deposit of any and all public funds of the State of Texas and any and all public funds of cities, towns, villages, counties, school districts, and other political corporations or subdivisions of the State of Texas, and they shall be lawful and sufficient security for said deposits at their face value when accompanied by all unmatured coupons, if any, appurtenant thereto.

Expenses of Relocation, Rerouting, Altering Construction, etc.

Sec. 20. In the event any issuer, in the exercise of the power of relocation or any other power, makes necessary the relocation, raising, lowering, rerouting, or changing the grade of, or altering the construction of any highway, railroad, electric transmission line, cable television transmission line, telegraph or telephone properties and facilities, or pipelines, all such necessary relocation, raising, lowering, rerouting, changing of grade, or alteration of construction shall be accomplished at the sole expense of the issuer or the non-profit corporation. Such expense shall be paid from the proceeds of the sale of the bonds or notes. The term "sole expense" shall mean the actual cost of such relocation, raising, lowering, rerouting, changing the grade of, or alteration of construction to provide comparable replacement, without enhancement, of such facilities, after deducting therefrom the net salvage value derived from the old facility.

Severability

Sec. 21. The provisions of this Act are severable. If any word, phrase, clause, paragraph, sentence, section, part, or provision of this Act or the application thereof to any person or circumstance shall be held to be invalid or unconstitutional, the remainder of this Act shall nevertheless be valid; and the legislature hereby declares that this Act would have been enacted without such invalid or unconstitutional word, phrase, clause, paragraph, sentence, section, part, or provision.

[Acts 1975, 64th Leg., p. 285, ch. 126, §§ 1 to 21, eff. Sept. 1, 1975.]

Sections 2 and 3 of the 1975 amendatory act provided:

"Sec. 2. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

"Sec. 3. All laws and parts of laws in conflict herewith are hereby repealed."

Art. 4437f. Texas Hospital Licensing Law

[See Compact Edition, Volume 4 for text of 1 to 6]

Application for License; Approval; Fees; Disposition

Sec. 7. Applications for license shall be made to the Licensing Agency upon forms provided by it, and shall contain such information as the Licensing Agency may reasonably require. It shall be necessary that the Licensing Agency issuing licenses require that each hospital show evidence that there are one or more physicians on the medical staff of the hospital, and that these physicians are currently licensed by the Texas State Board of Medical Examiners.

The Licensing Agency may require that the application be approved by the local health officer, or other local official, for the compliance with city ordinances on building construction, fire prevention, and sanitation. Hospitals outside city limits shall comply with corresponding state laws.

Each application shall be accompanied by a license fee. In the event the application for a license is denied, such fee shall be refunded to the applicant.

All license fees collected shall be deposited with the State Treasury to the credit of the Licensing Agency and said license fees are hereby appropriated to said agency for its use in the administration and enforcement of this Act.

Each hospital so licensed shall pay a license fee, both initially and annually thereafter, of Two Dollars (\$2.00) per bed; but in no event shall the total fee exceed the sum of Five Hundred Dollars (\$500.00).

[See Compact Edition, Volume 4 for text of 8 and 9]

Failure to Comply with Health Planning and Development Act

Sec. 9A. The Licensing Agency shall deny, cancel, revoke, or suspend a license if its finds that the

applicant or licensee has failed substantially to comply with any applicable provisions of the Texas Health Planning and Development Act¹ requiring a certificate of need or an exemption certificate.

¹ Article 4418h.

[See Compact Edition, Volume 4 for text of 10 to 17]

[Amended by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.04, eff. May 28, 1975; Acts 1977, 65th Leg., p. 1056, ch. 387, § 5, eff. Aug. 29, 1977.]

Art. 4437f-1. Hospital Laundry Cooperative Associations; Health Related State-Supported and Nonprofit Institutions Within Medical Centers in Counties Over 1,600,000 Population

[See Compact Edition, Volume 4 for text of 1]

Definitions

Sec. 2. The following terms used in this Act shall have the following meanings:

(1) "Eligible institutions" shall include only political subdivisions and municipalities of the State of Texas; health-related state-supported institutions, including, but not limited to, Texas A&M University System, The University of Texas System, and Texas Woman's University; nonprofit health-related institutions; and cooperative associations created to provide certain systems as defined in Subsection (2), Section 2, Chapter 195, Acts of the 64th Legislature, Regular Session, 1975 (Article 4447r, Vernon's Texas Civil Statutes), a unit of which is situated in any county of this State having a population in excess of 1,600,000 inhabitants according to the most recent federal census. In addition to other activities, such entities must be engaged in health-related pursuits to become eligible institutions, and, except for cooperative associations, must be exempt from federal income tax. It is not a requirement of this Act that any component institution of any state-supported institution be a member of any association created under this Act, but any one or more of such component institutions may be a member of any one or more associations.

[See Compact Edition, Volume 4 for text of 2(2)]

Powers, Rights and Functions

Sec. 3. Associations established under this Act shall have the following specific powers, rights, and functions:

(1) to acquire, own, and operate a laundry system on a cooperative basis solely for the benefit of eligible institutions whether or not members of the association and to engage in such activities for the benefit of such eligible institutions as are necessarily related to the acquisition, ownership, operation, and maintenance of a laundry system;

(2) to acquire by purchase, lease, or otherwise lands and estates in lands (whether leasehold or otherwise) appropriate or reasonably incidental to the laundry system, and to own, hold, improve, develop, and manage any real estate so acquired, and to construct or cause to be constructed, improve, enlarge, and equip buildings or other structures on any such real estate, and to encumber and dispose of any lands or estates in lands and any buildings or other structures at any time owned or held by the association;

(3) to acquire by purchase, lease, manufacture, or otherwise any personal property appropriate or reasonably incidental to the laundry system, including property for the cleaning, washing, steaming, bleaching, dry cleaning, and disinfecting of all types of clothing, cloths, and fabrics and the transportation and distribution of these articles, and to encumber and dispose of any such personal property;

(4) to acquire by purchase or otherwise any uniforms, clothing, or linen for its members;

(5) to borrow or raise money without limit as to amount; to sell, grant security interests in, pledge, and otherwise dispose of and realize upon accounts receivable, contract rights and other choses in action; to make, draw, accept, endorse, execute, and issue bonds, debentures, notes, or other obligations for money so borrowed or in payment for property purchased, and to secure the payment thereof by mortgage upon, or creation of security interests in, or pledge of, or conveyance or assignment in trust of, the whole or any part of the property, real or personal, of the association.

[See Compact Edition, Volume 4 for text of 4 and 5]

Cooperative and Nonprofit Requirements; Franchise Tax Exemption; Annual Written Report; Disposition of Surplus Revenue

Sec. 6. Associations established under this Act shall be purely cooperative and not for profit, and shall not be required to pay any annual franchise tax, but shall nevertheless file a written report to the Secretary of State showing their assets and the condition of their affairs annually. Such associations may by their directors, in accordance with their bylaws, pass any surplus revenue derived from the laundry system to the surplus fund or divide such funds among the patrons thereof in proportion to their respective contributions to the working capital of the association and patronage.

[See Compact Edition, Volume 4 for text of 7 to 14]

[Amended by Acts 1977, 65th Leg., p. 1231, ch. 476, §§ 4 to 6, eff. June 15, 1977.]

Section 7 of the 1977 amendatory act provided:

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

Art. 4437h. Surveys and Inspections of Health Care Facilities

Sec. 1. The purpose of this Act is to require that state agencies, including the Texas Department of Health Resources,¹ the Department of Public Welfare,² and those agencies with which each contracts, who perform surveys, inspections, and investigations of health care facilities, do not duplicate their procedures or subject such health care facilities to duplicious rules and regulations.

Sec. 2. For the purposes of this Act:

(1) "Health care facility" shall have the same definition as that given in the Texas Health Planning and Development Act (Article 4418h, Vernon's Texas Civil Statutes).

(2) "Inspection" means all surveys, inspections, investigations, and other procedures necessary for a state agency or a division or unit thereof to perform in order to carry out various obligations imposed on such agency by applicable state and federal law and regulations.

Sec. 3. State agencies shall make or cause to be made only such inspections necessary to carry out the various obligations imposed on each agency by applicable state and federal law and regulations. Any on-site inspection by a state agency or a division or unit thereof that substantially complies with the inspection requirements of any other state agency or any other division or unit of the inspecting agency charged with making similar inspections shall be accepted as an equivalent inspection in lieu of an on-site inspection by said agency or by a division or unit of the inspecting agency. A state agency shall coordinate its health care facility inspections both internally and with those required by other state agencies so as to insure that the requirements of this section are met.

Sec. 4. (a) All hospitals licensed by the Texas Department of Health Resources which have been certified under Title XVIII of the Social Security Act, as added July 30, 1965 (Public Law 89-97),³ or which have obtained accreditation from the Joint Commission on Accreditation of Hospitals or which have obtained accreditation from the American Osteopathic Association shall not be subject to licensing inspections under the Texas Hospital Licensing Law⁴ by the agency so long as such certification or accreditation is maintained. Such hospitals shall only be required to annually remit the statutory licensing fees in order to be issued a license by the licensing agency.

(b) The State Department of Public Welfare and the Texas Department of Health Resources shall establish procedures to eliminate or reduce duplication of functions in certifying nursing homes for

payments under the requirements of the Medical Assistance Act of 1967, as amended (Article 695j-1, Vernon's Texas Civil Statutes), and federal laws and regulations relating to Title XIX of the Social Security Act.⁵ The procedures established under this section shall provide for use by both agencies of information collected by either agency in making inspections for certification purposes and in investigating complaints regarding matters that would affect the certification of a nursing home.

[Acts 1977, 65th Leg., p. 1055, ch. 387, §§ 1 to 4, eff. Aug. 29, 1977.]

¹ Name changed to Department of Health; see art. 4418g.

² Name changed to Department of Human Resources; see art. 695c, § 2-A.

³ 42 U.S.C.A. § 1395 et seq.

⁴ Article 4437f.

⁵ 42 U.S.C.A. § 1396 et seq.

Art. 4438a. Denial of Emergency Treatment by Hospital Officer or Employee for Inability to Pay

Sec. 1. No officer or employee of a general hospital supported with public funds may deny a person diagnosed by a licensed physician on the staff of that hospital as seriously ill or injured emergency services customarily provided at the hospital because the person is unable to establish his ability to pay for the services.

Sec. 2. An officer or employee of a hospital who violates the provisions of Section 1 of this Act is guilty of a Class C misdemeanor and on conviction is subject to a fine not exceeding \$200.

Sec. 3. Nothing in this Act shall be construed to relieve a person of his obligation to pay for services provided by a hospital.

[Acts 1975, 64th Leg., p. 1331, ch. 495, §§ 1 to 3, eff. Sept. 1, 1975.]

Art. 4439. Repealed by Acts 1977, 65th Leg., p. 316, ch. 149, § 1, eff. May 13, 1977

See, now, art. 4477, rules 3 and 13.

Art. 4442a-1. Adult Day Care Act

Purpose

Sec. 1. It is the purpose of this Act to establish programs of quality adult day care and day health care that will enable elderly and handicapped persons with medical or psychological impairments to maintain maximum independence and to prevent premature or inappropriate institutionalization. It is the purpose of this Act to provide adequately regulated supervision for elderly and handicapped persons while enabling them to remain in a family environment and affording the family a measure of normalcy for their daily activities. It is therefore the intent of the legislature to provide for the development of policies and programs that will:

- (1) provide alternatives to institutionalization;

(2) establish facilities for adult day care and day health care throughout the state that offer services and are accessible to economically disadvantaged persons; and

(3) prevent inappropriate institutionalization.

Short Title

Sec. 2. This Act may be cited as the Adult Day Care Act.

Definitions

Sec. 3. In this Act:

(1) "Adult day care facility" means a facility that provides counseling, recreation, or food or any combination of these services on a daily or regular basis but not overnight to four or more elderly or handicapped persons who are not related by blood, marriage, or adoption to the owner of the facility.

(2) "Adult day health care facility" means a facility that provides health care or physical therapy or both and that may also provide adult day care services on a daily or regular basis but not overnight to four or more elderly or handicapped persons who are not related by blood, marriage, or adoption to the owner of the facility.

(3) "Elderly person" means a person 65 years of age or older.

(4) "Handicapped person" means a person whose physical or mental functioning is sufficiently impaired to require frequent medical attention, counseling, physical therapy, therapeutic or corrective equipment, or another person's attendance and supervision.

(5) "Department" means the Texas Department of Human Resources.

(6) "Licensing agency" means the Texas Department of Health.

(7) "Person" means an individual, corporation, or association.

Department Duties

Sec. 4. (a) The department shall adopt rules for implementing this Act.

(b) The department shall set standards for:

(1) the health, safety, and welfare of persons attending a facility;

(2) the eligibility of persons to attend a facility;

(3) the scope of services provided by a facility;

(4) adequate supervision for persons attending a facility;

(5) the professional staff and other personnel at a facility;

(6) adequate and healthful food service, where it may be offered;

(7) procedures for consultation with family members, case workers, or other persons responsible for the welfare of a person attending a facility; and

(8) prohibiting racial discrimination.

(c) The department may contract with political subdivisions or persons for transporting persons to a facility.

Licensing Agency Duties

Sec. 5. The licensing agency shall adopt rules for the licensing procedures and set standards for the safety and sanitation requirements for a licensed facility.

License

Sec. 6. (a) The licensing agency shall issue a license to operate an adult day care facility or an adult day health care facility to a person who has met the application requirements and received approval after an on-site inspection.

(b) A license issued under this Act expires one year from the date of issuance.

(c) The department may contract with the licensing agency for cooperative and efficient evaluation of an applicant for a license or license renewal.

(d) An applicant for a license that is already licensed by the licensing agency as a health care provider is entitled to have inspections and license renewal procedures coordinated so that one inspection may fulfill various licensing requirements.

License Application

Sec. 7. (a) An applicant for a license to operate an adult day care or an adult day health care facility must file an application on a form prescribed by the licensing agency together with a license fee of \$25.

(b) The applicant shall provide evidence of:

(1) the ability to comply with the department's and licensing agency's requirements;

(2) responsible management; and

(3) qualified professional staff and personnel.

(c) A person who operates a facility that is licensed under this Act shall file an application for a renewal license before the expiration date of the current license on a form prescribed by the licensing agency together with a renewal fee of \$25.

Inspections

Sec. 8. (a) The licensing agency may enter the premises at reasonable times and make an inspection necessary to issue a license or renew a license.

(b) Any person may request an inspection of a facility by notifying the licensing agency in writing of an alleged violation of a licensing requirement. The complaint shall be as detailed as possible and

signed by the complainant. The licensing agency shall perform an on-site inspection within 10 days after receiving the complaint unless it determines after an investigation that the complaint is frivolous. The licensing agency shall respond to a complainant in writing. The licensing agency shall also receive and investigate anonymous complaints.

License Denial, Suspension, or Revocation

Sec. 9. (a) The licensing agency may deny, suspend, or revoke the license of an applicant or holder of a license who fails to comply with the rules or standards for licensing required by this Act.

(b) The licensing agency may revoke or suspend a license to be effective immediately when the health and safety of persons attending a facility are threatened. A person whose license is suspended or revoked under this subsection is entitled to a hearing within seven days after the effective date of the suspension or revocation.

Disposition of Funds

Sec. 10. All fees collected under this Act shall be deposited in the State Treasury to the credit of the General Revenue Fund.

Certificate of Need Requirement

Sec. 11. The acquisition, development, construction, or modification of an adult day health care facility or the expansion of services of an adult day health care facility licensed under this Act is subject to the requirements for a certificate of need or an exemption certificate and other applicable provisions of the Texas Health Planning and Development Act, as amended (Article 4418h, Vernon's Texas Civil Statutes.

[Acts 1979, 66th Leg., p. 1509, ch. 562, §§ 1 to 11, eff. Aug. 27, 1979.]

Art. 442c. Convalescent and Nursing Homes and Related Institutions

[See Compact Edition, Volume 4 for text of 1]

Definitions

Sec. 2.

[See Compact Edition, Volume 4 for text of 2(a) to 2(d)]

(e) "Respite care" means the provision by an institution of room, board, and care at the level ordinarily provided for permanent residents of the institution to a person for not more than two weeks for each stay in the institution.

(f) "Plan of care" means a written description of the medical care or the supervision and nonmedical care needed by a person during respite care.

(g) "Elderly person" means a person who is 65 years of age or older.

(h) "Handicapped person" means a person whose physical or mental functioning is sufficiently impaired to require medical attention, counseling, physical therapy, therapeutic or corrective equipment, or another person's attendance and supervision.

[See Compact Edition, Volume 4 for text of 3]

Application for License

Sec. 4. An application for a license shall be made to the Licensing Agency upon forms provided by it and contain such information as the Licensing Agency requires which may include affirmative evidence of ability to comply with reasonable standards, rules and regulations as are lawfully prescribed hereunder. The application shall be accompanied by a license fee which shall be in the sum of Twenty-five Dollars (\$25) plus One Dollar (\$1) for each unit of capacity or bed space for which a license is sought. Such license fee shall be paid annually in said amount with each application for renewal of the institution's license. All license fees provided for herein shall be waived for the State of Texas and its departments, divisions, boards and agencies. All license fees collected shall be deposited with the State Treasury to the credit of the Licensing Agency and said license fees are hereby appropriated to said Agency for its use in the administration and enforcement of this Act.

Upon receipt of an application for a license the Licensing Agency shall issue a license if upon inspection and investigation it finds that the applicant and facilities meet the requirements established under this law. A license, unless suspended or revoked, shall be renewed annually after an inspection and upon tender of the annual license fee together with the filing by the licensee and approval by the Licensing Agency of an annual report upon such date and containing such information in such form as the Licensing Agency prescribes by regulation. Such license shall be issued only for the premises and persons or governmental units and for the maximum number of beds named in the application and shall not be transferable or assignable. Any approved increase in the bed space shall be subject to an additional fee. Any violation of these provisions shall be guilty of a misdemeanor and upon conviction shall be subject to the penalties provided for in Section 12 of this Act.

Fire Safety Requirements

Sec. 4A. (a) The Licensing Agency shall require all nursing homes and custodial care homes and major additions over One Hundred Thousand Dollars (\$100,000) to existing nursing homes and custodial care homes which are approved for construction or conversion after September 1, 1979, to comply with the 1976 edition of the Code for Safety to Life from Fire in Buildings and Structures, known as the Life

Safety Code (Pamphlet No. 101) of the National Fire Protection Association.

(b) After September 1, 1979, those building sections of a licensed nursing home or custodial care home, regardless of ownership, which have complied with or without waiver, with either the 1967 or 1973 edition of the Life Safety Code of the National Fire Protection Association will be recognized as meeting licensing requirements for fire safety as long as they continue to be in substantial compliance with either the 1967 or 1973 code edition.

(c) The requirements of this section do not preclude an institution from conforming to a higher or additional fire safety standard or provision where required by federal law or regulation. Where provisions of this section conflict with federal laws or regulations adopted after September 1, 1979, then the federal requirements prevail, if required for participation in federal programs.

(d) As provided in the 1976 edition of the Life Safety Code, the Licensing Agency shall have discretionary powers to grant exceptions to the code under certain conditions or in the interest of common and uniform applicability.

(e) Fire safety requirements for institutions other than nursing homes or custodial care homes shall be as determined by the Licensing Agency.

[See Compact Edition, Volume 4 for text of 5 and 6]

Failure to Comply with Health Planning and Development Act

Sec. 6A. The Licensing Agency shall deny, cancel, revoke, or suspend a license if it finds that the applicant or licensee has failed substantially to comply with any applicable provisions of the Texas Health Planning and Development Act¹ requiring a certificate of need or an exemption certificate.

Emergency Suspension and Closing Order

Sec. 6B. (a) If the Licensing Agency finds an institution operating in violation of the standards prescribed by this Act and the violations create an immediate threat to the health and safety of a resident in the institution, the Licensing Agency shall suspend the license or order an immediate closing of the institution or part of an institution; and the Licensing Agency shall by rule provide for patient placement during the period of suspension to assure the health and safety of the patients in said institution.

(b) The order suspending a license under Subsection (a) of this section is immediately effective upon written notice to the license holder or on the date specified on the order.

(c) The order suspending the license and ordering an institution or part of an institution closed is valid for 10 days after the effective date.

Rules, Regulations and Enforcements

Sec. 7. The Licensing Agency is authorized to adopt, amend, promulgate, publish and enforce minimum standards in relation to:

(a) Construction of the home or institution, including plumbing, heating, lighting, ventilation and other housing conditions, which shall insure the health, safety and comfort of residents and protection from fire hazard;

(b) Regulate the number and qualification of all personnel, including management and nursing personnel, having responsibility for any part of the care given to residents, and establish requirements for in-service education of all employees who have any contact with residents;

(c) All sanitary and related conditions within the nursing home and its surroundings, including water supply, sewage disposal, food handling and general hygiene, which shall insure the health, safety and comfort of the residents;

(d) Diet related to the needs of each resident and based upon good nutritional practice or on recommendations which may be made by the physician attending the resident;

(e) Equipment essential to the health and welfare of the residents;

(f) At least one unannounced inspection per year shall be mandatory; further inspections may be required by the Licensing Agency;

(g) For at least one unannounced inspection in each year as required by Subsection (f) of this section, the Licensing Agency shall arrange to invite in the inspection at least one person as a citizen advocate from one of the following groups: American Association of Retired Persons, the Texas Senior Citizen Association, or the Texas Retired Federal Employees, or any other statewide organization for the elderly;

(h) The use and administration of medications in conformity with applicable law and rules and regulations on the use and administration of medications; all personnel administering medications must have completed a state-approved training program in medication administration;

(i) Grading each home or institution so as to recognize those homes or institutions that go beyond the minimum level of services and personnel, as established by the agency and such attained grade shall be prominently displayed for public view and as incentive to attain the superior grade, allow each home or institution to advertise such grade.

(j) The Licensing Agency shall require one medical examination per patient per year. The details of this examination will be specified by the Licensing Agency.

The Licensing Agency is further authorized to provide for advice to and coordination of its personnel and facilities with any local agency of a city or county where such city or county shall see fit to supplement the state program with further regulations required to meet local conditions.

Language Requirements Prohibited

Sec. 7A. No institution may prohibit a resident or employee from communicating in his or her native language with other residents or employees for the purpose of acquiring or providing medical treatment, nursing care, or institutional services.

[See Compact Edition, Volume 4 for text of 8]

Respite Care

Sec. 8A. (a) An institution that is licensed under this Act may provide respite care for an elderly or handicapped person according to a plan of care that is filed at the institution and agreed upon between the institution and the person arranging the respite care before the institution admits the person for the care.

(b) The plan of care must be signed by a licensed physician if the person for whom respite care is arranged needs medical care or treatment. If the person does not need medical care or treatment, the plan of care must be signed by the person arranging for the respite care.

(c) The institution may keep an agreed plan of care for not longer than six months from the date it is received and during that period admit a person for respite care as frequently as is needed and as accommodations are available.

(d) An institution that offers respite care shall notify the licensing agency in writing that it is offering respite care.

(e) The licensing agency, at the time of ordinary licensing inspections, or at other times if the agency determines necessary, shall inspect the institution's records of respite care services, the physical accommodations available for respite care, and the plan of care records to insure that the respite care services comply with the licensing standards of this Act and with any rules the licensing agency may adopt to regulate respite care services.

(f) The licensing agency may suspend the license of an institution that provides respite care that does not comply with the licensing standards of this Act. The licensing agency may require an institution to cease providing respite care if the agency determines that the respite care does not meet the standards required by this Act and that the institution cannot comply with those standards in the respite care it provides. The licensing agency may suspend the license of an institution that continues to provide

respite care after receiving an order in writing from the licensing agency that it is to cease.

(g) The licensing agency may adopt rules for the regulation of respite care provided by a licensed institution.

Inspections and Consultations

Sec. 9. The Licensing Agency shall make or cause to be made such inspections and investigations as it deems necessary. The Licensing Agency shall hold at least one open hearing a year in each licensed institution to hear any complaints of substandard care or licensing violations. The Licensing Agency shall notify the institution, the designated closest living relatives or legal guardians of the institution's residents, and other appropriate State or Federal agencies that work with the institution of the time, place, and date of the hearing. The Licensing Agency may exclude an institution's administrators and personnel from the hearing. The Licensing Agency shall notify an institution of any complaints received at the hearing. The Licensing Agency shall provide a summary of the complaints without identifying the source thereof to the licensed institution. The Licensing Agency shall determine and implement a mechanism to notify confidentially the complainant of the results of the investigation which followed the complaint. It is further provided that the Licensing Agency shall wherever possible utilize the services and consultation of other State and local agencies in carrying out its responsibility under the provisions of this Act and shall use wherever possible the facilities of the State Department of Public Welfare especially in setting up and maintaining standards with reference to the humane treatment of the individuals in the institutions.

The Licensing Agency is hereby given the authority to cooperate with local public health officials of any county or incorporated city in carrying out the provisions of this Act and may in its discretion delegate to said local authorities the power to make the inspections and recommendations to the Licensing Agency in accordance with the terms and provisions of this Act.

[See Compact Edition, Volume 4 for text of 10]

Injunction and Temporary Restraining Order

Sec. 11. (a) When the Licensing Agency finds that a person's violations of the standards prescribed by this Act create an immediate threat to the health and safety of the residents of an institution, the Licensing Agency may petition the district court for a temporary restraining order to restrain the person from continuing the violations.

(b) When a person violates the licensing requirements or the standards prescribed by this Act, the Licensing Agency may petition the district court for

an injunction to prohibit a person from continuing the violation or to restrain or prevent the establishment, conduct, management, or operation of an institution without a license under this Act. A suit for a temporary restraining order or other injunctive relief must be brought in the judicial district that includes the county of the alleged violation.

(c) On application for injunctive relief and a finding that a person is violating the licensing requirements or standards prescribed by this Act, the district court shall grant the injunctive relief the facts may warrant.

(d) At the request of the Licensing Agency, the attorney general shall institute and conduct the suits authorized in Subsections (a) and (b) of this section in the name of the State of Texas.

Penalties

Sec. 12. (a) Any person establishing, conducting, managing, or operating any institution without a license under this law shall be guilty of a misdemeanor and upon conviction shall be fined not more than Two Hundred Dollars (\$200) for the first offense and not more than One Hundred Dollars (\$100) for each subsequent offense, and each day of a continuing violation after conviction shall be considered a separate offense.

(b) A person who violates this Act or who fails to comply with a rule or regulation authorized by this Act determined by the Licensing Agency to threaten the health and safety of the patient is subject to a civil penalty of not less than \$100 nor more than \$500 for each act of violation, and each day of a continuing violation constitutes a separate ground of recovery.

Sec. 13. Repealed by Acts 1977, 65th Leg., 1st C.S., p. 55, ch. 2, § 11, eff. July 22, 1977.

[See Compact Edition, Volume 4 for text of 14 and 15]

Reports of Abuse and Neglect

Sec. 16. (a) Persons required to Report.

(1) Any person or any owner or employee of a nursing home having cause to believe that a nursing home resident's physical or mental health or welfare has been or may be adversely affected by abuse or neglect caused by another person or persons shall report in accordance with Section 16(b).

(2) Each nursing home employee shall be required to sign a statement that he or she realizes his or her criminal liability for failure to report such abuses as a condition of employment by the nursing home.

(b) Contents of Report. (1) Nonaccusatory reports reflecting the reporting person's belief that a nursing home resident has been or will be abused or

neglected or has died of abuse or neglect shall be made to:

(A) the Licensing Agency; or

(B) any local or state law enforcement agency.

(2) All reports must contain the name and address of the nursing home resident, the name and address of the person responsible for the care of the resident, if available, and any other relevant information.

(3) All reports received by any local or state law enforcement agency shall be referred to the Licensing Agency or to the agency designated by the court to be responsible for the protection of the nursing home resident.

(4) An oral report shall be made immediately on learning of the abuse or neglect and a written report shall be made within five days to the same agency. Anonymous reports, while not encouraged, will be received and acted on in the same manner as acknowledged reports. Anonymous reports about a specific individual, accusing the individual of abuse or neglect, need not be investigated.

(c) Immunities. Any person reporting pursuant to this chapter is immune from liability, civil or criminal, that might otherwise be incurred or imposed because of the making of the report or reports. Immunity extends to participation in any judicial proceeding resulting from the report. Persons reporting in bad faith or with malice are not protected by this section. A person making a bad faith, malicious, or reckless report is subject to the criminal penalty of a Class A misdemeanor, in addition to any civil penalties.

(d) Privileged Communications. In any proceeding regarding the abuse or neglect of a nursing home resident or the cause of any abuse or neglect, evidence may not be excluded on the ground of privileged communication except in the case of communications between attorney and client.

(e) Investigation and Report of Receiving Agency.

(1) The Licensing Agency or the agency designated by the court to be responsible for the protection of nursing home residents shall make a thorough investigation promptly after receiving either the oral or written report. The primary purpose of the investigation shall be the protection of the nursing home resident.

(2) In the investigation the agency shall determine:

(a) the nature, extent, and cause of the abuse or neglect;

(b) the identity of the person responsible for the abuse or neglect;

(c) the names and conditions of the other nursing home residents in the nursing home;

(d) an evaluation of the persons responsible for the care of the nursing home residents;

(e) the adequacy of the nursing home environment; and

(f) all other pertinent data.

(3) The investigation shall include a visit to the resident's nursing home and an interview with the subject nursing home resident. If admission to the nursing home, or any place where the nursing home resident may be, cannot be obtained, the district court, upon cause shown, shall order the persons responsible for the care of the nursing home resident, or the person in charge of any place where the nursing home resident may be, to allow entrance for the interview and investigation.

(4) If, before the investigation is complete, the opinion of the Licensing Agency is that immediate removal is necessary to protect the nursing home resident from further abuse or neglect, the Licensing Agency shall file a petition for temporary care and protection of the nursing home resident.

(5) The agency designated by the court to be responsible for the protection of the nursing home resident or the Licensing Agency shall make a complete written report of the investigation. The report, together with its recommendations, shall be submitted to the district attorney and the appropriate law enforcement agency.

(f) Central Registry. The Licensing Agency shall establish and maintain in Austin, Texas, a central registry of reported cases of nursing home resident abuse or neglect. The Licensing Agency may adopt rules and regulations as are necessary in carrying out the provisions of this section. The rules shall provide for cooperation with hospitals and clinics in the exchange of these reports.

(g) Failure to Report; Penalty. (1) A person commits an offense if the person has cause to believe that a nursing home resident's physical or mental health or welfare has been or may be further adversely affected by abuse or neglect and knowingly fails to report in accordance with Subsection (a)(1).

(2) An offense under this section is a Class A misdemeanor.

(h) Confidentiality. The reports, records, and working papers used or developed in an investigation made under this chapter are confidential and may be disclosed only for purposes consistent with the regulations adopted by the investigating agency.

Prohibition of Remuneration

Sec. 17. (a) No institution may receive remuneration, either monetary or otherwise, from any individual, corporation, company, or agency which furnishes services or materials to the institution or its occupants for a fee.

(b) The Licensing Agency may seek the revocation of the license of an institution that violates the prohibition in Subsection (a) of this section.

[Amended by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.05, eff. May 28, 1975; Acts 1977, 65th Leg., 1st C.S., p. 49, ch. 2, §§ 1 to 7, 9, 11, eff. July 22, 1977; Acts 1979, 66th Leg., p. 1903, ch. 771, § 1, eff. Sept. 1, 1979; Acts 1979, 66th Leg., p. 1962, ch. 775, § 1, eff. Aug. 27, 1979.]

¹ Article 4418h.

Section 8 of the 1977 Act provides as follows:

"(a) The Department of Public Welfare shall contract those medical functions and quality of care functions, including quality assurance and consultation, level of care determination, periodic medical review, utilization review, and related program support, pertaining to long-term care regulation and services performed by the Medical Assistance Unit under the authority of the State Department of Public Welfare to the Texas Department of Health. The contract shall include all provisions necessary to ensure compliance with federal law and regulations, including submission of reports and other information requested by the State Department of Public Welfare, for purposes of Title XIX of the Social Security Act. After January 1, 1978, if the Governor of Texas makes a finding that the public interest will be served, he shall direct the Department of Public Welfare to request a waiver from the Department of Health, Education, and Welfare to allow the Texas Department of Health to perform those medical and quality of care functions pertaining to long-term care regulation and services performed by the Medical Assistance Unit of the State Department of Public Welfare.

"(b) If a contract is executed or a waiver is obtained, the funds, personnel, equipment, and central office supporting personnel relating to the functions described in Subsection (a) are to be included in the contract between the State Department of Public Welfare and the Texas Department of Health or transferred by the waiver.

"(c) The functions of eligibility determination, health related social services, vendor drug program, and provider payments related to long-term care are not included in the programs to be contracted under this section."

Art. 4442c-1. Repealed by Acts 1975, 64th Leg., p. 847, ch. 323, § 5.08(3), eff. May 28, 1975

See, now, the Health Planning and Development Act, classified as art. 4418h.

Art. 4442d. Nursing Home Administrators Licensure Act

[See Compact Edition, Volume 4 for text of 1 and 2]

Creation and Composition of Board

Sec. 3. (1) There is hereby created the Texas Board of Licensure for Nursing Home Administrators which shall consist of nine (9) members. The Commissioner of Human Resources for the State of Texas, or his designee, and the Commissioner of Health of the Texas Department of Health, or his designee, shall be ex officio nonvoting members of the board. Such designees shall be chosen from those representatives of the respective departments who are actively assigned to and are engaged in work in the nursing home field. One member shall be a physician duly licensed by the State of Texas; one member shall be an educator connected with a university program in public health or medical or nursing home care administration within the State of Texas or a psychiatrist whose field includes geriatric or institutional psychiatry, or a psychologist whose field includes clinical psychology or educational psychology. Four (4) members shall be duly licensed nursing home administrators of the State of Texas; however, at least one of these four shall represent a nonproprietary nursing home. Three (3) members must be representatives of the general public who are not licensed under this Act.

(2) Appointments to the board shall be made by the Governor with the advice and consent of the senate. Appointments to the board shall be made without regard to the race, creed, sex, religion, or national origin of the appointees.

[See Compact Edition, Volume 4 for text of 3(3)]

(4) Appointed members of the board serve staggered terms of six (6) years with the terms of three (3) members expiring on January 31 of each odd-number year. Vacancies on the board shall be filled by appointment for the unexpired portion of the term.

(5) All appointive members of the board who are nursing home administrators shall hold degrees from an accredited four year college or university and shall have special interest, background, and experience in the field of care for the aged. They shall be residents of the State of Texas and citizens of the United States and shall be of good character.

In lieu of the degree requirement above specified an appointee who is a nursing home administrator representative may nevertheless qualify by submitting to the Governor satisfactory evidence of two (2) years of practical experience as a nursing home administrator for each year, whether one or more, of four (4) years of college and such appointee shall receive credit toward his qualifications for each full year of credits earned by him in an accredited college or university.

[See Compact Edition, Volume 4 for text of 3(6) to 3(8)]

(9) All money collected under this Act shall be deposited in the state treasury in a designated separate account in the name of the board and shall be subject to appropriation by the legislature only for use by the board.

(10) The Texas Board of Licensure for Nursing Home Administrators is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1991.

¹ Article 5429K.

(11) The board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

Restrictions on Board Members, etc.

Sec. 3A. (1) A member of the board or an employee of the board or of the Texas Board of Health who carries out the functions of the board may not:

(a) be an officer, employee, or paid consultant of a trade association in the nursing home industry;

(b) be related within the second degree by affinity or within the third degree by consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the nursing home industry; or

(c) communicate directly or indirectly with a party or the party's representative to a proceeding pending before the board unless notice and an opportunity to participate is given to all parties to the proceeding, if the member or agent is assigned to make a decision, a finding of fact, or a conclusion of law in the proceeding.

(2) Members of the board, except those members who are duly licensed nursing home administrators, may not have personally, nor be related to persons within the second degree by affinity or third degree by consanguinity who have, except as consumers, financial interests in nursing homes as officers, directors, partners, owners, employees, attorneys, or paid consultants of the nursing homes or otherwise.

(3) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9c, Vernon's Texas Civil Statutes), may not act as the general counsel to the board or serve as a member of the board.

Organization of the Board

Sec. 4. (1) As soon as practicable after appointment, appointive members of the board shall be certified by the Governor's office and shall take the constitutional oath of office for officers of the State of Texas. The board shall elect from its appointive members a chairman and vice chairman and these officers shall be elected to serve for one (1) year or so much thereof as shall remain, and elections for these offices shall be held annually thereafter for the term of a year. Elections to fill vacancies shall be held in the same manner for the balance of any unexpired term. The board shall appoint a person to be secretary to the board who shall serve at the pleasure of the board and who shall be the chief executive officer to the board but not a member thereof. The secretary shall have such powers and shall perform such duties as may be prescribed by law or delegated to him by the board under its rules and regulations. Suitable office space, equipment and supplies and additional agents or employees as may be required for discharging the functions of the board shall be provided within the limits of the funds available to the board as hereinafter provided for. The board shall adopt an official seal which shall be affixed to licenses, certificates and other official documents of the board.

(2) The secretary and such other person as the board may designate, as an alternate, shall act as fiscal agent for the board and shall be responsible for the receipt, deposit, safekeeping and disburse-

ment of all funds of the agency, provided, however, that at all times the board shall cause to be maintained in force a fidelity bond covering the secretary and such other person in an amount which shall at all times exceed any reasonable expectations as to the total amount of funds to be held at any one time to the account of the board. At no time shall the fidelity bond or bonds be for an amount less than \$25,000.00.

(3) The board shall hold not less than four meetings per year after due notice thereof and at any meeting a majority of the board shall constitute a quorum. Board members shall receive a per diem of \$25.00 while engaged in board business together with actual and necessary expenses.

(4) Each member of the board shall be present for at least one-half of the regularly scheduled meetings held each year by the board. The failure of a member to meet this requirement automatically removes the member from the board and creates a vacancy on the board.

(5) The Texas Board of Licensure for Nursing Home Administrators shall be administratively attached to the Texas Department of Health. The department shall provide administrative assistance to the board; and the department and the board shall coordinate administrative responsibilities in order to avoid unnecessary duplication and in furtherance of the objective of providing quality nursing home services. The department shall submit the board's budget requests to the legislature. The department and the board shall share investigative staff and other employees. However, the board may employ its own additional investigative staff.

[See Compact Edition, Volume 5 for text of 5]

Functions and Duties of the Board

Sec. 6. It shall be the function and duty of the board to:

(1) develop, impose, and enforce standards which must be met by individuals in order to receive a license as a nursing home administrator and standards which must be met by licensees, which standards shall be designed to insure that nursing home administrators will be individuals who are of good character and are otherwise suitable, and who, by training or experience in the field of institutional administration, are qualified to serve as nursing home administrators and satisfactorily perform the duties of nursing home administrators;

(2) develop and apply appropriate techniques, including examinations and investigations, for determining whether an individual meets such standards;

(3) issue licenses to individuals determined, after application of such techniques, to meet such

standards, and revoke or suspend licenses previously issued by the board in any case where the individual holding any such license is determined substantially to have failed to conform to the requirements of such standards;

(4) establish and carry out procedures designed to insure that individuals licensed as nursing home administrators will, during any period that they serve as such, comply with the requirements of such standards;

(5) receive, investigate, and take appropriate action with respect to, any charge or complaint filed with the board to the effect that any individual licensed as a nursing home administrator has failed to comply with the requirements of such standards;

(6) conduct a continuing study and investigation of nursing homes and administrators of nursing homes within the State with a view to the improvement of the standards imposed for the licensing of such administrators and of procedures and methods for the enforcement of such standards with respect to administrators of nursing homes who have been licensed as such;

(7) conduct or cause to be conducted, one or more courses of instruction and training sufficient to meet the requirements of this Act, and make provisions for the conduct of such courses and their accessibility to residents of this State, unless it finds that there are a sufficient number of courses conducted by others within this State to meet the needs of the State. In lieu thereof the board may approve courses conducted within and without the State as sufficient to meet the education and training requirements of this Act; and

(8) on request, provide to each individual who fails an examination administered by the board an analysis of the individual's performance on the examination.

[See Compact Edition, Volume 4 for text of 7]

Posting of Complaint Information Sign

Sec. 7A. There shall at all times be prominently displayed in every nursing home regulated by the state, a sign in letters no smaller than one inch in height, the contents of which shall contain the name, mailing address, and telephone number of the Texas Board of Licensure for Nursing Home Administrators and which shall contain a statement informing consumers that complaints against nursing home administrators can be directed to the board.

Rulemaking Authority

Sec. 8. (a) The Board shall have the authority to make rules and regulations not inconsistent with law as may be necessary or proper for the performance of its duties, and to take such other actions as may be necessary to enable the State to meet the require-

ments set forth in Section 1908 of the Social Security Act, the Federal rules and regulations promulgated thereunder, and other pertinent Federal authority; provided, however, that no rule shall be promulgated, altered or abolished without the approval of a two-thirds majority of the Board.

(b) If the appropriate standing committees of both houses of the legislature acting under Section 5(g), Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), transmit to the Board statements opposing adoption of a rule under that section, the rule may not take effect or, if the rule has already taken effect, the rule is repealed effective on the date the Board receives the committees' statements.

¹ 42 U.S.C.A. § 1396g.

Qualifications for Licensure

Sec. 9. The Board shall have authority to issue licenses to qualified persons as nursing home administrators, and shall establish qualification criteria for such nursing home administrators. No license shall be issued to a person as a nursing home administrator unless:

(1) he is at least 18 years of age; of good moral character, and sound in mental and physical health;

(2) he has satisfactorily completed a course of instruction and training prescribed by the board, which course shall be conducted by or in cooperation with an accredited postsecondary educational institution and which course shall be so designed as to content and so administered as to present sufficient knowledge of the proper needs to be served by nursing homes; laws governing the operation of nursing homes and the protection of the interests of patients therein; and the elements of good nursing home administration; or has presented evidence satisfactory to the board of sufficient education, training or experience in the foregoing fields to enable him to administer, supervise and manage a nursing home;

(3) he has passed an examination administered by the board and designed to test for competence in the subject matters referred to in subsection (2) hereof;

(4) that applicant submit written evidence, on forms provided for such purpose by the board, that he has successfully completed a course of study and has been graduated from a high school or secondary school approved and recognized by the educational authorities of the State in which such school is located, or a political division thereof, or has submitted a certificate indicating that he has obtained high school or secondary school equivalency, such certificate being certified by a State educational authority or a political division thereof; and

(5) that applicant has complied with all other qualifications and requirements as may have been established by rule and regulation of the board.

Licenses and Fees

Sec. 10.

[See Compact Edition, Volume 4 for text of 10(1)]

(2) Every holder of a nursing home administrator's license shall renew it biennially, by making application to the board. The license remains valid and is subject to renewal for 30 days after the expiration date of the license. The board shall notify each person licensed under this Act of the expiration date of the person's license and the amount of the fee that is required for its renewal. The notice shall be mailed at least 30 days before the expiration date of the license. A person renews an unexpired license or a license that has been expired for 30 days or less by paying to the board the renewal fee. A person renews a license that has been expired for more than 30 days but less than one year by paying to the board the renewal fee plus \$20.00. A person may not renew a license that has been expired for one year or more, but the person may obtain a new license by applying for the license in the manner that a person applies for an original license. Renewals of licenses shall be granted as a matter of course, unless the board finds, after due notice and hearing, that the applicant has acted or failed to act in such a manner or under circumstances, as would constitute grounds for suspension or revocation of a license.

(3) Each person licensed as a nursing home administrator shall pay an initial license fee to be fixed by the board which shall not exceed \$100.00. Renewal licenses shall be issued biennially at a fee to be set by the board which shall not exceed \$100.00 for the biennium. Reasonable fees shall be set by the board for the issuance of copies of public records in its office as well as for certificates or transcripts and duplicates of lost instruments. Each applicant for examination and license shall accompany the application with an examination fee not to exceed \$100.00 which shall not be refundable, for investigation, processing, and testing purposes. Upon the certification by any department, division, board or agency of the State of Texas of the necessity therefor, all examination fees and license fees provided for herein shall be waived for any employee of such state entity so long as such person remains an employee of the State of Texas and does not serve as a nursing home administrator of a nursing home operated other than by such state entity. The board shall set the fees in amounts that produce sufficient money for administering this Act.

(4) The board may issue a nursing home administrator's license for the regular fee to any person who holds a current license as a nursing home administrator from another jurisdiction, provided that the

board finds that the standards for licensure in such other jurisdiction are at least the substantial equivalent of those prevailing in this State; and that the applicant is otherwise qualified; and that the other state gives similar recognition and endorsement to nursing home administrators licenses of the State of Texas.

(5) The board shall have authority to receive and disburse funds received pursuant to Section 1908(e)(1) of the Social Security Act¹ or from any other Federal source of funds or grants for the furtherance of board duties and responsibilities hereunder.

(6) Deleted by Acts 1979, 66th Leg., p. 1231, ch. 591, § 4, eff. Sept. 1, 1979.

¹ 42 U.S.C.A. § 1396g(e)(1).

Disciplinary Action

Sec. 11. (1) The board shall be authorized to revoke, suspend, or refuse to renew, a nursing home administrator's license after due notice and hearing upon the following grounds or any of them:

(a) upon proof that such licensee has wilfully or repeatedly violated any of the provisions of this Act or the rules adopted in accordance therewith;

(b) upon proof that such licensee has wilfully or repeatedly acted in a manner inconsistent with the health and safety of the patients of the home of which he is administrator;

(c) upon proof that the licensee was guilty of fraud in securing his license;

(d) upon proof of the intemperate use of alcohol or drugs which in the opinion of the board creates a hazard to patients;

(e) upon proof of a judgment of a court of competent jurisdiction finding the licensee insane;

(f) upon proof that such licensee has been convicted in a court of competent jurisdiction of a misdemeanor or a felony involving moral turpitude; and

(g) upon proof that the licensee has been grossly negligent in his duties as a nursing home administrator.

(2) The board shall have jurisdiction to hear all disciplinary charges brought under the provisions of this Act against persons licensed as nursing home administrators and upon such hearings shall determine such charges upon their merits. Proceedings under this Act shall be begun by filing with the board written charges under oath. Such charges may be preferred by any person and after notice in writing of not less than fifteen (15) full days, stating the place and date of the hearing, accompanied by a copy of the complaint or charges, the board, or a majority thereof, shall hold a hearing on said charges, cause a written record to be made of the evidence given at the hearing, accord the person charged a right to present evidence, be represented

by an attorney, and to cross-examine the witnesses. In this connection the board shall be authorized to issue subpoenas for witnesses at the hearing, either at the request of the person cited or on behalf of the board or its representative; to compel the attendance of witnesses, and administer oaths to witnesses. Disobedience of a subpoena duly issued by the board or by its secretary under its direction, shall constitute a contempt of the board which shall be enforceable by any district court sitting in the county in which the hearing is being held upon petition of the board and the presentation to the court of evidence of wilful disobedience and if the district judge is of the opinion and finds that the subpoena was wilfully disobeyed, such judge shall be authorized to punish a subpoenaed witness in like manner and to the extent provided in like cases in civil actions in the district courts of Texas.

(3) Strict rules of evidence shall not apply in a hearing before the board but all decisions of the board shall be supported by sufficient legal and competent evidence.

(4) The failure of the nursing home to comply with Texas State Department of Health requirements for licensure of nursing homes may be considered by the board in determining whether the licensee meets standards for licensure as a nursing home administrator.

(5) If a written complaint is filed with the board or the Texas Board of Health relating to a licensee under this Act, the board, at least as frequently as quarterly, shall notify the complainant of the status of the complaint until the complaint is finally resolved.

(6) The board must within 31 days from the date of filing of the complaint determine whether a hearing shall be held on such complaint or whether such complaint shall be dismissed and shall notify both the person who filed the complaint and the person against whom the complaint has been filed of the board's decision.

(7) If the board determines that a hearing should be held on a complaint, the board shall designate a hearing officer to conduct the hearing on the complaint. The hearing shall be held within 61 days from the date that the written complaint was filed unless such time is extended in writing by the board.

(8) The hearing officer shall keep a complete record of the hearing and shall transmit the record to the board when completed.

(9) The hearing officer shall forward to the board the complete record of the hearing not later than 30 days from the date of the hearing along with the hearing officer's recommendations concerning what disciplinary action, if any, should be taken by the board with respect to the complaint.

(10) The board shall take action on such complaint by written order not later than the 120th day follow-

ing the filing of the complaint, unless the date for hearing was delayed pursuant to Subsection (7) of this section, in which case the deadline for the order is extended accordingly. Copies of the order and the record of the hearing shall be filed together in the office of the board, indexed, and made available for public inspection.

(11) The board shall maintain an information file on each complaint it receives.

Injunction

Sec. 11A. A person who violates Section 7 of this Act or who engages in conduct that is grounds for revocation or suspension of the person's license under Section 11 of this Act, on petition of the board, may be enjoined or restrained by a district court from practicing nursing home administration.

[Amended by Acts 1975, 64th Leg., p. 1116, ch. 420, § 1, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1833, ch. 735, § 2.012, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1226, ch. 591, §§ 1 to 7, eff. Sept. 1, 1979.]

Section 6 of the 1979 amendatory act provided:

"Membership. (a) In making the initial appointments of public members to the Texas Board of Licensure for Nursing Home Administrators, the governor shall designate one public member for a term expiring on January 31, 1981, one for a term expiring on January 31, 1983, and one for a term expiring on January 31, 1985.

"(b) A person holding office as a member of the Texas Board of Licensure for Nursing Home administrators on September 1, 1979, other than the ex officio members, who satisfies the provisions of this Act, continues to hold office for the term for which the member was originally appointed."

Art. 4445c. Laboratory Tests for Venereal Diseases; Reporting Results

Notification of Findings; Duty

Sec. 1. (a) Any person who is in charge of a clinical or hospital laboratory, blood bank, mobile unit, or other facility in which a laboratory examination of any specimen derived from a human body yields microscopical, cultural, serological, or other evidence suggestive of those venereal diseases significant from a public health standpoint listed in Section 3 of this Act shall notify the Communicable Disease Services Section, Texas State Department of Health, of such findings.

(b) Notification shall be submitted by the person in charge of the laboratory to the Communicable Disease Services Section, Texas State Department of Health, through the local health officer having jurisdiction of the area containing the office address of the physician for whom the examination or test was performed or, if the examination or test was not performed for a physician, the area in which the facility is located. In the absence of a local full-time health officer, said report(s) will be forwarded directly to the Communicable Disease Services Section, Texas State Department of Health.

Notification of Findings; Contents

Sec. 2. (a) Notification shall contain the date and result of the test performed, the name and age of the person from whom the specimen was obtain-

ed, and the name and address of the physician for whom such examination or test was performed or, if the examination or test was not performed for a physician, a notation to that effect and a statement of the reason it was performed. Also, notification shall be submitted in writing and in such form and manner as prescribed by the Communicable Disease Services Section, Texas Department of Public Health.

[See Compact Edition, Volume 4 for text of 2(b) to 4]

Communications with Patient and Physician

Sec. 5. (a) Except when acting on the basis of information other than the laboratory notification, neither the Communicable Disease Services Section, Texas State Department of Health, nor the local health director will under any circumstances communicate with the patient or the potential contacts until a diagnosis has been reported to the Department of Health by the attending physician, if any, but if there is no attending physician, communications with the person from whom the specimen was derived and other potential contacts may proceed as in cases in which the information is received from other than laboratory notification.

[See Compact Edition, Volume 4 for text of 5(b) to 7]

[Amended by Acts 1975, 64th Leg., p. 2211, ch. 704, §§ 1 to 3, eff. June 21, 1975.]

Art. 4447c. Texas Coordinating Commission for State Health and Welfare Services

Creation; Membership; Terms

Sec. 1. There is hereby created a "Texas Coordinating Commission for State Health and Welfare Services," to be composed of the following persons:

(a) The Director of Health Resources, the chairman of the Texas Health Facilities Commission, the Commissioner of Education, the Commissioner of Mental Health and Mental Retardation, the Chairman of the Texas Employment Commission, the Commissioner of Public Welfare, the Executive Secretary-Director of the State Commission for the Blind, the Executive Director of the Texas Youth Council, and the executive heads of other health-related state agencies designated by executive order of the Governor, each of whom, or his designee, is an ex officio, non-voting member of the Commission;

(b) Three members of the Senate appointed by the Lieutenant Governor;

(c) Three members of the House of Representatives appointed by the Speaker of the House;

(d) Three citizen members appointed by the Governor and chosen for their recognized interest

in health or welfare activities of the state, local governments, and private agencies.

The terms of members of the Commission first appointed shall be from the date of their appointment to December 31, 1976, and appointments thereafter shall be for two-year periods ending on December 31 of even-numbered years.

Application of Sunset Act

Sec. 1a. The Texas Coordinating Commission for State Health and Welfare Services is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1985.

¹ Article 5429k.

Organization; Chairman

Sec. 2. The Texas Coordinating Commission for State Health and Welfare Services shall meet within thirty (30) days after the appointment of all its members. The Governor shall biennially designate one member as chairman and another as vice-chairman.

Staff and Services Assistance

Sec. 3. The Governor shall provide the staff and services necessary to assist the Commission in performing its duties. To the extent practicable, all health-related state agencies with ex officio representatives on the Commission shall provide staff and services assistance.

Meetings

Sec. 4. Regular meetings of the Texas Coordinating Commission for State Health and Welfare Services shall be held in Austin or at other locations within the state as determined by the Commission, and after its initial organization the Commission shall meet at least once every three months. Called meetings of the Commission may be held at such times and at such places as it may determine. A majority of the appointed members shall constitute a quorum.

Compensation; Expenses

Sec. 5. Members of the Commission shall serve without compensation, but appointed members of the Commission shall be reimbursed for their actual and necessary expenses while in attendance upon meetings of the Commission from funds appropriated by the Legislature.

Sec. 6. Repealed by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.08(4), eff. May 28, 1975.

Application for Federal Grant; Study and Analysis of Services and Programs

Sec. 6A. (a) Whenever any state agency or institution applies for a federal grant for health pur-

poses, prior to or at the time the application is submitted to the federal government, the agency or institution shall provide the Commission with a copy of the application. The Commission may review and comment on the application. If the agency or institution receives funds pursuant to the application, it shall so report to the Commission and shall advise the Commission of the disposition of the funds.

(b) The Commission shall make a continuing study and analysis of the services and programs of all health-related state agencies and shall include its findings and recommendations in its annual report.

[See Compact Edition, Volume 4 for text of 7]

Reports

Sec. 8. The Commission shall compile annual reports on its activities for submission to the Governor and the Legislature. The reports shall be submitted not later than December 1 of each year and shall include any recommendations which the Commission may have for legislative action.

[Amended by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.06, May 28, 1975; Acts 1977, 65th Leg., p. 1847, ch. 735, § 2.105, eff. Aug. 29, 1977.]

Art. 4447d-2. Immunization Reminder Notices

In a program administered by the State Department of Health in which immunization reminder notices for children are sent to persons, the notices must be sent without discrimination on the basis of the legitimacy of the child and must be addressed to an adult or parent without including an indication of the marital status of the addressee and without use of the terms "Mr.," "Mrs.," "Miss," or "Ms."

[Acts 1975, 64th Leg., p. 1020, ch. 389, § 1, eff. June 19, 1975.]

Art. 4447e. Phenylketonuria and Other Heritable Diseases

Sec. 1. The Texas Department of Health shall establish, maintain, and carry out a program designed to combat mental retardation in children suffering from phenylketonuria and other heritable diseases. The Texas Board of Health is authorized to adopt regulations necessary to carry out the program. The Board may adopt a rule specifying the heritable diseases covered by this Act. The Department shall establish and maintain a diagnostic laboratory for conducting experiments, projects, and other undertakings necessary to develop tests for the early detection of phenylketonuria and other heritable diseases; for developing ways and means or discovering methods to be used for the prevention and treatment of phenylketonuria and other heritable diseases in children; and for such other purposes considered necessary by the Department to carry out the program.

Sec. 2. The physician attending a newborn child, or the person attending a newborn child that was not attended by a physician, shall cause the child to be subjected to tests for phenylketonuria and other heritable diseases that have been approved by the Department. The tests required by this Act must be performed by the Department's diagnostic laboratory or by a laboratory approved by the Department under Section 2A of this Act. Providing, however, that such tests shall not be given to any child whose parents or guardian object thereto on the grounds that such tests conflict with their religious tenets or practices. Provisions of this Act are mandatory with the exception above-stated; however, no physician, technician, or person giving such tests shall be liable or responsible because of the failure or refusal of the parent or guardian to give permission or consent to tests herein provided. The city or county health officer shall follow up all positive tests with the attending physician who notified such officer or with the parent of the newborn child if such notification was made by a person other than a physician. The Department may follow up positive tests with the attending physician, the attending physician's designee, the city or county health officer, or the parents of the newborn child. When a positive test is confirmed, the services and facilities of the Department, and those of other boards, departments, agencies, and political subdivisions of the State cooperating with the Department in carrying out the program, shall be made available to the extent needed by the family and physician. The Department and the other departments, boards, agencies, and political subdivisions of the State cooperating with it shall, in cooperation with an attending physician, provide for the continued medical care, dietary, and other related needs of such children where necessary or desirable.

Sec. 2A. (a) The Department may develop a program to approve any laboratory that wishes to perform the tests required to be administered under this Act. To the extent that they are not otherwise provided in this Act, the Board may adopt rules prescribing procedures and standards for the conduct of the program.

(b) The Department may prescribe the form and reasonable requirements for the application and the procedures for processing the application.

(c) The Department may prescribe the test procedure to be employed and the standards of accuracy and precision required for each test.

(d) The Department may extend or renew any approval in accordance with reasonable procedures prescribed by the Board.

(e) The Department may for good cause, after notice to the affected laboratory and a hearing if requested, restrict, suspend, or revoke any approval granted under this program.

(f) Hearings under this section shall be conducted in accordance with the hearing rules adopted by the Board and the applicable provisions of the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

Sec. 3. The various boards, departments, agencies and political subdivisions of the State capable of assisting the Department in carrying out any program established under the authority of this Act may cooperate with the department and are encouraged to furnish their services and facilities in aid of any such program.

Sec. 4. The Department may invite the cooperation of all physicians and hospitals in the state which provide maternity and newborn infant care to participate in any program established by the Department under the authority of this Act.

[Amended by Acts 1979, 66th Leg., p. 578, ch. 269, §§ 1 to 5, eff. Aug. 27, 1979.]

Art. 447e-1. Hypothyroidism

Detection Program; Diagnostic Laboratory

Sec. 1. The Texas Department of Health¹ shall establish a program to detect hypothyroidism in newborn infants. The department shall establish a diagnostic laboratory for conducting screening and other undertakings necessary to develop and carry out tests for the early detection of hypothyroidism.

¹ Name changed to Department of Health; see art. 4418g.

Rules

Sec. 2. The department may adopt rules necessary to carry out the program established pursuant to this Act.

Test Requirement

Sec. 3. The physician attending a newborn infant or the person attending a newborn infant who is not attended by a physician shall cause the child to be subjected to a test or tests for hypothyroidism which have been approved by the department. The tests required by this Act must be performed at the department's diagnostic laboratory or at a laboratory that has been approved by the department under Section 4 of this Act.

Approval of Laboratories

Sec. 4. (a) The Texas Department of Health may develop a program to approve any laboratory that wishes to perform the tests required to be administered under this Act. To the extent that they are not otherwise provided in this Act, the board is authorized to adopt rules prescribing procedures and standards for the conduct of the laboratory approval program.

(b) The department may prescribe the form and reasonable requirements for the application and the procedures for processing such application.

(c) The department may prescribe the test procedure to be employed and the standards of accuracy and precision required for each test.

(d) The department may extend or renew any approval in accordance with reasonable procedures prescribed by the department.

(e) The department may for good cause after notice to the affected laboratory and an opportunity for hearing restrict, suspend, or revoke any approval granted under this program.

(f) Hearings under this section shall be conducted in accordance with the hearing rules adopted by the board and the applicable provisions of the Administrative Procedure and Texas Register Act, as amended, (Article 6252-13a, Vernon's Texas Civil Statutes).

Provisions Mandatory; Exception for Religious Tenets; Liability for Failure to Give Permission for Tests

Sec. 5. The provisions of this Act are mandatory; provided, however, that such test or tests shall not be given to any child whose parents or guardian object thereto on the grounds that such tests conflict with their religious tenets or practices. Provided further, that no physician, technician, or person giving a test for hypothyroidism is liable or responsible because of the failure or refusal of a parent or guardian to give permission for tests provided in the screening program under this Act.

Follow Up of Positive Tests

Sec. 6. The city or county health officer shall follow up all positive tests with the attending physician who notified such officer or with the parent of the newborn child if such notification was made by a person other than a physician. The Texas Department of Health is authorized to follow up positive tests with the attending physician or the physician's designee, the city or county health officer, or the parent of the newborn infant.

Diagnosis and Treatment

Sec. 7. When a positive test is confirmed, the services and facilities of the department and other boards, agencies, and political subdivisions in the state cooperating in the program shall be made available to establish a definitive diagnosis and to supervise treatment as a service to the family and attending physician.

Services and Facilities to Aid Program

Sec. 8. The various boards, agencies, and political subdivisions of the state capable of assisting the department in carrying out a program established under this Act are encouraged to furnish their services and facilities to aid the program.

Cooperation of Physicians and Hospitals

Sec. 9. The department may invite the cooperation of physicians and hospitals in the state which provide maternity and newborn infant care to participate in any program established under this Act.

Gifts and Donations

Sec. 10. The department may receive gifts and donations on behalf of the program established under this Act.

[Acts 1977, 65th Leg., p. 905, ch. 339, §§ 1 to 7, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 1601, ch. 677, § 1, eff. Aug. 27, 1979.]

Art. 447e-2. Sudden Infant Death Syndrome

Sec. 1. When a child under the age of two years dies within this state under circumstances of sudden death, cause unknown, or found dead, cause unknown, that death shall be immediately reported to the justice of the peace, coroner, medical examiner, or other proper official under the law, wherein the body lies, whereupon the justice of the peace, coroner, or medical examiner shall inform the parents or legal guardian of the child that they may request an autopsy performed on the child, the reasonable cost of which shall be borne by the state. An autopsy requested by the parents or legal guardians shall be arranged for by the justice of the peace, coroner, or medical examiner and the parents or legal guardians shall be promptly notified of the results of that autopsy. The reasonable cost of the autopsy performed under this section shall be reported to the director of Health Resources who shall in turn instruct the comptroller to pay the account to the person entitled thereto out of funds appropriated for this purpose by the legislature. The reasonableness and propriety of all claims and accounts under this section shall be passed upon and determined by the director of Health Resources. Nothing in this section shall be construed as interfering with the duties and responsibilities of the justice of the peace, coroner, or medical examiner as defined in other sections of the law.

Sec. 2. Sudden Infant Death Syndrome (SIDS) is hereby recognized and may be used as a primary cause of death, when applicable, in such certification as is required by Rule 40a, Sanitary Code for Texas, as amended (Article 4477, Revised Civil Statutes of Texas, 1925).

Sec. 3. The Texas Department of Health Resources¹ shall develop and disseminate to proper agencies, governmental bodies, officials, physicians, nurses, health professionals, and citizens a model program that can be used in follow-up consultation and information about Sudden Infant Death Syndrome (SIDS) and its characteristic grief-guilt reaction. It is the intent of this section to initiate a model program that can be used to humanize and

maximize the understanding and the handling of Sudden Infant Death Syndrome (SIDS) in this state. The Texas Department of Health Resources may appoint an advisory committee to assist it in the development of such program.

[Acts 1977, 65th Leg., p. 1196, ch. 462, §§ 1 to 3, eff. Aug. 29, 1977.]

¹ Department of Health Resources abolished and Department of Health created by Acts 1977, 65th Leg., ch. 474; see art. 4418g.

Art. 4447e-3. Pilot Program to Identify Infants with High Risk of Impaired Hearing

Text of article effective until September 1, 1981

Definitions

Sec. 1. In this Act:

- (1) "Board" means the Texas Board of Health.
- (2) "Department" means the Texas Department of Health.

Program Established

Sec. 2. The department shall establish and implement a program in certain public health regions of the state to identify infants at high risk of having impaired hearing and to assure that an infant who is identified as being at high risk of having impaired hearing is tested for hearing loss.

Regions Served

Sec. 3. The department shall implement the program in two public health regions, as that term is defined by the board. The board shall establish the program in one public health region with a population greater than 2,000,000, according to the most recent federal census, and in one public health region with a population of less than 1,000,000, according to the most recent federal census.

Registry of Infants at High Risk

Sec. 4. (a) The board shall establish criteria for determining if an infant is at high risk of having impaired hearing.

(b) The department shall establish a registry of infants who, before they are 29 days old, are determined to be at high risk of having impaired hearing. With the consent of the child's parent or other person having care, custody, or control of the child, the department shall place on the registry the name of a child who meets criteria for being at high risk of having hearing impairment.

(c) The department shall remove the name of a child from the registry if the child is determined to have no hearing impairment.

Audiological Testing

Sec. 5. (a) If possible, the department shall contact the parents or other person having care, custody, or control of a child whose name is placed on the registry before the child enters school, determine if

the child's hearing has been tested, and refer the child to the Central Education Agency and to other appropriate agencies for needed services.

(b) The department shall establish an audiological testing program for testing the hearing of children whose names are on the registry and who have not been tested for hearing impairment. Audiological testing provided by the department shall be limited to those children whose families meet financial criteria set by the board.

(c) The board shall set a fee scale based on financial need to be charged for audiological testing.

Repayment

Sec. 6. If the parent, managing conservator, or other person having a legal obligation to support an infant or child served by this program receives money, or is entitled to receive money, from an insurance policy, a group health or prepaid medical plan, or a public program created by law for the payment of the costs of services provided by this Act, that person shall reimburse the department to the extent of the benefit received for the cost to the department of providing the services.

Powers of the Board

Sec. 7. The board may:

- (1) adopt rules necessary for the implementation of this Act;
- (2) enter into contracts or agreements with physicians or hospital staff as necessary for the audiological testing program; and
- (3) accept federal or private grants or donations for the program.

Medical Advisory Committee

Sec. 8. The board shall appoint an advisory committee of professionals experienced in the areas of audiological testing and treatment of children with impaired hearing. The committee shall offer advice and assistance to the board in adopting rules and determining policy concerning the program established by this Act.

Evaluation

Sec. 9. The department shall evaluate the results of the program created by this Act and shall report the results of the evaluation to the 67th Legislature.

Duration of the Program

Sec. 10. This Act expires September 1, 1981, unless specifically reenacted by the legislature and unless funds are appropriated for its continued existence.

[Acts 1979, 66th Leg., p. 2069, ch. 809, §§ 1 to 10, eff. Sept. 1, 1979.]

Art. 4447r. Cooperative Associations by Eligible Institutions

Establishment; Names; Purposes

Sec. 1. Associations may hereafter be established for the purpose of enabling "eligible institutions" (as defined in this Act) to cooperate with each other for the purposes named in this Act. Only eligible institutions can become members of associations established under this Act. Each association chartered under this Act shall contain as part of its name the words "Cooperative Association," and its purposes shall be limited to establishing, operating, and maintaining a "system" or "systems" (as defined in this Act) on a cooperative basis solely for the use and benefit of eligible institutions. Eligible institutions are authorized to create and establish each association only under such terms and conditions as may be prescribed by the governing bodies of the respective eligible institutions.

Definitions

Sec. 2. The following terms used in this Act shall have the following meanings:

(1) The term "eligible institutions" shall include only political subdivisions and municipalities of the State of Texas; health-related state-supported institutions, including, but not limited to, Texas A & M University System, The University of Texas System, and Texas Woman's University, and non-profit health-related institutions; and cooperative associations created to provide a system as defined in Subsection (2) of this Section 2, a unit of which is situated in any county of this state having a population in excess of 1,600,000 inhabitants according to the most recent federal census. In addition to other activities, such entities must be engaged in health-related pursuits to become eligible institutions, and, except for cooperative associations, must be exempt from federal income tax. It is not a requirement of this Act that any component institution of any state-supported institution be a member of any association created under this Act, but any one or more of such component institutions may be a member of any one or more associations.

(2) The term "system" shall include all properties and facilities necessary, incidental, and appropriate for the purposes of providing laundering services, central heating and cooling services (including steam and chilled water supply), cable television and other communication services, including transmission of x-rays, records, and other copy, parking facilities and traffic control facilities and devices on private streets, and food processing and dietary food preparation and supply services, together with the buildings and land (whether leasehold or other interests) necessary to provide the foregoing services, properties and fa-

ilities, all by and for the benefit of the members of the cooperative associations created under this Act.

Powers, Rights and Functions

Sec. 3. Each association established under this Act shall have the following specific powers, rights, and functions:

(1) to acquire, own, and operate a system or systems on a cooperative basis solely for the benefit of the eligible institutions whether or not members of the association and to engage in such activities for the benefit of such eligible institutions as are necessarily related to the acquisition, ownership, operation, and maintenance of the system or systems as defined in this Act;

(2) to acquire by purchase, lease, or otherwise, lands and estates in lands (whether leasehold or otherwise) appropriate or reasonably incidental to the system or systems as defined in this Act; to own, hold, improve, develop, and manage any real estate so acquired; to construct, or cause to be constructed, improve, enlarge, and equip buildings or other structures on any such real estate; and to encumber and dispose of any lands or estates in lands and any such buildings or other structures at any time owned or held by the association;

(3) to acquire by purchase, lease, manufacture, or otherwise, any personal property appropriate or reasonably incidental to the system or systems as defined in this Act; and

(4) to borrow or raise money; to sell, grant security interests in, pledge, and otherwise dispose of and realize upon accounts receivable, contract rights, and other choses in action; and to make, draw, accept, endorse, execute, and issue bonds, debentures, notes, or other obligations for money so borrowed or in payment for property purchase, and to secure the payment thereof by mortgage upon, or creation of security interests in, or pledge of, or conveyance or assignment in trust of, the whole or any part of the property, real or personal, of the association, all of the above being authorized to the extent necessary to accomplish the purposes set forth in this Act.

Public Funds

Sec. 4. No public funds appropriated to any department of the state government or to any state institution shall be used in establishing any association authorized by this Act.

Articles of Incorporation

Sec. 5. Eligible institutions desiring to establish associations hereunder may, in the exercise of the rights herein granted and subject to the limitations herein provided, prepare and file articles under the general corporation laws of the State of Texas,

which corporation laws, including the Texas Business Corporations Act, shall upon such filing govern such associations except wherein such laws conflict with the provisions of this Act.

Franchise Tax Exemption; Reports; Surplus Revenue

Sec. 6. The associations established under this Act shall be purely cooperative and not for profit, and shall not be required to pay any annual franchise tax, but shall nevertheless file a written report to the secretary of state showing their assets and the condition of their affairs annually. Such associations may by their directors, in accordance with their bylaws, pass any surplus revenue derived from each system to the surplus fund or divide such funds among the patrons thereof in proportion to their respective contributions to the working capital of the association and patronage.

Loaning Money to Members

Sec. 7. The associations established under this Act shall not have the power to loan money to their members.

Loans From Public or Private Sources; Services and Costs

Sec. 8. The associations established under this Act shall only have the powers enumerated in Section 3 of this Act. The creation, operation, or maintenance of each system may be accomplished in whole or in part with the proceeds of loans obtained from any public or private source. Such associations are authorized to furnish services from each system to any and all eligible institutions and to determine the amounts to be charged as the cost of furnishing such services.

Bonds, Notes or Other Obligations

Sec. 9. From time to time each association established under this Act shall have authority to borrow money and to deliver evidences of indebtedness to include bonds or notes in such amounts as may be necessary for the purpose of creating, enlarging, operating, or maintaining the system or systems. Such bonds, notes, or other evidences of indebtedness authorized by this Act shall be paid solely from the revenues received from the operation of the system or systems or from funds specifically provided for that purpose from other sources, and said revenues and funds may be pledged to secure the payment of such bonds, notes, or other evidences of indebtedness. Said bonds, notes, or other evidences of indebtedness authorized under this Act shall never constitute indebtedness of the State of Texas or of any of the eligible institutions that are members of any association, and the holders thereof shall never have the right to demand or to enforce payment of principal or interest of the bonds, notes, or other evidences of obligations out of funds, other than those specifically pledged to the payment thereof.

Bonds as Legal and Authorized Investments

Sec. 10. All bonds of the associations established by this Act shall be and are hereby declared to be legal, eligible, and authorized investments for banks, savings and loan associations, insurance companies, fiduciaries, and trustees.

Election to Membership; Voting Rights; Suspension or Expulsion; Transfer of Membership Certificates

Sec. 11. (a) Membership in the associations established under this Act shall be limited to eligible institutions and can be obtained only by election to membership at the time of organization by the organizers thereof, or by the board of directors of the association, when organized under such rules and limitations as may be contained in the bylaws. Members shall have voting rights in the management of the affairs of the association contained in the bylaws of the association.

(b) Members may be suspended or expelled for misconduct under such rules and regulations as may be prescribed in the bylaws. In case of expulsion, the association shall pay to the members such amount and at such time as may be fixed in its bylaws in cancellation of such membership; provided, however, that such member's contractual obligations pledged to the payment of the association's notes, bonds, or other evidences of indebtedness shall have been fully paid or provided for.

(c) Membership certificates shall be transferable only to eligible institutions under and subject to such rules and regulations as may be adopted by any association in its bylaws.

(d) All amounts paid or property conveyed or transferred to any association by expelled members not returned as hereinunder provided shall be retained by the association and any facilities or property theretofore acquired shall remain the property of the association, and the members shall have no lien or other rights with regard thereto.

Liability to Creditors; Financial Commitments

Sec. 12. Unless otherwise herein provided, the members of any association established hereunder shall not be responsible to such association or to its creditors in excess of amounts contracted for by the member, and when the contracts are paid in the amounts and at the times therein specified, the liability of each such member shall cease. Nothing contained in this Act shall be interpreted to authorize any health-related state-supported institution to make a financial commitment extending beyond the then current budget period for such institution.

Cumulative Effect

Sec. 13. This Act shall be cumulative of all laws now in effect relating to eligible institutions.

Tax Exemption

Sec. 14. The accomplishment of the purposes stated in this Act being for the health and benefit of the people of this state, and for the improvement of their properties and industries, the associations in carrying out the purposes of this Act will be performing essential public functions under the constitution, and the associations shall not be required to pay any tax or assessment on its properties or any part thereof or on any purchases made by the associations.

Severability; Liberal Construction

Sec. 15. If any word, phrase, clause, paragraph, sentence, part, portion, or provision of this Act or the applications thereof to any person or circumstances shall be held to be invalid or unconstitutional, the remainder of this Act shall nevertheless be valid, and the legislature hereby declares that this Act would have been enacted without such invalid or unconstitutional word, phrase, clause, paragraph, sentence, part, portion, or provision. All of the terms and provisions of this Act are to be liberally construed to effectuate the purposes, powers, rights, functions, and authorities herein set forth.

[Acts 1975, 64th Leg., p. 458, ch. 195, eff. May 13, 1975. Amended by Acts 1977, 65th Leg., p. 1230, ch. 476, §§ 1 to 3, eff. June 15, 1977.]

Section 7 of the 1977 amendatory act provided:

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

Art. 4447s. Disclosure of Agreements for Payment of Laboratory Tests

Sec. 1. No person licensed in this state to practice medicine, dentistry, podiatry, veterinary medicine, or chiropractic shall agree with any clinical, bioanalytical, or hospital laboratory, wherever located, to make payments to such laboratory for individual tests, combination of tests, or test series for patients unless such person discloses on the bill or statement to the patient or third party payors the name and address of such laboratory and the net amount or amounts paid to or to be paid to such laboratory for individual tests, combination of tests, or test series or makes available on request to the patient or third party payors the net amount or amounts paid to or to be paid to such laboratory for individual tests, combination of tests, or test series. Such information made available shall be in writing and shall show the charge for such laboratory test or test series and may include explanation in net dollar amounts or percentages the charge from such laboratory, the charge for handling, and an interpretation charge.

Sec. 2. The board or agency responsible for licensing and regulation of persons practicing medicine, dentistry, podiatry, veterinary medicine, and

chiropractic, in addition to other authority granted, may deny an application for license or other authority to practice for violation of Section 1 of this Act. [Acts 1977, 65th Leg., p. 1528, ch. 621, §§ 1, 2, eff. June 15, 1977. Amended by Acts 1979, 66th Leg., p. 65, ch. 40, § 1, eff. April 11, 1979.]

Art. 4447t. Determination of Death

Sec. 1. (a) A person will be considered legally dead if, based on ordinary standards of medical practice, there is the irreversible cessation of spontaneous respiratory and circulatory functions.

(b) If artificial means of support preclude a determination that spontaneous respiratory and circulatory functions have ceased, a person will be considered legally dead if in the announced opinion of a physician, based on ordinary standards of medical practice, there is the irreversible cessation of all spontaneous brain function. Death will have occurred at the time when the relevant functions ceased.

(c) Death is to be pronounced before artificial means of supporting respiratory and circulatory functions are terminated.

Sec. 2. A physician who determines death in accordance with the provisions of Section 1(b) of this Act is not liable for damages in any civil action or subject to prosecution in any criminal proceeding for his or her acts or the actions of others based on that determination.

Sec. 3. A person who acts in good faith in reliance on a determination of death by a physician is not liable for damages in any civil action or subject to prosecution in any criminal proceeding for his or her act.

[Acts 1979, 66th Leg., p. 368, ch. 165, §§ 1 to 3, eff. May 15, 1979.]

Art. 4447u. Home Health Services**Definitions**

Sec. 1. In this Act:

(1) "Home health agency" means a place of business that provides a home health service for pay or other consideration in a patient's residence, ordinarily according to a written and signed plan of treatment.

(2) "Home health service" means the provision of a health service for pay or other consideration in a patient's residence.

(3) "Health service" means:

- (A) nursing;
- (B) physical, occupational, speech, or respiratory therapy;
- (C) a medical social service;
- (D) the service of a home health aide;

(E) the furnishing of medical supplies (other than drugs and medicines) and medical equipment; or

(F) nutritional counseling.

(4) "Residence" means a place where a person resides, including a home, nursing home, or convalescent home for the disabled or aged.

(5) "Certified agency" means a person who provides a home health service and holds a current letter of approval signed by an official of the Department of Health, Education, and Welfare and indicating compliance with conditions of participation in Title XVIII of the federal Social Security Act.¹

(6) "Department" means the Texas Department of Health.

(7) "Council" means the Home Health Services Advisory Council.

(8) "Person" means an individual, corporation, or association.

(9) "Place of business" means any office of a home health agency which is required to maintain the official patient records and directs patient services.

¹ 42 U.S.C.A. § 1395 et seq.

Home Health Services Advisory Council

Sec. 2. (a) The Home Health Services Advisory Council is created.

(b) The council is composed of nine members appointed by the governor as follows:

(1) one member to represent the department;

(2) two members to represent consumers of home health agency services;

(3) one member to represent the Texas Department of Human Resources;

(4) one member to represent the Texas Association of Home Health Agencies, Incorporated;

(5) one member to represent private nonprofit home health agencies;

(6) one member to represent voluntary nonprofit agencies;

(7) one member to represent proprietary agencies; and

(8) one member to represent an official department home health agency.

(c) Members of the council serve staggered terms of two years, the terms of five members expiring on January 31 of each even-numbered year and the terms of four members expiring on January 31 of each odd-numbered year.

(d) The council shall elect a presiding officer from among its members to preside at meetings and to notify members of meetings. The presiding officer shall serve for one year and may not serve in that capacity for more than two years.

(e) The council shall meet at least once a year and at other times at the call of the presiding officer, any three members of the council, or the commissioner of health.

(f) Members of the council serve without compensation.

Council Duties

Sec. 3. The council shall advise the department on standards for licensing.

Rules and Standards

Sec. 4. (a) The department shall prescribe forms necessary to perform its duties and shall adopt rules necessary to implement this Act.

(b) The department shall set minimum standards for home health services licensed under this Act that pertain to:

(1) qualifications for professional personnel;

(2) qualifications for nonprofessional personnel;

(3) treatment and services provided by a home health agency and the coordination of treatment and services;

(4) supervision of professional and nonprofessional personnel;

(5) organizational structure of the agency, lines of authority, and delegation of responsibility;

(6) clinical records kept by the agency;

(7) business records; and

(8) other aspects of home health services necessary to protect the public.

Licenses Required

Sec. 5. (a) No certified agency may engage in the business of providing home health services unless the person has acquired from the department a Class A home health service license for each place of business from which home health services are directed.

(b) No person, other than a certified agency, may engage in the business of providing home health services unless the person has acquired from the department a Class B home health service license for each place of business from which home health services are directed.

Persons Exempted from License Requirement

Sec. 6. The following persons are not required to be licensed under Section 5 of this Act:

(1) a licensed physician;

(2) an individual whose permanent residence is in the patient's residence;

(3) an employee of a person holding a license under this Act who provides home health services only as an employee of the licensed person and

who receives no benefit for providing home health services other than wages from the employer;

(4) a home, nursing home, convalescent home, or other institution for the disabled or aged that provides health services only to residents of the home or institution;

(5) a person who provides one health service through a contract with a person licensed under Section 5 of this Act;

(6) a durable medical equipment supply company;

(7) a drug store or wholesale medical supply company that furnishes no services to persons in their houses except supplies;

(8) a hospital or other licensed health care facility serving in-patient residents; or

(9) a person providing home health services to an injured employee pursuant to Article 8306 et seq. of the Revised Civil Statutes of Texas, 1925, as amended.

License Application

Sec. 7. (a) An applicant for a license to provide a home health service must:

(1) file a written application on a form prescribed by the department;

(2) file with the application the name of the owner of the service or a list of names of persons who own an interest in the service and a list of any businesses with which the service business subcontracts and in which the owner or owners of the service business hold as much as five percent of the ownership;

(3) cooperate with any inspections the department may require for a license; and

(4) pay to the department a license fee as prescribed by Section 8 of this Act.

(b) In addition to the above requirements: (1) for a Class A license, if the applicant is at the time of filing an application a certified home health agency, it shall include a copy of its letter of approval from the Department of Health, Education, and Welfare showing its compliance with federal conditions of participation. If the applicant is not at the time of filing its application a certified home health agency, it must attach a copy of its certificate of need, exemption certificate, or declaratory ruling. It must also have been surveyed and be in the process of receiving its certificate from the Department of Health, Education, and Welfare.

(2) For a Class B license, the applicant must show proof of the services provided and geographical territory in which such services have been provided as of the effective date of this Act and it must have requested a survey for the purposes of confirming the services provided and territory cov-

ered. If the applicant is not providing services as of the effective date of this Act, it must attach a copy of its certificate of need, exemption certificate, or declaratory ruling.

(c) The license fee shall be returned to the applicant if the license application is denied.

License Fees

Sec. 8. (a) Except as provided by Subsections (b) and (c) of this section, the Class A home health service license fee and the Class B home health service license fee for each place of business is \$100.

(b) The Class A home health service license fee for each place of business of a certified agency that has been operated during the year immediately preceding the date of the application is a figure in dollars that equals one percent of the total number of home visits made by the agency from the place of business during the year immediately preceding the date of the application, but not less than \$100 nor more than \$400.

(c) The Class B home health service license fee for each place of business of a person, other than a certified agency, providing home health services during the year immediately preceding the date of the application is the fee specified in the following schedule according to the number of home health service hours billed from the place of business during the year immediately preceding the date of the application:

<u>Fee</u>	<u>No. Hrs. Billed</u>
\$100	0-10,000
\$200	over 10,000 but not more than 100,000
\$400	over 100,000

Issuance of License

Sec. 9. (a) The department shall issue a Class A or Class B home health service license for each place of business to each applicant who:

(1) qualifies for the type of license requested;

(2) submits an application as required by this Act; and

(3) complies with all licensing standards required or adopted by the department under this Act.

(b) A license issued under this Act may not be transferred or assigned.

(c) A license issued under this Act expires one year from the date of issuance.

Inspections

Sec. 10. The department or its authorized representatives may enter the premises of a license applicant or license holder at reasonable times to make an inspection incidental to the issuance of a license.

License Denial, Suspension, or Revocation

Sec. 11. (a) The department may deny, suspend, or revoke the license of an applicant or holder of a license who fails to comply with the rules or standards for licensing required by this Act.

(b) The department may revoke or suspend a license to be effective immediately when the health and safety of persons are threatened. A person whose license is suspended or revoked under this subsection is entitled to a hearing within seven days after the effective date of the suspension or revocation.

(c) The licensing agency shall deny, cancel, revoke, or suspend a license if it finds that the applicant or licensee has failed substantially to comply with any applicable provisions of the Texas Health Planning and Development Act¹ requiring a certificate of need or an exemption certificate.

¹ Article 4418h.

Injunctions

Sec. 12. (a) When a person violates the licensing requirements of this Act, the department may petition a district court to restrain the person from continuing the violation. A suit for injunctive relief must be brought in Travis County.

(b) On application for injunctive relief and a finding that a person is violating this Act, the district court shall grant the injunctive relief the facts may warrant.

(c) At the request of the department, the attorney general shall institute and conduct the suit authorized in Subsection (a) of this section in the name of the State of Texas.

Disposition of Funds

Sec. 13. All fees received by the department under this Act shall be deposited in the State Treasury to the credit of the General Revenue Fund.

Application of Sunset Act

Sec. 14. This Act and the council created thereby are subject to the Texas Sunset Act;¹ and unless continued in existence by that Act, the council is abolished, and this Act expires effective September 1, 1991.

¹ Article 5429k.

Effective Date

Sec. 15. This Act takes effect September 1, 1979, except that Section 5 takes effect January 1, 1980. [Acts 1979, 66th Leg., p. 1466, ch. 642, §§ 1 to 4, 6 to 15, eff. Sept. 1, 1979; § 5, eff. Jan. 1, 1980.]

CHAPTER THREE. FOOD AND DRUGS

Article

4476-5a. Laetrile; Manufacture, Distribution, Sale, Prescription, and Use.

Article

4476-6a. Purchase of Imported Beef by State Agencies and Subdivisions.

4476-6b. Purchase of Imported Dairy Products by State Agencies and Subdivisions.

4476-15a. R.B. McAllister Drug Treatment Program Act.

Art. 4476-2. Repealed by Acts 1979, 66th Leg., p. 887, ch. 407, § 1, eff. June 6, 1979

Art. 4476-5. Food, Drug and Cosmetic Act

Sections 1 to 3 of Acts 1979, 66th Leg., p. 2159, ch. 826, amended art. 4476-15. Section 4 of that act provided:

"Any person, firm, or corporation which has filed a new drug application under the Texas Food, Drug and Cosmetic Act, as amended (Article 4476-5, Vernon's Texas Civil Statutes), on or after December 5, 1977, with respect to which the commissioner of health did not enter a formal order of denial within 180 days from the date of application as provided by the Texas Food, Drug and Cosmetic Act, as amended (Article 4476-5, Vernon's Texas Civil Statutes), shall be deemed approved and granted and the commissioner of health shall enter an order to such effect. This section shall take effect upon passage of this Act [August 27, 1979]."

Art. 4476-5a. Laetrile; Manufacture, Distribution, Sale, Prescription, and Use

Sec. 1. (a) It is lawful to manufacture amygdalin (laetrile) in this state in accordance with the provisions of the Texas Food, Drug and Cosmetic Act (Article 4476-5, Vernon's Texas Civil Statutes) and to sell the substance in the state for distribution by licensed physicians.

(b) A licensed physician may prescribe or administer amygdalin (laetrile) in the treatment of cancer.

(c) No hospital or health care facility may forbid or restrict the use of amygdalin (laetrile) when prescribed or administered by a physician and requested by a patient, unless the substance, as prescribed or administered by the physician, is found to be harmful by the Texas Board of Health Resources after a hearing conducted as provided in the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(d) No physician may be subject to disciplinary action by the Texas State Board of Medical Examiners for prescribing or administering amygdalin (laetrile) to a patient under the physician's care and who has requested the substance, unless the Texas State Board of Medical Examiners has made a formal finding, in a hearing conducted as provided in the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), that the substance is harmful.

Sec. 2. Nothing in this Act shall deny the right of the Texas State Board of Medical Examiners to cancel, revoke, or suspend the license of any practitioner of medicine who:

(1) fails to keep complete and accurate records of purchases and disposal of amygdalin (laetrile). A physician shall keep records of his purchases and disposals of amygdalin (laetrile) to include, but not be limited to, date of purchase, sale or disposal of amygdalin (laetrile) by the doctor, the

name and address of the person receiving amygdalin (laetrile), and the reason for disposing of or dispensing amygdalin (laetrile) to such person;

(2) writes prescriptions for or dispenses to a person known to be an habitual user of narcotic drugs or dangerous drugs, or to a person who the doctor should have known was an habitual user of narcotic or dangerous drugs. This provision shall not apply to those persons being treated by the physician for their narcotic use after the physician notifies the Texas State Board of Medical Examiners in writing of the name and address of such person being so treated;

(3) uses any advertising statement of a character tending to mislead or deceive the public; or

(4) is unable to practice medicine with reasonable skill and safety to patients by reason of age, illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition.

[Acts 1977, 65th Leg., p. 571, ch. 204, §§ 1, 2, eff. Aug. 29, 1977.]

Art. 4476-6a. Purchase of Imported Beef by State Agencies and Subdivisions

Sec. 1. In this Act:

(1) "State agency" means any agency, department, board, or commission of the state or any state eleemosynary, educational, rehabilitative, correctional, or custodial facility.

(2) "Subdivision" means any county, incorporated city or town, or any school, junior-college, water, hospital, reclamation, or other special-purpose district.

Sec. 2. No state agency or subdivision may purchase beef, or any product consisting substantially of beef, which has been imported from outside the United States of America.

Sec. 3. The State Department of Health has responsibility for enforcing the provisions of this Act and is the agency for receipt of notifications of violations of this Act.

Sec. 4. The State Department of Health shall promulgate rules and regulations for the reporting of purchases covered by this Act by state agencies and subdivisions and for the reporting of violations of this Act.

[Acts 1975, 64th Leg., p. 368, ch. 159, §§ 1 to 4, eff. May 8, 1975.]

Art. 4476-6b. Purchase of Imported Dairy Products by State Agencies and Subdivisions

Sec. 1. In this Act:

(1) "State agency" means any agency, department, board or commission of the state or any

state eleemosynary, educational, rehabilitative, correctional, or custodial facility.

(2) "Subdivision" means any county, incorporated city or town, or any school, junior college, water, hospital, reclamation, or other special purpose district.

(3) "Dairy product" means milk, cream, butter, cheese, or any product consisting largely of one or more of them.

Sec. 2. No state agency or subdivision may purchase a dairy product that has been imported from outside the United States of America. This Act does not apply to the purchase of milk powder when, in the normal course of business, domestic milk powder is not readily available.

[Acts 1975, 64th Leg., p. 1346, ch. 505, §§ 1, 2, eff. Sept. 1, 1975.]

Art. 4476-13. Hazardous Substances; Labeling; Sales

Definitions

Sec. 1. When used in this Act, unless the context requires a different definition:

(1) "Department" means the Texas Department of Health.

(2) "Person" includes any individual, partnership, corporation or association, or legal representative or agent.

(3) "Commerce" means any and all commerce within the State of Texas and subject to the jurisdiction thereof; and includes the operation of any business or service establishment.

(4) "Hazardous substance" means any substance or mixture of substances which is toxic, corrosive, flammable, an irritant, a strong sensitizer, or generates pressure through decomposition, heat, or other means, if the substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children, or any toy or other article other than clothing intended for use by children which presents an electrical, mechanical, or thermal hazard; and any radioactive substance if, with respect to the substance as used in a particular class of article or as packaged, the department finds by regulation that the substance is sufficiently hazardous to require labeling in accordance with the provisions of this Act in order to protect the public health. The term "hazardous substance" does not apply to economic pesticides subject to the State or Federal Insecticide, Fungicide, and Rodenticide¹ Act nor to foods, drugs, and cosmetics subject to the Federal Food, Drug, and Cosmetic Act² or to beverages complying with or

subject to the Federal Alcohol Administration Act,³ or to the Texas Food, Drug, and Cosmetic Act,⁴ nor to substances intended for use as fuels when stored in containers and used in the heating, cooking or refrigeration system of a private residence, nor does it apply to or include any source material, special nuclear material, or by-product material as defined in the federal Atomic Energy Act of 1954, as amended,⁵ and regulations issued pursuant thereto by the Atomic Energy Commission.

(5) "Toxic" means any substance other than a radioactive substance which has the capacity to produce personal injury or illness to any person through ingestion, inhalation, or absorption through any body surface.

(6) "Highly toxic" means any substance which produces death within 14 days in half or more than half of a group of 10 or more laboratory white rats each weighing between 200 and 300 grams, at a single dose of 50 milligrams or less per kilogram of body weight, when orally administered, or when inhaled continuously for a period of one hour or less at an atmospheric concentration of 200 parts per million by volume or less of gas or vapor or two milligrams per liter by volume or less of mist or dust, if the inhaled concentration is likely to be encountered by any person when the substance is used in any reasonably foreseeable manner; or which produces death within 14 days in half or more than half of a group of 10 or more rabbits tested in a dosage of 200 milligrams or less per kilogram of body weight, when administered by continuous contact with the bare skin for 24 hours or less. However, if the department finds that available data based on human experience indicate results different from those obtained on animals, the human data shall take precedence.

(7) "Corrosive" means any substance which in contact with living tissue will cause destruction of that tissue by chemical action. It does not refer to chemical action on inanimate surfaces.

(8) "Irritant" means any noncorrosive substance which on immediate, prolonged, or repeated contact with normal living tissue will induce a local inflammatory reaction.

(9) "Strong sensitizer" means any substance which will cause on normal living tissue, through an allergic or photodynamic process, a hypersensitivity which becomes evident on reapplication of the same substances. Before designating any substance as a strong sensitizer, the department, upon consideration of the frequency of occurrence and severity of the reaction, shall find that the substance has a significant potential for causing hypersensitivity.

(10) "Flammable" applies to any substance which has a flash point of above 20 degrees to and including 80 degrees Fahrenheit, as determined by

the Tagliabue Open Cup Tester. Any substance which has a flash point at or below 20 degrees Fahrenheit, as determined by the Tagliabue Open Cup Tester shall be designated "extremely flammable." However, the flammability of solids, fabrics, children's clothing, household furnishings, and of the contents of self-pressurized containers shall be determined by methods found by the department to be generally applicable to these materials or containers, and shall be established by regulations issued by the department.

(11) "Radioactive substance" means a substance which emits ionizing radiation.

(12) "Label" means a display of written, printed, or graphic matter upon the immediate container of any substance, or in the case of an article which is unpackaged or is not packaged, in an immediate container intended or suitable for delivery to the ultimate consumer, a display of this matter directly on the article involved or on a tag or other suitable material affixed thereto.

(13) "Immediate container" does not include package liners.

(14) "Misbranded hazardous substance" means a hazardous substance (including a toy, or other article intended for use by children, which is a hazardous substance, or which bears or contains a hazardous substance in a manner which is susceptible of access by a child to whom the toy or other article is entrusted, intended or packaged in a form suitable for use in the household or by children) which fails to bear a proper label as required by this Act.

(15) "Electrical hazard" means an article which, in normal use or when subjected to reasonably foreseeable damage or abuse, by its design or manufacture may cause personal injury or illness by electrical shock.

(16) "Mechanical hazard" means an article which, in normal use or when subjected to reasonably foreseeable damage or abuse, by its design or manufacture presents an unreasonable risk of personal injury or illness;

(A) from fracture, fragmentation, or disassembly of the article;

(B) from propulsion of the article or any part or accessory thereof;

(C) from points or other protrusions, surfaces, edges, openings, or closures;

(D) from moving parts;

(E) from lack or insufficiency of controls to reduce or stop motion;

(F) as a result of self-adhering characteristics of the article;

(G) because the article or any part or accessory thereof may be aspirated or ingested;

(H) because of instability; or

(I) because of any other aspect of the article's design or manufacture.

(17) "Thermal hazard" means an article which, in normal use or when subjected to reasonably foreseeable damage or abuse, by its design or manufacture presents an unreasonable risk of personal injury or illness because of heat as from heated parts, substances, or surfaces.

¹ Article 135b-5; 7 U.S.C.A. § 135 et seq.

² 21 U.S.C.A. § 301 et seq.

³ 27 U.S.C.A. § 201 et seq.

⁴ Article 4476-5.

⁵ 42 U.S.C.A. § 2011 et seq.

[See Compact Edition, Volume 4 for text of 2]

Banned Hazardous Substances

Sec. 3. (a) Any article of clothing (other than diapers) intended for the use of children which is not in compliance with flammability standards for such clothing established by the department shall be declared to be a banned hazardous substance by the department. The determination by the department that articles of clothing of a specified range of sizes are intended for the use of a child 14 years or younger shall be conclusive.

(b) Any toy or other article other than clothing intended for use by children, which is a hazardous substance, or which bears or contains a hazardous substance in a manner susceptible of access by a child to whom the toy or other article is entrusted, shall be declared to be a banned hazardous substance by the department.

(c) Any hazardous substance intended, or packaged in a form suitable for, use in a household, which, notwithstanding cautionary labeling required by this Act, is potentially so dangerous or hazardous when present or used in a household, that the protection of the public health and safety can be adequately served only by keeping the substance out of the channels of commerce, shall be declared to be a banned hazardous substance by the department.

(d) Any article subject to the provisions of this Act which cannot be labeled adequately to protect the public health and safety, or which presents an imminent danger to the public health and safety, shall be declared a banned hazardous substance by the department.

(e) The provisions of this section do not apply to any toy or article such as chemical sets which by reason of functional purpose requires the inclusion of a hazardous substance, or necessarily presents an electrical, mechanical, or thermal hazard, and which bears labeling which in the judgment of the department gives adequate directions and warnings for safe use, and is intended for use by children who have attained sufficient maturity and may reasonably be expected to read and heed these directions and warnings; nor do the provisions of this section

apply to the manufacture, sale, distribution, or use of fireworks of any class.

[See Compact Edition, Volume 4 for text of 4 to 6]

Penalty

Sec. 7. (a) A person commits an offense if he intentionally, knowingly, or recklessly violates any provision of this Act or any rule issued pursuant to the authorization of this Act.

(b) An offense under this section is a Class B misdemeanor unless the person's intent is to defraud another, in which event the offense is a Class A misdemeanor.

[See Compact Edition, Volume 4 for text of 8 to 12]

[Amended by Acts 1979, 66th Leg., p. 712, ch. 311, §§ 1 to 3, eff. Aug. 27, 1979.]

Art. 4476-14. Dangerous Drugs

[See Compact Edition, Volume 4 for text of 1]

Definitions

Sec. 2. For the purposes of this Act:

(a) The term "dangerous drug" means any drug or device that is not included in Penalty Groups I through IV of the Texas Controlled Substances Act¹ and that is unsafe for self-medication, and includes the following:

(1) Procaine, its salts, derivatives, or compounds or mixtures thereof except ointments and creams for topical application containing not more than two and one-half percent (2½%) strength.

(2) Any drug or device which bears or is required to bear the legend: Caution: federal law prohibits dispensing without prescription, or the legend: Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian.

¹ Article 4476-15.

[See Compact Edition, Volume 4 for text of 2(b) to 4]

Duties of Exempt Persons

Sec. 5. Persons (other than carriers) exempt from the provisions of paragraphs (a) and (b) of Section 3 by virtue of Section 4 shall:

(a)(1) Make a complete record of all stocks of drugs set forth in Section 2(a)(1) hereof, on hand on the effective date of this Act, and retain such record for not less than two (2) calendar years immediately following such date, and

(2) Retain each commercial or other record relating to those drugs set forth in Section 2(a)(1) hereof, maintained by them in the usual course of

their business or occupation, for not less than two (2) calendar years immediately following the date of such record, to create and maintain a perpetual record of the purchases of those drugs set forth in Section 2(a)(1) hereof.

(b) Pharmacies as set forth in Section 4(b)(1) shall, in addition to complying with the provisions of subsection (2) above, retain each prescription for those drugs set forth in Section 2(a)(1) hereof, received by them for not less than two (2) calendar years immediately following the date of the filling or the date of the last refilling of such prescription, whichever is the later date, to create and maintain a perpetual record of the sales of those drugs set forth in Section 2(a)(1) hereof.

Files or Records; Inspection; Inventory of Drugs

Sec. 6. Persons required to keep files and records relating to those drugs set forth in Section 2(a)(1) hereof, by Section 5 shall

(1) make such files or records available for inspection by any public official or employee engaged in the enforcement of this Act, at all reasonable hours, for inspection and copying; and

(2) accord to such officer or employee full opportunity to make inventory of all stocks of those drugs set forth in Section 2(a)(1) hereof, on hand; and it shall be unlawful for any such person to fail to make such files or records available or to accord such opportunity to check their correctness.

[See Compact Edition, Volume 4 for text of 7 to 15A]

[Amended by Acts 1979, 66th Leg., p. 163, ch. 90, §§ 8, 9, eff. May 2, 1979.]

Section 10 of the 1979 amendatory act provided:

"This Act applies only to offenses committed on or after its effective date, and a criminal action for an offense committed before this Act takes effect is governed by the law existing before the effective date, which law is continued in effect for this purpose as if this Act were not in force. For purposes of this section, an offense is committed on or after the effective date of this Act if any element of the offense occurs on or after the effective date."

Art. 4476-15. Controlled Substances Act

SUBCHAPTER 1. GENERAL PROVISIONS

[See Compact Edition, Volume 4 for text of 1.01]

Definitions

Sec. 1.02.

[See Compact Edition, Volume 4 for text of 1.02(1) to 1.02(26)]

(27) "Prescription" means a written order or, in cases of emergency, a telephone order by a practitioner to a pharmacist for a controlled substance for a particular patient which specifies the date of issue, the name and address of the patient or, if the controlled substance is prescribed for an animal, the species of the animal and the name and address of its owner, the name and quantity of the controlled substance prescribed, and directions for use of the drug.

(28) "Raw material" means a compound, material, substance, or equipment that is used or intended for use, alone or in any combination, in manufacturing, compounding, or processing a controlled substance.

SUBCHAPTER 2. STANDARD AND SCHEDULES

[See Compact Edition, Volume 4 for text of 2.01 and 2.02]

Schedule I

Sec. 2.03. (a) Schedule I shall consist of the controlled substances listed in this section.

(b) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

- (1) Allylprodine;
- (2) Benzethidine;
- (3) Betaprodine;
- (4) Clonitazene;
- (5) Diampromide;
- (6) Diethylthiambutene;
- (7) Difenoxin;
- (8) Dimenoxadol;
- (9) Dimethylthiambutene;
- (10) Dioxaphetyl butyrate;
- (11) Dipipanone;
- (12) Ethylmethylthiambutene;
- (13) Etonitazene;
- (14) Etoxadrine;
- (15) Furethidine;
- (16) Hydroxypethidine;
- (17) Ketobemidone;
- (18) Levophenacymorphan;
- (19) Meprodone;
- (20) Methadol;
- (21) Moramide;
- (22) Morpheridine;
- (23) Noracymethadol;
- (24) Norlevorphanol;
- (25) Normethadone;
- (26) Norpipanone;
- (27) Phenadoxone;
- (28) Phenampromide;
- (29) Phenomorphan;
- (30) Phenoperidine;
- (31) Piritramide;
- (32) Proheptazine;

- (33) Properidine;
- (34) Propiram;
- (35) Trimeperidine;
- (36) Phencyclidine.

(c) Any of the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Acetorphine;
- (2) Acetyldihydrocodeine;
- (3) Benzylmorphine;
- (4) Codeine methylbromide;
- (5) Codeine-N-Oxide;
- (6) Cyprenorphine;
- (7) Desomorphine;
- (8) Dihydromorphine;
- (9) Drotebanol;
- (10) Etorphine (except hydrochloride salt);
- (11) Heroin;
- (12) Hydromorphinol;
- (13) Methyl-desorphine;
- (14) Methyl-dihydromorphine;
- (15) Monoacetylmorphine;
- (16) Morphine methylbromide;
- (17) Morphine methylsulfonate;
- (18) Morphine-N-Oxide;
- (19) Myrophine;
- (20) Nicocodeine;
- (21) Nicomorphine;
- (22) Normorphine;
- (23) Pholcodine;
- (24) Thebacon.

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this paragraph only, the term "isomer" includes the optical, position, and geometric isomers):

- (1) 4-bromo-2, 5-dimethoxyamphetamine (Some trade or other names: 4-bromo-2, 5-dimethoxy-alpha-methylphenethylamine; 4-bromo-2, 5-DMA);
- (2) 2, 5-dimethoxyamphetamine (Some trade or other names: 2, 5-dimethoxy-alpha-methylphenethylamine; 2, 5-DMA);
- (3) 4-methoxyamphetamine (Some trade or other names: 4-methoxy-alpha-methylphenethylamine; paramethoxyamphetamine; PMA);

(4) 5-methoxy-3, 4-methylenedioxy amphetamine;

(5) 4-methyl-2, 5-dimethoxyamphetamine (Some trade and other names: 4-methyl-2, 5-dimethoxy-alpha-methylphenethylamine; "DOM"; and "STP");

(6) 3, 4-methylenedioxy amphetamine;

(7) 3, 4, 5-trimethoxy amphetamine;

(8) Bufotenine (Some trade and other names: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N, N-dimethyltryptamine; mappine);

(9) Diethyltryptamine (Some trade and other names: N, N-Diethyltryptamine, DET);

(10) Dimethyltryptamine (Some trade and other names: DMT);

(11) Ibogaine (Some trade or other names: 7-Ethyl-6, 6, beta, 7, 8, 9, 10, 12, 13, -octahydro-2-methoxy-6, 9-methano-5H-pyrido [1', 2':,1, 2] aze-pino [5, 4-b] indole; tabernanthe iboga);

(12) Lysergic acid diethylamide;

(13) Marihuana;

(14) Mescaline;

(15) Peyote, unless unharvested and growing in its natural state, meaning all parts of the plant presently classified botanically as *Lophophora*, whether growing or not; the seeds thereof; any extract from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or extracts;

(16) N-ethyl-3-piperidyl benzilate;

(17) N-methyl-3-piperidyl benzilate;

(18) Psilocybin;

(19) Psilocin;

(20) Tetrahydrocannabinols.

Synthetic equivalents of the substances contained in the plant, or in the resinous extractives of *Cannabis*, and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

delta-1 cis or trans tetrahydrocannabinol, and their optical isomers;

delta-6 cis or trans tetrahydrocannabinol, and their optical isomers;

delta-3, 4 cis or trans tetrahydrocannabinol, and its optical isomers.

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions are covered.);

(21) Thiophene Analog of Phencyclidine (Some trade or other names: 1-[1-(2-thienyl) cyclohexyl] piperidine; 2-Thienyl Analog of Phencyclidine; TPCP);

(e) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant or stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation;

- (1) Fenethylline;
- (2) Mecloqualone; and
- (3) Nitrazepam.

Schedule II

Sec. 2.04. (a) Schedule II shall consist of the controlled substances listed in this section.

(b) Any of the following substances, except those narcotic drugs listed in other schedules, however produced:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding naloxone and its salts, and excluding naltrexone and its salts, but including the following:

- (A) Raw opium;
- (B) Opium extracts;
- (C) Opium fluid extracts;
- (D) Powdered opium;
- (E) Granulated opium;
- (F) Tincture of opium;
- (G) Codeine;
- (H) Ethylmorphine;
- (I) Etorphine hydrochloride;
- (J) Hydrocodone;
- (K) Hydromorphone;
- (L) Metopon;
- (M) Morphine;
- (N) Oxycodone;
- (O) Oxymorphone;
- (P) Thebaine;

(2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (1) of this subsection, but not including the isoquinoline alkaloids of opium;

(3) Opium poppy and poppy straw;

(4) Cocaine, including its salts, isomers (whether optical, position, or geometric) and salts of such isomers; coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine;

(5) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrine alkaloids of the opium poppy);

(6) 1-Phenylcyclohexylamine; and

(7) 1-Piperidinocyclohexane-Carbonitrile.

(c) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (1) Alphaprodine;
- (2) Anileridine;
- (3) Bezitramide;
- (4) Dihydrocodeine;
- (5) Diphenoxylate;
- (6) Fentanyl;
- (7) Isomethadone;
- (8) Levomethorphan;
- (9) Levorphanol;
- (10) Metazocine;
- (11) Methadone;
- (12) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- (13) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;
- (14) Pethidine;
- (15) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
- (16) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
- (17) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- (18) Phenazocine;
- (19) Piminodine;
- (20) Racemethorphan;
- (21) Racemorphan.

(d) Phenylacetone and methylamine if possessed together with intent to manufacture methamphetamine.

(e) Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

- (1) amphetamine, its salts, optical isomers, and salts of its optical isomers;
- (2) methamphetamine, including its salts, isomers, and salts of isomers;
- (3) methylphenidate and its salts; and
- (4) phenmetrazine and its salts.

(f) Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Methaqualone;
- (2) Amobarbital;
- (3) Secobarbital;
- (4) Pentobarbital.

Schedule III

Sec. 2.05. (a) Schedule III shall consist of the controlled substances listed in this section.

(b) Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(1) any compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or any salt thereof and one or more active medicinal ingredients which are not listed in any schedule;

(2) any suppository dosage form containing amobarbital, secobarbital, pentobarbital, or any salt of any of these drugs and approved by the Food and Drug Administration for marketing only as a suppository;

(3) any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules;

- (4) Chlorhexadol;
- (5) Glutethimide;
- (6) Lysergic acid;
- (7) Lysergic acid amide;
- (8) Methyprylon;
- (9) Sulfondiethylmethane;
- (10) Sulfonethylmethane;
- (11) Sulfonmethane.

(c) Nalorphine.

(d) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(1) not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(2) not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(3) not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(4) not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(5) not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(6) not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more ingredients in recognized therapeutic amounts;

(7) not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(8) not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(e) Any compound, mixture, or preparation containing any stimulant listed in Subsection (e) of Section 2.04 or depressant substance listed in Subsection (b) of this section is excepted from the application of all or any part of this Act if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

(f) Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible, within the specific chemical designation:

- (1) Benzphetamine;
- (2) Chlorphentermine;
- (3) Clortermine;
- (4) Mazindol;
- (5) Phendimetrazine.

Schedule IV

Sec. 2.06. (a) Schedule IV shall consist of the controlled substances listed in this section.

(b) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

- (1) Barbital;
- (2) Chloral betaine;
- (3) Chloral hydrate;
- (4) Chlordiazepoxide;
- (5) Clonazepam;
- (6) Clorazepate;
- (7) Diazepam;
- (8) Ethchlorvynol;
- (9) Ethinamate;
- (10) Flurazepam;
- (11) Lorazepam;
- (12) Mebutamate;
- (13) Meprobamate;
- (14) Methohexital;
- (15) Methylphenobarbital;
- (16) Oxazepam;
- (17) Paraldehyde;
- (18) Pentazocine, its salts, derivatives, or compounds or mixtures thereof;
- (19) Petrichloral;
- (20) Phenobarbital;
- (21) Prazepam.

(c) Any compound, mixture, or preparation containing any depressant substance listed in Subsection (b) of this section is excepted from the application of all or any part of this Act if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

(d) Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever

the existence of such salts, isomers, and salts of isomers is possible within the specific designation:

- (1) Diethylpropion;
- (2) Phentermine;
- (3) Fenfluramine;

(4) Pemoline (including organometallic complexes and chelates thereof).

(e) OTHER SUBSTANCES. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts:

(1) Dextropropoxyphene (Alpha-(+)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxybutane).

(f) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(1) Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

Schedule V

Sec. 2.07. (a) Schedule V shall consist of the controlled substances listed in this section.

(b) Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100 grams;

(2) not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams;

(3) not more than 100 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or per 100 grams;

(4) not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(5) not more than 15 milligrams of opium per 29.5729 milliliters or per 28.35 grams.

(6) not more than 0.5 milligram of difenoxin and not less than 25 milligrams of atropine sulfate per dosage unit.

(c) Loperamide.

[See Compact Edition, Volume 4 for text of 2.08 to 2.16]

Dangerous Drugs

Sec. 2.17. The following substances are dangerous drugs regulated by the provisions of Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476-14, Vernon's Texas Civil Statutes):

- (1) procaine, its salts, derivatives, or compounds or mixtures thereof; or
- (2) any substance that bears or is required to bear the legend: Caution: federal law prohibits dispensing without prescription; or the legend: Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian.

SUBCHAPTER 3. REGULATION OF MANUFACTURE, DISTRIBUTION, AND DISPENSING OF CONTROLLED SUBSTANCES

Registration Requirements

Sec. 3.01.

[See Compact Edition, Volume 4 for text of 3.01(a) to 3.01(d)]

(e) The following persons need not register and may lawfully possess controlled substances under this Act:

- (1) an agent or employee of any registered manufacturer, distributor, analyzer, or dispenser of any controlled substance if he is acting in the usual course of his business or employment;
- (2) a common or contract carrier or warehouseman, or an employee thereof, whose possession of any controlled substance is in the usual course of business or employment;
- (3) an ultimate user, as that term is defined herein, or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a Schedule V substance; or
- (4) an official of the Texas Department of Health, a medical school researcher, or a research program participant possessing tetrahydrocannabinols and their derivatives as authorized under Subchapter 7 of this Act.

[See Compact Edition, Volume 4 for text of 3.01(f) to 3.01(h)]

Rules

Sec. 3.02. (a) The director may promulgate reasonable rules.

(b) The director may charge an annual fee of up to \$5 per registrant for the costs necessary to administer this Act. Except as provided by Subsection (c) of this section, the fees shall be paid to the director of the department of public safety.

(c) The director may authorize a contract between the department of public safety and an appropriate state agency for the collection and remittance of fees required under this section.

(d) The director by rule may provide for remittance of registration fees collected by state agencies for the department of public safety.

(e) Fees collected by the director of the department of public safety under the terms of this section shall be deposited in the state treasury in the operator's and chauffeur's license fund and said fees deposited may be used only by the department of public safety in the administration of this Act.

Registration

Sec. 3.03. (a) The director shall register an applicant to manufacture or distribute or analyze controlled substances included in Schedules II through V, if:

- (1) the applicant furnishes the director evidence that the applicant is registered for such purpose pursuant to the Federal Controlled Substances Act;
- (2) the applicant has made proper application and paid the applicable fee; and
- (3) the applicant has not been found by the director to have violated any provision of Section 3.04 of this Act.

(b) The director shall register an applicant to dispense any controlled substances in Schedules II through V or to conduct research with controlled substances in Schedules II through V, if:

- (1) the applicant is a practitioner licensed under the laws of this state;
- (2) the applicant has made proper application and paid the applicable fee; and
- (3) the applicant has not been found by the director to have violated any provision of Section 3.04 of this Act.

[See Compact Edition, Volume 4 for text of 3.03(c) to 3.03(e)]

(f) This section does not apply to the use of tetrahydrocannabinols in the research program established under Subchapter 7 of this Act.

Grounds for Revocation and Suspension

Sec. 3.04. (a) A registration under Section 3.03 to manufacture, distribute, analyze, or dispense a controlled substance may be suspended, denied, or revoked in accordance with this Act upon a finding that the registrant:

- (1) has furnished false or fraudulent material information in any application filed under this Act;
- (2) has been convicted of a felony offense under any state or federal law relating to any controlled substance or convicted of any other felony;

(3) has had his registration under the Federal Controlled Substances Act suspended or revoked to manufacture, distribute, analyze, or dispense controlled substances;

(4) has had his practitioner's license under the laws of this state suspended or revoked;

(5) has failed to establish and maintain effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels as provided by federal regulations or laws now in effect or hereafter promulgated; or

(6) has willfully failed to maintain records required to be kept or has willfully or unreasonably refused to allow an inspection authorized by this Act.

[See Compact Edition, Volume 4 for text of 3.04(b) to 3.07]

Prescriptions

Sec. 3.08.

[See Compact Edition, Volume 4 for text of 3.08(a) to (c)]

(d) A controlled substance listed in Subdivision (1) or (2), Subsection (b), Section 2.07 of this Act, may not be dispensed without the prescription of a practitioner, except when dispensed directly to an ultimate user by a practitioner other than a pharmacy, and a prescription for the substances may not be filled or refilled more than six months after the date of the prescription or be refilled more than five times, unless renewed by the practitioner. A controlled substance included in Schedule V shall not be distributed or dispensed other than for a medical purpose.

[See Compact Edition, Volume 4 for text of 3.08(e)]

(f) A practitioner, as defined by Section 1.02(24)(A) of this Act, may not prescribe, dispense, or administer a controlled substance or cause a controlled substance to be administered under his direction and supervision except for a valid medical purpose and in the course of professional practice.

SUBCHAPTER 4. OFFENSES AND PENALTIES

[See Compact Edition, Volume 4 for text of 4.01]

Criminal Classification

Sec. 4.02.

[See Compact Edition, Volume 4 for text of 4.02(a)]

(b) Penalty Group 1. Penalty Group 1 shall include the following controlled substances:

(1) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (A) Allylprodine;
- (B) Benzethidine;
- (C) Betaprodine;
- (D) Clonitazene;
- (E) Diampromide;
- (F) Diethylthiambutene;
- (G) Difenoxin;
- (H) Dimenoxadol;
- (I) Dimethylthiambutene;
- (J) Dioxaphetyl butyrate;
- (K) Dipipanone;
- (L) Ethylmethylthiambutene;
- (M) Etonitazene;
- (N) Etoxeridine;
- (O) Furethidine;
- (P) Hydroxypethidine;
- (Q) Ketobemidone;
- (R) Levophenacymorphan;
- (S) Meprodine;
- (T) Methadol;
- (U) Moramide;
- (V) Morpheridine;
- (W) Noracymethadol;
- (X) Norlevorphanol;
- (Y) Normethadone;
- (Z) Norpipanone;
- (AA) Phenadoxone;
- (BB) Phenampromide;
- (CC) Phenomorphan;
- (DD) Phenoperidine;
- (EE) Piritramide;
- (FF) Proheptazine;
- (GG) Properidine;
- (HH) Propiram;
- (II) Trimeperidine.

(2) Any of the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (A) Acetorphine;
- (B) Acetyldihydrocodeine;
- (C) Benzylmorphine;
- (D) Codeine methylbromide;
- (E) Codeine-N-Oxide;

- (F) Cyprenorphine;
- (G) Desomorphine;
- (H) Dihydromorphine;
- (I) Drotebanol;
- (J) Etorphine;
- (K) Heroin;
- (L) Hydromorphinol;
- (M) Methyldesorphine;
- (N) Methyldihydromorphine;
- (O) Monoacetylmorphine;
- (P) Morphine methylbromide;
- (Q) Morphine methylsulfonate;
- (R) Morphine-N-Oxide;
- (S) Myrophine;
- (T) Nicocodeine;
- (U) Nicomorphine;
- (V) Normorphine;
- (W) Pholcodine;
- (X) Thebacon.

(3) Any of the following substances, except those narcotic drugs listed in another group, however produced:

(A) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding naloxone and its salts, and excluding naltrexone and its salts, but including the following:

- (i) Raw opium;
- (ii) Opium extracts;
- (iii) Opium fluid extracts;
- (iv) Powdered opium;
- (v) Granulated opium;
- (vi) Tincture of opium;
- (vii) Codeine;
- (viii) Ethylmorphine;
- (ix) Hydrocodone;
- (x) Hydromorphone;
- (xi) Metopon;
- (xii) Morphine;
- (xiii) Oxycodone;
- (xiv) Oxymorphine;
- (xv) Thebaine;

(B) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (A), but not including the isoquinoline alkaloids of opium;

(C) Opium poppy and poppy straw;

(D) Cocaine, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers, coca leaves and any salt,

compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine;

(E) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrine alkaloids of the opium poppy).

(4) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (A) Alphaprodine;
- (B) Anileridine;
- (C) Bezitramide;
- (D) Dihydrocodeine;
- (E) Diphenoxylate;
- (F) Fentanyl;
- (G) Isomethadone;
- (H) Levomethorphan;
- (I) Levorphanol;
- (J) Metazocine;
- (K) Methadone;
- (L) Methadone-Intermediate,

4-cyano-2-dimethylamino-4, 4-diphenyl butane;

- (M) Moramide-Intermediate,

2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;

- (N) Pethidine;

- (O) Pethidine-Intermediate-A,

4-cyano-1-methyl-4-phenylpiperidine;

- (P) Pethidine-Intermediate-B,

ethyl-4-phenylpiperidine-4 carboxylate;

- (Q) Pethidine-Intermediate-C,

1-methyl-4-phenylpiperidine-4-carboxylic acid;

- (R) Phenazocine;

- (S) Piminodine;

- (T) Racemethorphan;

- (U) Racemorphan.

(5) Lysergic acid diethylamide, including its salts, isomers, and salts of isomers.

(6) Methamphetamine, including its salts, isomers, and salts of isomers.

(7) 1-Phenylcyclohexylamine;

(8) Phenylacetone and methylamine, if possessed together with intent to manufacture methamphetamine;

(9) 1-Piperidinocyclohexane-Carbonitrile;

(10) Phencyclidine.

(c) Penalty Group 2. Penalty Group 2 shall include the following controlled substances: (1) Any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this paragraph only, the term "isomer" includes the optical, position, and geometric isomers):

(A) 4-bromo-2, 5-dimethoxyamphetamine (Some trade or other names: 4-bromo-2, 5-dimethoxy-alpha-methylphenethylamine; 4-bromo-2, 5-DMA);

(B) 2, 5-dimethoxyamphetamine (Some trade or other names: 2, 5-dimethoxy-alpha-methylphenethylamine; 2, 5-DMA);

(C) 4-methoxyamphetamine (Some trade or other names: 4-methoxy-alpha-methylphenethylamine; paramethoxyamphetamine; PMA);

(D) 5-methoxy-3, 4-methylenedioxy amphetamine;

(E) 4-methyl-2, 5-dimethoxyamphetamine (Some trade and other names: 4-methyl-2, 5-dimethoxy-alpha-methylphenethylamine; "DOM"; and "STP");

(F) 3, 4-methylenedioxy amphetamine;

(G) 3, 4, 5-trimethoxy amphetamine;

(H) Bufotenine (Some trade and other names: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N, N-dimethyltryptamine; mappine);

(I) Diethyltryptamine (Some trade and other names: N, N-Diethyltryptamine, DET);

(J) Dimethyltryptamine (Some trade and other names: DMT);

(K) Ibogaine (Some trade or other names: 7-Ethyl-6, 6, beta 7, 8, 9, 10, 12, 13, -octahydro-2-methoxy-6, 9-methano-5H-pyrido [1', 2',:1, 2] azepino [5, 4-b] indole; tabernanthe iboga.);

(L) Mescaline;

(M) N-ethyl-3-piperidyl benzilate;

(N) N-methyl-3-piperidyl benzilate;

(O) Psilocin;

(P) Psilocybin;

(Q) Tetrahydrocannabinols, other than marihuana, and synthetic equivalents of the substances contained in the plant, or in the resinous extracts of Cannabis, and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

delta-1 cis or trans tetrahydrocannabinol, and their optical isomers;

delta-6 cis or trans tetrahydrocannabinol, and their optical isomers;

delta-3, 4 cis or trans tetrahydrocannabinol, and its optical isomers.

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions are covered.)

(R) Thiophene Analog of Phencyclidine (Some trade or other names: 1-[1-(2-thienyl) cyclohexyl] piperidine; 2-Thienyl Analog of Phencyclidine; TPCP);

(S) Etorphine Hydrochloride.

(d) Penalty Group 3. Penalty Group 3 shall include the following controlled substances:

(1) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

(A) Amphetamine, its salts, optical isomers, and salts of its optical isomers;

(B) Fenethylamine;

(C) Methylphenidate and its salts;

(D) Phenmetrazine and its salts;

(2) Methaqualone;

(3) Mecloqualone.

(4) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(A) Any substances which contain any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid not otherwise covered by this subsection;

(B) Any compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or any salt of any of these, and one or more active medicinal ingredients which are not listed in any schedule;

(C) Any suppository dosage form containing amobarbital, secobarbital, pentobarbital, or any salt of any of these drugs, and approved by the United States Food and Drug Administration for marketing only as a suppository;

(D) Amobarbital;

(E) Secobarbital;

(F) Pentobarbital;

(G) Chlordiazepoxide;

(H) Clonazepam;

(I) Clorazepate;

(J) Chlorhexadol;

(K) Diazepam;

- (L) Flurazepam;
 - (M) Glutethimide;
 - (N) Lorazepam;
 - (O) Lysergic acid, including its salts, isomers, and salts of isomers;
 - (P) Lysergic acid amide, including its salts, isomers, and salts of isomers;
 - (Q) Mebutamate;
 - (R) Methyprylon;
 - (S) Nitrazepam;
 - (T) Oxazepam;
 - (U) Pentazocine, its salts, derivatives, or compounds or mixtures thereof;
 - (V) Prazepam;
 - (W) Sulfondiethylmethane;
 - (X) Sulfonethylmethane;
 - (Y) Sulfonmethane.
- (5) Nalorphine.
- (6) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:
- (A) not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;
 - (B) not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
 - (C) not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;
 - (D) not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
 - (E) not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
 - (F) not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
 - (G) not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(H) not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(I) not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(7) Any compound, mixture, or preparation containing any stimulant listed in Subsection (d)(1) of this section or depressant substance listed in Subsection (d)(4) of this section is excepted if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

(8) Any material, compound, mixture or preparation which contains any quantity of the following substances:

- (A) Barbital;
- (B) Chloral betaine;
- (C) Chloral hydrate;
- (D) Ethchlorvynol;
- (E) Ethinamate;
- (F) Methohexital;
- (G) Meprobamate;
- (H) Methylphenobarbital;
- (I) Paraldehyde;
- (J) Petrichloral;
- (K) Phenobarbital.

(9) Any compound, mixture, or preparation containing any depressant substance listed in Subsection (d)(8) is excepted if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

(10) Peyote, unless unharvested and growing in its natural state, (meaning all parts of the plant presently classified botanically as *Lophophora*, whether growing or not; the seeds thereof; any extract from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or extracts);

(11) Unless listed in another penalty group, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers

(whether optical, position, or geometric), and salts of its isomers, if the existence of the salts, isomers, and salts of isomers is possible, within the specific chemical designation:

- (A) Benzphetamine;
- (B) Chlorphentermine;
- (C) Clortermine;
- (D) Diethylpropion;
- (E) Fenfluramine;
- (F) Mazindol;
- (G) Pemoline (including organometallic complexes and chelates thereof);
- (H) Phendimetrazine;
- (I) Phentermine.

(12) OTHER SUBSTANCES. Unless specifically excepted or unless listed in another penalty group, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts:

(A) Dextropropoxyphene (Alpha-(+)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxybutane).

(e) Penalty Group 4. Penalty Group 4 shall include the following controlled substances: (1) Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(A) not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;

(B) not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

(C) not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

(D) not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(E) not more than 15 milligrams of opium per 29.5729 milliliters or per 28.35 grams;

(F) not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(2) Loperamide.

[See Compact Edition, Volume 4 for text of 4.03 to 4.08]

Fraud Offenses

Sec. 4.09. (a) It is unlawful for any person knowingly or intentionally:

(1) to distribute as a registrant a controlled substance classified in Schedule I or II, except

pursuant to an order form as required by Section 3.07 of this Act;

(2) to use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended, or issued to another person;

(3) to acquire, obtain, or attempt to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge;

(4) to furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document required to be kept or filed under this Act, or any record required to be kept by this Act; or

(5) to make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any controlled substance or container or labeling thereof so as to render the controlled substance a counterfeit substance.

(b) An offense under Subsection (a) with respect to:

(1) a controlled substance classified in Schedule I or II is a felony of the second degree;

(2) a controlled substance classified in Schedule III is a felony of the third degree;

(3) a controlled substance classified in Schedule IV or V is a Class B misdemeanor.

[See Compact Edition, Volume 4 for text of 4.10 to 4.12]

SUBCHAPTER 5. ENFORCEMENT AND ADMINISTRATIVE PROVISIONS

[See Compact Edition, Volume 4 for text of 5.01 and 5.02]

Forfeitures

Sec. 5.03. (a) The following are subject to forfeiture as authorized by this subchapter:

(1) all controlled substances that are or have been manufactured, distributed, dispensed, delivered, acquired, obtained, or possessed in violation of this Act;

(2) all raw materials, products, and equipment of any kind that are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this Act;

(3) all property that is used, or intended for use, as a container for property described in paragraph (1) or (2) of this subsection;

(4) all books, records, and research products and materials, including formulas, microfilm, tapes, and data that are used, or intended for use, in violation of this Act;

(5) any conveyance, including aircraft, vehicles, vessels, trailers, and railroad cars, that is used or intended for use to transport for delivery or in any manner facilitate the transportation for delivery of any property described in paragraph (1), (2), or (3) of this subsection, provided that no conveyance used by any person as a common carrier shall be forfeited under this subchapter unless the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this Act, and no conveyance shall be subject to forfeiture if the delivery involved is an offer to sell;

(6) all money derived from the sale, manufacture, distribution, dispensation, delivery, or other commercial undertaking violative of this Act.

[See Compact Edition, Volume 4 for text of 5.03(b) to 5.04]

Notification of Forfeiture Proceedings

Sec. 5.05. (a) When any property, other than a controlled substance or raw material, is seized, proceedings under this section shall be instituted within ten (10) days after the seizure and not thereafter.

(b) The seizing officer shall immediately cause to be filed in the name of the State of Texas with the clerk of the district court of the county in which the seizure is made, or if the property is a conveyance, in any county in which the conveyance was used or intended for use to transport for delivery or in any manner facilitate the transportation for delivery of any property described in Paragraph (1), (2) or (3) of Section 5.03(a), a notice of the seizure and intended forfeiture. Certified copies of the notice shall be served upon the following persons as provided for the serving of process by citation in civil cases:

(1) the owner of the property, if address is known;

(2) any secured party who has registered his lien or filed a financing statement as provided by law; and

(3) any other bona fide lienholder or secured party or other person holding an interest in the property in the nature of a security interest, of whom the Texas Department of Public Safety has knowledge.

[See Compact Edition, Volume 4 for text of 5.05(c) to (k)]

Replevy of Seized Property

Sec. 5.06. Any property, other than a controlled substance or raw material, or money derived from the sale, manufacture, distribution, dispensation, delivery, or other commercial undertaking violative of

this Act, seized under this subchapter may be replevied by the owner, lienholder, secured party, or other party holding an interest in the nature of a security interest affecting the property, upon execution by him of a good and valid bond with sufficient surety in a sum double the appraised value of the property replevied, which bond shall be approved by the seizing officer and shall be conditioned upon return of the property to the custody of the officer on the day of hearing of the forfeiture proceeding and abide the judgment of the court.

Forfeiture Hearing

Sec. 5.07. (a) An owner of property, other than a controlled substance or raw material, that has been seized shall file a verified answer within 20 days of the mailing or publication of notice of seizure. If no answer is filed, the court shall hear evidence that the property is subject to forfeiture and may upon motion forfeit the property to the state or an agency of the state or to a political subdivision of the state authorized by law to employ peace officers. If an answer is filed, a time for hearing on forfeiture shall be set within 30 days of filing the answer and notice of the hearing shall be sent to all parties.

(b) If the owner of the property has filed a verified answer denying that the property is subject to forfeiture then the burden is on the state to prove beyond a reasonable doubt that the property is subject to forfeiture. However, if no answer has been filed by the owner of the property, the notice of seizure may be introduced into evidence and is prima facie evidence that the property is subject to forfeiture.

(c) At the hearing any claimant of any right, title, or interest in the property may prove his lien, security interest, or other interest in the nature of a security interest, to be bona fide and created without knowledge or consent that the property was to be used so as to cause the property to be subject to forfeiture.

(d) If it is found beyond a reasonable doubt that the property is subject to forfeiture, then the judge shall upon motion forfeit the property to the state or an agency of the state or to a political subdivision of the state authorized by law to employ peace officers. However, if proof at the hearing discloses that the interest of any bona fide lienholder, secured party, or other person holding an interest in the property in the nature of a security interest is greater than or equal to the present value of the property, the court shall order the property released to him. If such interest is less than the present value of the property and if the proof shows beyond a reasonable doubt that the property is subject to forfeiture, the court shall order the property forfeited to the state or an agency of the state or to a political subdivision of the state authorized by law to employ peace officers.

(e) Upon petition of the seizing officer, filed in the name of the State of Texas with the clerk of the district court of the county in which the seizure of any controlled substance or raw material is made, the district court having jurisdiction may order the controlled substance or raw material summarily forfeited except when lawful possession and title can be ascertained. If a person is found to have had lawful possession and title prior to seizure, the court shall order the controlled substance or raw material returned to the owner, if the owner so desires.

Disposition of Forfeited Property

Sec. 5.08. (a) Regarding all controlled substances and raw materials which have been forfeited, the district court shall by its order direct a law enforcement agency to:

- (1) retain the property for its official purposes;
- (2) deliver the property to a government agency or department for official purposes;
- (3) deliver the property to a person authorized by the court to receive it; or
- (4) destroy the property that is not otherwise disposed. A record of the place where the controlled substances and raw materials were seized, of the kind and quantities so destroyed, and of the time, place, and manner of destruction, shall be kept, and a return under oath, reporting the destruction, shall be made to the district court by the officer who destroys them.

(b) All other property that has been forfeited, except the money derived from the sale, manufacture, distribution, dispensation, delivery, or other commercial undertaking violative of this Act, and except as provided below, shall be sold at a public auction under the direction of the county sheriff after notice of public auction as provided by law for other sheriff's sales. The proceeds of the sale shall be delivered to the district clerk and shall be disposed of as follows:

- (1) to any bona fide lienholder, secured party, or other party holding an interest in the property in the nature of a security interest, to the extent of his interest; and
 - (2) the balance, if any, after deduction of all storage and court costs, shall be forwarded to the state comptroller and deposited with and used as general funds of the state.
- (c) The state or an agency of the state or a political subdivision of the state authorized by law to employ peace officers may maintain, repair, use, and operate for official purposes all property that has been forfeited to it if it is free from any interest of a bona fide lienholder, secured party, or other party who holds an interest in the property in the nature of a security interest. The department or agency receiving the forfeited vehicle may purchase the

interest of a bona fide lienholder, secured party, or other party who holds an interest so that the property can be released for use by the department or agency receiving the forfeited vehicle. The department or agency receiving the forfeited vehicle may maintain, repair, use, and operate the property with money appropriated to the department or agency for current operations. If the property is a motor vehicle susceptible of registration under the motor vehicle registration laws of this state, the department or agency receiving the forfeited vehicle is deemed to be the purchaser and the certificate of title shall be issued to it as required by Subsection (e) of this section.

(d) Storage charges on any property accrued while the property is stored at the request of a seizing officer of the department or agency receiving the forfeited vehicle pending the outcome of the forfeiture proceedings shall be paid by the department or agency out of its appropriations if such property after final hearing is not forfeited to the department or agency.

[See Compact Edition, Volume 4 for text of 5.08(e) to 5.11]

Education and Research

Sec. 5.12.

[See Compact Edition, Volume 4 for text of 5.12(a) and 5.12(b)]

(c) The executive director of the Texas Department of Community Affairs may establish accreditation standards for drug abuse treatment programs and treatment personnel consistent with those required by federal law and regulation and certify those drug abuse treatment programs and treatment personnel meeting accreditation standards.

[See Compact Edition, Volume 4 for text of 5.13 to 6.04]

SUBCHAPTER 7. MEDICAL AND RESEARCH PROGRAM

Research Program

Sec. 7.01. The Texas Board of Health shall establish a controlled substance therapeutic research program for the supervised use of tetrahydrocannabinols for medical and research purposes to be conducted in accordance with this Act.

Research Program Review Board

Sec. 7.02. (a) The Research Program Review Board is created. The review board members are appointed by the Texas Board of Health and serve at the board's pleasure.

(b) The review board shall be composed of:

- (1) a licensed physician who is certified by the American Board of Ophthalmology;

(2) a licensed physician who is certified by the American Board of Internal Medicine and also certified in the subspecialty of medical oncology;

(3) a licensed physician who is certified by the American Board of Psychiatry;

(4) a licensed physician who is certified by the American Board of Surgery;

(5) a licensed physician who is certified by the American Board of Radiology; and

(6) a licensed attorney who has experience in law pertaining to the practice of medicine.

(c) Members serve without compensation but are entitled to reimbursement for actual and necessary expenses incurred in performing official duties.

Review Board Powers and Duties

Sec. 7.03. (a) The review board shall review research proposals submitted and medical case histories of persons recommended for participation in a research program and determine which research programs and persons are most suitable for the therapy and research purposes of the program. The review board shall approve the research programs, certify program participants, and conduct periodic reviews of the research and participants.

(b) The review board, after approval of the Board of Health, may seek authorization to expand the research program to include diseases not covered by this subchapter.

(c) The review board shall maintain a record of all persons in charge of approved research programs and of all persons who participate in the program as researchers or as patients.

Termination of Tetrahydrocannabinols Distribution to Program

Sec. 7.04. The Texas Board of Health may terminate the distribution of tetrahydrocannabinols and their derivatives to a research program as it determines necessary.

Patient Participation

Sec. 7.05. (a) A person may not be considered for participation as a recipient of tetrahydrocannabinols and their derivatives through a research program unless the person is recommended to a person in charge of an approved research program and the review board by a physician licensed by the Board of Medical Examiners attending the person.

(b) A physician may not recommend a person for the research program unless the person:

(1) has glaucoma or cancer;

(2) is not responding to conventional treatment for glaucoma or cancer or is experiencing severe side effects from treatment; and

(3) has symptoms or side effects from treatment that may be alleviated by medical use of tetrahydrocannabinols or their derivatives.

Acquisition of Controlled Substance for Program

Sec. 7.06. The Texas Board of Health shall acquire the tetrahydrocannabinols and their derivatives for use in the research program by contracting with the National Institute on Drug Abuse to receive tetrahydrocannabinols and their derivatives that are safe for human consumption according to the regulations promulgated by the institute, the Food and Drug Administration, and the Drug Enforcement Administration.

Distribution of Controlled Substance

Sec. 7.07. The Texas Board of Health shall supervise the distribution of the tetrahydrocannabinols and their derivatives to program participants. The tetrahydrocannabinols and derivatives thereof may be distributed only by the person in charge of the research program, under rules promulgated by the Texas Board of Health in such manner as to prevent unauthorized diversion of the substances and in compliance with any and all requirements of the Drug Enforcement Administration, to physicians caring for program participant patients. The physician is responsible for dispensing the substances to patients.

Rules

Sec. 7.08. The Texas Board of Health shall adopt rules necessary for implementing the research program.

Report

Sec. 7.09. The commissioner of health shall publish a report before January 2 of each year in which the Texas Legislature meets in regular session on the medical effectiveness of the use of tetrahydrocannabinols and their derivatives and any other medical findings of the research program.

Authorized Possession or Delivery not Violation

Sec. 7.10. The possession or delivery of tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinols or the possession of an instrument that has on it a quantity of any of those substances is not a violation of Section 4.03, 4.04, 4.05, or 4.07 of this Act if the possession or delivery is for use in the program established under this subchapter.

[Amended by Acts 1975, 64th Leg., p. 123, ch. 58, § 1, eff. April 18, 1975; Acts 1975, 64th Leg., p. 749, ch. 295, §§ 1 to 4, eff. May 27, 1975; Acts 1975, 64th Leg., p. 1842, ch. 572, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1269, ch. 492, §§ 1 and 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1860, ch. 737, § 1, eff. June 16, 1977; Acts 1979, 66th Leg., p. 59, ch. 37, §§ 1 to 5, eff. Sept. 1, 1979; Acts 1979, 66th Leg., p. 163, ch. 90, §§ 1 to 7, eff. May 2, 1979; Acts 1979, 66th Leg., p. 1278, ch. 598, §§ 1 to 6, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 2159, ch. 826, §§ 1 to 3, eff. Jan. 1, 1980.]

Section 2 of Acts 1975, 64th Leg., ch. 58, provided:

"For the fiscal year ending August 31, 1975, all money in the fund, or as much of it as is necessary, is appropriated to the department of public safety to be used for the purpose of performing the department's functions under the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes)."

Section 10 of Acts 1979, 66th Leg., ch. 90, provided:
 "This Act applies only to offenses committed on or after its effective date, and a criminal action for an offense committed before this Act takes effect is governed by the law existing before the effective date, which law is continued in effect for this purpose as if this Act were not in force. For purposes of this section, an offense is committed on or after the effective date of this Act if any element of the offense occurs on or after the effective date."

Section 7 of Acts 1979, 66th Leg., ch. 598, provided:
 "This Act applies only to offenses committed on or after its effective date, and a criminal action for an offense governed by the Texas Controlled Substances Act that is committed before this Act's effective date is governed by the law existing before this Act's effective date, which law is continued in effect for this purpose as if this Act were not in force. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date."

Art. 4476-15a. R.B. McAllister Drug Treatment Program Act

ARTICLE I. DEFINITIONS

Title

Sec. 100. This Act shall be cited as the R.B. McAllister Drug Treatment Program Act.

Definitions

Sec. 101. For purposes of this Act:

(1) "Executive director" means the executive director or his designee of the Texas Department of Community Affairs.

(2) "Commitment" means the relationship established by a court order that places a drug-dependent person or person incapacitated by controlled substances in the custody of the executive director for purposes of treatment under this Act.

(3) "Controlled substance" means any substance designated as such in the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes) or toxic inhalants as defined by the executive director.

(4) "Criminal justice system" means law enforcement officials, district attorney(s), county attorney(s), courts, and the Texas Department of Corrections.

(5) "Drug-dependent person" means a person who is using a controlled substance and who is in a state of psychic or physical dependence or both arising from administration of a controlled substance. Drug dependence is characterized by behavioral and other responses that include a strong compulsion to take a controlled substance in order to experience its psychic effects or to avoid the discomfort of its absence.

(6) "Day care services" means treatment services for drug dependence provided for a part-time resident client in a treatment facility.

(7) "Nearest relative" means, in the order of priority stated, a person's legal guardian, spouse, adult issue, whether natural or adopted, parent or adult sibling, or any other person with whom the person is residing, whether related or not.

(8) "Outpatient services" means treatment services for drug dependence provided to a client who is not a resident of a treatment facility.

(9) "Person incapacitated by controlled substances" means a person who, as a result of the effects of one or more controlled substances, needs treatment and either is unconscious of or has had his judgment so impaired that he is incapable of making a rational decision with respect to his need for treatment.

(10) "Private facility" means any facility providing treatment services which is not operated by the federal, state, or local government, whether or not it receives public funds and whether or not it operates for profit.

(11) "Public facility" means any facility providing treatment services which is operated by the federal, state, or local government.

(12) "Residential services" means treatment services for drug dependence provided for a full-time resident client in a treatment facility.

(13) "Treatment" means (A) emergency services for drug-dependent persons, persons incapacitated by controlled substances; or persons under the influence of controlled substances; and (B) the full range of residential, day care, and outpatient services for drug-dependent persons designed to aid them to gain control over or eliminate their dependence on controlled substances and to become productive, functioning members of the community. Treatment includes but is not limited to diagnostic evaluation; medical, psychiatric, psychological, and social services; drug maintenance services; vocational rehabilitation, job training, and career counseling; educational and informational guidance; family counseling; and recreational services.

(14) "Treatment facility" means a public or private facility to which the executive director has authorized public agencies to refer persons for treatment.

(15) "Prevention" means a constructive process designed to promote personal and social growth of the individual toward full human potential and thereby inhibit or reduce physical, mental, emotional, or social impairment which results in or from the abuse of licit or illicit chemical substances.

ARTICLE II. ORGANIZATION, OBJECTIVE, AND STANDARDS OF DRUG DEPENDENCE TREATMENT PROGRAM

Establishment of Program

Sec. 201. (a) The executive director shall establish and supervise a drug dependence treatment program. Within funds appropriated to the Texas Department of Community Affairs, the executive director shall provide integrated health, education, information, and welfare services through appropriate public and private facilities to persons who seek

the services voluntarily or who are referred from public or private agencies.

(b) The program shall include, so far as practicable, a comprehensive range of treatment services in each locality. The number, location, and types of services included in the treatment program and the amount of public resources allocated thereto shall be determined by the executive director based in whole or in part by the estimated size and location of the current and potential numbers of drug-dependent persons in designated council of government regions. The executive director shall give particular attention to the potential drug problem in rural areas in developing the program.

(c) In establishing and supervising the program, the executive director may contact any public or private person, agency, organization, or institution for services or for the use of any facility or personnel.

(d) The executive director shall utilize and coordinate public and private treatment facilities and resources, wherever practicable, utilizing community mental health centers and general hospitals.

Powers and Duties of Executive Director

Sec. 202. The director shall:

(1) prescribe by rule those controlled substances that pose a substantial risk of severe psychic or physical dependence and the types of drug dependence for which treatment is feasible and available under this Act;

(2) require programs receiving funds under this Act to meet established standards;

(3) prepare, publish, and distribute throughout the state as often as necessary a list of all public and private treatment facilities the director finds to conform to the established standards and periodically notify the courts of the treatment facilities within their respective jurisdictions and of the types of services offered at each facility;

(4) evaluate, on a continuing basis, the services provided by treatment facilities funded through this Act to assure that the services are effective, humanely operated, and properly staffed and meet the standards established under this Act, and make the evaluations a matter of public record;

(5) use funds appropriated through this Act to carry out the mandate of this Act, the Texas Controlled Substances Act, and Public Law 92-255, the Drug Abuse Office and Treatment Act of 1972;¹ and

(6) use funds to provide matching funds for local programs and to increase the overall state allotment of federal funds.

¹ 21 U.S.C.A. § 1101 et seq.

Prevention Services

Sec. 203. The executive director shall develop prevention services that include:

(1) information to promote awareness within the general public about controlled substances and inhalants and treatment services for drug dependence;

(2) education designed to promote a deeper understanding of drug abuse and its concomitant problems and to promote the support, participation, and cooperation of selected groups in drug abuse prevention education;

(3) intervention services to persons who do not require drug dependence treatment but who are risking drug dependence and are not being adequately served by the standard social service institutions; and

(4) alternatives to drug abuse through the development of public activities that promote positive growth and fulfillment.

Coordination with Other Treatment Agencies

Sec. 204. (a) The executive director shall establish coordinated efforts with the Texas Rehabilitation Commission, Texas Department of Human Resources, Texas Department of Health, Texas Adult Probation Commission, Texas Department of Mental Health and Mental Retardation, councils of government, and other appropriate agencies.

(b) The executive director and the director of the Texas Department of Corrections may establish appropriate drug dependence treatment in the correctional institutions of this state.

Other Duties of Executive Director

Sec. 205. In addition to the other duties specified in this Act, the executive director shall:

(1) develop, encourage, and evaluate public and private plans and services to discourage the improper use of controlled substances, with special attention to developing, in cooperation with the schools, public health agencies, courts, and other public and private agencies, programs to discourage the improper use of controlled substances by juveniles and young adults;

(2) provide, so far as practicable, technical assistance and advice to public and private agencies within and without the state on services designed to treat drug-dependent persons;

(3) conduct, in cooperation with the United States Departments of Justice and Health, Education and Welfare, the police, the courts, and other public and private agencies, a program for educating policemen, prosecuting attorneys, court personnel, the judiciary, probation and parole officers, correctional officials, and other criminal justice

personnel on the causes, effects, and treatment of drug dependence; and

(4) conduct and develop, in cooperation with the Texas Department of Human Resources and the Texas Rehabilitation Commission, services for educating all personnel of those agencies on the causes, effects, and treatment of drug dependence.

Treatment Services in Program

Sec. 206. The treatment program shall include:

(1) residential services for short-term and long-term treatment of drug-dependent persons; residential services for persons not incarcerated under sentence shall be provided at a location other than a correctional institution unless no other facilities are available, in which case those persons shall be segregated from persons incarcerated under sentence; and

(2) day care and outpatient services; the executive director shall give priority to developing these services, which must be community-based and readily accessible to patients, and may include clinics, social centers, vocational rehabilitation and job referral facilities, welfare centers, and supportive residential facilities such as foster homes and halfway houses.

Treatment Objective

Sec. 207. For a drug-dependent person being treated under this Act, the primary purpose of treatment is to enable the person to live as a productive, functioning member of the community. Insofar as possible, treatment shall be designed to aid the person to overcome his dependence on controlled substances. Treatment also may be designed to maintain or control the person's drug dependence through approved drug maintenance services that conform to applicable state and federal laws and are limited to persons who consent to such treatment.

ARTICLE III. VOLUNTARY TREATMENT OF DRUG-DEPENDENT PERSONS AND OTHER PERSONS

Application

Sec. 301. (a) A person, whether adult or minor, who needs emergency services as a result of using controlled substances may apply directly to a treatment facility.

(b) A person, whether adult or minor, who considers himself drug-dependent may apply directly to a treatment facility. A private physician who diagnoses a person as drug-dependent and determines he is unable to provide adequate treatment may refer the person, with his consent, to a treatment facility.

(c) The executive director shall make necessary efforts to develop outreach services that identify drug-dependent persons and encourage application for treatment under this Act.

ARTICLE IV. TREATMENT AND CIVIL COMMITMENT OF PERSONS CHARGED WITH CRIMES

Applicability

Sec. 401. This article applies to policies of the State of Texas regarding referral procedures between the criminal justice system and the executive director which apply to a person from the time he is first taken into police custody for the purpose of being charged with a crime under the laws of this state until the charge is dismissed or, if the person is convicted, until his sentence has been finally discharged.

State Interagency Cooperation

Sec. 402. The executive director is authorized, within funds appropriated to the Texas Department of Community Affairs, to accept persons referred from the criminal justice system under the terms of bail, probation, conditional discharge, parole, or other conditional release which is not inconsistent with medical or clinical judgment or in conflict with this Act or applicable federal rules, regulations, or standards.

Emergency Treatment of Persons in Police Custody

Sec. 403. The executive director, within funds appropriated for this Act, may develop emergency treatment resources for persons who appear to be (1) incapacitated by controlled substances, (2) under the influence of controlled substances and in need of medical attention, or (3) drug-dependent and undergoing withdrawal or experiencing medical complications.

Treatment of Drug-Dependent Persons on Conditional Release

Sec. 404. (a) The director of the Texas Department of Corrections and the Board of Pardons and Paroles may refer persons who are or were drug-dependent to treatment facilities established under this Act if available when they are placed on work release, parole, or other conditional release.

(b) A person who is released from any correctional institution on the condition that he participate in the treatment program established under this Act may be required to submit to periodic urinalysis or other medically accepted means of detecting the presence of controlled substances in the body. If, in the judgment of the physician in charge of his treatment, a person fails to conform to the conditions of treatment, the court or the Board of Pardons and Paroles shall decide whether to retain, restrict, or revoke parole or other conditional release according to what is most consistent with both the treatment of the individual and the safety of the community.

(c) If required for effective treatment, the director of the Texas Department of Corrections and the Board of Pardons and Paroles may transfer an

offender placed on conditional release from one day care or outpatient treatment facility to another.

(d) The executive director shall report periodically to the director of the Texas Department of Corrections and the Board of Pardons and Paroles on compliance with the conditions of treatment by persons participating in the program under this section.

ARTICLE V. EMERGENCY TREATMENT AND POLICE REFERRAL OF PERSONS NOT CHARGED WITH CRIMES

Applicability

Sec. 501. This article applies to a person against whom no criminal charge is pending under the laws of this state or for whom any sentence previously assessed has been finally discharged.

Emergency Treatment for Persons Under the Influence of Controlled Substances

Sec. 502. (a) When, in the judgment of a law enforcement officer, a person is under the influence of a controlled substance in a public place and needs emergency treatment, the person may be taken to his home or to a treatment facility. If the person is taken to a treatment facility and the physician in charge of emergency services confirms the need for treatment, the person shall, with his consent, be either admitted or referred to another treatment facility. If the person is admitted, reasonable efforts shall be made to notify his nearest relative. If the person is referred to another treatment facility, reasonable efforts shall be made to provide transportation to that facility. Medical assistance may be provided to a person who is neither admitted nor referred.

(b) A person admitted to a treatment facility under this section may be detained until emergency treatment is completed, but he may not be detained without his consent for longer than 24 hours after admission.

Emergency Treatment for Incapacitated Persons

Sec. 503. (a) If a law enforcement or public health officer is notified by an interested person that another person appears incapacitated by controlled substances, the law enforcement or public health officer may take the person to a treatment facility for emergency treatment. If a person appears incapacitated by controlled substances in a public place in the judgment of a law enforcement officer or in a treatment facility in the judgment of a public health officer, the person may be brought to or detained at a treatment facility for emergency treatment. A law enforcement or public health officer, in detaining a person in or taking him to a treatment facility, takes him into protective custody and shall make every effort to protect his health and safety. Entry into protective custody under this section is not to be

considered an arrest, and no entry or other record may be made to indicate that the person has been arrested for or charged with a crime.

(b) A person brought to a treatment facility under Subsection (a) of this section shall be examined as soon as practicable by the physician in charge of emergency services. If the physician determines that the person is incapacitated by controlled substances, the person shall be either admitted as a client or referred to another treatment facility. If he is admitted, the patient's nearest relative shall be notified as soon as practicable. If the person is referred to another treatment facility, the referring facility shall arrange for his transportation. If the physician determines that the person is not incapacitated by controlled substances and does not admit or refer the person for treatment under Section 502 of this Act, the person may be taken to his home.

(c) A person admitted to a treatment facility under this section may be required to remain until he is no longer incapacitated by controlled substances, but no longer than 48 hours unless commitment is authorized by a court in accordance with other applicable law.

(d) Law enforcement officers, public health officers, and physicians are not criminally or civilly liable for acts undertaken in the good faith conduct of their official functions under this section.

Release and Conditional Referral to Treatment Services by Police

Sec. 504. (a) This section applies to a person who has been apprehended, either with or without a warrant, for a violation of Section 4.04, 4.05, or 4.07 of the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes).

(b) With the consent of a person covered by Subsection (a) of this section, a police or law enforcement officer may, in lieu of normal criminal processing, take the person before a magistrate, and with the approval of the magistrate refer the person for treatment. If the person agrees to participate in treatment, the police officer may either (1) release the person unconditionally, or (2) issue a conditional citation for the offense for which the person was apprehended to be returned to the police department in 90 days and to be dismissed if the person has participated satisfactorily in the treatment program. The person's agreement to participate in treatment shall not be used against him in any criminal proceeding nor does it waive any rights that he has in any criminal proceedings later brought on the original offense.

(c) If, in the judgment of the person or agency supervising the treatment program, a person who has been issued a citation under Subsection (b) of this section fails to participate satisfactorily in the

program or if the person fails to appear on the return date of the citation, a warrant shall issue for his arrest on the original offense, unless he is already in police custody. Timeliness of the person's initial appearance before the court on the original offense shall be determined on the basis of the return date of the citation.

(d) The police department shall record all dispositions under Subsection (b) of this section as detentions and not as arrests. Such records shall be treated as confidential, except for use in determining whether a person is given the benefit of this section upon apprehension at a later time.

ARTICLE VI. GENERAL PROVISIONS

Policy for Governmental and Private Employees

Sec. 601. (a) The executive director may develop and maintain, in cooperation with other state and local agencies, appropriate services for the prevention and treatment of drug dependence among state and local employees consistent with this Act. Drug-dependent employees of this state or any political subdivision shall be granted the same employment and other benefits as persons afflicted with serious illness while undergoing treatment under Article III or V of this Act and shall not be denied pension, retirement, medical, or other rights because of their drug dependence. However, acceptance of appropriate treatment may be made a condition of their continued employment.

(b) The executive director shall encourage private industry to develop treatment services within the state.

Applicability to the Mentally Ill

Sec. 602. The services provided under this Act shall be made available to a mentally ill, drug-dependent person.

Applicability to Juveniles

Sec. 603. Articles III, IV, and V of this Act are available to a juvenile. Nothing in this Act shall take precedence over any provision of the Family Code relating to juveniles unless expressly stated herein.

Rules and Delegation of Powers

Sec. 604. The executive director may promulgate rules for the implementation of this Act and may designate any state officer or employee to carry out any of its functions under this Act.

ARTICLE VII. MISCELLANEOUS

Continuation of Rules

Sec. 701. Any orders and rules promulgated under any law affected by this Act and in effect on the effective date of this Act and not in conflict with it continue in effect until modified, superseded, or repealed.

Appropriation

Sec. 702. The sum of \$210,000 is appropriated from the General Revenue Fund to the Texas Department of Community Affairs for each year of the biennium beginning September 1, 1979, for the purpose of implementing the provisions of this Act.

Effective Date

Sec. 703. This Act takes effect September 1, 1979; provided that for the period beginning September 1, 1979, and ending August 31, 1981, the Act shall authorize but not require the executive director to make emergency drug treatment services available pursuant to this Act.

[Acts 1979, 66th Leg., p. 1843, ch. 750, §§ 101 to 703, eff. Sept. 1, 1979.]

CHAPTER FOUR. SANITARY CODE

Article

4477e. Spanish Surname Information on Vital Statistics Records.

Art. 4477. Sanitary Code

The following rules are hereby enacted as the "Sanitary Code for Texas," adopted for the promotion and protection of the public health and for the general amelioration of the sanitary and hygienic condition within this State, for the suppression and prevention of infectious and contagious diseases, and for the proper enforcement of quarantine, isolation and control of such diseases, to wit:

[See Compact Edition, Volume 4 for text of Rules 1 and 2]

Rule 3. "Contagious Diseases."—The term "contagious disease" as used in these regulations shall be held to include the following diseases, whether contagious or infectious; and as such shall be reported to all local health authorities and by said authority reported in turn to the Chairman of the State Board of Health: Asiatic cholera, bubonic plague, typhus fever, yellow fever, Hansen's disease, smallpox, scarlet fever (scarlatina), diphtheria (membranous croup), epidemic cerebrospinal meningitis, dengue, typhoid fever, epidemic dysentery, trachoma, and anthrax.

[See Compact Edition, Volume 4 for text of Rules 4 to 12]

Rule 13. Dangerous Contagious Diseases; Modified Quarantine.—In the management and control of smallpox, scarlet fever (scarlatina), diphtheria (membranous croup), and dengue, it is required that the house be placarded, premises placed in modified quarantine, patient in modified isolation, and complete disinfection done upon death or recovery.

[See Compact Edition, Volume 4 for text of Rules 14 to 47]

Rule 47a. Form and Contents of Birth Certificates; Supplementary Certificate; Certificates of Adoption, Annulment and Revocation.—The standard certificate of birth shall be in such form and shall provide for such items of information as may be prescribed by the State Department of Health. Any person may apply to the State Department of Health to have any indication of illegitimacy removed from his or her birth record, including separate medical records. The Department shall charge a fee of \$10.00 for this service. All items prescribed on the certificate of birth are hereby declared necessary for the legal, social and sanitary purposes subserved by registration records. The name of the father or any information by which he might be identified may be written in the birth or death certificate of any child:

(a) whose mother was married at the time of conception or birth; or whose mother was subsequently married to the father; or

(b) where paternity of the father has been established in a judicial proceeding. The State Department of Health shall be specifically authorized to use and to provide upon request to other state agencies records pertaining to all births in connection with programs to notify the mothers of young children about health needs for the children.

Subject to the regulations of the State Department of Health, any person:

(a) who becomes the legitimate child of its father by the subsequent marriage of its parents;

(b) whose parentage has been determined by a court of competent jurisdiction; or

(c) adopted under the law existing at the time of adoption in this state or any other state or territory of the United States of America may request the state registrar to file a supplementary certificate of birth on the basis of the status subsequently acquired or established and of which proof is submitted. The application to file a supplementary certificate of birth may be filed by the person, if of age, or a legal representative of the person. The state registrar shall require such proof in these cases as the State Department of Health may by regulation prescribe. The preparation and filing of supplementary certificates of birth based on legitimation, paternity determination, and adoption shall be in accordance with the regulations of the State Department of Health. Provided, however, that when a child is adopted the new birth certificate shall be in the names of the parents by adoption, and the copies of birth certificates or birth records made therefrom shall not disclose the child to be adopted. After the

supplementary certificate is filed, any information disclosed from the record shall be made from the supplementary certificate, and access to the original certificate of birth and to the documents filed upon which the supplementary certificate is based shall not be authorized except upon order of a court of competent jurisdiction.

A certificate of each adoption, annulment of adoption, and revocation of adoption ordered or decreed in this state shall be filed with the state registrar as hereinafter provided. The information necessary to prepare the certificates shall be supplied to the clerk of the court by the petitioner for adoption, annulment of adoption, or revocation of adoption at the time the petition is filed. The clerk of the court shall thereupon prepare the certificate on a form furnished by and containing such items of information as may be determined by the State Department of Health and shall, immediately after the decree becomes final, complete the certificate. On or before the 10th of each month, the clerk shall forward to the state registrar the certificates completed by him for decrees which have become final during the preceding calendar month.

Provided, that the above provisions shall not, in any way, be construed as affecting the property rights of natural or adoptive parents or of natural or adopted children, or as amending, modifying, or repealing any of the present laws of the State of Texas governing descent and distribution of property.

Subject to the regulations of the State Department of Health, any person whose name has been changed by court order may request the state registrar to attach to the original birth record an amendment reflecting the change of name. The request to attach such amendment may be made by the person, if of age, or a legal representative of the person. The state registrar shall require such proof of change of name as the State Department of Health may by regulation prescribe.

Rule 47b. "For Medical and Health Use Only" Section of Birth Certificate.—The section entitled "For Medical and Health Use Only" shall not be considered a part of the legal certificate of birth.

[See Compact Edition, Volume 4 for text of Rules 48 to 51]

Rule 51a. Blanks and Registration Forms; Index of Births and Deaths; Records; Transcripts; Fees; Delayed Registrations; Judicial Procedure to Establish Facts of Birth.—A. The State Department of Health shall prepare, print, and supply to local registrars all blanks and forms used in registering, recording, and preserving the returns, or in otherwise carrying out the

purposes of this Act, and each city and incorporated town shall supply its local registrar, and each county shall supply the county clerk with permanent record books, in forms approved by the State Registrar, for the recording of all births, deaths, and stillbirths occurring within their respective jurisdictions. The State Registrar shall prepare and issue such detailed instructions as may be required to procure the uniform observance of its provisions and the maintenance of a perfect system of registration; and no other forms shall be used than those approved by the State Department of Health. He shall carefully examine the certificates received monthly from the local registrars, and if any such are incomplete or unsatisfactory he shall require such further information to be supplied as may be necessary to make the record complete and satisfactory. All physicians, midwives, informants or funeral directors, and all other persons having knowledge of the facts, are hereby required to supply, upon a form provided by the State Department of Health, or upon the original certificate, such information as they may possess regarding any birth, death, or stillbirth upon demand of the State Registrar, in person, by mail, or through the local registrar. After its acceptance for registration by the local registrar, no record of any birth, death, or stillbirth shall be altered or changed; provided, however, that if any such record is incomplete, or satisfactory evidence can be submitted proving the record to be in error in any respect, an amending certificate may be filed for the purpose of completing or correcting such record, which amendment shall be in a form prescribed by the State Department of Health and shall, if accepted for filing, be attached to and become a part of the legal record of such birth, death, or stillbirth. The State Registrar shall further arrange, bind, and permanently preserve the certificates in a systematic manner, and shall prepare and maintain a comprehensive index of all births and deaths registered; said index to be arranged alphabetically, in the case of deaths, by the names of decedents, and in the case of births, by the names of fathers and mothers. When the State Registrar receives the death certificate of a person under 18 years of age whose birth has been registered in this state, the State Registrar shall make a conspicuous notation on the face of the decedent's birth certificate showing that the person is dead and shall provide copies of the death certificate to the county clerk of the county in which the decedent was born and to the local registrar of the district in which the decedent was born. If any organization or individual is in possession of any record of births or deaths which may be of value in establishing the genealogy of any resident of this state, such organization or individual may file such record or a duly authenticated transcript thereof with the State Registrar. If any person desires a transcript of any such record, the State Registrar

shall furnish the same upon application, together with a certificate that it is a true copy of such record, as filed in his office, and for his services in so furnishing such transcript and certificate he shall be entitled to a fee of Ten Cents (10¢) per folio, Fifty Cents (50¢) per hour or fraction of an hour necessarily consumed in making such transcript, and to a fee of Twenty-five Cents (25¢) for the certificate, which fees shall be paid by the applicant; provided, that before the issuance of any such transcript, the State Registrar shall be satisfied that the applicant is properly entitled thereto, and that it is to be used only for legitimate purposes.

B. Delayed Registration of Births.

Subject to the regulations and requirements of the State Department of Health:

[See Compact Edition, Volume 4 for text of B 1 to 8]

9. For each application for a delayed certificate of birth, the State Registrar shall be entitled to a fee not to exceed Ten Dollars (\$10.00), said fee to be paid by the applicant. All such fees received by the State Registrar under the provisions of this Section shall be deposited and used as provided in Section 21 of this Act.

[See Compact Edition, Volume 4 for text of C and D and Rule 52]

Rule 52a. Duties of Local Registrars.—That each local registrar shall supply blank forms of certificates to such persons as require them. Each local registrar shall carefully examine each certificate of birth or death when presented for record in order to ascertain whether or not it has been made out in accordance with the provisions of this act and the instructions of the state registrar; and if any certificate of death is incomplete or unsatisfactory, it shall be his duty to call attention to the defects in the return. All certificates, either of birth or death, shall be written legibly, in durable black ink, and no certificate shall be held to be complete and correct that does not supply all of the items of information called for therein, or satisfactorily account for their omission.

If a certificate of birth is incomplete, the local registrar shall immediately notify the informant, and require him to supply the missing items of information if they can be obtained. He shall number consecutively the certificates of birth and death, in two separate series, beginning with number 1 for the first birth and the first death in each calendar year, and sign his name as registrar in attest of the date of filing in his office. He shall also make a complete and accurate copy of each birth and each death certificate registered by him in a record book supplied in accordance with provisions of Section 18 of this Act,¹ to be preserved permanently in his office as the local record, in such manner as directed

by the state registrar, or in the event that local ordinances require that all reports of births and deaths be made in duplicate, he may permanently bind the duplicate reports and index them in the manner prescribed in Section 18 for the state registrar. And he shall, on the tenth day of each month, transmit to the state registrar all original certificates registered by him for the preceding month. And if no births or no deaths occurred in any month, he shall, on the tenth day of the following month, report that fact to the state registrar, on a card provided for such purposes.

When the state registrar notifies the county clerk of the county in which the decedent was born and the local registrar of the district in which the decedent was born, the county clerk and the local registrar shall make a conspicuous notation on the face of the decedent's birth certificate showing that the person is dead.

¹ Rule 51a of this article.

[See Compact Edition, Volume 4 for text of 53 to 54]

Rule 54a. Copies of Records.—Subject to the regulations of the Texas Department of Health controlling the accessibility of vital records, the State Registrar shall, upon request, supply to any properly qualified applicant a certified copy of a record, or any part thereof, registered under the provisions of this Act.¹ The State Registrar is entitled to a fee of Three Dollars (\$3.00) for the first copy of a record or part of a record and One Dollar (\$1.00) for each additional copy of the record or part of the record requested by the applicant in a single request. The fee is to be paid by the applicant. A local registrar who issues certified copies of death certificates shall charge the same fee as is charged by the State Registrar. Certified copies shall be issued only in the form approved by the Texas Department of Health. And any such copy of a record, when properly certified by the State Registrar, shall be prima facie evidence in all courts and places of the facts therein stated. For any search of the files where a record is not found or a certified copy is not made, the State Registrar shall be entitled to a fee of Three Dollars (\$3.00), said fee to be paid by the applicant. The State Registrar shall, upon request of any parent or guardian, supply, without fee, a certificate limited to a statement as to the date of birth of any child when the same shall be necessary for admission to school, or for the purpose of securing employment. The State Registrar shall issue free of cost to any veteran, his widow, orphan or other dependents, a certified copy of any record not otherwise prohibited by law when such record is to be used in the settlement of a claim against the government. The State Registrar may issue, upon court order, without fee, a certified copy of a birth record in cases relating to child labor and the public

schools. Provided, that the national agency in charge of the collection of vital statistics may obtain, without expense to the State, transcripts of vital records without payment of the fees herein prescribed; and provided further, that the State Registrar is hereby authorized to act as special agent for that agency in accepting the use of the franking privilege and blanks furnished by that agency; and provided further, that the Bureau of Vital Statistics of the Texas Department of Health is hereby authorized to enter into a contract with the national agency in charge of the collection of vital statistics in order to have transcribed for that agency copies of vital records filed with the State Bureau of Vital Statistics. The State Registrar shall keep a true and correct account of all money received by him under these provisions, and deposit the same with the State Treasurer at the close of each month and at such other intervals as the Registrar deems advisable, and all such money shall be kept by the State Treasurer in a special and separate fund, to be known as the vital statistics fund, and the amounts so deposited in this fund shall be used for defraying expenses incurred in the enforcement and operation of this Act.

The State Registrar shall refund to the applicant any fee received for services which the Bureau cannot render. If the money has been deposited in the vital statistics fund, the Comptroller shall issue a warrant against the fund, upon presentation of a claim signed by the State Registrar, for the purpose of refunding the payment.

The State Registrar shall be entitled to a fee of Five Dollars (\$5.00) for filing a new birth certificate based on adoption, a fee of Eight Dollars (\$8.00) for filing a new birth certificate based on legitimation or paternity determination, and a fee of Five Dollars (\$5.00) for filing an amendment to a birth certificate based on a court order of change of name, said fees to be paid by the applicants.

¹ Rules 34a to 55a of this article and art. 4477c.

[See Compact Edition, Volume 4 for text of Rules 55 to 59]

Rule 60. Repealed by Acts 1979, 66th Leg., p. 1145, ch. 550, § 1, eff. Aug. 27, 1979

[See Compact Edition, Volume 4 for text of Rules 61 to 76]

[Amended by Acts 1975, 64th Leg., p. 117, ch. 54, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 30, ch. 14, §§ 1, 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 316, ch. 149, §§ 2 and 3, eff. May 13, 1977; Acts 1977, 65th Leg., p. 1689, ch. 669, §§ 1 and 2, eff. Jan. 1, 1978; Acts 1977, 65th Leg., p. 2089, ch. 837, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 89, ch. 54, §§ 1, 2, eff. April 19, 1979; Acts 1979, 66th Leg., p. 1135, ch. 543, § 2, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1145, ch. 550, § 1, eff. Aug. 27, 1979.]

Acts 1977, 65th Leg., p. 1689, ch. 669, which by §§ 1 and 2 amended subsec. B, par. 9 of rule 51a and rule 54a of this article, provided in § 3: "This Act takes effect January 1, 1978."

Art. 4477b. Repealed by Acts 1979, 66th Leg., p. 317, ch. 146, § 2, eff. May 11, 1979

Art. 4477c. Penalty for Birth or Death Information Violations

Definitions

Sec. 1. As used in this Act, the following words or phrases have the meaning indicated:

(a) "Person" means an individual, corporation, association, or partnership;

(b) "Vital Statistics Act" means Rules 34a to 55a, Article 4477, Revised Civil Statutes of Texas, 1925, as amended;

(c) "State registrar" means the director of the Bureau of Vital Statistics;

(d) "Local registrar" means a person serving as registrar of vital statistics in a primary registration district as specified in Rule 36a, Article 4477, Revised Civil Statutes of Texas, 1925, as amended, or a combination of primary registration districts.

False Entries; Fraudulent Records

Sec. 2. (a) A person commits an offense if he:

(1) intentionally or knowingly makes any false statement in a certificate, record, or report required by the Vital Statistics Act, or in an application for an amendment thereof, or in an application for a delayed certificate of birth or death, or in an application for a certified copy of a vital record, or intentionally or knowingly supplies false information or intentionally or knowingly creates any false record to be used in the preparation of any such report, record, or certificate, or amendment thereof;

(2) without lawful authority and with the intent to deceive, makes, counterfeits, alters, amends, or mutilates any certificate, record, or report required by the Vital Statistics Act or a certified copy of such certificate, record, or report;

(3) intentionally or knowingly obtains, possesses, uses, sells, furnishes, or attempts to obtain, possess, use, sell, or furnish to another, for any purpose of deception, any certificate, record, or report required by the Vital Statistics Act or certified copy thereof so made, counterfeited, altered, amended, or mutilated, or which is false in whole or in part or which relates to the birth of another person, whether living or deceased.

(b) An offense under this section is a felony of the third degree.

Failure to Furnish Required Information, File Required Certificates, or Perform Required Duties

Sec. 3. (a) A person commits an offense if he:

(1) refuses or fails to furnish correctly any information in his possession affecting any certificate or record required by the Vital Statistics Act;

(2) being required by the Vital Statistics Act to fill out a certificate of birth or death and file same with the local registrar or deliver it upon request to any person charged with the duty of filing the same, shall fail, neglect, or refuse to perform such duty in the manner required by this Act;

(3) being a local registrar, deputy registrar, or subregistrar, shall fail, neglect, or refuse to perform his duty as required by the Vital Statistics Act and by the instructions and directions of the state registrar thereunder.

(b) An offense under this section is a Class C misdemeanor.

Construction with Penal Code

Sec. 4. If the conduct of a person, which constitutes an offense under this Act, also constitutes an offense defined by the Penal Code of the State of Texas, as amended, the provisions of this Act shall not be applicable and the Penal Code shall govern. [Amended by Acts 1979, 66th Leg., p. 316, ch. 146, § 1, eff. May 11, 1979.]

Art. 4477e. Spanish Surname Information on Vital Statistics Records

Purpose

Sec. 1. The purpose of this Act is to enable this state to participate in a study being conducted by a group of states in the Southwest to obtain information about the birth rates and mortality patterns of persons with Spanish surnames and to implement recommendations made by the National Center for Health Statistics for improved methods of maintaining vital statistics.

Revision of Vital Statistic Forms

Sec. 2. In the next official revision of the prescribed forms for birth certificates, fetal death certificates, and death certificates, the Texas Department of Health shall include the following inquiries and instructions:

(A) on a birth certificate or fetal death certificate:

"(1) Is father of Spanish origin?"

"(2) If yes, specify Mexican, Cuban, Puerto Rican, etc.

"(3) Is mother of Spanish origin?"

"(4) If yes, specify Mexican, Cuban, Puerto Rican, etc."

(B) on a death certificate:

"(1) Was the decedent of Spanish origin?"

"(2) If yes, specify Mexican, Cuban, Puerto Rican, etc."

[Acts 1979, 66th Leg., p. 1112, ch. 529, §§ 1, 2, eff. Aug. 27, 1979.]

CHAPTER FOUR A. SANITATION AND HEALTH PROTECTION

Article

4477-6a. Rabies Control and Eradication.

4477-10. Treating and Conveying Waste in Cities of 1,200,000 or More.

Art. 4477-1. Minimum Standards of Sanitation and Health Protection Measures

[See Compact Edition, Volume 4 for text of 1 to 4]

Disposal of Human Excreta

Sec. 5.

[See Compact Edition, Volume 4 for text of 5(a) and (b)]

(c) No privy shall hereafter be constructed within seventy-five (75) feet of any drinking water well or of a human habitation other than to which it is appurtenant without approval by the Local Health Officer or the Texas Board of Health Resources¹ and no privy shall be erected or maintained over any abandoned well or over any stream; provided further that no privy shall be constructed or maintained in any unincorporated village which shall hereafter come within the provisions of Article 4434-35 of the Revised Civil Statutes of Texas, 1925, which is located within thirteen hundred and twenty (1320) feet of any water well which is used for drinking water purposes, and the construction, maintenance, and use of such privy in violation of this section shall be a nuisance.

¹ Board of Health Resources abolished and Board of Health created by Acts 1977, 65th Leg., ch. 474; see art. 4418g.

[See Compact Edition, Volume 4 for text of 5(d) to 10]

Protection of Public Water Supplies

Sec. 11.

[See Compact Edition, Volume 4 for text of 11(a) and (b)]

(c) The owner or manager of every water supply system furnishing drinking water to 25,000 or more persons shall have the water tested at least once daily for the determination of its sanitary quality and shall furnish the Texas Department of Health Resources with monthly reports thereof. The owner or manager of any water plant supplying drinking water to less than 25,000 persons, according to the latest Federal Census and such revised Federal Census as may hereafter be taken and established, or by other population-determining methods in all such cases where Federal Census are not taken, shall submit to the Texas Department of Health Resources at least one (1) specimen of water taken from the supply for the purpose of bacteriological analysis during each monthly period of the operation of such service.

[See Compact Edition, Volume 4 for text of 11(d) to 22]

Authority of Home Rule Cities Not Affected

Sec. 23. (a) All provisions of this Act are hereby declared to constitute minimum requirements of sanitation and health protection within the State of Texas and shall in no way affect the authority of Home Rule Cities to enact more stringent ordinances pertaining to the matters herein referred to, and shall in no way affect the authority of Home Rule Cities to enact ordinances as granted to them under Article XI, Section V of the State Constitution, and Articles 1175-76 of the Revised Civil Statutes of Texas of 1925.

(b) The Texas Board of Health Resources may adopt rules consistent with the general intent and purposes of this Act, and establish standards and procedures for the management and control of sanitation and health protective measures.

Home-Rule Cities of 800,000 or More; Appointment of Environmental Health Officer

Sec. 23a. In a home-rule city in cities of a population of 800,000 or more according to the last federal census, an environmental health officer may be appointed to enforce the provisions of this article. An environmental health officer must be a registered professional engineer, subscribe to the official oath, and file a copy of his oath and appointment with the State Board of Health. He shall assist the State Board of Health in the enforcement of this article and is subject to the authority of the State Board of Health and to removal from office in the same manner as a city health officer.

Penalty

Sec. 24. Any person, firm or corporation who shall violate any of the provisions of any Section or sub-division of this Act, or any rule adopted under this Act, shall be fined not less than Ten Dollars (\$10.00) and not more than Two Hundred Dollars (\$200.00), and each day of such violation shall constitute a separate offense.

Enforcement

Sec. 25. The Texas Department of Health Resources may apply to any district court in this state to enforce, prevent, or restrain violations of this Act or violations of rules adopted pursuant to this Act. [Amended by Acts 1975, 64th Leg., p. 227, ch. 86, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1188, ch. 456, §§ 1 to 5, eff. Aug. 29, 1977.]

Art. 4477-5. Texas Clean Air Act

SUBCHAPTER A. GENERAL PROVISIONS

[See Compact Edition, Volume 4 for text of 1.01 and 1.02]

Definitions

Sec. 1.03. As used in this Act, unless the context requires a different definition:

(1) "air contaminant" means particulate matter, radioactive material, dust, fumes, gas, mist, smoke, vapor or odor, or any combination thereof produced by processes other than natural;

(2) "source" means a point of origin of air contaminants, whether privately or publicly owned or operated;

(3) "air pollution" means the presence in the atmosphere of one or more air contaminants or combinations thereof, in such concentration and of such duration as are or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation or property, or as to interfere with the normal use and enjoyment of animal life, vegetation or property;

(4) "board" means the Texas Air Control Board;

(5) "executive director" means the executive director of the Texas Air Control Board;

(6) "person" means individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity; and

(7) "local government" means a county, an incorporated city or town; or a health district established under authority of Chapter 63, Acts of the 51st Legislature, 1949, as amended by Chapter 239, Acts of the 56th Legislature, 1959 (Article 4447a, Vernon's Texas Civil Statutes);

(8) "new source" means any stationary source, the construction or modification of which is commenced after the effective date of this statute;

(9) "modification" means any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source into the atmosphere or which results in the emission of any air pollutant not previously emitted. Insignificant increases in the amount of any air pollutant emitted are not intended to be included, nor is maintenance or replacement of equipment components which do not increase or tend to increase the amount or change the characteristics of the air contaminants emitted to the atmosphere.

[See Compact Edition, Volume 4 for text of 1.04 to 1.07]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

[See Compact Edition, Volume 4 for text of 2.01]

Application of Sunset Act

Sec. 2.01a. The Texas Air Control Board is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by the Act the board is abolished, and this Act expires effective September 1, 1985.

¹ Article 5429k.

Members of the Board

Sec. 2.02. The board is composed of nine members appointed by the governor with the advice and consent of the Senate. Of the nine members appointed by the governor, one shall be a professional engineer with at least ten years experience in the actual practice of his profession which experience shall include work in air control; one shall be a physician licensed to practice in this state, currently engaged in general practice in this state, with experience in the field of industrial medicine; one shall be a person who has been actively engaged in the management of a private manufacturing or industrial concern for at least ten years immediately prior to his appointment; one shall be an agricultural engineer with at least ten years experience in his profession; and five shall be chosen to represent the public interest.

[See Compact Edition, Volume 4 for text of 2.03]

Qualification by Members; Vacancies; Records

Sec. 2.04.

[See Compact Edition, Volume 4 for text of 2.04(a) to 2.04(c)]

(d) A board member who is appointed to represent the public interest may not derive a significant portion of his or her income from a person subject to the board's permits or enforcement orders.

[See Compact Edition, Volume 4 for text of 2.05 to 2.17]

SUBCHAPTER C. POWERS AND DUTIES OF THE BOARD

[See Compact Edition, Volume for text of 3.01 to 3.10]

Limitations on Board Actions

Sec. 3.11. The board may not make any rule, regulation, determination or order with respect to air conditions existing solely within buildings and structures used for commercial and industrial plants, works or shops when the source of the offending air contaminants is under the control of the person who owns or operates the plant, works or shops, or which affects the relations between employers and their employees with respect to or arising out of any air condition from such a source. This provision does not and is not intended to limit or restrict in any way the authority or powers granted to the board under the provisions of Subsections (c) and (f) of Section 3.10 of this Act.

[See Compact Edition, Volume 4 for text of 3.12 to 3.26]

Construction Permit

Sec. 3.27.

[See Compact Edition, Volume 4 for text of 3.27(a) and 3.27(b)]

(c) If, from the information submitted under subsection (b) of this section, the board finds the proposed facility will utilize at least the best available control technology, with consideration given to the technical practicability and economic reasonableness of reducing or eliminating the emissions resulting from the facility and no indication that the emissions from the proposed facility will contravene the intent of the Texas Clean Air Act, including protection of the health and physical property of the people, the board shall grant within a reasonable time a permit to construct or modify the facility. If the board finds that the emissions from the proposed facility will contravene these standards or will contravene the intent of the Texas Clean Air Act, it shall not grant the permit and shall set out in a report to the applicant its specific objections to the submitted plans of the proposed facility.

[See Compact Edition, Volume 4 for text of 3.27(d) to 3.28]

Permit and Variance Fees

Sec. 3.29. The board may adopt rules relating to charging and collecting fees for permits and variances, including schedules of fees to be charged. The fees shall be sufficient to cover the reasonable costs of review and action by the board on a permit or variance application and of implementing and enforcing the terms and conditions of the permit or variance. Fees adopted under this section shall be not less than \$50 nor more than \$7,500.

A Pilot Program for Motor Vehicle Inspection and Maintenance, a Study of such Programs, Reports to the Legislature, and Development of and Preparation for a Motor Vehicle Inspection and Maintenance Program

Sec. 3.30. (a) On or before December 1, 1980, the Texas Air Control Board shall submit to the 67th Session of the Legislature a report based on the results of the pilot program and study required by Subsections (b) and (c) of this section. The report required by this subsection shall contain recommendations as to the most feasible program, if any, for controlling motor vehicle emissions in the State of Texas and reflect consideration of the following factors as they relate to the alternative programs listed in Subsection (c):

- (1) acceptance by and protection of consumers;
- (2) overall effectiveness including costs versus benefits;
- (3) resulting social and economic impacts;

(4) appropriate geographic areas of applicability;

(5) the operating of motor vehicle inspection and maintenance, registration, and safety inspection programs in other states; and

(6) any additional factors deemed by the Texas Air Control Board to be appropriate.

(b) The Texas Air Control Board with the assistance and cooperation of the Department of Public Safety and the State Department of Highways and Public Transportation shall develop and conduct either directly or through a private contractor a pilot program utilizing advanced computer technology for the purpose of inspecting, testing, and compiling a list of a representative sample of motor vehicles giving primary attention to vehicles operated in Harris and contiguous counties to determine:

(1) actual emissions of air contaminants from such vehicles and the cause of any excessive emissions and whether specific equipment and operating parameters identified by the Texas Air Control Board as significantly affecting vehicle emissions are installed, adjusted, and operating in accordance with manufacturers' specifications;

(2) whether required vehicle safety features as specified by Section 140 of the Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes), are properly installed and operating; and

(3) the feasibility of performing any necessary registration of such vehicles at the time of inspection and testing.

(c) In conjunction with the pilot program established pursuant to Subsection (b) and using any available information, including but not limited to that generated by the program, the Texas Air Control Board with the assistance of the Department of Public Safety and the State Department of Highways and Public Transportation shall conduct a comprehensive examination and evaluation of motor vehicle inspection, maintenance, and registration programs utilizing advanced computer technology. The study required by this subsection shall include an analysis of:

(1) the effectiveness of programs requiring actual testing of motor vehicle emissions and needed maintenance or the inspection and adjustment of appropriate vehicle operating parameters which relate to emissions of air contaminants;

(2) the effectiveness and efficiency of such a motor vehicle inspection and maintenance program operated in Texas in conjunction with a motor vehicle safety inspection program such as that required by Section 140 of the Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes), through:

(A) existing inspection stations;

(B) state-operated inspection centers with vehicle maintenance performed in private repair facilities; or

(C) contractor-operated inspection centers with maintenance performed in private repair facilities; and

(3) the effectiveness and efficiency of such a motor vehicle inspection and maintenance program operated in Texas independently of a motor vehicle safety program such as that required by Section 140 of the Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes), through:

(A) existing inspection stations;

(B) state-operated inspection centers with vehicle maintenance performed in private repair facilities; or

(C) contractor-operated inspection centers with maintenance performed in private repair facilities; and

(4) the effectiveness and efficiency of a motor vehicle registration program operated in conjunction with one or more of the alternative programs listed in Subsection (c)(1), (c)(2), or (c)(3) above.

(d) The Texas Air Control Board with the assistance and cooperation of the Department of Public Safety and the State Department of Highways and Public Transportation shall develop and make preparations for a motor vehicle inspection and maintenance program for Harris County by designing, planning, and scheduling the implementation of the necessary elements of such program. The design of such program shall be based on the results of the pilot program and study required by Subsections (a) and (b) of this section and shall be consistent with the recommendations to be contained in the report required by Subsection (c) of this section. The schedule for such program:

(1) shall be adequate to allow and achieve full implementation of the inspection and maintenance program as it affects passenger automobiles in Harris County not later than December 31, 1982;

(2) shall not, prior to 120 calendar days after the convening of the 67th Session of the Legislature, require or include:

(A) mandatory participation in the program by the public;

(B) execution of an agreement with a private contractor to operate inspection centers; or

(C) construction or acquisition of inspection centers or acquisition of inspection equipment except as may be necessary or useful to the conduct of the pilot program required by Subsection (a) of this section;

(3) shall, to the maximum extent feasible and consistent with other requirements of this subsection, preserve and facilitate the range of choices available to the 67th Session of the Legislature as to the direction and further development of a motor vehicle inspection and maintenance program for the State of Texas.

(e) The Texas Air Control Board shall cooperate with any legislative committee appointed to monitor the progress made in satisfying the requirements of this section.

(f) This section shall become effective upon approval by the administrator of the Environmental Protection Agency of those provisions of the plan submitted by the governor of the State of Texas in accordance with the Federal Clean Air Act Amendments of 1977,¹ which relate to inspection and maintenance of motor vehicles and the use of emission reductions credited to the pilot program established by this Act to allow for new source growth in affected areas.

¹ 42 U.S.C.A. § 7401 et seq.

[See Compact Edition, Volume 4 for text of 4.01 to 6.01]

[Amended by Acts 1977, 65th Leg., p. 1844, ch. 735, § 2.084, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1787, ch. 726, §§ 2 to 8, eff. June 13, 1979.]

Sections 1 and 9 of the 1979 amendatory act provided:

"Sec. 1. Purpose and policy. The Texas Legislature recognizes both the importance and historical effectiveness of this state's efforts to control air pollution in order to protect the public health and improve air quality. It further recognizes the impact of the 1970 Federal Clean Air Act and subsequent amendments on the State of Texas. The Texas Legislature believes that in passing the Clean Air Act, the United States Congress intended that the national air quality standards promulgated thereunder by the Environmental Protection Agency be both reasonable and attainable.

"It is hereby declared the public policy of the State of Texas that the state in cooperation with the federal government should determine the appropriate environmental controls to be applied within its boundaries necessary to protect the public health and improve air quality. The State of Texas should continue to question and challenge federal air quality regulations and programs which establish unreasonable and unattainable standards; particularly when the programs are of doubtful scientific benefit and are established with no consideration of regional differences among the states. The Texas Legislature should undertake to conduct studies and pilot projects necessary to prove the need for air quality programs and control measures which will have major impact on the State of Texas."

"Sec. 9. The provisions of this Act which give the Texas Air Control Board authority to regulate radioactive air contaminants shall become effective only upon an affirmative determination relating to such contaminants by the administrator of the Environmental Protection Agency pursuant to Section 122 of the Federal Clean Air Act Amendments of 1977."

Art. 4477-6a. Rabies Control and Eradication

Definitions

Sec. 1. In this Act:

(1) "Animal" means a warm-blooded animal.

(2) "Board" means the Texas Board of Health.

(3) "Commissioner" means the Commissioner of Health.

(4) "Person" means an individual, corporation, or association.

Duties of Texas Board of Health

Sec. 2. (a) The Texas Board of Health shall administer this Act and may adopt rules necessary to carry out the purposes of this Act.

(b) The board may enter into contracts with other entities, governmental or private, necessary or appropriate to carry out the provisions of this Act. The contracts may provide for payment by the state for materials, equipment, or services.

(c) The board shall compile, analyze, and publish information relating to the control of rabies for the education of physicians, veterinarians, public health personnel, and the general public.

Designation of Local Health Authorities

Sec. 3. The commissioners court of each county and the governing body of each city or town shall designate one officer to act as the local health authority for the purposes of this Act. The officer designated may be the county health officer, municipal health officer, animal control officer, peace officer, or any entity that the commissioners court or governing body considers appropriate, except as restricted by rule of the board.

Reports of Exposure to Rabies

Sec. 4. (a) A person having knowledge of an animal bite or scratch or other attack on an individual that the person could reasonably foresee as capable of transmitting rabies, or of an animal that the person suspects is rabid, shall report the incident or animal to a local health authority of the county or the city or town in which the person lives, in which the animal is located, or in which the attack occurs. The report shall include the name and address of any victim and of the owner of the animal, if known.

(b) The owner of an animal that is reported to be rabid or to have attacked an individual, or that the owner knows or suspects to be rabid or to have attacked an individual, shall submit the animal for quarantine to the local health authority of the county or the city or town in which the owner resides.

(c) The local health authority shall investigate all reports filed under this section.

Quarantine of Animals

Sec. 5. (a) The local health authority shall quarantine for at least 10 days any animal that the authority has probable cause to believe is rabid or has attacked an individual.

(b) The board shall adopt rules governing the testing of quarantined animals, the procedures for and method of quarantine, and the types of facilities that may be used for quarantine.

(c) In accordance with the rules of the board, a local health authority may contract with one or more public or private entities for the purpose of providing and operating a quarantine facility.

(d) If a quarantined animal is found to be rabid, the local health authority shall humanely destroy the animal. If an animal dies or is destroyed while in

quarantine, the local health authority shall remove the head or brain of the animal and submit it to the nearest Texas Department of Health laboratory for testing.

(e) If a quarantined animal is found to be free from rabies, the local health authority shall release it to the owner following the quarantine period if:

(1) the owner has an unexpired rabies vaccination certificate for the animal; or

(2) the animal is vaccinated against rabies by a licensed veterinarian at the owner's expense.

(f) The owner of an animal that is quarantined under this Act shall pay to the local health authority the reasonable costs of the quarantine and disposition of the animal, and the local health authority may bring suit to collect those costs. The local health authority may sell and retain the proceeds, keep, grant, or destroy an animal that the owner or custodian does not take possession of on or before the 15th day following the final day of the quarantine.

Vaccination Required

Sec. 6. (a) Except as otherwise provided by rule of the board, the owner of each dog or cat shall have the dog or cat vaccinated against rabies by the time the dog or cat is four months of age and at regular intervals thereafter as prescribed by rule of the board.

(b) A veterinarian who vaccinates a dog or cat against rabies shall issue to the owner of the animal a vaccination certificate in a form approved by the board.

(c) No county, city, or town may register or license an animal that has not been vaccinated in accordance with this section.

Importation of Certain Animals

Sec. 7. The commissioner by rule may adopt a list of types of animals that the commissioner finds have a high probability of carrying rabies and constitute a danger to public health if brought into this state.

Penalties

Sec. 8. (a) A person commits an offense if the person knowingly violates Section 6 of this Act.

(b) A person commits an offense if the person brings into this state an animal that is on the list adopted by the commissioner under Section 7 of this Act.

(c) An offense under this section is a Class C misdemeanor.

[Acts 1979, 66th Leg., p. 1852, ch. 752, §§ 1 to 8, eff. Jan. 1, 1980.]

Art. 4477-7. Solid Waste Disposal Act

[See Compact Edition, Volume 4 for text of 1]

Definitions

Sec. 2. As used in this Act, unless the context requires a different definition:

(1) "person" means individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity;

(2) "department" means the Texas Department of Health Resources;¹

(3) "department of water resources" means the Texas Department of Water Resources;

(4) "local government" means a county; an incorporated city or town; or a political subdivision exercising the authority granted under Section 6 of this Act;

(5) "solid waste" means all putrescible and nonputrescible discarded or unwanted solid materials, including garbage, refuse, sludge from a waste treatment plant or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations and from community activities, but does not include:

(i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued pursuant to the Texas Water Quality Act;

(ii) soil, dirt, rock, sand and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or

(iii) waste materials which result from activities associated with the exploration, development, or production of oil or gas and are subject to control by the Texas Railroad Commission;

(6) "municipal solid waste" means solid waste resulting from or incidental to municipal, community, commercial, and recreational activities, including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste other than industrial solid waste;

(7) "industrial solid waste" means solid waste resulting from or incidental to any process of industry or manufacturing, or mining or agricultural operations;

(8) "garbage" means solid waste consisting of putrescible animal and vegetable waste materials resulting from the handling, preparation, cooking, and consumption of food, including waste materials from markets, storage facilities, handling, and sale of produce and other food products;

(9) "rubbish" means nonputrescible solid waste (excluding ashes), consisting of both combustible and noncombustible waste materials; combustible rubbish includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials; noncombustible rubbish includes glass, crockery, tin cans, aluminum cans, metal furniture, and like materials which will not burn at ordinary incinerator temperatures (1600°F to 1800°F);

(10) "sanitary landfill" means a controlled area of land upon which solid waste is disposed of in accordance with standards, regulations or orders established by the department or the board;

(11) "processing" means the extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of hazardous waste so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume;

(12) "composting" means the controlled biological decomposition of organic solid waste under aerobic conditions;

(13) "person affected" means any person who is a resident of a county or any county adjacent or contiguous to the county in which a site, facility or plant is to be located including any person who is doing business or owns land in the county or adjacent or contiguous county and any local government. Such person affected shall also demonstrate that he has suffered or will suffer actual injury or economic damage; and

(14) "hazardous waste" means any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency pursuant to the Federal Solid Waste Disposal Act.²

(15) "Class I industrial solid waste" means any industrial solid designated as Class I by the Executive Director of the Texas Department of Water Resources as any industrial solid waste or mixture of industrial solid wastes which because of its concentration or physical or chemical characteristics is toxic, corrosive, flammable, a strong sensitizer or irritant, a generator of sudden pressure by decomposition, heat, or other means and may pose a substantial present or potential danger to human health or the environment when improperly treated, stored, transported, or otherwise managed, including hazardous industrial waste.

¹ Name changed to Department of Health; see art. 4418g.

² 42 U.S.C.A. § 6901 et seq.

State Solid Waste Agency; Designations; Duties

Sec. 3. (a) The department is hereby designated the state solid waste agency with respect to the collection, handling, storage, processing, and disposal

of municipal solid waste, and shall be the coordinating agency for all municipal solid waste activities. The department shall be guided by the Texas Board of Health Resources in its activities relating to municipal solid waste. The department shall seek the accomplishment of the purposes of this Act through the control of all aspects of municipal solid waste collection, handling, storage, processing, and disposal by all practical and economically feasible methods consistent with the powers and duties given the department under this Act and other existing legislation. The department has the powers and duties specifically prescribed in this Act and all other powers necessary or convenient to carry out its responsibilities. The department shall consult with the department of water resources with respect to the water pollution control and water quality aspects, and with the Texas Air Control Board with respect to the air pollution control and ambient air quality aspects, of the matters placed under the jurisdiction of the department by this Act.

(b) The department of water resources is hereby designated the state solid waste agency with respect to the collection, handling, storage, processing, and disposal of industrial solid waste, and shall be the coordinating agency for all industrial solid waste activities. The department of water resources shall seek the accomplishment of the purposes of this Act through the control of all aspects of industrial solid waste collection, handling, storage, processing, and disposal by all practical and economically feasible methods consistent with the powers and duties given it under this Act and other existing legislation. The department of water resources has the powers and duties specifically prescribed in this Act and all other powers necessary or convenient to carry out its responsibilities. The department of water resources shall consult with the department with respect to the public health aspects, and with the Texas Air Control Board with respect to the air pollution control and ambient air quality aspects, of the matters placed under the jurisdiction of the department of water resources by this Act.

(c) Where both municipal solid waste and industrial solid waste, except Class I industrial solid waste which is not routinely collected with municipal solid waste, are involved in any activity of collecting, handling, storing, processing, or disposing of solid waste, the department is the state agency responsible and has jurisdiction over the activity; and, with respect to that activity, the department may exercise all of the powers, duties and functions vested in the department by this Act. Class I industrial solid waste under the jurisdiction of the Texas Department of Water Resources may be accepted in municipal solid waste disposal facilities if authorized by the department with the concurrence of the Texas Department of Water Resources.

State Agencies; Authority and Powers; Permits

Sec. 4. (a) As used in this section the term "state agency" refers to either the department or the department of water resources, and "state agencies" means both the department and the department of water resources.

(b) The department is authorized to develop a state municipal solid waste plan, and the department of water resources is authorized to develop a state industrial solid waste plan. The state agencies shall coordinate the solid waste plans developed. Before a state agency adopts its solid waste plan or makes any significant amendments to the plan, the Texas Air Control Board shall have the opportunity to comment and make recommendations on the proposed plan or amendments, and shall be given such reasonable time to do so as the state agency may specify.

(c) Each state agency may adopt and promulgate rules and regulations consistent with the general intent and purposes of this Act, and establish minimum standards of operation for all aspects of the management and control of the solid waste over which it has jurisdiction under this Act, including but not limited to collection, handling, storage, processing, and disposal.

(d) Each state agency is authorized to inspect and approve sites used or proposed to be used for the storage, processing, or disposal of the solid waste over which it has jurisdiction.

(e) Except as provided in Subsection (f) of this section with respect to certain industrial solid wastes, each state agency has the power to require and issue permits authorizing and governing the operation and maintenance of sites used for the storage, processing, or disposal of solid waste. This power may be exercised by a state agency only with respect to the solid waste over which it has jurisdiction under this Act. If this power is exercised by a state agency, that state agency shall prescribe the form of and reasonable requirements for the permit application and the procedures to be followed in processing the application, to the extent not otherwise provided for in this subsection. The following additional provisions apply if a state agency exercises the power authorized in this subsection:

(1) The state agency to whom the permit application is submitted shall mail a copy of the application or a summary of its contents to the Texas Air Control Board, to the other state agency, to the mayor and health authorities of any city or town within whose territorial limits or extraterritorial jurisdiction the solid waste storage, processing, or disposal site is located, and to the county judge and health authorities of the county in which the site is located. The governmental entities to whom the information is mailed shall have

a reasonable time, as prescribed by the state agency to whom the application was originally submitted, to present comments and recommendations on the permit application before that state agency acts on the application.

(2) A separate permit shall be issued for each site. The permit shall include the names and addresses of the person who owns the land where the solid waste storage, processing, or disposal site is located and the person who is or will be the operator or person in charge of the site; a legal description of the land on which the site is located; and the terms and conditions on which the permit is issued, including the duration of the permit.

(3) The state agency may extend or renew any permit it issues in accordance with reasonable procedures prescribed by the state agency. The procedures prescribed in Paragraph (1) of this Subsection (e) for permit applications apply also to applications to extend or renew a permit.

(4) Before a permit is issued, extended or renewed, the state agency to which the application is submitted shall issue notice and hold a hearing in the manner provided for other hearings held by the agency.

(5) Before a permit is issued, extended or renewed, the state agency to which the application is submitted may require the permittee to execute a bond or give other financial assurance conditioned on the permittee's satisfactorily closing the disposal site on final abandonment.

(6) If a permit is issued, renewed or extended by a state agency in accordance with this Subsection (e), the owner or operator of the site does not need to obtain a license for the same site from a county, or from a political subdivision exercising the authority granted in Section 6 of this Act.

(7) A permit is issued in personam and does not attach to the realty to which it relates. A permit may not be transferred without prior notice to and prior approval by the state agency which issued it.

(8) The state agency has the authority, for good cause, after hearing with notice to the permittee and to the governmental entities named in Paragraph (1) of this Subsection (e), to revoke or amend any permit it issues for reasons pertaining to public health, air or water pollution, land use, or violation of this Act or of any other applicable laws or regulations controlling the disposal of solid waste.

(9) Manufacturing and processing establishments, commonly known as rendering plants, which process for any purpose waste materials originating from animals, poultry, and fish (all hereinafter referred to as "animals") and materials of vegetable origin, including without limitation animal parts and scraps, offal, paunch ma-

nure, and waste cooking grease of animal and vegetable origin are subject to regulation under the industrial solid waste provisions of this Act and may also be regulated under Chapter 26, Water Code. When a rendering establishment is owned by a person who operates the rendering establishment as an integral part of an establishment engaged in manufacturing or processing for animal or human consumption food derived wholly or in part from dead, slaughtered, or processed animals, poultry, or fish, the combined business may operate under authority of a single permit issued pursuant to Chapter 26, Water Code. The provisions of this subsection do not apply to those rendering plants in operation and production on or before August 27, 1973.

(f)(1) This subsection applies to the collection, handling, storage, processing, and disposal of industrial solid waste which is disposed of within the property boundaries of a tract of land owned or otherwise effectively controlled by the owners or operators of the particular industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced, and which tract of land is within 50 miles from the plant or operation which is the source of the industrial solid waste. This subsection does not apply if the waste is collected, handled, stored, or disposed of with solid waste from any other source or sources or if the waste, which is collected, handled, stored, processed, or disposed of is hazardous waste. The department of water resources may not require a permit under this Act for the disposal of any solid waste to which this subsection applies, but this does not change or limit any authority the department of water resources may have with respect to the requirement of permits, the control of water quality, or otherwise, under Chapter 26, Water Code. However, the department of water resources may adopt rules and regulations as provided under Subsection (c) of this section to govern and control the collection, handling, storage, processing, and disposal of the industrial solid waste to which this subsection applies so as to protect the property of others, public property and rights-of-way, groundwater, and other rights requiring protection. The department of water resources may require a person who disposes or plans to dispose of industrial solid waste under the authority of this subsection to submit to the department of water resources such information as may be reasonably required to enable the department of water resources to determine whether in its judgment the waste disposal activity is one to which this subsection applies.

(2) After the expiration of 90 days following the identification and listing of wastes as hazardous waste, no person shall process, store, or dispose of hazardous industrial solid wastes under this subsection without having first obtained a hazardous waste

permit issued by the board; provided, however, that any person processing, storing, or disposing of hazardous waste under this subsection who has filed a hazardous waste permit application in accordance with the rules and regulations of the board may continue to process, store, or dispose of hazardous waste until such time as the board approves or denies the application. Upon its own motion or the request of a person affected, the board may hold a public hearing on an application for a hazardous waste permit. The board by rule shall establish procedures for public notice and any public hearing authorized by this subsection.

(g) The state agencies may, either individually or jointly:

(1) provide educational, advisory, and technical services to other agencies of the state, regional planning agencies, local governments, special districts, institutions, and individuals with respect to solid waste management and control, including collection, storage, handling, processing, and disposal;

(2) assist other agencies of the state, regional planning agencies, local governments, special districts, and institutions in acquiring federal grants for the development of solid waste facilities and management programs, and for research to improve the state of the art; and

(3) accept funds from the federal government for purposes relating to solid waste management, and to expend money received from the federal government for those purposes in the manner prescribed by law and in accordance with such agreements as may be necessary and appropriate between the federal government and each state agency.

If a state agency engages in any of the programs and activities named in this subsection on an individual basis, it may do so only as the participation by that state agency is related to the management and control of the solid waste over which it has jurisdiction. When the state agencies do not participate jointly, they shall coordinate on any efforts undertaken by either one individually so that similar programs and activities of the state agencies will be compatible.

(h) The state agencies are authorized to administer and expend state funds provided to them by legislative appropriations, or otherwise, for the purpose of making grants to local governments for solid waste planning, the installation of solid waste facilities, and the administration of solid waste programs. The grants made under the terms of this Act shall be distributed in a manner determined by the state agency to whom the appropriation is made. Any financial assistance granted by the state through either of the state agencies to any local government under the terms of this Act must, at a minimum, be equally matched by local government funds.

County Powers

Sec. 5. (a) Every county has the solid waste management powers which are enumerated in this Section 5. However, the exercise of the licensing authority and other powers granted to counties by this Act does not preclude the department or the department of water resources from exercising any of the powers vested in the department or the department of water resources under other provisions of this Act, including specifically the provisions authorizing the department and the department of water resources to issue permits for the operation and maintenance of sites for the processing or disposal of solid waste. The powers specified in Subsections (d) and (e) of this section and Section 18 of the County Solid Waste Control Act (Article 4477-8, Vernon's Texas Civil Statutes) may not be exercised by a county with respect to the industrial solid waste disposal practices and areas to which Subsection (f) of Section 4 of this Act applies. The department or the department of water resources, by specific action or directive, may supersede any authority or power granted to or exercised by a county under this Act, but only with respect to those matters which are, under this Act, within the jurisdiction of the state agency acting.

(b) A county is authorized to appropriate and expend money from its general revenues for the collection, handling, storage and disposal of solid waste and for administering a solid waste program; and to charge reasonable fees for the services.

(c) A county may develop county solid waste plans and coordinate those plans with the plans of local governments, regional planning agencies, other governmental entities, the department, and the board.

(d) Except as provided in Subsection (a) of this section, a county is empowered to require and issue licenses authorizing and governing the operation and maintenance of sites used for the processing or disposal of solid waste in areas not within the territorial limits or extraterritorial jurisdiction of incorporated cities and towns. If a county elects to exercise licensing authority, it must adopt, promulgate, and enforce rules or regulations for the management of solid waste. The rules or regulations shall not be less stringent than those of, and must be approved by, the department or the board as appropriate. The following additional provisions apply if a county exercises the power authorized in this Subsection (d):

(1) The county shall mail a copy of the license application with pertinent supporting data to the department, the board, and the Texas Air Control Board. The governmental entities to whom the information is mailed shall have a reasonable time, as prescribed by the county, to submit comments and recommendations on the license application before the county acts on the application.

(2) A separate license shall be issued for each site. The license shall include the names and addresses of the person who owns the land where the waste disposal site is located and the person who is or will be the operator or person in charge of the site; a legal description of the land on which the site is located; and the terms and conditions on which the license is issued, including the duration of the license. The county is authorized to charge a fee for a license of not to exceed \$100.00, as set by the commissioners court of the county. Receipts from the fees shall be placed in the general revenue fund of the county.

(3) The county may extend or renew any license it issues in accordance with rules and regulations prescribed by the county. The procedures prescribed in Paragraph (1) of this Subsection (d) apply also to applications to extend or renew a license.

(4) No license for the use of a site for processing or disposal of solid waste may be issued, renewed, or extended without the prior approval, as appropriate, of the department or the department of water resources. If a license is issued, renewed, or extended by a county in accordance with this Subsection (d), the owner or operator of the site does not need to obtain a permit from the department or the department of water resources for the same site.

(5) A license is issued in personam and does not attach to the realty to which it relates. A license may not be transferred without prior notice to and prior approval by the county which issued it.

(6) The county has the authority, for good cause, after hearing with notice to the licensee and to the governmental entities named in Paragraph (1) of this Subsection (d), to revoke or amend any license it issues for reasons pertaining to public health, air or water pollution, land use, or violation of this Act or of any other applicable laws or regulations controlling the disposal of solid waste. For like reasons, the department and the department of water resources each may, for good cause, after hearing with notice to the licensee, the county which issued the license, and the other governmental entities named in Paragraph (1) of this Subsection (d), revoke or amend any license issued by a county, but only as to those sites which fall, under the terms of this Act, within the jurisdiction of the state agency acting.

(e) Subject to the limitation specified in Subsection (a) of this section, a county may designate land areas not within the territorial limits or extraterritorial jurisdiction of incorporated cities and towns as suitable for use as solid waste disposal sites. The county shall base these designations on the principles of public health, safety, and welfare, including proper land use, compliance with state statutes, and any other pertinent considerations.

(f) A county is authorized to enforce the requirements of this Act and the rules and regulations promulgated by the department and the board as related to the handling of solid waste.

(g) Repealed by Acts 1971, 62nd Leg., p. 1763, ch. 516, § 20, eff. Aug. 30, 1971.

(h) A county may enter into cooperative agreements with local governments and other governmental entities for the purpose of the joint operation of solid waste collection, handling, storage, processing or disposal facilities, and to charge reasonable fees for the services.

[See Compact Edition, Volume 4 for text of 6]

Right of Entry; Inspections; Access to Hazardous Waste Records

Sec. 7. (a) The authorized agents or employees of the department, the department of water resources, and local governments have the right to enter at all reasonable times in or upon any property, whether public or private, within the governmental entity's jurisdiction, including in the case of an incorporated city or town, its extraterritorial jurisdiction, for the purpose of inspecting and investigating conditions relating to solid waste management and control. Agents and employees shall not enter private property having management in residence without notifying the management, or the person in charge at the time, of their presence and exhibiting proper credentials. The agents and employees shall observe the rules and regulations of the establishment being inspected concerning safety, internal security, and fire protection.

(b) The authorized agents or employees of the department and the board may have access to, examine, and copy during regular business hours any records pertaining to hazardous waste management and control.

(c) Records copied pursuant to Subsection (b) of this section shall be public records, except that, if a showing satisfactory to the commissioner of the department or to the executive director of the board is made by the owner of such records that the records would divulge trade secrets if made public, then the department or the board shall consider such copied records as confidential. Nothing in this subsection shall require the board or the department to consider the composition or characteristics of solid waste being treated, stored, disposed, or otherwise handled to be held confidential.

Prohibited Acts; Violations; Penalties; Injunction

Sec. 8. (a) No person may cause, suffer, allow or permit the collection, storage, handling or disposal of solid waste, or the use or operation of a site for the disposal of solid waste, in violation of this Act or of the rules, regulations, permits, licenses or other orders of the department or the department of water

resources, or a county or a political subdivision exercising the authority granted in Section 6 of this Act within whose jurisdiction the violation occurs.

(b) Any person who violates any provision of this Act or of any rule, regulation, permit, license, or other order of the department or the department of water resources, or a county or a political subdivision exercising the authority granted in Section 6 of this Act within whose jurisdiction the violation occurs, is subject to a civil penalty of not less than \$50.00 nor more than \$1,000.00 for each act of violation and for each day of violation, as the court may deem proper, to be recovered in the manner provided in this Section 8.

(c) Whenever it appears that a person has violated, or is violating or threatening to violate, any provision of this Act, or of any rule, regulation, permit, or other order of the department or the department of water resources, then the department or the department of water resources may cause a civil suit to be instituted in a district court for injunctive relief to restrain the person from continuing the violation or threat of violation, or for the assessment and recovery of a civil penalty of not less than \$50.00 nor more than \$1,000.00 for each act of violation and for each day of violation, as the court may deem proper, or for both injunctive relief and civil penalty. Upon application for injunctive relief and a finding that a person is violating or threatening to violate any provision of this Act or any rule, regulation, permit, or other order of the department or the department of water resources, the district court shall grant appropriate injunctive relief. At the request of the department or the executive director of the department of water resources when authorized by the Texas Water Development Board, the attorney general shall institute and conduct a suit in the name of the State of Texas for injunctive relief or to recover the civil penalty, or for both injunctive relief and penalty, as authorized in this subsection.

(d) Whenever it appears that a violation or threat of violation of any provision of this Act, or of any rule, regulation, permit, license, or other order of the department, the department of water resources, a county, or a political subdivision exercising the authority granted in Section 6 of this Act, has occurred or is occurring within the jurisdiction of that county or political subdivision, the county or political subdivision, in the same manner as the department of water resources and the department, may cause a civil suit to be instituted in a district court through its own attorney for the injunctive relief or civil penalties, or both, as authorized in Subsection (c) of this section, against the person who committed, is committing, or is threatening to commit, the violation.

(e) Whenever it appears that a violation or threat of violation of any provision of this Act, or of any rule, regulation, permit, license, or other order of the department, the department of water resources, a county, or political subdivision exercising the authority granted in Section 6 of this Act, has occurred or is occurring within the area of the extraterritorial jurisdiction of an incorporated city or town, or is causing or will cause injury to or an adverse effect on the health, welfare or physical property of the city or town or its inhabitants, then the city or town, in the same manner as the department of water resources and the department, may cause a civil suit to be instituted in a district court through its own attorney for the injunctive relief or civil penalties, or both, as authorized in Subsection (c) of this section, against the person who committed, is committing, or is threatening to commit, the violation.

(f) A suit for injunctive relief or for recovery of a civil penalty, or for both injunctive relief and penalty, may be brought either in the county where the defendant resides or in the county where the violation or threat of violation occurs. In any suit brought to enjoin a violation or threat of violation of this Act or of any rule, regulation, permit, license or other order of the department of water resources, the department, a county, or a political subdivision exercising the authority granted in Section 6 of this Act, the court may grant the governmental entity bringing the suit, without bond or other undertaking, any prohibitory or mandatory injunction the facts may warrant, including temporary restraining orders after notice and hearing, temporary injunctions, and permanent injunctions.

(g) In a suit brought by a local government under Subsection (d) or (e) of this section, the department of water resources and the department are necessary and indispensable parties.

(h) Any party to a suit may appeal from a final judgment as in other civil cases.

(i) All civil penalties recovered in suits instituted under this Act by the State of Texas through the department of water resources or the department shall be paid to the General Revenue Fund of the State of Texas. All civil penalties recovered in suits first instituted by a local government or governments under this Act shall be equally divided between the State of Texas on the one hand and the local government or governments on the other, with 50 per cent of the recovery to be paid to the General Revenue Fund of the State of Texas and the other 50 per cent equally to the local government or governments first instituting the suit.

Appeals

Sec. 9. A person affected by any ruling, order, decision, or other act of the department or the department of water resources may appeal by filing

a petition in a district court of Travis County. A person affected by any ruling, order, decision, or other act of a county, or of a political subdivision exercising the authority granted in Section 6 of this Act, may appeal by filing a petition in a district court having jurisdiction in the county or political subdivision. The petition must be filed within 30 days after the date of the action, ruling, order, or decision of the governmental entity complained of. Service of citation must be accomplished within 30 days after the date the petition is filed. The plaintiff shall pursue his action with reasonable diligence. If the plaintiff does not prosecute his action within one year after the action is filed, the court shall presume that the action has been abandoned. The court shall dismiss the suit on a motion for dismissal made by the governmental entity whose action is appealed, unless the plaintiff, after receiving due notice, can show good and sufficient cause for the delay. In an appeal from an action by the department, the department of water resources, a county, or a political subdivision exercising the authority granted in Section 6 of this Act, the issue is whether the action is invalid, arbitrary or unreasonable. [Amended by Acts 1977, 65th Leg., p. 825, ch. 308, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2337, ch. 870, §§ 2 to 7, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 536, ch. 251, §§ 1, 2, eff. Aug. 27, 1979.]

Art. 4477-10. Treating and Conveying Waste in Cities of 1,200,000 or More

Application

Sec. 1. This Act shall be applicable to all incorporated cities, including home-rule cities, having a population of 1,200,000 or more according to the last preceding federal census (hereinafter called "eligible city").

Acquisition of Property; Construction of Improvements; "Waste" Defined

Sec. 2. An eligible city is authorized to acquire, by purchase, lease or otherwise, any or all property (real, personal or mixed) and to construct or otherwise acquire, improve and equip any property for the purposes of treating and conveying waste, including, but not limited to waste treatment facilities including plants, disposal fields, lagoons and areas devoted to sanitary landfills for the purposes of treating, neutralizing, stabilizing or disposal of waste, and sewer systems including pipelines, conduits, canals, pumping stations, force mains, and all other constructions, devices, and appurtenant appliances used to transport waste (such waste treatment facilities and sewer systems are hereinafter called "project" or "projects"). An eligible city is also authorized to enter into leases and other contracts, including installment sale agreements, with persons, firms or corporations to use or acquire a project or projects of such city and to enter into agreements

under which the project or projects may be operated on behalf of such city; such leases, contracts and agreements to contain such terms and conditions as the eligible city deems appropriate. Each and all of the foregoing purposes are hereby found and declared to be public purposes and proper municipal functions. The term "waste" as used in this section has the meaning defined in the Texas Water Quality Act, codified as Chapter 21 of the Texas Water Code, as heretofore and hereafter amended.

Issuance of Bonds

Sec. 3. For any purpose or purposes authorized under Section 2 of this Act, the governing body of an eligible city may issue its revenue bonds from time to time in one or more series to be payable from and secured by liens on all or part of the revenues derived from any project or projects.

Ordinances Authorizing Bonds; Maturity; Registration as "Security"; Disposition of Proceeds from Sale; Property Tax

Sec. 4. (a) Said bonds may be issued when authorized by ordinance duly adopted by an eligible city's governing body and may mature serially or otherwise within not to exceed 40 years from their date or dates, and provision may be made for the subsequent issuance of additional parity bonds, or subordinate lien bonds, under any terms or conditions that may be set forth in the ordinance authorizing the issuance of such bonds.

(b) Said bonds, and any interest coupons appertaining thereto, shall be deemed and construed to be a "security" within the meaning of Chapter 8, Investment Securities, Uniform Commercial Code (Chapter 785, Acts of the 60th Legislature, Regular Session, 1967).¹ The bonds may be issued registrable as to principal alone or as to principal and interest, and shall be executed, and may be made redeemable prior to maturity, and may be issued in such form, denominations, and manner, and under such terms, conditions and details, and may be sold in such manner, at such price, and under such terms, and such bonds shall bear interest at such rates, all as shall be determined and provided in the ordinance authorizing the issuance of the bonds.

(c) If so provided in said ordinance, the proceeds from the sale of the bonds may be used for paying interest on the bonds during and after the period of the acquisition, construction or improvement of any project or projects, for paying expenses of operation and maintenance of said project or projects, for creating a reserve fund for the payment of the principal of and interest on the bonds, and for establishing any other funds. The proceeds of sale of the bonds may be placed on time deposit or invested, until needed, all to the extent, and in the manner provided, in the bond ordinance.

(d) An eligible city is authorized to levy and pledge to the payment of the operation and mainte-

nance of any project or projects, either as a supplement to the pledge of revenues for such purpose or in lieu thereof, a continuing annual ad valorem tax at a rate or rates on each \$100 valuation of taxable property within said city sufficient for such purposes, all as may be provided in said ordinance authorizing the issuance of such bonds; provided, that such taxes shall be within any constitutional or charter limit for eligible cities; and provided further, that no part of any moneys raised by such taxes shall ever be used for the payment of the interest on or principal of any bonds issued hereunder. The proceeds of any such taxes thus pledged shall be utilized annually to the extent required by, or provided in, the ordinance for operation and maintenance of such projects, and such city in its discretion may covenant in such ordinance that certain costs of operating and maintaining such projects, as may be enumerated therein, or all of such costs, will be paid by the eligible city from the proceeds of such tax.

(e) An eligible city shall not acquire or construct any such project or projects with the proceeds of bonds, notes, or other evidences of indebtedness the interest on which is exempt from federal income taxation by virtue of Section 103(c)(4) of the Internal Revenue Code of 1954, as heretofore or hereafter amended,² unless (1) such project is operated by an eligible city or a political subdivision of the State of Texas on behalf of such eligible city or, (2) such project provides pretreatment for waste which is then discharged into a project operated by an eligible city or a political subdivision on behalf of such city.

¹ Business and Commerce Code, § 8.101 et seq.

² 26 U.S.C.A. § 103(c)(4).

Fees, Purchase Prices, Rentals, Rates and Charges

Sec. 5. An eligible city is authorized to fix and collect fees, purchase prices, rentals, rates and charges for the sale, occupancy, use or availability of all or any of the projects in such amounts and in such manner as may be determined by the governing body of the eligible city.

Pledges for Payment of Bonds

Sec. 6. (a) An eligible city may pledge all or any part of the revenues, income or receipts from such fees, purchase prices, rentals, rates and charges to the payment of the bonds, including the payment of principal, interest and any other amounts required or permitted in connection with the bonds. The pledged fees, purchase prices, rentals, rates and charges shall be fixed and collected in amounts that will be at least sufficient, together with any other pledged resources, to provide for all payments of principal, interest and any other amounts required in connection with the bonds, and, to the extent required by the ordinance authorizing the issuance of the bonds, to provide for the payment of expenses in

connection with the bonds, and for the payment of operation, maintenance and other expenses in connection with the projects.

(b) The bonds may be additionally secured by mortgages or deeds of trust on any real property relating to the projects owned or to be acquired by the eligible city and by chattel mortgages, liens or security interests on any personal property appurtenant to that real property. The governing body of the eligible city may authorize the execution of trust indentures, mortgages, deeds of trust or other forms of encumbrances to evidence the indebtedness.

(c) An eligible city may also pledge to the payment of the bonds all or any part of any grant, donation, revenues or income received or to be received from the United States government or any other public or private source, whether pursuant to an agreement or otherwise.

Refunding Bonds

Sec. 7. (a) Any bonds issued pursuant to this Act may be refunded or otherwise refinanced by the issuance of refunding bonds for that purpose under any terms or conditions as are determined by ordinance of the governing body of the eligible city. All appropriate provisions of this Act are applicable to refunding bonds, and the refunding bonds shall be issued in the manner provided in this Act for other bonds. The refunding bonds may be sold and delivered in amounts necessary to pay the principal, interest and redemption premium, if any, of bonds to be refunded, at maturity or on any redemption date.

(b) The refunding bonds may be issued to be exchanged for the bonds being refunded by them. In that case, the comptroller of public accounts shall register the refunding bonds and deliver them to the holder or holders of the bonds being refunded in accordance with the provisions of the ordinance authorizing the refunding bonds. The exchange may be made in one delivery or in several installment deliveries.

(c) Bonds issued at any time by a city under this Act also may be refunded in the manner provided by any other applicable law.

Examination of Bonds by Attorney General; Approval and Registration

Sec. 8. All bonds issued under this Act and the appropriate proceedings authorizing their issuance shall be submitted to the attorney general for examination. If the bonds recite that they are secured by a pledge of revenues or rentals from a contract or lease, a copy of the contract or lease and the proceedings relating to it shall also be submitted to the attorney general. If he finds that the bonds have been authorized and any contract or lease has been made in accordance with law, he shall approve the bonds and the contract or lease, and thereupon the

bonds shall be registered by the comptroller of public accounts. After approval and registration the bonds and any contract or lease relating to them are incontestable for any reason, and are valid and binding obligations for all purposes in accordance with their terms.

Bonds as Legal and Authorized Investments and Security

Sec. 9. All bonds issued under this Act are legal and authorized investments for all banks, trust companies, building and loan associations, savings and loan associations, insurance companies of all kinds and types, fiduciaries, trustees, and guardians, and for all interest and sinking funds and other public funds of the state and all agencies, subdivisions, and instrumentalities of the state, including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic. The bonds are also eligible and lawful security for all deposits of public funds of the state and all agencies, subdivisions, and instrumentalities of it, including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic, to the extent of the market value of the bonds, when accompanied by any unmatured interest coupons appurtenant thereto.

Cumulative Effect; Conflicting Laws

Sec. 10. This Act is cumulative of all other law on the subject, but this Act shall be wholly sufficient authority within itself for the issuance of the bonds and the performance of the other acts and procedures authorized by it without reference to any other law or any restrictions or limitations contained therein, except as herein specifically provided. When any bonds are issued under this Act, then to the extent of any conflict or inconsistency between any provisions of this Act and any provision of any law or home-rule-charter provision, the provisions of this Act shall prevail and control. An eligible city shall have the right to use the provisions of any other laws, not in conflict with the provisions of this Act, to the extent convenient or necessary to carry out any power or authority, express or implied, granted by this Act.

Severability

Sec. 11. In case any one or more of the sections, provisions, clauses, or words of this Act, or the application thereof to any situation or circumstance, shall for any reason be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect any other sections, provisions, clauses, or words of this Act, or the application thereof to any other situation or circumstance, and it is intended that this Act shall be severable and shall be construed and applied as if any such invalid or unconstitutional section, provision, clause, or word had not been included herein.

[Acts 1975, 64th Leg., p. 257, ch. 106, §§ 1 to 11, eff. Sept. 1, 1975.]

CHAPTER FOUR B. TUBERCULOSIS

Art. 4477-11. Texas Tuberculosis Code

[See Compact Edition, Volume 4 for text of 1 and 2]

Definitions

Sec. 3. As used in this Code, unless the context otherwise requires:

- (a) "Board" means the Texas Board of Health;
- (b) "Person" includes firm, partnership, joint stock company, joint venture, association, and corporation;
- (c) "Political subdivision" includes a county, city, town, village, or hospital district in this State but does not include the Board or any other department, board, or agency of the State having state-wide authority and responsibility;
- (d) "Physician" means a person licensed by the Texas State Board of Medical Examiners to practice medicine in the State of Texas;
- (e) "Head of hospital" means the individual in charge of a hospital;
- (f) "State Chest Hospital" means a chest hospital operated by the Board and includes San Antonio State Chest Hospital, San Antonio, Texas, and Harlingen State Chest Hospital, Harlingen, Texas;
- (g) "Tuberculosis patient" means any person, adult or child, who has any form of tuberculosis disease in any part of the body;
- (h) "Person legally responsible" means parents, guardians, spouses, or any person whom the laws of this State hold responsible for the debts incurred as a result of hospitalization and/or treatment;
- (i) "Local health authority" means the city or county health officer, a director of a local health department or local board of health, provided that such health officer is a licensed and practicing physician, within their respective jurisdictions;
- (j) "Resident of this State" means a person who is physically present and living voluntarily in the State of Texas with the intention of making a home within the State and whose stay is not for temporary purposes. Such intent may be demonstrated by (but not limited to) the following: the presence of personal effects at a specific abode within this State; employment within this State; possession of such documentation as a Texas driver's license, motor vehicle registration or voter registration forms;
- (k) "Department" means the Texas Department of Health.

Control and Sanitary Management of Tuberculosis

Sec. 4. Tuberculosis in a contagious, infectious, or communicable state is hereby declared to be dangerous to public health.

(a) Any physician, or other person, who makes a diagnosis in, or treats a case of tuberculosis, and every head or manager of a hospital, dispensary, or charitable, or penal institution in which there is a case of tuberculosis, shall report such case as soon as possible, in writing, or by an acknowledged telephone communication to the local health authority, stating the name, address, age, sex, color, and occupation of the diseased person and the date of the onset of the disease, and the probable source of infection.

(b) All local health authorities shall keep a careful and accurate record of all cases of tuberculosis as reported to them with the date, name, age, sex, race, location, and such other necessary data as may be prescribed by the Department. Such health authorities shall make a report of all tuberculosis cases of which they may be cognizant to the Department within forty-eight (48) hours of receiving a report upon blank forms provided by the Department. These reports may be used by the Department for any and all purposes consistent with the care and treatment of individuals afflicted with tuberculosis, for research purposes, for statistical purposes, for investigative purposes, with the ultimate goal being the eradication of tuberculosis in Texas.

(c) It shall be the duty of every physician and of every other person who examines or treats a person having tuberculosis to instruct him in measures for preventing the spread of such disease and of the necessity for treatment until cured.

Notice of Evidence of Tuberculosis

Sec. 4A. (a) The Bureau of Tuberculosis Services must be notified when a laboratory examination of a specimen derived from a human indicates microscopical, cultural, or other evidence of the presence or likely presence of *Mycobacterium tuberculosis*.

(b) The person in charge of the laboratory in which the evidence of tuberculosis disease is discovered shall notify the local health authority, or if there is no local health authority, the Bureau of Tuberculosis Services in the Department.

(c) The notification must contain:

(1) the name and age of the person from whom the specimen was obtained;

(2) the name and address of the physician requesting the tests; and

(3) the tests performed, the date of the tests, and the results.

(d) Cumulative reports must be reported weekly.

(e) All laboratory notifications required by this section are confidential and are not open for inspection by anyone other than authorized public health personnel.

(f) No person from the Bureau of Tuberculosis Services or the local health authority may communicate with a suspected tuberculosis patient or a person who may be exposed to tuberculosis by a suspected patient until a diagnosis is reported to the Department by the attending physician.

Measures for Protection of Persons not Having Tuberculosis

Sec. 5. Upon receipt of a report of a case of tuberculosis, the local health authority shall institute measures for protection of other persons from infection by such diseased person.

(a) All duly authorized health authorities of this State are authorized to notify any person who is known to be infected with tuberculosis, to place himself under the medical care of a physician licensed by the Texas State Board of Medical Examiners, hospital, or clinic, for treatment or examination until such physician, hospital, or clinic shall furnish such health authority with a certificate that such person examined or treated is free from tuberculosis in an infectious or contagious state. The certificate shall state that the person examined has been given an actual and thorough examination. The test or tests for tuberculosis shall be that type of test or tests as approved by the Department. Such certificates shall also contain the report of the test.

(b) Physicians, local health authorities, and all other persons are prohibited from issuing certificates of freedom from tuberculosis unless the examination includes clinical and appropriate radiographic or laboratory evidence that the person so examined is free from tuberculosis in an infectious or contagious state. Before a certificate of freedom from tuberculosis can be issued in the case of a person who has previously had tuberculosis, it will be necessary that the physician or person on giving the certificate shall submit to the local health authority a report of the person summarizing the clinical and appropriate radiologic or laboratory evidence that the person no longer has tuberculosis in an infectious or contagious state.

(c) Any person who violates the provisions of Section 4, or who fails to follow the directions of the local health authority, or who fails to follow the directions of his attending physician pursuant to Section 4, or who in the opinion of the local health authority cannot be treated with reasonable safety to the public, at home, may be quarantined, as that term is hereinafter defined, and the local health authority may direct the removal of the person to a suitable place for examination, and if such person is found to have tuberculosis in an infectious and contagious state, then such person may be quarantined, as that term is hereinafter defined, until such person is no longer in an infectious and contagious state.

Quarantine, as used in this Section, means the limitation of movement and separation, during that period of time while infectious and contagious, from other persons not infected, in such places and under such conditions as will prevent the conveyance of such infectious or contagious condition to others not infected.

A person found to have tuberculosis in an infectious and contagious state and quarantined under the provisions of this Section may be placed in any place suitable for the detention and segregation required under the provisions of this Section. If suitable facilities are not available within the jurisdiction of the local health authority, then in such event, the person so quarantined may be transported to a State chest hospital designated by the Board. The Board is hereby empowered and directed to provide suitable facilities for detention of such individuals.

The Commissioners Courts of the various counties and the governing body of all incorporated towns and cities are hereby empowered to provide suitable places for the detention of persons who may be subject to quarantine and who should be segregated for the execution of the provisions of this Section; and such commissioners courts and governing body of incorporated cities and towns are hereby authorized to incur on behalf of their said counties, cities, or towns, the expenses necessary to the enforcement of this Section.

The Commissioners Courts of the various counties and the governing body of all incorporated towns and cities are hereby empowered and directed to provide transportation to the State chest hospital so designated by the Board for any person quarantined under the provisions of this Section when suitable facilities are not available within the jurisdiction of the local health authority.

The local health authority shall inform all persons who are to be released from quarantine for tuberculosis of the status of their disease and what further treatment is required.

(d) It shall be the duty of all persons with tuberculosis, or who, from exposure to tuberculosis, may be liable to endanger others who may come in contact with them, to strictly observe such instructions as may be given them by any local health authority of the State in order to prevent the spread of tuberculosis.

(e) If an attending physician or other person knows or has good reason to suspect that a person having tuberculosis is so conducting himself or herself so as to expose other persons to infection or is about so to conduct himself or herself, he shall notify the local health authority of the name and address of the diseased person and the essential facts in the case, and the local health authority shall investigate the facts of the case and shall

adopt or employ the necessary measures as set out herein.

Violations; Penalties

Sec. 6. (a) A person commits an offense if he violates the provisions of Section 4, 4A, or 5 of this Act.

(b) An offense under this section is a Class B misdemeanor.

Local Regulations

Sec. 7. These regulations shall not be construed to prevent any city, county, or town from establishing such types of disinfection, isolation, control, and management of tuberculosis cases which they deem necessary for the preservation of the health of the individuals and the public; provided that such rules and regulations are not inconsistent with the provisions of this Code and are subordinate to said Code, and the rules and regulations prescribed by the Department. The local health authority shall at once furnish the Department with a true copy of any such regulations adopted by said local authorities.

Provided, however, that no provision in this Act shall be construed in any manner such that it would deprive any person of his right to depend on prayer or spiritual means alone for healing, in the practice of the principles, tenets, or teachings of his religion; provided that in so doing the isolation and quarantine rules and regulations under this Act are complied with.

Admission

Sec. 8. Residents of Texas as defined in Section 1 herein, having tuberculosis, may be admitted to a State chest hospital. Non-resident indigents with tuberculosis who have been quarantined under the provisions of Section 5 herein may be admitted to a State chest hospital pending their return to the State or country of their residence.

Classification of Patients

Sec. 9. Patients admitted to State chest hospitals shall be two (2) classes:

- (1) Indigent public patients and
- (2) Non-indigent public patients.

(a) Indigent public patients are those who possess no property of any kind nor have anyone legally responsible for their support, and who are unable to reimburse the State. This class shall be supported at the expense of the State.

(b) Non-indigent public patients are those who possess some property out of which the State may be reimbursed, or who have someone legally responsible for their support. This class shall be kept and maintained at the expense of

the State as in (a) above, but in such case the State shall have the right to be reimbursed for the support of such patients, and the claim of the State shall constitute a valid lien against any property of any such patient, or in case he has a guardian, against any property of his which is in the possession of said guardian, or against the person or persons who may be legally responsible for his support and financially able to contribute as herein provided. Such claim may be collected by suit or other proceedings in the name of the State of Texas by the County or District Attorney of the county from which said patient is sent or the Attorney General against such patient or his guardian or the person or persons legally responsible for his support; and the suit shall be brought in the county from which such patient was sent. Such suit shall be instituted upon the written request of the head of the State chest hospital accompanied by a certificate as to the amount due the State. In all suits or proceedings, the certificate of the head of the hospital shall be sufficient evidence of the amount due the State for the support of such patient. It shall be the duty of said Attorney upon such request being made to institute and conduct such proceedings and for which he shall be entitled to a commission of ten per cent (10%) of the amount collected. All moneys so collected, less such commission, shall be paid by said County Attorney to the head of said hospital, who shall receive and receipt for the same.

Sec. 10. Repealed by Acts 1979, 66th Leg., p. 1529, ch. 658, § 9, eff. Aug. 27, 1979.

Certificate of Examination

Sec. 11. The application for admission to a State chest hospital shall be accompanied by a certificate of a physician licensed to practice medicine in the State of Texas by the Texas State Board of Medical Examiners, or in the case of indigent patients by a certificate from the local health authority if such individual or individuals are licensed to practice medicine in the State of Texas by the Texas State Board of Medical Examiners, stating that he has thoroughly examined the person for whose admission application has been made, and that such person is suffering from tuberculosis. The certificate shall be in the form and contain such information as prescribed by the Department.

In the event that the person applying for admission to a State chest hospital is afflicted with a contagious, infectious, or transmissible disease other than tuberculosis, then in such event the head of the State chest hospital to whom application has been made may use the presence of such contagious, infectious, or transmissible disease other than tubercu-

losis as a valid reason for delaying admission until such contagious disease is rendered non-contagious.

Duties of Board

Sec. 12. (a) The State chest hospital shall review applications for admission and admit or deny admission to applicants.

(b) The Board shall prepare and adopt by-laws, rules, and regulations for the government, control, and management of all State chest hospitals, prescribing the duties of all officers and employees, and for enforcing the necessary discipline and restraint of all patients.

(c) The Board shall appoint for each of said chest hospitals a physician licensed to practice medicine in the State of Texas by the Texas State Board of Medical Examiners. Each physician so appointed shall be the head of the hospital under his control and shall have power to remove with just cause any person employed in said hospital over which he has such authority. Any such physician so appointed shall be removable at the discretion of the Board. The provisions applying to the powers and duties of the Board and of the head of the hospital as set forth in this Section are in addition to any others provided for by law. The Board shall supply each hospital with the necessary personnel for the operation and maintenance of such hospital.

(d) In addition to the specific authority granted by other provisions of law, the Board is authorized to prescribe the form of application, certificates, records, and reports provided for under this Code and the information required to be contained therein; to require reports from the head of any State chest hospital relating to the admission, examination, diagnosis, release, or discharge of any patient; to visit each hospital regularly to review the admitting procedures and care and treatment of all new patients admitted between visits; to investigate by personal visit complaints made by any patient or by any person on behalf of a patient; and to adopt such rules and regulations not inconsistent with the provisions of this Code as may be necessary for proper and efficient hospitalization of tuberculosis patients.

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

Unless otherwise expressly provided in this Code, a power granted to, or a duty imposed upon the head of a hospital may be exercised or performed by an authorized employee, but the delegation of a duty does not relieve the head of a hospital from his responsibility.

(f) The Board may return a non-resident patient admitted to a State chest hospital in this State to the proper agency of the State of his residence.

The Board may permit the return of any resident of this State who is admitted to a tuberculosis hospital in another state.

All expenses incurred in returning admitted patients to other states shall be paid by this State. The expense of returning residents of this State shall be borne by the states making the return.

(g) The Board is authorized to enter into reciprocal agreements with the proper agencies of other states to facilitate the return to the states of their residence of patients admitted to State chest hospitals in this or other states.

Sec. 13. Repealed by Acts 1979, 66th Leg., p. 1530, ch. 658, § 12, eff. Aug. 27, 1979.

No Preference in Admission

Sec. 14. (a) No patient in any state chest hospital shall be discriminated against but all patients shall be treated alike, given equal facilities, equal attention and equal treatment; it being recognized, however, that the condition of the individual patient may necessitate a greater or lesser degree of care and treatment.

(b) No patient in any such hospital shall be permitted to give any officer, servant, agent, or employee in any such hospital any tip, pay, or reward of any kind, and if such patient does so, it shall be a cause for his expulsion from said hospital, and the discharge of any servant accepting the same; and the Board shall see that this provision is rigidly enforced.

Private Additions to State Chest Hospitals

Sec. 15. (a) The Board is hereby authorized, on request of any charitable fraternity or society in this State, to permit the erection, furnishing, and maintenance by such fraternities or societies upon the grounds of any State chest hospital or dormitories and such other accommodations as may be desired by any such fraternity or society for the proper treatment and care of any member or members of such fraternity or society or for any members of their families, or for the widows and children of deceased members of such fraternity or society, who may have tuberculosis, and which accommodations so erected shall be reserved for the preferential use of such members and members of their families and of the widows and children of deceased members of the fraternity or society so erecting, furnishing, and maintaining such accommodations hereunder. The State shall be at no expense whatever in the erection, furnishing, or maintenance of such accommodations, and the fraternity or society entering a patient or patients shall provide such pro rata part for the

maintenance of such patient or patients as may be found just and equitable pending the next succeeding appropriation to be made by the Legislature for the maintenance of said State chest hospitals. "Children" under this Article shall mean any minor child of a deceased member of such fraternity or society. Such accommodations or any part of them not being used or required by those entitled to such preference, may be used and occupied by other patients in said State chest hospitals at the discretion of the head of the hospital and without any charge therefor against the State.

(b) Plan of buildings.

All matters pertaining to the location, construction, style or character of buildings, term of their existence and all other questions arising in connection with the granting of the permission to erect and maintain the accommodations contemplated in the preceding Section, shall be arranged and agreed upon in writing by and between the Board on the part of the State and the properly authorized officers, board, or committee of each respective charitable fraternity or society, and such written agreement in each case shall be recorded at length upon the minutes of the Board.

(c) Rules of admission.

The members of such charitable fraternities or societies, members of their families, and the widows and children of deceased members thereof, shall be classified according to the facts the same as other patients of said State chest hospitals are classified, and shall be admitted, maintained, cared for and treated in said hospitals upon the same terms and conditions and under the same regulations as all other patients therein, save and except that they shall at all times have the preference and right to occupy the accommodations erected and maintained hereunder by their several and respective fraternities or societies when not already filled with others having the same preferential right.

Sec. 16. Repealed by Acts 1979, 66th Leg., p. 1532, ch. 658, § 15, eff. Aug. 27, 1979.

Conveyances by Counties in Establishing Chest Hospitals

Sec. 17. All counties in this State are hereby authorized to donate and convey land to the State of Texas in consideration of the establishment of a State chest hospital by the Board. The desirability, manner, and form of the donation and conveyance shall be within the discretion of the Commissioners Court of the particular county. No provision of this Section shall authorize the Commissioners Court of any such county to convey any land given or donated or granted to the county for the purpose of education in any manner other than that which is or shall be directed by law.

Appropriations

Sec. 18. All appropriations heretofore made and now effective or appropriations hereafter made by the Legislature for the use and benefit of San Antonio State Chest Hospital, San Antonio, Texas, and Harlingen State Chest Hospital, Harlingen, Texas; or in names previously used by these hospitals, shall remain available for their use and benefit.

Contracts

Sec. 19. All contracts heretofore entered into in behalf of San Antonio State Chest Hospital, San Antonio, Texas, and Harlingen State Chest Hospital, Harlingen, Texas; or in names previously used by these hospitals, are hereby ratified, confirmed, and validated for and in their behalf.

[Amended by Acts 1979, 66th Leg., p. 1524, ch. 658, §§ 1 to 18, eff. Aug. 27, 1979.]

Repealer

Acts 1977, 65th Leg., p. 752, ch. 282, classified as Art. 3201a-4, transfers control of the East Texas Chest Hospital from the Department of Health to the University of Texas System. Section 7 of the Act provides, in part, “ * * insofar as applicable to the East Texas Chest Hospital, Subsections (b) through (e) of Section 12 and all of Section 15, Texas Tuberculosis Code (Article 4477-11, Vernon’s Texas Civil Statutes), are repealed.”*

Art. 4477-12. Prevention, Eradication and Control of Tuberculosis

[See Compact Edition, Volume 4 for text of 1 to 3]

Examination of Pupils for Tuberculosis Infection

Sec. 4. The Texas Board of Health Resources may provide for the examination for tuberculosis infection of pupils in the first and seventh grades of the public, parochial and private schools of this state, and of pupils transferred to the public, parochial and private schools of this state from another state or country.

Certificate of Examination of School Personnel

Sec. 5. (a) The governing body of each public school within the State shall require that each individual who is employed by or who acts as a volunteer for the governing body, and who is included within certain categories designated by the Texas Board of Health, shall present to the governing body a certificate, signed by a physician licensed to practice medicine in Texas, which states that the individual has been examined for tuberculosis and discloses the results of the examination. The governing body of each public school shall verify that each individual within its jurisdiction who is included within this Act, has the required certificate and shall not permit

any individual to commence his or her duties in the absence of the certificate. The Texas Board of Health may require reexamination of any individual employee or volunteer as the Board determines is necessary and appropriate to protect the public health.

(b) The Texas Board of Health shall adopt rules describing the following:

- (1) the designation of the categories of employees or volunteers who are required to be examined;
- (2) the form and content of the required examination certificate;
- (3) the closing dates for filing such individual certificates;
- (4) the transfer of such individual certificates between public school districts;
- (5) the frequency of such required examinations;
- (6) the criteria for requiring reexaminations; and
- (7) the reporting of the results of such examinations to the Texas Department of Health.

(c) This section and the rules adopted by the Texas Board of Health by the authority of this Act, shall be the minimum acceptable standards for the examination of the named categories of individuals for tuberculosis. A school district may adopt and enforce more stringent standards, except that the requirements for a tuberculosis examination may not include exposure to X-rays unless the person being examined consents or the examining physician determines that the X-ray examination is medically necessary and states that determination on the required certificate.

[See Compact Edition, Volume 4 for text of 6 and 7]

Sec. 8. Repealed by Acts 1977, 65th Leg., p. 1180, ch. 452, § 3, eff. Aug. 29, 1977.

[See Compact Edition, Volume 4 for text of 9 and 10]

[Amended by Acts 1977, 65th Leg., p. 1179, ch. 452, §§ 1 to 3, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 345, ch. 157, § 1, eff. May 11, 1979.]

Art. 4477-13. Repealed by Acts 1977, 65th Leg., p. 754, ch. 282, § 8, eff. Sept. 1, 1977

Prior to repeal, this article was amended by Acts 1975, 64th Leg., p. 2193, ch. 700, § 1.

See, now, art. 3201a-4.

CHAPTER FOUR C. KIDNEY DISEASE

Art. 4477-20. Kidney Health Care Act

[See Compact Edition, Volume 4 for text of 1 to 8]

Reimbursement of Health Department for Cost of Treatment

Sec. 9. (a) Subject to the limitations set forth in Subsections (b)(1) and (2) below, any person certified by the board as eligible for treatment under the provisions of this Act for whose treatment the board has paid or the person or persons liable for the debts of such patient shall reimburse the Texas State Department of Health for the cost of such treatment and the proceeds resulting from such reimbursement shall be reappropriated to the Division of Kidney Health Care of the Texas State Department of Health for carrying out the purposes of this Act.

(b) No person or persons liable for repayment under Subsection (a) of this section shall be liable for more than the sum of:

(1) any proceeds of insurance, group health plan, or prepaid medical care, provided that such proceeds are paid to the insured and are paid by the insurer by reason of liability for the payment of the cost of medical treatment, and

(2) five percent of the adjusted gross income, as defined in the United States Internal Revenue Code for purposes of federal income tax and as amended from time to time, of such person or persons, less a yearly sum of not more than \$500 and the yearly premiums such person or persons have paid on insurance which resulted in proceeds under Subsection (b)(1) hereof.

Nothing in this section shall be construed to affect any arrangement for payment of costs directly to a medical provider by an insurance company, group health plan, or prepaid medical care plan.

Coordination of Benefits

Sec. 9.1. The board shall require the coordination of benefits provided under this Act with all other benefits to which any person certified as eligible under this Act may be entitled. To effect this coordination the board shall:

(1) Require full disclosure of all other benefits to which such person may be entitled.

(2) Require the full utilization of all other benefits to which such person may be entitled before benefits may be received under this Act.

(3) For the purposes of this Act, the term "other benefits" is defined as those benefits which are or upon proper claim could be provided such persons certified as eligible under this Act to cover the expense of medical care, treatment, services, pharmaceuticals, transportation, and supplies by but not limited to the following:

(a) Any policy of insurance, group health plan, or prepaid medical care plan which provides benefits for the care and treatment of kidney disease;

(b) Title XVIII of the Social Security Act, as amended (Medicare);¹

(c) Title XIX of the Social Security Act, as amended (Medicaid);²

(d) Veterans Administration;

(e) Civilian Health and Medical Program of the Armed Forces (Champus);

(f) Workmen's Compensation or any other compulsory employer's insurance program;

(g) Any other public program created by laws enacted by the Congress of the United States, or the Legislature of this State, or the laws, regulations, or established regulations of any county or municipality.

(4) Nothing in this section shall be construed to abridge the freedom of a person certified as eligible under this Act in exercising his or her choice of treatment modality, treatment facility, or treating physician; provided, however, that such modality, facility, or physician is accredited by the board as provided in Section 3 of this Act.

[See Compact Edition, Volume 4 for text of 10 to 12]

[Amended by Acts 1975, 64th Leg., p. 1884, ch. 597, § 1, eff. Sept. 1, 1975.]

¹ 42 U.S.C.A. § 1395 et seq.

² 42 U.S.C.A. § 1396 et seq.

Sections 2 and 3 of the 1975 amendatory act provided:

"Sec. 2. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provisions or applications, and to this end the provisions of this Act are declared to be severable.

"Sec. 3. All laws and parts of laws in conflict with or inconsistent with this Act are hereby repealed."

CHAPTER FOUR D. HEMOPHILIA

Article

4477-30. Hemophilia Assistance Program.

Art. 4477-30. Hemophilia Assistance Program

Definitions

Sec. 1. In this Act:

(1) "Hemophilia" means a human physical condition characterized by bleeding resulting from a genetically determined deficiency of a blood coagulation factor or hereditarily resulting in an abnormal or deficient plasma procoagulant.

(2) "Committee" means the hemophilia advisory committee.

(3) "Department" means the Texas Department of Health Resources.

(4) "Program" means the hemophilia assistance program.

(5) "Director" means the director of health resources.

(6) "Administrator" means a person employed or appointed by the director to administer the program.

Hemophilia Assistance Program

Sec. 2. (a) There is established in the department a hemophilia assistance program to assist persons who have hemophilia and who require continuing treatment with blood, blood derivatives, or manufactured pharmaceutical products but who are unable to pay the entire cost.

(b) The department shall, in the order of priority listed:

(1) set standards of eligibility for assistance under this Act;

(2) provide financial assistance for medically eligible persons, through approved providers, in obtaining blood, blood derivatives and concentrates, and other substances for use in medical or dental facilities or in the home.

Administrator

Sec. 3. (a) The administrator is responsible for carrying out the hemophilia assistance program.

(b) The administrator shall report to the director.

(c) The administrator may employ two persons in carrying out the program.

Funding Sources

Sec. 4. (a) The department may accept grants, gifts, and donations from individuals, private or public organizations, or federal or local funds for the support of the hemophilia assistance program.

(b) The department shall investigate any potential sources of funding from federal grants or programs.

Hemophilia Advisory Committee

Sec. 5. (a) There is established a hemophilia advisory committee which shall review the program and consult with the department in the administration of the program. The department shall make an annual report of the program to the committee.

(b) The committee consists of 12 members appointed by the director as follows:

(1) three members representing hospitals where hemophilia treatment occurs;

(2) two members representing voluntary agencies interested in hemophilia;

(3) three members who are medical specialists in hemophilia patient care;

(4) three members who are adult hemophiliacs or parents of hemophiliacs; and

(5) one member representing the general public.

(c) Except for those first appointed, members are appointed for terms of six years, expiring January 31 of odd-numbered years. If a vacancy occurs on the committee, the director shall appoint a member to serve the unexpired portion of the term.

(d) In making the initial appointments, the director shall appoint four members for terms expiring in 1983, four for terms expiring in 1981, and four for terms expiring in 1979.

(e) The committee shall meet annually, and the committee may meet at other times as necessary.

(f) The members of the committee shall serve without compensation but may be reimbursed for travel expenses incurred by committee activities. [Acts 1977, 65th Leg., p. 732, ch. 274, §§ 1 to 5, eff. Aug. 29, 1977.]

CHAPTER FOUR E. CANCER

Article

4477-40. Cancer Control Act.

Art. 4477-40. Cancer Control Act

Short Title

Sec. 1. This Act may be cited as the Texas Cancer Control Act.

Purpose

Sec. 2. It is the intent of the legislature to require the establishment and maintenance of a cancer registry for the State of Texas. This responsibility is delegated to the Texas Board of Health, along with the authority to exercise certain powers to implement this requirement. To insure an accurate and continuing source of data concerning cancer and certain specified precancerous and tumorous diseases, the legislature by this Act requires all general and special hospitals, clinical laboratories, and cancer treatment centers within the state to make available to the Texas Board of Health information contained in the medical records of patients who have cancer or specified precancerous or tumorous diseases. It is intended that the product of these efforts will be a central data bank of accurate, precise, and current information regarding the subject diseases which medical authorities agree would serve as an invaluable tool in their early recognition, prevention, cure, or control.

Definitions

Sec. 3. In this Act:

(1) "Board" means the Texas Board of Health.

(2) "Department" means the Texas Department of Health.

(3) "Cancer" includes a large group of diseases characterized by uncontrolled growth and spread

of abnormal cells; any condition of tumors having the properties of anaplasia, invasion, and metastasis; a cellular tumor the natural course of which is fatal; and malignant neoplasm.

(4) "Precancerous disease" means abnormality of development and organization of adult cells. It is a condition of early cancer, without the invasion of neighboring tissue.

(5) "Tumorous disease" means a new growth of tissue in which the multiplication of cells is uncontrolled and progressive, also called neoplasm. It is a swelling, enlargement, or abnormal mass, either benign or malignant, which performs no useful functions.

(6) "Hospital" means a general or special hospital licensed under the Texas Hospital Licensing Law, as amended (Article 4437f, Vernon's Texas Civil Statutes), or The University of Texas System Cancer Center.

(7) "Clinical laboratory" means an accredited facility where tests are performed identifying findings of anatomical changes, and where specimens are interpreted and pathological diagnoses are made.

(8) "Cancer treatment center" means a special health facility devoted to study, prevention, diagnosis, and management of neoplastic and allied diseases.

Cancer Registry

Sec. 4. The board shall establish and maintain a registry that includes a record of the cases of cancer and of precancerous disease and tumorous disease, as specified by the board, that occur within the state and such information concerning these cases as the board determines necessary and appropriate for the recognition, prevention, cure, or control of the subject diseases.

Duties of the Board

Sec. 5. In order to implement this Act, the board may:

- (1) adopt rules that the board considers necessary;
- (2) execute contracts that the board considers necessary;
- (3) receive the data contained in the medical records that are in the custody or under the control of clinical laboratories, hospitals, and cancer treatment centers, of persons having cancer, precancerous disease, and tumorous disease, for the purpose of recording and analyzing that data directly related to the subject diseases;
- (4) compile and publish statistical and other studies derived from the patient data authorized by this Act to be collected, to provide in an accessible form information useful to physicians, other medical personnel, and the general public;

(5) comply with requirements as necessary to obtain federal funds in the maximum amounts and most advantageous proportions possible; and

(6) receive and use gifts and donations made for the purpose of this Act.

Annual Report

Sec. 6. The department, in cooperation with The University of Texas System Cancer Center and other cancer research institutions, shall publish an annual report to the legislature of the information obtained under this Act.

Availability of Records

Sec. 7. (a) On the request of the board or its authorized representative, each hospital, clinical laboratory, and cancer treatment center within the state shall:

(1) produce and make available to the board or its authorized representative, on a form prescribed by the department, the data that the board determines is necessary and appropriate from each medical record in its custody or under its control of a case of cancer or of those precancerous or tumorous diseases specified by the board; or

(2) make available each medical record to the board or its authorized representative on presentation of proper identification, during normal working hours, on the premises of the respective hospital, clinical laboratory, or cancer treatment center, for the purpose of recording specific data about a patient's cancer, precancerous disease, or tumorous disease, on a form prescribed by the department.

(b) The data required to be produced shall include, but is not limited to:

- (1) diagnosis;
- (2) stage of disease;
- (3) medical history;
- (4) laboratory data;
- (5) tissue diagnosis;
- (6) method of treatment; and
- (7) annual lifetime follow-up of each patient.

Confidentiality and Disclosure

Sec. 8. All data obtained directly from medical records of individual patients are for the confidential use of the department, the private and public entities, or the persons that the board determines are necessary to carry out the intent of this Act. The data are privileged and may not otherwise be divulged or made public so as to disclose the identity of an individual whose medical records have been used for acquiring data. Information that could possibly identify individuals whose medical records have been used for collecting data may not be included in materials available to public inspection under Chapter 424, Acts of the 63rd Legislature,

Regular Session, 1973, as amended (Article 6252-17a, Vernon's Texas Civil Statutes). Statistical information collected under this Act shall be open and accessible to the public.

Immunity from Liability

Sec. 9. No hospital, clinical laboratory, or cancer treatment center, no administrator, officer, or employee of a hospital, clinical laboratory, or cancer treatment center, and no physician subject to the provisions of this Act who acts in compliance with this Act shall be civilly or criminally liable for divulging the information required by this Act.

Freedom of Choice

Sec. 10. This Act does not compel an individual to submit to any medical examination or supervision or to examination or supervision by the board or its authorized representatives.

Effective Date

Sec. 11. This Act takes effect September 1, 1979. However, the provisions of this Act extend to records of all cases of cancer and the specified precancerous and tumorous diseases diagnosed on or after January 1, 1979, and to records of all ongoing cases of such diseases diagnosed before January 1, 1979. [Acts 1979, 66th Leg., p. 170, ch. 94, §§ 1 to 11, eff. Sept. 1, 1979.]

CHAPTER FIVE. COUNTY HOSPITAL

Article

- 4494n-3. Validating Creation and Organization of Hospital Districts with Population of Less Than 40,000.
- 4494r-2.1. Advisory Elections in Issuance of Revenue Bonds.
- 4494r-5. Payment of Current Operating Expenses of County-Wide Hospital District in Counties of 1,000,000 or More.

Art. 4478. Authority

The commissioners court of any county shall have power to establish a county hospital and any medical or other health facilities and to enlarge any existing hospitals or facilities for the care and treatment of persons suffering from any illness, disease or injury, subject to the provisions of this chapter. At intervals of not less than twelve months, ten per cent of the qualified property tax paying voters of a county may petition such court to provide for the establishing or enlarging of a county hospital, or any medical or other health facilities, in which event said court within the time designated in such petition shall submit to such voters at a special or regular election the proposition of issuing bonds in such aggregate amount as may be designated in said petition for the establishing or enlarging of such hospital or facilities. Whenever any such proposition shall receive a majority of the votes of the qualified property tax payers voting at such election, said commissioners court shall establish and maintain such hospital or facilities and shall have the following powers:

1. To purchase and lease real property therefor, or acquire such real property, and easements therein, by condemnation proceedings.

2. To purchase or erect all necessary buildings, make all necessary improvements and repairs and alter any existing buildings, for the use of said hospital or facilities. The plans for such erection, alteration, or repair shall first be approved by the State Health Officer, if his approval is requested by the said commissioners court.

3. To cause to be assessed, levied and collected, such taxes upon the real and personal property owned in the county as it shall deem necessary to provide the funds for the maintenance thereof, and for all other necessary expenditures therefor.

4. To issue county bonds to provide funds for the establishing, enlarging and equipping of said hospital or facilities and for all other necessary permanent improvements in connection therewith; to do all other things that may be required by law in order to render said bonds valid.

5. To appoint a board of managers for said hospital or facilities, or both.

6. To accept and hold in trust for the county, any grant or devise of land, or any gift or bequest of money or other personal property or any donation to be applied, principal or income or both, for the benefit of said hospital or facilities, and apply the same in accordance with the terms of the gift.

7. The Commissioners Court may lease all or part of any medical facility so constructed, purchased or acquired under this Act.

8. The Commissioners Court of any county may close by order on terms it considers reasonable any medical facility constructed, purchased, or acquired under this Act, and this order shall be final thirty days after promulgation unless at least ten per cent of the qualified electors in the county petition the Commissioners Court within the thirty days requesting that an election be held in the county to determine whether or not the medical facility should be closed. On proper petition, the Commissioners Court shall set a time for an election and shall submit to the qualified electors of the county ballots providing for voting for or against the proposition: "The closing of (Name of medical facility to be closed)."

[Amended by Acts 1977, 65th Leg., p. 2, ch. 2, § 1, eff. Feb. 23, 1977.]

Section 2 of the 1977 amendatory act (which added subd. 8 to this article), provided:

"Nothing in this Act shall exempt any county commissioners court from any provision of the Health Planning and Development Act of 1975 [Art. 4418h]."

Art. 4494i-1. Joint County-City Hospital Boards

Repeal

Section 15 of this article is repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective

tive January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Art. 4494j. Sale or Lease of County Hospital in Counties Having Assessed Valuation Under \$20,000,000

Text of article effective January 1, 1982

Any county in this State having an assessed valuation of property for ad valorem tax purposes of less than Twenty Million Dollars (\$20,000,000) and having a county hospital belonging to said county and operated by such county, may, and such county is hereby authorized to sell or lease such hospital, provided the Commissioners Court of such county shall find and determine by an order entered in the minutes of such Court that it is to the best interests of such county to sell or lease said county hospital. The proposed sale or lease shall not be considered by such Commissioners Court unless and until said proposed sale or lease shall be approved by a majority vote in an election to be held in such county for the purpose of determining the will of property taxpaying voters living in the county, in reference to such subject. Such election shall be ordered by the Commissioners Court of any such county upon petition of not less than ten per cent (10%) of such voters and shall be otherwise held under and governed by the election provisions of Article 4478, Revised Civil Statutes, 1925, of the State of Texas. [Amended by Acts 1979, 66th Leg., p. 2315, ch. 841, § 4(b), eff. Jan. 1, 1982.]

For text of article effective until January 1, 1982, see Compact Edition, Volume 4

Art. 4494n. County Hospital Districts; Counties of 190,000 or More and Galveston County

[See Compact Edition, Volume 4 for text of 1]

Taxes of District; Deposit of Taxes and Other Income
Text of section effective January 1, 1982

Sec. 2. The Commissioners Court of any county which has voted to create a Hospital District shall have the power and the authority, and it shall be its duty, to levy on all property subject to hospital district taxation for the benefit of the District, a tax of not to exceed Seventy-five Cents (75¢) on the One Hundred Dollars (\$100.00) valuation of all taxable property within the Hospital District, for the purpose of (1) paying the interest on and creating a sinking fund for bonds which may have been assumed or which may be issued by the Hospital District for hospital purposes, as herein provided; (2) providing for the operation and maintenance of the hospital or hospital system; and (3) when requested by the Board of Hospital Managers and approved by the Commissioners Court, for the purpose of making

further improvements and additions to the hospital system, and for the acquisition of necessary sites therefor, by purchase, lease or condemnation.

The tax so levied shall be collected on all property subject to Hospital District taxation by the Assessor and Collector of Taxes for the county. All income of the Hospital District shall be deposited in the district depository. Warrants against Hospital District funds shall not require the signature of the County Clerk.

The Commissioners Court shall have the authority to levy the tax aforesaid for the entire year in which the said Hospital District is established, for the purpose of securing funds to initiate the operation of the Hospital District, and to pay assumed bonds.

For text of section effective until January 1, 1982, see Compact Edition, Volume 4

[See Compact Edition, Volume 4 for text of 2a and 2b]

El Paso County Hospital District; Assessment of Taxes; Rate

Sec. 2c. The Commissioners Court of El Paso County on its own motion may order the Assessor and Collector of Taxes to assess the property in the El Paso County Hospital District at a greater or lesser percentage of its fair cash market value than that used in assessing the property for state and county purposes.

[See Compact Edition, Volume 4 for text of 3 and 4]

Board of Hospital Managers in Counties of 650,000 to 750,000

Sec. 5(a). Notwithstanding the provision of the preceding section, in counties containing a population of more than 650,000, but less than 750,000 according to the last preceding Federal Census, the Commissioners Court shall appoint a Board of Hospital Managers consisting of not less than five (5) nor more than fifteen (15) members who shall serve for a term of two years with overlapping terms if desired, and upon such conditions, and bearing such responsibilities and duties as otherwise set out within this section.

[See Compact Edition, Volume 4 for text of 5a to 15]

[Amended by Acts 1975, 64th Leg., p. 1854, ch. 579, § 1, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 671, ch. 298, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 2327, ch. 841, §§ 4(s), 6(a)(1), eff. Jan. 1, 1982.]

Repeal

Sections 2a and 2b of this article are repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Art. 4494n-3. Validating Creation and Organization of Hospital Districts with Population of Less Than 40,000

Sec. 1. All proceedings and actions had and taken in the creation of any hospital district created under the provisions of Article IX, Section 9 of the Constitution of Texas, with a population of less than 40,000 according to the last preceding federal census, the appointment or election of directors or the governing body of such districts, and all proceedings and actions had and taken by the board of directors or governing body of such districts in organizing, selecting officers, tax elections, voting, authorizing, selling, and issuing bonds of such districts and all proceedings and actions relating to any of the foregoing, are hereby in all things and all respects ratified, confirmed, approved, and validated, notwithstanding that any of the aforementioned proceedings and actions may not in all respects have been had in accordance with statutory provisions.

Sec. 2. The creation, organization, and the tax election of all of such hospital districts and all proceedings relating thereto are hereby in all things and all respects ratified, confirmed, approved, and validated, notwithstanding that same may not in all respects have been accomplished in accordance with statutory provisions.

Sec. 3. All bonds, including tax and revenue bonds, voted or authorized but undelivered bonds, as well as outstanding bonds authorized, approved, sold, or issued of any hospital district, and all elections at which bonds were voted for any purpose, are hereby in all things and all respects ratified, confirmed, approved, and validated, notwithstanding the fact that the governing body of such district may have failed to comply with all statutory requirements and notwithstanding that any election held by any such district may not in all respects have been ordered and held in accordance with statutory provisions. When the attorney general has approved such bonds and they have been registered by the Comptroller of Public Accounts of the State of Texas and sold and delivered, they shall be binding, legal, valid, and enforceable obligations of any such district, and said bonds shall be incontestable. Provided, however, that, with respect to bonds required by law to be authorized at an election held within any such district, this Act shall apply only to such bonds as were authorized at an election or elections wherein at least a majority of the votes cast by the qualified voters in the district, voting thereat, were in favor of the issuance of the bonds.

Sec. 4. This Act shall not be construed as validating any proceedings or bonds issued or to be issued, the validity of which is contested or under attack in any suit or litigation pending at the time this Act becomes effective, if such suit or litigation is ultimately determined against the validity thereof.

Sec. 5. If any word, phrase, sentence, or portion of this Act is for any reason held unconstitutional, the unconstitutionality thereof shall not affect the remaining words, phrases, sentences, or portions of the Act.

[Acts 1977, 65th Leg., p. 845, ch. 316, §§ 1 to 5, eff. May 30, 1977.]

Art. 4494o. Public Hospital Districts; Counties of 75,000 or Less

[See Compact Edition, Volume 4 for text of 1 to 11]

Additional Bond Issue; Election

Text of section effective January 1, 1982

Sec. 12. If the proceeds of the original bond issue shall be insufficient to complete the construction and/or equipment and/or maintenance and/or purchase of hospital buildings and grounds for such district, or if the Trustees determine to provide for additional construction and/or equipment and/or maintenance and/or purchase of hospital buildings and grounds, they shall certify to said court the necessity for an additional bond issue, stating the amount required, the purpose of same, the rate of interest of said bonds and the time for which they are to run. Said court shall thereupon order an election on the issuance of said bonds to be held within such district at the earliest possible legal time. The outstanding bonds and the additional bonds so ordered shall not exceed in amount one-fourth of the assessed value of the real property in such district, as shown by the latest annual assessment thereof made for county taxation.

For text of section effective until January 1, 1982, see Compact Edition, Volume 4

[See Compact Edition, Volume 4 for text of 13 to 23]

County Tax Assessor; Powers and Duties; Board of Equalization

Text of section effective January 1, 1982

Sec. 24. The county tax assessor-collector shall assess and collect taxes for the district.

For text of section effective until January 1, 1982, see Compact Edition, Volume 4

[See Compact Edition, Volume 4 for text of 25 to 28]

Elections as to Separate Officers for District; Notice

Text of section effective January 1, 1982

Sec. 29. After the establishment of a district, and upon the petition of not less than five per cent (5%) of the qualified taxpaying voters thereof, the court may order an election to determine whether or not such district shall have a separate tax assessor and collector. Notice of such election shall be given as in the original election, and if said proposition

carries by a two-thirds vote, the said Trustees shall appoint a suitable person as assessor and collector.

For text of section effective until January 1, 1982, see Compact Edition, Volume 4

[Amended by Acts 1979, 66th Leg., p. 2327, ch. 841, §§ 4(t), 6(a)(1), eff. Jan. 1, 1982.]

Repeal

Sections 25 to 28 of this article are repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Art. 4494p. Optional Hospital District Law of 1957

[See Compact Edition, Volume 4 for text of 1 to 3]

Taxes of District; Deposit of Taxes and Other Income
Sec. 4.

Text of subsections (a) and (b) effective January 1, 1982

(a) The Commissioners Court of any county which has voted to create a hospital district shall have the power and the authority, and it shall be its duty, to levy on all property subject to hospital district taxation for the benefit of the district, a tax of not to

Art. 4494q. Particular Hospital Districts

[The hospital districts listed below have been created by special acts.]

HOSPITAL DISTRICTS

Name	Creation
Amarillo, City of	Acts 1957, 55th Leg., p. 298, ch. 136, amended by Acts 1971, 62nd Leg., p. 1172, ch. 275; Acts 1975, 64th Leg., p. 1178, ch. 439.
Angelina County	Acts 1977, 65th Leg., p. 1480, ch. 603.
Brazoria County Community	Acts 1979, 66th Leg., p. 935, ch. 427.
Burleson County	Acts 1977, 65th Leg., p. 1807, ch. 726.
Chillecothe	Acts 1979, 66th Leg., p. 117, ch. 74.
East Coke County	Acts 1969, 61st Leg., p. 1485, ch. 444, amended by Acts 1977, 65th Leg., p. 662, ch. 249.
Edna	Acts 1967, 60th Leg., p. 355, ch. 172, repealed by Acts 1979, 66th Leg., p. 598, ch. 275, § 24 (see, now, Jackson).
Elgin	Acts 1979, 66th Leg., p. 6, ch. 6.
Farwell	Acts 1975, 64th Leg., p. 169, ch. 73.
Fisher County	Acts 1973, 63rd Leg., p. 1236, ch. 448, amended by Acts 1975, 64th Leg., p. 807, ch. 313.
Follett	Acts 1975, 64th Leg., p. 2020, ch. 668.
Gainesville	Acts 1975, 64th Leg., p. 489, ch. 211.
Gonzales County	Acts 1975, 64th Leg., p. 446, ch. 191.
Hardeman County	Acts 1979, 66th Leg., p. 462, ch. 214.
Hemphill County	Acts 1979, 66th Leg., p. 917, ch. 424.
Higgins	Acts 1975, 64th Leg., p. 2008, ch. 666.
Hood County	Acts 1971, 62nd Leg., p. 2594, ch. 852, amended by Acts 1977, 65th Leg., p. 312, ch. 145.
Jackson County	Acts 1979, 66th Leg., p. 586, ch. 275.

exceed the amount determined by the Commissioners Court in calling the election and so stated on the ballot in which the district was approved, on the One Hundred Dollars (\$100) valuation of all taxable property within the hospital district, for the purpose of (1) paying the interest on and creating a sinking fund for bonds which may have been assumed or which may be issued by the hospital district for hospital purposes, as herein provided; (2) providing for the operation and maintenance of the hospital or hospital system; and (3) for the purpose of making further improvements and additions to the hospital system, and for the acquisition of necessary sites therefor, by purchase, lease or condemnation.

(b) The tax so levied shall be collected on all property subject to hospital district taxation by the assessor and collector of taxes for the county. All income of the hospital district shall be deposited in the district depository. Warrants against hospital district funds shall not require the signature of the county clerk.

For text of subsections (a) and (b) effective until January 1, 1982, see Compact Edition, Volume 4

[See Compact Edition, Volume 4 for text of 4(c) to 18]

[Amended by Acts 1979, 66th Leg., p. 2328, ch. 841, § 4(u), eff. Jan. 1, 1982.]

HOSPITAL DISTRICTS—Continued

Name	Creation
Kleberg County	Acts 1977, 65th Leg., p. 1359, ch. 540.
Lavaca	Acts 1975, 64th Leg., p. 23, ch. 16.
Lipscomb	Acts 1975, 64th Leg., p. 2014, ch. 667.
Mabank-Kemp	Acts 1973, 63rd Leg., p. 26, ch. 22, amended by Acts 1977, 65th Leg., p. 2137, ch. 854.
Menard County	Acts 1975, 64th Leg., p. 2001, ch. 665, amended by Acts 1977, p. 1751, ch. 700.
Midland County	Acts 1977, 65th Leg., p. 232, ch. 112; amended by Acts 1979, 66th Leg., p. 1012, ch. 446.
Montgomery County	Acts 1977, 65th Leg., p. 678, ch. 258.
Moulton	Acts 1975, 64th Leg., p. 1988, ch. 662.
Muenster	Acts 1965, 59th Leg., p. 984, ch. 477, amended by Acts 1967, 60th Leg., p. 1206, ch. 541; Acts 1975, 64th Leg., p. 498, ch. 212.
Nacogdoches County	Acts 1967, 60th Leg., p. 987, ch. 431, amended by Acts 1977, 65th Leg., p. 318, ch. 151.
Nixon	Acts 1965, 59th Leg., p. 1461, ch. 644, amended by Acts 1975, 64th Leg., p. 830, ch. 321.
Parker County	Acts 1965, 59th Leg., p. 93, ch. 35, amended by Acts 1975, 64th Leg., p. 1186, ch. 444.
Reagan	Acts 1977, 65th Leg., p. 45, ch. 29.
Refugio County Memorial	Acts 1977, 65th Leg., p. 11, ch. 6.
Sabine County	Acts 1975, 64th Leg., p. 1829, ch. 565, amended by Acts 1977, 65th Leg., p. 1177, ch. 450.
Shackelford County	Acts 1977, 65th Leg., p. 298, ch. 140.
Starr County	Acts 1973, 63rd Leg., p. 243, ch. 118, amended by Acts 1977, 65th Leg., p. 35, ch. 18.
Sugar Land Community	Acts 1979, 66th Leg., p. 128, ch. 76.
Teague	Acts 1969, 61st Leg., 2nd C.S., p. 143, ch. 39; Acts 1975, 64th Leg., p. 1224, ch. 457.
Terry	Acts 1965, 59th Leg., p. 1502, ch. 653, amended by Acts 1979, 66th Leg., p. 2204, ch. 838.
Val Verde County	Acts 1975, 64th Leg., p. 1977, ch. 658.
Walker County	Acts 1971, 62nd Leg., p. 2583, ch. 848, amended by Acts 1977, 65th Leg., p. 1325, ch. 527.
West Coke County	Acts 1963, 58th Leg., p. 825, ch. 315, amended by Acts 1967, 60th Leg., p. 679, ch. 283; Acts 1977, 65th Leg., p. 662, ch. 248; Acts 1979, 66th Leg., p. 1014, ch. 448.
Wichita County	Acts 1979, 66th Leg., p. 1691, ch. 701.
Wilbarger County	Acts 1965, 59th Leg., p. 9, ch. 6, amended by Acts 1973, 63rd Leg., p. 6, ch. 5; Acts 1977, 65th Leg., p. 1303, ch. 513.
Wilson County Memorial	Acts 1977, 65th Leg., p. 1293, ch. 511; amended by 1979, 66th Leg., p. 1123, ch. 535.
Wood County Central	Acts 1967, 60th Leg., p. 705, ch. 293, amended by Acts 1979, 66th Leg., p. 378, ch. 172.

Art. 4494r. County Hospital Authority Act

[See Compact Edition, Volume 4 for text of 1]

Definitions

Sec. 2. As used in this law, "County" means any county in the State of Texas; "Governing Body" means the Commissioners Court of a county; "Authority" means a County Hospital Authority created under this Act; "Board" or "Board of Directors" means the board of directors of the Authority;

"bond" or "bonds" means bonds or notes; "Bond Resolution" means the resolution authorizing the issuance of revenue bonds; "Trust Indenture" means the mortgage, deed of trust or other instrument pledging revenues of, or creating a mortgage lien on properties, or both, to secure the revenue bonds issued by the Authority; "Trustee" means the trustee under the Trust Indenture; "Hospital" or "Hospitals" means any "Hospital Project" as defined in Section 3(g) of Senate Bill No. 243, as enacted,

Acts of the 64th Legislature, Regular Session, 1975, as now or hereafter amended.¹

¹ Classified as art. 4437e-2.

[See Compact Edition, Volume 4 for text of 3]

Board of Directors

Sec. 4. (a) The Authority shall be governed by a Board of Directors consisting of not less than seven (7) nor more than eleven (11) members to be determined at the time of creating the Authority. Unless otherwise provided in the resolution authorizing the issuance of bonds or the Trust Indenture securing them, the number of Directors may be increased or decreased from time to time by amendment to the order creating the Authority adopted by the Governing Body of the County, but no decrease in number shall have the effect of shortening the term of any incumbent Director. Except as hereinafter in this Section provided, the first Directors shall be appointed by the Governing Body of the County, and they shall serve until their successors are appointed as hereinafter provided. When the Authority issues its revenue bonds the resolution authorizing the issuance of the bonds or the Trust Indenture securing them may prescribe the method of selecting and the term of office of a majority of the members of the Board. The remaining members of the Board shall be appointed by the Governing Body of the County. The Trust Indenture may also provide that, in the event of default as defined in the Trust Indenture, the Trustee may appoint all of the Directors, in which event the terms of the Directors then in office shall automatically terminate. Unless and until provision is made in the Bond Resolution or Indenture in connection with the issuance of bonds for the appointment by other means of part of the Directors, all of the Directors shall be appointed by the Governing Body of the County for terms not to exceed three (3) years, but the terms of Directors appointed prior to the issuance of the first issue of revenue bonds shall be subject to the exercise of the provision herein made for appointment of a majority of the members of the Board in connection with the issuance of the bonds. No officer or employee of any such County shall be eligible for appointment as a Director. Directors shall not receive compensation for services but shall be entitled to reimbursement of their expenses incurred in performing such service.

(b) In the event the Authority purchases from a nonprofit corporation a hospital then in existence or in process of construction, the first members of the Board of Directors and their successors shall be determined as provided in the contract of purchase.

Officers; Quorum; Committees; Manager or Executive Director; Lease; Legal Counsel

Sec. 5. The Board of Directors shall elect from among their members a president and vice president,

and shall elect a secretary and a treasurer who may or may not be Directors, and may elect such other officers as may be authorized by Authority's bylaws. The offices of secretary and treasurer may be combined. The president shall have the same right to vote on all matters as other members of the Board. A majority of the members of the Board shall constitute a quorum and when a quorum is present action may be taken by a majority vote of Directors present. If the bylaws so provide, the Board of Directors, by resolution adopted by a majority of the Directors in office, may designate one or more committees, which, to the extent and in the manner provided in such resolution or in the bylaws, shall have and exercise the authority of the Board of Directors in the management of the Authority. Each such committee shall consist of two or more persons who are directors and may have additional non-voting members who, if such resolution or the bylaws so provide, need not be directors. The Board of Directors may not, however, provide for the delegation to such committees of the Authority of the power to issue bonds, enter into or amend a lease of a Hospital or a management agreement with respect to a Hospital or to employ or discharge a manager or an executive director. The Board may employ a manager or executive director of the Hospital and such other employees, experts and agents as it may see fit, or enter into a management agreement with any person and it may delegate to the manager the power to manage the Hospital and to employ and discharge employees. The Board may lease the Hospital as otherwise provided by law and may employ legal counsel.

Construction, Operation and Equipment of Hospitals;
Location; Sale of Real Property

Sec. 6. (a) The Authority shall have the power to construct, enlarge, furnish and equip Hospitals, purchase existing Hospitals, furnishings and equipment for its Hospitals, and to operate and maintain Hospitals. A Hospital must be located within the County creating the Authority.

(b) The Board may sell real property acquired by donation, gift, or purchase that the Board determines is not needed for Hospital purposes if the sale does not contravene (1) a trust indenture or bond resolution relating to outstanding bonds of the Authority or (2) any agreement entered into either prior to or after the effective date of this Section 6(b) between the Authority and a nonprofit corporation under the provisions of the Hospital Project Financing Act (Article 4437e-2, Vernon's Texas Civil Statutes). The Board shall sell the property through sealed bids or at a public auction. If the Board conducts the sale by sealed bids, the Board shall provide notice of the sale in the manner provided by Chapter 455, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 5421c-12, Ver-

non's Texas Civil Statutes). If the Board conducts the sale by public auction, the Board shall publish notice of the sale, including a description of the property and the date, time, and place of the auction in a newspaper with general circulation in the County creating the Authority once a week for three consecutive weeks, the first notice to appear at least 20 days before the auction. Nothing in this Section 6(b) is intended to affect or amend the powers granted to the Authority by the Hospital Project Financing Act (Article 4437e-2, Vernon's Texas Civil Statutes).

Revenue Bonds

Sec. 7. The Authority may issue revenue bonds to provide funds for any of its purposes. Such bonds shall be payable from and secured by a pledge of all or any part of the revenues to be derived from the operation of the Hospital or Hospitals and any other revenues resulting from the ownership of the Hospital properties. The bonds may be additionally secured by a mortgage or deed of trust on real property of Authority or by a chattel mortgage on its personal property, or by both.

Content of Bonds; Maturity

Sec. 8. The bonds shall be authorized by resolution adopted by a majority vote of a quorum of the Board of Directors, and shall be signed by the president or vice president and countersigned by the secretary, or either or both of their facsimile signatures may be printed thereon. The seal of the Authority shall be impressed or printed thereon. The bonds shall mature serially or otherwise in not to exceed forty (40) years and may be sold at a price and under terms determined by the Board of Directors to be the most advantageous reasonably obtainable, provided that the net effective interest rate as defined by law in Article 717k-2 does not exceed ten per cent (10%) per annum, and within the discretion of the Board, may be made callable prior to maturity at such times and prices as may be prescribed in the resolution authorizing the bonds, and may be made registrable as to principal or as to both principal and interest.

[See Compact Edition, Volume 4 for text of 9]

Junior Lien Bonds; Parity Bonds

Sec. 10. Bonds constituting a junior lien on the revenues or properties may be issued unless prohibited by the Bond Resolution or Trust Indenture. Parity bonds may be issued under conditions specified in the Bond Resolution or Trust Indenture.

Money Set Aside Out of Bond Sale Proceeds

Sec. 11. Money for the payment of not more than two (2) years' interest on the bonds and an amount estimated by the Board to be required for operating expenses during the first year of operation

and an amount to fund any bond reserve fund or other reserve funds provided for in the Bond Resolution or Trust Indenture may be set aside for those purposes out of the proceeds from the sale of the bonds.

Refunding Outstanding Bonds

Sec. 12. Bonds may be issued for the purpose of refunding outstanding bonds in the manner provided in this Act for other bonds, and may be exchanged by the Comptroller of Public Accounts of the State of Texas or sold and the proceeds applied in accordance with the procedure prescribed in Chapter 503, Acts of the Fifty-fourth Legislature¹ or other applicable law.

¹ Article 717k.

[See Compact Edition, Volume 4 for text of 13]

Operation of Hospital; Rates Charged; Creation of Funds; Lease Conditions

Sec. 14. The Hospital shall be operated without the intervention of private profit for the use and benefit of the public. If the Hospital is not being used, operated, or acquired by a nonprofit corporation under the provisions of the Hospital Project Financing Act (Article 4437e-2, Vernon's Texas Civil Statutes) or not leased it shall be the duty of the Board of Directors to charge sufficient rates for services rendered by the Hospital and to utilize other sources of its revenues that revenues will be produced sufficient to pay all expenses in connection with the ownership, operation and upkeep of the Hospital, to pay the interest on the bonds as it becomes due, to create a sinking fund to pay the bonds as they become due, and to create and maintain a bond reserve fund and other funds as provided in the Bond Resolution or Trust Indenture. In the event the Hospital is being used, operated, or acquired by a nonprofit corporation under the provisions of the Hospital Project Financing Act (Article 4437e-2, Vernon's Texas Civil Statutes) or leased, it shall be the duty of the Board of Directors to provide that such nonprofit corporation or the lessee shall charge sufficient rates for services rendered by the Hospital which together with other sources of such nonprofit corporation's or the lessee's revenues will produce revenues sufficient to enable such nonprofit corporation or the lessee to pay all expenses in connection with the operation and upkeep of the Hospital and to make payments or to pay lease rentals to the Authority which will be sufficient, when taken with other pledged sources of the Authority's estimated revenues, to pay the interest on the bonds as it becomes due, to create a sinking fund to pay the bonds as they become due, and to create and maintain a bond reserve fund and other funds as provided in the Bond Resolution or Trust Indenture. The Bond Resolution or Trust Indenture may prescribe systems, methods, routines, procedures, and policies under or in accordance with which the Hospital shall

be operated, and in the event the Hospital is being used, operated, or acquired by a nonprofit corporation or leased, the Authority may delegate to such nonprofit corporation or the lessee the duty to establish the systems, methods, routines, procedures, and policies under or in accordance with which the Hospital shall be operated.

[See Compact Edition, Volume 4 for text of 15 to 17]

Investment of Funds and Proceeds of Bonds

Sec. 18. The law as to the security for and the investment of funds, applicable to Counties, shall control, insofar as applicable the investment of funds belonging to Authority. The Bond Resolution or the Indenture or both may further restrict the making of such investments. In addition to other powers Authority shall have the right to invest the proceeds of its bonds, until such money is needed, in the manner authorized in the Bond Resolution or Indenture, and the proceeds of its bond may be deposited in such banks and may be paid out pursuant to such terms as may be provided in the Bond Resolution or Trust Indenture.

[See Compact Edition, Volume 4 for text of 19 and 20]

[Amended by Acts 1975, 64th Leg., p. 1907, ch. 613, § 1, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1604, ch. 679, § 1, eff. June 13, 1979; Acts 1979, 66th Leg., p. 1606, ch. 680, § 1, eff. June 13, 1979; Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982.]

Repeal

Section 16 of this article is repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Section 2 of the 1975 amendatory act provided:

"If any word, phrase, clause, sentence or part of this Act shall be held by any court of competent jurisdiction to be invalid or unconstitutional, it shall not affect any other word, phrase, clause, sentence or part of this Act, and such remaining portions shall remain in full force and effect."

Section 2 of Acts 1979, 66th Leg., p. 1605, ch. 679, provided:

"If any word, phrase, clause, sentence, or part of this Act shall be held by any court of competent jurisdiction to be invalid or unconstitutional, it shall not affect any other word, phrase, clause, sentence, or part of this Act, and such remaining portions shall remain in full force and effect."

Art. 4494r-2.1. Advisory Elections in Issuance of Revenue Bonds

The commissioners court of each county which is authorized by law to issue revenue bonds for and on behalf of a hospital district in the county shall have the option, within its discretion and on its own motion, of calling an advisory election for the purpose of ascertaining whether or not a majority of the resident, qualified electors of the hospital district voting at an election held for such purpose favor the issuance of any such revenue bonds. In the event a

commissioners court determines to exercise such option, it is authorized to call an election for such purpose, to be held in accordance with the Texas Election Code, except as hereinafter provided. The order of election shall set forth the date of the election, the proposition to be submitted and voted on, the polling places, the hours during which the polls will be open, and any other matters deemed necessary or advisable by the commissioners court. The expenses of holding the election shall be paid from hospital district funds. Notice of the election shall be given by publishing a substantial copy of the election order one time, at least 10 days prior to the date set for the election, in a newspaper of general circulation in the hospital district. The commissioners court shall canvass the returns and declare the results of the election; but the election shall be advisory only and shall not affect the authority of the commissioners court to issue revenue bonds for and on behalf of the hospital district under any applicable law if no election is required thereby. [Added by Acts 1975, 64th Leg., p. 952, ch. 359, § 1, eff. June 19, 1975.]

Art. 4494r-4. Adoption of Tax Rolls by Hospital Districts Board of Equalizations; Assessment and Collections of Taxes

Text of section effective January 1, 1982

Sec. 1. That a hospital district organized pursuant to the provisions of Article IX, Section 9, of the Constitution of the State of Texas, may appoint its own assessor and collector of taxes for the hospital district.

For text of section effective until January 1, 1982, see Compact Edition, Volume 4

[See Compact Edition, Volume 4 for text of 2]

[Amended Acts 1979, 66th Leg., p. 2315, ch. 841, §§ 4(c), 6(a)(1), eff. Jan. 1, 1982.]

Repeal

Section 2 of this article is repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Art. 4494r-5. Payment of Current Operating Expenses of County-Wide Hospital District in Counties of 1,000,000 or More

Applicability of Act

Sec. 1. This Act shall be applicable to counties now or hereafter containing a population of 1,000,000 or more according to the last preceding federal census, wherein there exists a county-wide hospital district whose taxes are levied and collected by the commissioners court and which has teaching hospital facilities that are affiliated with a state-owned

medical school, such counties hereinafter referred to as "authorized counties."

Revenue Anticipation Agreements Authorized

Sec. 2. The commissioners court of any authorized county is hereby authorized to enter into and execute with any bank or banks or other corporations, partnerships, persons, financial institutions, or lending institutions revenue anticipation agreements in accordance with this Act.

Advances and Repayments: Revenue Anticipation Agreements

Sec. 3. Upon a finding and determination by the commissioners court of an authorized county that the projected revenues and tax collections of and for the hospital district will not be received by the district at the times necessary to pay when due the district's operating and maintenance expenses, the commissioners court may execute a revenue anticipation agreement by which the other contracting party (or parties) agrees to advance to the district, and the authorized county and the district agree to repay (from the sources hereinbelow specified), funds necessary for the operation and maintenance of the district's hospital facilities during the term of the revenue anticipation agreement. The revenue anticipation agreement may be upon such terms as the parties may agree, subject to the following limitations:

(a) The term of the revenue anticipation agreement shall not exceed two years.

(b) Advances made to the district during the term of the agreement shall not be made more frequently than once each month and each shall not be greater in amount than the difference between (i) the accumulated and unpaid operating and maintenance expenses of the district, and (ii) the revenues and income of the district, including tax revenues, actually received by the district to the date of the advance and lawfully available for the purpose of paying such expenses. The party or parties making the advances may conclusively rely on certifications made by authorized officers of the district as to the facts specified in this subsection.

(c) The advances under the revenue anticipation agreement may bear interest at a rate or rates not exceeding the rate permitted by law for revenue bonds of the district, shall mature and become due and payable on a date not later than the last day of the term of the revenue anticipation agreement, shall be subject to prepayment without penalty at any time before their maturity date, and they shall not be refunded or in any manner refinanced or extended. The agreement may provide that the rates or rate of interest on the advances may be determined at the time made by reference to such determinative factors and formulae as the parties may agree.

(d) If, in any month during the term of the agreement while advances are outstanding, revenues, including tax revenues, are received and are not required to pay and are not lawfully committed to the payment of other obligations and expenses of the district, the commissioners court shall apply the same upon receipt to the payment or prepayment of any advances at the time outstanding and unpaid under the revenue anticipation agreement, and no advances shall be made under a subsequent revenue anticipation agreement until all advances made under the prior agreement have been paid in full, retired, and canceled.

(e) Advances made under the revenue anticipation agreement shall be and are hereby directed to be secured by and payable, either or both, (1) from a pledge of and lien upon revenues of the district derived from the operation and maintenance of its hospital facilities, and/or (2) from tax revenues when collected, levied for the purpose of operating and maintaining the district's facilities for the year during which the advances are made. Upon default in the payment or repayment of any advances made under the terms of the revenue anticipation agreement when due or when required to be prepaid under the terms of this Act, any district court may be petitioned by mandamus or otherwise to enforce the agreement and prepayment as required by this Act.

Use of Advances

Sec. 4. Funds received from advances made pursuant to revenue anticipation agreements authorized by this Act shall be used solely for the purposes authorized by this Act. However, it shall not be a defense to repayment of advances that the funds have been used for a purpose not authorized hereby. The auditor of the affairs of the hospital district shall concurrently with the regular audit thereof audit the use of said funds and shall certify to the commissioners court whether or not the funds have been used for proper operating and maintenance purposes as authorized hereby.

Bonds or Notes; Ad Valorem Taxes

Sec. 5. (a) The commissioners court of an authorized county is authorized to include in any revenue anticipation agreement provisions pursuant to which the authorized county will agree to execute and deliver, concurrently with the making of advances under the agreement, interest-bearing bonds (which also may be designated as notes) evidencing the obligation of the authorized county and the hospital district to repay the advances made pursuant to the agreement and in accordance therewith and with this Act. Such bonds or notes may be delivered upon such terms and may contain such provisions not inconsistent with Section 3 of this Act as may be prescribed in the revenue anticipation agreement.

(b) The provisions hereof relating to advances shall apply to bonds or notes evidencing the obligation to repay the same issued under this section. It is provided, however, that if such hospital district was created pursuant to the authority granted to the legislature by Article IX, Section 4, of the Texas Constitution and the creation of such hospital district was approved at an election held in such hospital district as required by Article IX, Section 4, of the Texas Constitution or if such hospital district was created pursuant to any other constitutional provision which would permit the levy and pledge of taxes as hereinafter authorized, then regardless of any restrictions in any other law of this state the commissioners court also is authorized in addition to the mandatory security required in Section 3(e) hereof to pay and secure the bonds or notes issued under this section from and by annual ad valorem taxes levied and to be levied on all taxable property in such hospital district, and such annual ad valorem taxes may be pledged to the payment of the principal of and interest on the bonds or notes to the extent required therein and in the agreement. If such annual ad valorem taxes are thus pledged it shall be the duty of the commissioners court annually to levy a tax on all taxable property in the hospital district sufficient or to the extent necessary to pay the principal of and the interest on the bonds or notes when due, but the rate of the tax, if any, for each year may be fixed after giving consideration to the amount of money estimated to be received from revenues pledged under Section 3 hereof which may be available for the payment of such principal and interest, all to the extent and in the manner provided in the revenue anticipation agreement, but provided further that such annual ad valorem tax together with all other annual ad valorem taxes levied in the hospital district shall never exceed a maximum annual rate of 75 cents on the \$100 valuation of all taxable property within such hospital district. Further, if such annual ad valorem taxes are thus pledged, it shall be the duty of the commissioners court during each year while any of the bonds or notes or interest thereon is outstanding and unpaid to compute and ascertain a rate and amount of ad valorem tax, if any, which will be sufficient to raise and produce the money required to make the aforesaid payment to the extent required; and said tax shall be based on the latest approved tax rolls of such hospital district, with full allowance being made for tax delinquencies and the cost of tax collection. Said rate and amount of ad valorem tax shall be levied and ordered to be levied subject to the maximum limitation prescribed above against all taxable property in such hospital district for each year while any of the bonds or notes or interest thereon are outstanding and unpaid; and said tax shall be assessed and collected each such year and used for such purpose to the extent so required.

(c) Upon the issuance, sale, and delivery of bonds or notes under the authority of this section, such bonds or notes shall be incontestable in any court or other forum for any reason and shall be valid and binding obligations in accordance with their terms and conditions for all purposes. Such bonds or notes shall constitute "investment securities" under the Uniform Commercial Code of Texas. Any such bonds or notes shall be legal and authorized security for public funds of this state and its political subdivisions and shall be legal and authorized investments by all banks, savings banks, savings and loan associations, and insurance companies of all types.

Cumulative Effect; Conflicting Provisions

Sec. 6. This Act shall be cumulative of all other laws on the subject, but this Act shall be wholly sufficient authority within itself for the execution of revenue anticipation agreements and the issuance of bonds or notes to evidence obligations to repay advances made thereunder and the performance of the other acts and procedures authorized hereby without reference to any other laws or any restrictions or limitations contained therein, except as herein specifically provided; and when any bonds are being issued pursuant to the authority of this Act, then to the extent of any conflict or inconsistency between any provisions of this Act and any provisions of any other law, the provisions of this Act shall prevail and control.

[Acts 1975, 64th Leg., p. 653, ch. 272, eff. May 20, 1975.]

CHAPTER SIX. MEDICINE

Article

4495a. Application of Sunset Act.

4501b. Foreign Medical School Students.

4511a. Authorized Supplementary Fees that may be Charged by the Texas State Board of Medical Examiners.

4511b. Authority to Receive Criminal Records and Fingerprint Reports.

4511c. Authority to Extend Temporary License.

Art. 4495a. Application of Sunset Act

The Texas State Board of Medical Examiners is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished effective September 1, 1981.

[Added by Acts 1977, 65th Leg., p. 1839, ch. 735, § 2.049, eff. Aug. 29, 1977.]

¹ Article 5429k.

Art. 4498c. State Rural Medical Education Board

[See Compact Edition, Volume 4 for text of 1]

Application of Sunset Act

Sec. 1a. The State Rural Medical Education Board is subject to the Texas Sunset Act,¹ but it is not abolished under that Act. The board shall be reviewed under the Texas Sunset Act during the

period in which state agencies abolished effective September 1 of 1989 and of every 12th year after 1989 are reviewed.

¹ Article 5429k.

[See Compact Edition, Volume 4 for text of 2 to 6]

Amount and Proportioning of Loans, Grants and Scholarships; Repayment; Credit for Rural Practice; Default

Sec. 7. Applicants who are granted loans, grants or scholarships by the Board shall receive an amount which may defray his or her tuition and other expenses in any reputable, accepted and accredited medical school or medical college or school listed by the World Health Organization, or a scholarship to any such medical college or school for a term not exceeding four (4) years, same to be paid at such time and in such manner as may be determined by the Board. The loans, grants and scholarships herein provided may be proportioned in any such manner as to pay to the medical school to which any applicant is admitted such funds as are required by that school, and the balance to be paid directly to the applicant; all of which shall be under such terms and conditions as may be provided under rules and regulations of the Board. The said loans, grants, or scholarships shall be based upon the condition that the full amount thereof shall be repaid to the State of Texas in cash in full with five percent interest from the date of each payment by the State on such loan, grant or scholarship or by satisfaction of other conditions of the Board or this Act. If the applicant practices his profession in a rural area as defined by this Act the Board is authorized and shall credit one fifth of the loan, grant or scholarship together with interest thereon to the applicant for each year of such practice as certified by the Board. At the end of the second full year of practice in a rural area as provided for herein, the applicant shall be privileged to pay off the balance of the loan, grant or scholarship as the case may be with accrued interest thereon, and upon such payment shall be relieved from further obligation under his contract. Should the applicant default under his contract at any time the full principal and accrued interest plus a penalty of 10% of the outstanding balance plus attorneys' fees as defined by said contract shall be due and owing to the State.

Priority for Texas Residents

Sec. 7A. Texas residents who attend a medical school within the United States shall have first priority in the distribution of loan funds. Funds shall then be made available to Texas residents who attend a medical school outside the United States. A "Texas resident," as used in this Act, shall be a person who has actually resided in the State of Texas for two (2) years immediately prior to becoming an applicant hereunder.

[See Compact Edition, Volume 4 for text of 8 to 20]

[Amended by Acts 1977, 65th Leg., p. 130, ch. 60, §§ 1 and 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1853, ch. 735, § 2.154, eff. Aug. 29, 1977.]

Art. 4500. Reciprocal Arrangements

The Texas State Board of Medical Examiners may, in its discretion, upon payment by an applicant of a fee of One Hundred Dollars (\$100) grant a license to practice medicine to any reputable physician who is a citizen of the United States or has filed his declaration of intention to become a citizen, and who is a graduate of a reputable medical college, or who has qualified on examination for a certificate of medical qualification for a commission in the United States Army or Navy, and to licentiates of other State or Territories having requirements for medical registration and practice equal to those established by the laws of this State. Applications for license under the provisions of this Act shall be in writing, and upon a form prescribed by the Texas State Board of Medical Examiners. Said application shall be accompanied by a diploma or photograph thereof, awarded to the applicant by a reputable medical college, and in the case of an Army Officer or Naval Officer, a certified transcript, or a certificate, or license, or commission issued to the applicant by the Medical Corps of the United States Army or Navy, or by a license, or a certified copy of license to practice medicine, lawfully issued to the applicant, upon examination, by some other State or Territory of the United States; provided that the licensing board of such other State or Territory in its examination requires the same general degree of fitness required by this State and grants the same reciprocal privileges to persons licensed by the Texas State Board of Medical Examiners of this State. Said application shall also be accompanied by an affidavit made by an executive officer of the United States Army or Navy, the President or Secretary of the Board of Medical Examiners which issued the license, or by a duly constituted registration officer of the State or Territory by which the certificate or license was granted, and on which the application for medical registration in Texas is based, reciting that the accompanying certificate or license has not been cancelled, suspended or revoked, except by honorable discharge from the Medical Corps of the United States Army or Navy, and that the statement of the qualifications made in the application for medical license in Texas is true and correct. Applicants for license under the provisions of this Act shall subscribe to an oath in writing before an officer authorized by law to administer oaths, which shall be a part of such application, stating that the license, certificate, or authority under which the applicant practiced medicine in the State or Territory from which the applicant removed, was at the

time of such removal in full force and not cancelled or suspended or revoked. Said application shall also state that the applicant is the identical person to whom the said certificate, license, or commission, and the said medical diploma were issued, and that no proceeding has been instituted against the applicant for the cancellation, suspension or revocation of such certificate, license, or authority to practice medicine in the State or Territory in which the same was issued; and that no prosecution is pending against the applicant in any State or Federal Court for any offense which under the laws of the State of Texas is a felony. A reputable physician under the meaning of this Act shall be one who would be eligible for examination by the Texas State Board of Medical Examiners. A reputable medical college within the meaning of this Act shall be such as is defined in Article 4501 of the Revised Civil Statutes of Texas of 1925, as amended. It is provided, however, that the Board may, in its discretion, grant a license to any reputable physician of another State or Territory, who graduated prior to 1907 from a medical college which at the time of his graduation required only three (3) courses of instruction of not less than six (6) months each for attainment of its diploma, or the Degree of Doctor of Medicine, and which, at the time of his graduation, was generally recognized by the medical examining boards of the States or Territories as maintaining entrance requirements and courses of instruction equal to those maintained by the then better class of medical schools of the United States; provided that the provisions of all other laws of this State are complied with.

[Amended by Acts 1979, 66th Leg., p. 1151, ch. 556, § 1, eff. Sept. 1, 1979.]

Art. 4501b. Foreign Medical School Students

Eligibility for License

Sec. 1. Notwithstanding any other provision of law, an individual who has been a student of a foreign medical school is eligible for licensure to practice medicine in this state if he has satisfied the following requirements:

(1) has studied medicine in a medical school located outside the United States which is listed by the World Health Organization;

(2) has completed all of the didactic work of the foreign medical school;

(3) has attained a score satisfactory to a medical school in the United States approved by the Liaison Committee on Medical Education on a qualifying examination and has satisfactorily completed one academic year of supervised clinical training for foreign medical students as defined by the American Medical Association Council on Medical Education under the direction of the medical school in the United States;

(4) has attained a passing score on the Educational Council for Foreign Medical Graduates examination, or other examination, if required by the State Board of Medical Examiners; and

(5) has passed the examination required by the State Board of Medical Examiners of all applicants for licensure.

Additional Requirements for License

Sec. 2. Satisfaction of the requirements of Section 1 of this Act shall be in lieu of the completion of any requirements of the foreign medical school beyond completion of the didactic work, and no other requirements shall be a condition of licensure to practice medicine in this state.

Certification by Educational Council for Foreign Medical Graduates Unnecessary

Sec. 3. Satisfaction of the requirements specified in Section 1 of this Act shall be in lieu of certification by the Educational Council for Foreign Medical Graduates, and such certification shall not be a condition of licensure to practice medicine in this state for candidates who have completed the requirements of Section 1 of this Act.

Hospitals; Additional Requirements

Sec. 4. No hospital licensed by this state, or operated by the state or a political subdivision of the state, or which receives state financial assistance, directly or indirectly, shall require an individual who has been a student of a foreign medical school to satisfy any requirements other than those contained in Subdivisions (1), (2), (3), and (4) of Section 1 of this Act prior to commencing an internship or residency.

Documents or Degrees From Foreign Medical Schools

Sec. 5. A document granted by a medical school located outside the United States which is listed by the World Health Organization issued after the completion of all the didactic work of the foreign medical school shall, on certification by the medical school in the United States in which such training was received of satisfactory completion by the person to whom the document was issued of the requirements listed in Subdivision (3) of Section 1 of this Act, be deemed the equivalent of a degree of doctor of medicine for purposes of licensure and practice of medicine in this state and shall possess all the rights and privileges thereof, including the use of the title "Doctor of Medicine" and the suffix "M.D."

[Acts 1975, 64th Leg., p. 462, ch. 197, eff. April 29, 1975.]

Art. 4502. Disposition of Fees; Compensation of Members of Board

The fund realized from all fees payable under this Act shall first be applied to the payment of all necessary expenses of the Board, and the remainder is to be applied by order of the Board to compensate

members of the Board, said compensation to each member of the Board to be One Hundred Dollars (\$100) per day for any number of days which any such member may be active on business of the Board, whether such business consists of regular meetings, committee work for the Board, grading papers, or any other function which is a legitimate and proper function held to be necessary by the Texas State Board of Medical Examiners; provided, however, that no member of said Board shall be paid a per diem in excess of sixty (60) days of any calendar year. Said daily compensation shall be exclusive of the necessary costs of travel of any Board member, or any other expenses necessary to the performance of his duty. Provided also, that the premium on any bond required by the Board of any officer or employee of the Board shall be paid out of said fund, as well as the necessary expenses of any employee incurred in the performance of his duties. [Amended by Acts 1975, 64th Leg., p. 296, ch. 127, § 1, eff. Sept. 1, 1975.]

Art. 4511a. Authorized Supplementary Fees that may be Charged by the Texas State Board of Medical Examiners

The Texas State Board of Medical Examiners, in addition to fees authorized heretofore, may charge, collect, receive, and deposit for the use of the board in the manner and for the purposes heretofore provided a reasonable supplementary fee of not more than the following fees for performance of the following duties and functions:

For processing and granting license by reciprocity to licensee of another state	\$100
For processing application and administration of complete examination for licensure	\$100
For processing application and administration of partial examination for licensure on preclinical subjects	\$ 85
For processing application and administration of partial examination for licensure on clinical subjects	\$ 25
For processing application and issuance of a temporary license	\$ 15
For processing application and issuance of a duplicate license	\$ 25
For processing application and issuance of license of reinstatement after lapse or cancellation of license.	\$100
For processing application and issuance of annual registration of licensee	\$ 15
For processing and issuance of institutional permit for interns, residents, and others in approved medical training programs	\$ 25
For processing application and issuance of endorsement to other state medical boards	\$ 15

For processing application and certification to other state boards of applicants' grades in basic science examination \$ 25

The board of medical examiners shall set and collect a sales charge for making copies of any paper of record in the office of the board, and for any printed material published by the board, such charges to be in an amount deemed sufficient to reimburse the board for the actual expense.

[Added by Acts 1975, 64th Leg., p. 333, ch. 140, § 1, eff. May 8, 1975.]

Section 2 of the 1975 Act provided: "If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision."

Art. 4511b. Authority to Receive Criminal Records and Fingerprint Reports

The Texas State Board of Medical Examiners shall have the authority to receive criminal records or reports from any law enforcement agency or source pertaining to its licensees or any applicant for license and, provided further, the Texas State Board of Medical Examiners shall submit to the Texas Department of Public Safety a complete set of fingerprints of every applicant for license and the Department of Public Safety shall cause same to be classified and checked against those in their fingerprint files and shall forthwith certify their findings concerning the criminal record of the applicant or shall report the lack of same, as the case may be, to the Texas State Board of Medical Examiners.

All criminal records and reports received from the Department of Public Safety shall be for the exclusive use of the Texas State Board of Medical Examiners and shall be privileged and shall not be released or otherwise disclosed to any person or agency by the board except upon court order. Any applicant for licensure or any licensee whose license is subject to revocation, cancellation, or suspension because of adverse information contained in such criminal records or reports shall be afforded the opportunity for a hearing before the board prior to any action on the application for license or revocation, cancellation, or suspension of license.

[Added by Acts 1975, 64th Leg., p. 948, ch. 356, § 1, eff. June 19, 1975.]

Section 2 of the 1975 Act provided: "If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision."

Art. 4511c. Authority to Extend Temporary License

Notwithstanding other provisions of law, the Texas State Board of Medical Examiners shall, at its discretion, have the authority to extend the expiration date of a temporary license for a period not to exceed one year if such extension of expiration date

is, in the opinion of the board, in the best interest of the public.

[Added by Acts 1975, 64th Leg., p. 332, ch. 139, § 1, eff. May 8, 1975.]

CHAPTER SIX ½. ABORTION

Article

4512.7. Right Not to Perform Abortions.

Art. 4512.7. Right Not to Perform Abortions

Personnel Not Required to Participate in Abortion Procedures

Sec. 1. A physician, nurse, staff member, or employee of a hospital or other health care facility who objects to performing or participating, directly or indirectly, in an abortion procedure may not be required to perform or participate, directly or indirectly, in an abortion procedure.

Private Hospitals Not Required to Make Facilities Available

Sec. 2. A private hospital or private health care facility may not be required to make its facilities available for the performance of an abortion unless a physician determines that the life of the mother is immediately endangered.

Discrimination Prohibited

Sec. 3. A hospital or health care facility may not discriminate in any manner against a physician, nurse, staff member, or employee or against an applicant for such positions, who refuses to perform or participate in an abortion procedure. No physician, nurse, staff person, or employee shall be discriminated against for their willingness to participate in abortion procedures at other facilities. An educational institution may not discriminate against applicants for admission or employment as students, interns, or residents because of their attitudes concerning abortion.

Remedies

Sec. 4. A person whose rights under this Act are violated may sue a hospital, health care facility, or educational institution in district court in the county where the hospital, facility, or institution is located to enjoin further violations of this Act and for such affirmative relief as may be appropriate, including, but not limited to, admission or reinstatement of employment with back pay plus 10 percent interest, and any other relief necessary to ensure compliance with the provisions of this Act.

[Acts 1977, 65th Leg., p. 1870, ch. 745, §§ 1 to 4, eff. Aug. 29, 1977.]

CHAPTER SIX A. CHIROPRACTORS

Article

4512a. Responsibilities Delegated to Physician Assistants.

4512b(1). Peer Review.

4512b(2). Civil Immunity, Official Acts.

Art. 4512a. Responsibilities Delegated to Physician Assistants

(a) The Texas State Board of Medical Examiners by rule shall adopt standards to regulate the extent to which a physician licensed by the board may delegate his or her responsibilities as a physician to a physician assistant. The standards shall take into consideration:

(1) the skill of the physician assistant to whom the physician is to delegate the responsibility;

(2) the skill of the physician who is to delegate the responsibility;

(3) the nature of the responsibility delegated;

(4) the extent and nature of the supervision that the physician is to give to the physician assistant to whom the responsibility is delegated;

(5) the risks to the patient who is the subject of the delegated responsibility; and

(6) other factors considered relevant by the board.

(b) A physician licensed by the board shall comply with the standards adopted by the board as provided by this article.

[Added by Acts 1979, 66th Leg., p. 1554, ch. 670, § 1, eff. Sept. 1, 1979.]

Art. 4512b. Practice of Chiropractic

[See Compact Edition, Volume 4 for text of 1 and 2]

Texas Board of Chiropractic Examiners Created; Personnel and Terms; Application of Sunset Act

Sec. 3.

[See Compact Edition, Volume 4 for text of 3(a) and (b)]

(c) The Texas Board of Chiropractic Examiners is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1981.

¹ Article 5429k.

[See Compact Edition, Volume 4 for text of 4 to 7]

Annual Registration Renewal

Sec. 8. It shall be unlawful for any person who shall be licensed for the practice of chiropractic by the Texas Board of Chiropractic Examiners as created by this Act, unless such person be registered as such practitioner with the Texas Board of Chiropractic Examiners on or before the first day of January A.D. 1950, or thereafter registered in like manner annually as provided by this Act on or before the first day of January each year to practice chiropractic in this State. Each person so licensed and registered shall be deemed to have complied with the

requirements and prerequisites of the laws governing the practice of chiropractic in this State. Each person so registered with the Texas Board of Chiropractic Examiners shall pay in connection with each annual registration and for the receipt hereafter provided for, a fee fixed by the Texas Board of Chiropractic Examiners not to exceed Fifty Dollars (\$50), which fee shall accompany the application of every such person for registration. Such payment shall be made to the Texas Board of Chiropractic Examiners. Every person so registered shall file with said Board a written application for annual registration, setting forth his full name, his age, post office address, his place of residence, the county or counties in which his certificate entitling him to practice chiropractic has been registered, and the place or places where he is engaged in the practice of chiropractic, as well as the college of chiropractic from which he graduated, and the number and date of his license certificate. Upon receipt of such application, accompanied by the registration fee, the Texas Board of Chiropractic Examiners, after ascertaining either from the records of the Board or from other sources deemed by it to be reliable, that the applicant is a licensed practitioner of chiropractic in this State, shall issue to the applicant an annual registration receipt certifying that the applicant has filed such application and has paid the registration fee mentioned for the year in question; provided, that the filing of such application, the payment of the registration fee and the issuance of such receipt shall not entitle the holder thereof to lawfully practice chiropractic within the State of Texas unless he has in fact been previously licensed as such chiropractor by the Texas Board of Chiropractic Examiners, as prescribed by law, and has recorded his license certificate entitling him to practice, as issued by said Board, in the district clerk's office of the several counties in which the same may be required by law to be recorded, and unless his license to practice chiropractic is in full force and effect; and provided further that, in any prosecution for the unlawful practice of chiropractic as denounced in Section 6 hereof, such receipt showing payment of the annual registration fee required by this Section shall not be treated as evidence that the holder thereof is lawfully entitled to practice chiropractic.

[See Compact Edition, Volume 4 for text of 8a to 9]

Examination of Applicants for License; Persons Practicing or Beginning Study Before Date of Act

Sec. 10. All applicants for license to practice chiropractic in this State, not otherwise licensed under the provisions of this law, must successfully pass an examination by the Texas Board of Chiropractic Examiners established by this law. The Board is authorized to adopt and enforce rules of procedure not inconsistent with the statutory requirements.

All applicants shall be eligible for examination who are citizens of the United States and present satisfactory evidence to the Board that they are more than twenty-one (21) years of age, of good moral character, have completed sixty (60) semester hours of college courses, other than a chiropractic school, and are graduates of bona fide reputable chiropractic schools (whose entrance requirements and course of instruction are as high as those of the better class of chiropractic schools in the United States); a reputable chiropractic school shall maintain a resident course of instruction equivalent to not less than four (4) terms of eight (8) months each, or a resident course of not less than the number of semester hours required by The University of Texas for the granting of a Bachelor of Arts degree; shall give a course of instruction in the fundamental subjects named in Section 12 of this Act; and shall have the necessary teaching force and facilities for proper instruction in all of said subjects. Applications for examination must be made in writing, verified by affidavit, and filed with the secretary of the Board, on forms prescribed by the Board, accompanied by a fee of Fifty Dollars (\$50). All applicants shall be given due notice of the date and place of such examination.

The Board shall grant a license without a written examination to an applicant that holds a National Board of Chiropractic Examiners certificate who meets the requirements of this chapter and who has satisfactorily passed a personal interview and a practical examination and has paid an additional fee of Fifty Dollars (\$50). The Board shall periodically determine to its satisfaction whether those applicants who hold National Board of Chiropractic Examiners certificates have been adequately examined. When the Board determines that those applicants have not been adequately examined, the Board shall require those applicants to be examined in accordance with other provisions of this Act.

If any applicant, because of failure to pass the required examination, shall be refused a license, he or she, at such time as the Texas Board of Chiropractic Examiners may fix, not exceeding one (1) year, shall be permitted to take a subsequent examination, upon such subjects required in the original examination as the Board may prescribe except that the applicant shall not be required to take a re-examination on subjects in which he has made a grade of seventy-five per cent (75%) or more, provided the applicant shall apply for re-examination within one (1) year upon the payment of such part of Fifty Dollars (\$50) as the Board may determine and state. In the event satisfactory grades shall be made in the subjects prescribed and taken on such re-examination, the Board shall grant to the applicant a license to practice chiropractic. The Board shall determine the grade to be given the examinees on the answers

turned in on the subjects of complete and partial examination, and its decision thereupon shall be final.

Provided, however, that those who are regularly engaged in the practice of chiropractic in this State on April 18, 1949, and who have completed a resident course and hold diplomas from schools recognized by the Board as being regularly organized and conducted as chiropractic schools at the time of the issuance of such diplomas, shall be licensed under this Act, provided they apply therefor within six (6) months after the effective date of this Act, and provided further that they shall meet the provisions of this Act with reference to citizenship, age, and good moral character; and

Provided that those who have begun the study of chiropractic prior to the effective date of this Act in institutions regularly organized and conducted as chiropractic schools shall be licensed under this Act, provided they complete a standard chiropractic resident course of one hundred and twenty (120) semester hours in such school or schools and receive diplomas therefrom; and provided further that they shall meet the provisions of this Act with reference to citizenship, age, and good moral character.

The Board may not establish examination requirements for a license in addition to the requirements provided in this section.

[See Compact Edition, Volume 4 for text of 11]

Conduct of Examinations; Subjects

Sec. 12. All examinations for license to practice chiropractic shall be conducted in writing in the English language and in such manner as to be entirely fair and impartial to all applicants. All applicants shall be known to the examiners only by numbers, without names or other method of identification on examination papers by which members of the Board may be able to identify such applicants, or examinees, until after the general averages of the examinees' numbers in the class have been determined, and license granted or refused. Examinations shall be conducted on practical and theoretical chiropractic and in the subjects of anatomy-histology, chemistry, bacteriology, physiology, symptomatology, pathology and analysis of the human spine, and hygiene and public health. Upon satisfactory examination, conducted as aforesaid under the rules of the Board, which shall consist of an average grade of not less than seventy-five per cent (75%) with not less than sixty per cent (60%) in any one subject, applicants shall be granted license to practice chiropractic. All questions and answers, with the grades attached, authenticated by the signature of the examiner, shall be preserved in the executive office of the Board for one (1) year. All applicants examined at the same time shall be given identical questions. All certificates shall be attested by the seal of the

Board, and signed by all members of the Board, or a quorum thereof.

[See Compact Edition, Volume 4 for text of 13 to 24]

[Amended by Acts 1975, 64th Leg., p. 19, ch. 14, § 1, eff. March 13, 1975; Acts 1975, 64th Leg., p. 21, ch. 15, §§ 1, 2, eff. March 13, 1975; Acts 1977, 65th Leg., p. 151, ch. 75, § 1, eff. April 25, 1977; Acts 1977, 65th Leg., p. 1838, ch. 735, § 2.042, eff. Aug. 29, 1977.]

Section 3 of Acts 1975, 64th Leg., p. 22, ch. 15, read: "If any section, subsection, paragraph, sentence, clause, phrase, or word in this Act, or application thereof to any person or circumstance is held invalid, such holding shall not affect the validity of the remaining portions of this Act, and the Legislature hereby declares it would have passed such remaining portions despite such invalidity."

Art. 4512b(1). Peer Review

Definition

Sec. 1. In this article "chiropractor" means a person licensed to practice chiropractic by the Texas Board of Chiropractic Examiners.

Peer Review Committee

Sec. 2. The chiropractors practicing in this state may elect from their membership a committee which may be denominated a chiropractic peer review committee. The committee shall be elected or appointed by the organization forming such peer review committee.

Duties

Sec. 3. The chiropractic peer review committee shall:

- (1) review and evaluate chiropractic treatment and services in disputes involving a chiropractor and a patient or a person obligated to pay a fee for chiropractic services or treatment rendered; and
- (2) act as arbitrator in a dispute involving a chiropractor and a patient or person obligated to pay a fee for chiropractic services or treatment.

Liability of Committee Member in Civil Action

Sec. 4. Unless fraud, conspiracy, or malice can be shown, a member of a chiropractic peer review committee is not liable in a civil action for a finding, evaluation, recommendation, or other action made or taken by him as a member of the committee, or by the committee.

Conflict of Interest

Sec. 5. A member of a chiropractic peer review committee may not participate in committee deliberations or other activities involving chiropractic services or treatment rendered or performed by him.

Rights or Remedies Not Deprived

Sec. 6. Except for the express immunity provided by Section 4 of this article, this article deprives no person of a right or remedy, legal or equitable. [Added by Acts 1975, 64th Leg., p. 686, ch. 286, § 1, eff. May 22, 1975.]

Art. 4512b(2). Civil Immunity, Official Acts

In the absence of fraud, conspiracy, or malice, no member of the Texas Board of Chiropractic Examiners, its employees, nor any witness called to testify by said board, nor any consultant or hearing officer appointed by said board shall be liable or subject to suit or suits for damages for alleged injury, wrong, loss, or damage allegedly caused by any of said persons for any investigation, report, recommendation, statement, evaluation, finding, order, or award made in the courts of any of said persons' performing assigned, designated, official or statutory duties. This immunity is enacted to relieve and protect the persons named from being harassed and threatened with legal action while attempting to perform official duties.

[Added by Acts 1977, 65th Leg., p. 606, ch. 217, § 1, eff. Aug. 29, 1977.]

Sections 2 and 3 of the 1977 Act provided:

"Sec. 2. All laws or parts of laws in conflict or inconsistent with the provisions of this Act are hereby repealed."

"Sec. 3. If any section, subsection, paragraph, sentence, clause, phrase, or word in this Act, or the application thereof to any person or circumstance for any reason is held invalid or unconstitutional, such holding shall not affect the validity or enforceability of the remaining portions of this Act, and the legislature hereby declares that it would have passed such remaining portions of this Act despite such invalidity or unconstitutionality of any part or portion thereof."

CHAPTER SIX B. PSYCHOLOGY

Art. 4512c. Psychologists' Certification and Licensing Act

[See Compact Edition, Volume 4 for text of 1]

Definitions

Sec. 2. In this Act, unless the context otherwise requires:

(a) "Board" means the Texas State Board of Examiners of Psychologists provided for by this Act.

(b) A person represents himself to be a "psychologist" within the meaning of this Act when he holds himself out to the public by any title or description of services incorporating the words "psychological," "psychologists," or "psychology," or offers to render or renders psychological services to individuals, corporations, or the public for compensation.

(c) The term "psychological services," means acts or behaviors coming within the purview of the practice of psychology, including, but not limited to, the application of psychological principles to the evaluation and remediation of learning, emotional, interpersonal, and behavioral disorders.

[See Compact Edition, Volume 4 for text of 3 and 4]

Application of Sunset Act

Sec. 4a. The Texas State Board of Examiners of Psychologists is subject to the Texas Sunset Act,¹ and unless continued in existence as provided by

that Act the board is abolished, and this Act expires effective September 1, 1981.

¹ Article 5429k.

[See Compact Edition, Volume 4 for text of 5 to 7]

Powers of the Board

Sec. 8. (a) In addition to the powers and duties granted the Board by other provisions of this Act, the Board may make all rules, not inconsistent with the Constitution and laws of this state, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it. The Board shall adopt and publish a Code of Ethics.

(b) The Board may certify specialties within the field of psychological services and may employ consultants when necessary for the implementation of this Act. The Board shall adopt rules applicable to the certification of specialties and to the employment of consultants. Specialty certifications by the Board may include certifications for clinical psychologists, counseling psychologists, industrial psychologists, and school psychologists.

[See Compact Edition, Volume 4 for text of 9 and 10]

Qualification of Applicant for Examination for Certification

Sec. 11. An applicant is qualified to take the examination for certification as a psychologist:

(a) if he has received the doctoral degree based upon a program of studies whose content was primarily psychological from an accredited educational institution or its substantial equivalent in both subject matter and extent of training,

(b) if he is at least twenty-one years of age,

(c) if he is a resident of this state,

(d) if he is of good moral character,

(e) if he is a citizen of the United States or has legally declared his intention of becoming a citizen,

(f) if, in the judgment of the Board, he is physically and mentally competent to render psychological services with reasonable skill and safety to his patients and is afflicted with no disease or condition, either mental or physical, which would impair his competency to render psychological services, and

(g) if he has not been convicted of a felony or a crime involving moral turpitude, is not intemperate in the use of or addicted to any drug, has not been guilty of fraud or deceit in making his application, and has not aided or abetted a person, not a licensed psychologist, in representing himself as a psychologist in this state.

[See Compact Edition, Volume 4 for text of 12 to 15]

Fees

Sec. 16. The certification fee, the licensing fee, the specialty certification fee, and the renewal fees shall be an amount fixed by the Board. The Board shall fix the amount of the fees so that the total fees collected will be sufficient to meet the expenses of administering this Act and so that unnecessary surpluses in the Psychologist Licensing Fund are avoided.

Certification—Expiration—Renewal

[See Compact Edition, Volume 4 for text of 17(a) to (c)]

(d) The Board may refuse to renew the certification of any person who is not qualified to take the examination for certification under Section 11 of this Act.

[See Compact Edition, Volume 4 for text of 17A to 20]

Licensing

Sec. 21. Any person who offers psychological services as defined herein for compensation, must apply to the Board and upon payment of a fee shall be granted a license by the Board. No person may be licensed unless:

(1) he is certified as a psychologist under the authority of this Act; and

(2) he has had at least two years' experience in the field of psychological services, at least one year of which was at the post-doctoral level of the education process, and one year of which was under the supervision of a psychologist licensed under the provisions of this Act.

Exemptions

Sec. 22. Nothing in this Act shall be construed to apply to:

(a) the activities, services and use of official title on the part of a person employed as a psychologist by any: (1) governmental agency, (2) public school district, (3) institution of higher education approved by the Board or any hospital licensed by the Texas State Department of Health, including medical clinics associated with such hospitals and are organized as an unincorporated association, provided such employee is performing those duties for which he is employed by such agency, district, institution, or clinic and within the confines of such agency, district, institution, or clinic insofar as such activities and services are a part of the duties of his office or position as a psychologist with such agency, district, or institution, or clinic; except that persons employed as psychologists who offer or provide

psychological services to the public (other than lecture services) for a fee, monetary or otherwise, over and above the salary that they receive for the performance of their regular duties, and/or persons employed as psychologists by organizations that sell psychological services to the public (other than lecture services) for a fee, monetary or otherwise must be licensed under the provisions of this Act;

(b) the activities and services of a student, intern or resident in psychology, pursuing a course of study in preparation for the profession of psychology under qualified supervision in recognized training institutions or facilities, if these activities and services constitute a part of his supervised course of study, provided that such an individual is designated by a title such as "psychological intern," "psychological trainee," or others clearly indicating such training status;

(c) the activities and services of a person who is not a resident of this state and who has no established offices in this state in rendering consulting or other psychological service when these activities and services are rendered for a period which does not exceed in the aggregate more than thirty days during any year if the person is authorized under the laws of the state or country of his residence to perform these activities and services;

(d) a sociologist who holds a doctoral degree in sociology or social psychology awarded by a recognized institution of higher learning and who elects to represent himself to the public by the title "social psychologist," provided that he has notified the Board of his intention to represent himself as such;

(e) registered nurses licensed by the laws of this state and practicing in accordance with the standards of professional conduct and ethics promulgated by rules and regulations of the Board of Nurse Examiners;

(f) the activities and services of qualified members of other professional groups such as physicians, attorneys, school counselors, marriage or family counselors, social workers, Christian Scientist practitioners who are duly recognized by the Church of Christ Scientist as registered and published in the Christian Science Journal, or duly ordained religions from doing work of a psychological nature consistent with their training and consistent with any code of ethics of their respective professions, provided that they do not represent themselves by any title or in any manner prohibited by this Act;

(g) the services of a licensed optometrist in the evaluation and remediation of learning or behavioral disabilities associated with or caused by a defective or abnormal condition of vision.

Revocation, Cancellation or Suspension of License
or Certification

Sec. 23. The Texas State Board of Examiners of Psychologists shall have the right to cancel, revoke, suspend, or refuse to renew the license or certification of any psychologist upon proof that the psychologist:

(a) has been convicted of a felony or of a violation of the law involving moral turpitude by any court; the conviction of a felony shall be the conviction of any offense which if committed within this state would constitute a felony under the laws of this state; or

(b) is or has had the habit of intemperance or drug addiction such as the use of morphine, opium, cocaine, or other drugs having similar effect; or

(c) has been guilty of fraud or deceit in connection with his services rendered as a psychologist; or

(d) has aided or abetted a person, not a licensed psychologist, in representing himself as a psychologist within this state; or

(e) has been guilty of unprofessional conduct as defined by the rules established by the Board; or

(f) for any cause for which the Board shall be authorized to refuse to admit persons to its examination.

Proceedings under this section shall be begun by filing charges with the Texas State Board of Examiners of Psychologists in writing and under oath. Said charges may be made by any person or persons. The Chairman of the Board shall set a time and place for hearing, and shall cause a copy of the charges, together with a notice of the time and place fixed for hearing, to be served on the respondent or his counsel at least ten (10) days prior thereto. When personal service is impossible, or cannot be effected, the Board shall cause to be published once a week for two (2) successive weeks a notice of the hearing in a newspaper published in the county wherein the respondent was last known to live, and shall mail a copy of the charges and of such notice to the respondent at his last known address. When publication of the notice is necessary, the date of hearing shall not be less than ten (10) days after the date of the last publication of the notice. At said hearing the respondent shall have the right to appear either personally or by counsel, or both, to produce witnesses or evidence in his behalf, to cross-examine witnesses, and to have subpoenas issued by the Board. The Board shall thereupon determine the charges upon their merits. All charges, complaints, notices, orders, records, and publications authorized or required by the terms of this Act shall be privileged.

Any person whose license or certification has been cancelled, revoked or suspended by the Board, or

whose license or certification the Board has refused to renew for any reason, including the person's refusal to submit to a physical or mental examination requested by the Board, may, within twenty (20) days after the making and entering of such order, take an appeal to any of the district courts in the county of his residence, but the decision of the Board shall not be enjoined or stayed except on application to such district court after notice to the Board. The proceeding on appeal shall be under the substantial evidence rule, and which appeal shall be taken in any District Court of the county in which the person whose certificate of registration or license is involved resides. Upon application, the Board may recertify the applicant or reissue a license to a person whose license has been cancelled or suspended, but such application, in the case of cancellation or revocation, shall not be made prior to one (1) year after the cancellation or revocation and shall be made in such manner and form as the Board may require.

Provided, however, that the Board shall have the right and may, upon majority vote, rule that the order revoking, cancelling, or suspending the psychologists' license or certification be probated so long as the probationer conforms to such orders and rules as the Board may set out as the terms of probation. The Board, at the time of probation, shall set out the period of time which shall constitute the probationary period. Provided further, that the Board may at any time while the probationer remains on probation hold a hearing, and upon majority vote, rescind the probation and enforce the Board's original action in revoking, cancelling, or suspending the psychologists' license or certification, the said hearing to rescind the probation shall be called by the Chairman of the Texas State Board of Examiners of Psychologists who shall cause to be issued a notice setting a time and place for the hearing and containing the charges or complaints against the probationer, said notice to be served on the probationer or his counsel at least ten (10) days prior to the time set for the hearing. When personal service is impossible, or cannot be effected, the same provisions for service in lieu of personal service as heretofore set out in this Act shall apply. At said hearing the respondent shall have the right to appear either personally or by counsel or both, to produce witnesses or evidence in his behalf, to cross-examine witnesses, and to have subpoenas issued by the Board. The Board shall thereupon determine the charges upon their merits. All charges, complaints, notices, orders, records, and publications authorized or required by the terms of this Act shall be privileged. The order revoking or rescinding the probation shall not be subject to review or appeal.

[See Compact Edition, Volume 4 for text of 24]

Enforcement of Competency Requirements

Sec. 24A. (a) If the Board reasonably believes that a person applying to take the certification examination, or applying for renewal of certification, is not physically and mentally competent to render psychological services with reasonable skill and safety to his patients, or is afflicted with a disease or condition, either physical or mental, which would impair his competency to render psychological services, the Board may request that that person submit to a physical examination by a medical doctor approved by the Board or submit to a mental examination by a medical doctor or licensed psychologist approved by the Board.

(b) If the applicant or person seeking renewal of certification refuses to submit to the examination, the Board shall issue an order requiring that person to show cause for his refusal and shall schedule a hearing on the order within thirty (30) days after notice is served on the person who has refused to submit to the examination. Notice shall be given either by personal service or by registered mail return receipt requested. At the hearing the person may appear personally and by counsel and present evidence in justification of his refusal to submit to the examination. After a complete hearing the Board shall issue an order either requiring the person to submit to the examination or withdrawing the request for the examination. Unless the request is withdrawn the person who has refused to take the examination may not take the certification examination, and is not entitled to renewal of his certification. An appeal from the order of the Board may be made under Section 23 of this Act.

[See Compact Edition, Volume 4 for text of 25 to 27]

[Amended by Acts 1975, 64th Leg., p. 956, ch. 362, §§ 1 to 9, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1838, ch. 735, § 2.045, eff. Aug. 29, 1977.]

CHAPTER SIX C. ATHLETIC TRAINERS

Art. 4512d. Advisory Board of Athletic Trainers

Definitions

Sec. 1. In this Act:

[See Compact Edition, Volume 4 for text of 1(1)]

(2) "Board" means the Advisory Board of Athletic Trainers.

[See Compact Edition, Volume 4 for text of 1(3) and (4)]

Advisory Board of Athletic Trainers

Sec. 2. (a) The Advisory Board of Athletic Trainers, composed of six members, is created. The

board is created as a part of the State Department of Health and shall perform its duties as a board within the State Department of Health. To qualify as a member, a person must be a citizen of the United States and a resident of Texas for five years immediately preceding appointment. Members must be licensed athletic trainers.

(b) The members of the board shall be appointed by the governor with the advice and consent of the Senate. Except for the initial appointees, members hold office for terms of six years. The terms expire on January 31 of odd-numbered years.

(c) Each appointee to the board shall qualify by taking the constitutional oath of office within 15 days from the date of his appointment. On presentation of the oath, the secretary of state shall issue commissions to appointees as evidence of their authority to act as members of the board.

(d) In the event of death, resignation, or removal of any member, the vacancy of the unexpired term shall be filled by the governor in the same manner as other appointments.

Appropriations to Department of Health

Sec. 2A. The State Department of Health¹ may expend funds appropriated to it for the purpose of implementing the provisions of this Act.

¹ Name changed to Texas Department of Health; see art. 4414a.

Board Organization and Meetings

Sec. 3.

[See Compact Edition, Volume 4 for text of 3(a)]

(b) The board shall meet at least twice a year. Additional meetings may be held on the call of the chairman or at the written request of any three members of the board.

(c) The quorum required for any meeting of the board is four members. No action by the board or its members has any effect unless a quorum of the board is present.

[See Compact Edition, Volume 4 for text of 4 to 17]

[Amended by Acts 1975, 64th Leg., p. 859, ch. 328, §§ 1 to 4, eff. Sept. 1, 1975.]

Sections 5 and 6 of the 1975 amendatory act provided:

"Sec. 5. Members serving on the Texas Board of Athletic Trainers on the effective date of this Act shall serve on the Advisory Board of Athletic Trainers for the terms for which they were appointed. The governor shall appoint three additional members to the Advisory Board of Athletic Trainers. Of the three additional members the governor shall designate one for a term expiring in 1981, one for a term expiring in 1979, and one for a term expiring in 1977.

"Sec. 6. This Act takes effect September 1, 1975, on which date all property, files, and records in the custody of the Texas Board of Athletic Trainers are transferred to the State Department of Health to be used by the Advisory Board of Athletic Trainers in the performance of its duties."

CHAPTER SIX D. PHYSICAL THERAPY

Art. 4512e. Board of Physical Therapy Examiners; Licensing; Procedures

[See Compact Edition, Volume 4 for text of 1]
Sec. 2.

Creation of the Texas Board of Physical Therapy Examiners

[See Compact Edition, Volume 4 for text of 2(a) to (e)]

(f) The Texas Board of Physical Therapy Examiners is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1981.

¹ Article 5429k.

[See Compact Edition, Volume 4 for text of 3 to 7]

Physical Therapist License

Sec. 8. (a) An applicant for a license as a physical therapist shall file a written application on forms provided by the board together with an examination fee of \$50 which is refundable if the applicant does not take the examination; and an application fee of \$25 which is not refundable. The applicant shall present evidence satisfactory to the board that he is of good moral character and that he has completed an accredited curriculum in physical therapy education which has provided adequate instruction in the basic sciences, clinical sciences, and physical therapy theory and procedures as determined by the board and:

(1) has completed a minimum of 60 academic semester credits or its equivalent from a recognized college which semester hour credits are acceptable for transfer to The University of Texas, including courses in the biological, social, and physical sciences; or

(2) has received a diploma from an accredited school of professional nursing.

(b) The board shall issue a license to each applicant who passes the examination, meets the qualifications set out in Subsection (a) of this section, and has not committed an act which constitutes grounds for denial of a license under Section 19 of this Act.

Physical Therapist Assistant License

Sec. 9. (a) An applicant for a physical therapist assistant license shall file a written application with the board on forms provided by the board together with an examination fee of \$45 which is refundable if the applicant does not take the examination; and an application fee of \$25 which is not refundable. The applicant shall present evidence that he is of good moral character and has completed a program of at least two years duration offered by a college accredited by a recognized accrediting agency in-

cluding elementary or intermediate courses in the anatomical, biological, physical sciences, and clinical procedures as prescribed and approved by the board.

(b) The board shall issue a license to each applicant who passes the examination, meets the qualifications set out in Subsection (a) of this section, and has not committed an act which constitutes grounds for denial of a license under Section 19 of this Act.

[See Compact Edition, Volume 4 for text of 10 to 15A]

Renewal of an Expired License

Sec. 16. (a) A license which has expired for less than five years from the date of application for renewal may be renewed by submission of an application form prescribed by the board, payment of a \$2 fee for each year the license was expired without renewal, and payment of a \$50 restoration fee.

(b) A license which has expired for more than five years may be reinstated only by complying with the requirements and procedures for issuing the original license.

[See Compact Edition, Volume 4 for text of 17]

Penalties; Enforcement

Sec. 18.

[See Compact Edition, Volume 4 for text of 18(a) to 18(c)]

(d) The Attorney General or any District or County Attorney may institute any injunction proceedings or such other proceedings as to enforce the provisions of the Act, and to enjoin any physical therapist, physical therapist assistant, or any other person from the practice of physical therapy without having complied with the provisions hereof, and shall forfeit to the State of Texas the sum of \$50 per day as a penalty for each day's violation, to be recovered in a suit by the District or County Attorney, and/or the Attorney General.

[See Compact Edition, Volume 4 for text of 19 to 25]

[Amended by Acts 1975, 64th Leg., p. 795, ch. 307, §§ 1 to 4, eff. May 27, 1975; Acts 1977, 65th Leg., p. 1838, ch. 735, § 2.043, eff. Aug. 29, 1977.]

CHAPTER SIX E. SOCIAL PSYCHOTHERAPY

Art. 4512f. Social Psychotherapist Regulation Act

Short Title

Sec. 1. This Act may be cited as the Social Psychotherapist Regulation Act.

Definitions

Sec. 2. In this Act:

(1) A person represents himself to be a "social psychotherapist" within the meaning of this Act if he states or implies he is a "social psychotherapist," or uses the letters "S.P." as part of his professional identification in conjunction with his name.

(2) The term "social psychotherapy" includes acts or behaviors coming within the purview of the practice of social psychotherapy as defined in this Act.

(3) The practice of social psychotherapy means a service in which a special knowledge of social resources, human capabilities, and the part conscious and unconscious motivation plays in determining behavior, is directed at helping people to achieve more adequate, satisfying, and productive emotional adjustments. The application of social psychotherapy includes, but is not restricted to, counseling and using applied psychotherapy of a nonmedical nature with individuals, families, and groups, and doing related research.

(4) Psychotherapy, within the meaning of this Act, is the use of psychotherapeutic methods within a professional relationship to assist the person or persons to achieve a better emotional adaptation, to acquire greater realization of human potential and adaptation, to modify internal and external conditions that affect individuals or groups with respect to behavior, emotions, and thinking with respect to intrapersonal and interpersonal process.

(5) "Board" means the Texas State Board of Examiners in Social Psychotherapy.

(6) "Department" means the State Department of Health.

Practice of Medicine Not Authorized

Sec. 3. Nothing in this Act permits the practice of medicine as defined by the laws of this state.

State Board

Sec. 4. The Texas State Board of Examiners in Social Psychotherapy is created. The board consists of six qualified persons appointed by the governor with the advice and consent of the senate. Except for those members first appointed to the board, a member is appointed for a term of six years, expiring January 31 of odd-numbered years. The members of the first board shall be appointed within 90 days after this Act takes effect to serve the following terms: two for terms which expire on January 31, 1981, two for terms which expire January 31, 1979, and two for terms which expire January 31, 1977. Thereafter, at the expiration of the term of each member, the governor shall appoint a successor for each. Before entering on the duties of his office,

each member of the board shall take the constitutional oath of office which shall be filed with the secretary of state.

Application of Sunset Act

Sec. 4a. The Texas State Board of Examiners in Social Psychotherapy is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1981.

¹ Article 5429k.

Qualifications of Members of the Board

Sec. 5. Each member of the board shall be a citizen of the United States, a resident of this state, licensed under this Act, and have been actively engaged in the practice of social psychotherapy for five years preceding his appointment, provided, however, that the members comprising the board as first appointed shall meet these requirements with the exception of being licensed under this Act. To assure adequate representation of the diverse field of social psychotherapy, the governor shall appoint six members primarily engaged in rendering social psychotherapeutic services, three who provide such services as a social psychotherapist in private practice; one social psychotherapist who is engaged primarily in the administration of social psychotherapeutic services; one social psychotherapist who is a member of the faculty of an accredited university training program whose graduates may be eligible for certification under the provisions of this Act; and one social psychotherapist who is employed in a private or public agency. A member of the board who has served a six-year term may not succeed himself. Any vacancy in the membership of the board occurring otherwise than by expiration of term shall be filled for the unexpired term by appointment of the governor.

Per Diem; Expenses

Sec. 6. A member of the board is not entitled to a salary for duties performed as a member of the board. A member is entitled to \$25 for each day he is in attendance at meetings or hearings or on authorized business of the board, including time spent in traveling to and from the place of the meeting, hearing, or other authorized business, and is entitled to reimbursement for travel and other necessary expenses incurred in performing official duties, as evidenced by vouchers approved by the executive secretary.

Executive Secretary

Sec. 7. (a) The executive secretary shall be an employee of the State Department of Health; the state commissioner of health, after consulting with the board, shall designate the employee to serve as executive secretary.

(b) The executive secretary shall be the administrator of social psychotherapy activities for the board. In addition to his other duties prescribed in this Act and by the State Department of Health, the executive secretary shall

(1) keep full and accurate minutes of all transactions and proceedings of the board;

(2) be the custodian of all of the files and records of the board;

(3) prepare and recommend to the board plans and procedures necessary to effectuate the purposes and objectives of this Act, including but not limited to rules and regulations, and proposals on administrative procedures not inconsistent with this Act;

(4) exercise general supervision over all persons employed by the State Department of Health in the administration of this Act; and

(5) be responsible for the investigation of complaints and for the presentation of formal complaints.

(c) The executive secretary, or his authorized representative, shall

(1) attend all meetings of the board but is not entitled to vote; and

(2) handle or arrange for the handling of the correspondence, make or arrange for the inspections and investigations, and obtain, assemble, or prepare the reports and data that the board may direct or authorize.

Staff Services

Sec. 8. The basic personnel and necessary facilities as may be required to carry out the provisions of this Act shall be the personnel and facilities of the State Department of Health acting as the agents of the board. The department may by agreement secure such services as it may deem necessary from any other departments and agencies of this state, may arrange for compensation for these services, and may employ and compensate, within appropriations available, the professional consultants, technical assistants, and employees on a full- or part-time basis necessary to carry out the provisions of this Act. The board may request, and on request is entitled to receive, the assistance of state educational institutions or other state agencies.

Organization and Meetings of the Board

Sec. 9. The board shall hold a regular annual meeting at which time a chairman and a vice-chairman shall be elected. Other regular meetings shall be held at the times that the rules of the board may provide but not less than two times a year. Special meetings may be held at the times that may be deemed necessary or advisable by the board or a majority of its members. Reasonable notice of all

meetings shall be given in the manner prescribed by the rules of the board. The board may employ other persons it deems necessary or desirable to carry out the provisions of this Act. The board shall adopt and have an official seal.

Enforcement Proceedings

Sec. 10. The board, or the executive secretary when duly authorized, generally or specifically, by the department, may cause legal proceedings to be instituted in courts of competent jurisdiction to compel compliance with the provisions of this Act or the rules, regulations, orders, variances, or other decisions of the board.

Rulemaking

Sec. 11. (a) The board may, in accordance with the procedures in this section and subject to the approval of the State Board of Health, make rules and regulations consistent with the general intent and purposes of this Act and amend any rule or regulation it makes.

(b) Before adopting, amending, or repealing rules or regulations, the board shall hold a public hearing. If the rule or regulation, or amendment or repeal, will have statewide effect, notice of the date, time, place, and purpose of the hearing shall be published one time at least 20 days prior to the scheduled date of the hearing in at least three newspapers whose combined circulation will, in the judgment of the board, give reasonable circulation throughout the state. If the rule or regulation, or amendment or repeal, will have effect in only a part of the state, the notice shall be published one time at least 10 days prior to the scheduled date of the hearing in a newspaper or newspapers having general circulation in the area or areas to be affected. The board shall also comply, as appropriate, with the requirements of Chapter 274, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 6252-13, Vernon's Texas Civil Statutes).

(c) Any person may appear and be heard at the hearing on any rules or regulations. The executive secretary shall record the names and addresses of the persons appearing. The executive secretary shall send written notice to any person heard or represented at the hearing or requesting notice of the action taken by the board.

(d) Before it becomes effective, a rule or regulation, or amendment or repeal, shall be approved in writing by at least four members of the board and approved by the State Department of Health and a certified copy filed with the secretary of state for the time specified in Chapter 274, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 6252-13, Vernon's Texas Civil Statutes).

Contents of the Rules

Sec. 12. The board is authorized to adopt rules and regulations, subject to the approval of the State Board of Health, relating to the professional behavior and ethics of the social psychotherapy profession and the qualifications and licensing of social psychotherapists, consistent with the protection of the health and general welfare of the people.

Qualification of Applicant for Examination for Licensing

Sec. 13. An applicant is qualified to take the examination for licensing as a social psychotherapist if

(1) he presents evidence of having received a master's degree based on a program of studies whose content was designed to develop skill and competence in the use of psychotherapeutic treatment methods with the degree being from a graduate school accredited by the Council on Social Work Education or from a graduate school equivalent in both subject matter and extent of training for social psychotherapists which meets accreditation requirements of the board;

(2) he has at least two years of full-time experience acceptable to the board subsequent to the granting of the master's degree in the use of psychotherapeutic methods under the supervision of a licensed social psychotherapist or a person qualified to become licensed under this Act, except that if the applicant works in a geographical area where no licensed social psychotherapist is available to provide the supervision, he shall have two years of full-time experience subsequent to the granting of the master's degree acceptable to the board in the use of psychotherapeutic methods under the supervision of a licensed psychologist or a board certified psychiatrist;

(3) he is at least 21 years of age;

(4) he is a resident of this state; and

(5) he is of good moral character.

Applications

Sec. 14. Application for examination for the social psychotherapy licensure shall be on the forms prescribed by the board. The board may require that the application be verified. The licensing fee shall accompany the application.

Evaluation of Experience

Sec. 15. In determining the acceptability of the applicant's professional experience, the board may require documentary evidence of the quality, scope, and nature of the applicant's experience the board deems necessary.

Examinations

Sec. 16. The department shall administer examinations to qualified applicants for licensure at least

once a year. The board, with the approval of the State Board of Health, shall determine the subject matter, scope, and necessary scores for successful completion of the examinations. Written examinations may be supplemented by oral examinations. An applicant who fails his examination may be reexamined at a subsequent examination on payment of another examination fee. An applicant who fails his written examination has the right to review this examination and to have a full hearing.

Licensing

Sec. 17. (a) A qualified applicant for licensing who has successfully passed the examination prescribed by the board and has paid the licensing fee may be issued a license to hold himself forth as a social psychotherapist by the board.

(b) Until August 31, 1976, a person meeting the requirements of Section 13 of this Act and possessing the equivalent of the education and training requirements of that section as determined by the board, shall be issued a license on application.

(c) The board may, on application and payment of the licensing fee, license as a social psychotherapist a person who is licensed to practice social psychotherapy by another state, territory, or possession of the United States if the requirements of that state, territory, or possession for the license are the substantial equivalent of the requirements of this Act as determined by the board.

Licenses

Sec. 18. (a) The board shall issue a license to each person whom it licenses as a social psychotherapist. The license shall show the full name of the social psychotherapist and his address and shall bear a serial number. The license shall be signed by the chairman and the secretary of the board under the seal of the board.

(b) Licenses must be renewed at least once every two years. Licenses expire on August 31 and are invalid thereafter unless renewed.

(c) Social psychotherapists desiring to renew a license and who have maintained the status required by the board to qualify for licenses shall

(1) pay the renewal fee for the license; and

(2) if the board requires, give evidence that the social psychotherapist has participated in continuing education courses acceptable to the board toward the furthering of his professional development as a social psychotherapist.

(d) The board shall notify every person licensed under this Act of the amount of the renewal fee. This notice shall be mailed at least 60 days before the expiration of the license. Renewal may be made at any time during the months of July or August on application therefor by meeting the renewal require-

ments provided for in this Act. Failure to pay the renewal fee prior to September 1 shall not deprive a social psychotherapist of his right to renew his license, but the fee to be paid for renewal after August 31 shall be increased by 50 percent of the regular renewal fee.

Exemptions

Sec. 19. Nothing in this Act restricts the activities of the following; provided, however, no person shall state or imply that he is a "social psychotherapist" or use the letters "S.P." as part of his professional identification in conjunction with his name unless he is licensed under the provisions of this Act:

(1) a licensed physician, licensed psychologist, licensed attorney, social worker, lecturer, duly ordained priest, rabbi, minister of the gospel, Christian Science practitioner, or other licensed professional or ordained religious practitioner;

(2) a person who is performing activities of a psychotherapeutic nature, provided that he is performing those activities as part of the duties for which he is employed or under contract, and the activities are performed solely within the confines or under the control and supervision of one exempt under Section 19(1) of this Act or the jurisdiction of the organization in which he is employed or under contract, and provided that he does not state or imply that he is licensed to practice social psychotherapy, and provided that he may not offer to engage in the practice of social psychotherapy to the public for a fee, monetary or otherwise, over and above the salary or fee he receives for the performance of his official duties with the organization in which he is employed, or under contract, unless he is licensed under this Act;

(3) a person engaging in activities of a psychotherapeutic nature who is employed by accredited academic institutions, public schools, government agencies, or nonprofit institutions engaged in the training of graduate students or interns pursuing the course of study leading to a master's degree from a school accredited by the Council on Social Work Education, or working in a recognized training program, provided that these activities constitute a part of a supervised course of study and that the student is designated by a title such as social psychotherapy intern, social psychotherapy trainee, or other title clearly indicating the training status appropriate to his level of training; or

(4) a person from another state offering social psychotherapeutic services in this state; provided the services are performed for no more than five days in a calendar month, except that if the person meets the qualifications and requirements provided in this Act and resides in a state or territory of the United States, or foreign country, or province that does not grant a certification or license

to practice social psychotherapy, he may offer social psychotherapeutic services in this state for a total of not more than 30 days in any calendar year without being licensed under this Act.

Revocation, Cancellation, or Suspension of License

Sec. 20. (a) The Texas State Board of Examiners in Social Psychotherapy may cancel, revoke, or suspend the license of any social psychotherapist on proof that the social psychotherapist:

(1) has been convicted of a felony or of a violation of the law involving moral turpitude by any court; or

(2) has the habit of intemperance or drug addiction such as the use of morphine, opium, cocaine, or other drugs having similar effects; or

(3) has been guilty of fraud or deceit in connection with his services rendered as a social psychotherapist or in connection with application for license renewal; or

(4) has aided or abetted a person, not a licensed social psychotherapist, in representing himself as a social psychotherapist within this state; or

(5) has been guilty of unprofessional conduct as defined by the rules established by the board; or

(6) for any cause for which the board shall be authorized to refuse to admit persons to its examination.

(b) Proceedings under this section shall be begun by filing charges with the Texas State Board of Examiners in Social Psychotherapy in writing and under oath. The charges may be made by any person. The chairman of the board shall set a time and place for hearing and shall cause a copy of the charges, together with a notice of the time and place fixed for hearing, to be served on the respondent or his counsel at least 30 days prior to the hearing date. When personal service is impossible, the board shall cause to be published, once a week for two successive weeks, a notice of the hearing in a newspaper published in the county wherein the respondent was last known to live and shall mail a copy of the charges and of such notice to the respondent at his last known address. When publication of the notice is necessary, the date of the hearing shall not be less than 30 days after the date of the last publication of the notice. At the hearing the respondent has the right to appear either personally, by counsel, or both, to produce witnesses or evidence in his behalf, to cross-examine witnesses, and to have subpoenas issued by the board. The board shall thereupon determine the charges on their merits. All charges, complaints, notices, orders, records, and publications authorized or required by the terms of this Act are privileged.

(c) A person whose license has been cancelled, revoked, or suspended by the board may, within 30

days after the making and entering of the order, appeal to a district court in the county of his residence, but the decision of the board may be enjoined or stayed only on application to the district court after notice to the board. The proceeding on appeal is tried according to the substantial evidence rule, and the appeal shall be taken in a district court of the county in which the person whose license is involved resides. On application, the board may reissue a license to a person whose license has been cancelled or suspended, but the application may not be made until one year after the cancellation or revocation and shall be made in the manner and form as the board requires.

(d) The board may, by a majority vote, rule that the order revoking, cancelling, or suspending the social psychotherapist's license be probated so long as the probationer conforms to the orders and rules the board may set out as the terms of probation. The board, at the time of probation, shall set out the period of time that shall constitute the probationary period.

(e) The board may at any time, while the probationer remains on probation, hold a hearing and by majority vote rescind the probation and enforce the board's original action in revoking, cancelling, or suspending the social psychotherapist's license. The hearing to rescind the probation shall be called by the chairman of the board who shall cause to be issued a notice setting the time and place for the hearing and containing the charges or complaints against the probationer, said notice to be served on the probationer or his counsel at least 30 days prior to the time set for the hearing. When personal service is impossible, the same provisions for service of process by publication in lieu of personal service as set out in Subsection (b) of this section apply. At the hearing the probationer has the right to appear either personally, by counsel, or both, to produce witnesses or evidence in his behalf, to cross-examine witnesses, and to have subpoenas issued by the board. The board shall determine the charges on the merits. All charges, complaints, notices, orders, records, and publications authorized or required by the terms of this Act are privileged. The order revoking or rescinding the probation is not subject to review or appeal.

Injunctions

Sec. 21. The department may institute an action to enjoin the violation of any provisions of this Act. The action is in addition to any other action, proceeding, or remedy provided by law. The board shall be represented by the attorney general or a county or district attorney of this state.

Violations and Prohibitions Under this Act

Sec. 22. (a) No person, after one calendar year from the effective date of this Act, may represent

himself to be a social psychotherapist within this state without being licensed in accordance with the provisions of this Act.

(b) No social psychotherapist may continue to practice as a social psychotherapist without renewing his license six months after expiration of his license.

(c) No person may represent himself as a social psychotherapist, or use the letters "S.P." as part of his professional identification in conjunction with his name, unless he is licensed under the provisions of this Act.

(d) No person licensed under the provisions of this Act may violate a rule or regulation promulgated by the Texas State Board of Examiners in Social Psychotherapy.

Penalties

Sec. 23. A person who violates a provision of this Act, or a rule or regulation or other order of the board, is subject to a civil penalty of not less than \$50 nor more than \$1,000 for each day of violation.

Enforcement

Sec. 24. (a) When it appears that a person has violated or is violating or is threatening to violate any provision of this Act or any rule, regulation, or order of the board, then the board, or the executive secretary when duly authorized by the department, may cause a civil suit to be instituted in a district court for injunctive relief to restrain the person from continuing the violation or threat of violation or for the assessment and recovery of a civil penalty of not less than \$50 nor more than \$1,000 for each day of violation, as the court may deem proper, or for both injunctive relief and civil penalty. On application for injunctive relief and a finding that a person is violating or threatening to violate any provision of this Act or any rule, regulation, variance, or order of the board, the district court may grant the injunctive relief the facts warrant.

(b) At the request of the board, or the executive secretary when authorized by the department, the attorney general shall institute and conduct a suit in the name of the State of Texas for injunctive relief or to recover the civil penalty, or for both injunctive relief and penalty, as authorized in Subsection (a) of this section.

Revenue, Receipts, and Disbursements

Sec. 25. The State Department of Health shall receive and account for all money derived under this Act and shall pay the money weekly to the state treasurer who shall keep it in a separate fund to be known as the "Social Psychotherapist's Licensure Fund." The State Department of Health may make expenditures from this fund for any purpose which is reasonably necessary to carry out the provisions of

this Act. The State Department of Health may impose examination, license, and renewal fees, in an amount fixed by the State Department of Health. The State Department of Health shall fix the amount of the fees sufficient to meet the expenses of administering this Act without unnecessary surpluses. Surpluses, if any, are reserved for the use of the State Department of Health in this program.

Annual Report of the Board

Sec. 26. Within 90 days after the close of each fiscal year, the board shall submit a report to the governor and the presiding officer of each house of the legislature concerning the work of the board during the preceding fiscal year.

Appropriation

Sec. 27. For the biennium ending August 31, 1977, the funds received in the Social Psychotherapist's Licensure Fund are appropriated to the State Department of Health to be expended by it in the administration of this Act. The salaries paid to persons employed by the State Department of Health shall be comparable to those prescribed in the general appropriations act for persons holding comparable positions. To the extent applicable, the general rules of the general appropriations act apply to the expenditure of funds under this appropriation. [Acts 1975, 64th Leg., p. 2286, ch. 714, §§ 1 to 27, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 1839, ch. 735, § 2.050, eff. Aug. 23, 1977.]

CHAPTER SEVEN. NURSES

Article

4513a. Application of Sunset Act.

4526b. Inactive Status List.

4527c. Injunction.

Art. 4513a. Application of Sunset Act

The Board of Nurse Examiners is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished effective September 1, 1981.

[Added by Acts 1977, 65th Leg., p. 1838, ch. 735, § 2.041, eff. Aug. 29, 1977.]

¹ Article 5429k.

Art. 4514. Organization of Board

The members of the board shall elect from their number a president and a treasurer. Special meetings of said board shall be called by the president acting upon the written request of any two members. The board shall have the authority and power to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it, to establish standards of professional conduct for all persons licensed under the provisions of this law in keeping with its purpose and objectives, and to regulate the practice of pro-

fessional nursing. Such rules and regulations shall not be inconsistent with the provisions of this law. The executive secretary shall be required to keep a record of each meeting of said board, including a register of the names of all nurses registered under this law, which shall be at all times open to public inspection. Said board shall assist the proper legal authorities in the prosecution of all persons violating any provision of this law. Nothing herein shall either expand or contract the board's present powers as they relate to the regulation of nursing education. [Amended by Acts 1979, 66th Leg., p. 1220, ch. 590, § 1, eff. Aug. 27, 1979.]

Art. 4518. Accreditation of Schools of Nursing and Educational Programs; Certification of Graduates; Examination by Board of Nurse Examiners and Requirement of Registration

Sec. 1. It shall be the duty of the Board of Nurse Examiners to prescribe and publish the minimum requirements and standards for a course of study in programs which prepare professional nurse practitioners. All other regulations necessary to conduct accredited schools of nursing and educational programs for the preparation of professional nurses shall be as prescribed by the Board, provided, however, that the minimum period of time that the Board may require shall be at least two (2) academic years and the maximum period of time shall not exceed four (4) calendar years. The Board shall accredit such schools of nursing and educational programs as meet its requirements and shall deny or withdraw accreditation from schools of nursing and educational programs which fail to meet the prescribed course of study or other standards.

The Board shall give those persons and organizations affected by its orders or decisions under this Article reasonable notice thereof, not less than twenty (20) days, and an opportunity to appear and be heard with respect to same. The Board shall hear all protests or complaints from such persons and organizations affected by such rule, regulation or decision as to the inadequacy or unreasonableness of any rule, regulation or order promulgated or adopted by it, or the injustice of any order or decision by it. If any person or organization which shall be affected by such order or decision shall be dissatisfied with any regulation, rule or order by such Board, such person or organization shall have the right, within thirty (30) days from the date such order is entered, to bring an action against said Board in the District Court of Travis County, Texas, to have such regulation, rule or order vacated or modified, and shall set forth in a petition therefor the principal grounds of objection to any or all of such rules, regulations or orders. Such appeal as herein provided shall be de novo as that term is known and understood in appeals from the Justice Court to the County Court.

[See Compact Edition, Volume 4 for text of 2]

Sec. 3. Every applicant for registration under this law shall present to the Board of Nurse Examiners evidence of successful completion of an accredited program of professional nursing education and a sworn application accompanied by such proof as may be required by the Board showing that the applicant is of good moral character and has such basic educational and other preliminary qualifications and requirements as the Board may prescribe, and shall upon payment of required fees be entitled to take the examination prescribed by the Board, and upon making the passing grade of 350 on all subjects shall be entitled to receive from said Board a certificate signed by the members of said Board, attested by the seal of said Board, entitling such person to practice as a registered nurse in the State of Texas.

[See Compact Edition, Volume 4 for text of 4]

Sec. 5. Insofar as any of the following acts require substantial specialized judgment and skill and insofar as the proper performance of any of the following acts is based upon knowledge and application of the principles of biological, physical, and social science as acquired by a completed course in an approved school of professional nursing, "Professional Nursing" shall be defined as the performance for compensation of any nursing act (a) in the observation, assessment, intervention, evaluation, rehabilitation, care and counsel and health teachings of persons who are ill, injured or infirm or experiencing changes in normal health processes; (b) in the maintenance of health or prevention of illness; (c) in the administration of medications or treatments as prescribed by a licensed physician or dentist; (d) in the supervision or teaching of nursing; (e) in the administration, supervision, and evaluation of nursing practices, policies, and procedures. The foregoing shall not be deemed to include acts of medical diagnosis or prescription of therapeutic or corrective measures.

[See Compact Edition, Volume 4 for text of 6]

[Amended by Acts 1977, 65th Leg., p. 1755, ch. 703, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1221, ch. 590, §§ 2, 4, eff. Aug. 27, 1979.]

Art. 4519. Examination and Fee

Upon filing application for examination each applicant shall pay an examination fee which shall in no case be returned to applicant. If the applicant passes the examination, then no further fee shall be required for registration. Any applicant for registration who fails to successfully pass the examination herein provided for shall have the right to stand a second examination on those subjects wherein he or she has failed to make a grade of 350. A grade of not less than 350 on any one subject shall be required to pass the examination. The examination

shall be of such character as to determine the fitness of the applicant to practice professional nursing. If the result of the examination be satisfactory to the board, a certificate shall be issued to the applicant, signed by the president and executive secretary and attested by the seal of said board, which certificate shall qualify the person receiving the same to practice professional nursing in this State.

[Amended by Acts 1979, 66th Leg., p. 1222, ch. 590, § 5, eff. Aug. 27, 1979.]

Art. 4520. Exempt from Examination

No nurse who is engaged in professional nursing at the time of the passage of this law and who has qualified under any previous law of this State and received a certificate from the board under such provisions of law regulating professional nursing, shall be required to stand any further examination under this law.

[Amended by Acts 1979, 66th Leg., p. 1222, ch. 590, § 6, eff. Aug. 27, 1979.]

Art. 4524. Repealed by Acts 1979, 66th Leg., p. 1222, ch. 590, § 7, eff. Aug. 27, 1979

Art. 4525. Disciplinary Proceedings

(a) The board of nurse examiners may refuse to admit persons to its examinations, may refuse to issue a license or certificate of registration or to issue a certificate of re-registration, may refuse to issue a temporary permit, may issue a warning or reprimand, may suspend for any period not to exceed 2 years, or may revoke the license or certificate of any practitioner of professional nursing, for any of the following reasons:

(1) The violation, or attempted violation, of any of the provisions of this law, any rule, regulation not inconsistent with this law, or order issued hereunder.

(2) Is guilty of fraud or deceit in procuring or attempting to procure a license to practice professional nursing.

(3) Conviction of a crime of the grade of felony, or a crime of lesser grade which involves moral turpitude.

(4) The use of any nursing license, certificate, diploma or permit, or transcript of such license, certificate, diploma or permit, which has been fraudulently purchased, issued, counterfeited, or materially altered.

(5) The impersonation of, or the acting as a proxy for, another in any examination required by law to obtain a license to practice professional nursing.

(6) Aiding or abetting, directly or indirectly, or in any manner whatsoever, any unlicensed person in connection with the unauthorized practice of professional nursing.

(7) Revocation, suspension, or denial of the license to practice nursing in another jurisdiction. Certified copy of the order of denial, suspension, or revocation shall be conclusive evidence thereof.

(8) Intemperate use of alcohol or drugs if the nurse knows or should know that the effects of that use endangers or could endanger patients. Intemperate use includes but is not limited to practicing professional nursing or being on duty or call while under the influence of alcohol or drugs.

(9) Unprofessional or dishonorable conduct which, in the opinion of the board, is likely to injure the public.

(10) Adjudication of mental incompetency.

(11) Lack of fitness to practice by reason of mental or physical health or otherwise.

(b) Proceedings under this Article shall be begun by filing charges with the board of nurse examiners in writing and under oath. Such charges may be made by any person or persons. The board shall make such preliminary investigation of the charges as it deems necessary and may issue a warning or reprimand to the person charged. If the disciplinary proceedings under Subsection (a) of this Article are contemplated or, in any event, if the person charged so requests, a hearing shall follow. The president of the board shall set a time and place for hearing and shall cause a copy of the charges together with a notice of time and place fixed for the hearing to be served on the person charged at least 10 days prior thereto. Notice shall be sufficient if sent by registered or certified mail to the person charged at the address shown on his or her most recent application for certificate of registration or re-registration. At the hearing the person charged shall have the right to appear personally, or to be represented by counsel, or both; to produce witnesses or evidence in his own behalf; to cross-examine witnesses; and to have subpoenas issued by the board. The board shall thereupon determine the charges upon their merits. If requested by the person who is the subject of disciplinary proceedings, the board shall give in writing the reason for its decision. If a licensed professional nurse voluntarily surrenders said license to the board and executes a sworn statement that he or she no longer desires to be licensed, the board may revoke said license without the necessity of formal charges, notice, or opportunity of hearing.

(c) Any person whose license or certificate to practice professional nursing has been revoked or suspended by the board or who has been otherwise disciplined by the board may, within 30 days after the making and entering of such order, take an appeal to any of the district courts in the county of his residence, but the decision of the board shall not be enjoined or stayed except on application to such district courts after notice to the board. Upon application the board may reissue a license or certificate

to practice professional nursing to a person whose license has been revoked or suspended but such application, in case of revocation, shall not be made prior to one year after the revocation was issued and shall be made in such manner and form as the board may require.

(d) The board shall have the right and may, upon majority vote, rule that the order denying an application for a license or any order revoking, cancelling, or suspending any license be probated so long as the probated practitioner conforms to such orders and rules as the board may set out in the terms of probation. The board, at the time of probation, shall set out the period of time which shall constitute the probationary period; provided further that the board may at any time while the probationer remains on probation hold a hearing and upon majority vote rescind the probation and enforce the board's original action in denying, revoking, cancelling, or suspending such license. The said hearing to rescind the probation shall be called by the president of the board who shall cause to be issued a notice setting the time and place for the hearing and containing the charges or complaints against the probationer, said notice to be served on the probationer or his counsel at least 20 days prior to the time set for the hearing. Notice shall be sufficient if sent by registered or certified mail to the person charged at the address shown on his or her most recent application for certificate of registration or re-registration.

(e) The board of nurse examiners is charged with the duty of aiding in the enforcement of the provisions of this chapter, and may retain legal counsel to represent the board, but prior to retaining outside legal counsel, the board shall request the attorney general to perform such services and may only retain outside counsel if the attorney general so certifies to the board that the attorney general cannot provide such services. The board shall have the power to issue subpoenas, compel the attendance of witnesses, administer oaths to persons giving testimony at hearings, and cause the prosecution of all persons violating any provisions of this chapter. It shall keep a record of all its proceedings and make an annual report to the Governor. Any member of the board may present to a prosecuting officer complaints relating to violations of any of the provisions of this chapter, and the board through its members, officers, counsel, or agents shall assist in the trial of any cases involving alleged violation of this chapter, subject to the control of the prosecuting officers. The Attorney General is directed to render such legal assistance as may be necessary in enforcing and making effective the provisions of this chapter; provided that this shall not relieve the local prosecuting officers of any of their duties under the law as such.

[Amended by Acts 1979, 66th Leg., p. 1222, ch. 590, § 8, eff. Aug. 27, 1979.]

Art. 4526b. Inactive Status List

Any nurse licensed under the provisions of this law, not actively or actually engaged in the practice of professional nursing, at the expiration of any such license upon written request to the board in such form and manner as the board shall determine may be placed on an inactive status list which shall be maintained by the board. No professional nurse on such inactive status list shall perform any professional nursing services or work or violate any of the provisions of this law or any rule or regulation of the board so long as on such inactive status. At any time such person desires to reenter the active practice of professional nursing or again begin performing or offering to perform professional nursing services, such person shall notify the board and upon payment of appropriate fees shall be removed from the inactive status list.

[Added by Acts 1979, 66th Leg., p. 1224, ch. 590, § 9, eff. Aug. 27, 1979.]

Art. 4527. Fees

Text of article effective September 1, 1981

All fees received by said Board under this law shall be placed in the State Treasury to the credit of a special fund to be known as the "Professional Nurse Registration Fund" and the Comptroller shall upon requisition of the Board from time to time draw warrants upon the State Treasurer for the amounts specified in such requisition; provided, however, all fees collected by the Board and deposited in the Professional Nurse Registration Fund shall be expended as specified by itemized appropriation in the General Appropriations Act and shall be used by the Board, and under its directions, only for purposes of carrying out this Act. This section shall apply to all fees on hand at the time of the effective date of this section and all fees of whatsoever nature as permitted by law now or as amended. This section shall take effect September 1, 1981.

[Amended by Acts 1979, 66th Leg., p. 1225, ch. 590, § 12, eff. Sept. 1, 1981.]

For text of article effective until September 1, 1981, see Compact Edition, Volume 4

Art. 4527b. Penalty

A person who violates any provision of this chapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$50 nor more than \$500, confinement in jail for a term not to exceed 30 days, or both.

[Amended by Acts 1979, 66th Leg., p. 1225, ch. 590, § 11, eff. Aug. 27, 1979.]

Art. 4527c. Injunction

In addition to any other action, proceeding, or remedy authorized by law, the board shall have the right to institute any action in its own name to

enjoin any violation or any provision of this law or rule or regulation of the board, and in order for the board to sustain such action, it shall not be necessary to allege or prove either that an adequate remedy at law does not exist or that substantial or irreparable damage would result from the continued violation thereof; provided, however, that in any such proceeding for injunction the defendant may assert and prove as a complete defense to such action that the actions or proceedings of the board were: (1) arbitrary or capricious; (2) contrary to legal requirements; or (3) conducted without due process of law. Either party to such action may appeal to the appellate court having jurisdiction of said cause. The board shall not be required to give any appeal bond in any cause arising under this law.

[Added by Acts 1979, 66th Leg., p. 1221, ch. 590, § 3, eff. Aug. 27, 1979.]

Art. 4527-1. Authorized Fees that may be Charged by Board of Nurse Examiners

The board of nurse examiners, in addition to other fees authorized heretofore, may charge and receive for the use of the board a reasonable fee not more than the following fees:

For accreditation of new schools and programs	\$100.00
For admission fee to examinations, to be applied to all examinations in each examination	\$ 50.00
For approval of Exchange Visitor Programs	\$ 50.00
For duplicate or substitute of current certificate	\$ 5.00
For duplicate or substitute of permanent certificate	\$ 10.00
For duplicate permits	\$ 3.00
For endorsement with or without examination	\$ 50.00
For filing affidavits in re change of name	\$ 5.00
For proctoring examinations of examinees from another State	\$ 75.00
For re-registration under Article 4526, Revised Civil Statutes of Texas, 1925, as amended	\$ 25.00
For verification of records	\$ 5.00
For issuance of a temporary permit under Article 4523(a), Revised Civil Statutes of Texas, 1925, as amended	\$ 10.00
For late application for re-registration	\$ 10.00
For reactivating from inactive status	\$ 20.00
For bad checks	\$ 10.00

The board of nurse examiners shall set and collect a sales charge for making copies of any paper of record in the office of the board, and for any printed

material published by the board, such charges to be in an amount deemed sufficient to reimburse the board for the actual expense.

[Amended by Acts 1975, 64th Leg., p. 301, ch. 130, § 1, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1225, ch. 590, § 10, eff. Aug. 27, 1979.]

Sections 2 and 3 of the 1975 amendatory act provided:

"Sec. 2. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

"Sec. 3. All laws and parts of laws in conflict herewith are hereby repealed."

Art. 4528b. Tuberculosis Nurses

[See Compact Edition, Volume 4 for text of 1]

Application of Sunset Act

Sec. 1a. The Board of Tuberculosis Nurses Examiners is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1981.

¹ Article 5429k.

[See Compact Edition, Volume 4 for text of 2 to 9]

[Amended by Acts 1977, 65th Leg., p. 1837, ch. 735, § 2.037, eff. Aug. 29, 1977.]

Art. 4528c. Licensed Vocational Nurses

[See Compact Edition, Volume 4 for text of 1 to 3]

Term of Office, Organization, Meetings of Board; Application of Sunset Act

Sec. 4.

[See Compact Edition, Volume 4 for text of 4(a) to (d)]

(e) The Board of Vocational Nurse Examiners is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1981.

¹ Article 5429k.

[See Compact Edition, Volume 4 for text of 4½ to 14]

[Amended by Acts 1977, 65th Leg., p. 1837, ch. 735, § 2.038, eff. Aug. 29, 1977.]

CHAPTER EIGHT. PHARMACY

Article

4542c. Labeling Requirements for Prescriptions Drugs.

Art. 4542a. State Board of Pharmacy to Regulate Practice of Pharmacy

[See Compact Edition, Volume 4 for text of 1]

Application of Sunset Act

Sec. 1a. The State Board of Pharmacy is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1981.

¹ Article 5429k.

[See Compact Edition, Volume 4 for text of 2]

Funds Received, Use Of

Sec. 3. The fund realized from all fees payable under this Act shall first be applied to the payment of all necessary expenses of the Board, and the remainder is to be applied by order of the Board to compensate members of said Board; said compensation to each member of the Board not to exceed Seventy-five Dollars (\$75) per day, exclusive of necessary expenses in performance of his duties. Provided, however, that the premium on any bond required of the Secretary, or any other employee of the Board, shall be paid out of said fund, as well as the expenses of any employee incurred in the performance of his duties. The State Board of Pharmacy shall defray all expenses under this law from fees provided in this Act, and the State of Texas shall never be liable for the compensation or expenses of any member of the Board, or its officers or employees, or any other expenses thereof.

[See Compact Edition, Volume 4 for text of 4 to 8]

Fees

Sec. 9. (a) Every person desiring to practice pharmacy in the State of Texas shall be required to pass the examination given by the State Board of Pharmacy. The applicant shall make application by presenting to the secretary of the Board, on forms furnished by the Board, satisfactory sworn evidence that he has attained the age of twenty-one (21) years, is of good moral character, is a citizen of the United States, and has at least graduated from a first grade high school, or has a preliminary education equivalent thereto, permitting matriculation in The University of Texas, and that he has attended and graduated from a reputable university, school, or college of pharmacy which meets with the requirements of the Board, and shall have had at least one thousand (1,000) hours of practical experience under the supervision of a registered pharmacist. A university, school, or college of pharmacy is reputable whose entrance requirements and course of instruction are as high as those adopted by recognized universities, schools, or colleges of pharmacy, and whose course of instruction shall be the equivalent

of not less than four (4) terms of eight (8) months each, and approved by the Board.

(b) The examination shall consist of written, oral, and/or practical tests in pharmacy, chemistry, pharmaceutical jurisprudence, posology, toxicology, bacteriology, physiology, pharmacognosy, and pharmacology, and in such other subjects as may be regularly taught in all recognized universities, schools, and colleges of pharmacy.

(c) Each applicant for license to practice pharmacy in Texas shall be given due notice of the time and place of examination. All examinations shall be conducted in writing and by such other means as the State Board of Pharmacy shall deem adequate to ascertain the qualifications of applicants, and in such manner as shall be entirely fair and impartial to all individuals in every recognized school of pharmacy. All applicants examined at the same time shall be given the same regular examinations, and each applicant successfully passing the examination and meeting all requirements of the State Board of Pharmacy shall be registered by the Board as possessing the qualifications required by this law, and shall receive from said Board a license to practice pharmacy in this State. Provided that the State Board of Pharmacy may, in its discretion, upon the payment of an amount, not to exceed Two Hundred Fifty Dollars (\$250), set by the Board, grant a license to practice pharmacy to persons who pass a Texas drug and pharmacy law examination administered by the Board and who furnish proof that they have been registered as pharmacists in some other state or territory, and that they are of good moral character, provided that such other Board in its examination required the same general degree of fitness required by this State, and grants the same reciprocal privileges to pharmacists of this State.

(d) No person who is a member of the Communist Party, or who is affiliated with such party, or who believes in, supports, or is a member of any group or organization that believes in, furthers, or teaches the overthrow of the United States Government by force or by any illegal or unconstitutional methods, shall be authorized to practice pharmacy in the State of Texas, or to receive a license to practice pharmacy in the State of Texas.

(e) Every person admitted to practice pharmacy in the State of Texas shall, before receiving his license, make oath that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in and is neither a member of nor supports any group or organization that believes in, furthers, or teaches the overthrow of the United States Government by force or by any illegal or unconstitutional methods.

(f) Any person who shall falsely make the affidavit prescribed in the foregoing paragraph shall be

deemed guilty of fraudulent and dishonorable conduct, and malpractice, and shall be subject to all penalties which may be prescribed for making false affidavit.

[See Compact Edition, Volume 4 for text of 10]

Fees, Examination of Books and Records

Sec. 11. The State Board of Pharmacy shall charge a fee not to exceed \$75 for examining an applicant for license, which fee must accompany the application. If an applicant who, because of failure to pass the examination, is refused a license, he shall be permitted to take a second examination without additional fee, provided the second examination is taken within a period of one (1) year. The State Auditor of the State of Texas shall, not less than once each year, examine and audit the books and records of the State Board of Pharmacy, and report his findings to the Governor of the State of Texas.

[See Compact Edition, Volume 4 for text of 12 and 13]

Annual Renewal Fee; Practicing Without Renewal Certificate; Duplicates

Sec. 14. (a) On or before the first day of each year every licensed pharmacist in this state shall pay to the Secretary of the State Board of Pharmacy an annual renewal fee not to exceed Thirty-five Dollars (\$35) for the renewal of his license to practice pharmacy for the current year. On receipt of said renewal fee, the Board shall issue an annual renewal certificate bearing the number of the license, the year for which renewed and other information for the records of the Board which said Board may deem necessary. When a pharmacist shall have failed to pay his annual renewal fee before March 1st of each year, said license shall be suspended, and such person in order to be reinstated shall be required to pay one (1) annual renewal fee as a penalty, in addition to the sum of all fees such person may be in arrears. Said renewal fee shall be due on January 1st of each year, and shall become delinquent on March 1st of each year.

[See Compact Edition, Volume 4 for text of 14(b) to 16]

Permits for Stores or Factories

Sec. 17.

[See Compact Edition, Volume 4 for text of 17(a) to 17(c)]

(d) The State Board of Pharmacy may, in its discretion, refuse to issue a permit to any applicant,

and may cancel, revoke, or suspend the operation of any permit by it granted under the foregoing subsections for any of the following reasons:

(1) That the applicant has been convicted of a felony or a misdemeanor which involves moral turpitude, or if the applicant be an association, joint stock company, partnership, or corporation, that a managing officer has been convicted of a felony or a misdemeanor which involves moral turpitude;

(2) That the applicant has been convicted in either a State or Federal Court of the illegal use, sale, or transportation of intoxicating liquor, narcotic drugs, barbiturates, amphetamines, desoxephedrine, their compounds or derivatives, controlled substances as defined in the Texas Controlled Substances Act, or any other dangerous or habit-forming drugs, or if the applicant be an association, joint stock company, partnership, or corporation, that a managing officer has been convicted in either a State or Federal Court of the illegal use, sale, or transportation of intoxicating liquor, narcotic drugs, barbiturates, amphetamines, desoxephedrine, their compounds or derivatives, controlled substances, or any other dangerous or habit-forming drugs;

(3) That the applicant applying for, or licensed, pursuant to Subsection (a) hereof has advertised any drug or drugs which bear the legend: "Caution: Federal law prohibits dispensing without prescription" in a deceitful, misleading, or fraudulent manner;

(4) That any owner or employee of an owner of a licensed retail pharmacy, drugstore, dispensary, or apothecary shop, pursuant to Subsection (a), has violated any provision of this Act;

(5) That the applicant has sold counterfeit drugs and medicines, or has sold without a prescription drugs and medicines bearing the legend: "Caution: Federal Law prohibits dispensing without prescription," to persons other than:

(A) the owners or operators of a pharmacy, drug store, dispensary, apothecary shop, or prescription laboratory, duly registered with the State Board of Pharmacy;

(B) practitioners;

(C) persons who procure controlled substances or dangerous drugs for the purpose of lawful research, teaching, or testing, and not for resale;

(D) hospitals which procure controlled substances or dangerous drugs for lawful administration by practitioners;

(E) officers or employees of federal, state, or local government acting in the lawful discharge of their official duties;

(F) manufacturers and wholesalers registered with the Commissioner of Health as required by

Chapter 373, Acts of the 57th Legislature, 1961, as amended (Article 4476-5, Vernon's Texas Civil Statutes);

(G) carriers and warehousemen.

[See Compact Edition, Volume 4 for text of 17(e)]

(f) The permit provided for in Subsection (a) of this Section shall be issued annually by the Board upon receipt of the proper application accompanied by a fee not to exceed Fifty Dollars (\$50).

[See Compact Edition, Volume 4 for text of 17(g) to 20]

Sec. 20A. Repealed by Acts 1979, 66th Leg., p. 2204, ch. 837, § 5, eff. June 14, 1979.

[See Compact Edition, Volume 4 for text of 21 and 21a]

[Amended by Acts 1975, 64th Leg., p. 1384, ch. 532, §§ 1 to 3, June 19, 1975; Acts 1977, 65th Leg., p. 1837, ch. 735, § 2.040, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2108, ch. 844, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 2202, ch. 837, §§ 1 to 5, eff. June 14, 1979.]

Art. 4542c. Labeling Requirements for Prescription Drugs

(a) All prescription drugs manufactured and sold or distributed to a pharmacist in this state after the effective date of this Act to be subsequently dispensed to the consumer of the drug or drug product shall have affixed to the labeling the name and business address of the original manufacturer of the finished dosage form, and the names and business address of all repackagers or distributors of the prescription drug or drug product prior to its delivery to the pharmacist. This information does not need to be affixed to the container delivered to the patient. Provided, however, that the name and business address of the distributor need not be so affixed if the distributor acts only as a wholesaler or supplier and does not repackage the drug or in any way modify the individual drug package or container or its contents as such was received from the manufacturer, repackager, or other distributor.

(b) An individual, corporation, or association who violates any provision of this Act commits a Class C misdemeanor.

[Acts 1975, 64th Leg., p. 1360, ch. 517, § 1, eff. Jan. 1, 1976. Amended by Acts 1977, 65th Leg., p. 1225, ch. 473, § 1, eff. Aug. 29, 1977.]

Section 2 of the 1977 Act repealed conflicting laws.

CHAPTER NINE. DENTISTRY

Article

4543a. Application of Sunset Act.

4547a. Aid to the Board.

4551c-1. Peer Review or Grievance Committees.

4551i. Civil Immunity—Peer Review, Judicial or Grievance Committees.

4451j. Civil Immunity, Official Acts.

Art. 4543a. Application of Sunset Act

The State Board of Dental Examiners is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished effective September 1, 1981.

[Added by Acts 1977, 65th Leg., p. 1838, ch. 735, § 2.047, eff. Aug. 29, 1977.]

¹ Article 5429k.

Art. 4544. Examination for License to Practice Dentistry

It shall be the duty of the Board to examine all applicants for license to practice dentistry in this State; and the Board shall examine and grade all papers submitted by such applicants and report to such applicants within a reasonable time after the date of such examination, and said report shall give to each applicant the grades made by said applicant upon each and every subject which he or she was examined by said Board. Each person applying for an examination shall pay to said Board a fee of One Hundred Dollars (\$100) and shall be granted a license to practice dentistry in this State upon his satisfactorily passing an examination given by said Board on subjects and operations pertaining to dentistry which shall include Anatomy, Physiology, Anaesthesia, Biochemistry, Dental Materials, Diagnosis, Treatment Planning, Ethics, Jurisprudence, Hygiene, Pharmacology, Operative Dentistry, Oral Surgery, Orthodontia, Perodontia, Prosthetic Dentistry, Pathology, Microbiology, and such other subjects as are regularly taught in reputable Dental Schools as the Board may in its discretion require. The examination shall be given either orally or in writing, or by giving a practical demonstration of the applicant's skill, or by any combination of such methods or subjects as the Board may in its discretion require. The Texas State Board of Dental Examiners may provide in its rules and regulations the procedures, fees, and requirements for graduates of foreign and/or nonaccredited Dental Schools to become licensed to practice dentistry in Texas.

[Amended by Acts 1977, 65th Leg., p. 356, ch. 174, § 4, eff. Aug. 29, 1977.]

Arts. 4546, 4546a. Repealed by Acts 1977, 65th Leg., p. 616, ch. 225 § 4, eff. Aug. 29, 1977

Art. 4547a. Aid to the Board

The Texas State Board of Dental Examiners shall have power and authority to appoint such clerks, advisors, consultants, hygienists, and/or examiners to aid the board to carry out its duties as it deems necessary and advisable and may reimburse said persons so appointed in such amounts as is reasonable and in conformity with the provisions of the general appropriations bill as enacted by the Texas Legislature.

[Added by Acts 1977, 65th Leg., p. 969, ch. 365, § 1, eff. Aug. 29, 1977.]

Art. 4548e. Use of Own Proper Name Instead of Corporate or Trade Name; Practice as Partnership

It shall be unlawful for any person or persons to practice dentistry in this State under the name of a corporation, company, association, or trade name; or under any name except his own proper name, which shall be the name used in his license as issued by the State Board of Dental Examiners. It shall be unlawful for any person or persons to operate, manage, or be employed in any room, rooms, office, or offices where dental service is rendered or contracted for under the name of a corporation, company, association, or trade name, or in any other name than that of the legally qualified dentist or dentists actually engaged in the practice of dentistry in such room, rooms, office, or offices; provided, however, this shall not prevent two or more legally qualified dentists from practicing dentistry in the same offices as a firm, partnership, or as associates in their own names as stated in licenses issued to them. Provided, however, that any dentist practicing under his own license may be employed by any person, firm or partnership practicing dentistry under licenses issued to them. Each day of violation of this Article shall constitute a separate offense. This prohibition shall not prohibit a dentist or dentists from incorporating their dental practice in accordance with the Texas Professional Corporation Act (Article 1528e, Vernon's Texas Civil Statutes), where such corporate practice complies with the rules and regulations of the State Board of Dental Examiners governing such corporate practice.

[Amended by Acts 1977, 65th Leg., p. 1165, ch. 444, § 2, eff. Aug. 29, 1977.]

Art. 4549. Refusing Examination or License; Revocation of License

The Texas State Board of Dental Examiners shall have authority to refuse to examine any person or refuse to issue a license to any person for any one or more of the following causes:

(a) Proof of presentation to the Board of any dishonest or fake evidence of qualification, or being guilty of any illegality, fraud or deception in the process of examination, or for the purpose of securing a license.

(b) Proof of chronic or habitual intoxication or addiction to drugs on the part of the applicant.

(c) Proof that the applicant has been guilty of dishonest or illegal practices in or connected with the practice of dentistry.

(d) Proof of conviction of the applicant of a felony involving moral turpitude under the laws of this State or any other State or of the United States.

The Texas State Board of Dental Examiners and the District Courts of this State shall have concur-

rent jurisdiction and authority, after notice and hearing as hereinafter provided, to suspend or revoke a dental license for any one or more of the following causes:

(a) Proof of insanity of the holder of a license, as adjudged by the regularly constituted authorities.

(b) Proof of conviction of the holder of a license of a felony involving moral turpitude under the laws of this State or any other State or of the United States.

(c) That the holder thereof has been or is guilty of dishonorable conduct, malpractice or gross incompetency in the practice of dentistry.

(d) That the holder thereof has been or is guilty of any deception or misrepresentation for the purpose of soliciting or obtaining patronage.

(e) That the holder thereof procured a license through fraud or misrepresentation.

(f) That the holder thereof is addicted to habitual intoxication or the use of drugs.

(g) That the holder thereof employs or permits or has employed or permitted persons to practice dentistry in the office or offices under his control or management, who were not licensed to practice dentistry.

(h) That the holder thereof has failed to use proper diligence in the conduct of his practice or to safeguard his patients against avoidable infections.

(i) That the holder thereof has failed or refused to comply with any of the provisions of this Act.

(j) That the holder thereof has failed or refused to comply with the adopted and promulgated rules and regulations of the Board.

(k) That the holder thereof is physically or mentally incapable of practicing dentistry legally or with safety to dental patients.

(l) That the holder thereof has been negligent in the performance of dental services which injured or damaged dental patients.

Proceedings to suspend or revoke a dental license on account of any one or more of the causes set forth in this Article shall be taken as follows:

(a) Proceedings before the Texas State Board of Dental Examiners shall be as follows:

All complaints to be considered by the Board shall be made in writing, subscribed and sworn to by the person presenting such complaint, which complaint shall set out the alleged violations of such Statutes and declaring it to be the opinion of the person presenting such complaint that the person or persons so accused have so violated said Statutes.

All complaints as received shall be presented to the Secretary of the Board or an authorized

employee of the Board who shall cause copies of all complaints to be made and mailed or delivered to each member of the Board. When a complaint is made by a member of the Board, its agents or employees, the Secretary of the Board shall cause such complaint to be docketed on its records in the name of the Texas State Board of Dental Examiners versus the person against whom such complaint has been made, and shall mail a copy of such docketed complaint by registered mail to the accused person under the jurisdiction of the Texas State Board of Dental Examiners charged with having violated such Statutes. When a complaint is made by others than the members of the Board, its agents or employees, the Board or its duly authorized representative shall cause an investigation of such complaint to be made to determine the facts in such case, and if the facts as determined by such investigation, in the discretion of the Secretary of the Board, justify the docketing of such complaint for hearing before the Board, then the Secretary of the Board shall cause such complaint to be docketed on its records in the name of the Texas State Board of Dental Examiners versus the person against whom such complaint has been made, and shall mail a copy of such docketed complaint by registered mail to the accused person under the jurisdiction of the Texas State Board of Dental Examiners charged with having violated such Statutes.

The Secretary of the Board or its authorized officer or employee shall not less than ten (10) days prior to the next meeting of the Board called for the purpose of hearing and considering such complaint, mail by registered mail to the last known address of such person or persons against whom a complaint has been so docketed a notice of hearing, which notice shall contain the date, time, and place of the meeting of the Texas State Board of Dental Examiners called to consider such complaint, and such notice shall contain the alleged violations of such Statutes, and shall state that such accused person may appear and offer such evidence as is pertinent to his defense to such complaint. Such hearing shall be governed by such rules and regulations as may be prescribed by the Board, and the Board shall have the authority to subpoena and compel the attendance of such licensees or other persons deemed to have knowledge which would aid the Board in reaching a proper decision and for the enforcement of this Act. After such hearing, the Board shall enter an order in its minutes, as in the opinion of the majority of the Board the facts brought out at such hearing justify and require. Provided, however, that any order revoking or suspending such license or licenses shall be signed

by a majority of such Board and by all the members of such Board present at such hearing.

If said Board shall make and enter any order revoking or suspending any license or licenses as hereinabove provided, the person or persons whose license shall have been so revoked or suspended may, within thirty (30) days after the making and entering of such order, take an appeal to the District Court of the County of the residence of the person or persons whose license shall have been so revoked or suspended, by filing an appropriate petition for such purpose. Said cause shall be placed on the docket of said Court in the name of the party or parties filing same, as plaintiff, and the Texas State Board of Dental Examiners, as defendants. It shall be the duty of said Board, upon the filing of a petition asking for an appeal and review of such proceedings of said Board by the person or persons accused, and after citation in such cause has been issued and served as in other civil cases, to prepare and transmit to such District Court upon notice from such Court a transcript of the orders hereinabove provided for, the same to be certified as true and correct by the Secretary of said Board. Such District Court shall thereafter and under the rules of procedure applicable to other civil cases, proceed to set such cause for hearing as in other civil cases. Upon the hearing of such cause, if such Court shall find that the action of such Board, in revoking or suspending such license or licenses is not well taken, such Court shall by appropriate order and judgment set aside such action of said Board; but if such Court or jury shall sustain such action of said Board in revoking or suspending such license or licenses an order shall be made and entered in appropriate form sustaining and affirming the action of such Board; provided, however, that the person or persons whose license shall have been so revoked or suspended may waive the impanelling of a jury, from which order an appeal may be taken to the Court of Civil Appeals, as in other civil causes.

(b) Proceedings before the District Courts of this State shall be as follows:

It shall be the duty of the several District and County Attorneys of this State, on the request of any member of the Texas State Board of Dental Examiners or by complaint presented to any District Court of the State or county in which such alleged offense occurred, to file and prosecute appropriate judicial proceedings in the name of the State against the person or persons alleged to have so violated such Statute. Such complaint shall be made in writing and filed in the District Court of the State or county in which the alleged offense occurred, and such

complaint shall distinctly set forth the charges and grounds thereof and shall be subscribed and sworn to. When such complaint is made by any County or District Attorney, as herein provided, it shall be subscribed and sworn to by the prosecutor and shall be filed with the Clerk of the Court. The Court, upon the filing of said complaint, shall order the accused dentist to show cause why his license to practice dentistry in this State shall not be suspended or revoked.

Citation therein shall be issued in the name of the State of Texas and in manner and form as in other cases and the same shall be served upon the defendant at least ten (10) days before the trial date set therein. Upon the return of said citation executed, if the defendant shall appear and deny the charge, the cause shall be docketed for trial and conducted in the name of the State of Texas against the defendant. A jury of twelve (12) men shall be summoned as in cases during term time of the Court when no regular jury is available and as prescribed by law and shall be impanelled unless waived by the defendant, and the cause shall be tried in like manner as in other civil cases. If the said accused dentist be found guilty or shall fail to appear and deny the charge after being cited as aforesaid, the Court may by proper order entered on the minutes, suspend his license for a time or revoke and cancel it entirely and may also give proper judgment of costs, from which order an appeal may be taken to the Court of Civil Appeals as in other civil cases.

[Amended by Acts 1977, 65th Leg., p. 799, ch. 296, § 1, eff. May 28, 1977.]

Sections 2 and 3 of the 1977 amendatory act provided:

"Sec. 2. All laws or parts of laws in conflict or inconsistent with the provisions of this Act are hereby repealed.

"Sec. 3. If any section, subsection, paragraph, sentence, clause, phrase, or word in this Act, or the application thereof to any person or circumstance for any reason is held invalid or unconstitutional, such holding shall not affect the validity or enforceability of the remaining portions of this Act, and the legislature hereby declares that it would have passed such remaining portions of this Act despite such invalidity or unconstitutionality of any part or portion thereof."

Art. 4550. Records of the Board

The Board shall keep records in which shall be registered the name and residence or place of business of all persons authorized under this law to practice dentistry, dental hygiene and such other professions or businesses under its jurisdiction as provided by law. All of the records and files of the Texas State Board of Dental Examiners shall be public records and open to inspection at reasonable times, except the investigation files and records which shall be confidential and their contents may not be forced to be divulged until after the investigation is complete or has been inactive for 60 days at which time this exception expires and the records open to inspection.

[Amended by Acts 1977, 65th Leg., p. 1165, ch. 444, § 1, eff. Aug. 29, 1977.]

Section 2 of the 1977 amendatory act amended art. 4548e; §§ 3 and 4 thereof provided:

"Sec. 3. All laws or parts of laws in conflict or inconsistent with the provisions of this Act are hereby repealed.

"Sec. 4. If any section, subsection, paragraph, sentence, clause, phrase, or word in this Act, or the application thereof to any person or circumstance for any reason is held invalid or unconstitutional, such holding shall not affect the validity or enforceability of the remaining portions of this Act, and the legislature hereby declares that it would have passed such remaining portions of this Act despite such invalidity or unconstitutionality of any part or portion thereof."

Art. 4550a. Application, Registration Fund, and Secretary or Director

1. It shall be the duty of all persons now lawfully qualified and engaged in the practice of dentistry in this State, or who shall hereafter be licensed for such practice by the State Board of Dental Examiners, to annually apply and to be registered as such practitioners with the State Board of Dental Examiners on or before March 1st of each calendar year. Each person so registering shall pay in connection with such annual registration for the receipt hereinafter provided for, a fee of not less than Twelve Dollars (\$12) nor more than Seventy-Five Dollars (\$75) as determined by said Board according to the needs of said Board, such payment to be made by each licensee to such Board, and every person so registering shall file with said Board a written application setting forth such facts as the Board may require. Upon receipt of such applications, accompanied by such fees, said Board, after ascertaining either from its records or other sources deemed by it to be reliable, that the applicant is a duly licensed practitioner of dentistry in this State, shall issue to the applicant an annual registration certificate or receipt certifying that he has filed such application and has paid the required fee; provided, that the filing of such application, the payment of such fee, and the issuance of such receipt therefor, shall not entitle the holder thereof to lawfully practice dentistry within the State of Texas unless he has in fact been previously licensed as such practitioner by the State Board of Dental Examiners, as provided by this law, and unless said license is in full force and effect; and provided further, that in any prosecution for the unlawful practice of dentistry such receipt showing payment of the annual registration fee required by this chapter shall not be treated as evidence that the holder thereof is lawfully entitled to practice dentistry.

[See Compact Edition, Volume 4 for text of 2 and 3]

4. To aid the Board in performing the duties prescribed in this Section, the Board is hereby authorized to employ an Executive Secretary or Director who shall receive a salary to be fixed by the Board, and who shall make and file a surety bond in a sum not less than Five Thousand Dollars (\$5,000) conditioned for the faithful performance of all the duties of his office and the safekeeping and proper disbursement of said "Dental Registration Fund" and all other funds coming into his hands; such salary

shall be paid out of said "Dental Registration Fund" and shall not be in any way a charge upon the general revenue of the State. Said Board shall employ and provide such other employees as may be needed to assist the Executive Secretary or Director in performing his duties and in carrying out the purposes of this Act, provided that their compensation shall be paid only out of the said "Dental Registration Fund." All disbursements from "Dental Registration Fund" shall be made only upon the written approval of the President and Secretary of said Board and upon warrants drawn by the Comptroller to be paid out of said fund.

[Amended by Acts 1977, 65th Leg., p. 353, ch. 174, § 1, eff. Aug. 29, 1977.]

Section 2 of the 1977 amendatory act amended §§ 5 and 6 of art. 4551e; § 3 amended art. 4551; § 4 amended art. 4544; §§ 5 and 6 thereof provided:

"Sec. 5. All laws or parts of laws in conflict or inconsistent with the provisions of this Act are hereby repealed.

"Sec. 6. If any section, subsection, paragraph, sentence, clause, phrase, or word in this Act, or the application thereof to any person or circumstance for any reason is held invalid or unconstitutional, such holding shall not affect the validity or enforceability of the remaining portions of this Act, and the legislature hereby declares that it would have passed such remaining portions of this Act despite such invalidity or unconstitutionality of any part or portion thereof."

Art. 4551. Fees and Expenses

Each member of the State Board of Dental Examiners, also known and referred to as the Texas State Board of Dental Examiners, shall receive for his service Seventy-five Dollars (\$75) per day for each day he is actually engaged in the duties of his office together with all legitimate expenses incurred in the performance of such duties. All per diem and expenses accruing hereunder shall be paid from monies received by said Board from the "Dental Registration Fund" as provided in this law; no money shall ever be paid to any member of the Board from the General Fund.

[Amended by Acts 1977, 65th Leg., p. 356, ch. 174, § 3, eff. Aug. 29, 1977.]

Art. 4551a. Persons Regarded as Practicing Dentistry

Any person shall be regarded as practicing dentistry within the meaning of this Chapter:

(1) Who publicly professes to be a dentist or dental surgeon or who uses or permits to be used for himself or for any other person, the title of "Doctor," "Dr.," "Doctor of Dental Surgery," "D.D.S.," "Doctor of Dental Medicine," "D.M.D.," or any other letters, titles, terms or descriptive matter which directly or indirectly represents him as being able to diagnose, treat, remove stains or concretions from teeth, provide surgical and adjunctive treatment for any disease, pain, injury, deficiency, deformity or physical condition of the human teeth, oral cavity, alveolar process, gums, jaws or directly related and adjacent masticatory structures.

(2) Who shall offer or undertake by any means or methods whatsoever, to clean teeth or to re-

move stains, concretions or deposits from teeth in the human mouth, or who shall undertake or offer to diagnose, treat, operate, or prescribe by any means or methods for any disease, pain, injury, deficiency, deformity, or physical condition of the human teeth, oral cavity, alveolar process, gums, or jaws.

(3) Any person who shall offer or undertake in any manner to prescribe or make, or cause to be made, an impression of any portion of the human mouth, teeth, gums, or jaws, for the purpose of diagnosing, prescribing, treating, or aiding in the diagnosing, prescribing or treating, any physical condition of the human mouth, teeth, gums or jaws, or for the purpose of constructing or aiding in the construction of any dental appliance, denture, dental bridge, false teeth, dental plate or plates of false teeth, or any other substitute for human teeth.

(4) Any one who owns, maintains or operates any office or place of business where he employs or engages, under any kind of contract whatsoever, any other person or persons to practice dentistry as above defined shall be deemed to be practicing dentistry himself and shall himself be required to be duly licensed to practice dentistry as hereinabove defined, and shall be subject to all of the other provisions of this Chapter, even though the person or persons so employed or engaged by him shall be duly licensed to practice dentistry as hereinabove defined.

(5) Any person, firm, group, association, or corporation who shall offer or undertake to fit, adjust, repair, or substitute in the human mouth or directly related and adjacent masticatory structures any dental appliance, structure, prosthesis, or denture, or who shall aid or cause to be fitted, adjusted, repaired, or substituted in the human mouth or directly related and adjacent masticatory structures any dental appliance, structure, prosthesis, or denture.

(6) Who makes, fabricates, processes, constructs, produces, reproduces, duplicates, repairs, relines, or fixes any full or partial denture, any fixed or removable dental bridge or appliance, any dental plate or plates of false teeth, any artificial dental restoration, or any substitute or corrective device or appliance for the human teeth, gums, jaws, mouth, alveolar process, or any part thereof for another, or who in any manner offers, undertakes, aids, abets, or causes another person so to do for another, without a written prescription or work-order therefor signed by the dentist legally engaged in the practice of dentistry in this state or in the jurisdiction where such dentist maintains his dental office and who prescribed and ordered same.

(7) Who offers, undertakes, solicits, or advertises in any manner for himself or for another except in person or by agent to a dentist, or through the United States Mail to a dentist, or in regularly published dental publications mailed or delivered to dentists in this state or in other jurisdictions to do or perform any of the acts or services listed in any of the subsections of this Article and except to and for such dentist.

(8) Who shall offer or undertake or cause another to do, directly or indirectly, for any person any act, service, or work in the practice of dentistry or any part thereof as provided for in the laws of Texas relating to the practice of dentistry including without limitation the inducing, administering, prescribing, or dispensing any anesthesia, anesthetic drug, medicine, or agent in anywise incidental to or in connection with the practice of dentistry; or who permits or allows another to use his license or certificate to practice dentistry in this state for the purpose of performing any act described in this Article; or who shall aid or abet, directly or indirectly, the practice of dentistry by any person not duly licensed to practice dentistry by the Texas Board of Dental Examiners.

[Amended by Acts 1975, 64th Leg., p. 1836, ch. 566, § 1, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1955, ch. 778, § 1, eff. Aug. 29, 1977.]

Sections 2 and 3 of the 1977 amendatory act provided:

"Sec. 2. All laws or parts of laws in conflict or inconsistent with the provisions of this Act are hereby repealed.

"Sec. 3. If any section, subsection, paragraph, sentence, clause, phrase, or word in this Act, or the application thereof to any person or circumstance for any reason is held invalid or unconstitutional, such holding shall not affect the validity or enforceability of the remaining portions of this Act, and the legislature hereby declares that it would have passed such remaining portions of this Act despite such invalidity or unconstitutionality of any part or portion thereof."

Art. 4551a-1. Repealed by Acts 1975, 64th Leg., p. 1837, ch. 566, § 2, eff. June 19, 1975

See, now, art. 4551a.

Art. 4551b-1. Repealed by Acts 1977, 65th Leg., p. 616, ch. 225, § 4, eff. Aug. 29, 1977

Art. 4551c-1. Peer Review or Grievance Committees

(a) As used in this Act, the term "dental peer review committee" or "dental grievance committee" shall mean members of a committee composed of practicing dentists duly licensed by the State Board of Dental Examiners, and which committee shall act for the purpose of reviewing and evaluating dental treatment and dental services in disputes involving licensed dentists, dental patients and/or third party payors financially obligated to pay in whole or in part for dental treatment or dental services rendered; and such committee, when requested by all parties concerned, shall act as arbitrator between said parties. A dental peer review or grievance committee shall be composed of and elected by a majority of the licensed dentists in the area served by such committee.

(b) In the absence of fraud, conspiracy, or malice, neither a dental peer review or grievance committee formed hereunder nor a member thereof, nor any witness or consultant called by such committee, shall be liable for any finding, evaluation, or recommendation of such committee or the testimony or statements made by a member of the committee, or as a witness or consultant thereto. Any member of a dental peer review or grievance committee shall be disqualified from acting as a member thereof where the dental treatment or dental services rendered or performed by him are being reviewed by such committee.

(c) Nothing in this Act shall prevent any party or person from availing himself of any legal remedy except for the specific immunity granted herein. [Added by Acts 1975, 64th Leg., p. 974, ch. 371, § 1, eff. June 19, 1975.]

Sections 2 and 3 of the 1975 Act provided:

"Sec. 2. Peer review or grievance committees formed hereunder shall each elect from their membership one member to serve on and be a member of the state appeals committee of the area committees which state appeals committee shall hear and decide all appeals from area committees. The state appeals committee shall prepare and adopt rules and regulations governing the procedure and operation of the area committees and of the state appeals committee to insure fair and impartial hearings and appeals.

"Sec. 3. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

Art. 4551e. Dental Hygienists; Regulation and Licensing

[See Compact Edition, Volume 4 for text of 1]

Qualifications

Sec. 2. A dental hygienist shall be not less than eighteen (18) years of age, a citizen of the United States of America, a graduate of an accredited high school or hold a certificate of high school equivalency (GED) and be a graduate of a recognized and accredited school or college of dentistry or dental hygiene approved by the Texas State Board of Dental Examiners in which the course of instruction shall be the equivalent of not less than two (2) terms of eight (8) months each and who shall have thereafter passed an examination given by and before the Texas State Board of Dental Examiners on subjects pertaining to dental hygiene, and who shall have complied with all of the provisions of this Act and the rules and regulations promulgated by the Texas State Board of Dental Examiners.

Supervision

Sec. 3. All work performed by a dental hygienist in the practice of dental hygiene, as defined in this Act, shall be performed in the dental office of a dentist or dentists legally engaged in the practice of dentistry in this state, by whom he or she must be employed, except where employed by schools, hospitals, state institutions, or public health clinics approved by the Texas State Board of Dental Examiners. It shall be unlawful for more than two dental

hygienists to practice dental hygiene for one dentist at any one time, and it shall be unlawful for a dentist legally engaged in the practice of dentistry in this state to employ, under any contractual relationship whatsoever, more than two dental hygienists to practice dental hygiene at any one time.

[See Compact Edition, Volume 4 for text of 4]

Dental Hygiene Advisory Committee

Sec. 4A. (a) The Dental Hygiene Advisory Committee is hereby established.

(b) The Dental Hygiene Advisory Committee shall consist of not more than six dental hygienists appointed by the Texas State Board of Dental Examiners. A member of such advisory committee shall serve for a term of one year expiring on May 1 of each year.

(c) The advisory committee shall advise the Texas State Board of Dental Examiners on matters relating to dental hygiene.

Examination

Sec. 5. The Texas State Board of Dental Examiners shall hold meetings at such times and places as the Board shall designate for the purpose of examining qualified applicants for certification as dental hygienists in this State. All applicants for examination shall pay a fee of not less than \$25 nor more than \$70 to said Board as determined by said Board according to its needs and shall apply upon forms furnished by the Board and shall furnish such other information as the Board may in its discretion require to determine any applicant's qualifications. The Board shall have authority to employ the services of such examiners and clerks as may be needed to aid the Board in the performance of such duties. The examination shall be taken by all applicants on such subjects and operations pertaining to dentistry and dental hygiene which shall include Dental Anatomy, Pharmacology, X-Ray, Ethics, Jurisprudence, and Hygiene, and such other subjects as are regularly taught in reputable schools of dentistry and dental hygiene, as the Board in its discretion may require. The examination shall be given orally or in writing, or by giving a practical demonstration of the applicant's skill or by any combination of such methods or subjects as the Board may in its discretion require. The Board shall grade each applicant upon the various phases of the examination and shall report such grades to the applicant within a reasonable time after such examination, and each applicant who has satisfactorily passed all phases of the examination as determined by the Board shall be entitled to and shall be issued a certificate permitting such applicant to practice dental hygiene in the State of Texas as is defined and regulated by the law of this State.

Renewal of Certificate, Fee

Sec. 6. It shall be the duty of each dental hygienist in this State to annually apply to the Texas State Board of Dental Examiners for renewal of his certificate granted him by said Board, and to pay, in the manner and within the time prescribed by the Board in its rules and regulations in connection with such application for renewal, a fee of not less than Ten Dollars (\$10) nor more than Fifty Dollars (\$50) as determined by said Board according to its needs. Upon the payment of such fee as prescribed by the Board, each dental hygienist shall receive a renewal of his certificate as a receipt for such payment, and the absence of such renewed certificate shall be prima facie evidence of the want of possession of such certificate before the Board and in any court in the State.

Dental hygienists, required to register under this Act, who fail or refuse to register and pay the annual registration fee in the manner and within the time prescribed shall not thereafter practice dental hygiene in this State, and during such time of said person's failure or refusal to register and renew his certificate and to pay the required fee, he shall be subject to the same penalties imposed by law upon any person unlawfully practicing dental hygiene. Such person may, in the discretion of the Board in each instance, be reinstated and permitted to register and renew his certificate within three years upon written application to such Board. Such application shall contain all facts and information which the Board may require and must be accompanied by the payment of all annual registration fees in arrears together with an additional fee of Five Dollars (\$5). Any certificate issued by the Texas State Board of Dental Examiners shall be subject to cancellation for failure to pay all annual registration fees required by law where such certificate holder shall have failed to register and pay such fees for three consecutive years. A revocation to be valid for failure to pay such fees shall be based upon written notice to such person at his last known address not less than 90 days prior to the date of hearing and intended cancellation, if not so paid. Upon such cancellation the Board, in its discretion in each instance, may reinstate such person's certificate upon an affirmative showing by such person that he or she has the degree of professional skill and knowledge currently required of such certificate holders, and that such person is not mentally or physically incompetent and has not been guilty of any immoral or unprofessional conduct. However, the requirements governing the payment of the annual registration fees and penalties for late registration shall not apply to certificate holders who are on active duty with the Armed Forces of the United States of America and are not engaged in private or civilian practice.

[See Compact Edition, Volume 4 for text of 7 to 20]

[Amended by Acts 1977, 65th Leg., p. 355, ch. 174, § 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 615, ch. 225, §§ 2, 3, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 970, ch. 365, § 2, eff. Aug. 29, 1977.]

Art. 4551g-1. Repealed by Acts 1977, 65th Leg., p. 616, ch. 225, § 4, eff. Aug. 29, 1977

Art. 4551h. Narcotic Drugs, Dangerous Drugs, Controlled Substances

It shall be unlawful for a dentist to prescribe, provide, obtain, order, administer, give, or deliver to or for any person, narcotic drugs, dangerous drugs or any controlled substances not necessary or required, or where the use or possession of same would promote or further addiction thereto, or to aid, abet, or cause any of same to be done in any manner. For purposes of this article the terms narcotic drugs, dangerous drugs, and controlled substances shall mean those defined or recognized as such by any law of the State of Texas or of the United States. [Amended by Acts 1977, 65th Leg., p. 615, ch. 225, § 1, eff. Aug. 29, 1977.]

Sections 2 and 3 of the 1977 amendatory act amended §§ 2 and 3 of art. 4551e; § 4 repealed arts. 4546, 4546a, 4551b-1, and 4551g-1; §§ 5 and 6 thereof provided:

"Sec. 5. All laws or parts of laws in conflict or inconsistent with the provisions of this Act are hereby repealed.

"Sec. 6. If any section, subsection, paragraph, sentence, clause, phrase, or word in this Act, or the application thereof to any person or circumstance for any reason is held invalid or unconstitutional, such holding shall not affect the validity or enforceability of the remaining portions of this Act, and the legislature hereby declares that it would have passed such remaining portions of this Act despite such invalidity or unconstitutionality of any part or portion thereof."

Art. 4551i. Civil Immunity—Peer Review, Judicial or Grievance Committees

In the absence of fraud, conspiracy, or malice, the elected members of the dental peer review, judicial or grievance committees of a dental society or association which has not less than 75 percent of the licensed dentists in such area as members, shall not be subject to suit or suits for damages for alleged injury, wrong, loss, or damage for and while performing duties of investigating disagreements or complaints, holding hearings to determine facts, or in making evaluations, recommendations, decisions, or awards involving dentists, dental patients and/or third parties. The Texas State Board of Dental Examiners shall determine the various areas and shall certify the percentage requirements from its records of the dental licensees in such area or areas. This immunity is enacted to relieve and protect the persons named herein from being harassed and threatened with legal action while attempting to perform required duties.

[Added by Acts 1977, 65th Leg., p. 1150, ch. 436, § 1, eff. Aug. 29, 1977.]

Section 2 of the 1977 Act added art. 4551j; §§ 3 and 4 thereof provided:

"Sec. 3. All laws or parts of laws in conflict or inconsistent with the provisions of this Act are hereby repealed.

"Sec. 4. If any section, subsection, paragraph, sentence, clause, phrase, or word in this Act, or the application thereof to any person or circumstance for

any reason is held invalid or unconstitutional, such holding shall not affect the validity or enforceability of the remaining portions of this Act, and the legislature hereby declares that it would have passed such remaining portions of this Act despite such invalidity or unconstitutionality of any part or portion thereof."

Art. 4551j. Civil Immunity, Official Acts

In the absence of fraud, conspiracy, or malice, no member of the Texas State Board of Dental Examiners, its employees, nor any witness called to testify by said board, nor any consultant or hearing officer appointed by said board shall be liable or subject to suit or suits for damages for alleged injury, wrong, loss, or damage allegedly caused by any of said persons for any investigation, report, recommendation, statement, evaluation, finding, order, or award made in the course of any of said persons performing assigned, designated, official, or statutory duties. This immunity is enacted to relieve and protect the persons named from being harassed and threatened with legal action while attempting to perform official duties.

[Added by Acts 1977, 65th Leg., p. 1151, ch. 436, § 2, eff. Aug. 29, 1977.]

CHAPTER TEN. OPTOMETRY

ARTICLE 2. TEXAS OPTOMETRY BOARD

Article

4552-2.01a. Application of Sunset Act.

ARTICLE 4. LICENSES—RENEWAL, REVOCATION, ETC.

4552-4.01B. Educational Requirement for Renewal.

ARTICLE 2. TEXAS OPTOMETRY BOARD

Art. 4552-2.01a. Application of Sunset Act

The Texas Optometry Board is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1981. [Added by Acts 1977, 65th Leg., p. 1837, ch. 735, § 2.039, eff. Aug. 29, 1977.]

¹ Article 5429k.

ARTICLE 4. LICENSES—RENEWAL, REVOCATION, ETC.

Art. 4552-4.01. Annual Renewal

(a) On or before January 1 of each year, every licensed optometrist in this state shall pay to the secretary-treasurer of the board an annual renewal fee for the renewal of his license to practice optometry for the current year. The amount of the fee shall be as determined by the board, not to exceed \$75.

[See Compact Edition, Volume 4 for text of (b) to (e)]

[Amended by Acts 1977, 65th Leg., p. 199, ch. 98, § 1, eff. Aug. 29, 1977.]

Art. 4552-4.01B. Educational Requirement for Renewal

(a) Each optometrist licensed in this state shall take annual courses of study in subjects relating to the utilization and application of scientific, technical, and clinical advances in vision care, vision therapy, visual training, and other subjects relating to the practice of optometry regularly taught by recognized optometric universities and schools.

(b) The length of study required is 12 hours per calendar year.

(c) The continuing education requirements established by this section shall be fulfilled by attendance in continuing education courses sponsored by an accredited college of optometry or in a course approved by the board. Attendance at a course of study shall be certified to the board on a form provided by the board and shall be submitted by each licensed optometrist in conjunction with his application for renewal of his license and submission of renewal fee.

(d) The board may take action necessary in order to qualify for funds or grants made available by the United States or an agency of the United States for the establishment and maintenance of programs of continuing education.

(e) Licensees who have not complied with the requirement of this section may not be issued a renewal license, except for the following persons who are exempt:

(1) a person who holds a Texas license but who does not practice optometry in Texas;

(2) a licensee who served in the regular armed forces of the United States during part of the 12 months immediately preceding the annual license renewal date;

(3) a licensee who submits proof that he suffered a serious or disabling illness or physical disability which prevented him from complying with the requirements of this section during the 12 months immediately preceding the annual license renewal date; or

(4) a licensee first licensed within the 12 months immediately preceding the annual renewal date.

[Added by Acts 1975, 64th Leg., p. 1875, ch. 591, § 1, eff. Sept. 1, 1975.]

CHAPTER TEN A. HEARING AIDS

Art. 4566-1.02. Board of Examiners

[See Compact Edition, Volume 4 for text of (a) to (e)]

(f) The Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1981.

[Amended by Acts 1977, 65th Leg., p. 1836, ch. 735, § 2.028, eff. Aug. 29, 1977.]

¹ Article 5429k.

Art. 4566-1.12. Fees and Expenses

[See Compact Edition, Volume 4 for text of (a) to (d)]

(e) The Secretary-Treasurer of the Board shall, on or before the 10th day of each month, remit to the State Treasurer all of the fees collected by the Board during the preceding month for deposit in the General Revenue Fund.

(f) Each member of the Board is entitled to a per diem of \$30 for each day he is engaged in performing the duties of his office. The travel expenses allowance for members of the Board and its employees shall be provided in the General Appropriations Act. The executive director of the Board shall be allowed his actual expenses incurred while traveling on official business for the Board.

[See Compact Edition, Volume 4 for text of (g) and (h)]

(i) Funds for the administration of this Act shall be provided by the General Appropriations Act from the General Revenue Fund.

(j) The balance of all money remaining in the "Fitting and Dispensing of Hearing Aids Fund" account on August 31, 1979, is transferred to the General Revenue Fund.

[Amended by Acts 1977, 65th Leg., p. 1750, ch. 699, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 2048, ch. 802, § 1, eff. Sept. 1, 1979.]

Art. 4566-1.13. Renewal of License

(a) On or before the first day of January 1972, every licensee under this Act shall pay to the Secretary-Treasurer of the Board an annual renewal fee of \$67.50 for the renewal of his license to fit and dispense hearing aids for the year 1972. On or before the first day of January, 1973, and every year thereafter, every licensee under this Act shall pay to the Secretary-Treasurer of the Board an annual renewal fee of \$125.00 for renewal of his license to fit and dispense hearing aids for the current year. On receipt of said renewal fee, the Board shall issue an annual renewal certificate bearing the number of his license, the year for which it is renewed, and such other information from the records of the Board as the Board may deem necessary for the proper enforcement of this Act.

[See Compact Edition, Volume 4 for text of (b) to (e)]

[Amended by Acts 1977, 65th Leg., p. 1750, ch. 699, § 1, eff. Aug. 29, 1977.]

CHAPTER ELEVEN. PODIATRY

Article

4568b. Application of Sunset Act.

4569a. Licensure of Podiatry Faculty Members.

Art. 4568b. Application of Sunset Act

The Texas State Board of Podiatry Examiners is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished effective September 1, 1981.

[Added by Acts 1977, 65th Leg., p. 1838, ch. 735, § 2.044, eff. Aug. 29, 1977.]

¹ Article 5429k.

Art. 4569. Examination Grades; Fee; Subjects; Re-examination

(a) Except as provided in Article 4569a, Revised Civil Statutes of Texas, 1925, all applicants for license to practice podiatry in this State under the provisions of this Act must successfully pass an examination by the Texas State Board of Podiatry Examiners.

(b) The Board is authorized to adopt and enforce rules of procedure for administering this Article that are not inconsistent with the statutory requirements.

(c) The examinations shall be written and practical and in the English language, and all applicants that possess the qualifications required for an examination and who shall pass the examinations prescribed with a general average of seventy-five per cent (75%) in all subjects and not less than sixty per cent (60%) in any one subject shall be issued a license by the Board to practice podiatry in this State.

(d) The subjects the applicant must be examined in are anatomy, chemistry, dermatology, diagnosis, materia-medica, pathology, physiology, microbiology, orthopedics and podiatry, limited in their scope to ailments of the human foot.

(e) The Board shall determine the credit to be given on the answers turned in on the subjects in which examined and the discretion of the Board on the examinations shall be final.

(f) All applicants shall pay to the secretary-treasurer of the Board an examination fee of Seventy-Five Dollars (\$75) at least fifteen (15) days before the dates of the regular examinations.

(g) Applicants who fail to satisfactorily pass an examination and are refused a license for such failure, shall be entitled to one (1) re-examination at a regular session of the Board without payment of an additional examination fee, provided this first re-examination is taken within eighteen (18) months after date of the original examination. All applicants shall be required to pay the regular examination fee of Seventy-Five Dollars (\$75) for all subsequent re-examinations.

(h) All examinations or re-examinations shall be in all subjects as provided for in this Act.

(i) The secretary-treasurer of the Board shall report to each applicant the grade made in each subject and the general average on the examination within sixty (60) days from the date of the examination.

[Amended by Acts 1979, 66th Leg., p. 320, ch. 149, § 1, eff. May 11, 1979.]

Art. 4569a. Licensure of Podiatry Faculty Members

(a) The board may issue a license to practice podiatry without administering the examination specified in Article 4569, Revised Civil Statutes of Texas, 1925, as amended, to any podiatrist who at the time of applying for a license has accepted an appointment or is serving as a full-time member of the faculty of an educational institution in this state offering an approved or accredited course of study or training leading to a degree in podiatry, who is licensed to practice podiatry in any other state or territory of the United States having requirements for licensing substantially equivalent to those established by the laws of this state, and who otherwise satisfies the requirements of Article 4570, Revised Civil Statutes of Texas, 1925, as amended.

(b) In this article a course of study, training, or education is considered approved or accredited if it is approved or accredited by the Texas State Board of Podiatry Examiners as constituting a bona fide reputable course of training, study, or education. In making a decision relating to the approval or accreditation of a course of study, training, or education, the board shall consider whether the course is approved or accredited by the Council on Education of the American Podiatry Association or its successor organization.

(c) Except for the requirement of an examination, any person applying for a license under this article must comply with all application, licensure, and relicensure requirements relating to podiatry and is subject to all laws relating to the practice of podiatry.

(d) A license granted under this article permits the practice of podiatry only for purposes of instruction in the educational institution.

(e) If the faculty appointment of a podiatrist licensed under this article is terminated, his license issued under this article terminates. However, nothing in this article is to be construed to prohibit the podiatrist from applying for and obtaining a license or in any way affect a license obtained by the podiatrist by complying with Article 4569, Revised Civil Statutes of Texas, 1925, as amended, and other applicable laws relating to the practice of podiatry. [Added by Acts 1979, 66th Leg., p. 321, ch. 149, § 2, eff. May 11, 1979.]

Art. 4570. Application for License

[See Compact Edition, Volume 4 for text of (a)]

(b) The applicant shall submit any information reasonably required by the Board, including evidence satisfactory to the Board that the applicant:

- (1) has attained the age of twenty-one (21) years;
- (2) is of good moral character;

(3) has completed at least ninety (90) semester hours of college courses acceptable at the time they were completed for credit on a Bachelor's Degree at The University of Texas;

(4) is a graduate of a bona fide reputable school of podiatry or chiropody, and shall furnish a diploma from the school; and

(5) has successfully completed any other course of training reasonably required by rule of the Board relating to the safe care and treatment of patients.

[See Compact Edition, Volume 4 for text of (c)]

(d) The State Board of Podiatry Examiners may refuse to admit persons to its examinations, and to issue a license to practice podiatry to any person, for any of the following reasons:

(1) The presentation to the Board of any license, certificate, or diploma, which was illegally or fraudulently obtained, or when fraud or deception has been practiced in passing the examination.

(2) Conviction of a crime of the grade of a felony or any crime which involves moral turpitude, or conviction of a violation of Article 4567c, Revised Civil Statutes of Texas, 1925, as amended.

(3) Habits of intemperance, or drug addiction, calculated, in the opinion of the Board, to endanger the health, well-being, or welfare of patients.

(4) Grossly unprofessional or dishonorable conduct, of a character which in the opinion of the Board is likely to deceive or defraud the public.

(5) The violation, or attempted violation, direct or indirect, of any of the provisions of this Act (Title 71, Chapter 11, Revised Civil Statutes of Texas, 1925, as amended),¹ or any rule adopted under this Act, either as a principal, accessory, or accomplice.

(6) The use of any advertising statement of a character tending to mislead or deceive the public.

(7) Advertising professional superiority, or the performance of professional service in a superior manner.

(8) The purchase, sale, barter, or use, or any offer to purchase, sell, barter, or use, any podiatry degree, license, certificate, diploma, or transcript of license, certificate, or diploma, in or incident to an application to the Board of Podiatry Examiners for a license to practice podiatry.

(9) Altering, with fraudulent intent, any podiatry license, certificate, diploma, or transcript of a podiatry license, certificate, or diploma.

(10) The use of any podiatry license, certificate, diploma, or transcript of any such podiatry license, certificate, or diploma, which has been fraudulently purchased, issued, counterfeited, or materially altered.

(11) The impersonation of, or acting as proxy for, another in any examination required by this Act for a podiatry license.

(12) The impersonation of a licensed practitioner, or permitting, or allowing, another to use his license, or certificate to practice podiatry in this State, for the purpose of treating, or offering to treat, conditions and ailments of the feet of human beings by any method.

(13) Employing, directly or indirectly, any person whose license to practice podiatry has been suspended, or association in the practice of podiatry with any person or persons whose license to practice podiatry has been suspended, or any person who has been convicted of the unlawful practice of podiatry in Texas or elsewhere.

(14) The wilful making of any material misrepresentation or material untrue statement in the application for a license to practice podiatry.

(15) The inability to practice podiatry with reasonable skill and safety to patients by reason of age, illness, drunkenness, excessive use of drugs, narcotics, chemicals or any other type of material or as a result of any mental or physical condition. In enforcing this subsection the Board shall, upon probable cause, request a podiatrist to submit to a mental or physical examination by medical doctors designated by it. If the podiatrist refuses to submit to the examination, the Board shall issue an order requiring the podiatrist to show cause why he will not submit to the examination and shall schedule a hearing on the order within 30 days after notice is served on the podiatrist. The podiatrist shall be notified by either personal service or by certified mail with return receipt requested. At the hearing, the podiatrist and his attorney are entitled to present any testimony and other evidence to show why the podiatrist should not be required to submit to the examination. After a complete hearing, the Board shall issue an order either requiring the podiatrist to submit to the examination or withdrawing the request for examination.

(16) The failure to practice podiatry in an acceptable manner consistent with public health and welfare.

(17) Being removed, suspended, or disciplined in another manner by the podiatrist's peers in any professional podiatry association or society, whether the association or society is local, regional, state, or national in scope or being disciplined by a licensed hospital or the medical staff of a hospital, including removal, suspension, limitation of hospital privileges, or other disciplinary action, if any of these actions in the opinion of the Board were based on unprofessional conduct or professional incompetence that was likely to harm the public, provided that the Board finds that the action

taken was appropriate and reasonably supported by evidence submitted to the association, society, hospital, or medical staff.

(18) Repeated or recurring meritorious health care liability claims against the podiatrist that in the opinion of the Board are evidence of professional incompetence likely to injure the public.

[See Compact Edition, Volume 4 for text of (e) and (f)]

[Amended by Acts 1979, 66th Leg., p. 321, ch. 149, § 3, eff. May 11, 1979.]

¹ Article 4567 et seq.

Art. 4571. Licenses

Annual License Renewal

Sec. 1. (a) The Texas State Board of Podiatry Examiners shall set and may from time to time change the amount of the annual license renewal fee as in the Board's judgment may be needed to provide for the reasonable costs and expenses of the Board in performing its duties and administering this Act, but such annual license renewal fee shall not exceed Fifty Dollars (\$50). The annual license renewal fee shall be paid to the Secretary-Treasurer of the Board.

(b) The Secretary-Treasurer of the Texas State Board of Podiatry Examiners on or before August first of each year shall notify, by mail, all Texas licensed podiatrists at their last known address that the annual license renewal fee is due on the following September first.

(c) If the annual license renewal fee is not paid on or before the following December first, the delinquent licensee shall be notified by mail at his last known address by the Secretary-Treasurer that such fee is due and unpaid and a delinquent penalty of Twenty Dollars (\$20) is assessed and shall be paid on or before the following January first. If such fees are not paid by January first, it shall be the duty of the Texas State Board of Podiatry Examiners to suspend or revoke the license for nonpayment of the annual license renewal and delinquent fees for the current year.

(d) The Board by rule may adopt a system under which licenses expire on various dates during the year, and the dates for sending notice that payment is due and dates of suspension, revocation, and assessment of a penalty for nonpayment shall be adjusted accordingly. For the year in which the license renewal date is changed, license fees payable on September 1 shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee which is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

Effect of Practicing Without Renewing License

Sec. 2. Practicing podiatry without an annual renewal certificate for the current year, as provided herein, shall have the same force and effect and be subject to all penalties of practicing podiatry without a license.

Re-Examination If License Revoked

Sec. 3. After the Board has declared a license suspended or revoked for nonpayment of the annual license renewal fee as provided for in this Article, the Board may thereafter in its discretion refuse to reinstate the license or issue a new license until the podiatrist, whose license has been declared suspended or revoked has passed the regular examination for license.

Reissuance of Lost or Amended License

Sec. 4. If any license issued by the Board is lost, destroyed or stolen from the legally qualified and authorized person to whom it was issued, the owner of the license shall report the fact to the Secretary-Treasurer of the Board, in an affidavit form. The affidavit shall set forth detailed information as to the loss, destruction or theft, giving dates, place and circumstances. If the owner of a license desires to have an amended license issued to him because of a lawful change in the name or degree designation of the licensee or for any other lawful and sufficient reason, the owner of the license shall make application for such amended license to the Secretary-Treasurer of the Board setting forth the reasons the issuance of an amended license is requested. A duplicate or amended license shall be issued upon regular application of the owner of the original license and payment of a fee set by the Board for the duplicate or amended license; however, the Board shall not issue a duplicate or amended license until sufficient evidence by the owner of the original license has been submitted to prove the license has been lost or to establish the lawful reason an amended license should be issued, and unless the records of the Board show a license had been issued and been in full force and effect at the time of such loss, destruction or theft, or such request for an amended license. If an amended license is issued, the original license shall be returned to the Board.

Display of License

Sec. 5. Every person licensed by the State Board of Podiatry Examiners to practice in the state shall conspicuously display both his license and an annual renewal certificate for the current year of practice in the place or office wherein he practices and shall be required to exhibit such license and renewal certificate to a representative of the Board upon such representative's official request for its examination or inspection.

Renewal After Military Service

Sec. 6. Any licensed podiatrist whose license has been suspended or revoked or whose annual renewal certificate has expired while he has been engaged in Federal service or on active duty with the Army of the United States, the United States Navy, the United States Marine Corps, the United States Coast Guard, the United States Air Force, or the United States Maritime Service or the State Militia, called into service or training of the United States of America or in training or education under the supervision of the United States preliminary to induction into the military service, may have his license renewed without paying any lapsed renewal fee or without passing any examination, if, within one (1) year after termination of said service, training or education, other than by dishonorable discharge, he furnishes the State Board of Podiatry Examiners an affidavit to the effect that he has been so engaged and that his service, training or education has been so terminated.

[Amended by Acts 1977, 65th Leg., p. 1219, ch. 469, § 1, eff. Aug. 29, 1977.]

Section 2 of the 1977 amendatory act repealed art. 4571a and § 3 thereof provided:

"All laws or parts of laws in conflict with this Act are repealed to the extent of such conflict."

Art. 4571a. Repealed by Acts 1977, 65th Leg., p. 1221, ch. 469, § 2, eff. Aug. 29, 1977

See, now, § 1(d) of art. 4571.

Art. 4574. Compensation and Expenses

Each member of the board shall receive for his services fifty dollars a day and necessary traveling and incidental expenses, while actually engaged in the performance of his official duties; except that no board member may be paid the per diem expenses allowed by this article for more than fifty days in a calendar year. The secretary shall receive his necessary expenses for services actually performed for the board. All printing, postage and other contingent expenses, necessarily incurred in administering this law shall be paid from the fees received by the board, and all expenses shall be itemized, verified, audited and an account kept thereof by the secretary of the board, who shall pay the same out of the fees which accrue to the board.

[Amended by Acts 1977, 65th Leg., p. 137, ch. 66, § 1, eff. April 18, 1977.]

Per Diem Allowance

Acts 1967, 60th Leg., p. 181, ch. 96, § 5 [see Compact Edition, Volume 4], was repealed by Acts 1977, 65th Leg., p. 137, ch. 66, § 2.

CHAPTER TWELVE. EMBALMING

Art. 4582b. Funeral Directing and Embalming

Definitions

Sec. 1. A. 1. A "funeral director" as that term is used herein, is a person who for compensation engages in or conducts, or who holds himself out as being engaged, for compensation, in preparing, other than by embalming, for the burial or disposition of dead human bodies, and maintaining or operating a funeral establishment for the preparation and disposition, or for the care of dead human bodies.

2. A person who acts as a funeral director without holding a funeral director license violates this Act. This subdivision does not apply to a registered apprentice who works under the supervision of a licensed funeral director. A person who is engaged in the business of funeral directing or who professes to be engaged in that business or who holds himself or herself out to the public as a funeral director shall be a licensed funeral director.

[See Compact Edition, Volume 4 for text of B and C]

D. The term "embalmer" as herein used is a person who for compensation disinfects or preserves a dead human body, entire or in part by the use of chemical substances, fluids, or gases in the body, or by the introduction of the same into the body by vascular or hypodermic injection, or by direct application into the organs or cavities, or by any other method intended to disinfect or preserve a dead human body, or restore body tissues and structures. The placing of any such chemicals or substances on or in a dead human body by any person who is not a licensed embalmer shall be deemed a violation of this Act, provided that this shall not apply to a registered apprentice working under the supervision of a licensed embalmer. All persons who are engaged in the business of embalming or who profess to be engaged in such business, or hold themselves out to the public as embalmers, shall be licensed embalmers.

[See Compact Edition, Volume 4 for text of E to I]

J. An "accredited school or college of mortuary science" is a school or college which maintains a course of instruction of not less than forty-eight (48) calendar weeks or four (4) academic quarters or college terms and which gives a course of instruction that includes but is not limited to the following fundamental subjects: (a) mortuary management and administration; (b) legal medicine and toxicology as it pertains to funeral directing; (c) public health, hygiene and sanitary science; (d) mortuary science, to include embalming technique, in all its aspects; chemistry of embalming, color harmony;

discoloration, its causes, effects and treatment; treatment of special cases; restorative art; funeral management; and professional ethics; (e) anatomy and physiology; (f) chemistry, organic and inorganic; (g) pathology; (h) bacteriology; (i) sanitation and hygiene; (j) public health regulations; (k) other courses of instruction in fundamental subjects prescribed by the Board; and (l) local, state, and federal rules and laws relating to the care and disposition of dead human bodies.

[See Compact Edition, Volume 4 for text of K]

L. A "commercial embalmer" or "commercial embalming establishment" is one that embalms for licensed funeral establishments and does not sell any services or merchandise directly or at retail to the public, and shall otherwise meet the requirements of a licensed embalmer as provided in this Act. A commercial embalmer or a commercial embalming establishment may not employ an embalmer who is not licensed under this Act.

M. "Solicitation" means a direct or indirect contact with the family, next of kin, or one who has custody of a person who is deceased or near death for the purpose of securing the right to provide funeral services or merchandise for the deceased or the person near death. Provided, however, that the term "solicitation" shall not be deemed to include any attempt to secure funeral business pursuant to a permit issued under the provisions of Chapter 512, Acts of the 54th Legislature, Regular Session, 1955, as amended (Article 548b, Vernon's Texas Civil Statutes), or to include any method of advertising by publication or broadcasting.

N. "Funeral merchandise" means merchandise sold primarily for use in funeral ceremonies, for embalming, or for the care and preparation of deceased human bodies for burial, cremation, or other disposition.

O. "Funeral services" means services performed incident to funeral ceremonies or for the care and preparation of deceased human bodies for burial, cremation, or other disposition and includes embalming.

P. "Outer enclosure" means an enclosure or container placed in a grave above or around the casket and includes burial vaults, grave boxes, and grave liners.

Q. "Suitable container" means a container other than a casket that can be used to hold and transport a deceased human body.

The Board

Sec. 2. A. (1) There is hereby created the State Board of Morticians, with offices located in Austin, Texas, consisting of nine (9) members who shall be citizens of the United States and residents of the State of Texas. Five (5) members must be licensed embalmers or funeral directors in the State of Texas

and each of these members must have a minimum of five (5) years, consecutively, of such experience in this state immediately preceding appointment. At least three (3) such licensed members shall be embalmers. Four (4) members must be representatives of the general public who are not regulated under this Act.

(2) The members of said Board shall be appointed by the Governor, by and with the consent of the Senate for staggered terms of six (6) years. Each member shall be subject to removal by the Governor for neglect of duty, incompetence, or fraudulent or dishonest conduct. The Governor shall remove from the Board any member whose license to practice funeral directing and/or embalming has been voided, revoked or suspended. Any vacancy in an unexpired term shall be filled by appointment of the Governor for the unexpired term. No member of the Board shall be appointed for more than one (1) full term of service.

(3) A member of the Board or an employee of the State Board of Morticians who carries out the functions of the Board may not:

(a) be an officer, employee, or paid consultant of a trade association in the funeral industry;

(b) be related within the second degree by affinity or within the third degree by consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the funeral industry; or

(c) communicate directly or indirectly with a party or the party's representative to a proceeding pending before the Board unless notice and an opportunity to participate is given to all parties to the proceeding, if the member or agent is assigned to make a decision, a finding of fact, or a conclusion of law in the proceeding.

(4) Members of the Board, except those members who are duly licensed embalmers or funeral directors, may not have personally, nor be related to persons within the second degree by affinity or third degree by consanguinity who have, except as consumers, financial interests in funeral establishments as officers, directors, partners, owners, employees, attorneys, or paid consultants of the funeral establishments or otherwise.

(5) No member shall be appointed to the Board who is an officer or employee of a corporation or other business entity controlling or operating, directly or indirectly, more than three funeral establishments, if another member of the Board is also an officer or employee of the same corporation or other business entity.

(6) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9c, Vernon's Texas Civil Statutes), may not act

as the general counsel to the Board or serve as a member of the Board.

(7) Appointments to the Board shall be made without regard to the race, creed, sex, religion, or national origin of the appointees.

(8) Each member of the Board shall be present for at least one-half of the regularly scheduled meetings held each year by the Board. The failure of a member to meet this requirement automatically removes the member from the Board and creates a vacancy on the Board.

[See Compact Edition, Volume 4 for text of B and C]

D. The Board shall elect, after thirty (30) days' written notice is given to members, a President, Vice-President, and Secretary from the members of the said Board who shall serve one (1) year, or until their successor shall be elected and qualified in cases of resignation or death. In the absence of an Executive Secretary, the Secretary shall be bonded to the State of Texas in a sum equal to the maximum annual anticipated receipts of the Board and any premium payable for such bond shall be paid from the funds of the Board; likewise, the Board will require a bond of the Executive Secretary, if any, and such bond shall be deposited with the State Auditor of the State of Texas. The President of the Board shall preside at all meetings of the Board unless otherwise ordered, and he shall exercise all duties and performances incident to the office of the President of the Board, and in his absence the Vice-President shall preside. A majority of the membership of the Board shall constitute a quorum for the transaction of business.

E. The Board shall make an annual report covering the work of the Board for the preceding fiscal year, and such report shall be filed with the Governor and shall include:

1. An itemized account of money received and expended and the purpose therefor which has been duly certified by the State Auditor;

2. The names of all duly licensed funeral directors, embalmers, and funeral establishments. A copy shall be filed with the Secretary of State for permanent record, a certified copy of which, under the hand and seal of the Secretary of State, shall be admissible as evidence in all courts; and

3. A description of the activities of the Board during the preceding fiscal year.

[See Compact Edition, Volume 4 for text of F to H]

I. Membership of the Board shall be reimbursed for necessary traveling expenses incident to attendance upon the business of the Board, and in addition thereto, each shall receive a per diem allowance of Fifty Dollars (\$50) for each day actually spent by

such member upon attendance to the business of the Board, not to exceed sixty (60) days within a calendar year. The Secretary, in the absence of an Executive Secretary, notwithstanding membership on the Board, shall receive and be paid a salary for the time he devotes to the business of the Board, and the amount and method of payment shall be fixed by the Board and in addition thereto, he shall receive necessary traveling expenses incurred in the performance of such duty; provided, however, he shall not be paid a per diem allowance during the time he is compensated on a salary basis; and provided that all such expenses, per diem allowance and compensation shall be paid out of the receipts of the Board. All fees and other funds received by the Board shall be deposited in the State Treasury to the credit of the General Revenue Fund. No claim for traveling expenses or per diem allowance shall be allowed or paid unless the claim be in writing and signed by the claimant under oath.

[See Compact Edition, Volume 4 for text of J to M]

N. The State Board of Morticians is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1991.

O. The Board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

P. If the appropriate standing committees of both houses of the legislature acting under Subsection (g), Section 5, Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), transmit to the Board statements opposing adoption of a rule under that section, the rule may not take effect, or if the rule has already taken effect, the rule is repealed effective on the date the Board receives the committees' statements.

Licenses—Funeral Directors and Embalmers

Sec. 3.

[See Compact Edition, Volume 4 for text of A]

B. The minimum requirements for the issuance of licenses by this Board to practice funeral directing and/or embalming in Texas are as follows, to wit:

1. For a license to practice funeral directing: the applicant shall be found by the Board to be not less than eighteen (18) years of age, a resident of the State of Texas, having graduated from an accredited high school or passed examination pre-

scribed by the Texas Education Agency, having graduated from an accredited school or college of mortuary science approved by this Board, having served as an apprentice for at least one (1) year under the personal supervision and instruction of a licensed funeral director and having satisfied the Board through written examination as to his proficiency by examination on the subjects of: (a) the art and technique of funeral directing; (b) signs of death; (c) the manner by which death may be determined; (d) sanitation; (e) hygiene; (f) mortuary management and mortuary law; (g) business and professional ethics; (h) laws applicable to vital statistics pertaining to dead human bodies; (i) local, state, and federal rules and laws relating to the preparation, transportation, care, and disposition of dead human bodies; and such other subjects as may be taught in a recognized school or college of mortuary science. Not later than the 30th day after the day on which a person completes an examination administered by the Board, the Board shall send to the person his examination results. If requested by a person who fails the examination, the Board shall send to the person not later than the 30th day after the day on which the request is received by the Board an analysis of the person's performance on the examination.

2. For a license to practice embalming: the applicant shall have been found by the Board to be not less than eighteen (18) years of age, a resident of the State of Texas, having graduated from an accredited high school or passed examination prescribed by the Texas Education Agency, having graduated from an accredited school or college of mortuary science approved by this Board, having served as an apprentice for one (1) year under the personal supervision of a licensed embalmer, and having satisfied the Board as to his proficiency through written and practical examination on the subjects of: (a) anatomy of the human body; (b) the cavities of the human body; (c) the arterial and venous system of the human body; (d) blood and discoloration; (e) bacteriology and hygiene; (f) pathology; (g) chemistry and embalming; (h) arterial and cavity embalming; (i) restorative art; (j) disinfecting; (k) embalming special cases; (l) contagious and infectious diseases; (m) mortuary management; (n) care, preservation, transportation and disposition of dead human bodies; (o) laws applicable to vital statistics pertaining to dead human bodies; (p) sanitary science; (q) local, state, and federal rules and laws relating to the care and disposition of dead human bodies; and such other subjects as may be taught in a recognized school or college of mortuary science. Not later than the 30th day after the day on which a person completes an examination administered by the Board, the Board shall send to the person his examination results. If requested in writing by a

person who fails the examination, the Board shall send to the person not later than the 30th day after the day on which the request is received by the Board an analysis of the person's performance on the examination.

[See Compact Edition, Volume 4 for text of C]

D. It shall be the duty of the Board to prescribe and supervise the course of instruction received by an apprentice while serving his or her apprenticeship, consistent with the following requirements to establish such an apprenticeship registration procedure:

1. Apprenticeship for embalmer: A license to practice the science of embalming shall not be issued unless and until the applicant therefor has served an apprenticeship period of not less than twelve (12) consecutive months under the personal supervision and instruction of a licensed embalmer and has successfully completed all requirements of apprenticeship. The only exception to this requirement shall be in the case of an applicant under reciprocity.

(a) Any person, eighteen (18) years of age or more, who desires to practice the science of embalming in this state, files application therefor, meets the requirements of the law and this Board, and possesses such qualification to enter into apprenticeship training, may be registered as an apprentice. Apprenticeship for a license to practice the science of embalming must be served by the person after graduation from a school or college of mortuary science. Applicant shall pay a fee not to exceed Ten Dollars (\$10) at the time he requests such apprenticeship registration.

(1) An applicant for a license to practice the science of embalming who attains a grade of 70% or higher on the written examination given by the Board upon payment of a fee not to exceed Ten Dollars (\$10) therefor, shall be registered as an apprentice within six (6) months of such examination.

(b) Each registered apprentice embalmer shall be issued a certificate of apprenticeship or other means of apprenticeship identification by the Board to be served in the State of Texas. During the period of apprenticeship he shall assist in embalming a minimum of sixty (60) dead human bodies, six (6) of which bodies the apprentice shall embalm without aid but in the immediate presence and under the personal supervision of an embalmer duly and currently licensed in the State of Texas. No more than two (2) apprentices may receive credit due for work on any one body.

(c) An apprentice embalmer must report within ten (10) days after the end of each month

each separate case handled by him or with which he has assisted in handling. Each such report shall be certified by the licensee under whom the apprentice performed his work. Throughout the period of apprenticeship, the apprentice shall report on at least one (1) such case of embalming each calendar month, within the month. In any month in which he did not embalm at least one (1) case under the direction of a licensed embalmer, a report shall be made to the Board notwithstanding.

2. Apprentice for Funeral Director: The term of apprenticeship for a funeral director's license shall be a period of not less than twelve (12) months, and may be served concurrently with apprenticeship for an embalmer's license; however, apprenticeship must be served in twelve (12) consecutive months. A person desiring to become an apprentice funeral director shall make application to the Board on a form provided by the Board, and if the Board desires, he shall appear before at least one (1) member of the Board, or a designated representative thereof, for approval of his application, subject to review of it by the entire Board. Applicant must be not less than eighteen (18) years of age and have completed the educational requirements prescribed for a funeral director, except an applicant for a funeral director's license may elect to serve apprenticeship therefor in like manner to that of one who has applied for a license to practice the science of embalming, by serving one (1) year of apprenticeship prior to completing a course of study in funeral directing prescribed by the Board and graduating from a school of embalming or college of mortuary science. The application for registration shall be sworn to and accompanied by a fee of not to exceed Ten Dollars (\$10). If the application is accepted, applicant will be issued a certificate of apprenticeship registration upon determination by the Board that his qualifications are satisfactory.

(a) An applicant for a funeral director's license and the examination therefor who has not completed one (1) year of apprenticeship prior to graduation from a school of embalming or college of mortuary science shall be admitted to apprenticeship only in the event he shall have attained a grade of 70% or higher on the written and practical examination given by the Board, and the payment of a fee of not to exceed Ten Dollars (\$10) therefor, whereupon he shall be registered as an apprentice. Provided, however, applicant must register as an apprentice within six (6) months of such examination.

(b) An apprentice funeral director must report within ten (10) days after the end of each month each separate case with which he has assisted in handling. Each such report shall be

certified to by the licensee under whom the apprentice performed the work. Throughout the period of apprenticeship the apprentice shall report on at least one (1) such case each calendar month, within the month. In any month within which he did not assist a funeral director in handling a funeral, a report shall be made to the Board notwithstanding.

(c) During the course of apprenticeship each apprentice shall assist a licensed funeral director in this state to prepare, other than by embalming, and to make final disposition of not less than sixty (60) dead human bodies, six (6) of which bodies the apprentice shall handle after the first six months of the apprenticeship. No more than two (2) apprentices may receive credit for work done on any one body.

3. Annual renewal apprenticeship certificate: Each certificate of apprenticeship issued by the Board to an apprentice embalmer or apprentice funeral director must be renewed on the first day of January of each year and will be renewed upon payment by the apprentice of a renewal fee not to exceed Ten Dollars (\$10), provided the apprentice has observed the rules and regulations of the Board with respect to his apprenticeship. Notice shall be mailed, during the month of December each year, to each registered apprentice at his last known address, notifying him that the renewal fee is due. If the renewal fee is not paid on or before the 31st day of January in the year in which it became due, a penalty in the sum of not to exceed Ten Dollars (\$10) will be added to the renewal fee of each certificate when paid. Thirty (30) days after the grace period as above provided, if said annual renewal fee and penalty still remain unpaid, it shall be the duty of the Board, acting through its Secretary, to suspend his certificate for nonpayment of the annual renewal fee and to notify such apprentice of such suspension by registered mail, addressed to his last known address. If the said renewal fee and penalty is not then paid within ninety (90) days from the date of such notice of suspension, the Board shall then cancel such certificate. Provided, however, after an apprentice certificate has been cancelled, the apprentice may apply for reinstatement within eighteen (18) months from the date such apprentice certificate was cancelled and the Board may reinstate said apprentice provided he meets all other requirements of the Board. It is provided that the registration fee of any apprentice who is actively engaged in the military service of the United States may be remitted for the duration of such service or for such fees and such time as the Board may deem advisable upon presentation of proper evidence required by the Board.

3a. The board by rule shall adopt a system under which certificates expire on various dates during the year. The date for sending notice that payment is due, the dates of the grace period, the date on which penalty attaches, and the date for suspension due to nonpayment shall be adjusted accordingly. For the year in which the certificate expiration date is changed, certification fees payable on January 1 shall be prorated on a monthly basis so that each certificate holder shall pay only that portion of the certification fee which is allocable to the number of months during which the certificate is valid. On renewal of the certificate on the new expiration date the total renewal fee is payable.

4. Notification of the Board upon entry into apprenticeship: When an apprentice enters the employ of a licensed embalmer or funeral director, he shall immediately notify the Board the name and place of business of the licensed embalmer or funeral director whose service he has entered and the name of the funeral director or embalmer under whom he will train, and such notification shall be signed by the embalmer or funeral director in each case. If at any time thereafter such apprentice leaves the employ of the licensed embalmer or funeral director whose services he has entered, the said licensed embalmer or funeral director shall give to such apprentice an affidavit showing the length of time he has served as an apprentice with him and the number of cases handled while so employed; the original of said affidavit shall be filed with the Board and made a matter of record, and a copy shall be furnished to the apprentice. The Board shall furnish report forms to be used by each apprentice.

(a) Any apprentice registration shall be cancelled, and the applicant required to re-register, including paying the required fees, for failure to pass the Board's examination of such apprentice after only part of the apprenticeship has been completed. Provided, however, such applicant shall be given credit for apprenticeship time served under the cancelled license in any new registration.

5. Certificate of Apprenticeship may be suspended or revoked as provided and set forth in Section 3, subsection H.

E. Any person engaged or desiring to engage in the practice of embalming or funeral directing in this state, in connection with the care and disposition of dead human bodies, shall make written application to the Board for a license accompanying same with a fee not to exceed Fifty Dollars (\$50). The license or licenses when issued shall be signed by a majority of the Board and shall authorize the licensee to practice the science of embalming and/or funeral directing. All licenses shall be registered in

the office of the County Clerk in any county in which the holder thereof resides and practices embalming and/or funeral directing and shall be displayed conspicuously in the place of business. Every licensed embalmer and/or funeral director who desires to continue his practice shall biennially pay to the Secretary of the said Board a fee not to exceed Forty Dollars (\$40) for the renewal of each funeral director's license and each embalmer's license. Said license shall become due and payable biennially on the 31st day of May, and the Board will give written notice on or before April 1st, of each year that the license fees are due and payable.

When a licensee under this Act shall fail to pay his biennial registration fee, it shall be the duty of the Board to notify such licensee at his last known address that his biennial registration fee is due and unpaid and that a penalty equal to the amount of the registration fee has been added. If such fee and penalty are not paid within thirty (30) days after notification by regular mail, it shall be the duty of the Board to suspend the license and notify the licensee by certified mail, return receipt requested, of such suspension. Ninety (90) days after the Board shall have declared a license suspended, as provided herein, the license shall be automatically cancelled and the Board may thereafter refuse to reinstate the licensee until the applicant has passed a regular examination for license as provided in this Act. If any license issued under this Act shall be lost or destroyed, the holder of any such license may present his application for duplicate license to the State Board of Morticians, on a form to be prescribed by the Board, together with his affidavit of such loss or destruction, and that he is the same person to whom such license was issued, and such other information concerning its loss or destruction as the State Board of Morticians shall require, and shall, upon payment of a fee not to exceed Ten Dollars (\$10), as determined by the Board, be granted a duplicate license. The Board shall adopt rules to carry out the biennial licensing system.

1. Any license that has been cancelled, suspended or lapsed for a period of five (5) years or more may be reinstated only after the applicant shall have passed a written and practical examination by the Board on embalming and/or a written examination on funeral directing.

2. The board by rule shall adopt a system under which licenses expire on various dates during the year. All dates for sending notice regarding payment of fees and dates for license suspension for nonpayment shall be adjusted accordingly. For the year in which the license expiration date is changed, license fees payable on May 31 shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee which is allocable to the number of months during which

the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

F. (1) On a reciprocal basis with other states, countries, or territories the Board may issue, without examination, a license to an applicant who has a corresponding certificate or license issued by another state, country, or territory having standards for the license that are at least substantially equivalent to those of this state and who pays a fee of Fifty Dollars (\$50). The person's application shall be accompanied by an affidavit made by the President or Secretary of the Board of Mortician Examiners which issued the license, or by a duly constituted registration officer of the state, country, or territory by which the certificate or license was granted, and on which the application for registration in Texas is based, reciting that the accompanying certificate or license has not been cancelled, suspended or revoked, and that the statement of the qualifications made in the application for a license in Texas is true and correct. Applicants for a license under the provisions of this Act shall subscribe to an oath in writing before an officer authorized by law to administer oaths, which shall be a part of such application, stating that the license, certificate, or authority under which the applicant practiced as a funeral director or embalmer in the state, country, or territory from which the applicant removed, was at the time of such removal in full force and effect and not cancelled or suspended or revoked. Said application shall also state that the applicant is the identical person to whom the said certificate, license, or commission was issued, and that no proceeding has been instituted against the applicant for the cancellation, suspension or revocation of such certificate or license in the state, country, or territory in which the same was issued; and that no prosecution is pending against the applicant in any state or federal court for any offense which, under the laws of the State of Texas, is a felony, or is a misdemeanor related to the practice of embalming or funeral directing.

(2) Licenses granted under this subsection shall be on the following basis: Before a license is granted, the applicant shall receive a temporary permit good for one (1) year from date of issuance by the Board. At the end of one (1) year, the holder of said temporary permit shall again be considered by the Board, and if his application for license has been maintained and he meets all other requirements, the Board may grant said applicant a license.

[See Compact Edition, Volume 4 for text of G]

H. The State Board of Morticians may seek appropriate injunctive relief against a funeral establishment, licensed embalmer, or funeral director who fails to comply with any provision of this Act. This Act does not affect any remedy or enforcement power under other laws. The State Board of Morticians

cians may revoke, suspend, or place on probation any licensed funeral director and/or embalmer, or apprentice and may refuse to license or admit persons to examination for any of the following reasons all of which are offenses as provided in Section 6A of this Act:

1. The presentation to the Board of any license, certificate, or diploma which was illegally or fraudulently obtained, or when fraud or deception has been practiced in passing the examination;

2. Conviction of a crime of the grade of a felony or of a misdemeanor that is related to the practice of embalming or funeral directing;

3. Being unfit to practice as a funeral director and/or embalmer by reason of insanity and having been adjudged by a court of competent jurisdiction to be of unsound mind;

4. The use of any statement that misleads or deceives the public, including but not limited to false or misleading statements regarding (1) any legal, religious, or cemetery requirement for funeral merchandise or funeral services, (2) the preservative qualities of funeral merchandise or funeral services in preventing or substantially delaying natural decomposition or decay of human remains, (3) the airtight or watertight properties of a casket or outer enclosure, or (4) representations as to licensed personnel in the operation of a funeral establishment;

5. The purchase, sale, barter, or use, or any offer to purchase, sell, barter, or use any license, certificate, or transcript of license or certificate, in or incident to an application to the Board of Morticians for license to practice as a funeral director and/or embalmer;

6. Altering, with fraudulent intent, any funeral director and/or embalmer license, certificate, or transcript of license or certificate;

7. The use of any funeral director and/or embalmer license, certificate, diploma, or transcript of any such funeral director and/or embalmer license, certificate, or diploma, which has been fraudulently purchased, issued, counterfeited, or materially altered;

8. The impersonation of, or acting as proxy for, another in any examination required by this Act for a funeral director and/or embalmer license;

9. The impersonation of a licensed funeral director or embalmer as authorized hereunder, or permitting, or allowing another to use his license, or certificate to practice as a funeral director or embalmer in this state;

10. Using profane, indecent or obscene language within the immediate hearing of the family or relatives of a decedent, in proximity to a de-

ceased person whose body has not yet been interred or otherwise disposed of; or the indecent exposure of a dead human body;

11. Taking custody of, embalming, or refusing to promptly surrender a dead human body to a person or his agent authorized to make funeral arrangements for the deceased or embalming a body without the express written or oral permission of a person authorized to make funeral arrangements for the deceased or without making a documented reasonable effort over a period of at least two (2) hours to obtain the permission;

12. Wilfully making any false statement on a certificate of death;

13. Employment directly or indirectly of any apprentice, agent, assistant, embalmer, funeral director, employee, or other person on a part or full-time basis, or on commission, for the purpose of soliciting individuals or institutions by whose influence dead human bodies may be turned over to a particular funeral director or embalmer;

14. Presentation of false certification of work done as an apprentice on apprenticeship records;

15. Unfitness by reason of present drug addiction;

16. Whenever a licensee, apprentice, or any other person, whether employee, agent or representative, or one in any manner associated with a funeral establishment shall engage in solicitation as defined in this Act;

17. Failure by the Funeral Director in Charge to provide licensed personnel for attendance, direction, or personal supervision for a "first call," as that term is defined in this Act;

18. Failure by a funeral director or embalmer to inform customers by a written notice on or near the casket of the different colors in which the three least expensive caskets displayed are available; or failure by the funeral director or embalmer to provide a casket in an available color requested by a customer if the customer has expressed an intent to purchase the casket and if the casket can be obtained from regular commercial suppliers under normal delivery conditions within twelve (12) hours;

19. Performing acts of funeral directing or embalming, as those terms are defined in this Act, which are outside the licensed scope and authority of the licensee;

20. Engaging in fraudulent or deceptive conduct in providing funeral services or merchandise to a consumer;

21. Statement or implication by a funeral director or embalmer that a customer's concern with the cost of any funeral service or funeral merchandise is improper or indicates a lack of respect for the deceased;

22. Failure by any person arranging for funeral services or merchandise to make available to the customer at the time of discussion or selection of funeral services or funeral merchandise a printed or typewritten list of the retail price of at least the following items, provided they are available for purchase through the establishment: (a) transferring the deceased to the funeral home; (b) embalming; (c) use of facilities for viewing; (d) use of facilities for funeral ceremonies; (e) hearses; (f) limousines; (g) the itemized services of the funeral establishment staff; (h) caskets; (i) outer enclosures; and which contains the name, address, and telephone number of the funeral establishment, an effective date for the prices, and a notice which reads, "You may choose only the items you desire. You will be charged only for the items you use. If you have to pay for any items you did not specifically ask for, we will explain the reason in writing on the memorandum of agreement. Please note that there may be charges for such items as cemetery fees, flowers, and newspaper notices." The person arranging the funeral service shall make known to the customer the availability of the list and shall provide the list, which the customer may keep, before any contractual agreement between the parties;

23. Failure of any person arranging for funeral services or merchandise to provide each customer a written memorandum itemizing the cost of funeral services and funeral merchandise selected by the customer as enumerated in the price list, the requirements of which are set forth in Section 3, Subsection H(22) of this Act; each amount paid or owed to another on behalf of the customer; each fee for the cost of advancing funds or becoming indebted to another on behalf of the customer; and including the name, address, and telephone number of the funeral establishment and the following notice: "Charges are only for those items that are used. If the type of funeral selected requires extra items, we will explain the reasons in writing on this memorandum." Provided, however, that any person arranging for funeral services on merchandise may satisfy the itemization requirements of this Subsection H(23) by providing prices to the purchaser on a component or unit pricing basis that provides a discount to the purchaser if any component or unit is declined or if all components or units are selected. The written memorandum shall also include the name, mailing address, and telephone number of the State Board of Morticians and a statement indicating that complaints can be directed to the Board;

24. Restricting, hindering, or attempting to restrict or hinder (1) the advertising or disclosure of prices and other information regarding the availability of funeral services and funeral merchandise that is not unfair or deceptive to consumers, or (2)

agreements for funeral services between any consumer or group of consumers and funeral directors or embalmers;

25. Failure to retain and make available to the State Board of Morticians, upon request, copies of all price lists, written notices, and memoranda of agreement required by this article for two years after the date of their distribution or signing.

[See Compact Edition, Volume 4 for text of I]

J. Repealed by Acts 1979, 66th Leg., p. 1249, ch. 592, § 11, eff. Sept. 1, 1979.

Funeral Establishments

Sec. 4.

[See Compact Edition, Volume 4 for text of A and B]

C. Each funeral establishment shall be required to have a physical plant, equipment and personnel consisting of the following:

1. Some facilities in which funeral services may be conducted;

2. A physical plant which meets building standards and fire safety standards of the state and of the municipality in which the establishment is located;

3. Access to rolling stock consisting of at least one motor hearse;

4. A preparation room containing an operating table, sewer facilities, hot and cold running water, and other facilities necessary to comply with the sanitary code of the state and the municipality in which the room is located;

5. A display containing sufficient merchandise to permit reasonable selection, including five (5) or more adult caskets, provided that the least expensive casket offered for sale by a funeral establishment must be displayed in the same general manner as other caskets are displayed;

6. Sufficient licensed personnel who will be available to conduct the operation of the funeral establishment;

7. A physical plant located at a fixed place, and not located on any tax-exempt property or cemetery; and

8. A physical plant which meets the health standards or health ordinances of the state and of the municipality in which the establishment is located.

It is expressly provided, however, that an establishment which functions solely as a commercial embalmer, as that term is defined in this Act, shall have a commercial embalmers establishment license, but shall not be required to meet the requirements of subsections 1 and 5 of this paragraph C.

D. 1. The Board may initiate formal complaint or other action against a funeral establishment or in regard to the license of a funeral establishment only upon the following grounds:

[See Compact Edition, Volume 4 for text of 1(a) to (e)]

2. As to asserted violations of provisions of this Section, the Board shall have the following powers, rights and duties:

(a) The Board may, in any case, require a sworn statement setting forth matter complained of as a condition to taking further action.

(b) The Board shall cause an investigation to be made whenever a complaint is filed with or by the Board.

(c) As to the licenses of funeral establishments, except when the accused admits a violation and agrees in writing to a judgment of the Board suspending or revoking the license in question or placing the accused on probation, the Board shall have no power or authority to suspend or revoke the license of the accused. However, the Board shall have the right to initiate a civil action in a District Court in the county in which the accused resides for the purpose of seeking a revocation or suspension of such license or probationary action or fine all as hereinafter provided.

If the Board shall be of the opinion that the license of the accused should be revoked or suspended for a period not to exceed three years, and if the accused will accept a decision of the Board to such effect, it shall prepare a formal judgment and submit the same to him; and upon his agreement to its entry, evidenced by memorandum in writing signed and acknowledged by him, the Board shall enter judgment accordingly and the same shall have the force and effect of a judgment of the District Court of the county of the residence of the accused. A copy of the judgment, together with a copy of the complaint, shall be mailed to the clerk of the District Court of the county of residence of the accused for entry in the minutes of the court.

(d) The term "Accusation" or "Complaint" shall embrace all complaints brought before the Board. By the terms "civil suit," "court action" or "formal complaint" is meant the pleading by which disciplinary action is instituted by the Board in a District Court of this state.

The Texas rules of civil procedure shall govern the procedure in all proceedings under Civil Actions (Formal Complaint).

The District Attorney or the County Attorney of the county of residence of the accused licensee as defendant, or the Attorney General or such counsel as the Board may designate shall represent the Board as it shall determine.

The formal complaint shall be the pleading by which the proceeding is instituted. The formal complaint shall be filed in the name of the Texas State Board of Morticians as plaintiff against the accused licensee as defendant and shall set forth the violation with which the defendant is charged. The prayer may be that the defendant "be placed on probation or his (its) license suspended or revoked or he (it) be fined as the facts shall warrant."

The answer of the defendant to the formal complaint shall either admit or deny each allegation of the petition, except where the defendant is unable to admit or deny the allegation, in which case defendant shall set forth the reasons he (it) cannot admit or deny.

Proceedings under formal complaint shall be entitled to preferred setting at the request of either party.

If the court shall find from the evidence in a case tried without a jury, or from the verdict of the jury, if there be one, that the defendant is guilty of no violation, he shall enter judgment so declaring and dismiss the complaint; but if he shall find the defendant guilty, he shall determine whether the party shall be (a) placed under probation (in which case he shall specify the terms thereof), (b) the license suspended (in which case he shall fix the term of suspension), (c) the license revoked, or (d) fined (in which case he shall set the amount thereof); and he shall enter the judgment accordingly. If the judgment be one finding the defendant guilty as aforesaid, it shall direct transmittal of certified copies of the judgment and complaint to the Secretary of the Board of Morticians; and the latter shall make proper notation on the membership rolls.

At any time the expiration of one year from the date of final judgment or revocation of a license, such party may petition the District Court of the county of his residence for reinstatement. Notice of such action shall be given to the Secretary of the State Board of Morticians.

The Board shall have the right to institute an action in its own name to enjoin the violation of any of the provisions of this Section. Said action for an injunction shall be in addition to any other action, proceeding, or remedy recognized by law. The Board shall be represented by counsel designated by it, or, by the Attorney General and/or County and District Attorney of this state.

Any fine imposed on the accused through judicial proceedings shall be no less than Two Hundred Dollars (\$200) nor more than Two Thousand Dollars (\$2,000). Any fines collected by the court shall be deposited in the General Fund of the State of Texas.

[See Compact Edition, Volume 4 for text of 4E to 5]

Revocation, Cancellation or Suspension of Licenses of Funeral Directors, Embalmers and Apprentices

Sec. 6. The State Board of Morticians shall have the right to cancel, revoke, or suspend or place on probation the license of any individual person licensed under this Act as provided by subparagraph H of Section 3 above.

Proceedings under this Section shall be initiated by filing charges with the State Board of Morticians in writing and under oath. Said charges may be made by any person or persons. The President of the State Board of Morticians shall set a time and place for hearing. Upon application, the Board may reissue a license to practice as a funeral director or embalmer to a person whose license has been cancelled or suspended, but such application, in the case of cancellation or revocation, shall not be made prior to one (1) year after the cancellation or revocation, and shall be made in such a manner and form as the Board may require.

The State Board shall have the power to appoint committees from the membership. The duties of any committees appointed from the State Board of Morticians membership may consider such matters pertaining to the enforcement of this Act as shall be referred to such committees, and they shall make recommendations to the State Board of Morticians with respect thereto. The State Board of Morticians shall have the power, and may delegate the said power to any committee, to issue subpoenas,¹ duces tecum, and to compel the attendance of witnesses, the production of books, records and documents, to administer oaths, and to take testimony concerning all matters within its jurisdiction. The determination shall be founded on sufficient legal evidence to sustain it. The State Board of Morticians shall have the right to institute an action in its own name to enjoin the violation of any of the provisions of this Act. Said action for an injunction shall be in addition to any other action, proceeding, or remedy authorized by law. The State Board of Morticians shall be represented by the Attorney General and/or the County or District Attorneys of this state, or counsel designated and empowered by the Board. Before entering any order cancelling, suspending, refusing to renew, or revoking a license to practice as a funeral director and/or embalmer, the Board shall hold a hearing in accordance with the procedure as set forth in this Act.

The provisions of this Section shall not apply to funeral establishments or licenses pertaining to funeral establishments.

¹ So in enrolled bill.

Offenses

Sec. 6A. A person commits an offense if the person:

(1) acts or holds himself out as a funeral director, embalmer, or apprentice, as those terms are defined in this Act, without being properly licensed under this Act or shall make a "first call" without the authorization or supervision as provided in Section 1C of this Act;

(2) is a licensed funeral director or embalmer and engages in a funeral practice that is grounds for suspension or revocation of the person's license.

[See Compact Edition, Volume 4 for text of 6B]

Administrative Procedure and Texas Register Act

Sec. 6C. (a) A person who is denied a license or certificate by the Board is entitled to a hearing before the Board in accordance with the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), if the person requests the hearing in writing.

(b) A proceeding conducted by the Board relating to the suspension or revocation of a license or certificate is governed by the Administrative Procedure and Texas Register Act. Judicial review of the proceeding is by trial de novo and is governed by the Administrative Procedure and Texas Register Act.

Complaints

Sec. 6D. (a) The Board shall investigate and keep an information file about each complaint received by the Board relating to a funeral director, embalmer, apprentice, or funeral establishment.

(b) The Board shall include in each information file a description of the complaint, the date on which the complaint was filed, the name of the complainant, a description of any information obtained by the Board after investigating the complaint, a description and date of any formal actions taken by the Board relating to the complaint, a description of the current status of the complaint, and other information that the Board considers appropriate.

(c) The Board, at least as frequently as quarterly, shall notify the complainant of the status of the complaint until the complaint is finally resolved.

(d) The information file, except for information in the file obtained by the Board after investigating the complaint, is public information. The information obtained after investigating the complaint is not public information.

(e) If a person files a complaint with the Board relating to a licensed funeral director, embalmer, or funeral establishment, the Board shall furnish to the person an explanation of the remedies that are available to the person under this Act and information about appropriate state or local agencies or officials with which the person may file a complaint.

(f) The Board shall employ at least one person who is a licensed private investigator under the laws

of this state and who is not regulated under this Act. The private investigator may investigate complaints of consumer interest and other complaints received by the Board.

Consumer Information

Sec. 6E. (a) The Board shall prepare information of consumer interest explaining matters relating to funerals, describing the regulatory functions of the Board, and describing the Board's procedures by which consumer complaints are filed with and resolved by the Board.

(b) The Board shall disseminate the information to the general public.

Ex Parte Communications

Sec. 6F. The members and employees of the Board are subject to the provisions of the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), relating to ex parte communications.

Penalty

Sec. 7. (a) An offense under Section 6A of this Act is a Class B misdemeanor.

(b) The Board may file a complaint with the appropriate governmental authorities to begin prosecution of a person who commits an offense under Section 6A of this Act. The State Board of Morticians or any adversely affected party may sue a funeral establishment or licensed embalmer or funeral director who fails to comply with any provision of this Act for appropriate injunctive relief. This Act does not affect a remedy or enforcement power under other laws. Any person who practices as a funeral director, embalmer or apprentice in violation of any provisions of this Act shall be fined not less than Fifty Dollars (\$50) nor more than Five Hundred Dollars (\$500) or shall be imprisoned in the county jail for not more than thirty (30) days, or both. Each day of such practice shall constitute a separate offense.

[Amended by Acts 1977, 65th Leg., p. 859, ch. 324, §§ 1 to 3, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1834, ch. 735, § 2.013, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1233, ch. 592, §§ 1 to 8, eff. Sept. 1, 1979.]

Sections 9 and 10 of the 1979 amendatory act provided:

"Sec. 9. (a) A person holding office as a member of the State Board of Morticians on the effective date of this Act continues to hold the office for the term for which the member was originally appointed.

"(b) The governor shall make initial appointments of three public members, one for a term expiring on January 31, 1981, one for a term expiring on January 31, 1983, and one for a term expiring on January 31, 1985. The additional public member shall be appointed upon expiration of the term of one incumbent funeral industry member on May 31, 1981.

"(c) The terms of office of the appointees who fill the offices of incumbent members whose terms expire on May 31, 1981, and May 31, 1983, shall expire on January 31, 1987, and January 31, 1989, respectively.

"Sec. 10. This board shall promulgate no rule or regulation requiring embalming. No other state agency shall promulgate or enforce a rule or regulation requiring embalming without a finding that such rule or regulation is necessary to protect the public health."

CHAPTER THIRTEEN. ANATOMICAL BOARD

Article

4583a. Application of Sunset Act.

4590-2a. Kidney Donation by Mentally Retarded Person.

4590-4. Justice of the Peace or Medical Examiner; Permitting Removal of Corneal Tissue.

4590-5. Eye Enucleation for Anatomical Donations.

Art. 4583. Board and Duties

The professor of anatomy and the professor of surgery of each of the medical schools or colleges, and two professors from each chiropractic school or college now incorporated, and of the several medical, chiropractic, and dental schools and colleges which may hereafter be incorporated in this State are constituted a board, to be known as the Anatomical Board of the State of Texas, for the distribution and delivery of dead human bodies, hereinafter described, to and among such institutions as, under the provisions of this law, are entitled thereto. The board shall have power to establish rules and regulations for its government, and to appoint and remove proper officers of such board, and shall keep full and complete minutes of its transactions. Records sufficient for identification shall also be kept, under its direction, of all bodies received and distributed by said board and of persons to whom the same may be distributed, which minutes and records shall be open at all times to the inspection of each member of said board and of any district attorney or county attorney of this State.

[Amended by Acts 1977, 65th Leg., p. 147, ch. 72, § 1, eff. April 25, 1977.]

Art. 4583a. Application of Sunset Act

The Anatomical Board of the State of Texas is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished effective September 1, 1985.

[Added by Acts 1977, 65th Leg., p. 1848, ch. 735, § 2.112, eff. Aug. 29, 1977.]

¹ Article 5429k.

Art. 4585. Distribution of Bodies to Institutions

The board, or their duly authorized agents, may take and receive such bodies so delivered as aforesaid, and shall, upon receiving them, distribute and deliver them to and among the schools, colleges, physicians and surgeons aforesaid, including chiropractic colleges, in the manner following: Those bodies needed for lecture and demonstration in the said incorporated schools and colleges shall first be supplied; the remaining bodies shall then be distributed proportionately and equitably, the number assigned to each to be based upon the number of students receiving instruction or demonstration in normal or morbid anatomy and operative surgery, which number shall be certified by the dean of each

school or college to the board at such times as it may direct. Instead of receiving and delivering said bodies themselves through their agent or servant, the said board may, from time to time, either directly or by their designated officer or agent authorize physicians and surgeons to receive them, and the number which each shall receive.

[Amended by Acts 1977, 65th Leg., p. 147, ch. 72, § 2, eff. April 25, 1977.]

Art. 4590-2. Anatomical Gift Act

[See Compact Edition, Volume 4 for text of 1]

Definitions

Sec. 2.

[See Compact Edition, Volume 4 for text of 2(a) to (h)]

(i) "Eye Bank" means a nonprofit corporation, chartered under the laws of Texas, to obtain, store, and distribute donor eyes to be used by ophthalmologists for corneal transplants, for research, or for other medical purposes.

[See Compact Edition, Volume 4 for text of 3]

Persons who May Become Donees, and Purposes for Which Anatomical Gifts May be Made

Sec. 4. The following persons may become donees of gifts of bodies or parts thereof for the purposes stated:

[See Compact Edition, Volume 4 for text of (1)]

(2) any accredited medical, chiropractic, or dental school, college or university for education, research, advancement of medical or dental science or therapy; or

[See Compact Edition, Volume 4 for text of (3)]

(4) any individual specified by a licensed physician for therapy or transplantation needed by him; or

(5) any eye bank whose medical activities are directed by a licensed physician or surgeon.

[See Compact Edition, Volume 4 for text of 5 to 8]

[Amended by Acts 1977, 65th Leg., p. 28, ch. 12, §§ 5, 6, eff. March 10, 1977; Acts 1977, 65th Leg., p. 148, ch. 72, § 3, eff. April 25, 1977.]

Art. 4590-2a. Kidney Donation by Mentally Retarded Person

Sec. 1. (a) "Mentally retarded" as used in this Act means a person who is mentally retarded pursuant to the terms and provisions of the Mentally Retarded Persons Act of 1977 (Article 5547-300, Vernon's Texas Civil Statutes).

(b) The guardian of the person of a mentally retarded ward, 12 chronological years of age or more, may petition a district court which has juris-

diction of the guardian for an order authorizing said ward to donate one of his or her two kidneys to a father, mother, son, daughter, sister, or brother as hereinafter set out.

Sec. 2. (a) The court shall hold a hearing on the petition. An attorney ad litem and a guardian ad litem, neither of which shall be related to the ward within the second degree by consanguinity, shall be appointed by the court to represent the interest of the prospective donor.

(b) Petitioners shall have the burden of establishing good cause for the kidney donation by establishing the statutory prerequisites set out herein. The court may enter an order authorizing the kidney donation if it is established that: (1) the guardian of the prospective donor consents to the donation; (2) the prospective donor assents to the kidney transplant; (3) absent the transplant the donee will soon die or suffer severe and progressive deterioration; and with the transplant the donee will probably benefit substantially; (4) there are no medically preferable alternatives to a kidney transplant for the donee; (5) the risks of the operation and the long-term risks are minimal to the donor, and the donor will not likely suffer psychological harm; and (6) the transplant will promote the proposed donor's best interests.

(c) Within seven days of the hearing, the court shall conduct an "in chambers" interview with the mentally retarded ward, out of the presence of the guardian, to determine whether the prospective donor assents to the donation. If the court deems it necessary, it may order a comprehensive diagnosis and evaluation, described in Section 3(24), Mentally Retarded Persons Act of 1977 (Article 5547-300, Vernon's Texas Civil Statutes), to be performed to aid the court in evaluating the prospective donor's capacity to agree to the donation.

(d) In order to secure a complete record, the hearing shall be adversary in nature. The attorney ad litem shall advocate the ward's interest, if any, in not being a donor.

(e) Upon request, any party to a proceeding instituted pursuant to this Act shall be entitled to a preferential setting.

[Acts 1979, 66th Leg., p. 886, ch. 406, §§ 1, 2, eff. Sept. 1, 1979.]

Sections 3 and 4 of the 1979 Act provided:

"Sec. 3. This Act takes effect on September 1, 1979.

"Sec. 4. If any sentence, paragraph, or section of this Act shall be held invalid or unconstitutional, such holding shall not invalidate any other sentence, paragraph, or section hereof, and the legislature hereby expressly dictates that it would have passed such remaining sentences, paragraphs, and sections despite such invalidity."

Art. 4590-4. Justice of the Peace or Medical Examiner; Permitting Removal of Corneal Tissue

Permission to Take Tissue

Sec. 1. On a request from an authorized official of a nonprofit corporation chartered under the laws of Texas, to obtain, store, and distribute donor eyes to be used by those licensed to practice medicine for corneal transplants, for research, or for other medical purposes and whose medical activities are directed by one licensed to practice medicine in Texas, for corneal tissue, the justice of the peace or the medical examiner may permit the taking of corneal tissue if:

- (1) the decedent from whom the tissue is to be taken died under circumstances requiring an inquest by the justice of the peace or the medical examiner;
- (2) no objection by a person listed in Section 2 of this Act is known by the justice of the peace or the medical examiner; and
- (3) the removal of corneal tissue will not interfere with the subsequent course of an investigation or autopsy, or alter the postmortem facial appearance.

Objection to Taking

Sec. 2. Objection may be made known to the justice of the peace or the medical examiner by the following persons:

- (1) the decedent's spouse;
- (2) if no spouse, the decedent's adult children;
- (3) if no adult children or spouse, the decedent's parents; or
- (4) if no parents, adult children, or spouse, the decedent's brothers or sisters.

Liability for Damages

Sec. 3. The justice of the peace, the medical examiner, and the eye bank official are not liable for damages in a civil action brought by a person listed in Section 2 of this Act who has not objected prior to the removal of the corneal tissue on any theory of civil recovery based on a contention that the consent of plaintiff was required prior to the removal of corneal tissue as authorized by this Act.

[Acts 1977, 65th Leg., p. 26, ch. 11, §§ 1 to 3, eff. March 10, 1977.]

Art. 4590-5. Eye Enucleation for Anatomical Donations

Persons Who May Enucleate Eye as Anatomical Gift

Sec. 1. Only the following persons may enucleate an eye when an eye is an anatomical gift:

- (1) a licensed physician or surgeon;
- (2) a licensed doctor of dental surgery or medical dentistry;

- (3) a licensed embalmer; or
- (4) a technician supervised by a physician or surgeon.

Eye Enucleation Course

Sec. 2. All persons, except licensed physicians, who perform eye enucleations must complete a course in eye enucleation that is taught by an ophthalmologist as defined in this Act and must possess a certificate showing the fulfillment of this requirement.

Requisites of Course

Sec. 3. The course must include anatomy and physiology of the eye, instruction in maintaining a sterile field during the procedure, use of the appropriate instruments, and sterile procedures for removing the corneal button and preserving it in a preservative fluid.

"Ophthalmologist" Defined

Sec. 4. "Ophthalmologist" means for the limited purpose of this Act one licensed to practice medicine who specializes in the treatment of diseases of the eye.

[Acts 1977, 65th Leg., p. 27, ch. 12, §§ 1 to 4, eff. March 10, 1977.]

CHAPTER SIXTEEN. BASIC SCIENCES

Article

4590c-1. Board of Examiners in Basic Sciences Abolished; Basic Science Requirements of Boards of Medical Examiners and Chiropractic Examiners.

Art. 4590c. Repealed by Acts 1979, 66th Leg., p. 1153, ch. 556, eff. Sept. 1, 1979

Art. 4590c-1. Board of Examiners in Basic Sciences Abolished; Basic Science Requirements of Boards of Medical Examiners and Chiropractic Examiners

Sec. 1. [Amends art. 4500]

Sec. 2. The State Board of Examiners in the Basic Sciences is abolished. The records and other property in the custody of the board are transferred to the State Board of Control.¹

Sec. 3. (a) Prior to the issuance of a license to practice any profession or occupation granted by the Boards of Medical Examiners or Chiropractic Examiners, such board shall require from a person otherwise qualified by law, evidence, verified by transcript of credits, certifying that such person has satisfactorily completed 60 or more semester hours of college credits at a college or university which issues credits acceptable by The University of Texas at Austin leading toward a Bachelor of Arts or a Bachelor of Science degree. Said credits shall include the satisfactory completion of courses in anat-

my, physiology, chemistry, bacteriology, pathology, hygiene, and public health with an average of 75 percent or better in each of such courses. The sequence of such courses shall be in the manner as from time to time is required by The University of Texas at Austin.

(b) The applicable board may charge a fee of not more than \$50 for verification of the satisfaction of the completion of the courses described in Subsection (a) of this section.

(c) Any license to practice issued after the effective date of this Act by the boards identified in Subsection (a) of this section contrary to this Act shall be void.

(d) Any person who knowingly obtains a license from the boards identified in Subsection (a) of this section, or assists another in so doing, without complying with this Act, or who presents any information called for in this Act obtained by dishonesty or fraud or by any forged or counterfeit means, or who knowingly acts, advises, or assists another in so doing, shall be subject to a Class A misdemeanor and upon conviction shall be punished in accordance with Section 12.21, Penal Code.

(e) All funds on hand in the basic science examination fund shall be allocated and transferred by the comptroller to the respective boards identified above, prorated on the basis of the number of certificates of proficiency issued by the Board of Basic Science to licensees of such board during the fiscal year immediately preceding the effective date of this Act. Such funds may be used by the Boards of Medical Examiners and of Chiropractic Examiners to carry out the provisions of this Act.

[Acts 1979, 66th Leg., p. 1153, ch. 556, §§ 2, 3, eff. Sept. 1, 1979.]

¹ State Board of Control abolished and State Purchasing and General Services Commission created by Acts 1979, 66th Leg., p. 1908, ch. 773. See, now, art. 601b.

CHAPTER TWENTY. NATURAL DEATH

Art. 4590h. Natural Death Act

Short Title

Sec. 1. This Act shall be known and may be cited as the Natural Death Act.

Definitions

Sec. 2. In this Act:

(1) "Attending physician" means the physician selected by, or assigned by the physician selected by, the patient who has primary responsibility for the treatment and care of the patient.

(2) "Directive" means a written document voluntarily executed by the declarant in accordance with the requirements of Section 3 of this Act. The directive, or a copy of the directive, shall be made part of the patient's medical records.

(3) "Life-sustaining procedure" means a medical procedure or intervention which utilizes mechanical or other artificial means to sustain, restore, or supplant a vital function, which, when applied to a qualified patient, would serve only to artificially prolong the moment of death and where, in the judgment of the attending physician, noted in the qualified patient's medical records, death is imminent whether or not such procedures are utilized. "Life-sustaining procedure" shall not include the administration of medication or the performance of any medical procedure deemed necessary to alleviate pain.

(4) "Physician" means a physician and surgeon licensed by the Texas State Board of Medical Examiners.

(5) "Qualified patient" means a patient diagnosed and certified in writing to be afflicted with a terminal condition by two physicians, one of whom shall be the attending physician, and the other shall be chosen by the patient or the attending physician, who have each personally examined the patient.

(6) "Terminal condition" means an incurable condition caused by injury, disease, or illness, which, regardless of the application of life-sustaining procedures, would, within reasonable medical judgment, produce death, and where the application of life-sustaining procedures serves only to postpone the moment of death of the patient.

Directive for Withholding or Withdrawal of Life-Sustaining Procedures in Event of Terminal Condition

Sec. 3. Any adult person may execute a directive for the withholding or withdrawal of life-sustaining procedures in the event of a terminal condition. The directive shall be signed by the declarant in the presence of two witnesses not related to the declarant by blood or marriage and who would not be entitled to any portion of the estate of the declarant on his decease under any will of the declarant or codicil thereto or by operation of law. In addition, a witness to a directive shall not be the attending physician, an employee of the attending physician or a health facility in which the declarant is a patient, a patient in a health care facility in which the declarant is a patient, or any person who has a claim against any portion of the estate of the declarant upon his decease at the time of the execution of the directive. The signature of the declarant shall be acknowledged, and the witnesses shall subscribe and swear to the directive before a notary public. The directive shall be in the following form:

"DIRECTIVE TO PHYSICIANS

"Directive made this _____ day of _____ (month, year).

"I _____, being of sound mind, willfully and voluntarily make known my desire that my life shall not be artificially prolonged under the circumstances set forth below, and do hereby declare:

"1. If at any time I should have an incurable condition caused by injury, disease, or illness certified to be a terminal condition by two physicians, and where the application of life-sustaining procedures would serve only to artificially prolong the moment of my death and where my attending physician determines that my death is imminent whether or not life-sustaining procedures are utilized, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally.

"2. In the absence of my ability to give directions regarding the use of such life-sustaining procedures, it is my intention that this directive shall be honored by my family and physicians as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences from such refusal.

"3. If I have been diagnosed as pregnant and that diagnosis is known to my physician, this directive shall have no force or effect during the course of my pregnancy.

"4. I have been diagnosed and notified as having a terminal condition by _____, M.D., whose address is _____, and whose telephone number is _____. I understand that if I have not filled in the physician's name and address, it shall be presumed that I did not have a terminal condition when I made out this directive.

"5. This directive shall be in effect until it is revoked.

"6. I understand the full import of this directive and I am emotionally and mentally competent to make this directive.

"7. I understand that I may revoke this directive at any time.

"Signed _____

City, County, and State of Residence _____

The declarant has been personally known to me and I believe him or her to be of sound mind. I am not related to the declarant by blood or marriage, nor would I be entitled to any portion of the declarant's estate on his decease, nor am I the attending physician of declarant or an employee of the attending physician or a health facility in which declarant is a patient, or a patient in the health care facility in which the declarant is a patient, or any person who has a claim against any portion of the estate of the declarant upon his decease.

"Witness _____

"Witness _____

STATE OF TEXAS
COUNTY OF _____

"Before me, the undersigned authority, on this day personally appeared _____, _____, and _____, known to me to be the declarant and witnesses whose names are subscribed to the foregoing instrument in their respective capacities, and, all of said persons being by me duly sworn, the declarant, _____, declared to me and to the said witnesses in my presence that said instrument is his Directive to Physicians, and that he had willingly and voluntarily made and executed it as his free act and deed for the purposes therein expressed.

"Declarant _____

"Witness _____

"Witness _____

"Subscribed and acknowledged before me by the said Declarant, _____, and by the said witnesses, _____ and _____, on this ___ day of _____, 19__.

Notary Public in and for
_____ County,
Texas"

Revocation of Directive

Sec. 4. (a) A directive may be revoked at any time by the declarant, without regard to his mental state or competency, by any of the following methods:

(1) by being canceled, defaced, obliterated, or burnt, torn, or otherwise destroyed by the declarant or by some person in his presence and by his direction;

(2) by a written revocation of the declarant expressing his intent to revoke, signed and dated by the declarant. Such revocation shall become effective only on communication to an attending physician by the declarant or by a person acting on behalf of the declarant or by mailing said revocation to an attending physician. An attending physician or his designee shall record in the patient's medical record the time and date when he received notification of the written revocation and shall enter the word "VOID" on each page of the copy of the directive in the patient's medical records; or

(3) by a verbal expression by the declarant of his intent to revoke the directive. Such revocation shall become effective only on communication to an attending physician by the declarant or by a person acting on behalf of the declarant. An attending physician or his designee shall record in the patient's medical record the time, date, and place of the revocation and the time, date, and place, if different, of when he received notification of the revocation and shall enter the word

"VOID" on each page of the copy of the directive in the patient's medical records.

(b) Except as otherwise provided in this Act, there shall be no criminal or civil liability on the part of any person for failure to act on a revocation made pursuant to this section unless that person has actual knowledge of the revocation.

Duration of Directive

Sec. 5. A directive shall be effective until it is revoked in a manner prescribed in Section 4 of this Act. Nothing in this Act shall be construed to prevent a declarant from reexecuting a directive at any time in accordance with the formalities of Section 3 of this Act, including reexecution subsequent to a diagnosis of a terminal condition. If the declarant has executed more than one directive, such time shall be determined from the date of execution of the last directive known to the attending physician. If the declarant becomes comatose or is rendered incapable of communicating with the attending physician, the directive shall remain in effect for the duration of the comatose condition or until such time as the declarant's condition renders him or her able to communicate with the attending physician.

Civil or Criminal Liability

Sec. 6. No physician or health facility which, acting in accordance with the requirements of this Act, causes the withholding or withdrawal of life-sustaining procedures from a qualified patient, shall be subject to civil liability therefrom unless negligent. No health professional, acting under the direction of a physician, who participates in the withholding or withdrawal of life-sustaining procedures in accordance with the provisions of this Act shall be subject to any civil liability unless negligent. No physician, or health professional acting under the direction of a physician, who participates in the withholding or withdrawal of life-sustaining procedures in accordance with the provisions of this Act shall be guilty of any criminal act or of unprofessional conduct unless negligent. No physician, health care facility, or health care professional shall be liable either civilly or criminally for failure to act pursuant to the declarant's directive where such physician, health care facility, or health care professional had no knowledge of such directive.

Failure to Execute Directive

Sec. 7. (a) Prior to effecting a withholding or withdrawal of life-sustaining procedures from a qualified patient pursuant to the directive, the attending physician shall determine that the directive complies with the form of the directive set out in Section 3 of this Act, and, if the patient is mentally competent, that the directive and all steps proposed by the attending physician to be undertaken are in accord with the existing desires of the qualified patient and are communicated to the patient.

(b) If the declarant was a qualified patient prior to executing or reexecuting the directive, the directive shall be conclusively presumed, unless revoked, to be the directions of the patient regarding the withholding or withdrawal of life-sustaining procedures. No physician, and no health professional acting under the direction of a physician, shall be criminally or civilly liable for failing to effectuate the directive of the qualified patient pursuant to this subsection. A failure by a physician to effectuate the directive of a qualified patient pursuant to this subsection may constitute unprofessional conduct if the physician refuses to make the necessary arrangements or fails to take the necessary steps to effect the transfer of the qualified patient to another physician who will effectuate the directive of the qualified patient.

(c) If the declarant becomes a qualified patient subsequent to executing the directive, and has not subsequently re-executed the directive, the attending physician may give weight to the directive as evidence of the patient's directions regarding the withholding or withdrawal of life-sustaining procedures and may consider other factors, such as information from the affected family or the nature of the patient's illness, injury, or disease, in determining whether the totality of circumstances known to the attending physician justifies effectuating the directive. No physician, and no health professional acting under the direction of a physician, shall be criminally or civilly liable for failing to effectuate the directive of the qualified patient pursuant to this subsection.

Effect on Offense of Aiding Suicide and Insurance Policies

Sec. 8. (a) The withholding or withdrawal of life-sustaining procedures from a qualified patient in accordance with the provisions of this Act shall not, for any purpose, constitute an offense under Section 22.08, Penal Code.

(b) The making of a directive pursuant to Section 3 of this Act shall not restrict, inhibit, or impair in any manner the sale, procurement, or issuance of any policy of life insurance, nor shall it be deemed to modify the terms of an existing policy of life insurance. No policy of life insurance shall be legally impaired or invalidated in any manner by the withholding or withdrawal of life-sustaining procedures from an insured qualified patient, notwithstanding any term of the policy to the contrary.

(c) No physician, health facility, or other health provider, and no health care service plan, or insurer issuing insurance, may require any person to execute a directive as a condition for being insured for, or receiving, health care services nor may the execution or failure to execute a directive be considered in any way in establishing the premiums for insurance.

Tampering with Directive

Sec. 9. A person who willfully conceals, cancels, defaces, obliterates, or damages the directive of another without such declarant's consent shall be guilty of a Class A misdemeanor. A person who falsifies or forges the directive of another, or willfully conceals or withholds personal knowledge of a revocation as provided in Section 4 of this Act, with the intent to cause a withholding or withdrawal of life-sustaining procedures contrary to the wishes of the declarant, and thereby, because of any such act, directly causes life-sustaining procedures to be withheld or withdrawn and death to thereby be hastened, shall be subject to prosecution for criminal homicide under the provisions of the Penal Code.

Mercy Killing not Condoned

Sec. 10. Nothing in this Act shall be construed to condone, authorize, or approve mercy killing, or to permit any affirmative or deliberate act or omission to end life other than to permit the natural process of dying as provided in this Act.

Act as Cumulative

Sec. 11. Nothing in this Act shall impair or supersede any legal right or legal responsibility which any person may have to effect the withholding or withdrawal of life-sustaining procedures in any lawful manner. In such respect the provisions of this Act are cumulative.

[Acts 1977, 65th Leg., p. 1085, ch. 398, §§ 1 to 11, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1783, ch. 724, §§ 1 to 3, eff. Aug. 27, 1979.]

CHAPTER TWENTY-ONE. MEDICAL LIABILITY AND INSURANCE IMPROVEMENT

Art. 4590i. Medical Liability and Insurance Improvement Act

Text of article effective until August 31, 1993

SUBCHAPTER A. GENERAL PROVISIONS

Short Title

Sec. 1.01. This part may be cited as the Medical Liability and Insurance Improvement Act of Texas.

Findings and Purposes

Sec. 1.02. (a) The Legislature of the State of Texas finds that:

- (1) the number of health care liability claims (frequency) has increased since 1972 inordinately;
- (2) the filing of legitimate health care liability claims in Texas is a contributing factor affecting medical professional liability rates;
- (3) the amounts being paid out by insurers in judgments and settlements (severity) have likewise increased inordinately in the same short period of time;

(4) the effect of the above has caused a serious public problem in availability of and affordability of adequate medical professional liability insurance;

(5) the situation has created a medical malpractice insurance crisis in the State of Texas;

(6) this crisis has had a material adverse effect on the delivery of medical and health care in Texas, including significant reductions of availability of medical and health care services to the people of Texas and a likelihood of further reductions in the future;

(7) the crisis has had a substantial impact on the physicians and hospitals of Texas and the cost to physicians and hospitals for adequate medical practice insurance has dramatically risen in price, with cost impact on patients and the public;

(8) the direct cost of medical care to the patient and public of Texas has materially increased due to rising cost of malpractice insurance protection for physicians and hospitals in Texas;

(9) the crisis has increased the cost of medical care both directly through fees and indirectly through additional services provided for protection against future suits or claims; and defensive medicine has resulted in increasing cost to patients, private insurers, and the state and has contributed to the general inflation that has marked health care in recent years;

(10) satisfactory insurance coverage for adequate amounts of insurance in this area is often not available at any price;

(11) the combined effect of the defects in the medical, insurance, and legal systems has caused a serious public problem both with respect to the availability of coverage and to the high rates being charged by insurers for medical professional liability insurance to some physicians, health care providers, and hospitals;

(12) the adoption of certain modifications in the medical, insurance, and legal systems, the total effect of which is currently undetermined, may or may not have an effect on the rates charged by insurers for medical professional liability insurance;

(13) these facts have been verified by the Medical Professional Liability Study Commission, which was created by the 64th Legislature.¹ For further amplification of these facts the legislature adopts the findings of the report of the commission.

(b) Because of the conditions stated in Subsection (a) of this section, it is the purpose of this Act to improve and modify the system by which health care liability claims are determined in order to:

(1) reduce excessive frequency and severity of health care liability claims through reasonable im-

provements and modifications in the Texas insurance, tort, and medical practice systems;

(2) decrease the cost of those claims and assure that awards are rationally related to actual damages;

(3) do so in a manner that will not unduly restrict a claimant's rights any more than necessary to deal with the crisis;

(4) make available to physicians, hospitals, and other health care providers protection against potential liability through the insurance mechanism at reasonably affordable rates;

(5) make affordable medical and health care more accessible and available to the citizens of Texas;

(6) make certain modifications in the medical, insurance, and legal systems in order to determine whether or not there will be an effect on rates charged by insurers for medical professional liability insurance; and

(7) make certain modifications to the liability laws as they relate to health care liability claims only and with an intention of the legislature to not extend or apply such modifications of liability laws to any other area of the Texas legal system or tort law.

¹ See note under Insurance Code, art. 21.49-3.

Definitions

Sec. 1.03. (a) In this part:

(1) "Court" means any federal or state court.

(2) "Health care" means any act or treatment performed or furnished, or which should have been performed or furnished, by any health care provider for, to, or on behalf of a patient during the patient's medical care, treatment, or confinement.

(3) "Health care provider" means any person, partnership, professional association, corporation, facility, or institution duly licensed or chartered by the State of Texas to provide health care as a registered nurse, hospital, dentist, podiatrist, pharmacist, or nursing home, or an officer, employee, or agent thereof acting in the course and scope of his employment.

(4) "Health care liability claim" means a cause of action against a health care provider or physician for treatment, lack of treatment, or other claimed departure from accepted standards of medical care or health care or safety which proximately results in injury to or death of the patient, whether the patient's claim or cause of action sounds in tort or contract.

(5) "Hospital" means a duly licensed public or private institution as defined in Chapter 223, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4437f, Vernon's Texas Civil Statutes), or in Section 88, Chapter 243, Acts of the

55th Legislature, Regular Session, 1957 (Article 5547-88, Vernon's Texas Civil Statutes).

(6) "Medical care" means any act defined as practicing medicine in Article 4510, Revised Civil Statutes of Texas, 1925, as amended, performed or furnished, or which should have been performed, by one licensed to practice medicine in Texas for, to, or on behalf of a patient during the patient's care, treatment, or confinement.

(7) "Pharmacist" means one licensed under Chapter 107, Acts of the 41st Legislature, Regular Session, 1929, as amended (Article 4542a, Vernon's Texas Civil Statutes), who, for the purposes of this Act, performs those activities limited to the dispensing of prescription medicines which result in health care liability claims and does not include any other cause of action that may exist at common law against them, including but not limited to causes of action for the sale of mishandled or defective products.

(8) "Physician" means a person licensed to practice medicine in this state.

(9) "Representative" means the spouse, parent, guardian, trustee, authorized attorney, or other authorized legal agent of the patient or claimant.

(b) Any legal term or word of art used in this part, not otherwise defined in this part, shall have such meaning as is consistent with the common law.

SUBCHAPTER B. ADDITIONAL DISCIPLINARY POWERS

Definitions

Sec. 2.01. In this subchapter:

(1) "Board" means the Texas State Board of Medical Examiners.

(2) "Medical peer review committee" means a committee of a state or local professional medical society, the governing board of a licensed hospital in this state or of a medical staff of a licensed hospital, nursing home, or other health care facility, provided the committee or medical staff operates pursuant to written bylaws that have been approved by the policymaking body or the governing board of the society, hospital, nursing home, or other health care facility, or other organization of physicians formed pursuant to state or federal law and authorized to evaluate medical and health care services.

Reporting by Medical Peer Review Committee or Physician

Sec. 2.02. Any medical peer review committee in this state and any physician licensed to practice medicine or otherwise lawfully practicing medicine in this state may report relevant facts to the board relating to the acts of any physician in this state if, in the opinion of the medical peer review committee or the physician, they have knowledge relating to

the physician that reasonably raises a question with respect to his or her competency.

Reporting by Professional Society

Sec. 2.03. A professional society in this state comprised primarily of physicians that takes formal disciplinary action against a member relating to professional ethics, medical incompetency, moral turpitude, or drug or alcohol abuse may report in writing to the board the name of the member, together with the pertinent information relating to the action.

Effect of Filing, Investigation, or Disposition by Board

Sec. 2.04. The filing of a report with the board pursuant to this article, investigation by the board, or any disposition by the board shall not, in and of itself, preclude any action by a hospital or other health care facility or professional society comprised primarily of physicians to suspend, restrict, or revoke the privileges or membership of the physician.

Handling of Report

Sec. 2.05. On a determination by the board that a report submitted by a medical peer review committee is without merit, the report shall be expunged from the physician's or applicant's individual historical record in the board's office. A physician or applicant or his authorized representative is entitled on request to examine the physician's or applicant's medical peer review report submitted to the board under the provisions of this subchapter, and to place into the record a statement of reasonable length of the physician's or applicant's view with respect to any information existing in the report. The statement shall at all times accompany that part of the record in contention.

Confidentiality

Sec. 2.06. (a) Reports, information, or records received and maintained by the board pursuant to this subchapter, including any material received or developed by the board during an investigation or hearing shall be strictly confidential and subject to the provisions of Subsection (c) of this section; however, the board may only disclose this confidential information:

(1) in a disciplinary hearing before the board or in a subsequent trial or appeal of a board action or order;

(2) to the physician licensing or disciplinary authorities of other jurisdictions, to a local, state, or national professional medical society, or to a medical peer review committee located inside or outside this state that is concerned with granting, limiting, or denying a physician hospital privileges;

(3) pursuant to an order of a court of competent jurisdiction; or

(4) to qualified personnel for bona fide research or educational purposes, if personally identifiable information relating to any person or physician is first deleted.

(b) Orders of the board relating to disciplinary action against a physician shall not be confidential.

(c) In no event shall records and reports received, maintained, or developed by the board, or disclosed by the board to others, pursuant to this article, be available for discovery or court subpoena, or introduced into evidence in a medical professional liability suit or other action for damages arising out of the provision of or failure to provide medical or health care services.

(d) A person found guilty of an unlawful disclosure of this confidential information possessed by the board shall be guilty of a Class A misdemeanor.

Immunity from Civil Liability

Sec. 2.07. A person reporting to or furnishing information to a medical peer review committee, and a member, employee, or agent of the committee, who makes a report or other information available to the board pursuant to this subchapter, or who assists in the organization, investigation, or preparation of this information, or who assists the board in carrying out its duties or functions provided by law, shall be immune from civil liability.

Reports and Data from Insurers

Sec. 2.08. (a) Every insurer providing medical professional liability insurance covering a physician or physicians in this state shall submit to the board the report or data described in Subsections (b) and (c) of this section at the time prescribed. The report or data shall be provided with respect to a complaint filed against an insured in a court, if the complaint seeks damages relating to the insured's conduct in providing or failing to provide medical or health care services, and with respect to settlement of a claim or lawsuit made on behalf of the insured. In the event a physician practicing medicine in this state does not carry or is not covered by medical professional liability insurance, or is insured by a nonadmitted carrier, the information required to be reported in Subsections (b) and (c) of this section shall be the responsibility of the physician.

(b) The following report or data shall be furnished to the board within 90 days after receipt by the insurer of the complaint from the insured:

(1) the name of the insured;

(2) the policy number;

(3) the policy limits;

(4) a copy of the complaint;

(5) a copy of the answer; and

(6) other pertinent data and information within the knowledge of the insurer as the board may require.

(c) The following report or data and information shall be furnished to the board within 90 days from a judgment, dismissal, or settlement of suit involving the insured, or settlement of any claim on behalf of the insured without the filing of a lawsuit:

- (1) the date of a judgment, dismissal, or settlement;
- (2) whether an appeal has been taken and by which party;
- (3) the amount of the settlement or judgment against the insured; and
- (4) other pertinent information within the knowledge of the insurer as the board may require.

(d) There shall be no liability on the part of and no cause of action of any nature shall arise against an insurer reporting under this section, or its agents or employees, or the board or its employees or representatives, for any action taken by them pursuant to this section.

(e) In the trial of a suit against a physician based on his conduct in providing or failing to provide medical or health care services, no report or data submitted to the board under this section nor the fact that the report or data has been submitted to the board may be offered in evidence or in any manner used in the trial of the case.

Report of Felony Conviction

Sec. 2.09. Within 30 days after the conviction of a person, known to be a physician, licensed or otherwise lawfully practicing in this state or applying to be so licensed to practice, of a felony under the laws of this state, the clerk of the court of record in which the conviction was entered shall prepare and forward to the board a certified true and correct abstract of record of the court governing the case. The abstract shall include the name and address of the physician or applicant, the nature of the offense committed, the sentence, and the judgment of the court. The board shall prepare the form of the abstract and shall distribute copies of it to all clerks of courts of record within this state with appropriate instructions for preparation and filing.

Report of Board Actions

Sec. 2.10. The board shall report within 30 days the restriction, suspension, or revocation of a physician's license or other disciplinary action by the board against a physician to the appropriate health facilities and hospitals, professional societies of physicians in this state, and any entity responsible for the administration of Medicare and Medicaid in this state.

Denial of License or other Authorization and Discipline of Physician

Sec. 2.11. In addition to other powers previously granted, the board shall have authority to deny an

application for a license or other authorization to practice medicine in this state and to discipline a physician licensed or otherwise lawfully practicing in this state, who, after a hearing, as provided in Article 4506, Revised Civil Statutes of Texas, 1925, as amended, has been adjudged by the board of:

- (1) professional failure to practice medicine in an acceptable manner consistent with public health and welfare;
- (2) being removed, suspended, or having disciplinary action taken by his or her peers in any professional medical association or society, whether the association or society is local, regional, state, or national in scope, or of being disciplined by a licensed hospital or the medical staff of a hospital, including removal, suspension, limitation of hospital privileges, or other disciplinary action, if that action in the opinion of the board was based on unprofessional conduct or professional incompetence which was likely to harm the public, provided that the board finds that the actions taken were appropriate and reasonably supported by evidence submitted to it; or
- (3) repeated or recurring meritorious health care liability claims which in the opinion of the board evidence professional incompetence likely to injure the public.

Methods of Discipline

Sec. 2.12. If the board finds any person to have committed any of the acts set forth in Section 2.11 of this subchapter, it may enter an order imposing one or more of the following:

- (1) deny the person's application for a license or other authorization to practice medicine;
- (2) administer a public or private reprimand;
- (3) suspend, limit, or restrict the person's license or other authorization to practice medicine, including limiting the practice of the person to or by the exclusion of one or more specified activities of medicine;
- (4) revoke the person's license or other authorization to practice medicine;
- (5) require the person to submit to care, counseling, or treatment of physicians designated by the board as a condition for initial, continued, or renewal of license or other authorization to practice medicine;
- (6) require the person to participate in a program of education or counseling prescribed by the board; or
- (7) require the person to practice under the direction of a physician designated by the board for a specified period of time.

Temporary Suspension of License

Sec. 2.13. If the board determines from evidence or information presented to it that a person licensed to practice medicine in this state by his continuation in practice would constitute an immediate danger to the public, the board, on majority vote of the members, may temporarily suspend the license of that person without notice or hearing on the complaint, provided institution of proceedings for a hearing before the board is initiated simultaneously with the temporary suspension and provided that a hearing is held as soon as can be accomplished under Chapter 6, Title 71, Revised Civil Statutes of Texas, 1925, as amended,¹ and the Administrative Procedure and Texas Register Act.²

¹ Article 4495 et seq.

² Article 6252-13a.

Appeal

Sec. 2.14. A person against whom disciplinary action is taken pursuant to this subchapter shall have the right of judicial appeal as provided under Article 4506, Revised Civil Statutes of Texas, 1925, as amended, provided that the person may not be allowed to practice medicine or deliver health care services in violation of any disciplinary order or action of the board while the appeal is pending unless otherwise stayed by the district judge where-in the venue of the appeal lies.

Powers Cumulative

Sec. 2.15. The provisions of Subchapter B of this Act are in addition to other laws relating to medical disciplinary powers and procedures of the Texas State Board of Medical Examiners.

SUBCHAPTER C. DISTRICT REVIEW COMMITTEES

Definitions

Sec. 3.01. In this subchapter:

(1) "Board" means the Texas State Board of Medical Examiners.

(2) "Committee" means a district review committee.

(3) "District" means the district established in Section 3.02 of this subchapter.

Districts

Sec. 3.02. For the purposes of this subchapter, there shall be established a reasonable number of districts in Texas. The number of and geographic areas composed of various counties shall be designated by the board. Within six months after the effective date of this Act, the board, after a public hearing, shall designate the number of districts as in its opinion are needed and the counties to be included in the districts, shall notify the governor of the designation, and shall have the designation published in the Texas Register. After the initial designation

of geographic areas in accordance with this section, the board, after a public hearing, may revise the number of districts and the composition of the various counties as it shall deem appropriate. In the event of change of the number or the composition of the various counties the board shall follow the same procedure as applies to the initial designations.

Creation of Committees; Composition; Appointment of Members; Qualifications

Sec. 3.03. A district review committee is created under the jurisdiction of the Texas State Board of Medical Examiners for each of the districts established in Section 3.02 of this subchapter. Each committee shall be composed of three persons appointed by the governor from among persons who have resided and practiced medicine in the district for more than three years before their appointment.

Term; Manner of Appointment

Sec. 3.04. (a) Each member of each committee shall be appointed by the governor, after designation of the districts, for a term of six years, except the terms of the initial members shall be as provided in Subsection (c) of this section.

(b) Each member shall hold office as long as qualified and until the appointment and qualification of his successor or until six months have elapsed since the expiration of the term for which he was appointed, whichever first occurs.

(c) The initial members of each committee shall classify themselves by lot, so that one of them shall serve a term which expires January 15, 1978, one of them shall serve a term which expires January 15, 1980, and one of them shall serve a term which expires January 15, 1982.

Filling of Vacancies

Sec. 3.05. Vacancies in the membership of a committee shall be filled by the governor by appointment for the unexpired term in the manner provided for making other appointments to a committee.

Per Diem and Expenses

Sec. 3.06. Each member of the committee shall receive the per diem and expenses provided for board members for actual duty or as provided by the board.

Rules Governing Members

Sec. 3.07. Each member of a committee is subject to law and the rules of the board as if he were a member of the board, except members shall not be subject to the provisions of Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9b, Vernon's Texas Civil Statutes).

Adoption, Amendment, or Repeal of Rules

Sec. 3.08. The board may adopt, amend, or repeal rules as may be reasonably necessary to carry

into effect the provisions of this subchapter relating to:

- (1) per diem and expenses of members;
- (2) matters to be heard by or considered by the committees;
- (3) the conduct of any hearings and the authority the board may delegate to the committees; and
- (4) other matters relating to the committee's actions, duties, and responsibilities as may be reasonable.

Limitation on Authority

Sec. 3.09. No committee may exercise final authority over the disposition of a complaint against a person licensed by the board or may issue a final order or rule, and the board must make final disposition of complaints against persons licensed by it and shall have the sole authority to issue final orders and rules.

SUBCHAPTER D. NOTICE

Notice

Sec. 4.01. (a) Any person or his authorized agent asserting a health care liability claim shall give written notice of such claim by certified mail, return receipt requested, to each physician or health care provider against whom such claim is being made at least 60 days before the filing of a suit in any court of this state based upon a health care liability claim.

(b) In such pleadings as are subsequently filed in any court, each party shall state that it has fully complied with the provisions of this section and shall provide such evidence thereof as the judge of the court may require to determine if the provisions of this Act have been met.

(c) Notice given as provided in this Act shall toll the applicable statute of limitations to and including a period of 75 days following the giving of the notice, and this tolling shall apply to all parties and potential parties.

(d) All parties shall be entitled to obtain complete and unaltered copies of the claimant's medical records from any other party within 10 days from the date of receipt of a written request for such records; provided, however, that the receipt of a medical authorization executed by the claimant herein shall be considered compliance by the claimant with this section.

SUBCHAPTER E. AD DAMNUM CLAUSE

Pleadings not to State Damage Amount; Special Exception; Exclusion from Section

Sec. 5.01. Pleadings in a suit based on a health care liability claim shall not specify an amount of money claimed as damages. The defendant may file a special exception to the pleadings on the ground

the suit is not within the court's jurisdiction, in which event, the plaintiff shall inform the court and defendant in writing of the total dollar amount claimed. This section does not prevent a party from mentioning the total dollar amount claimed in examining prospective jurors on voir dire or in argument to the court or jury.

SUBCHAPTER F. INFORMED CONSENT

Definition

Sec. 6.01. In this subchapter, "panel" means the Texas Medical Disclosure Panel.

Theory of Recovery

Sec. 6.02. In a suit against a physician or health care provider involving a health care liability claim that is based on the failure of the physician or health care provider to disclose or adequately to disclose the risks and hazards involved in the medical care or surgical procedure rendered by the physician or health care provider, the only theory on which recovery may be obtained is that of negligence in failing to disclose the risks or hazards that could have influenced a reasonable person in making a decision to give or withhold consent.

Texas Medical Disclosure Panel

Sec. 6.03. (a) The Texas Medical Disclosure Panel is created to determine which risks and hazards related to medical care and surgical procedures must be disclosed by health care providers or physicians to their patients or persons authorized to consent for their patients and to establish the general form and substance of such disclosure.

(b) The panel established herein is administrative-ly attached to the Texas Department of Health. The Texas Department of Health, at the request of the panel, shall provide administrative assistance to the panel; and the Texas Department of Health and the panel shall coordinate administrative responsibilities in order to avoid unnecessary duplication of facilities and services. The Texas Department of Health, at the request of the panel, shall submit the panel's budget request to the legislature. The panel shall be subject, except where inconsistent, to the rules and procedures of the Texas Department of Health; however, the duties and responsibilities of the panel as set forth in the Medical Liability and Insurance Improvement Act of Texas, as amended (Article 4590i, Vernon's Texas Civil Statutes), shall be exercised solely by the panel and the board or Texas Department of Health shall have no authority or responsibility with respect to same.

(c) The panel is composed of nine members, with three members licensed to practice law in this state and six members licensed to practice medicine in this state. Members of the panel shall be selected by the Commissioner of Health.

(d) The commissioner shall select members of the panel according to the following schedule:

(1) one attorney and two physicians to serve a term of two years, which term shall begin on September 1, 1979, and expire on August 31, 1981, or until a successor is qualified;

(2) one attorney and two physicians to serve a term of four years, which terms shall begin September 1, 1979, and expire August 31, 1983, or until a successor is qualified;

(3) one attorney and two physicians to serve a term of six years, which term shall begin September 1, 1979, and expire on August 31, 1985, or until a successor is qualified.

Thereafter, at the expiration of the term of each member of the panel so appointed, the commissioner shall select a successor, and such successor shall serve for a term of six years, or until his successor is selected. Any member who is absent for three consecutive meetings without the consent of a majority of the panel present at each such meeting may be removed by the commissioner at the request of the panel submitted in writing and signed by the chairman. Upon the death, resignation, or removal of any member, the commissioner shall fill the vacancy by selection for the unexpired portion of the term.

(e) Members of the panel are not entitled to compensation for their services, but each panelist is entitled to reimbursement of any necessary expense incurred in the performance of his duties on the panel including necessary travel expenses.

(f) Meetings of the panel shall be held at the call of the chairman or on petition of at least three members of the panel.

(g) At the first meeting of the panel each year after its members assume their positions, the panelists shall select one of the panel members to serve as chairman and one of the panel members to serve as vice-chairman, and each such officer shall serve for a term of one year. The chairman shall preside at meetings of the panel, and in his absence, the vice-chairman shall preside.

(h) Employees of the Texas Department of Health shall serve as the staff for the panel.

¹ Department of Health Resources abolished and Department of Health created by Acts 1977, 65th Leg., ch. 474; see art. 4418g.

Duties of Panel

Sec. 6.04. (a) To the extent feasible, the panel shall identify and make a thorough examination of all medical treatments and surgical procedures in which physicians and health care providers may be involved in order to determine which of those treatments and procedures do and do not require disclosure of the risks and hazards to the patient or person authorized to consent for the patient.

(b) The panel shall prepare separate lists of those medical treatments and surgical procedures that do and do not require disclosure and for those treatments and procedures that do require disclosure shall establish the degree of disclosure required and the form in which the disclosure will be made.

(c) Lists prepared under Subsection (b) of this section together with written explanations of the degree and form of disclosure shall be published in the Texas Register.

(d) At least annually, or at such other period the panel may determine from time to time, the panel will identify and examine any new medical treatments and surgical procedures that have been developed since its last determinations, shall assign them to the proper list, and shall establish the degree of disclosure required and the form in which the disclosure will be made. The panel will also examine such treatments and procedures for the purpose of revising lists previously published. These determinations shall be published in the Texas Register.

Duty of Physician or Health Care Provider

Sec. 6.05. Before a patient or a person authorized to consent for a patient gives consent to any medical care or surgical procedure that appears on the panel's list requiring disclosure, the physician or health care provider shall disclose to the patient, or person authorized to consent for the patient, the risks and hazards involved in that kind of care or procedure. A physician or health care provider shall be considered to have complied with the requirements of this section if disclosure is made as provided in Section 6.06 of this subchapter.

Manner of Disclosure

Sec. 6.06. Consent to medical care that appears on the panel's list requiring disclosure shall be considered effective under this subchapter if it is given in writing, signed by the patient or a person authorized to give the consent and by a competent witness, and if the written consent specifically states the risks and hazards that are involved in the medical care or surgical procedure in the form and to the degree required by the panel under Section 6.04 of this subchapter.

Effect of Disclosure

Sec. 6.07. (a) In a suit against a physician or health care provider involving a health care liability claim that is based on the negligent failure of the physician or health care provider to disclose or adequately to disclose the risks and hazards involved in the medical care or surgical procedure rendered by the physician or health care provider:

(1) both disclosure made as provided in Section 6.05 of this subchapter and failure to disclose based on inclusion of any medical care or surgical procedure on the panel's list for which disclosure is

not required shall be admissible in evidence and shall create a rebuttable presumption that the requirements of Section 6.05 and 6.06 of this subchapter have been complied with and this presumption shall be included in the charge to the jury; and

(2) failure to disclose the risks and hazards involved in any medical care or surgical procedure required to be disclosed under Sections 6.05 and 6.06 of this subchapter shall be admissible in evidence and shall create a rebuttable presumption of a negligent failure to conform to the duty of disclosure set forth in Sections 6.05 and 6.06 of this subchapter, and this presumption shall be included in the charge to the jury; but failure to disclose may be found not to be negligent if there was an emergency or if for some other reason it was not medically feasible to make a disclosure of the kind that would otherwise have been negligence.

(b) If medical care or surgical procedure is rendered with respect to which the panel has made no determination either way regarding a duty of disclosure, the physician or health care provider is under the duty otherwise imposed by law.

SUBCHAPTER G. RES IPSA LOQUITUR

Application of Res Ipsa Loquitur

Sec. 7.01. The common-law doctrine of res ipsa loquitur shall only apply to health care liability claims against health care providers or physicians in those cases to which it has been applied by the appellate courts of this state as of the effective date of this subchapter.

SUBCHAPTER H. BAD FAITH CAUSE OF ACTION

Separate Cause of Action for Bad Faith

Sec. 8.01. With respect to a health care liability claim actually filed, a cause of action based on bad faith may be filed and litigated in a separate lawsuit.

Definition

Sec. 8.02. As used in this subchapter, "bad faith" means to file and maintain a claim with reckless disregard as to whether or not reasonable grounds exist for asserting the claim.

Notice of Bad Faith Claim

Sec. 8.03. At least 60 days before the filing of a suit based on bad faith in any court of this state, a person or his authorized agent asserting a bad faith cause of action shall give written notice by certified mail, return receipt requested, of the claim, to the defendant or his attorney against whom the claim is being made.

Persons Against Whom Claims May be Made; Damage Limits

Sec. 8.04. The right of action created in this subchapter shall lie against any claimant or defendant or claimant's or defendant's attorney, or both, who file a health care liability claim in bad faith, or file a claim under this article in bad faith, and the measure of damages with respect thereto shall be limited to \$100,000 for compensatory and exemplary damages, as applicable.

Effective Date

Sec. 8.05. This subchapter will take effect if and only if the State Bar of Texas fails to certify to the Supreme Court of Texas by January 31, 1979, that it has adopted rules for appropriate disciplinary measures against an attorney who has been determined to have filed a claim in bad faith. If the provisions of this section are held unconstitutional or invalid for any reason, the legislature specifically declares this section to be severable and that such holding shall in no way affect the validity of the other sections of this subchapter.

SUBCHAPTER I. ADVANCE PAYMENTS

Advance Payments not Admission of Liability

Sec. 9.01. In an action brought to recover damages based on a health care liability claim, no advance payment made on that claim by the defendant health care provider or physician, or the professional liability insurer, to or for the claimant, or any other person, shall be construed as an admission of liability by the health care provider or physician or any person for any injuries or damages suffered by the claimant or anyone else.

Admissibility of Advance Payments

Sec. 9.02. Except as provided in this subchapter, evidence of an advance payment shall not be admissible during the trial of an action based on a health care liability claim at any stage of the proceedings, unless and until there is a final award in favor of the claimant, in which event the trial judge shall reduce the award to the claimant to the extent of the advance payment.

Adjustments for Advance Payments

Sec. 9.03. The advance payment shall inure to the exclusive benefit of the defendant or his or its carrier making the advance payment, and in the event the advance payment exceeds the pro rata liability of the defendant or the carrier making the payment, the trial judge shall order any adjustment necessary to equalize the amount which each defendant is obligated to pay under this subchapter, exclusive of costs.

Certain Advance Payments Exempt from Repayment

Sec. 9.04. In no case shall an advance payment in excess of an award be repayable by the person receiving it.

SUBCHAPTER J. STATUTE OF LIMITATIONS

Limitations on Health Care Liability Claims

Sec. 10.01. Notwithstanding any other law, no health care liability claim may be commenced unless the action is filed within two years from the occurrence of the breach or tort or from the date the medical or health care treatment that is the subject of the claim or the hospitalization for which the claim is made is completed; provided that, minors under the age of 12 years shall have until their 14th birthday in which to file, or have filed on their behalf, the claim. Except as herein provided, this subchapter applies to all persons regardless of minority or other legal disability.

Causes of Action Covered by Other Law

Sec. 10.02. Causes of action accruing between the effective date of this Act and the effective date of Article 5.82, Insurance Code, shall be filed pursuant to Section 4 of Article 5.82.

SUBCHAPTER K. LIABILITY LIMITS

Definition

Sec. 11.01. In this subchapter, "consumer price index" means the index published by the Bureau of Labor Statistics of the United States Department of Labor that measures the average change in prices of goods and services purchased by urban wage earners and clerical workers' families and single workers living alone.

Limit on Civil Liability

Sec. 11.02. (a) In an action on a health care liability claim where final judgment is rendered against a physician or health care provider, the limit of civil liability for damages of the physician or health care provider shall be limited to an amount not to exceed \$500,000.

(b) Subsection (a) of this section does not apply to the amount of damages awarded on a health care liability claim for the expenses of necessary medical, hospital, and custodial care received before judgment or required in the future for treatment of the injury.

(c) This section shall not limit the liability of any insurer where facts exist that would enable a party to invoke the common law theory of recovery commonly known in Texas as the "Stowers Doctrine."

(d) In any action on a health care liability claim that is tried by a jury in any court in this state, the following shall be included in the court's written instructions to the jurors: Do not consider, discuss, nor speculate whether or not liability, if any, on the part of any party is or is not subject to any limit under applicable law.

Alternative Partial Limit on Civil Liability

Sec. 11.03. In the event that Section 11.02(a) of this subchapter is stricken from this subchapter or is otherwise invalidated by a method other than through legislative means, the following shall become effective:

In an action on a health care liability claim where final judgment is rendered against a physician or health care provider, the limit of civil liability of the physician or health care provider for all past and future noneconomic losses recoverable by or on behalf of any injured person and/or the estate of such person, including without limitation as applicable past and future physical pain and suffering, mental anguish and suffering, consortium, disfigurement, and any other nonpecuniary damage, shall be limited to an amount not to exceed \$150,000.

Adjustment of Liability Limits

Sec. 11.04. When there is an increase or decrease in the consumer price index with respect to the amount of that index on the effective date of this subchapter each of the liability limits prescribed in Section 11.02(a) or in Section 11.03 of this subchapter, as applicable, shall be increased or decreased, as applicable, by a sum equal to the amount of such limit multiplied by the percentage increase or decrease in the consumer price index between the effective date of this subchapter and the time at which damages subject to such limits are awarded by final judgment or settlement.

Subchapter's Application Prevails over Certain Other Laws

Sec. 11.05. The provisions of this subchapter shall apply notwithstanding the provisions contained in Article 4671, Revised Civil Statutes of Texas, 1925, as amended, and the provisions of Article 5525, Revised Civil Statutes of Texas, 1925, as amended.

SUBCHAPTER L. MISCELLANEOUS PROVISIONS

Exception From Certain Laws

Sec. 12.01. (a) Notwithstanding any other law, no provisions of Sections 17.41–17.63, Business & Commerce Code, shall apply to physicians or health care providers as defined in Section 1.03(3) of this Act, with respect to claims for damages for personal injury or death resulting, or alleged to have resulted, from negligence on the part of any physician or health care provider.

(b) This section shall not apply to pharmacists. [Acts 1977, 65th Leg., p. 2039, ch. 817, Part 1, eff. Jan. 1, 1978. Amended by Acts 1979, 66th Leg., p. 1259, ch. 596, §§ 1, 2, eff. Aug. 27, 1979.]

Sections 41.01 to 41.04 of the 1977 Act provide as follows:

"Sec. 41.01. The provisions of this Act shall apply only to causes of action based on health care liability claims accruing after the effective date of this Act.

"Sec. 41.02. This Act expires at midnight on August 31, 1993.

"Sec. 41.03. Art. 5.82, Ins.Code, and Section 3, Chapter 331, Acts of the 64th Legislature, Regular Session, 1975, are repealed.

"Sec. 41.04. If any provision of this statute or its application to any person or circumstance is held invalid or unconstitutional, such invalidity does not affect other provisions or applications of this statute which can be given effect without

the invalid clause, sentence, subsection, section, article, or provision or application, and shall not affect, impair, invalidate, or nullify the remainder of this Act, but the effect thereof shall be confined to the clause, sentence, subsection, section, article, or provision of the Act so adjudged to be invalid or unconstitutional and to this end the above are declared to be severable."

TITLE 72

HOLIDAYS—LEGAL

Article

4591b-1. Sam Rayburn Day.

Art. 4591. Enumeration

The first day of January, the 19th day of January, the third Monday in February, the second day of March, the 21st day of April, the last Monday in May, the 19th day of June, the fourth day of July, the 27th day of August, the first Monday in September, the second Monday in October, the 11th day of November, the fourth Thursday in November, and the 25th day of December, of each year, and every day on which an election is held throughout the state, are declared legal holidays, on which all the public offices of the state may be closed and shall be considered and treated as Sunday for all purposes regarding the presenting for the payment or acceptance and of protesting for and giving notice of the dishonor of bills of exchange, bank checks and promissory notes placed by the law upon the footing of bills of exchange. The nineteenth day of January

shall be known as "Confederate Heroes Day" in honor of Jefferson Davis, Robert E. Lee and other Confederate heroes. The 19th day of June is designated "Emancipation Day in Texas" in honor of the emancipation of the slaves in Texas on June 19, 1865.

[Amended by Acts 1975, 64th Leg., p. 14, ch. 11, § 1, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1051, ch. 481, § 1, eff. Jan. 1, 1980.]

Art. 4591b-1. Sam Rayburn Day

January 6 of each year is designated as "Sam Rayburn Day," in memory of that great Texas and American statesman, Sam Rayburn. This day shall be regularly observed by appropriate programs in the public schools and other places to commemorate the birthday of Sam Rayburn. This day shall not be a legal holiday.

[Acts 1977, 65th Leg., p. 1411, ch. 571, § 1, eff. Aug. 29, 1977.]

TITLE 75

HUSBAND AND WIFE

CHAPTER FOUR. DIVORCE

**Art. 4639b. Repealed by Acts 1975, 64th Leg., p.
1273, ch. 476, § 57 eff. Sept. 1, 1975**

TITLE 76

INJUNCTIONS

2. IN PARTICULAR CASES

Art. 4667. Injunctions to Abate Public Nuisances

[See Compact Edition, Volume 4 for text of (a)]

(b) Any person who may use or be about to use, or who may be a party to the use of any such premises for any purpose mentioned in this Article may be made a party defendant in such suit. The Attorney

General or any District or County Attorney or City Attorney may bring and prosecute all suits that either may deem necessary to enjoin such uses, and need not verify the petition; or any citizen of this State may sue in his own name and shall not be required to show that he is personally injured by the acts complained of.

[Amended by Acts 1975, 64th Leg., p. 1962, ch. 647, § 1, eff. June 19, 1975.]

TITLE 77

INJURIES RESULTING IN DEATH

Art. 4671. Cause of Action

No agreement between any owner of any railroad, street railway, steamboat, stage-coach or other vehicle for transporting passengers or goods, or any industrial or public utility plant, or other machinery, and any person, corporation, trustee, receiver, lessee, joint stock association or other person in control of, or operating the same, shall release such owner, person, trustee, lessee, corporation or joint stock association from any liability fixed by the provisions of this article. An action for actual damages on account of the injuries causing the death of any person may be brought in the following cases:

1. When an injury causing the death of any person, occurring either within or without this state, is caused by the wrongful act, neglect, carelessness, unskillfulness, or default of another person, association of persons, joint stock company, corporation or trustee or receiver of any person, corporation, joint stock company, or association of persons, his, its or their agents or servants, such persons, association of persons, joint stock company, corporation, trustee or receiver, shall be liable in damages for the injuries causing such death. The term "corporation," as used in this article, shall include all municipal corporations, as well as all private and public and quasi public corporations, except counties and common and independent school districts.

2. When an injury causing the death of any person occurring either within or without this state, is caused by the wrongful act, neglect, carelessness, unskillfulness, or default of the proprietor, owner, charterer or hirer of any industrial or public utility plant, or any railroad, street railway, steamboat, stage-coach, or other vehicle for the conveyance of goods or passengers, or by the unfitness, wrongful act, neglect, carelessness, unskillfulness or default of his, their or its servants or agents, such proprietor, owner, charterer or hirer shall be liable in damages for the injuries causing such death.

3. When an injury causing the death of any person, occurring either within or without this state, is caused by the wrongful act, neglect, care-

lessness, unskillfulness or default of the receiver, trustee or other person in charge of or in control of any railroad, street railway, steamboat, stage-coach, or other vehicle for the conveyance of goods or passengers, or any industrial plant, public utility plant, or any other machinery, or by the wrongful act, neglect, carelessness, unfitness, unskillfulness or default of his or their servants or agents, such receiver, trustee, or other person shall be liable in damages for the injuries causing such death, and the liability here fixed against such receiver, trustee, or other person shall extend to all cases in which the death is caused by reason of any bad or unsafe condition of the railroad, street railway or other machinery under the control or operation of such receiver, trustee or other person, and to all other cases in which the death results from any other reason or cause for which an action may be brought for damages on account of personal injuries, the same as if said railroad, street railway or other machinery were being operated by the owner thereof.

[Amended by Acts 1975, 64th Leg., p. 1381, ch. 530, § 1, eff. Sept. 1, 1975.]

Art. 4678. Death in Foreign State

Whenever the death or personal injury of a citizen of this State or of the United States, or of any foreign country having equal treaty rights with the United States on behalf of its citizens, has been or may be caused by the wrongful act, neglect or default of another in any foreign State or country for which a right to maintain an action and recover damages thereof is given by the statute or law of such foreign State or country or of this State, such right of action may be enforced in the courts of this State within the time prescribed for the commencement of such actions by the statutes of this State. All matters pertaining to procedure in the prosecution or maintenance of such action in the courts of this State shall be governed by the law of this State, and the court shall apply such rules of substantive law as are appropriate under the facts of the case. [Amended by Acts 1975, 64th Leg., p. 1382, ch. 530, § 2, eff. Sept. 1, 1975.]

TITLE 79

INTEREST—CONSUMER CREDIT—CONSUMER PROTECTION

SUBTITLE ONE—INTEREST

CHAPTER ONE. INTEREST

Article

- 5069-1.07. Determination of the Rate of Interest on Loans Secured by a Lien on any Interest in Real Property.
- 5069-1.08. Interest Charges by Registered Securities Brokers or Dealers.
- 5069-1.09. Loans Guaranteed or Insured by an Agency of the United States of America.

Art. 5069-1.03. Legal Rate Applicable

When no specified rate of interest is agreed upon by the parties, interest at the rate of six percent per annum shall be allowed on all accounts and contracts ascertaining the sum payable, commencing on the thirtieth (30th) day from and after the time when the sum is due and payable.

[Amended by Acts 1979, 66th Leg., p. 1718, ch. 707, § 1, eff. Aug. 27, 1979.]

Art. 5069-1.05. Rate of Judgments

All judgments of the courts of this State shall bear interest at the rate of nine percent per annum from and after the date of the judgment, except where the contract upon which the judgment is founded bears a specified interest greater than nine percent per annum, in which case the judgment shall bear the same rate of interest specified in such contract, but shall not exceed ten percent per annum, from and after the date of such judgment. [Amended by Acts 1975, 64th Leg., p. 730, ch. 288, § 1, eff. Sept. 1, 1975.]

Art. 5069-1.06. Penalties

(1) Any person who contracts for, charges or receives interest which is greater than the amount authorized by this Subtitle, shall forfeit to the obligor three times the amount of usurious interest contracted for, charged or received, such usurious interest being the amount the total interest contracted for, charged, or received exceeds the amount of interest allowed by law, and reasonable attorney fees fixed by the court except that in no event shall the amount forfeited be less than Two Thousand Dollars or twenty percent of the principal, whichever is the smaller sum; provided, that there shall be no penalty for any usurious interest which results from an accidental and bona fide error.

[See Compact Edition, Volume 4 for text of (2)]

[Amended by Acts 1979, 66th Leg., p. 605, ch. 281, § 1, eff. Aug. 27, 1979.]

Section 2 of the 1979 amendatory act provided:

"This Act shall be applicable to all claims of forfeiture made after the effective date of this Act but, with respect to claims of forfeiture in litigation pending at such effective date, the amount forfeited shall be determined under the provisions of this subsection as originally enacted."

Art. 5069-1.07. Determination of the Rate of Interest on Loans Secured by a Lien on Any Interest in Real Property

(a) On any loan or agreement to loan secured or to be secured, in whole or in part, by a lien, mortgage, security interest, or other interest in or with respect to any interest in real property, determination of the rate of interest for the purpose of determining whether the loan is usurious under all applicable Texas laws shall be made by amortizing, prorating, allocating, and spreading, in equal parts during the period of the full stated term of the loan, all interest at any time contracted for, charged, or received from the borrower in connection with the loan. However, in the event the loan is paid in full by the borrower prior to the end of the full stated term of the loan and the interest received for the actual period of the existence of the loan exceeds the maximum lawful rate, the lender contracting for, charging, or receiving all such interest shall refund to the borrower the amount of the excess or shall credit the amount of the excess against amounts owing under the loan and shall not be subject to any of the penalties provided by law for contracting for, charging, or receiving interest in excess of the maximum lawful rate.

(b) Notwithstanding any contrary provisions of law, any person may agree to pay, and may pay pursuant to such an agreement, any rate of interest not exceeding 18 percent per annum, if such agreement is evidenced by a written bond, note, or other contract of such person providing for a loan or other extension of credit in the original principal amount of \$250,000 or more, or any series of advances of money if the aggregate of all sums advanced or agreed or contemplated to be advanced pursuant to such agreement equals or exceeds \$250,000, or any extension or renewal of such loan or other extension of credit (regardless of whether or not the outstanding principal balance thereof at the time of such renewal or extension is \$250,000 or more); and as to any such agreement to pay or payment, the claim or defense of usury by such person or such person's heirs, personal representatives, successors, substitutes, or anyone else on such person's behalf, or by any person acting as guarantor, surety, accommoda-

tion maker, or endorser for or with respect to such agreement to pay or payment, or by any person assuming the obligation of such payment or otherwise becoming liable therefor, or by any person owning or acquiring property subject to a lien securing such agreement to pay or such payment is prohibited. Notwithstanding anything to the contrary contained herein, this Subsection (b) shall not apply to any loan or other extension of credit secured by (i) a lien on a building, constructed or to be constructed, which both is used or intended to be used as a single one-to-four family residence and is occupied or intended to be occupied by a person obligated to pay such loan or other extension of credit or (ii) a lien on land intended to be used primarily for agricultural or ranching purposes. Nothing herein shall be construed to limit or otherwise affect the provisions or application of Article 2.09, Texas Miscellaneous Corporation Laws Act, as amended (Article 1302-1.01 et seq., Vernon's Texas Civil Statutes), with respect to loans or other extensions of credit not covered hereby.

(c) Notwithstanding any contrary provisions of law, any person may agree to pay, and may pay pursuant to such an agreement, the same rate of interest as corporations (other than nonprofit corporations) on any loan in the principal amount of \$500,000 or more, which is made for the purpose of the payment of the direct or indirect costs of exploration for oil and gas, the development of oil and gas properties, or the reworking of oil or gas wells, provided that the value of the collateral securing such loan is reasonably estimated by the lender at the time of the making of the loan to be in excess of the amount of the loan. Such a loan shall not be subject to the defense of usury or the penalties for usury unless the interest rate exceeds the maximum lawful interest rate for corporations (other than nonprofit corporations).

Text of (d) as added by Acts 1979, 66th Leg., p. 1766, ch. 715, § 1

(d)(1) On any loan or agreement to loan secured or to be secured in whole or in part by a lien, mortgage, security interest, or other interest in or with respect to real property on which is located one or more single family dwellings, or dwelling units for not more than four families in the aggregate, interest may be charged at such rates as may be permitted by other applicable law or at the lesser of the following rates:

- (i) 12 percent per annum; or
- (ii) a rate equivalent to the average per annum market yield rate adjusted to constant maturities on 10-year United States Treasury notes and bonds as published by the board of governors of the Federal Reserve System for the second calendar month preceding the month in which the lender becomes legally bound to make the loan plus an

additional two percent per annum rounded off to the nearest quarter of one percent per annum.

A "dwelling unit" shall mean for the purpose of this section a unified combination of rooms that is designed for residential use by one family.

(2) Before the 20th day of each month, the savings and loan commissioner shall ascertain the average per annum market yield rate adjusted to constant maturities on 10-year United States Treasury notes and bonds for the preceding calendar month and cause such rate to be published in the Texas Register.

(3) The interest rates authorized by this subsection shall not be applicable to any loan made on or after September 1, 1981, unless the lender had become legally bound to make such loan prior to such date.

(4) No prepayment charge or penalty may be collected on any loan transaction of the class defined in Subsection (d)(1) bearing a rate of interest in excess of that authorized by Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925,¹ except where such collection is required by an agency created by federal law.

Text of (d) as added by Acts 1979, 66th Leg., p. 1766, ch. 715, § 3, effective if floating rate provisions of (d) as added by § 1 thereof are held to be unconstitutional

(d)(1) On any loan or agreement to loan secured or to be secured in whole or in part by a lien, mortgage, security interest, or other interest in or with respect to real property on which is located one or more single family dwellings, or dwelling units for not more than four families in the aggregate, interest may be charged at the rate of 12 percent per annum. A "dwelling unit" shall mean for the purpose of this section a unified combination of rooms that is designed for residential use by one family.

(2) The interest rates authorized by this subsection shall not be applicable to any loan made on or after September 1, 1981, unless the lender had become legally bound to make such loan prior to such date.

(3) No prepayment charge or penalty may be collected on any loan transaction of the class defined in Subsection (d)(1) bearing a rate of interest in excess of that authorized by Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925, except where such collection is required by an agency created by federal law.

(e)(1) In this subsection "financial institution" means a state bank, state savings and loan association, mortgage banking institution, credit union, national bank, or federal savings and loan association, and "housing accommodation" means improved or unimproved real property, or a portion of that property, that is used or occupied or is intended, ar-

ranged, or designed to be used or occupied as the residence of one or more individuals.

(2) A financial institution may not charge interest under Subsection (d), Section 1 or Subsection (d) of Section 3 of this Act and the maximum rate of interest that it may charge is limited to 10 percent if the financial institution in connection with such loan discriminates in providing or granting financial assistance to purchase, rehabilitate, improve, or refinance a housing accommodation due, in whole or in part, to the consideration of:

(i) conditions, characteristics, or trends in the neighborhood where the property is located, unless the financial institution can demonstrate that such a consideration in the particular case is required to avoid an unsafe or unsound business practice; or

(ii) race, color, religion, sex, marital status, national origin, or ancestry; or

in appraising a housing accommodation or in determining whether or not, or under what terms and conditions, to provide financial assistance to purchase, rehabilitate, improve, or refinance a housing accommodation, considers:

(i) the racial, ethnic, religious, or national origin composition of the neighborhood or geographic area surrounding the property; or

(ii) whether or not that composition is undergoing change, or is expected to undergo change.

[Added by Acts 1975, 64th Leg., p. 47, ch. 26, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 1697, ch. 673, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 704, ch. 305, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1766, ch. 715, §§ 1, 3, 4, eff. Aug. 27, 1979.]

¹ Article 5069-1.04.

Sections 2 and 3 of the 1975 Act provided:

"Sec. 2. If any paragraph, phrase, clause, or section of this statute be held invalid, it shall not affect the balance of this statute, but it is expressly declared to be the intention of the legislature that it would have passed the balance of the Act without such portion as may be held invalid.

"Sec. 3. This Act applies from and after its effective date prospectively and does not have any application to any right or duty, contract, obligation, cause of action, or claim of defense arising prior to its effective date."

Sections 2 and 3 of Acts 1979, 66th Leg., p. 705, ch. 305, provided:

"Sec. 2. If any paragraph, phrase, clause, or section of this statute be held invalid, it shall not affect the balance of this statute, but it is expressly declared to be the intention of the legislature that it would have passed the balance of the Act without such portion as may be held invalid.

"Sec. 3. This Act applies from and after its effective date prospectively and does not have any application to any right or duty, contract, obligation, cause of action, or claim of defense arising prior to its effective date."

Sections 2 and 5 of Acts 1979, 66th Leg., ch. 715, provided:

"Sec. 2. The savings and loan section of the finance commission and the savings and loan commissioner are hereby directed to exercise the rule-making powers delegated to them by law and promulgate specific rules and regulations with respect to the procedure to be followed in making variable interest rate real estate loans by savings and loan associations subject to the Texas Savings and Loan Act. [art. 852a]."

"Sec. 5. If any provision of this Act or any rate of interest fixed hereby is held invalid, such invalidity shall not affect any other provision of this Act which can be given effect without the invalid provision and the legislature hereby declares it would have passed such valid provisions despite such invalidity."

Art. 5069-1.08. Interest Charges by Registered Securities Brokers or Dealers

Interest charged by a broker or dealer registered under the Federal Securities and Exchange Act of

1934, as now or hereafter amended,¹ and The Securities Act, as now or hereafter amended,² for carrying a debit balance in an account for a customer shall not be subject to any of the limitations or other provisions of Title 79, Revised Civil Statutes of Texas (Article 5069-1, et seq., Vernon's Texas Civil Statutes) as now or hereafter amended, if such debit balance is payable on demand, or at will by the customer without penalty, and is secured by stocks, bonds, or other securities, and if such interest does not exceed a rate of 1½ percent per month on the monthly debit balance.

[Added by Acts 1977, 65th Leg., p. 945, ch. 355, § 1, eff. Aug. 29, 1977.]

¹ 15 U.S.C.A. § 77b et seq.

² Article 581-1 et seq.

Art. 5069-1.09. Loans Guaranteed or Insured by an Agency of the United States of America

Any loan insured by the Federal Housing Administration, pursuant to the provisions of the National Housing Act approved June 27, 1934, its amendments and supplements (12 U.S.C.A., Section 17.01 et seq. (1969), as amended), may bear such rate of interest, or be discounted at such rate as is permitted under the National Housing Act, its amendments and supplements, and the regulations promulgated from time to time by the Federal Housing Administration or its successor; and provided further that any loan guaranteed or insured by the Veterans Administration or its successor pursuant to the provisions of the Veterans' Benefits code approved September 2, 1958, its amendments and supplements (Title 38 U.S.C.A. (1959), as amended), may bear such rate of interest or be discounted at such rate as is permitted under the Veterans' Benefits code, its amendments and supplements, and the regulations promulgated from time to time by the Veterans Administration or its successor.

[Added by Acts 1977, 65th Leg., p. 172, ch. 84, § 1, eff. April 28, 1977.]

Section 2 of the 1977 Act provided:

"If any paragraph, phrase, clause, or section of this statute be held invalid, it shall not affect the balance of this statute, but it is expressly declared to be the intention of the legislature that it would have passed the balance of the Act without such portion as may be held invalid."

SUBTITLE TWO—CONSUMER CREDIT

Chapter	Article
6A. Manufactured Homes Installment Sales	5069-6A.01

CHAPTER TWO. GENERAL PROVISIONS

Art. 5069-2.02. Creation of the Office of Consumer Credit Commissioner and Division of Consumer Protection

[See Compact Edition, Volume 3 for text of (1) to (3)]

(4) The Consumer Credit Commissioner shall enforce the provisions of Chapters 2, 3, 4, 5, 6, 7, 8, 9, and 15 of this Title in person or through assistant commissioners or any examiner or employee. The Consumer Credit Commissioner, each assistant commissioner, each examiner, and each employee shall not be personally liable for damages occasioned by his official acts or omissions except when such acts or omissions are corrupt or malicious. The Attorney General shall defend any action brought against any of the above-mentioned officers or employees by reason of his official act or omission whether or not at the time of the institution of the act the defendant has terminated his services with the Office of the Consumer Credit Commissioner.

[See Compact Edition, Volume 4 for text of (5) to (7)]

(8) The office of Consumer Credit Commissioner is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the office is abolished effective September 1, 1983.

[Amended by Acts 1977, 65th Leg., p. 1841, ch. 735, § 2.069, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1503, ch. 648, § 2, eff. Aug. 27, 1979.]

¹ Article 5429K.

Art. 5069-2.05. Repealed by Acts 1975, 64th Leg., p. 2239, ch. 707 § 2, eff. Sept. 1, 1975

Section 1 of the 1975 Act revised and amended the Credit Union Act, art. 2461-1.01 et seq.

CHAPTER 3. REGULATED LOANS

Art. 5069-3.05. License, Annual Fee, Minimum Assets

[See Compact Edition, Volume 3 for text of (1)]

(2) Each license shall remain in full force and effect until relinquished, suspended, revoked or expired. Every licensee shall, on or before each December 1st, pay the Consumer Credit Commissioner an annual fee for each license held by him for the succeeding calendar year. The annual fee shall be Two Hundred Dollars, except if on September 30 immediately preceding the due date of the annual fee, the gross unpaid balance of regulated loans in a licensed office is One Hundred Thousand Dollars or less the annual fee for that office shall be One Hundred Dollars. If the annual fee remains unpaid fifteen days after written notice of delinquency has been given to the licensee by the Consumer Credit Commissioner, the license shall thereupon expire but not before December 31st of any year for which an annual fee has been paid.

[See Compact Edition, Volume 3 for text of (3)]

[Amended by Acts 1977, 65th Leg., p. 877, ch. 329, § 1, eff. May 30, 1977.]

Art. 5069-3.06. Officers, Removal

[See Compact Edition, Volume 4 for text of (1) and (2)]

(3) The Consumer Credit Commissioner may issue one or more licenses to any one person on compliance with this Chapter as to each license. Any person holding a license under this Chapter which shall violate any provision hereof shall be subject to forfeiture of his license, and if a corporation, its charter shall be subject to forfeiture, and it shall be the duty of the Attorney General, when any such violation is called to his attention, to file suit for such forfeiture of charter and cancellation of the license in a District Court in Travis County, Texas.

[See Compact Edition, Volume 4 for text of (4) and (5)]

[Amended by Acts 1979, 66th Leg., p. 1556, ch. 672, § 1, eff. Aug. 27, 1979.]

Art. 5069-3.08. Examination of Licensees, Access to Records, Investigation

At such times as the Commissioner shall deem necessary, the Commissioner, or his duly authorized representative shall make an examination of the place of business of each licensee and shall inquire into and examine the loans, transactions, books, accounts, papers, correspondence, and records of such licensee insofar as they pertain to the business regulated by this Chapter. In the course of such examination, the Commissioner or his duly authorized representative shall have free access to the office, place of business, files, safes and vaults of such licensee, and shall have the right to make copies of such books, accounts, papers, correspondence and records. The Commissioner or his duly authorized representative may, during the course of such examination, administer oaths and examine any person under oath upon any subject pertinent to any matter about which the Commissioner is authorized or required by this Chapter to consider, investigate, or secure information. Any licensee who shall fail or refuse to let the Commissioner or his duly authorized representative examine or make copies of such books, or other relevant documents shall thereby be deemed in violation of this Chapter and such failure or refusal shall constitute grounds for the suspension or revocation of such license. The information obtained in the course of such examination shall be confidential. Each licensee shall pay to the Commissioner an amount assessed by the Commissioner to cover the direct and indirect cost of such examination and a proportionate share of general administrative expense, and the total cost so assessed and charged a licensee in any one calendar year shall not

exceed Five Hundred Dollars for each licensed office.

[Amended by Acts 1977, 65th Leg., p. 877, ch. 329, § 2, eff. May 30, 1977.]

Art. 5069-3.13. Advertising

No licensee shall advertise or cause to be advertised, in any manner whatsoever, any false, misleading or deceptive statement or representation with regard to the rates, terms or conditions of any loan. [Amended by Acts 1979, 66th Leg., p. 1556, ch. 672, § 2, eff. Aug. 27, 1979.]

Art. 5069-3.15. Maximum Rates of Interest

(1) Every licensee may contract for and receive on any loan made under this Chapter repayable in consecutive monthly installments, substantially equal in amount, an interest charge, however calculated or shown, that does not exceed an add-on interest charge computed on the cash advance for the full term of the loan contract in accordance with the following schedule:

Eighteen Dollars per One Hundred Dollars per annum on that part of the cash advance not in excess of Three Hundred Dollars, and Eight Dollars per One Hundred Dollars per annum on that part of the cash advance in excess of Three Hundred Dollars but not in excess of Twenty-five Hundred Dollars.

(2) Interest authorized in Section (1) of this Article may be computed at the time the loan is made for the full term of the loan contract notwithstanding the requirement of the loan contract for payment in substantially equal regular installments and may be computed on the basis of a full month for any fractional period in excess of fifteen days. Pre-computed interest authorized by Section (1) of this Article shall be added to the cash advance and said sum shall be the amount of the loan.

(3) Notwithstanding the foregoing, a licensee may make loans which require repayment in other than substantially equal successive monthly installments, as where payable in irregular or unequal installments either in amount or periods of the installments or in equal successive monthly installments followed by or interspersed with an irregular, unequal, or larger installment or installments, or in other than monthly installments or if the first installment is not payable one month from the date of the contract and may compute, contract for, charge, or receive interest charges under any method or formula different from that prescribed in Section (1) of this Article if the interest charges do not exceed an amount that, having due regard for the schedule of installment payments, will provide the same effective return as if the loan were repayable in equal successive monthly installments beginning one month from the date of the contract.

(4) Notwithstanding any other provision of this Chapter, a borrower and a licensee may enter into a written agreement pursuant to which one or more loans or advances to or for the account of the borrower may be made from time to time. The agreement shall contain the date of the agreement and the name and address of each borrower and of the licensee and shall be signed by the parties. A copy of the agreement shall be delivered to the borrower. The agreement may provide for a maximum loan charge on the unpaid principal amounts from time to time outstanding not in excess of a rate producing an interest yield equivalent to that which would be permitted on a similar loan made under Section (1) of this Article. The Commissioner shall prescribe monthly rates of charge which produce an interest yield equal to that permitted under Section (1) of this Article on a loan of the same amount. The loan agreement shall clearly set forth the insurance coverages afforded the borrower through the lender and, if a charge for insurance is to be made to the borrower, a simple statement of the amount of such charge or the method by which it will be calculated.

(5) On any loan contract which includes pre-computed interest and is payable in substantially equal successive monthly installments, additional interest for default, if contracted for, may equal but shall not exceed Five Cents for each One Dollar of any scheduled installment when any portion of such installment continues unpaid for ten days or more following the date such payment is due, including Sundays and holidays. Interest for such default shall not be collected more than once on the same installment. If the payment date of each wholly unpaid installment, on which no interest for default has been collected is deferred as of an installment date for one or more full months and the maturity of the contract is extended for a corresponding period of time, the licensee may charge and collect additional interest for such deferment. The interest for such deferment may be equal to the difference between the refund which would be required for prepayment in full, as of the date of deferment and the refund which would be required for prepayment in full as one month prior to such date multiplied by the number of months in the deferment period as defined below. The portion of the interest contracted for under Section (1) of this Article applicable to each deferred balance and installment period following a deferment period shall remain the same as that applicable to such balance and period under the original contract of loan. If a loan is prepaid in full during the deferment period defined below, the borrower shall receive, in addition to the refund required under Section (6) of this Article, a pro-rata refund of that portion of the interest for deferment applicable to any unexpired full month or months of such period. The deferment period is that period

beginning with the day following the due date of the scheduled installment preceding the first installment being deferred, and during which no payment is made or required by reason of such deferment. The interest for default or interest for deferment may be collected at the time of its accrual, or at any time thereafter. On any loan contract which includes precomputed interest but which is not payable in substantially equal successive monthly installments, the loan contract may provide for interest from the maturity date of any installment until paid at a rate not exceeding the highest lawful contract rate.

(6)(a) When any loan contract which includes precomputed interest and is payable in substantially equal successive monthly installments beginning within one month plus fifteen days after the date of the contract is prepaid in full by cash, a new loan, renewal, or otherwise, or when the licensee makes demand for payment in full of the unpaid balance, after the first installment due date but before the final installment due date, the licensee shall refund or credit the borrower with an amount which shall be as great a proportion of the total interest contracted for under Section (1) of this Article as the sum of the periodic balances scheduled to follow the installment date after the date of prepayment in full or demand for payment in full, bears to the sum of all the periodic time balances under the schedule of payments set out in the loan contract. If such prepayment in full or demand for payment in full occurs before the first installment due date the licensee shall retain for each elapsed day from the date the loan was made, one-thirtieth of the portion of the interest which could be retained if the first installment period were one month and the loan were prepaid in full on the first installment period due date and the interest contracted for under Section (1) of this Article in excess of such amount shall be refunded or credited to the borrower.

(b) When any loan contract which includes precomputed interest and is payable in other than substantially equal successive monthly installments beginning within one month plus fifteen days after the date the contract is prepaid in full by cash, a new loan, renewal, or otherwise, or when the licensee makes demand for payment in full of the unpaid balance prior to final maturity, the licensee may retain earned interest for the period from the date of the loan to the date of prepayment in full or date of demand for payment in full in an amount not to exceed that which would accrue at the simple annual interest rate which the loan contract would have produced over its full term if each scheduled payment had been paid on the date due when applied to the unpaid principal amounts determined to be outstanding from time to time according to the schedule of payments, having due regard for the amount of each scheduled installment and the time

of each scheduled installment period. In the event prepayment in full or demand for payment in full occurs on a date during an installment period, the licensee, in addition to interest earnings for the installment period or periods that have elapsed, may retain for each day elapsed from the immediately preceding installment due date to the date of prepayment in full or demand for payment in full an interest charge produced by applying the simple annual interest rate under the contract as heretofore described to the unpaid principal balance of the loan determined to be outstanding according to the schedule of payments as of the immediately preceding installment due date and dividing that product by three hundred sixty-five. All interest contracted for and precomputed in the amount of loan in excess of the interest authorized to be retained by this Subsection shall be refunded or credited to the borrower.

The licensee may also retain earned interest on any additions to principal or other permissible charges added to the loan subsequent to the date of the loan contract, at the simple annual interest rate as described above, from the date such additions are made until paid or until demand for payment in full of the total unpaid balance under the loan contract is made by the licensee.

If the loan contract does not contain precomputed interest, then interest may be earned on the principal balance, including additions to principal subsequent to the loan contract, from time to time unpaid, at the rate contracted for, until the date of payment in full or demand for payment in full.

(c) No refund shall be required for partial prepayments and no refund of less than One Dollar need be made.

[See Compact Edition, Volume 4 for text of (7) and (8)]

[Amended by Acts 1979, 66th Leg., p. 1556, ch. 672, §§ 3 to 6, eff. Aug. 27, 1979.]

Art. 5069-3.18. Insurance

[See Compact Edition, Volume 4 for text of (1) and (2)]

(3) When insurance is required in connection with a loan made under this Chapter, the lender shall furnish the borrower a statement which shall clearly and conspicuously state that insurance is required in connection with the loan, and that the borrower shall have the option of furnishing the required insurance either through existing policies of insurance owned or controlled by him or of procuring and furnishing equivalent insurance coverages through any insurance company authorized to transact business in Texas. In addition when any requested or required insurance is sold or procured by the licensee

at a premium or rate of charge not fixed or approved by the State Board of Insurance, the licensee shall include such fact in the foregoing statement, and the borrower shall have the option for a period of five days from the date of loan of furnishing the required insurance coverage either through existing policies of insurance owned or controlled by him or of procuring and furnishing equivalent insurance coverage through any insurance company authorized to transact business in Texas. Such statement or statements may be made as separate written statements delivered in conjunction with the loan contract or may be included as a part of the loan contract.

(4) All insurance for which a charge is included in the loan contract shall be written at lawful rates and in accordance with the provisions of the Texas Insurance Code by a company authorized to do business in this State.

(5) Where insurance for which a charge is included in the loan contract is to be procured by the lender, the lender shall within thirty days after execution of the loan contract deliver, mail, or cause to be mailed to the borrower at his address as specified in the contract, a policy, or policies, or certificates of insurance, clearly setting forth the amount of the premium, the kind or kinds of insurance, the coverages and all of the terms, options, limitations, restrictions and conditions of the policy or policies of insurance.

(6) If a borrower is obligated under the terms of a loan contract to obtain or maintain required insurance coverages and fails to do so or requests the lender to procure that insurance, the lender may procure substitute insurance coverage, which coverage is substantially equivalent to or more limited than that originally required, in accordance with Sections (4) and (5) of this Article, and may procure insurance to cover only the interest of the lender as a secured party if the borrower does not request that the borrower's interest be covered. The lender may add the premium advanced by the lender for that insurance to the unpaid balance of the loan contract and may charge interest on that amount from the time of its addition to the unpaid balance of the loan contract until it is paid at a rate not in excess of the rate that the loan contract would produce over its full term if each scheduled payment were paid on the date due. If any insurance for which a charge is included in or added to the loan contract is cancelled, adjusted or terminated for any reason, the refund for unearned insurance premiums received by the lender shall be credited, except to the extent applied to the purchase by the lender of similar insurance, to any amounts then unpaid on the account and the balance shall be promptly refunded to the borrower; provided, however, that no cash refund shall be required if the amount thereof is less than One Dollar.

[See Compact Edition, Volume 4 for text of (7) to (9)]

[Amended by Acts 1979, 66th Leg., p. 1559, ch. 672, §§ 7, 8, eff. Aug. 27, 1979.]

Art. 5069-3.19. Licensee's Duty to Borrower

(1) When a loan is made under the authority of this Chapter, the licensee shall deliver to the borrower, or if more than one to one of them, a copy of the note or agreement and all other documents signed by the borrower and a statement in writing in the English language showing the following information:

(a) The names and addresses of the borrower and of the licensee; and

(b) The types of insurance, if any, for which a charge is included in the loan contract in connection with the loan, and the charge to the borrower for such insurance.

If the note or loan contract shows the information required above, a copy of such note or loan contract may be delivered rather than a separate statement.

[See Compact Edition, Volume 4 for text of (2) to (4)]

[Amended by Acts 1979, 66th Leg., p. 1561, ch. 672, § 9, eff. Aug. 27, 1979.]

Art. 5069-3.20. Prohibited Practices

[See Compact Edition, Volume 4 for text of (1) to (3)]

(4) No licensee shall take any promise to pay or loan obligation that does not disclose the amount financed and the schedule of payments.

[See Compact Edition, Volume 4 for text of (5) and (6)]

[Amended by Acts 1979, 66th Leg., p. 1561, ch. 672, § 10, eff. Aug. 27, 1979.]

CHAPTER FOUR. INSTALLMENT LOANS

Art. 5069-4.01. Installment Loans Authorized

(1) Any bank or savings and loan association doing business under the laws of this State or of the United States, and any person licensed to do business under the provisions of Chapter 3 of this Subtitle relating to regulated loans may contract for and receive on any loan made under the authority of this Chapter repayable in consecutive monthly installments, substantially equal in amount, an interest charge, however calculated or shown, which does not exceed an add-on interest charge of Eight Dollars per One Hundred Dollars per annum for the full term of the loan contract.

(2) Interest authorized in Section (1) of this Article may be computed on the cash advance at the time the loan is made for the full term of the loan

contract notwithstanding the requirement of the loan contract for payment in substantially equal regular installments and may be computed on the basis of a full month for any fractional period in excess of fifteen days. Precomputed interest authorized by Section (1) of this Article shall be added to the cash advance and said sum shall be the amount of the loan.

(3) Notwithstanding the foregoing, a lender may make loans which require repayment other than in substantially equal successive monthly installments, as where payable in irregular or unequal installments either in amount or period of the installments or in equal successive monthly installments followed by or interspersed with an irregular, unequal, or larger installment or installments, or in other than monthly installments, or if the first installment is not payable one month from the date of the contract and may compute, contract for, charge, or receive interest charges under any method or formula different from that prescribed in Section (1) of this Article if the interest charges do not exceed an amount that, having due regard for the schedule of installment payments, will provide the same effective return as if the loan were repayable in equal successive monthly installments beginning one month from the date of the contract.

(4) Notwithstanding any other provision of this Chapter, a borrower and a lender may enter into a written agreement pursuant to which one or more loans or advances to or for the account of the borrower shall be made from time to time. The agreement shall contain the date of the agreement and the name and address of each borrower and of the lender and shall be signed by the parties. A copy of the agreement shall be delivered to the borrower. The agreement may provide for a maximum loan charge on the unpaid principal amounts from time to time outstanding not in excess of a rate producing an interest yield equivalent to that which would be permitted on a similar loan made under Section (1) of this Article. The Commissioner shall prescribe monthly rates of charge which produce an interest yield equal to that permitted under Section (1) of this Article on a loan of the same amount. The loan agreement shall clearly set forth, if a charge for insurance is to be included in the contract, a simple statement of the amount of such charge or the method by which it will be calculated.

(5) On any loan contract which includes precomputed interest, and is payable in substantially equal, successive monthly installments, additional interest for default, if contracted for, may equal but shall not exceed Five Cents for each One Dollar of any scheduled installment when any portion of such installment continues unpaid for ten days or more following the date such payment is due, including Sundays and holidays. Interest for such default

shall not be collected more than once on the same installment. If the payment date of each wholly unpaid installment, on which no interest for default has been collected is deferred as of an installment date for one or more full months and the maturity of the contract is extended for a corresponding period of time, the lender may charge and collect additional interest for such deferment. The interest for such deferment may be equal to the difference between the refund which would be required for prepayment in full as of the date of deferment and the refund which would be required for prepayment in full as of one month prior to such date multiplied by the number of months in the deferment period as defined below. The portion of the interest contracted for under Section (1) of this Article applicable to each deferred balance and installment period following a deferment period shall remain the same as that applicable to such balance and period under the original contract of loan. If a loan is prepaid in full during the deferment period defined below, the borrower shall receive, in addition to the refund required under Section (6) of this Article, a pro-rata refund of that portion of the interest for deferment applicable to any unexpired full month or months of such period. The deferment period is that period beginning with the day following the due date of the scheduled installment preceding the first installment being deferred, and during which no payment is made or required by reason of such deferment. The interest for default or interest for deferment may be collected at the time of its accrual or deferment or at any time thereafter. On any loan contract which includes precomputed interest but which is not payable in substantially equal successive monthly installments, the loan contract may provide for interest from the maturity date of any installment until paid at a rate not exceeding the highest lawful contract rate.

(6)(a) When any loan contract payable in substantially equal successive monthly installments beginning within one month plus fifteen days after the date of the contract and containing precomputed interest is prepaid in full by cash, a new loan, renewal, or otherwise, or when the lender demands payment in full of the unpaid balance after the first installment due date but before the final installment due date, the lender shall refund or credit the borrower with an amount which shall be as great a proportion of the total interest contracted for under Section (1) of this Article as the sum of the periodic balances scheduled to follow the installment date after the date of prepayment in full or demand for payment in full bears to the sum of all the periodic time balances under the schedule of payments set out in the loan contract. If such prepayment in full or demand for payment in full occurs before the first installment due date the lender shall retain for each elapsed day from date the loan was made, one-thirti-

eth of the portion of the interest which could be retained if the first installment period were one month and the loan were prepaid in full on the first installment period due date and the interest contracted for under Section (1) of this Article in excess of such amount shall be refunded or credited to the borrower.

When any loan contract which includes precomputed interest and is payable in other than substantially equal successive monthly installments beginning within one month plus fifteen days after the date of the contract is prepaid in full by cash, a new loan, renewal, or otherwise, or if the lender demands payment in full of the unpaid balance before the final installment due date, the lender shall retain earned interest for the period from the date of the loan to the date of prepayment in full or demand for payment in full in an amount not to exceed that which would accrue at the simple annual interest rate which the loan contract would have produced over its full term if each scheduled payment had been paid on the date due when applied to the unpaid principal amounts determined to be outstanding from time to time according to the schedule of payments having due regard for the amount of each scheduled installment and the time of each scheduled installment period. In the event prepayment in full or demand for payment in full occurs on a date during an installment period, the lender, in addition to interest earnings for the installment period or periods that have elapsed, may retain for each day elapsed from the immediately preceding installment due date to the date of prepayment in full or demand for payment in full an interest charge produced by applying the simple annual interest rate under the contract as heretofore described to the unpaid principal balance of the loan determined to be outstanding according to the schedule of payments as of the immediately preceding installment due date and dividing that product by three hundred sixty-five. All interest contracted for and precomputed in the amount of loan in excess of the interest authorized to be retained by this subsection shall be refunded or credited to the borrower.

The lender may also retain earned interest on any additions to principal or other permissible charges added to the loan subsequent to the date of the loan contract, at the simple annual interest rate as described above, from the date such additions are made until paid or until demand for payment in full of the total unpaid balance under the loan contract is made by the lender.

If the loan contract does not contain precomputed interest, then interest may be earned on the principal balance, including additions to principal subsequent to the loan contract, from time to time unpaid, at the rate contracted for, until the date of payment in full or demand for payment in full.

(c)¹ No refund shall be required for partial prepayments and no refund of less than One Dollar need be made.

[See Compact Edition, Volume 4 for text of (7)]
[Amended by Acts 1979, 66th Leg., p. 1561, ch. 672, §§ 11 to 14, eff. Aug. 27, 1979.]

¹ So in enrolled bill; there is no (b).

Art. 5069-4.02. Insurance

[See Compact Edition, Volume 4 for text of (1) and (2)].

(3) When insurance is required in connection with a loan made under this Chapter, the lender shall furnish the borrower a statement which shall clearly and conspicuously state that insurance is required in connection with the loan, and that the borrower shall have the option of furnishing the required insurance either through existing policies of insurance owned or controlled by him or of procuring and furnishing equivalent insurance coverages through any insurance company authorized to transact business in Texas. In addition when any requested or required insurance is sold or procured by the lender at a premium or rate of charge not fixed or approved by the State Board of Insurance, the lender shall include such fact in the foregoing statement, and the borrower shall have the option for a period of five days from the date of loan of furnishing the required insurance coverage either through existing policies of insurance owned or controlled by him or of procuring and furnishing equivalent insurance coverage through any insurance company authorized to transact business in Texas. Such statement or statements may be made as separate written statements delivered in conjunction with the loan contract or may be included as a part of the loan contract.

(4) All insurance for which a charge is included in the loan contract shall be written at lawful rates and in accordance with the provisions of the Texas Insurance Code by a company authorized to do business in this State.

(5) Where insurance for which a charge is included in the loan contract is to be procured by the lender, the lender shall within thirty days after execution of the loan contract deliver, mail, or cause to be mailed to the borrower at his address as specified in the contract, a policy, or policies, or certificates of insurance, clearly setting forth the amount of the premium, the kind or kinds of insurance, the coverages and all of the terms, options, limitations, restrictions and conditions of the policy or policies of insurance.

(6) If a borrower is obligated under the terms of a loan contract to obtain or maintain required insurance coverages and fails to do so or requests the lender to procure that insurance, the lender may procure substitute insurance, which coverage is sub-

stantially equivalent to or more limited than that originally required, in accordance with Sections (4) and (5) of this Article and may procure insurance to cover only the interest of the lender as a secured party if the borrower does not request that the borrower's interest be covered. The lender may add the premium advanced by the lender for that insurance to the unpaid balance of the loan contract and may charge interest on that amount from the time of its addition to the unpaid balance of the loan contract until it is paid at a rate not in excess of the rate that the loan contract would produce over its full term if each scheduled payment were paid on the date due. If any insurance for which a charge is included in or added to the loan contract is cancelled, adjusted or terminated for any reason, the refund for unearned insurance premiums received by the lender shall be credited, except to the extent applied to the purchase by the lender of similar insurance, to any amounts then unpaid on the account and the balance shall be promptly refunded to the borrower; provided, however, that no cash refund shall be required if the amount thereof is less than One Dollar.

[See Compact Edition, Volume 4 for text of (7) to (9)]

[Amended by Acts 1979, 66th Leg., p. 1564, ch. 672, §§ 15 to 18, eff. Aug. 27, 1979.]

Art. 5069-4.03. Lender's Duty to Borrower

(1) When a loan is made under the authority of this Chapter, the lender shall deliver to the borrower, or if more than one to one of them, a copy of the note or agreement and all other documents signed by the borrower and a statement in writing in the English language showing the following information:

(a) The names and addresses of the borrower and of the lender; and

(b) The types of insurance, if any, for which a charge is included in the loan contract in connection with the loan, and the charge to the borrower for such insurance.

If the note or loan contract shows the information required above, a copy of such note or loan contract may be delivered rather than a separate statement.

[See Compact Edition, Volume 4 for text of (2) to (4)]

[Amended by Acts 1979, 66th Leg., p. 1565, ch. 672, § 19, eff. Aug. 27, 1979.]

Art. 5069-4.04. Prohibited Practices

[See Compact Edition, Volume 4 for text of (1) to (3)]

(4) Except as specifically provided by Article 4.01(4), no lender shall take any promise to pay or loan obligation that does not disclose the amount financed and the schedule of payments.

[See Compact Edition, Volume 4 for text of (5) and (6)]

[Amended by Acts 1979, 66th Leg., p. 1566, ch. 672, § 20, eff. Aug. 27, 1979.]

CHAPTER FIVE. SECONDARY MORTGAGE LOANS

Art. 5069-5.02. Secondary Mortgage Loans Authorized

[See Compact Edition, Volume 4 for text of (1) to (3)]

(4) When any loan contract is prepaid in full by cash, a new loan, renewal, or otherwise, or when the lender demands payment in full of the unpaid balance, after the first installment due date but before the final installment due date, the lender shall refund or credit the borrower with an amount which shall be as great a proportion of the total interest contracted for under Section (1) of this Article as the sum of the periodic balances scheduled to follow the installment date after the date of prepayment in full or demand for payment in full bears to the sum of all the periodic time balances under the schedule of payments set out in the loan contract. If such prepayment in full or demand for payment in full occurs before the first installment due date the lender shall retain for each elapsed day from date the loan was made, one-thirtieth of the portion of the interest which could be retained if the first installment period were one month and the loan were prepaid in full on the first installment period due date and the interest contracted for under Section (1) of this Article in excess of such amount shall be refunded or credited to the borrower. No refund shall be required for partial prepayments and no refund of less than One Dollar need be made.

(5) In addition to the authorized charges provided in this Chapter no further or other charge or amount whatsoever shall be directly, or indirectly, charged, contracted for, or received. This includes (but is not limited by) all charges such as fees, compensation, bonuses, commissions, brokerage discounts, expenses and every other charge of any nature whatsoever, whether of the types listed herein or not. Without limitation of the foregoing, such charges may be any form of costs or compensation whether contracted for or not, received by the lender, or any other person, in connection with (a) the investigating, arranging, negotiation, procuring, guaranteeing, making, servicing, collecting or enforcing of a loan; or (b) for the forbearance of money, credit, goods or things in action; or (c) for any other service or services performed or offered. However, the prohibition set out herein shall not apply to amounts actually incurred by a lender as:

- (i) court costs;
- (ii) attorney's fees assessed by a court;
- (iii) lawful fees paid to any public office for filing, recording, or releasing any instrument securing a loan;
- (iv) the reasonable cost expended for repossessing, storing, preparing for sale, or selling any security;
- (v) the premiums or identifiable charge received in connection with the sale of insurance authorized under this Chapter including a premium or charge for title insurance;
- (vi) an attorney's reasonable fee for title examination and opinion not in excess of the charge or premium set by the State Board of Insurance for title insurance for such a transaction; or
- (vii) the reasonable and necessary charges paid to persons not salaried employees of the lender for: appraisal and inspection of collateral, investigation of the credit standing or credit worthiness of the borrower, legal fees to an attorney for the preparation of documents in connection with the transaction, or official fees for construction permits.

[Amended by Acts 1979, 66th Leg., p. 1566, ch. 672, §§ 21, 22, eff. Aug. 27, 1979.]

Art. 5069-5.03. Insurance

[See Compact Edition, Volume 4 for text of (1) and (2)]

(3) When insurance is required in connection with a loan made under this Chapter, the lender shall furnish the borrower a statement which shall clearly and conspicuously state that insurance is required in connection with the loan, and that the borrower shall have the option of furnishing the required insurance either through existing policies of insurance owned or controlled by him or of procuring and furnishing equivalent insurance coverages through any insurance company authorized to transact business in Texas. In addition when any requested or required insurance is sold or procured by the lender at a premium or rate of charge not fixed or approved by the State Board of Insurance, the lender shall include such fact in the foregoing statement, and the borrower shall have the option for a period of five days from the date of loan of furnishing the required insurance coverages either through existing policies of insurance owned or controlled by him or of procuring and furnishing equivalent insurance coverage through any insurance company authorized to transact business in Texas. Such statement or statements may be made as separate written statements delivered in conjunction with the loan contract or may be included as a part of the loan contract.

(4) All such insurance for which a charge is included in the loan contract shall be written at lawful rates and in accordance with the provisions of the Texas Insurance Code by a company authorized to do business in this State.

[See Compact Edition, Volume 4 for text of (5) to (9)]

[Amended by Acts 1979, 66th Leg., p. 1567, ch. 672, §§ 23, 24, eff. Aug. 27, 1979.]

Art. 5069-5.04. Lender's Duty to Borrower

(1) When a secondary mortgage loan is made under the authority of this Chapter, the lender shall deliver to the borrower, or if more than one to one of them, a copy of the note and all other documents signed by the borrower and a statement in writing in the English language showing the following information:

- (a) The names and addresses of the borrower and of the lender; and
- (b) The types of insurance, if any, for which a charge is included in the loan contract in connection with the loan, and the charge to the borrower for such insurance.

If the note or loan contract shows the information required above, a copy of such note or loan contract may be delivered rather than a separate statement.

[See Compact Edition, Volume 4 for text of (2) to (4)]

[Amended by Acts 1979, 66th Leg., p. 1567, ch. 672, § 25, eff. Aug. 27, 1979.]

Art. 5069-5.05. Prohibited Practices

[See Compact Edition, Volume 4 for text of (1) and (2)]

(3) No lender shall take any promise to pay or loan obligation that does not disclose the amount financed and the schedule of payments.

[See Compact Edition, Volume 4 for text of (4) and (5)]

[Amended by Acts 1979, 66th Leg., p. 1568, ch. 672, § 26, eff. Aug. 27, 1979.]

CHAPTER SIX. RETAIL INSTALLMENT SALES

Art. 5069-6.01. Definitions

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

- (a) "Goods" means all tangible personal property when purchased primarily for personal, family or household use and not for commercial or business use, including such property which is furnished or used at the time of sale or subsequently, in the modernization, rehabilitation, repair, alteration, improvement or construction of real property so as to become a part thereof whether or not severable therefrom. The term also includes, but

is not limited to, a structure, except a mobile home, to be used as a residence, any boat, boat-trailer, motor scooter, motor-assisted bicycle, motorcycle, camper-type trailer, horse trailer, any vehicle propelled or drawn exclusively by muscular power, and merchandise certificates or coupons, issued by a retail seller, not redeemable in cash and to be used in their face amount in lieu of cash, in exchange for goods or services sold by such seller.

The term does not include (i) money, things in action or intangible personal property, other than merchandise certificates or coupons as herein described; or (ii) any automobile, mobile home, truck, trailer, semi-trailer, truck tractor or bus designed and used primarily to transport persons or property on a public highway; or (iii) any vehicle designed to run only on rails or tracks or in the air, as defined in Chapter 7 of this Subtitle; or (iv) any goods which are authorized to be and are included in a contract subject to Chapter 7 of this Subtitle.

(b) "Services" means work, labor, or services of any kind when purchased primarily for personal, family or household use and not for commercial or business use, and includes a maintenance or service contract or agreement or warranty, but does not include (i) the services of a professional person licensed by the State except when those services are rendered in connection with the purchase of goods; or (ii) services for which the cost is by law fixed or approved by, or filed with or subject to approval or disapproval by the United States or the State of Texas, or any agency, instrumentality or subdivision thereof; or (iii) educational services provided by an accredited college or university or a primary or secondary school providing education required by the State of Texas or services of a kindergarten or nursery school; (iv) any services which are authorized to be and are included in a contract subject to Chapter 7 of this Subtitle; or (v) any medical or legal services.

[See Compact Edition, Volume 4 for text of (c)]

(d) "Retail seller" or "seller" means a person regularly and substantially engaged in the business of selling goods or services to retail buyers, but does not include the services of a member of a learned profession.

(e) "Retail installment transaction" means any transaction in which a retail buyer purchases goods or services from a retail seller pursuant to a retail installment contract or a retail charge agreement, as defined in this Article, which provides for a time price differential, as defined in this Article, and under which the buyer agrees to pay the unpaid balance in one or more installments, together with a time price differential.

The term includes transactions made pursuant to a retail credit card arrangement as defined in this Article.

[See Compact Edition, Volume 4 for text of (f)]

(g) "Retail charge agreement" means an instrument or instruments prescribing the terms of retail installment transactions which may be made thereunder from time to time (whether secured or unsecured), and under the terms of which a time price differential, as defined in this Article, is to be computed in relation to the buyer's unpaid balance from time to time. The term includes an instrument or instruments prescribing the terms of a retail credit card arrangement.

(h) "Time price differential," however denominated or expressed, means the amount which is paid or payable for the privilege of purchasing goods or services to be paid for by the buyer in installments over a period of time. The term includes the amounts authorized by this Chapter when the parties have amended the contract to renew, restate, or reschedule the unpaid balance thereof or to extend or defer the scheduled due date of all or any part of any installment or installments.

In addition the term also includes any amounts paid or payable to a seller or holder as consideration for accepting payment in installments over time for goods and services charged under a retail credit card arrangement as defined by this Chapter.

The term does not include the amount, if any, charged for insurance premiums, delinquency charges, attorneys' fees, court costs or official fees. Nor shall the term be in anywise considered as interest as defined by the laws of this State.

(i) "Cash price" means the price stated in a retail installment contract or in a sales slip or other memorandum furnished by a retail seller to a retail buyer under or in connection with a retail charge agreement, for which the seller would have sold or furnished to the buyer and the buyer would have bought or obtained from the seller the goods or services which are the subject matter of a retail installment transaction, if the sale had been a sale for cash. The cash price may include any taxes and charges for delivery, installation, servicing, repairs, alterations or improvements and any of the charges described in Subsections (i), (iii), (iv), and (vi) of Section (j) of this Article which are not separately itemized on the contract.

(j) "Itemized Charges" however denominated or expressed means those amounts included in the contract or agreement but not included in the cash price for charges made to the buyer for:

(i) the amount of the fees prescribed by law for filing, recording, or otherwise perfecting and releasing or satisfying, a retained title lien or

other security interest created in connection with a retail installment transaction;

(ii) license registration or certificate of title fees;

(iii) any taxes;

(iv) any other fees or charges set or prescribed by law, and not in excess of the amounts allowed by law, that are connected with the sale or inspection of the goods or services;

(v) any premiums or charges for insurance permitted by Article 6.04;

(vi) official filing, recording, and construction permit fees; and

(vii) in a retail installment transaction involving modernization, rehabilitation, repair, alteration, improvement, or construction of real property, the reasonable and necessary fees and costs paid by the seller or holder for charge for title insurance or for title examination and opinion not to exceed the charge or premium promulgated by the State Board of Insurance for title insurance for such a transaction and the reasonable and necessary fees and costs paid by the seller or holder to persons not the salaried employees of the seller or holder of the contract for appraisal and inspection fees, fees and costs of investigation of the credit standing or credit worthiness of applicant, and legal fees to an attorney for the preparation of any and all documents in connection with the transaction.

(k) "Principal balance" means the cash price of the goods or services which are the subject matter of a retail installment contract plus the amounts, if any, included therein for itemized charges, less the amount of the buyer's down payment in money or goods or both.

[See Compact Edition, Volume 4 for text of (l)]

(m) "Holder" means the retail seller of the goods or services under the retail installment contract or retail charge agreement or the credit card issuer under the retail credit card arrangement or the assignee if the retail installment contract or the retail charge agreement or outstanding balance under either has been sold or otherwise transferred.

[See Compact Edition, Volume 4 for text of (n) to (o)]

(p) "Retail credit card arrangement" means an arrangement, payable in one or more installments, pursuant to which a retail seller or credit card issuer gives to a retail buyer or lessee the privilege of using a credit card for the purpose of purchasing or leasing goods or services from that person, a person related to that person, others licensed or franchised to do business under his business or trade name or designation, or other persons authorized to honor the card. The term does not in-

clude arrangements operated pursuant to any other Chapter of this Title.

(q) "Credit card issuer" means a person who issues a card, plate, or other identification device used to obtain goods or services under a retail credit card arrangement. The term does not include any person who honors the credit card but did not issue it, nor any bank, savings and loan association, credit union, person licensed to do business under the provisions of Chapter 3 or 4 of this Subtitle, nor any other person who is regularly and principally engaged in the business of lending money to persons for personal, family, and household purposes.

[Amended by Acts 1977, 65th Leg., p. 212, ch. 104, § 2, eff. May 4, 1977; Acts 1977, 65th Leg., p. 2080, ch. 830, §§ 1, 2, eff. June 16, 1977; Acts 1979, 66th Leg., p. 1568, ch. 672, §§ 27, 28, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 2018, ch. 792, §§ 1 to 6, eff. Aug. 27, 1979.]

Art. 5069-6.02. Retail Installment Contracts—Requirements—Disclosure

[See Compact Edition, Volume 4 for text of (1)]

(2) The printed or typed portion of the contract, other than instructions for completion, shall be in a size equal to at least eight-point type. The contract shall be designated "Retail Installment Contract" and shall contain substantially the following notice printed or typed in a size equal to at least ten-point bold type:

"NOTICE TO THE BUYER. DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT OR IF IT CONTAINS BLANK SPACES. YOU ARE ENTITLED TO A COPY OF THE CONTRACT YOU SIGN. UNDER THE LAW YOU HAVE THE RIGHT TO PAY OFF IN ADVANCE THE FULL AMOUNT DUE AND UNDER CERTAIN CONDITIONS MAY OBTAIN A PARTIAL REFUND OF THE FINANCE CHARGE. KEEP THIS CONTRACT TO PROTECT YOUR LEGAL RIGHTS."

[See Compact Edition, Volume 4 for text of (3) and (4)]

(5) The retail installment contract shall contain and disclose the following items:

(a) The cash price of the goods or services;

(b) The amount of the buyer's down payment, specifying the amounts paid in money and allowed for goods traded in;

(c) Any itemized charges, as defined in Article 6.01. Any charges for insurance permitted by Article 6.04 may be disclosed in the manner described in Article 6.04;

(d) In the event of any inconsistency or conflict between the disclosure requirements of this Chapter and those of a federal law, regulation, or an interpretation thereof, the requirements of the federal law, regulation, or interpretation shall control and the inconsistent or conflicting disclosures required by this Chapter need not to be given;

(e) Any promise, whether made in writing or orally, by the seller, made as an inducement to the buyer to become a party to the contract or which is part of the contract or which is made incidental to negotiations between the seller and the buyer with respect to the sale of the goods or services that are the subject of the contract, that the seller will compensate the buyer for referring customers or prospective customers to the seller for goods or services which the seller has for sale or for referring the seller to such customers or prospective customers. In any case in which, pursuant to the preceding provisions, the contract contains a promise to compensate the buyer for referring customers or prospective customers to the seller or the seller to such customers, the contract must contain a provision to the effect that the amount otherwise owing under the contract at any time is reduced by the amount of compensation owing pursuant to such promise.

[See Compact Edition, Volume 4 for text of (6)]

(7)(a) Retail installment contracts or retail charge agreements negotiated and entered into by mail or telephone, without solicitations in person by salesmen or other representatives of the seller, and based upon a catalog of the seller or other printed solicitation which clearly sets forth the cash prices of sales to be made through such medium, may be made as provided in this section. The provisions of this Article with respect to retail installment contracts shall be applicable to such sales, except that the designation and notice provisions of Section (2) of this Article shall not be applicable to such contract.

[See Compact Edition, Volume 4 for text of 7(b) to (9)]

(10) Notwithstanding the provisions of any retail installment contract to the contrary, any buyer may prepay in full the unpaid time balance thereof at any time before its final due date and, if he does so, or if the holder demands payment in full of the unpaid balance prior to its final due date, he shall receive a refund credit thereon for such prepayment or upon such demand for payment in full. The amount of such refund credit shall represent at least as great a proportion of the original time price differential, after first deducting therefrom an amount equivalent to the minimum charge authorized in this Article, as

(a) the sum of the monthly unpaid balances under the schedule of payments in the contract

(beginning as of the date after such prepayment or demand for payment in full which is the next succeeding monthly anniversary date of the due date of the first installment under the contract, or, of the prepayment or demand for payment in full is prior to the due date of the first installment under the contract, then as of the date after such prepayment or demand for payment in full which is the next succeeding monthly anniversary date of the date of the contract) bears to

(b) the sum of all the monthly unpaid balances under the schedule of installment payments in the contract. Where the amount of refund credit is less than One Dollar, no refund credit need be made. On contracts payable in other than substantially equal successive monthly installments commencing one month after the date of the contract, the refund shall be computed in a manner proportionate to the above described method, having due regard for the amount of each installment and to the irregularity of each installment period.

If, subsequent to demand of payment in full under a contract, the buyer and holder agree to reinstate such contract, they may do so and may amend the contract pursuant to Section (12) of this Article.

[See Compact Edition, Volume 4 for text of (11)]

(12)(a) The holder of a retail installment contract, upon request of the buyer, may agree to one or more amendments to extend or defer the scheduled due date of all or any part of any installment or installments and may collect for same a charge computed on the amount of the scheduled installment or installments extended or deferred for the period of extension or deferment at the rate of Fifteen Cents for each Ten Dollars per month; provided that a minimum extension or deferment charge of One Dollar may be charged and collected. Such amendments may also include payment by the buyer of the additional cost to the holder of premiums for continuing in force any insurance provided for in the contract and of any additional necessary official fees.

(b) The holder of a retail installment contract, upon request of the buyer may agree to an amendment to renew, restate or reschedule the unpaid balance of the contract and may collect for same a charge to be computed as follows: The sum of the unpaid balance as of the date of the amendment and the cost of any insurance, any additional necessary official fees and any accrued delinquency charges, after deducting an amount which would be equivalent to the required refund credit applicable in the case of prepayment in full as of the date of the amendment charges, shall constitute a principal balance on which a charge may be computed for the term of the amended contract at the applicable rate of charge as provided in Article 6.02.

(c) Any amendment to a retail installment contract must be confirmed in writing and signed by the buyer, and a copy of the writing shall be delivered to the buyer at the time of execution of same. Said writing together with the original contract and any previous amendments thereto shall constitute the retail installment contract.

[See Compact Edition, Volume 4 for text of (13)]

(14)(a) If, in a retail installment transaction, a retail buyer makes any subsequent purchases of goods or services from a retail seller from whom he has previously purchased goods or services under one or more retail installment contracts, and the amounts under such previous contract or contracts have not been fully paid, the subsequent purchases may, at the seller's option, be included in and consolidated with one or more of such previous contract or contracts. Each subsequent purchase shall be a separate retail installment contract under this Chapter, notwithstanding that the same may be included in and consolidated with one or more of such previous contract or contracts. All the provisions of this Chapter with respect to retail installment contracts shall be applicable to such subsequent purchases except as hereinafter stated in this section.

(b) In the event of such consolidation, in lieu of the buyer's executing a retail installment contract respecting each subsequent purchase, as provided in this Article, it shall be sufficient if the seller shall prepare a written memorandum of each subsequent purchase, in which case the provisions of Sections (1), (2), (3), and (5) of this Article shall not be applicable. The seller shall deliver to the buyer a copy of such memorandum prior to the due date of the first installment of such consolidated contract.

(c) When such subsequent purchases are made, if the seller has retained title or taken a lien or other security interest in any of the goods purchased under any one of the contracts included in the consolidation, the entire amount of all payments made prior to such subsequent purchases shall be deemed to have been applied to the previous purchases; and each payment after such subsequent purchase made on the consolidated contract shall be deemed to have been allocated to all of the various purchases in the same ratio as the original cash sale prices of the various purchases bear to the total of all. Where the amount of each installment payment is increased in connection with such subsequent purchases, at the seller's option, the subsequent payments may be deemed to be allocated as follows: an amount equal to the original periodic payment to the previous purchase, the balance to the subsequent purchase. However, the amount of any down payment on the subsequent purchase shall be allocated in its entirety to such subsequent purchase. The provisions of this Subsection (c) shall not apply to cases where such previous and subsequent purchases involve equipment, parts, or other goods attached or affixed to

goods previously purchased and not fully paid, or to services in connection therewith rendered by the seller at the buyer's request.

[Amended by Acts 1979, 66th Leg., p. 1569, ch. 672, §§ 29 to 34, eff. Aug. 27, 1979.]

Art. 5069-6.03. Retail Charge Agreements—Requirements—Disclosure

(1) A retail charge agreement may be established by a seller or credit card issuer upon the request of a buyer or prospective buyer. The retail charge agreement shall be in writing and signed by the buyer. A copy of such agreement executed on or after the effective date of this Chapter shall be delivered or mailed to the buyer prior to the date on which the first payment is due thereunder. Any acknowledgment by the buyer of delivery of a copy of the agreement contained in the body thereof shall be in a size equal to at least ten-point bold type and shall appear directly above the buyer's signature. No agreement executed on or after the effective date of this Chapter shall be signed by the buyer when it contains blank spaces to be filled in after it has been signed. The buyer's acknowledgment, conforming to the requirements of this section, of delivery of a copy of an agreement, shall be presumptive proof, in any action or proceeding, of such delivery and that the agreement, when signed, did not contain any blank spaces as herein provided. If no copy of the agreement is retained by the seller, a notation in his permanent record showing that such agreement was mailed and the date of mailing shall serve as presumptive proof of such mailing. Any such agreement shall contain substantially the following notice printed or typed in a size equal to at least ten-point bold type:

“NOTICE TO THE BUYER—DO NOT SIGN THIS AGREEMENT BEFORE YOU READ IT OR IF IT CONTAINS BLANK SPACES. YOU ARE ENTITLED TO A COPY OF THE AGREEMENT YOU SIGN. KEEP THIS AGREEMENT TO PROTECT YOUR LEGAL RIGHTS.”

(2) The buyer under the retail charge agreement shall be supplied with a statement as of the end of each monthly period (which need not be a calendar month), or other regular period agreed upon in writing, at the end of which there is any unpaid balance thereunder, which statement shall recite and disclose a legend to the effect that the buyer may at any time pay his total unpaid balance or any part thereof.

(2a) A retail charge agreement that complies with the applicable duties and requirements regarding disclosure under the Consumer Credit Protection Act (15 U.S.C. 1601 et seq.), shall be deemed to comply with the duties and requirements regarding disclosure included in Section (2) of this Article.

[See Compact Edition, Volume 4 for text of
(3) and (4)]

[Amended by Acts 1979, 66th Leg., p. 1573, ch. 672, §§ 35, 36, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 2020, ch. 792, §§ 7, 8, eff. Aug. 27, 1979.]

Art. 5069-6.04. Insurance

(1) On any retail installment contract or retail charge agreement made under the authority of this Chapter, a seller or holder may request or require a buyer to provide credit life insurance and credit health and accident insurance as additional protection for such contract or agreement and include the cost of such insurance as a separate charge in such contract or agreement. Only one policy of life insurance and one policy of health and accident insurance on any one buyer may be in force with respect to any one contract or agreement at any one time.

(2) A seller or holder may, in addition, request or require a buyer to insure the property purchased in, or improved by, goods and services provided under a retail installment transaction subject to this Chapter, including title insurance on real property involved in the retail installment contract or retail charge agreement and subject to a lien or security interest of seller or holder, and include the cost of such insurance as a separate charge in such contract or agreement. If the property involved in such contract or agreement is a boat which may be enrolled or licensed as a yacht with the United States Coast Guard and be subject to the maritime laws of the United States, a seller or holder may also require a buyer to provide protection and indemnity insurance, longshoremen's and harbor worker's compensation insurance and medical payments insurance in connection with the boat, and include the cost of such insurance as a separate charge in such contract or agreement. Such insurance and the premiums or charges for that insurance shall bear a reasonable relationship to the amount, term and conditions of the contract or agreement, the existing hazards or risk of loss, damage or destruction, or the potential liability and shall not provide for unusual or exceptional risks or coverages which are not ordinarily included in policies issued to the general public.

Additionally, the buyer and seller may agree to include in the retail installment contract charges for insurance coverages which (1) cover risks of loss or liability reasonably related to the goods or services sold, the anticipated use thereof, or goods or services related to the goods or services sold and which may be insured with the goods and services sold; and (2) are written on policies or endorsement forms prescribed or approved by the State Board of Insurance; and (3) are ordinarily offered in policies or endorsements offered to the general public. The retail installment contract shall clearly identify the type of coverage for each such type of coverage purchased

and the premiums therefor and shall clearly indicate that such coverage is optional.

(3) When insurance is required in connection with such a contract or agreement made under this Chapter, the seller or holder shall furnish the buyer a statement which shall clearly and conspicuously state that insurance is required in connection with the contract or agreement, and that the buyer shall have the option of furnishing the required insurance either through existing policies of insurance owned or controlled by him or of procuring and furnishing equivalent insurance coverages through any insurance company authorized to transact business in Texas. In addition when any requested or required insurance is sold or procured by the seller or holder and a premium or rate of charge not fixed or approved by the State Board of Insurance is included in the retail installment contract or under the retail charge agreement, the seller or holder shall include or cause to be included such fact in a written statement delivered or mailed to the buyer, and the buyer shall have the option for a period of ten days from the date of the contract or agreement or the mailing of the written statement to the buyer of furnishing the required insurance coverage either through existing policies of insurance owned or controlled by him or of procuring and furnishing equivalent insurance coverage through any insurance company authorized to transact business in Texas. Such statement or statements may be made in conjunction with or as part of the retail installment contract required by Article 6.02 or the retail charge agreement required by Article 6.03, respectively, or may be made in a separate written statement or statements.

(4) All such insurance subject to Section (1) or (2) of this Article for which a separate charge is included in the retail installment contract or under the retail charge agreement shall be written at lawful rates and in accordance with the provisions of the Texas Insurance Code by a company or companies authorized to do business in this State.

(5) The contract or agreement, separate written statement, or a specimen copy of a certificate or policy of insurance delivered to the buyer shall identify the type of coverage, term and amount of premium for such insurance coverages described in Sections (1) and (2) of this Article for which a separate charge is included in the retail installment contract or under the retail charge agreement.

(6) The buyer shall have the privilege at the time of execution of the contract or agreement of purchasing such insurance from an agent or broker of his own selection and of selecting an insurance company acceptable to the seller or holder, but, in such case the inclusion of the insurance premium in the contract or agreement shall be optional with the seller or holder.

(7)(a) Subsequent to the execution of the retail installment contract, a buyer and holder may agree to add to the unpaid balance of the contract premiums for insurance policies obtained subsequent to the retail installment transaction and covering the goods or services sold or goods or services related thereto, including premiums for renewal of policies originally included in the contract. Such policies shall comply with the limitations set out in Sections (1), (2), and (4) above, as applicable.

(b) If the buyer fails to present to the holder reasonable evidence that he or she has obtained or maintained a coverage required by the retail installment contract or retail charge agreement, the holder may but shall not be required to procure substitute insurance coverage which is substantially equivalent to or more limited than the coverages originally required and may add the premium advanced for that insurance to the unpaid balance of the contract or under the retail charge agreement. The substitute insurance may cover only the interest of the holder or the interest of the holder and the buyer. The substitute insurance shall be written at lawful rates and in accordance with the Texas Insurance Code by a company authorized to do business in this State.

(c) If any premium is added to the unpaid balance of a retail installment contract under this Section, the rate of time price differential previously agreed to in the retail installment contract remains in effect and shall be applied to the new unpaid balance or the contract may be rescheduled in accordance with Article 6.02. If any premium is added under a retail charge agreement, the premium shall be added to the unpaid balance under the retail charge agreement. When any substitute insurance is obtained by the holder of a retail installment contract or retail charge agreement when the buyer has failed to obtain or maintain a required coverage, the amendment adding the premium or rescheduling the contract need not be signed by the buyer but the holder shall deliver to the buyer or send to the buyer's last known address as shown by the records of the holder specific written notification of that action.

(8) If the insurance is to be procured by the seller or holder, he shall, within forty-five days after delivery of the goods or furnishing of the services under the contract or agreement, deliver, mail, or cause to be mailed to the buyer at his address as specified in the contract or agreement, a policy, or policies, or certificates of insurance, clearly setting forth the amount of the premium, the kind or kinds of insurance, the coverages and all the terms, options, limitations, restrictions and conditions of the policy or policies of insurance.

(9) If the insurance is cancelled, adjusted or terminated for any reason, the refund for unearned insurance premiums received by the seller or the

holder shall, at the seller or holder's option, be applied to replace required insurance coverages or be credited to the final maturing installments of the retail installment contract or retail charge agreement, and the remaining balance of the unearned insurance premiums shall be refunded to the buyer; provided, however, that no cash refund shall be required if the amount thereof is less than One Dollar.

(10) Any gain, or advantage to the seller or holder, or any employee, officer, director, agent, general agent, affiliate or associate from such insurance or its provision or sale shall not be considered as an additional charge or further time price differential in connection with any contract or agreement made under this Chapter except as specifically provided herein.

[Amended by Acts 1979, 66th Leg., p. 309, ch. 142, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1573, ch. 672, § 37, eff. Aug. 27, 1979.]

Art. 5069-6.05. Prohibited Provisions

No retail installment contract or retail charge agreement shall:

[See *Compact Edition, Volume 4 for text of (1) to (6)*]

(7) Provide for or grant a first lien upon real estate to secure such obligation, except, (a) such lien as is created by law upon the recording of an abstract of judgment or (b) such lien as is provided for or granted by a contract or series of contracts for the sale or construction and sale of a structure to be used as a residence so long as the time price differential does not exceed an annual percentage rate of 10 percent.

[Amended by Acts 1977, 65th Leg., p. 212, ch. 104, § 1, eff. May 4, 1977.]

Art. 5069-6.08. Application

None of the provisions of this Chapter shall affect or apply to any loans or to the business of making loans under or in accordance with the laws of this State, nor shall any of the provisions of the loan or interest statutes of this State affect or apply to any retail installment transaction. Nor shall any seller pay, promise to pay, or otherwise tender cash to any buyer as a part of any transaction made pursuant to this Chapter unless otherwise specifically authorized by this Chapter. Nothing in this Chapter shall be construed to impair or in any way affect any rule of law applicable to or governing retail installment sales not otherwise subject hereto. This Chapter shall apply exclusively to retail installment transactions as defined in Article 6.01 hereof. The provisions of this Chapter defining specific rates and amounts of charges and requiring certain credit disclosures to be made shall be deemed to control over any contrary Texas law respecting those sub-

jects. Except as displaced by the particular provisions of this Chapter, the Uniform Commercial Code as adopted in Texas,¹ other applicable statutes, and the principles of the common law shall remain applicable to transactions hereunder to the extent they are applicable.

[Amended by Acts 1979, 66th Leg., p. 1576, ch. 672, § 38, eff. Aug. 27, 1979.]

¹ Business and Commerce Code, § 1.101 et seq.

CHAPTER SIX A. MANUFACTURED HOMES INSTALLMENT SALES

Article

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5069-6A.14.	Consumer Credit Commissioner.

Art. 5069-6A.01. Scope

This chapter regulates the credit sale of manufactured homes as defined herein, mobile homes being previously regulated by either Chapter 7 of Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-7.01 et seq., Vernon's Texas Civil Statutes), and nonmobile home manufactured housing being previously regulated by Chapter 6 of Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-6.01 et seq., Vernon's Texas Civil Statutes).

[Added by Acts 1979, 66th Leg., p. 1576, ch. 672, § 39, eff. Aug. 27, 1979.]

Art. 5069-6A.02. Definitions

A. "Manufactured home" means any structure, transportable in one or more sections on either a permanent or temporary chassis or other conveyance device, which is eight body feet or more in width and is 32 body feet or more in length and which is manufactured at a location other than the homesite and which is designed to be a single-family or multi-family residence when transported to the homesite and which is designed to be connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems contained therein as well as any furniture, appliances, drapes, carpet, wall covering, or any other items which are attached to or contained in the home and which are included in the cash price and sold in conjunction with the home. Such term shall include all mobile

homes and modular homes which satisfy the above definition.

B. "Customer" means a person to whom credit is extended for the purchase of a manufactured home and includes a comaker, endorser, guarantor, or surety for such other person who is obligated to repay the extension of credit.

C. "Creditor" means a person who in the ordinary course of business regularly sells manufactured homes or extends or arranges for the extension of credit for the purchase of a manufactured home for the use by the customer, which is payable by agreement in more than four installments or for which the payment of a finance charge is or may be required. The term includes both the seller and, if known at the time of credit extension, the financier of the credit sale, even if the financier does not regularly extend credit as described above.

D. "Credit sale" means any retail transfer of title of a manufactured home pursuant to an installment contract payable in more than four installments, or for which the payment of a finance charge is or may be required, and with respect to which credit is extended or arranged by the creditor. The term includes any contract in the form of a bailment or lease if the bailee or lessee contracts to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the manufactured home involved and it is agreed that the bailee or lessee will become or for no other consideration or for a nominal consideration has the option to become the owner of the property upon full compliance with his obligations under the contract. The term does not include a transfer of title of a manufactured home in which the proceeds for said transfer are acquired by the customer pursuant to a loan, nor does it include a transfer for wholesale purposes in which the customer purchases the manufactured home for the purpose of reselling the manufactured home to another customer.

E. "Credit" means the right granted by a creditor (as defined herein) to a customer (as defined herein) to purchase a manufactured home and defer payment therefor.

F. "Cash price" means the price at which the creditor offers to sell for cash the manufactured home which is the subject of a credit sale. It may include the cash price of accessories and appliances and the cost of delivery and installation and may include sales tax to the extent imposed on the cash sale.

G. "Down payment" means the amount of any money and value of any property traded in which is applied by the customer to the payment of the cash price for the financing of the credit sale of the manufactured home.

H. "Other charges" means any charge which is part of the credit extended to the customer and

which is not included as part of the cash price or the finance charge, and includes but is not limited to such items as sales tax, which the creditor chooses to exclude from the cash price, and such other charges as license fee, certificate of title fee, transfer of title fee, insurance premium, and fees prescribed by the Business & Commerce Code for the perfecting or releasing of a security interest.

I. "Amount financed" means the amount of credit which the customer will have the actual use of as determined hereafter and shall equal the sum of the cash price and the other charges as defined in Subparagraph H above minus the down payment.

J. "Finance charge" means the costs of credit determined in accordance with Section 3 of this chapter and includes time price differential.

K. "Annual percentage rate" means the annual rate of finance charge as determined in accordance with Section 3 of this chapter.

L. "Total of payments" means the sum of the amount financed and the finance charge and equals the total amount to be paid by the customer to the creditor after the signing of the credit sale contract.

M. "Time price differential" means the total amount to be added to the sum of the cash price plus all other charges less the customer's down payment to determine the amount of the customer's indebtedness to be paid under a credit sale contract.

N. Words of the masculine gender include the feminine and the neuter and when the sense so indicates, words of the neuter gender may refer to any gender. Words of the singular include the plural when the sense so indicates and words of the plural include the singular when the sense so indicates.

O. "Person" means an individual, partnership, corporation, joint venture, trust, association, or any legal entity however organized. "Natural person" means a human being.

[Added by Acts 1979, 66th Leg., p. 1576, ch. 672, § 39, eff. Aug. 27, 1979.]

Art. 5069-6A.03. Finance Charge, Time Price Differential, and Annual Percentage Rate

A. Rate. Notwithstanding the provisions of any other laws, the time price differential in a credit sale of a manufactured home pursuant to an installment contract payable in substantially equal successive monthly installments shall not exceed an amount determined under the following schedule:

(1) Any manufactured home which is the subject of a retail sale for the first time may be sold at a rate not in excess of \$7.50 per \$100 per annum.

(2) Any manufactured home which has been the subject of a prior retail sale may be sold at a rate not in excess of \$10 per \$100 per annum.

(3) Any manufactured home which is the subject of a retail sale with the purchase of said manufactured home being financed for a time period in excess of 60 months from the date of the contract may be sold with either a rate charge calculated pursuant to the applicable subparagraph above or a time price differential charge produced by but not in excess of the amount obtained by applying the true annual percentage rate produced by Subparagraph (1) above for a term of 60 months to the unpaid portion of the amount financed determined to be outstanding from time to time according to the terms and schedule of payments of said contract, so that all contracts in excess of 60 months may be financed at such annual percentage rate.

B. Date of Computation of Finance Charge. The finance charge shall be computed on the amount financed from the date of the credit sale contract until the maturity of the final installment, notwithstanding that the total of payments is required to be paid in installments.

C. Irregular Periods. For a period lesser or greater than 12 months or for amounts lesser or greater than \$100, the amount of the maximum charge set forth in the foregoing schedule shall be decreased or increased proportionately. A fractional monthly period of 15 days or more may be considered a full month.

D. Maximum Rate for Irregular Payments. If a credit sale contract is payable other than in substantially equal successive monthly installments, as where payable in irregular or unequal installments either in amount or periods thereof, or in equal successive monthly installments followed by or interspersed with an irregular, unequal, or larger installment or installments, or in other than monthly installments or if the first installment is not payable one month from the date of the contract, the finance charge may not exceed an amount which, having due regard for the schedule of installment payments, will provide the same effective return as if the credit sale contract were payable in substantially equal successive monthly installments beginning one month from the date of the credit sale contract as provided in Subparagraph A above.

E. Annual Percentage Rate. Except as otherwise provided in this section, the annual percentage rate shall be that nominal annual percentage rate determined as follows:

(1) In accordance with the actuarial method of computation so that it may be disclosed with an accuracy at least to the nearest quarter of one percent. The mathematical equation and technical instructions for determining the annual percentage rate in accordance with the requirements of this paragraph are set forth in Supplement I to Regulation Z of the federal Truth-in-Lending Act,

said supplement being incorporated in this chapter by reference.

(2) At the option of the creditor, by application of the United States rule so that it may be disclosed with an accuracy at least to the nearest quarter of one percent. Under this rule, the finance charge is computed on the unpaid balance for the actual time the balance remains unpaid and if the amount of a payment is insufficient to pay the accumulated finance charge, the unpaid accumulated finance charge continues to accumulate to be paid from the proceeds of subsequent payments and is not added to the amount financed.

F. Rate Tables. The Regulation Z Annual Percentage Rate Tables produced by the Federal Reserve Board may be used to determine the annual percentage rate, and any such rate determined from these tables in accordance with instructions contained therein will comply with the requirements of this section.

[Added by Acts 1979, 66th Leg., p. 1578, ch. 672, § 39, eff. Aug. 27, 1979.]

Art. 5069-6A.04. Disclosure Requirements

A. Multiple Creditors. If there is more than one creditor in a transaction, each creditor whose identity is known at the time of the credit extension shall be clearly identified. The disclosure of any one item by any creditor shall satisfy the requirement to disclose such item regardless of which creditor makes the disclosure.

B. Multiple Customers. If there is more than one customer in a credit sale, the creditor need furnish the disclosures required by this chapter to only one of the customers.

C. Leap Year. Any variance in the amount of any finance charge, payment, percentage rate, or other term required under this chapter to be disclosed or stated in any advertisement, which occurs by reason of the addition of February 29 in each leap year, may be disregarded, and such term may be disclosed or stated without regard to such variance.

D. Place and Time of Disclosure. The creditor shall make the disclosures required by this chapter before the customer signs the credit sale contract. At the time disclosures are made, the creditor shall furnish the customer with a duplicate of the instrument or a statement by which the required disclosures are made and on which the creditor is identified. All of the disclosures shall be made together on the credit sale contract on the same side of the page and above or adjacent to the customer's signature.

E. Signature. The credit sale contract shall be signed by both the customer and creditor and shall state the date of the credit sale contract, which shall be the date that the last signature is made.

F. Required Notice. The printed portion of the credit sale contract, other than instructions for completion, shall be in a size equal to at least eight-point type. Such contract shall contain substantially the following notice:

"NOTICE TO THE CUSTOMER—DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT OR IF IT CONTAINS ANY BLANK SPACES. YOU ARE ENTITLED TO A COPY OF THE CONTRACT YOU SIGN. UNDER THE LAW YOU HAVE THE RIGHT TO PAY OFF IN ADVANCE THE FULL AMOUNT DUE AND UNDER CERTAIN CONDITIONS MAY OBTAIN A PARTIAL REFUND OF THE FINANCE CHARGE. KEEP THIS CONTRACT TO PROTECT YOUR LEGAL RIGHTS."

G. Identity of Parties. The credit sale contract shall contain the names of the creditor and the customer, the address of the place of business of the creditor, the residence or other address of the buyer as specified by the customer, and the name of the manufacturer and model of the manufactured home sold or to be sold.

H. Delinquency Charge. The creditor may collect a delinquency charge on each installment in default for a period of more than 10 days in an amount not to exceed five percent of each installment or not in excess of \$10, whichever is less. Only one such delinquency charge may be collected on any installment regardless of the period during which it remains in default. The creditor shall disclose on the credit sale contract the amount or method of computing the amount of any default, delinquency, or similar charges payable in the event of late payments. The charge or collection of a delinquency charge shall not affect the right of a creditor to accelerate the contract pursuant to Section 9 of this chapter.

I. Security Interest. The creditor shall disclose in the credit sale contract whether a security interest is retained. If a security interest is retained, the creditor shall give a general description of the property which is subject to the security interest. For purposes of this subparagraph, it shall be sufficient for the creditor to state that "The creditor retains a purchase money security interest in the manufactured home and all items sold pursuant to this contract."

J. Acknowledged Delivery. The customer's acknowledgment of delivery of a copy of the credit sale contract shall be conclusive proof of such delivery, and that such contract when signed by the customer did not contain any blank spaces except as herein provided, and of compliance with this section in any action or proceeding by or against a subse-

quent creditor without knowledge to the contrary when the creditor acquires the credit sale contract.

K. Payment Statement. Upon written request of the customer, the creditor shall give or forward to the creditor a written statement of the dates and amounts of the received installment payments and the total amount unpaid under such contract. Such a statement shall be given the customer once every six months without charge. If any additional statement is requested by the customer, it shall be supplied by the creditor at a charge not in excess of \$1 for each additional statement. A customer shall be given a written receipt for any payment when made in cash.

L. Special Order. If a customer desires to order a manufactured home from a creditor and the home is modified from a standard floor plan to fit the customer's specifications and the customer desires to purchase said home by executing a credit sale contract pursuant to this chapter, the creditor may require the customer to pay a deposit not in excess of three percent of the estimated cash price. Upon arrival of the special ordered home but not sooner, the customer shall execute a credit sale contract pursuant to the terms of this chapter and the deposit shall be applied toward the payment of the cash price. Prior to the execution of the credit sale contract, the customer may cancel said order. In such event, the creditor may retain all or any portion of the deposit, and the customer will not be responsible for any costs or expenses other than the forfeited deposit.

M. Price Block Disclosures. The following items, if applicable, shall be disclosed on the credit sale contract in the sequence stated below:

(1) the cash price of the manufactured house using the term, "cash price";

(2) the amount of the down payment itemized, as applicable, as down payment in money, using the term "cash down payment," down payment in property, using the term "trade-in," and the sum, using the term "total down payment";

(3) "other charges," individually itemized, which are included in the amount financed but which are not part of the finance charge, including insurance, taxes;

(4) the sum of Subparagraphs (1) and (3) of this paragraph less Subparagraphs (2) and (4) of this paragraph, using the term "amount financed";

(5) the total amount of the finance charge, using the term, "finance charge," and where the total charge consists of two or more types of charges, a description of the amount of each type.

N. Annual Percentage Rate. The credit sale contract shall also disclose the finance charge expressed as an annual percentage rate, using the term "annual percentage rate."

O. Payment Schedule. The number, amount, and due dates or periods of payments scheduled to repay the indebtedness and the sum of such payments using the term "total of payments." If any payment is more than twice the amount of an otherwise regularly scheduled equal payment, the creditor shall identify the amount of such payment by the term "balloon payment" and shall state the conditions, if any, under which that payment may be refinanced if not paid when due.

[Added by Acts 1979, 66th Leg., p. 1579, ch. 672, § 39, eff. Aug. 27, 1979.]

Art. 5069-6A.05. Prepayment

Notwithstanding the provisions of any credit sale contract to the contrary, any customer may prepay it in full at any time before maturity and, if he does so, shall receive a refund credit of the time price differential which shall not be less than the sum obtained by applying each payment first to the time price differential, which is treated as being earned at the time of said payment in the same manner as interest, with the balance of each payment being applied to the unpaid portion of the amount financed and subtracting the sum of the payments and the remaining balance of the amount financed from the total of payments and deducting an acquisition charge of \$50 from the remaining "unaccrued" time price differential.

[Added by Acts 1979, 66th Leg., p. 1581, ch. 672, § 39, eff. Aug. 27, 1979.]

Art. 5069-6A.06. Extension

A. The creditor of a credit sale contract, upon request by the customer, may agree to an amendment thereto to extend or defer the scheduled due date of all or any part of any installment or installments or to renew, restate, or reschedule the unpaid balance of such contract or to increase or reduce the number of installments and may collect for same a charge which will not exceed the amount obtained by the application of the actual annual percentage rate to the remaining balance of the amount financed of the credit sale contract calculated pursuant to Section 5 above for the period that any sum is extended or deferred. The creditor and customer may agree to an unlimited number of different extensions, with each extension for as long a period of time as agreed to by both parties. If the creditor imposes a charge or fee for deferral or extension, the creditor shall disclose to the customer:

(1) the amount deferred or extended;

(2) the date to which or the time period for which payment is deferred or extended; and

(3) the amount of the charge or fee for the deferral or extension.

B. Alternatively, the creditor of a credit sale contract, upon request by the customer, may agree to amend the credit sale contract by renewal, re-statement, or rescheduling of the unpaid portion of

the total of payments in the following manner. In such event the charge for such extension may be computed as follows: The sum of the unpaid amount financed as of the date of amendment and the cost of any insurance incidental to the amendment, any additional necessary official fees, and any accrued delinquency and collection charges, after deducting the prepayment refund credit required by Section 5 of this chapter, shall constitute an amount financed on which the charge may be computed for the term of the amended contract at the applicable time price differential provided in Section 3(A)(2) of this chapter. The provisions of this chapter relating to minimum charges and acquisition costs shall not apply in calculating the amount financed of the amended contract. The amendment to the contract must be confirmed in a writing signed by the buyer. The writing shall set forth the terms of the amendment and the new due dates and amounts of the installments. A copy thereof shall either be delivered to the buyer or mailed to him at his address as shown on the contract. Said writing together with the original contract and any previous amendments thereto shall constitute the credit sale contract. [Added by Acts 1979, 66th Leg., p. 1582, ch. 672, § 39, eff. Aug. 27, 1979.]

Art. 5069-6A.07. Insurance

A. Credit Life and Credit Accident and Health Insurance. On any credit sale contract made under the authority of this chapter, a creditor may request a customer to provide credit life insurance and/or credit health and accident insurance as additional protection for such contract and include the cost of such insurance as a separate charge in such contract. Only one policy of life insurance and one policy of health and accident insurance on any one customer may be in force with respect to any one loan contract at any one time. If the term or the initial amount of insurance of the credit life insurance or the credit accident and health insurance is less than the total of payments or the term of the credit sale contract, then the creditor shall disclose to the customer clearly and conspicuously the initial amount of the insurance and the credit sale contract shall state as follows:

"THE CREDIT LIFE INSURANCE OR CREDIT ACCIDENT AND HEALTH INSURANCE INCLUDED UNDER THIS CONTRACT MAY NOT SATISFY THE INDEBTEDNESS."

However, the creditor may not charge the customer a separate charge for credit life insurance or credit accident and health insurance when the customer is a group beneficiary and the credit insurance is a part of a group policy. In the event of group credit insurance, the creditor shall include the cost of such coverage in the finance charge.

B. Property Insurance. A creditor may, in addition, require a customer to insure tangible personal property involved in a credit sale contract made under authority of this chapter and include the cost of such insurance as a separate charge in such contract.

C. Purchase of Insurance. When insurance is required in connection with a credit sale made under this chapter, the creditor shall furnish the customer a statement which shall clearly and conspicuously state that insurance is required in connection with the contract and that the customer shall have the option of procuring and furnishing equivalent insurance coverages through any insurance company authorized to transact business in Texas. Such statement or statements may be made in conjunction with or as part of the credit sale contract.

D. Forced Place Insurance. If the customer fails to obtain the required insurance at any time, then the creditor may purchase said insurance and add the premium of said insurance together with interest at the rate of 10 percent per annum. At the creditor's option, such sum will be added either to the outstanding balance of the contract and will become due and payable on the date of the last installment or to each unpaid installment in equal increments with the interest being precalculated for the remainder of the term of the contract.

E. Optional Insurance. In addition to credit life insurance and credit accident and health insurance, a creditor may finance as part of the credit sale contract, as optional insurance, any insurance which might be required pursuant to Subparagraph B of this section as well as insurance providing coverage for household goods, personal effects, broad form theft, and comprehensive personal liability insurance as these coverages relate to the ownership and use of the manufactured home financed under this chapter. In the case of the voluntary election by the customer to purchase the optional insurance, the customer must sign a statement indicating the customer's desire to purchase the insurance and describing the term, premium, and type of insurance purchased. This statement may be included as part of the credit sale contract or may be on a separate document.

F. Insurance Disclosure. The credit sale contract shall disclose the term, premium, and type of insurance which is included in the amount financed. If required insurance is not included in the amount financed, then the creditor must disclose only the term and type of insurance required.

G. Insurance less than Contract Term. The premium of any insurance included in the credit sale contract may be included in the amount financed and paid as part of the total of payments even if the term of the insurance is less than the term of the credit sale contract.

H. Insurance Escrow. If agreed to between the creditor and customer, the customer may elect to purchase any insurance through the creditor and include the premiums of such insurance in the credit sale contract or pay to the creditor the first year's premium and on the date each installment is due, pay a sum (hereinafter "funds") equal to one-twelfth of the yearly premium installment for such insurance as reasonably estimated.

The funds shall be held in an institution, the deposits or accounts of which are insured or guaranteed by a federal or state agency. The creditor shall apply the funds to pay said insurance premiums. The creditor may not charge for so holding and applying the funds, analyzing said account, or verifying and compiling said bills. The creditor shall not be required to pay the customer any interest or earnings on the funds. The creditor shall give to the customer, without charge, an annual accounting of the funds showing credits and debits to the funds and the purpose for which each debit to the funds was made.

If the amount of the funds held by the creditor together with the future monthly installments of funds payable prior to the due dates of insurance premiums shall exceed the amount required to pay said insurance as they fall due, such excess shall be at the customer's option either repaid to the customer or credited to the customer on the future monthly installments of funds. If the amount of the funds held by the creditor shall not be sufficient to pay insurance premiums as they fall due, the customer shall pay to the creditor any amount necessary to make up the deficiency within 30 days from the date notice is mailed by the creditor to the customer requesting payment thereof. If the customer fails to make such adjustment with regard to insurance required pursuant to Subparagraph B above, the creditor may treat the deficiency in the same manner as forced placed insurance described in Subparagraph D of Section 7 of this subchapter.

I. Authorized Insurance Companies. All insurance required by this credit sale contract or included in the credit sale contract shall be written at lawful rates and in accordance with the provisions of the Texas Insurance Code by a company authorized to do business in Texas.

J. Right of Refusal. If the customer procures required insurance from someone other than the creditor, the creditor shall have the right for good cause to refuse to accept certain insurance policies from insurance companies designated by the creditor.

K. Unearned Premiums. If the insurance is cancelled, adjusted, or terminated for any reason, the refund for unearned insurance premiums received by the creditor shall be credited to the final maturing

installments of the credit sale contract, and the remaining balance of the unearned insurance premiums shall be refunded to the customer; provided, however, that no cash refund shall be required if the amount thereof is less than \$1.

L. Creditor Benefits. Any gain or advantage to the creditor or any employee, officer, director, agent, general agent, affiliate, or associate from such insurance or its provision or sale shall not be considered as an additional charge or further finance charge in connection with any credit sale contract made under this chapter except as specifically provided herein. [Added by Acts 1979, 66th Leg., p. 1582, ch. 672, § 39, eff. Aug. 27, 1979.]

Art. 5069-6A.08. Transfer

A creditor may agree to accept a subsequent customer as an obligor under an existing obligation. In such event, the creditor may charge and receive a transfer fee not in excess of \$50. The creditor shall make the disclosures to the subsequent customer as if the subsequent customer was a customer on a purchase pursuant to a credit sale contract under this chapter. Said disclosures shall be made as of the date of the subsequent purchase.

[Added by Acts 1979, 66th Leg., p. 1584, ch. 672, § 39, eff. Aug. 27, 1979.]

Art. 5069-6A.09. Default

A creditor may accelerate the maturity of any part or all of the amount owing on a credit sale contract if and only if the customer is in default on the performance of any obligation under the credit sale contract.

Not less than 30 days prior to taking any action to accelerate the maturity of any installment sales contract, to commence any legal action to recover under such obligation, or to take possession of any security of the installment buyer, the holder shall mail a written notice of intention to take such action by registered or certified mail to the address where the mobile home is located. The notice shall contain the following disclosures made in a clear and concise manner:

(1) the particular obligation or security interest, including the date of installment sale contract according to the records of the holder as well as a brief description of the mobile home;

(2) the nature of the default claimed, which may be stated in general terms—for example: "failure to make the required installment payments when due" or "failure to maintain property damage insurance" take at the expiration of the 30-day notice period;

(3) the right of the installment buyer to cure the default and the exact manner in which he may do so, including the sum of money which must be tendered, if any, in order to cure; the individual

or office address to whom it must be tendered; and the form of acceptable payment in accordance with the provisions of the Act.

The notice required above shall not be required when the installment buyer has abandoned or voluntarily surrendered the property which is the subject of the mobile home installment sale; provided that the holder retains evidence thereof satisfactory to the administrator.

In calculating the amount owing, the creditor shall grant to the customer a refund of the finance charge calculated pursuant to Section 5 of this chapter. In addition, the credit sale contract may provide for the payment of an attorney's reasonable fee and for court costs and disbursements, and in the event of repossession, sequestration, or other action necessary to secure possession of the manufactured home securing the payment of the credit sale contract, such contract may provide for the charge and collection of actual and reasonable out-of-pocket expenses incurred in connection with such repossession or foreclosure, including costs of storing, reconditioning, and reselling such manufactured home, subject to the standards of good faith and commercial reasonableness set by the Business & Commerce Code as adopted in Texas. In the event of default, any sum in an insurance escrow account established pursuant to Section 7 of this chapter shall be applied to the remaining balance of the contract.

[Added by Acts 1979, 66th Leg., p. 1585, ch. 672, § 39, eff. Aug. 27, 1979.]

Art. 5069-6A.10. Prohibited provisions

No credit sales contract shall:

(1) contain a power of attorney to confess judgment in this state or an assignment of wages;

(2) provide that the customer agrees not to assert against a creditor or any assignee of the credit sale contract any claim or defense arising out of the sale;

(3) authorize the creditor or other person acting on his behalf to enter upon the customer's premises unlawfully or to commit any breach of the peace in the repossession of a manufactured home;

(4) provide for or grant a first lien upon real estate to secure such obligation, except (a) such lien as is created by law upon the recording of an abstract of judgment or (b) such lien as is provided for or granted by a contract or series of contracts for the sale or construction and sale of a structure so long as the time price differential does not exceed an annual percentage rate of 10 percent;

(5) provide that a customer is required to enter into an insurance escrow agreement pursuant to Section 7 of this chapter.

[Added by Acts 1979, 66th Leg., p. 1585, ch. 672, § 39, eff. Aug. 27, 1979.]

Art. 5069-6A.11. Transfer of Creditor's Rights in a Credit Sale Contract

A. Right of Transfer. Any person may purchase or acquire or agree to purchase or acquire any credit sale contract or any outstanding balance from any other person on such terms and conditions and for such price as may be mutually agreed upon.

B. Transfer Notice. Notice to the customer of the transfer of rights and any requirement that the creditor be deprived of dominion over payments upon a credit sale contract, or over the manufactured home if returned to or repossessed by the creditor, is not necessary to the validity of a written transfer of the credit sale contract or any outstanding balance as against creditors, subsequent purchasers, pledgees, mortgages, and lien claimants of the creditor.

C. Payment after Transfer. Unless the customer has notice of the transfer of the credit sale contract or any outstanding balance thereunder, payment therefore made by the customer to the creditor last known to him shall be binding upon all subsequent creditors.

[Added by Acts 1979, 66th Leg., p. 1586, ch. 672, § 39, eff. Aug. 27, 1979.]

Art. 5069-6A.12. Application

None of the provisions of this chapter shall affect or apply to any loans or to the business of making loans under or in accordance with the laws of this state nor shall any of the provisions of the loan or interest statutes of this state affect or apply to any credit sale contract as defined in Section 2 of this chapter. Nothing in this chapter shall be construed to impair or in any way affect any rule of law applicable to or governing retail installment sales not otherwise subject hereto. This chapter shall apply exclusively to all credit sale contracts as defined in Section 2 of this chapter.

[Added by Acts 1979, 66th Leg., p. 1586, ch. 672, § 39, eff. Aug. 27, 1979.]

Art. 5069-6A.13. Waiver

No act or agreement of the customer before or at the time of the making of a credit sale contract or purchase thereunder shall constitute a valid waiver of any of the provisions of this chapter.

[Added by Acts 1979, 66th Leg., p. 1586, ch. 672, § 39, eff. Aug. 27, 1979.]

Art. 5069-6A.14. Consumer Credit Commissioner

The Consumer Credit Commissioner of Texas shall have the same powers and authority to enforce this Act as those provided in Chapter 2 of Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-2.01 et seq., Vernon's Texas Civil Statutes).

[Added by Acts 1979, 66th Leg., p. 1586, ch. 672, § 39, eff. Aug. 27, 1979.]

**CHAPTER SEVEN. MOTOR VEHICLE
INSTALLMENT SALES**

Art. 5069-7.01. Definitions

For the purposes of this Chapter, unless the context otherwise requires:

(a) "Motor Vehicle" means and is limited to any automobile, mobile home, truck, truck tractor, trailer, semi-trailer and bus designed and used primarily to transport persons or property on a public highway, including any commercial vehicles and heavy commercial vehicles as defined in this article, excepting however, any boat trailer, any vehicle propelled or drawn exclusively by muscular power or which is designed to run only on rails or tracks or in the air, or other machinery not designed primarily for highway transportation, but which may incidentally transport persons or property on a public highway.

[See Compact Edition, Volume 4 for text of (b) to (e)]

(f) "Cash Price" means the price stated in a retail installment contract for which the seller would have sold to the buyer and the buyer would have bought from the seller, the motor vehicle and other goods and services which are the subject matter of such contract if such sale had been a sale for cash. The cash price may include any taxes and charges for delivering, servicing, repairing, altering or improving the motor vehicle, or for installation of the motor vehicle or of goods to the motor vehicle, and charges for accessories and goods related to or used with the motor vehicle, if such charges are made to both cash and credit buyers alike and may include any of the charges described in Subsections (ii) and (iii) of Section (g) of this Article if they are not separately itemized on the contract.

(g) "Itemized Charges" however denominated or expressed means those amounts, if any, included in the contract but not included in the cash price for charges made to the buyer for:

(i) any registration, certificate of title, and license fees;

(ii) any taxes;

(iii) any other fees or charges that are set or prescribed by law, that are not more than the amounts allowed by law, and that are connected with the sale or inspection of a motor vehicle; and

(iv) any charges permitted by Article 7.06 for insurance, service contracts, or warranties permitted by Article 7.06.

(h) "Principal Balance" means the cash price plus the amounts, if any, included in the retail installment contract for itemized charges, less the amount of the buyer's down payment, if any, in money or goods or both.

(h-1) In addition to the provisions of Section (h) of this article, "principal balance" includes a motor vehicle inspection fee and a documentary fee for services actually rendered to, for, or on behalf of the retail buyer in preparing, handling, and processing documents relating to the motor vehicle and the closing of the transaction evidenced by the retail installment contract. If a documentary fee is charged:

(i) it must be charged to both cash and credit buyers;

(ii) it may not exceed \$25;

(iii) it shall be disclosed on the retail installment contract as a separate itemized charge; and

(iv) all preliminary worksheets which are exhibited to the buyer in which the motor vehicle retail seller calculates a sale price for the buyer, the buyer's order, and the retail installment contract shall include in reasonable proximity to the point in the worksheet, buyer's order, and retail installment contract where the documentary fee is disclosed the amount of the documentary fee to be charged and the following notice in boldface type:

"A DOCUMENTARY FEE IS NOT AN OFFICIAL FEE. A DOCUMENTARY FEE IS NOT REQUIRED BY LAW, BUT MAY BE CHARGED TO BUYERS FOR HANDLING DOCUMENTS AND PERFORMING SERVICES RELATING TO THE CLOSING OF A SALE. BUYERS MAY AVOID PAYMENT OF THE FEE TO THE SELLER BY HANDLING THE DOCUMENTS AND PERFORMING THE SERVICES RELATING TO THE CLOSING OF THE SALE. A DOCUMENTARY FEE MAY NOT EXCEED \$25. THIS NOTICE IS REQUIRED BY LAW."

(v) If the language primarily used in the oral sales presentation is not the same as that in which the retail installment contract is written, the seller shall furnish to the buyer a written statement containing the notice set out in Subsection (iv) in the language primarily used in the oral sales presentation.

[See Compact Edition, Volume 4 for text of (i) and (j)]

(k) "Person" means an individual, partnership, corporation, joint venture, trust, association, or any legal entity however organized.

(l) Words of the masculine gender include the feminine and the neuter, and when the sense so indicates, words of the neuter gender may refer to any gender.

(m) [Blank]

(n) "Heavy Commercial Vehicle" means any domestic or foreign truck or truck tractor that weighs 25,000 or more pounds gross vehicular weight (GVW) or any trailer or semitrailer designed for use in combination with any truck or truck tractor weighing 25,000 or more pounds gross vehicular weight (GVW) and that is not used primarily for personal, family, or household use. [Amended by Acts 1979, 66th Leg., p. 87, ch. 52, §§ 1, 2, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1016, ch. 450, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1587, ch. 672, §§ 40, 41, eff. Aug. 27, 1979.]

Art. 5069-7.02. Requirements and Prohibitions as to Retail Installment Contracts

(1) Each retail installment contract shall be in writing, dated, signed by both the buyer and the seller, and completed as to all essential provisions before it is signed by the buyer; provided, however, if delivery of the motor vehicle is not made at the time of the execution of the contract, the identifying numbers or marks or similar information and the due date of the first installment may be inserted in the contract after its execution. A retail installment contract need not be contained in a single document.

(2) The printed portion of the retail installment contract, other than instructions for completion, shall be in a size equal to at least eight-point type. Such contract shall contain substantially the following notice in a size equal to at least ten-point bold type:

"NOTICE TO THE BUYER—DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT OR IF IT CONTAINS ANY BLANK SPACES. YOU ARE ENTITLED TO A COPY OF THE CONTRACT YOU SIGN. UNDER THE LAW YOU HAVE THE RIGHT TO PAY OFF IN ADVANCE THE FULL AMOUNT DUE AND UNDER CERTAIN CONDITIONS MAY OBTAIN A PARTIAL REFUND OF THE FINANCE CHARGE. KEEP THIS CONTRACT TO PROTECT YOUR LEGAL RIGHTS."

(3) A retail installment contract or separate written statement shall also contain, in a size equal to at least ten-point bold type, a specific statement that liability insurance coverage for bodily injury and property damage caused to others is not included, if that is the case.

(4) The seller shall deliver to the buyer, or mail to him at his address shown on the retail installment contract, a copy of such contract as accepted by the seller. Until the seller does so, a buyer who has not received delivery of the motor vehicle shall have the right to rescind his contract and to receive a refund of all payments made and a return of all goods traded in to the seller on account of or in contem-

plation of such contract, or if the goods traded in cannot be returned, the value thereof. Any acknowledgment by the buyer of delivery of a copy of the retail installment contract shall be in a size equal to at least ten-point bold type and shall appear directly above the buyer's signature.

(5) The retail installment contract shall contain the names of the seller and the buyer, the place of business or address of the seller, the residence or other address of the buyer as specified by the buyer, and a description of the motor vehicle sold or to be sold.

(6) The retail installment contract shall specifically set out the following items:

- (a) The cash price as defined in Article 7.01;
- (b) The amount of the buyer's down payment, if any, specifying the amounts paid in money and in goods traded in;
- (c) Any itemized charges, as defined in Article 7.01. Any charges for insurance, service contracts, or warranties permitted by Article 7.06 may be disclosed in the manner described in Article 7.06;

(d) In the event of any inconsistency or conflict between the disclosure requirements of this Chapter and those of a federal law or regulation or an interpretation thereof, the requirements of the federal law, regulation, or interpretation shall control and the inconsistent or conflicting disclosures required by this Chapter need not be given.

(e) The above items need not be stated in the sequence or order set forth and additional information may be included.

(7) The buyer's acknowledgment, conforming to the requirements of this Article, of delivery of a copy of the retail installment contract shall be conclusive proof of such delivery, that such contract when signed by the buyer did not contain any blank spaces except as herein provided, and of compliance with this Article in any action or proceeding by or against a holder of such contract without knowledge to the contrary when he purchases it.

(8) Upon written request of the buyer, the holder of a retail installment contract shall give or forward to the buyer a written statement of the dates and amounts of installment payments and the total amount unpaid under such contract. Such a statement shall be given the buyer once every six months without charge; if any additional statement is requested by the buyer, it shall be supplied by the holder at a charge not in excess of One Dollar for each additional statement. A buyer shall be given a written receipt for any payment when made in cash.

(9)(a) Except as provided in Subsection (b) of this Section, if any scheduled installment of a retail installment contract is more than twice as large as the average of all prior scheduled installments (except the down payment), the buyer has the right, at

the buyer's option, to refinance, without being charged an acquisition cost, that payment at the time it is due. The buyer has the right to refinance that payment in installments which are neither larger nor more frequent than the average amount and frequency of payments preceding that payment, and the rate of time price differential applicable to such refinancing shall not exceed that originally agreed upon.

(b) Section (9)(a) of this Article does not apply to:

(i) a lease;

(ii) a retail installment transaction for a vehicle to be used primarily for purposes other than personal, family, or household use;

(iii) a transaction for which the payment schedule is adjusted to the seasonal or irregular income or scheduled payments or obligations of the buyer; or

(iv) a transaction of a kind determined by the Commissioner as not requiring the protection of the buyer provided in Section (9)(a) of this Article.

[Amended by Acts 1979, 66th Leg., p. 1587, ch. 672, § 42, eff. Aug. 27, 1979.]

Art. 5069-7.03. Finance Charge Limitations

(1) Notwithstanding the provisions of any other law, the time price differential in a retail installment contract payable in substantially equal successive monthly installments beginning one month after the date of the contract shall not exceed the larger of Twenty-five Dollars or an amount determined under the following schedule:

Class 1. Except the heavy commercial vehicles provided for in Class 2, any new domestic motor vehicle designated by the manufacturer by a year model not earlier than the year in which the sale is made and any new foreign motor vehicle—Seven Dollars and Fifty Cents per One Hundred Dollars per annum.

Class 2. Any new domestic motor vehicle not in Class 1, any used domestic motor vehicle designated by the manufacturer by a year model of the same or not more than two years prior to the year in which the sale is made, any used foreign motor vehicle not more than two years old, and any new or used heavy commercial vehicle not more than two years old—Ten Dollars per One Hundred Dollars per annum.

Class 3. Any used motor vehicle not in Class 2 and, if a domestic motor vehicle, designated by the manufacturer by a year model not more than four years prior to the year in which the sale is made, and, if a foreign motor vehicle, not more than four years old—Twelve Dollars and Fifty Cents per One Hundred Dollars per annum.

Class 4. Any used motor vehicle not in Class 2 or Class 3—Fifteen Dollars per One Hundred Dol-

lars per year. Provided, however, if the principal balance is Three Hundred Dollars or less, the time price differential shall be Eighteen Dollars per One Hundred Dollars per annum.

(2) Such charge shall be computed on the principal balance as defined under Article 7.01(h) of this Chapter from the date of the contract until the maturity of the final installment, notwithstanding that the balance thereof is required to be paid in installments.

[See Compact Edition, Volume 4 for text of (3) and (4)]

(5) A buyer under a retail installment contract may, upon written consent of the holder, transfer his equity in the motor vehicle at any time to another person, but in that event the holder shall be entitled to a transfer of equity fee not exceeding Twenty-five Dollars or Fifty Dollars in the case of a heavy commercial vehicle retail installment transaction.

[Amended by Acts 1979, 66th Leg., p. 88, ch. 52, § 3, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1589, ch. 672, § 43, eff. Aug. 27, 1979.]

Art. 5069-7.04. Refunds on Prepayment

Notwithstanding the provisions of any retail installment contract to the contrary, any buyer may prepay it in full at any time before maturity, and if he does so, or when the holder demands payment in full of the unpaid balance of the contract before its final installment is due, the buyer is entitled to receive the following refund credit thereon:

On a contract payable in substantially equal successive monthly installments commencing one month after the date of the contract, the amount of such refund credit shall represent at least as great a proportion of the finance charge, after first deducting therefrom an acquisition cost of Twenty-five Dollars, as (i) the sum of the monthly balances under the schedule of payments in the contract beginning as of the date after such prepayment or demand for payment in full which is the next succeeding monthly anniversary date of the due date of the first installment under the contract, or, if the prepayment or demand for payment in full is prior to the due date of the first installment under such contract, then as of the date after such prepayment or demand for payment in full, which is one month after the next succeeding monthly anniversary date of the date of such contract, bears to (ii) the sum of all the monthly balances under the schedule of payments in such contract. When the amount of refund credit is less than One Dollar no refund credit need be made. On contracts payable in other than substantially equal successive monthly installments commencing one month after the date of the contract, the refund shall be computed in a manner proportionate to the above-described method, having due regard to the

amount of each installment, to the irregularity of each installment period and to the provisions of Sections (2) and (4) of Article 7.03 hereof.

If, subsequent to demand of payment in full under a contract, the buyer and holder agree to reinstate such contract, they may do so and may amend the contract pursuant to Article 7.05 hereof.

[Amended by Acts 1979, 66th Leg., p. 1589, ch. 672, § 44, eff. Aug. 27, 1979.]

Art. 5069-7.05. Amendments of Retail Installment Contracts

(1) The holder of a retail installment contract upon request by the buyer, may agree to one or more amendments thereto to extend or defer the scheduled due date of all or any part of any installment or installments or to renew, restate or reschedule the unpaid balance of such contract, and may collect for same a charge not to exceed an amount computed under either of the following:

(a) If all or any part of any installment or installments is deferred for not more than three months per amendment, the holder may at his election charge and collect on the amount deferred for the period deferred a charge computed at a rate which will not exceed the same effective return as is permitted on monthly payment contracts under Article 7.03; provided that the minimum charge shall be One Dollar. Such amendment may also include payment by the buyer of the additional cost to the holder of premiums for continuing in force any insurance coverages provided for in the contract and any additional necessary official fees.

(b) In any other extension, renewal, restatement or rescheduling of the unpaid balance, the charge may be computed as follows: The sum of the unpaid balance as of the date of amendment and the cost of any insurance incidental to the amendment, any additional necessary official fees, and any accrued delinquency and collection charges, after deducting the prepayment refund credit required by Article 7.04, shall constitute a principal balance on which the charge may be computed for the term of the amended contract at the applicable time price differential provided in Article 7.03 after reclassifying the motor vehicle by its year model at the time of the amendment. The provisions of this Chapter relating to minimum charges under Article 7.03 and acquisition costs under the refund schedule in Article 7.04 shall not apply in calculating the principal balance of the amended contract. The amendment to the contract must be confirmed in a writing signed by the buyer, and a copy of the writing shall either be delivered to the buyer or mailed to him at his last known address as shown by the records of the

holder. Said writing together with the original contract and any previous amendments thereto shall constitute the retail installment contract.

[Amended by Acts 1979, 66th Leg., p. 1590, ch. 672, § 45, eff. Aug. 27, 1979.]

Art. 5069-7.06. Insurance

(1) On any retail installment contract made under the authority of this Chapter, a seller or holder may request or require a buyer to provide credit life insurance and credit health and accident insurance as additional protection for such contract, and include the cost of such insurance as a separate charge in such contract. Only one policy of life insurance and one policy of health and accident insurance on any one buyer may be in force with respect to any one loan contract at any one time.

(2) A seller or holder may, in addition, request or require a buyer to insure tangible personal property purchased in a retail installment transaction subject to this Chapter and accessories and related goods subject to the seller's security interest, and include the cost of such insurance as a separate charge in such contract. Such insurance and the premiums or charges therefrom shall bear a reasonable relationship to the amount, term and conditions of the contract, the existing hazards or risk of loss, damage or destruction, and shall not provide for unusual or exceptional risks or coverages which are not ordinarily included in policies issued to the general public. Additionally, the buyer and seller may agree to include in the retail installment contract charges for insurance coverages which (1) cover risks of loss or liability reasonably related to the motor vehicle, the use thereof, or goods or services related to the motor vehicle and which may ordinarily be insured with the motor vehicle; and (2) are written on policies or endorsement forms prescribed or approved by the State Board of Insurance; and (3) are ordinarily available in policies or endorsements offered to the general public. The retail installment contract shall clearly identify the type of coverage for each such type of coverage purchased and the premiums therefor and shall clearly indicate that such coverage is optional.

(3) When insurance is required in connection with such a contract or agreement made under this Chapter, the seller or holder shall furnish the borrower a statement which shall clearly and conspicuously state that insurance is required in connection with the contract, and that the buyer shall have the option of furnishing the required insurance either through existing policies of insurance owned or controlled by him or of procuring and furnishing equivalent insurance coverages through any insurance company authorized to transact business in Texas. In addition when any requested or required insurance is sold or procured by the seller or holder and a

premium or rate of charge not fixed or approved by the State Board of Insurance is included in the contract for that insurance, the seller or holder shall include or cause to be included such fact in a written statement delivered or mailed to the buyer, and the buyer shall have the option for a period of ten days from the date of the contract or agreement or the mailing or delivery of the written statement to the buyer of furnishing the required insurance coverage either through existing policies of insurance owned or controlled by him or of procuring and furnishing equivalent insurance coverages through any insurance company authorized to transact business in Texas. Such statement or statements may be made in conjunction with or as part of the retail installment contract required by Article 7.02 or may be made in a separate written statement or statements.

(4) All insurance described in Sections (1) and (2) of this Article for which a separate charge is included in the retail installment contract shall be written at lawful rates and in accordance with the provisions of the Texas Insurance Code by a company authorized to do business in this State.

(5) The retail installment contract must identify the type of coverage, term and amount of premium for such insurance coverages described in Sections (1) and (2) of this Article for which separate charges are included in the retail installment contract.

(6) If dual interest insurance on the motor vehicle is purchased by the seller or seller's assignee, as the case may be, it shall within a reasonable time after execution of the retail installment contract, send or cause to be sent to the buyer a policy, or policies, or certificates of insurance written by an insurance company authorized to do business in this State, clearly setting forth the amount of the premium, the kind or kinds of insurance, the coverage and all the terms, options, limitations, restrictions and conditions of the policy or policies of insurance. The buyer shall have the privilege at the time of execution of the contract of purchasing such insurance from an agent or broker of his own selection and of selecting an insurance company acceptable to the holder, but in such case the inclusion of the insurance premium in the retail installment contract shall be optional with the seller.

(7)(a) Subsequent to the execution of the retail installment contract, a buyer and holder may agree to add to the unpaid balance of the contract premiums for insurance policies obtained subsequent to the retail installment transaction and covering the motor vehicle or use thereof or goods or services related thereto, including premiums for renewal of policies originally included in the contract. Such policies shall comply with the limitations set out in Sections (1), (2), and (4) above, as applicable.

(b) If the buyer fails to present to the holder reasonable evidence that he or she has obtained or

maintained a coverage required by the contract, the holder may but shall not be required to procure substitute insurance coverage, which coverage is substantially equivalent to or more limited than that originally required, and may add the additional premium to the unpaid balance of the contract. The substitute insurance may at the holder's option cover only the interest of the holder or the interest of the holder and the buyer. The substitute insurance shall be written at lawful rates in accordance with the Texas Insurance Code by a company authorized to do business in this State.

(c) If any premium is added to the unpaid balance under this Section, the rate of time price differential previously agreed to in the retail installment contract remains in effect and shall be applied to the new unpaid balance or the contract may be rescheduled in accordance with Article 7.05, without reclassifying the motor vehicle by its year model at the time of the amendment. When any substitute insurance is obtained by the holder when the buyer has failed to obtain or maintain a required coverage, the amendment adding the premium or rescheduling the contract need not be signed by the buyer but the holder shall deliver to the buyer or send to the buyer's last known address as shown by the records of the holder specific written notification of that action.

(8) If the insurance is cancelled, adjusted or terminated for any reason, the refund for unearned insurance premiums received by the seller or the holder shall, at holder's option, be applied to replace required insurance coverages, or be credited to the final maturing installments of the retail installment contract, and the remaining balance of the unearned insurance premiums shall be refunded to the buyer; provided, however, that no cash refund shall be required if the amount thereof is less than One Dollar.

(9) A buyer and seller may agree to include motor vehicle property damage or bodily injury liability insurance, mechanical breakdown insurance, or a warranty or service contract relating to the motor vehicle as a separate charge in a contract for the sale of a motor vehicle. If a charge is added to a contract as provided by this section, the contract shall clearly and conspicuously disclose that fact.

(10) Any gain, advantage to the seller or holder, or any employee, officer, director, agent, general agent, affiliate or associate from such insurance or its provision or sale shall not be considered as an additional charge or further time price differential in connection with any retail installment contract made under this Chapter except as specifically provided herein.

[Amended by Acts 1977, 65th Leg., p. 1355, ch. 536, § 1, eff. June 15, 1977; Acts 1979, 66th Leg., p. 1591, ch. 672, § 46, eff. Aug. 27, 1979.]

Art. 5069-7.07. Prohibited Provisions

No retail installment contract or retail charge agreement shall:

(1) Provide that the seller or holder may accelerate the maturity of any part or all of the amount owing thereunder unless (a) the buyer is in default on the performance of any of his obligations or (b) the seller or holder in good faith believes that the prospect of payment or performance is impaired;

(2) Contain a power of attorney to confess judgment in this State or an assignment of wages;

(3) Authorize the seller or holder or other person acting on his behalf to enter upon the buyer's premises in violation of Chapter 9, Business & Commerce Code, as amended, or to commit any breach of the peace in the repossession of a motor vehicle;

(4) Provide for a waiver of the buyer's rights of action against the seller or holder or other person acting therefor for any illegal act committed in the collection of payments under the contract or agreement or in the repossession of a motor vehicle;

(5) Contain any provision by which the buyer executes a power of attorney appointing the seller or holder or other person acting on his behalf, as the buyer's agent in the repossession of a motor vehicle;

(6) Provide that the buyer agrees not to assert against the seller or holder of any claim or defense arising out of the sale;

(7) Contain an authorization for the seller or holder or any person acting on the seller's or holder's behalf to retain or dispose of other tangible personal property that is not subject to a security interest and that is acquired in the repossession of a motor vehicle, except property attached to the vehicle, unless the contract or a separate writing requires the seller or holder to send written notice of such an acquisition to the last known address of the buyer as shown by the records of the holder within fifteen days of the discovery of the personal property by the seller or holder. Such notice shall disclose to the buyer:

(a) that the buyer may identify and claim the property at a reasonable time before the end of the thirtieth day after the day on which the notice was mailed or delivered; and

(b) the location at which and reasonable times at which the buyer may identify and claim the property during that period.

If a contract contains an authorization complying with this Section and such property is not claimed within the thirty days after notice is mailed or delivered, the seller or holder may retain such property subject to any legal rights of buyer

or dispose of such property in a reasonable manner and distribute any proceeds of such disposition according to applicable law.

[Amended by Acts 1979, 66th Leg., p. 1593, ch. 672, § 47, eff. Aug. 27, 1979.]

Art. 5069-7.08. Assignment and Negotiation

[See Compact Edition, Volume 4 for text of (1) to (3)]

(4) Repealed by Acts 1979, 66th Leg., p. 1594, ch. 672, § 48, eff. Aug. 27, 1979.

[Amended by Acts 1979, 66th Leg., p. 1594, ch. 672, § 48, eff. Aug. 27, 1979.]

Art. 5069-7.09. Application

None of the provisions of this Chapter shall affect or apply to any loans or to the business of making loans under or in accordance with the laws of this State, nor shall any of the provisions of the loan or interest statutes of this State affect or apply to any retail installment transaction. Nor shall any seller pay, promise to pay, or otherwise tender cash to any buyer as a part of any transaction made pursuant to this Chapter unless otherwise specifically authorized by this Chapter. Nothing in this Chapter shall be construed to impair or in any way affect any rule of law applicable to, or governing retail installment sales not otherwise subject hereto. This Chapter shall apply exclusively to all retail installment transactions as defined in Article 7.01.

The provisions of this Chapter defining specific rates and amounts of charges and requiring certain credit disclosures to be made shall be deemed to control over any contrary Texas law respecting those subjects. Except as displaced by the particular provisions of this Chapter, the Uniform Commercial Code as adopted in Texas,¹ other applicable statutes, and the principles of the common law shall remain applicable to transactions hereunder to the extent they are applicable.

[Amended by Acts 1979, 66th Leg., p. 1594, ch. 672, § 49, eff. Aug. 27, 1979.]

¹ Business and Commerce Code, § 1.101 et seq.

CHAPTER EIGHT. PENALTIES

Art. 5069-8.01. Contracting For, Charging or Receiving Interest, Time Price Differential or Other Charges Greater Than Authorized; Failure to Perform Duty or Committing Prohibited Act; Correction of Violations

(a) Any person who violates this Subtitle by contracting for, charging or receiving interest, time price differential or other charges which are greater than the amount authorized by this Subtitle, shall forfeit to the obligor twice the amount of interest or

time price differential and default and deferment charges contracted for, charged or received, and reasonable attorneys' fees fixed by the court.

(b) Any person who violates this Subtitle or Chapter 14 of this Title by

(i) failing to perform any duty or requirement specifically imposed on him by any provision of this Subtitle or Chapter 14 of this Title, or by

(ii) committing any act or practice prohibited by this Subtitle or Chapter 14 of this Title, shall be liable to the obligor for a penalty in an amount equal to twice the time price differential or interest contracted for, charged, or received but not to exceed \$2,000 in a transaction in which the amount financed is \$5,000 or less, and not to exceed \$4,000 in a transaction in which the amount financed is in excess of \$5,000 and reasonable attorneys' fees fixed by the court.

(c)(1) A person has no liability to an obligor for a violation of this Subtitle or of Chapter 14 of this Title if within 60 days after having actually discovered such violation such person corrects such violation as to such obligor by performing the required duty or act or by refunding any amount in excess of that authorized by law; provided, however, that such person gives written notice to such obligor of such violation prior to such obligor having given written notice of or having filed an action alleging such violation of this Subtitle or of Chapter 14 of this Title.

As used herein, the term "actually discovered" shall not be construed, interpreted, or applied in such manner as to refer to the time or date when, through reasonable diligence, an ordinarily prudent person could or should have discovered or known as a matter of law or fact of the violation in question, but such term shall be construed, interpreted, and applied to refer to the time of the discovery of the violation in fact, provided, however, that the actual discovery of such violation in one transaction may constitute actual discovery of the same violation in other transactions if the violation actually discovered is of such nature that it would necessarily be repeated and would be clearly apparent in such other transactions without the necessity of examining all such other transactions.

(2) A person has no liability to an obligor for a violation of this Subtitle or of Chapter 14 of this Title if prior to the effective date of the Act or within 60 days after the effective date of the Act such person corrects such violation as to such obligor by performing the required duty or act or by refunding any amount in excess of that authorized by law; provided, however, that such person gives written notice to such obligor of such correction prior to such obligor having given written notice of or having filed an action alleging such violation of this Subtitle or of Chapter 14 of this Title.

(3) If, subsequent to the times specified in Article 8.01(c)(1) and (2) of this Act but prior to the obligor having given written notice of or having filed an action alleging a violation for which a penalty is provided in Article 8.01(b) of this Act, such violation is corrected as to such obligor by performing the required duty or act and written notice of such violation is given to such obligor, then the liability of any person to such obligor shall be limited in each transaction to a penalty in an amount equal to the time price differential or interest contracted for, charged, or received but not to exceed \$2,000 and reasonable attorneys' fees fixed by the court.

(4) If, subsequent to the times specified in Article 8.01(c)(1) and (2) of this Act but prior to the obligor having given written notice of or having filed an action alleging a violation for which a penalty is provided in Article 8.01(a) of this Act for contracting for, charging, or receiving

(i) other charges in excess of the amount authorized by law, or

(ii) interest or time price differential in excess of the amount authorized by law, where such excess is directly and solely attributable to and calculated upon the amount of such other charges, or

(iii) both of the foregoing, such violation is corrected as to such obligor by refunding the amount of the excess and written notice of such refund is given to such obligor, then the liability of any person to such obligor shall be limited in each transaction to a penalty in an amount equal to the time price differential or interest contracted for, charged, or received but not to exceed \$2,000 and reasonable attorneys' fees fixed by the court.

(5) For purposes of this Article the giving of written notice shall be accomplished by and upon the delivery of such notice to the person to whom such notice is directed or to such person's duly authorized agent or attorney of record, such delivery to be made either in person or by United States mail to the address shown on the most recent documents in the transaction. Deposit of such notice as registered or certified mail in a postage paid, properly addressed wrapper in a post office or official depository under the care and custody of the United States Postal Service shall constitute prima facie evidence of the delivery of such notice to such person.

(d) The action of a person who corrects a violation of this Subtitle or of Chapter 14 of this Title pursuant to Article 8.01(c) of this Act shall be effective as to all persons in the same transaction, and such persons shall be entitled to the same protection as that provided by Article 8.01(c) of this Act to the person who makes the correction.

(e) If a person has violated both Articles 8.01(a) and 8.01(b) of this Act as part of the same transac-

tion, then he shall be liable only for the penalties set forth in Article 8.01(a) of this Act.

(f) A person may not be held liable in any action brought under this Article for a violation of this Subtitle or of Chapter 14 of this Title if such person shows by a preponderance of evidence that (1) the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid such violation or that (2) the violation was an act done or omitted in good faith in conformity with any rule, regulation, or interpretation of this Title by any state agency, board, or commission, or with the federal Consumer Credit Protection Act (15 U.S.C. Section 1601 et seq.) or with any rule, regulation, or interpretation thereof by any federal agency, board, or commission, notwithstanding that after such act or omission has occurred, such rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(g) Multiple violations of this Subtitle or Chapter 14 of this Title occurring in a single transaction shall entitle the obligor to a single recovery.

(h) The liability of any person under this Article for a violation of this Subtitle is in lieu of and not in addition to his liability under the federal Consumer Credit Protection Act (15 U.S.C. Section 1601 et seq.). A final judgment granting or denying relief under the federal Consumer Credit Protection Act (15 U.S.C. Section 1601 et seq.) shall bar any subsequent action under this Article by the same obligor with respect to the same violation. If a final judgment has been rendered against any person in favor of an obligor pursuant to this Article and thereafter an action is instituted with respect to the same violation by the obligor under the federal Consumer Credit Protection Act (15 U.S.C. Section 1601 et seq.) against the same person, then such person may in the same or in an independent action have a cause of action against the obligor who obtained such judgment to recover the amount of the judgment rendered under this Article and reasonable attorneys' fees fixed by the court.

[Amended by Acts 1977, 65th Leg., p. 228, ch. 111, § 1, eff. Aug. 31, 1977.]

Section 2 of the 1977 amendatory act added subsec. (i) to art. 5069-14.19; §§ 3 to 5 thereof provided:

"Sec. 3. The provisions of this Act shall become effective at midnight on August 31, 1977, and shall apply to all transactions entered into prior to such date; provided, however, that this Act shall not apply to any action brought under Subtitle 2 or Chapter 14 of Title 79 that is pending on such date; and provided further, that the penalty for any violation of Title 79 of the type referred to in Article 8.01(b) of Section 1 of this Act occurring in a transaction entered into prior to July 1, 1976, which violation has not been corrected as provided in Article 8.01(c) of Section 1 of this Act, shall be determined by the law in effect prior to the effective date of this Act so that the penalty provided for in Article 8.01(b) shall apply only to violations in transactions entered into after June 30, 1976, which have not been corrected as provided in Article 8.01(c).

"Sec. 4. This Act shall supersede any other act passed at the Regular Session of the 65th Legislature which amends any article or section of Chapter 8 or Chapter 14 of Title 79, Revised Civil Statutes of Texas, 1925, as amended, regardless of the relative date of the passage or approval of such other act.

"Sec. 5. If any provision, paragraph, subsection, or section of this Act or the application thereof to any person or circumstance is determined to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect any other application thereof which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions, paragraphs, subsections, and sections of the Act are severable."

Art. 5069-8.02. Contracting For, Charging or Receiving Interest, Time Price Differential or Other Charges in Excess of Double the Amount Authorized

Any person who violates this Subtitle by contracting for, charging or receiving interest, time price differential or other charges which are in the aggregate in excess of double the total amount of interest, time price differential and other charges authorized by this Subtitle shall forfeit to the obligor as an additional penalty all principal or principal balance, as well as all interest or time price differential, and all other charges, and shall pay reasonable attorneys' fees actually incurred by the obligor in enforcing the provisions of this Article; provided further that any such person violating provisions of this Article shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than One Hundred Dollars. Each contract or transaction in violation of this Article shall constitute a separate offense punishable hereunder.

[Amended by Acts 1977, 65th Leg., p. 228, ch. 111, § 1, eff. Aug. 31, 1977.]

Art. 5069-8.03. Engaging in Lending Business Without License

In addition to the foregoing penalties, if applicable, any person engaging in any business under the scope of Chapters 3, 4, or 5 of this Subtitle without first securing a license provided, or without the authorization prescribed, in such Chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not more than One Thousand Dollars, and each such loan made without the authority granted by such license shall constitute a separate offense punishable hereunder; and in addition such person shall forfeit all principal and charges contracted for or collected on each such loan, and shall pay reasonable attorneys' fees incurred by the obligor.

[Amended by Acts 1977, 65th Leg., p. 228, ch. 111, § 1, eff. Aug. 31, 1977.]

Art. 5069-8.04. Venue and Limitation Periods

(a) Actions under this Chapter may be brought in the county where the transaction was entered into or where the Defendant resides at the time the action was filed. Such actions may be brought within four years from the date of the loan or retail installment transaction or within two years from the date of the occurrence of the violation, whichever is later; provided, however, that in the case of open-end credit transactions, such actions may be brought within two years from the date of the occurrence of the violation.

(b) If an action alleging any violation or violations of this Subtitle or Chapter 14 of this Title¹ is brought as a class action and is determined by the court to be maintainable as a class action, the class may recover the amount of actual damages proximately caused to the members of the class as a result of a violation or violations. The court may assess a penalty of: (i) such amount for each obligor who is named as a class representative at the time that the action is determined to be maintainable as a class action as could be recovered by such persons under this Chapter; (ii) such amount as the court may allow for all other class members, except as to each such member of the class no minimum recovery shall be applicable, and the total recovery under this subparagraph in any class action or series of class actions arising out of the same failure to comply by the same person shall not be more than the lesser of \$100,000 or five percent of the net worth of the person; and (iii) in the case of any successful action to enforce the foregoing liability, the costs of the action together with a reasonable attorney's fee as determined by the court. In determining the amount of award in any class action, the court shall consider, among other relevant factors, the amount of any actual damages awarded, the frequency and persistence of failures of compliance by the creditor, the resources of the creditor, the number of persons adversely affected, and the extent to which the creditor's failure of compliance was intentional or reckless.

[Amended by Acts 1977, 65th Leg., p. 228, ch. 111, § 1, eff. Aug. 31, 1977; Acts 1979, 66th Leg., p. 1594, ch. 672, § 50, eff. Aug. 27, 1979.]

¹ Repealed.

Art. 5069-8.05. Violating Terms of Injunction

Any person who violates the terms of an injunction duly issued under this Subtitle shall forfeit and pay to the State a civil penalty of not more than One Thousand Dollars per violation. For the purposes of this Article, the District Court issuing an injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the Attorney General may petition for recovery of such civil penalties.

[Amended by Acts 1977, 65th Leg., p. 228, ch. 111, § 1, eff. Aug. 31, 1977.]

Art. 5069-8.06. Violation of Art. 5069-2.07

[See Compact Edition, Volume 4 for text of (a) and (b)]

[Amended by Acts 1977, 65th Leg., p. 228, ch. 111, § 1, eff. Aug. 31, 1977.]

SUBTITLE THREE—CONSUMER PROTECTION

Chapter	Article
14. Alternative Disclosure Requirements in Coordination with Federal Law [Repealed]	5069-14.01

Chapter	Article
15. Revolving Loan and Revolving Triparty Accounts	5069-15.01
16 to 49. [Reserved for expansion].	

CHAPTER TWELVE. FINANCING OF INSURANCE PREMIUMS [REPEALED]

Article
5069-12.20. Repealed.

Art. 5069-12.01 to 5069-12.20. Repealed by Acts 1979, 66th Leg., p. 2158, ch. 825, § 3, eff. Jan. 1, 1980

Former art. 5069-12.20, relating to financing of insurance premiums, was added by Acts 1975, 64th Leg., p. 947, ch. 355, § 1.

CHAPTER THIRTEEN. HOME SOLICITATION TRANSACTIONS

Art. 5069-13.01. Definitions

As used in this Act:

(1) "Person" means an individual, corporation, trust, partnership, association, or any other legal entity.

(2) "Consumer" means an individual who seeks or acquires real or personal property, services, money, or credit for personal, family, or household purposes.

(3) "Consumer transaction" means a transaction in which one or more of the parties is a consumer.

(4) "Merchant" means a party to a consumer transaction other than a consumer.

(5) "Home solicitation transaction" means a consumer transaction:

(A) for the purchase of goods, other than farm equipment, and insurance sales regulated by the State Board of Insurance, or services, payable in installments or in cash where the consideration exceeds \$25, in which the merchant or person acting for him engages in a personal solicitation of the sale to the consumer at a residence and the consumer's agreement or offer to purchase is given at the residence to the merchant or person acting for him, but it does not include a sale made pursuant to a preexisting revolving charge account or retail charge agreement, or a sale made pursuant to prior negotiations between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale; or

(B) for the purchase of realty, payable in installments or in cash where the consideration exceeds \$100 in which the merchant or person acting for him engages in a solicitation of the sale to the consumer at the residence of the consumer and the consumer's agreement or offer to purchase is given at the residence of the

consumer; but it does not include a sale of realty in which transaction the purchaser is represented by a licensed attorney or in which the transaction is being negotiated by a licensed real estate broker or in which the transaction is being negotiated by the person who owns the realty not at the residence of the consumer.

[Amended by Acts 1975, 64th Leg., p. 124, ch. 59, § 1, eff. Sept. 1, 1975.]

Section 3 of the 1975 amendatory act provided: "All laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict."

Art. 5069-13.02. Consumer's Right to Cancel

[See Compact Edition, Volume 4 for text of (a) to (c)]

(d) Use of the forms and notices of the right to cancel prescribed by the Federal Trade Commission's trade-regulation rule providing a cooling-off period for door-to-door sales constitutes compliance with this section.

(e) A home solicitation sale in which the contract price does not exceed \$200 complies with the notice requirements of this Act if:

(1) the consumer may at any time cancel the order, refuse to accept delivery of the goods without incurring any obligation to pay for them, or return the goods to the merchant and receive a full refund of the amount the consumer has paid; and

(2) the consumer's right to cancel the order, refuse delivery, or return the goods without obligation or charge at any time is clearly and conspicuously set forth on the face or reverse side of the sales ticket.

[Amended by Acts 1975, 64th Leg., p. 124, ch. 59, § 2, eff. Sept. 1, 1975.]

Section 3 of the 1975 amendatory act provided: "All laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict."

CHAPTER 14. ALTERNATIVE DISCLOSURE REQUIREMENTS IN COORDINATION WITH FEDERAL LAW [REPEALED]

Article

5069-14.01 to 5069-14.28. Repealed.

Arts. 5069-14.01 to 5069-14.28. Repealed by Acts 1979, 66th Leg., p. 1595, ch. 672, § 51, eff. Aug. 27, 1979

The repealed articles, relating to alternative disclosure requirements in coordination with federal law, were derived from Acts 1975, 64th Leg., p. 421, ch. 184, § 1. Prior to repeal, art. 5069-14.19 was amended by Acts 1977, 65th Leg., p. 231, ch. 111, § 2.

CHAPTER 15. REVOLVING LOAN AND REVOLVING TRIPARTY ACCOUNTS

Article

5069-15.01. Definitions.
5069-15.02. Maximum Rates of Interest.
5069-15.03. More Than One Account.

Article

5069-15.04. Credit Covered.
5069-15.05. Amendments.
5069-15.06. Compliance with Federal Consumer Credit Protection Act.
5069-15.07. Collateral and Insurance.
5069-15.08. Recovery of Expenses.
5069-15.09. Conflicts.
5069-15.10. Application of This Chapter 15.
5069-15.11. Penalties.

Art. 5069-15.01. Definitions

The following terms used in this chapter shall have the meanings shown:

(a) "Account" means a revolving loan account or a revolving triparty account.

(b) "Arrangement" means a written agreement that makes an account available to a person and that is accepted by use of the account.

(c) "Average daily balance" means the sum of each day's ending balance in an account during a billing cycle (less any interest included in such balance), divided by the number of days in such billing cycle. Such sum may include purchases and loans posted to the account during such billing cycle and such sum shall be reduced by all payments and credits during such billing cycle.

(d) "Bank" means a person doing business under the authority of and as permitted by The Texas Banking Code of 1943, as amended (Article 342-101 et seq., Vernon's Texas Civil Statutes), and any person organized under Title 12, United States Code, as amended.

(e) "Billing cycle" means the time interval between periodic billing statements. Billing cycles in any 12-month period may be considered equal if no billing cycle within such 12-month period varies more than eight days in length from any other billing cycle and if the number of billing cycles in such 12-month period does not exceed 12.

(f) "Creditor" means a bank, savings and loan association, or licensee who lends money or otherwise extends credit to a customer under a credit card or cards and who may authorize other persons to honor such credit card or cards.

(g) "Credit card" means a card, confirmation or identification, or check or other written request by which a customer obtains access to an account.

(h) "Customer" means a person who has accepted an arrangement.

(i) "Licensee" means the holder of a license issued pursuant to Chapter 3 of Subtitle 2 of this Title 79.¹

(j) "Person" means an individual or a partnership, corporation, joint venture, trust, association, or other legal entity however organized.

(k) "Revolving loan account" means an arrangement between a creditor and a customer establishing an open-end line of credit under which

(1) the customer may obtain loans from the creditor;

(2) the unpaid balance of the loans and any interest thereon are debited to an account;

(3) interest is not precomputed but may be computed on the balances of the customer's account outstanding from time to time; and

(4) the customer may defer payment of any part of the balance.

(l) "Revolving triparty account" means an arrangement between a creditor and a customer establishing an open-end line of credit under which

(1) by means of a credit card, the customer may obtain loans from the creditor, which may be advanced by other participating persons, and lease goods or purchase goods or services from participating lessors or sellers, and the creditor will pay the other participating persons, lessors, or sellers and the customer is obligated to pay the creditor the amount of such loans or the cost of such leases or purchases;

(2) the unpaid balance of such loans, leases, and purchases and any interest thereon are debited to an account;

(3) interest is not precomputed but may be computed on the balances of the customer's account outstanding from time to time; and

(4) the customer may defer payment of any part of the balance.

(m) "Savings and loan association" means any person doing business under the authority of and as permitted by the Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes) or any person incorporated under the provisions of the Home Owners Loan Act of 1933, as amended.²
[Added by Acts 1979, 66th Leg., p. 1501, ch. 648, § 1, eff. Aug. 27, 1979.]

¹ Article 5069-3.01 et seq.

² 12 U.S.C.A. § 1461 et seq.

Section 3 of the 1979 Act provided:

"The invalidity for any reason of any paragraph, phrase, clause, article, or section of this statute shall not affect the validity or the enforceability of any portion of the remainder."

Art. 5069-15.02. Maximum Rates of Interest

(a) A creditor may charge and collect interest on an account either

(1)(i) on that portion of the average daily balance not above \$1,500 at an annual rate not above 18 percent; and (ii) on that portion of the average daily balance above \$1,500 and not above \$2,500 at an annual rate not above 12 percent; and (iii) on that portion of the average daily balance above \$2,500 at an annual rate not above 10 percent; or

(2) on the entire average daily balance at the annual rate of 14.4 percent.

(b) A creditor may charge one-twelfth of the applicable annual rate under Section (a) of Article 15.02 of this chapter in any billing cycle on the average daily balance of an account during such billing cycle, if billing cycles may be considered equal under Article 15.01(e) of this chapter.

(c) The maximum interest which may be contracted for and collected under this article may be computed by a method other than the average daily balance method as defined in this chapter if the amount of interest computed by the other method will not exceed the amount of interest computed under such average daily balance method.

[Added by Acts 1979, 66th Leg., p. 1502, ch. 648, § 1, eff. Aug. 27, 1979.]

Art. 5069-15.03. More Than One Account

Any customer may request and a creditor may make available to any customer more than one account, and the creditor may charge interest at the rates set out in Article 15.02 of this chapter on each such account, but no creditor may require that a customer have more than one such account for the purpose of collecting more interest.

[Added by Acts 1979, 66th Leg., p. 1502, ch. 648, § 1, eff. Aug. 27, 1979.]

Art. 5069-15.04. Credit Covered

The provisions of this Chapter 15 shall apply to loans and extensions of credit for both consumer and business purposes under an arrangement.

[Added by Acts 1979, 66th Leg., p. 1503, ch. 648, § 1, eff. Aug. 27, 1979.]

Art. 5069-15.05. Amendments

A creditor unilaterally may amend an agreement covering an arrangement and account, but no change adverse to the customer shall be effective as to existing balances or future credit until the first billing cycle beginning more than 90 days after written notice of the change to the customer.

[Added by Acts 1979, 66th Leg., p. 1503, ch. 648, § 1, eff. Aug. 27, 1979.]

Art. 5069-15.06. Compliance with Federal Consumer Credit Protection Act

Nothing in this chapter shall be construed to alter any creditor's obligation to comply with the federal Consumer Credit Protection Act.

[Added by Acts 1979, 66th Leg., p. 1503, ch. 648, § 1, eff. Aug. 27, 1979.]

Art. 5069-15.07. Collateral and Insurance

Creditors may require and take in connection with an account only such insurance and collateral as are

allowed under Chapter 4 of Subtitle 2 of this Title 79.¹

[Added by Acts 1979, 66th Leg., p. 1503, ch. 648, § 1, eff. Aug. 27, 1979.]

¹ Article 5069-4.01 et seq.

Art. 5069-15.08. Recovery of Expenses

Creditors may recover from customers amounts actually incurred by a creditor as court costs; attorneys' fees set by a court; lawful fees for filing, recording, or releasing in any public office any document securing an account; the reasonable cost actually expended for repossessing, storing, preparing for sale, or selling any collateral; fees for noting a lien on or transferring a certificate of title to any motor vehicle securing an account; and premiums or other identifiable charges received in connection with permitted sale of insurance.

[Added by Acts 1979, 66th Leg., p. 1503, ch. 648, § 1, eff. Aug. 27, 1979.]

Art. 5069-15.09. Conflicts

Arrangements and accounts covered by this chapter shall not be subject to the provisions of any other chapters of this title except as herein specifically provided.

[Added by Acts 1979, 66th Leg., p. 1503, ch. 648, § 1, eff. Aug. 27, 1979.]

Art. 5069-15.10. Application of This Chapter 15

This Chapter 15 on and after its effective date shall apply

(a) to arrangements and accounts existing on the date of enactment when, before or after the effective date hereof, the creditor shall amend agreements covering such arrangements and accounts to give notice of the application of this Chapter 15 to such arrangements and accounts in compliance with Section 15.05 of this Chapter 15; and

(b) to all arrangements and accounts created after the enactment of this Chapter 15 unless the agreement providing for such arrangement or account provides otherwise.

[Added by Acts 1979, 66th Leg., p. 1503, ch. 648, § 1, eff. Aug. 27, 1979.]

Art. 5069-15.11. Penalties

The provisions of Chapter 8 of Subtitle 2 of this Title 79¹ shall apply to violations of this Chapter 15.

[Added by Acts 1979, 66th Leg., p. 1503, ch. 648, § 1, eff. Aug. 27, 1979.]

¹ Article 5069-8.01 et seq.

[Chapters 16 to 49 reserved for expansion]

CHAPTER FIFTY-ONE. PAWNSHOPS

Art. 5069-51.08. Examinations

At such times as the Commissioner may deem necessary, the Commissioner, or his duly authorized representative, may make an examination of the place of business of each licensee and may inquire into and examine the transactions, books, accounts, papers, correspondence and records of such licensee insofar as they pertain to the business regulated by this Act. Such books, accounts, papers, correspondence and records shall also be open for inspection at any reasonable time by any peace officer, without need of judicial writ or other process. In the course of an examination, the Commissioner or his duly authorized representative shall have free access to the office, place of business, files, safes, and vaults of such licensee, and shall have the right to make copies of any books, accounts, papers, correspondence and records. The Commissioner or his duly authorized representative may, during the course of such examination, administer oaths and examine any person under oath upon any subject pertinent to any matter about which the Commissioner is authorized or required by this Act to consider, investigate, or secure information. Any licensee who fails or refuses to let the Commissioner or his duly authorized representative or any peace officer examine or make copies of such books, or other relevant documents shall thereby be deemed in violation of this Act and such failure or refusal shall constitute grounds for the suspension or revocation of such license. The information obtained in the course of any examination or inspection shall be confidential and privileged, except for use in a criminal investigation or prosecution. Each licensee shall pay to the Commissioner an amount assessed by the Commissioner to cover the direct and indirect cost of such examinations and a proportionate share of general administrative expense, not to exceed Five Hundred Dollars in any calendar year, and in the event a licensee hereunder is also licensed to do business under Chapter 3 of the Texas Credit Code, Chapter 3 of Subtitle 2, Chapter 274, Acts of the 60th Legislature, Regular Session, 1967, in the same place of business licensed hereunder, the aggregate charges for examinations authorized by the said Chapter 3 of the Texas Credit Code and by this Act shall not exceed Five Hundred Dollars in any calendar year.

[Amended by Acts 1977, 65th Leg., p. 878, ch. 329, § 3, eff. May 30, 1977.]

TITLE 81

JAILS

Article

5115.1. Commission on Jail Standards.

5115c. Intercounty Cooperation Regarding Furnishing and Operating Jail Facilities.

Art. 5115. Jails Provided

The Commissioners Court shall provide safe and suitable jails for their respective counties, and shall cause the same to be maintained in good sanitary condition at all times, properly ventilated, heated and lighted; structurally sound, fire resistant and kept in good repair. Furthermore, they shall cause the jails in their respective counties to be kept in a clean and healthy condition, provided with water of safe quality and ample quantity and sewer disposal facilities in accordance with good sanitary standards, and provided with clean, comfortable mattresses and blankets, sufficient for the comfort of the prisoners, and that food is prepared and served in a palatable and sanitary manner and according to good dietary practices and of a quality to maintain good health. Such jails shall comply with the provisions of this Act and with the rules and procedures of the Commission on Jail Standards.

SUITABLE SEGREGATION

The term "safe and suitable jails," as used in this Act, shall be construed to mean jails which provide adequate segregation facilities by having separate enclosures, formed by solid masonry or solid metal walls, or solid walls of other comparable material, separating witnesses from all classifications of prisoners; and males from females; and juveniles from adults; and first offenders, awaiting trial, from all classifications of convicted prisoners; and prisoners with communicable or contagious diseases from all other classifications of prisoners. Furthermore, the term "safe and suitable" jails shall be construed to mean jails either now or hereafter constructed, except that, in lieu of maintaining its own jail, any county whose population is not large enough to justify building a new jail or remodeling its old jail shall be exempt from the provisions of this Act by contracting with the nearest available county whose jail meets the requirements set forth in this Act for the incarceration of its prisoners at a daily per capita rate equal to the cost of maintaining prisoners in said jail, or at a daily rate mutually agreed to by the contracting counties.

No person suspected of insanity, or who has been legally adjudged insane, shall be housed or held in a

jail, except that such a person who demonstrates homicidal tendencies, and who must be restrained from committing acts of violence against other persons, may be held in a jail for a period of time not to exceed a total of twenty-four (24) hours, during which period he shall be kept under observation continuously. At the end of the twenty-four (24) hour period, such person shall be released or taken to a hospital or mental hospital. Furthermore, for such temporary holding of each person suspected of insanity, or who has been legally adjudged insane, there shall be provided a special enclosure or room, not less than forty (40) square feet and having a ceiling height of not less than eight (8) feet above the floor. Furthermore, the floor and the walls of such enclosure shall be provided with a soft covering designed to protect a violent person, temporarily held therein, from self-injury or destruction. One hammock, not less than two (2) feet, three (3) inches wide and six (6) feet, three (3) inches long, made of elastic or fibrous material shall be provided in each such special enclosure.

SUITABLE SECURITY AND SAFETY

For the purpose of this Act, the term "safe and suitable jails" is further defined to mean jails which provide adequate security and safety facilities by having separate cells or compartments, dormitories, and day rooms, of varying dimensions and capacities for prisoners confined therein, except that, if practicable, no one such cell or compartment shall be designed for confining two (2) prisoners only. Cells or compartments shall be designed to accommodate from one (1) to eight (8) prisoners each, and furthermore, such dormitories and day rooms shall be designed to accommodate not more than twenty-four (24) prisoners each. Furthermore, in each such jail there shall be provided individual one-man or one-woman cells to accommodate not less than thirty per cent (30%) of the total designated prisoner capacity of the jail and dormitory-type space may be provided to accommodate not more than forty per cent (40%) of the total designated prisoner capacity of the jail. All cells, compartments and dormitories for sleeping purposes, where each such cell, compartment or dormitory is designed to accommodate three (3) or more prisoners, shall be accessible to a day room to which prisoners may be given access during the day. Cells for one (1) prisoner only shall have a minimum floor area of forty (40) square feet and all other cells, compartments, dormitories and day rooms (including

safety vestibule area) shall have a minimum floor area equal to eighteen (18) square feet for each prisoner to be confined therein. The ceiling height above finished floor shall be not less than eight (8) feet for any cell, compartment, dormitory or day room where prisoners are confined.

The term "safe and suitable jails," as used in this Act, is further defined to mean that, for reasons of safety to officers and security, the entrance and/or exit to each group of enclosures forming a cell block or group of cells and/or compartments used for the confinement of three (3) or more prisoners shall be through a safety vestibule having one (1) or more interior doors in addition to the main outside entrance door to such cell block, all arranged to be locked, unlocked, opened or closed by control means located outside of any such enclosure or cell block.

SUITABLE SANITATION AND HEALTH

The term "safe and suitable jails" is further defined to mean jails which provide adequate facilities for maintaining proper standards in sanitation and health. Each cell designed for one (1) prisoner only shall be provided with a water closet and a combination lavatory and drinking fountain, table and seat. Each cell, compartment or dormitory designed for three (3) or more prisoners, shall be provided with one (1) water closet and one (1) combination lavatory and drinking fountain for each twelve (12) prisoners or fraction thereof to be confined therein. Furthermore, all such cells, compartments and dormitories shall be provided with one (1) bunk, not less in size than two (2) feet, three (3) inches wide and six (6) feet, three (3) inches long, for each prisoner to be confined therein. Furthermore, each day room for the confinement of three (3) or more prisoners shall be provided with one (1) water closet, one (1) combination lavatory and drinking fountain and one (1) shower bath for each twelve (12) prisoners, or fraction thereof, to be confined therein. Furthermore, each day room shall be otherwise suitably furnished.

The provision of this Act, as amended, shall become applicable to all jails upon its effective date. The standards prescribed by this Act are minimum standards only. The provisions of this Act are enforceable by the Commission on Jail Standards. [Amended by Acts 1975, 64th Leg., p. 1283, ch. 480, § 15, eff. June 19, 1975.]

Art. 5115.1. Commission on Jail Standards

Policy

Sec. 1. It is the policy of the State of Texas that all county jail facilities in the state conform to certain minimum standards of construction, maintenance, and operation. It is the purpose of the legislature by this Act to implement this policy by establishing a commission on jail standards with the au-

thority and responsibility to administer the provision of this Act and other laws relating to standards for county jails.

Definitions

Sec. 2. In this Act:

- (1) "Commission" means the Commission on Jail Standards.
- (2) "Executive director" means the executive director of the Commission on Jail Standards.
- (3) "County jail" means any jail, lockup, or other facility that is operated by or for a county for the confinement of persons accused or convicted of an offense.
- (4) "Prisoners" means persons confined in a county jail.

Commission Created

Sec. 3. The Commission on Jail Standards is created.

Application of Sunset Act

Sec. 3a. The Commission on Jail Standards is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1987.

¹ Article 5429k.

Membership—Appointment, Terms, Vacancies

Sec. 4. (a) The commission consists of nine members appointed by the governor with the advice and consent of the senate. Two members shall be county sheriffs, one from a county with a population of over 200,000 persons and one from a county with a population of 200,000 or less, according to the latest United States census. One member shall be a county judge; one shall be a practitioner of medicine licensed by the State Board of Medical Examiners; the other five positions shall be filled by citizens of the state who hold no public office. The sheriffs and the county judge appointed to the commission shall perform the duties of a member of the commission in addition to their other duties.

(b) Except as provided by Subsection (c) of this section, members are appointed for a term of six years expiring on January 31 of an odd-numbered year.

(c) For terms that begin within 60 days after the effective date of this Act, the governor shall appoint:

- (1) three members for terms that expire on January 31, 1981;
- (2) three members for terms that expire on January 31, 1979; and
- (3) three members for terms that expire on January 31, 1977.

(d) If a sheriff or county judge on the commission ceases to hold office or if a vacancy otherwise occurs in the membership of the commission, the governor shall appoint a replacement who possesses the same qualifications as the member who vacated his position, with the advice and consent of the senate, to serve the unexpired portion of the term. If a vacancy occurs at a time when the senate is not in session, the vacancy shall nevertheless be filled on an interim basis, and the interim appointee shall serve as a member of the commission until his nomination has been acted on by the senate.

Chairman; Vice-Chairman

Sec. 5. The commission shall biennially elect one of its members chairman and one vice-chairman for a term of two years beginning on February 1 of each odd-numbered year.

Meetings; Quorum; Rules

Sec. 6. (a) The commission shall hold a regular meeting each calendar quarter and may hold special meetings at the call of the chairman or on the written request of three members. The chairman, or in his absence, the vice-chairman, shall preside at all meetings of the commission.

(b) Five members constitute a quorum for the transaction of business.

(c) The commission shall adopt, amend, and rescind rules for the conduct of its proceedings.

Expenses

Sec. 7. Members of the commission are not entitled to compensation but are entitled to reimbursement for actual and necessary expenses incurred in performing their official duties.

Director; Staff

Sec. 8. (a) The commission shall employ an executive director to serve at the will of the commission. The executive director is subject to the policy direction of the commission and is the chief executive officer of the commission.

(b) The executive director may employ personnel as necessary to enforce and administer this Act.

(c) The executive director and employees are entitled to compensation and expenses as provided by legislative appropriation.

Duties of the Commission

Sec. 9. (a) The commission shall:

(1) promulgate reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails;

(2) promulgate reasonable rules and procedures establishing minimum standards for the custody, care, and treatment of prisoners;

(3) promulgate reasonable rules establishing minimum standards for the number of jail supervisory personnel and for programs and services to meet the needs of prisoners;

(4) promulgate reasonable rules and procedures establishing minimum requirements for programs of rehabilitation, education, and recreation in county jails;

(5) revise, amend, or change rules and procedures if necessary, in a manner not inconsistent with this Act;

(6) provide consultation and technical assistance to local government officials with respect to county jails;

(7) review and comment on plans for the construction and major modification or renovation of county jails;

(8) require that the sheriff and commissioners of each county submit to the commission, on a form prescribed by the commission, an annual report on the conditions in each county jail within their jurisdiction, including all information necessary to determine compliance with state law, commission orders, and the rules promulgated under this Act;

(9) review the reports submitted under Subdivision (8) of this subsection and require its employees to inspect county jails regularly to insure compliance with state law, commission orders, and rules and procedures promulgated under this Act; and

(10) determine annually, or more often, whether each county jail is in compliance with the rules and procedures promulgated under this Act.

(b) The fact that compliance with a commission rule or procedure requires major modification or renovation of an existing jail or construction of a new jail does not render a commission rule or procedure unreasonable.

Annual Report

Sec. 10. The commission shall make a report to the governor, the lieutenant governor, and the speaker of the house of representatives, not later than January 31 of each year, covering its operations, its findings concerning county jails during the preceding year, and whatever recommendations it deems appropriate.

Enforcement of Jail Standards

Sec. 11. (a) The commission shall be granted access at any reasonable time to any county jail facility or part of any county jail facility and shall be granted access to all books, records, and data pertaining to any county jail which the commission or the executive director deems necessary for the administration of the commission's functions, powers, and duties. The commissioners and sheriff of each

county shall furnish the commission or any of its members, or the executive director or any employee designated by the executive director, any information which he states is necessary to enable the commission to discharge its functions, powers, and duties, to determine whether its rules are being observed or whether its orders are being obeyed and otherwise to implement the purposes of this Act. In the exercise of its function, powers, and duties, the commission may issue subpoenas and subpoenas duces tecum to compel the attendance of witnesses and the production of books, records, and documents, administer oaths, and take testimony concerning all matters within its jurisdiction. The commission is not bound by strict rules of evidence or procedure in the conduct of its proceedings, but its determinations shall be founded on sufficient legal evidence to sustain them. The commission may delegate to the executive director the authority conferred by this subsection.

(b) When the commission finds that a county jail is not in compliance with state law, or the rules and procedures of the commission, or fails to meet the minimum standards prescribed by the commission or by state law, it shall report the noncompliance to the commissioners and sheriff of the county responsible for the jail that is not in compliance. The commission shall send a copy of the report to the governor.

(c) The commission shall grant the county or sheriff a reasonable time, not to exceed one year after a report of noncompliance, to comply with its rules and procedures and with state law. On application of the sheriff or commissioners of a county, if clearly justified by the facts and circumstances, the commission may grant reasonable variances for operation of county jails not in strict compliance with state law, except that no variance may be granted to permit unhealthy, unsanitary, or unsafe conditions.

(d) If the commissioners or sheriff does not comply within the time granted by the commission, the commission may, by order, prohibit the confinement of prisoners in the noncomplying jail and designate another detention facility for their confinement. If a prohibition and transfer order is issued, the sheriff of the county in which the noncomplying jail is situated shall immediately transfer all prisoners to the detention facility specified by the commission.

(e) The county responsible for a nonconforming jail shall bear the cost of transportation and maintenance of prisoners transferred from a noncomplying jail by order of the commission. The costs of transportation and maintenance shall be determined by the commission and shall be paid into the treasury of the entity operating the detention facility to which the prisoners are transferred.

(f) The commission, in lieu of closing a county jail, may institute an action in its own name to enforce,

or enjoin the violation of, its orders, rules, or procedures, or of Article 5115, Revised Civil Statutes of Texas, 1925, as amended. The commission shall be represented by the attorney general. An action brought pursuant to this subsection is in addition to any other action, proceeding, or remedy provided by law, and may be brought in a district court of Travis County. A suit brought under this subsection shall be given preferential setting and shall be tried by the court, without a jury. The court shall issue an injunction ordering compliance if it finds:

- (1) that the county jail is being operated in such a manner that it does not comply with the rules and procedures promulgated by the commission or with state law; and
- (2) that the commissioners or sheriff has been given a reasonable time to comply with the rules and procedures and has failed to do so.

Judicial Review

Sec. 12. (a) A county may appeal a commission order issued under Subsection (d), Section 11, of this Act by filing a petition in a district court of Travis County.

(b) The petition must be filed within 30 days after the date of the commission's order.

(c) Service of citation on the commission must be accomplished within 30 days after the date the petition is filed. Citation may be served on the executive director.

(d) In an action brought under this section, the court is confined to the record developed by the commission, and the only issues before the court are:

- (1) whether the order of the commission is based on substantial evidence; and
- (2) whether the order is arbitrary, capricious, or illegal.

Regulations

Sec. 13. (a) The commission shall promulgate the regulations required by Section 9 of this Act on or before January 1, 1977.

(b) On or before March 1, 1977, the commission shall mail a copy of the regulations promulgated pursuant to Section 9 of this Act to each county sheriff in this state. The chairman shall certify to the governor that the commission has complied with the requirements established by this section.

Qualifications of Jail Personnel

Sec. 14. (a) The Commission on Law Enforcement Officer Standards and Education shall establish minimum physical, mental, educational, and moral standards for persons employed or utilized in the operation of county jails.

(b) The authority and power of the Commission on Law Enforcement Officer Standards and Education is extended to cover all county jail personnel. The staff of the Commission on Law Enforcement Officer Standards and Education shall be enlarged sufficiently to discharge the additional responsibilities imposed by this section. Counties shall have a period of one year following establishment of standards for county jail personnel within which to have all jail personnel certified by the Commission on Law Enforcement Officers Standards and Education.

(c) A standard requiring a person to have any degree of formal education or the equivalent is not applicable to a person who was employed or whose services were utilized in the operation of a county jail on August 29, 1977.

[Acts 1975, 64th Leg., p. 1278, ch. 480, §§ 1 to 14, eff. June 19, 1975. Amended by Acts 1977, 65th Leg., p. 1850, ch. 735, § 2.131, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1596, ch. 673, § 1, eff. Aug. 27, 1979.]

Art. 5115c. Intercounty Cooperation Regarding Furnishing and Operating Jail Facilities

Sec. 1. Two or more counties, acting through their commissioners courts, may contract with one another for the joint operation of a jail to serve the contracting counties. The contract may provide for the construction or acquisition of a facility for this purpose or for the use of an existing facility. The joint facility is not required to be located at the county seat of one of the contracting counties.

Sec. 2. A county that is party to a contract under this Act may use any method of financing its

share of the capital expenditures under the contract for acquisition, construction, enlargement, or improvement of the joint facility, including necessary acquisition of land, as would be available to it if the county operated its own jail, including the issuance as provided by law of general obligation bonds or other evidences of indebtedness.

Sec. 3. (a) The administration of a jail operated under this Act is the responsibility of the sheriff of the county where the jail is located unless he declines that responsibility by filing a written statement to that effect with the commissioners court of that county. If the sheriff so declines, the commissioners courts of the contracting counties by joint action shall appoint a jail administrator for the jail.

(b) The sheriff or jail administrator responsible for the administration of the jail has all the powers, duties, and responsibilities with regard to the keeping of prisoners and operation of the jail that are conferred by law on a sheriff in a county that operates its own jail.

(c) Action by a sheriff declining the responsibility for the administration of a jail operated under this Act does not take effect until a jail administrator has been appointed and has assumed his duties. If there is a vacancy in the position of jail administrator, the sheriff of the county where the jail is located is responsible for the administration of the jail until a new jail administrator is appointed and assumes the position.

[Acts 1977, 65th Leg., p. 1436, ch. 581, §§ 1 to 3, eff. Aug. 29, 1977.]

TITLE 82

JUVENILES

Article

- 5119a-1. Transfer of Gatesville State School for Boys to Department of Corrections.
5139H-6. Juvenile Boards in 24th and 135th Judicial Districts.
5139JJJ. Webb County Juvenile Board.
5139KKK. East Texas Juvenile Board.
5139LLL. Colorado, Lavaca, Gonzales and Guadalupe Counties; Juvenile Boards.
5139MMM. Rockwall County Juvenile Board.
5139NNN. Somervell County Juvenile Board.
5139OOO. Juvenile Boards in Carson, Childress, Collingsworth, Donley, and Hall Counties.
5139PPP. Galveston County Juvenile Board.
5139QQQ. Grayson County Juvenile Board.
5139RRR. Hemphill, Roberts, and Lipscomb Counties Juvenile Boards.

Art. 5119a-1. Transfer of Gatesville State School for Boys to Department of Corrections

Sec. 1. In consideration of the benefit to the public health, safety, and welfare, and the benefit to the state of relieving congested facilities in the Texas Department of Corrections, the chairman of the Texas Youth Council, on behalf of the Texas Youth Council, shall transfer and convey title to the land, buildings, and facilities of the Gatesville State School for Boys to the Texas Board of Corrections for the use and benefit of the Texas Department of Corrections, effective September 1, 1979.

Sec. 2. The Texas Department of Corrections is hereby authorized to take possession, for the purposes of renovation, alteration, and construction, of the buildings and facilities of the Gatesville State School for Boys, according to the following schedule:

(a) On the effective date of this Act, the Texas Department of Corrections shall take possession of the Valley, Riverside, and Live Oak units of the Gatesville State School for Boys.

(b) On June 1, 1979, the Texas Department of Corrections shall take possession of the Terrace and Sycamore units of the Gatesville State School for Boys.

(c) On September 1, 1979, the Texas Department of Corrections shall take possession of the Hackberry and Hilltop units, the administration buildings, and all other land, buildings, and facilities of the Gatesville State School for Boys.

Sec. 3. From funds appropriated to the Texas Youth Council for the Gatesville State School Building and Repair Program for the biennium ending

August 31, 1979, the sum of \$571,000 is hereby transferred and appropriated to the Texas Department of Corrections for renovation, remodeling, and alteration of buildings and facilities of the Gatesville State School for Boys as required to house adult inmates. From funds appropriated for the same biennium for operation of the Gatesville State School for Boys, the Texas Youth Council may transfer to the Texas Department of Corrections for the same purpose an amount determined by agreement between the Texas Youth Council and the Texas Board of Corrections.

Sec. 4. The Texas Youth Council and the Texas Board of Corrections by agreement shall provide for the transfer or retention by the Texas Youth Council of all items of state property now located at the Gatesville State School for Boys, including furniture, equipment, vehicles, tools, supplies, linens, machinery, utensils, livestock, and agricultural implements. The Texas Youth Council and the Texas Board of Corrections shall inform the State Board of Control of the disposition made of all such property on or before September 1, 1979.

[Acts 1978, 65th Leg., 2nd C.S., p. 10, ch. 4, §§ 1-4, eff. Aug. 14, 1978.]

Art. 5138. Repealed by Acts 1979, 66th Leg., p. 2429, ch. 842, art. 1, § 2(1), eff. Sept. 1, 1979.

Acts 1979, 66th Leg., ch. 842, repealing this article, enacts the Human Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Human Resources Code.

Art. 5139E-1. Smith County Juvenile Board

(1) There is established a Juvenile Board in Smith County to be composed of the County Judge of the county, the District Judges of the Judicial Districts therein and the Judge of the Court of Domestic Relations. The County Judge of said county shall be chairman of such Board and its chief administrative officer. The official title of the Board in said county shall be the name of the county followed by the words: "County Juvenile Board."

(2) [Deleted]

(3) As compensation for the added duties hereby imposed upon members of such Juvenile Board, each member thereof may be compensated by an annual salary as determined by the Commissioners Court of the county, payable in 12 equal monthly installments; and such compensation shall be in addition

to all other compensation now provided for or allowed the Judges of the Domestic Relations, County, and District Courts by law, and shall be paid out of the general fund of the county.

[Amended by Acts 1975, 64th Leg., p. 1970, ch. 653, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1330, ch. 528, § 1, eff. Aug. 29, 1977.]

Art. 5139F. Juvenile Board in Counties of 110,000 to 125,500; Additional Compensation

Sec. 1. In any county having a population of more than one hundred and ten thousand (110,000) inhabitants and less than one hundred and twenty-five thousand, five hundred (125,500) inhabitants according to the last preceding Federal Census, the Judges of the several District Courts of such county, together with the County Judge of such county, are hereby constituted a Juvenile Board for such county. Subject to the approval of the Commissioners Court, the members composing such Juvenile Board in such county may each be allowed additional compensation in an amount which shall be designated by the County Commissioners and which shall be paid in twelve (12) equal installments out of the general fund of such county.

[See Compact Edition, Volume 4 for text of 2 and 3]

[Amended by Acts 1975, 64th Leg., p. 331, ch. 138, § 1, eff. May 8, 1975.]

Art. 5139G. Juvenile Board in Counties Comprising 9th, Second 9th, and 221st Judicial District

Sec. 1. In each county comprising the 9th Judicial District, the Second 9th Judicial District, and the 221st Judicial District, the judges of the district courts having jurisdiction in the county, together with the county judge of the county and the judges of the county courts at law, if there are any, shall constitute the juvenile board of such county. The members of each board shall each be allowed additional compensation not less than \$3,000 per annum nor more than \$10,000 per annum to be fixed by the Commissioners Court and paid monthly in twelve (12) equal installments out of the general fund of the county.

Sec. 2. This Act shall be cumulative of existing laws relating to compensation of judges of the district courts, county courts, and county courts at law.

[See Compact Edition, Volume 4 for text of 3]

[Amended by Acts 1975, 64th Leg., p. 439, ch. 186, § 11, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 825, ch. 372, § 1, eff. June 6, 1979.]

Art. 5139H-1. Juvenile Boards in Counties of 38th and 63rd Judicial Districts; Additional Compensation

Sec. 1. In each county comprising the 38th Judicial District and in each county comprising the 63rd Judicial District, the Judge of the District Court, together with the County Judge of the county, shall constitute the Juvenile Board of such county. The members of such Board in each county may each be allowed additional compensation of not less than One Thousand, Two Hundred Dollars (\$1,200) per annum and not more than Three Thousand, Six Hundred Dollars (\$3,600) per annum, to be fixed by the Commissioners Court and paid monthly in twelve (12) equal installments out of the General Fund of the County; and provided that the compensation allowed County Judges hereunder shall not be counted as fees of office.

[See Compact Edition, Volume 4 for text of 2]

[Amended by Acts 1975, 64th Leg., p. 243, ch. 93, § 1, eff. April 30, 1975.]

Art. 5139H-4. Juvenile Boards in Atascosa, Frio, LaSalle, Wilson, and Karnes Counties

In each of the counties of Atascosa, Frio, LaSalle, Wilson, and Karnes, the Judge of each judicial district that includes the county, together with the County Judge of the county, shall constitute the Juvenile Board of such county. The members of such Board in each county shall each be allowed additional compensation of not less than One Thousand, Two Hundred Dollars (\$1,200) per annum and not more than Four Thousand, Eight Hundred Dollars (\$4,800) per annum, to be fixed by the Commissioners Court and paid monthly in twelve (12) equal installments out of the general fund of the county; and provided that the compensation allowed County Judges hereunder shall not be counted as fees of office.

[Amended by Acts 1977, 65th Leg., p. 1267, ch. 490, § 1, eff. Aug. 29, 1977.]

Art. 5139H-5. Juvenile Boards in 36th and 156th Judicial Districts; Additional Compensation

Sec. 1. In each county comprising the 36th Judicial District and in each county comprising the 156th Judicial District, the Judge of the District Court, together with the County Judge of the county, shall constitute the Juvenile Board of such county. The members composing each County Juvenile Board within the Judicial Districts may each be allowed additional compensation of not more than Two Thousand, Four Hundred Dollars (\$2,400) per annum, which shall be paid in twelve (12) equal installments out of the General Fund of each county, such additional compensation to each member of the

Board to be fixed by the Commissioners Court of each county; and provided that the compensation allowed County Judges hereunder shall not be counted as fees of office.

[See Compact Edition, Volume 4 for text of 2]

[Amended by Acts 1975, 64th Leg., p. 1929, ch. 629, § 1, eff. June 19, 1975.]

Art. 5139H-6. Juvenile Boards in 24th and 135th Judicial Districts

In each of the counties comprising the 24th Judicial District and the 135th Judicial District, except Victoria County, the judge of each judicial district having jurisdiction in the county and the county judge of each county constitute the juvenile board of the county. The members of the board in each of those counties may each be allowed, for additional duties as a member of the board, additional compensation in a reasonable amount to be set by the commissioners court of each county, which shall be paid in 12 equal installments out of the general funds of each county. In no event shall the additional compensation for services rendered on the juvenile board be set lower than that existing on the effective date of this Act. Such compensation shall be in addition to all other compensation now provided or allowed by law for county and district judges. The provisions of this Act do not apply to nor affect the Victoria County Juvenile Board.

[Acts 1977, 65th Leg., p. 1440, ch. 585, § 1, eff. Aug. 29, 1977.]

Art. 5139J. Juvenile Boards in Harrison and Rusk Counties

[See Compact Edition, Volume 4 for text of 1]

Sec. 2. As compensation for the added duties imposed upon members of each juvenile board, each member thereof may be allowed additional compensation to be determined by the commissioners court of the county and paid monthly in twelve (12) equal installments out of the general fund of the county. Such compensation shall be in addition to all other compensation now provided or allowed by law for county judges and district judges.

[See Compact Edition, Volume 3 for text of 3 and 3a]

Sec. 3b. The juvenile board of Rusk County may appoint a juvenile officer whose salary shall be fixed by the Commissioners Court of said county in an amount not less than Three Thousand Dollars (\$3,000) per year. In addition, the Commissioners Court shall fix a reasonable allowance for the expenses of such officer. The juvenile officer shall have the powers and duties prescribed by Article 5142, of the Revised Civil Statutes of Texas, 1925, and any amendments thereto. All claims for expenses of the juvenile officer shall be certified by

the chairman of the juvenile board as being necessary in the performance of the duties of the juvenile officer. The Commissioners Court of the county shall have authority to accept contributions by way of gifts, grants or donations from cities, towns, other political subdivisions, organizations, or individuals, to be used in part payment of the salary and expenses of the juvenile officer. Such gifts, grants, or donations, shall be placed in a special fund and disbursed in payment of the salary and expenses of the juvenile officer as fixed by the order of the Commissioners Court of the county. The Commissioners Court shall provide the necessary funds for payment of the salary and expenses of the juvenile officer from the special fund established for that purpose and created by contributions or from the general fund of the county as may be necessary; provided, however, that the total amount payable from all sources to the juvenile officer for salary and expenses in any one year shall not exceed the amount authorized to be paid to such officer by this Section.

[Amended by Acts 1977, 65th Leg., p. 1529, ch. 622, § 1, eff. Aug. 29, 1977.]

Art. 5139Q. Midland County Juvenile Board

Sec. 1. There is a county juvenile board in and for Midland County, which shall be composed of the county judge of Midland County, the judge of each judicial district which includes Midland County, the judge of the court of domestic relations in Midland County, and the judge of the county court at law of Midland County. The official title of the board shall be the Midland County Juvenile Board. The judge of the court which is designated as the juvenile court of the county shall be the chairman of the board and its chief administrative officer.

[See Compact Edition, Volume 3 for text of 2 and 3]

[Amended by Acts 1977, 65th Leg., p. 1628, ch. 640, § 11, eff. Jan. 1, 1978.]

Art. 5139W. Lamar County Juvenile Board

[See Compact Edition, Volume 4 for text of 1]

Sec. 2. As compensation for the added duties hereby imposed upon him, the chairman of such board may be allowed additional compensation in the amount of Two Thousand, Four Hundred Dollars (\$2,400) per annum, which shall be paid in twelve (12) equal installments out of the general fund or any other available fund of Lamar County. The Commissioners Court of Lamar County may allow each other member of the board additional compensation in an amount not to exceed Two Thousand, Four Hundred Dollars (\$2,400) per annum, to be paid in twelve (12) equal installments out of the general fund or any other available fund of Lamar County. Such compensation shall be in addition to all other compensation now provided or allowed by law for county judges and district judges.

[Amended by Acts 1975, 64th Leg., p. 1933, ch. 631, § 1, eff. June 19, 1975.]

Art. 5139Z. Andrews County Juvenile Board

Sec. 1. There is hereby established a Juvenile Board for Andrews County, which shall be known as the Andrews County Juvenile Board. It shall be composed of the county judge of Andrews County, the judge of each judicial district which includes Andrews County, and the county attorney of Andrews County or his successor. The judge of the court which is designated as the juvenile court for Andrews County shall be chairman of the board and its chief administrative officer. The board shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of 1925, and any amendments thereto.

[See Compact Edition, Volume 3 for text of 2]
[Amended by Acts 1977, 65th Leg., p. 1789, ch. 717, § 1, eff. June 15, 1977.]

Art. 5139BB. Liberty County Juvenile Board

Sec. 1. There is hereby established a county juvenile board in Liberty County, which shall be composed of the county judge of the County Court of Liberty County, who shall act as juvenile judge if he qualifies under the provisions of Section 51.04, Family Code, to serve as judge of the juvenile court, and two (2) or more citizens of Liberty County, which citizens shall be appointed by the county judge, with the approval of the County Commissioners Court of Liberty County, for a period of two (2) years. If the county judge is not qualified to act as juvenile judge under the Family Code, a district judge having Liberty County within his jurisdiction shall act as the juvenile judge of Liberty County. The official title of the board shall be the Liberty County Juvenile Board.

Sec. 2. As compensation for the added duties imposed upon the juvenile board, the juvenile judge shall be allowed an additional compensation in an amount to be fixed by the Commissioners Court of the County; such other members of the juvenile board shall be allowed additional compensation in an amount to be fixed by the Commissioners Court of the County. The additional compensation provided in this section shall be paid monthly in twelve (12) equal installments out of the general fund or any other appropriate fund of the County. Such compensation shall be in addition to all other compensation now provided or allowed by law for county judges or any salary now received by said citizen members of the Liberty County Juvenile Board.

Sec. 3. The juvenile board established by this Act shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of 1925 and any amendments thereto. The board may appoint a juvenile officer and such assistants as may be necessary, whose salary shall be fixed by the Commissioners Court of said Liberty

County, Texas. The juvenile officer shall have the powers and duties prescribed by Article 5142 of the Revised Civil Statutes of 1925 and any amendments thereto. All claims for expenses of the juvenile officer and his assistants shall be certified by the chairman of the juvenile board as being necessary in the performance of the duties of the juvenile officer. The Commissioners Court shall provide the necessary funds for payment of the salary and expenses of the juvenile officer and his assistants. The same person may serve as the juvenile officer and as a citizen member of the Liberty County Juvenile Board; however, if a citizen member of the Liberty County Juvenile Board also is appointed to serve as the juvenile officer then he shall receive only the compensation set forth herein for the juvenile officer. All salaries referred to in this amendment shall be effective as of January 1, 1978.

[Amended by Acts 1977, 65th Leg., p. 1178, ch. 451, § 1, eff. Aug. 29, 1977.]

Art. 5139CC. Hunt County Juvenile Board

Sec. 1. There is hereby established a County Juvenile Board in Hunt County, which shall be composed of the county judge, the judge of the county court at law in Hunt County, the judge of the 196th Judicial District, and three non-salaried members who are citizens of Hunt County, one to be appointed by the county judge, one by the judge of the county court at law, and one by the district judge. The terms of office of the non-salaried appointed members of the Board are for one year each. The terms of the non-salaried appointed members expire on December 31st of each year.

[See Compact Edition, Volume 3 for text of 2 and 3]

Sec. 4. As compensation for the added duties imposed upon the judicial members of the Juvenile Board, the judges of the county court, county court at law, and district court may be allowed additional compensation not to exceed Three Thousand, Six Hundred Dollars (\$3,600) per year, and the clerk of the juvenile court may be allowed additional compensation not to exceed Eight Hundred Dollars (\$800) per year. Any additional compensation allowed shall be fixed by the Commissioners Court of Hunt County, and paid monthly in twelve (12) equal installments out of the general fund or any other available fund of the county. Such compensation shall be in addition to all other compensation not provided or allowed by law for the county judges, district judges, judges of the county court at law, and clerk of the juvenile court and shall not be counted as fees of office. Each other member of the Board serves without compensation. This Act shall be cumulative of existing laws relating to compensation for judges of district courts, county courts, and county courts at law, and clerks of juvenile courts. [Amended by Acts 1977, 65th Leg., p. 1356, ch. 537, § 1, eff. June 15, 1977.]

Art. 5139DD. Gray County Juvenile Board

[See Compact Edition, Volume 4 for text of 1]

Sec. 2. Members of the juvenile board shall be reimbursed by the county for their actual and necessary expenses incurred in the performance of their duties. The commissioners court may pay the members of a juvenile board such sums as will reasonably compensate them for their added duties as members of the juvenile board, which shall be in addition to all other compensation provided or allowed by law, but may not reduce the compensation or expenses below the amount paid to juvenile board members as compensation and expenses on the effective date of this Act. Each member of the juvenile board shall receive the same rate of compensation.

Sec. 3. The juvenile board shall have all the powers conferred on juvenile boards created under Article 5139, Revised Civil Statutes of Texas, 1925, as amended. The board may appoint juvenile officers whose salaries shall be fixed by the juvenile board. The juvenile officers shall have the powers and duties prescribed by Article 5142, Revised Civil Statutes of Texas, 1925, as amended. All claims for expenses of the juvenile officers shall be certified by the juvenile board as being necessary in the performance of the duties of that juvenile officer. *[Amended by Acts 1979, 66th Leg., p. 1077, ch. 506, § 1, eff. June 6, 1979.]*

Art. 5139II. Juvenile Boards in Comal, Hays, Caldwell, Austin and Fayette Counties

Sec. 1. There are hereby established juvenile boards in Comal, Hays, Caldwell, Austin and Fayette Counties, each of which shall be composed of the county judge of the county and the district judge of one of the two judicial districts comprised of these five (5) counties, as the commissioners court in each county shall determine, except that in Hays County the juvenile board shall be composed of the county judge of the county, the district judges of the two judicial districts of said county, the Hays County Attorney or his successor and the Hays County Court at Law Judge.

[See Compact Edition, Volume 4 for text of 2 and 3]

[Amended by Acts 1975, 64th Leg., p. 1037, ch. 401, § 1, eff. June 19, 1975.]

Art. 5139JJ. Victoria County Juvenile Board

Sec. 1. There is established a juvenile board in Victoria County, which shall be composed of the county judge of Victoria County, the judge of each judicial district which includes Victoria County, and the judge of each county court at law in Victoria County. The judge of the court which is designated the juvenile court for Victoria County shall be chair-

man of the board and its chief administrative officer. The board may designate a district court, the county court, or a county court at law with juvenile jurisdiction to be the juvenile court of the county. The board shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of Texas, 1925, and any amendments thereto.

[See Compact Edition, Volume 4 for text of 2 and 3]

[Amended by Acts 1979, 66th Leg., p. 1010, ch. 443, § 12, eff. Aug. 27, 1979.]

Art. 5139PP. Bell County Juvenile Board

Sec. 1. There is hereby established a Juvenile Board for Bell County, which shall be known as the Bell County Juvenile Board. It shall be composed of the district judges of the several judicial districts of the county, the county judge of Bell County, the judge of the County Court at Law of Bell County, and the judge of the County Court at Law No. 2 of Bell County. The county judge of Bell County shall be chairman of the board and its chief administrative officer. The board shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of 1925, and any amendments thereto.

[See Compact Edition, Volume 4 for text of 2]

[Amended by Acts 1975, 64th Leg., p. 79, ch. 37, § 6, eff. April 3, 1975.]

Art. 5139VV. Harris County Juvenile and Child Welfare Boards

[See Compact Edition, Volume 4 for text of Subchapter A]

SUBCHAPTER B. CHIEF JUVENILE PROBATION OFFICER

[See Compact Edition, Volume 4 for text of 6 to 9]

Support Payments

Sec. 10. (a) If the juvenile board directs the chief juvenile probation officer to receive payments for the support of wives and children made under the order of the district courts, courts of domestic relations or the juvenile courts of Harris County, he shall receive the payments and shall disburse the funds in the manner the courts determine to be for the best interests of the parties involved in each case.

(b) If the juvenile board directs the district clerk to receive support payments, the clerk shall receive the payments and shall disburse the funds in the manner the courts determine to be for the best interests of the parties involved in each case.

(c) In all cases in which the juvenile board directs the chief juvenile probation officer to receive support payments, he shall enter into a surety bond with some solvent surety company authorized to execute bonds of this type in Texas. The bond shall be conditioned upon the chief juvenile probation officer's faithful performance of the duties of his position and upon his properly accounting for any moneys entrusted to him. The Commissioners Court shall fix the amount of the bond and shall approve its terms. The Commissioners Court shall pay the premium for the bond out of the general funds of the county.

(d) The chief juvenile probation officer shall keep an accurate and complete record of all his receipts and disbursements of support payment funds. The record is open to inspection by the public. The County Auditor shall inspect the record and shall audit the accounts quarterly, making a report of his findings and recommendations to the juvenile board.

(e) If the juvenile board directs the chief juvenile probation officer to receive support payments, a fee, not to exceed One Dollar (\$1.00) per month, may be assessed for each individual transaction of receiving and disbursing each individual payment of support moneys. Such fee may be assessed, subject to the approval of the Commissioners Court, upon a determination of the juvenile board that additional funds are necessary to assist in the maintenance of a support office by the chief juvenile probation officer. The fee shall be collected by the chief juvenile probation officer from the payor annually in advance and shall be paid to the County Treasurer to be kept in a separate fund. This fund shall be administered by the juvenile board, subject to the approval of the Commissioners Court, for the purpose of assisting in the payment of the operating expenses of the support office in the juvenile probation office.

[See Compact Edition, Volume 4 for text of Subchapters C to E]

[Amended by Acts 1975, 64th Leg., p. 1177, ch. 438, § 1, eff. June 19, 1975.]

Art. 5139AAA. Anderson, Henderson and Houston Counties; Juvenile Boards

Sec. 1. (a) The Juvenile Board of Anderson County is created. The board consists of the County Judge of Anderson County, the judges of the district courts in Anderson County, the District Attorney for the 3rd Judicial District, and the District Attorney for the 173rd Judicial District. The judge of the court which is designated as the juvenile court of the county shall be chairman of the board and its chief administrative officer.

[See Compact Edition, Volume 4 for text of 1(b) and (c)]

Sec. 2. (a) The Juvenile Board of Henderson County is created. The board consists of the County Judge of Henderson County, the judges of the district courts in Henderson County, the District Attorney for the 3rd Judicial District, and the District Attorney for the 173rd Judicial District. The judge of the court which is designated as the juvenile court of the county shall be chairman of the board and its chief administrative officer.

[See Compact Edition, Volume 4 for text of 2(b) to (d)]

(e) The Juvenile Board of Henderson County shall appoint a juvenile officer for Henderson County, who shall meet all the qualifications and perform all the duties of a juvenile officer as prescribed by the laws of the state. The juvenile officer shall be paid a salary and an allowance for expenses as fixed by the juvenile board and approved by the commissioners court, to be paid out of the general fund or any other available fund of Henderson County. The juvenile board by a majority vote shall have the power to discharge any appointee, and such discharge need not be approved by the commissioners court.

Sec. 3. (a) The Juvenile Board of Houston County is created. The board consists of the County Judge of Houston County, the judges of the district courts in Houston County, the District Attorney for the 3rd Judicial District, and the District Attorney for the 173rd Judicial District. The judge of the court which is designated as the juvenile court of the county shall be chairman of the board and its chief administrative officer.

[See Compact Edition, Volume 4 for text of 3(b) to (d)]

[Amended by Acts 1975, 64th Leg., p. 336, ch. 142, §§ 1 to 3, eff. Jan. 1, 1976; Acts 1975, 64th Leg., p. 1192, ch. 449, § 1, eff. June 19, 1975.]

Art. 5139BBB. Nueces County Juvenile Board

[See Compact Edition, Volume 3 for text of 1 to 14]

Compensation of Board Members; Payment

Sec. 15. The members of the Nueces County Juvenile Board, in consideration of the additional duties imposed upon them, shall receive additional annual compensation of not less than \$4,200 nor more than \$8,000, as determined by the commissioners court. The compensation provided for in this section shall be paid by the commissioners court and is in addition to all other compensation allowed by law to such officers; provided that the compensation herein provided shall be the sole and only compensa-

tion which may be paid to members of the juvenile board in consideration of their services on such Board, such compensation to be in lieu of any compensation for such services which may be provided by other statutory provisions concerning juvenile boards.

[See Compact Edition, Volume 3 for text of 16 and 17]

[Amended by Acts 1977, 65th Leg., p. 1758, ch. 706, § 1, eff. Sept. 1, 1977.]

Sections 2 and 3 of the 1977 Act provided as follows:
 "Sec. 2. All laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict.

"Sec. 3. This Act shall be effective on and after September 1, 1977."

Art. 5139CCC. Johnson County Juvenile Board

[See Compact Edition, Volume 4 for text of 1]

Sec. 2. As compensation for the additional duties imposed upon them, the county and district judges who are members of the board shall each be allowed additional compensation payable in 12 equal monthly installments out of the general fund or any other available fund of Johnson County. The compensation shall be set by the Commissioners Court of Johnson County.

[See Compact Edition, Volume 4 for text of 3 and 4]

[Amended by Acts 1979, 66th Leg., p. 386, ch. 176, § 1, eff. May 15, 1979.]

Art. 5139HHH. Collin County Juvenile Board

Text of section 1 effective until January 1, 1981.

Sec. 1. The county judge of Collin County, the judges of the district courts having jurisdiction in Collin County, and the judge of the county court at law shall constitute the juvenile board of that county. The judge of the court which is designated as the juvenile court of Collin County shall be chairman of the board and its chief administrative officer.

Text of section 1 effective January 1, 1981

Sec. 1. The county judge of Collin County, the judges of the district courts having jurisdiction in Collin County, and the judges of the county courts at law shall constitute the juvenile board of that county. The judge of the court which is designated as the juvenile court of Collin County shall be chairman of the board and its chief administrative officer.

Sec. 2. As compensation for the additional duties imposed upon them, the county, county court at law, and district judges who are members of the board may each receive additional compensation of not more than \$6,000.00 per year, payable in 12 equal monthly installments out of the general fund or any other available fund of Collin County.

Sec. 3. This Act shall be cumulative of existing laws relating to compensation of judges of the district courts, county judges, and county court at law judges.

[See Compact Edition, Volume 4 for text of 4]

[Amended by Acts 1975, 64th Leg., p. 375, ch. 166, § 8, eff. Jan. 1, 1975; Acts 1979, 66th Leg., p. 839, ch. 375, § 9, eff. Jan. 1, 1981.]

Art. 5139JJJ. Webb County Juvenile Board

Sec. 1. The Webb County Juvenile Board is composed of the County Judge of Webb County, the judge of the County Court at Law of Webb County, and the judge of each judicial district that includes Webb County.

Sec. 2. The Webb County Juvenile Board may:

(a) appoint a qualified person, trained or experienced in the field of juvenile and parental counseling, as juvenile probation officer;

(b) suspend or remove any employee at any time for good cause;

(c) require any person employed by the board to enter into a bond, payable to the board, conditioned on the faithful performance of his duties, with the premium for the bond payable by the board;

(d) authorize the use of foster homes for the temporary care of children charged with engaging in delinquent conduct or children deemed to be in need of supervision; and

(e) accept gifts or grants of real or personal property, subject to the terms and conditions on which they are made, for the use and benefit of the juvenile justice system.

Sec. 3. The Webb County Juvenile Board shall:

(a) prescribe the duties and conditions of employment of its employees;

(b) control and supervise all homes, schools, farms, and other institutions or places of housing maintained and used chiefly by the county for the training, education, detention, support, or correction of juveniles;

(c) appoint superintendents of institutions maintained and used chiefly by the county for the training, education, detention, support, or correction of juveniles;

(d) designate the juvenile court in Webb County in accordance with Section 51.04, Family Code; and

(e) submit an annual proposed budget to the Webb County Commissioners Court.

Sec. 4. (a) As compensation for the added duties imposed on members of the Webb County Juvenile

Board, each member thereof may be allowed additional compensation of not more than \$4,800 per year, to be fixed by the commissioners court of the county and paid monthly in 12 equal installments out of the general fund of the county. Such compensation shall be in addition to all other compensation now provided or allowed by law for county judges and district judges.

(b) The Commissioners Court of Webb County may reimburse the judge of the juvenile court for actual and necessary expenses incurred in attending seminars and other educational or instructional meetings pertaining to juvenile problems. The amount payable under this subsection is limited to a maximum of \$600 per year.

Sec. 5. The juvenile probation officer for Webb County has all the powers of a peace officer for the purpose of performing his duties under this Act.

Sec. 6. The juvenile probation officer for Webb County shall:

(a) appoint assistant juvenile probation officers with the advice and consent of the juvenile board;

(b) investigate all cases referred to him by the board;

(c) investigate all cases brought before the juvenile court;

(d) take charge of juveniles and perform services for them as directed by the board or the juvenile court;

(e) in carrying out the duties required in this Act, act in the best interest of the juvenile;

(f) furnish the board and the juvenile court any information and assistance required by them;

(g) make a written report to the judge of the juvenile court showing facts relating to the environment, treatment, education, welfare, and other information that may assist the court in determining the proper disposition to be made of any juvenile; and

(h) keep a record that will at all times show the names of all referrals and delinquent juveniles within Webb County and the names and addresses of the persons having custody of them.

Sec. 7. The Commissioners Court of Webb County shall fix the salary of persons employed by the juvenile board. The commissioners court may appropriate money from the general fund to the juvenile board for the administration of this Act. The juvenile board shall administer this Act with money appropriated by the commissioners court.

[Acts 1975, 64th Leg., p. 17, ch. 13, art. 1, eff. March 13, 1975. Amended by Acts 1977, 65th Leg., p. 670, ch. 252, § 1, eff. May 25, 1977.]

Art. 5139KKK. East Texas Juvenile Board

Sec. 1. (a) The East Texas Juvenile Board, having jurisdiction in the counties of Jasper, Newton, Sabine, and San Augustine, is created.

(b) The board is composed of the county judges of Jasper, Newton, Sabine, and San Augustine counties and the judge of each district court having jurisdiction in any of those counties.

(c) The District Judge of the First Judicial District is chairman of the board and its chief administrative officer. The board shall elect a vice-chairman from among its members who are county judges.

Sec. 2. Within the area of jurisdiction of the East Texas Juvenile Board, the board may designate the juvenile courts, provide a juvenile probation program, and perform all powers and duties prescribed by law for juvenile boards.

Sec. 3. As compensation for the added duties imposed on the members of the East Texas Juvenile Board, each member who is a district judge may be allowed additional compensation to be fixed by a majority of the county commissioners of the participating counties and paid monthly in 12 equal installments out of the general fund or any available fund of the counties on a pro rata basis according to the population of each county in the last preceding federal census, and each member who is a county judge may be allowed additional compensation to be fixed by the commissioners court of his county and paid monthly in 12 equal installments out of the general fund or any available fund of the county. Such compensation shall be in addition to all other compensation provided or allowed by law for county judges and district judges.

[Acts 1975, 64th Leg., p. 17, ch. 13, art. 2, eff. March 13, 1975.]

Art. 5139LLL. Colorado, Lavaca, Gonzales and Guadalupe Counties; Juvenile Boards

Sec. 1. There is hereby established a county juvenile board in each of the counties of Colorado, Lavaca, Gonzales, and Guadalupe, which shall be composed of the county judge and the judge of each judicial district that includes the county; provided, however, that the County Judge of Guadalupe County, at his option, from time to time, can substitute the Judge of the County Court at Law of Guadalupe County for himself, or provide that both the County Judge and the Judge of the County Court at Law of Guadalupe County shall serve. The official title of the board in each county shall be the name of the county followed by the words "County Juvenile Board." The judge of the court that is designated as the juvenile court of the county shall be chairman of the board and its chief administrative officer.

Sec. 2. As compensation for the added duties imposed on members of each juvenile board, each member shall be allowed additional compensation of not less than \$100 per month and not more than \$400 per month, to be fixed by the commissioners court of the county and paid out of the general fund of the county. Such compensation shall be in addition to all other compensation now provided or allowed by law for county judges and district judges.

Sec. 3. Each juvenile board established by this Act shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of Texas, 1925, and any amendments thereto. The board may appoint a juvenile officer, with the concurrence of the commissioners court, whose salary shall be fixed by the commissioners court of the county. The juvenile officer shall have the powers and duties prescribed by Article 5142 of the Revised Civil Statutes of Texas, 1925, and any amendments thereto. All claims for expenses of the juvenile officer shall be certified by the chairman of the juvenile board as being necessary in the performance of the duties of the juvenile officer. The commissioners court shall provide the necessary funds for payment of the salary and expenses of the juvenile officer.

[Acts 1975, 64th Leg., p. 850, ch. 324, eff. May 29, 1975.]

Art. 5139MMM. Rockwall County Juvenile Board

Sec. 1. There is established a juvenile board for Rockwall County to be known as the Rockwall County Juvenile Board. It is composed of the judges of the district courts having jurisdiction in Rockwall County and the county judge of Rockwall County. The judge of the court which is designated as the juvenile court of Rockwall County shall be chairman of the board and its chief administrative officer.

Sec. 2. As compensation for the additional duties imposed on them, the judges who are members of the board may each receive additional compensation, as determined by the commissioners court, payable in 12 equal monthly installments out of the general fund or any other available fund of Rockwall County. This Act is cumulative of all other laws relating to compensation of judges of the district and county courts.

Sec. 3. The Rockwall County Juvenile Board may appoint a juvenile probation officer for Rockwall County, who shall meet all the qualifications and perform all the duties of a juvenile probation officer as prescribed by the laws of this state. The juvenile probation officer shall be paid a salary as fixed by the commissioners court, to be paid out of the general fund or any other available fund of Rockwall County. The juvenile board may discharge an appointee and the discharge need not be approved by the commissioners court.

[Acts 1975, 64th Leg., p. 1363, ch. 519, eff. Sept. 1, 1975.]

Art. 5139NNN. Somervell County Juvenile Board

Sec. 1. The county judge of Somervell County and the judge of the judicial district which includes Somervell County shall constitute the juvenile board of that county. The judge of the court which is designated as the juvenile court of Somervell County shall be chairman of the board and its chief administrative officer.

Sec. 2. As compensation for the additional duties imposed upon them, the county and district judge or judges who are members of the board may, if approved by the commissioners court of the county, be compensated by an annual salary to be set by the commissioners court, payable in 12 equal monthly installments out of the general fund or any other available fund of Somervell County. Such compensation shall be in addition to all other compensation now provided or allowed by law for county and district judges.

Sec. 3. This Act shall be cumulative of existing laws relating to compensation of judges of the district courts and county judges.

Sec. 4. The Juvenile Board of Somervell County shall appoint a juvenile officer for Somervell County, who shall meet all the qualifications and perform all the duties of a juvenile officer as prescribed by the laws of this state. The juvenile officer shall be paid a salary to be fixed by the commissioners court and to be paid out of the general fund or any other available fund of Somervell County. The juvenile board by majority vote shall have the power to hire and discharge any appointee and such action need not be approved by the commissioners court.

[Acts 1977, 65th Leg., p. 890, ch. 334, §§ 1 to 4, eff. Aug. 29, 1977.]

Art. 5139OOO. Juvenile Boards in Carson, Childress, Collingsworth, Donley, and Hall Counties

Sec. 1. There is hereby established a county juvenile board in Carson County, Childress County, Collingsworth County, Donley County, and Hall County, which shall be composed of the county judge and the judge of the judicial district which includes the county. The official title of the board shall be the name of the county followed by the words, "County Juvenile Board." The judge of the court which is designated as the juvenile court of the county shall be chairman of the board and its chief administrative officer.

Sec. 2. As compensation for the duties imposed on members of each juvenile board, each member shall be paid compensation of not less than \$50 per month and not more than \$150 per month to be fixed by the commissioners court of the county and paid out of the general fund of the county. Such com-

compensation shall be in addition to all other compensation now provided or allowed by law for county judges and district judges.

Sec. 3. Each juvenile board established by this Act shall have all the powers conferred on juvenile boards created under Article 5139, Revised Civil Statutes of Texas, 1925, as amended, and any amendments thereto. Each board may, with the concurrence of the commissioners court, appoint a juvenile officer whose salary shall be fixed by the commissioners court. The juvenile officer shall have the powers and duties prescribed by Article 5142, Revised Civil Statutes of Texas, 1925, as amended, and any amendments thereto. All claims for expenses of the juvenile officer in each county shall be certified by the chairman of the juvenile board as being necessary in the performance of the duties of that juvenile officer. Providing funding for the payment of the salary and expenses of the juvenile officer shall be within the discretion of the commissioners court of each county.

[Acts 1977, 65th Leg., p. 1239, ch. 478, §§ 1 to 3, eff. June 15, 1977.]

Art. 5139PPP. Galveston County Juvenile Board

Juvenile Board

Sec. 1. There is a juvenile board to be known as the Galveston County Juvenile Board, which is composed of the county judge, the judge of each statutory county court in Galveston County, and the judge of each district court in Galveston County. The juvenile board shall elect its chairman and other officers annually.

Duties

Sec. 2. The juvenile board shall meet at least once each month to review the work of the chief juvenile officer and juvenile officers and to consider any other matters concerning juveniles and the disposition of cases concerning juveniles pending before the juvenile courts. The juvenile board shall appoint a person of good moral character with at least a bachelor's degree in a field of study related to work with juveniles to serve as chief juvenile officer and shall appoint persons of good moral character to serve as juvenile officers for the county. The juvenile board shall fix the salaries and allowance for the chief juvenile officer and juvenile officers and shall employ a clerk for the office. The commissioners court shall provide the necessary funds for the payment of the salaries and expenses. All claims for expenses shall be certified by the chairman of the juvenile board to the commissioners court as being necessary in the performance of the duty of the officer. The appointment of the chief juvenile officer and juvenile officers shall be filed in the office of the county clerk and the officers shall take the oath to perform their duties and shall file the oaths in the

office of the county clerk. The juvenile board may remove the chief juvenile officer or a juvenile officer at any time.

Compensation

Sec. 3. The members of the juvenile board shall receive no compensation for their services on the board.

Advisory Board

Sec. 4. The commissioners court shall appoint a Citizens Juvenile Advisory Board composed of at least 15 interested citizens to consult with the Galveston County Juvenile Board and the commissioners court in regard to matters concerning juveniles. The Citizens Juvenile Advisory Board shall elect its chairman and other officers annually and may meet at its own discretion.

[Acts 1979, 66th Leg., p. 782, ch. 345, §§ 1 to 4, eff. Aug. 27, 1979.]

For similar provisions, see art. 5139PPP-1

Art. 5139PPP-1. Galveston County Juvenile Board

Sec. 1. [Amends § 1(b) of art. 1970-357]

Sec. 2. [Adds §§ 12a and 12b to art. 1970-110.3]

Sec. 3. [Repeals § 13 of art. 1970-110a]

Sec. 4. [Amends art. 3883i-2]

Sec. 5. [Enacts art. 3883i-3]

Juvenile Board

Sec. 6. There is a juvenile board to be known as the Galveston County Juvenile Board, which is composed of the county judge, the judge of each statutory county court in Galveston County, and the judge of each district court in Galveston County. The juvenile board shall elect its chairman and other officers annually.

Duties

Sec. 7. The juvenile board shall meet at least once each month to review the work of the chief juvenile officer, juveniles, and the disposition of cases concerning juveniles pending before the juvenile courts. The juvenile board shall appoint a person of good moral character with at least a bachelor's degree in a field of study related to work with juveniles to serve as chief juvenile officer and shall appoint persons of good moral character to serve as juvenile officers for the county. The juvenile board shall fix the salaries and allowance for the chief juvenile officer and juvenile officers and shall employ a clerk for the office. The commissioners court shall provide the necessary funds for the payment of the salaries and expenses. All claims for expenses shall be certified by the chairman of the juvenile board to the commissioners court as being necessary

in the performance of the duty of the officer. The appointment of the chief juvenile officer and juvenile officers shall be filed in the office of the county clerk and the officers shall take the oath to perform their duties and shall file the oaths in the office of the county clerk. The juvenile board may remove the chief juvenile officer or a juvenile officer at any time.

Compensation

Sec. 8. The members of the juvenile board shall receive no compensation for their services on the board.

Advisory Board

Sec. 9. The commissioners court shall appoint a Citizens Juvenile Advisory Board composed of at least 15 interested citizens to consult with the Galveston County Juvenile Board and the commissioners court in regard to matters concerning juveniles. The Citizens Juvenile Advisory Board shall elect its chairman and other officers annually and may meet at its own discretion.

[Acts 1979, 66th Leg., p. 1640, ch. 686, §§ 6 to 9, eff. Aug. 27, 1979.]

For similar provisions, see art. 5139PPP

Art. 5139QQQ. Grayson County Juvenile Board

Composition of Board

Sec. 1. The county judge of Grayson County and the judges of the district courts having jurisdiction in Grayson County constitute the Juvenile Board of Grayson County. The judge of the court which is designated as the juvenile court of Grayson County is chairman of the board and its chief administrative officer.

Compensation

Sec. 2. As compensation for the additional duties imposed on them, the county judge and the district judges who are members of the board may each receive additional compensation in an amount to be fixed by the commissioners court, payable in 12 equal monthly installments out of the general fund or any other available fund of Grayson County.

Cumulative Effect

Sec. 3. This Act is cumulative of existing laws relating to compensation of the judges of the district courts and the county judge.

[Acts 1979, 66th Leg., p. 916, ch. 423, §§ 1 to 3, eff. Aug. 27, 1979.]

Art. 5139RRR. Hemphill, Roberts, and Lipscomb Counties Juvenile Boards

County Juvenile Boards

Sec. 1. There is established a juvenile board in each of the counties of Hemphill, Roberts, and Lip-

scomb, which shall be composed of the county judge and the judges of the judicial districts which are included in the county. The official title of the board shall be the name of the county followed by the words, "County Juvenile Board."

Chairman

Sec. 2. Unless otherwise provided by law, the juvenile board of each county shall select a member to act as chairman.

Powers

Sec. 3. Each juvenile board established by this Act shall have all the powers conferred on juvenile boards created under Article 5139, Revised Civil Statutes of Texas, 1925, as amended, and any amendments thereto and conferred by general law. Each board may appoint a juvenile officer whose salary shall be fixed by the juvenile board. The juvenile officer shall have the powers and duties prescribed by Article 5142, Revised Civil Statutes of Texas, 1925, as amended, and any amendments thereto and by general law. All claims for expenses of the juvenile officer in each county shall be certified by the juvenile board as being necessary in the performance of the duties of that juvenile officer.

Compensation

Sec. 4. (a) Members of a juvenile board shall be reimbursed by the county for their actual and necessary expenses incurred in the performance of their duties.

(b) The commissioners court of each county may pay the members of a juvenile board such sums as will reasonably compensate them for their added duties as members of the juvenile board, which shall be in addition to all other compensation provided or allowed by law. All board members shall receive the same rate of compensation for their services.

[Acts 1979, 66th Leg., p. 1186, ch. 577, §§ 1 to 4, eff. Aug. 27, 1979.]

Art. 5142a-2. Wichita County Family Court Services Department

Sec. 1. There is hereby established the Wichita County Family Court Services Department.

Sec. 2. The Wichita County Juvenile Board, as heretofore established and composed of the County Judge of Wichita County and the Judge of each Judicial District which includes Wichita County, shall have all powers conferred upon the Juvenile Board created under Article 5139 of Revised Civil Statutes of 1925 and any amendments thereto. The Wichita County Juvenile Board shall have authority to appoint an Administrator and such assistants as may be necessary, and to determine the duties to be assigned such Administrator and his assistants, and the rate of pay which shall be paid all the personnel

comprising the Wichita County Family Court Services.

Sec. 3. The Wichita County Family Court Services Administrator shall have the powers and duties prescribed by Article 5142 of the Revised Civil Statutes of 1925 and any amendments thereto. The Administrator shall appoint assistants subject to confirmation by the Juvenile Board. The number of assistants shall be determined by the Juvenile Board. The term of office of the Administrator and assistants shall be for a period of two (2) years; provided, however, that the Juvenile Board may at any time, for good cause, suspend or remove an Administrator or an assistant.

Sec. 4. All claims for expenses of the Administrator, the assistants, and administrative expenses for operation of the Family Court Services Department, including all necessary equipment and supplies, shall, before payment thereof, be approved by the Juvenile Board.

Sec. 5. Subject to the advice and consent of the Commissioners Court of Wichita County, the Wichita County Juvenile Board shall determine the funds needed for the operation of the department including payment of salaries and expenses of the Administrator and assistants. Any such funds appropriated shall be in addition to funds received by the Family Court Services Department from any other source.

Sec. 6. The Wichita County Juvenile Board shall have authority to require and approve a good and sufficient surety or personal bond for the faithful performance of duty of any assistant or employee of any institution, under the jurisdiction of the Juvenile Board, in such sum as may be determined by said Board, and paid as an expense of the Family Court Services Department.

Sec. 7. All homes, schools, farms and any and all other institutions or places of housing maintained and used chiefly by the county for the training, education, detention and support or correction of juveniles shall be under the control and supervision of the Juvenile Board, and the superintendent of each such institution shall be appointed by the Wichita County Family Court Services Department Administrator and each such appointment shall be confirmed by the Juvenile Board. The salaries of such superintendents and assistants shall be fixed by the Wichita County Juvenile Board and such superintendent or assistant may at any time, for good cause, be suspended or removed by the appointing authority.

Sec. 8. When, in the opinion of the Wichita County Juvenile Board, the best welfare of any child or children coming within the provisions of Title 2¹

or Title 3² of the Family Code and any amendments thereto will be served by placement of said child or children in a foster home, said Juvenile Board may authorize the use of such foster home or homes for the temporary care of said child or children. The rate of pay for such foster care shall be determined by said Juvenile Board and payment of the cost of such foster care shall, when authorized by said Juvenile Board, be considered to be a necessary operating expense of the Wichita County Family Court Services Department.

Sec. 9. The Wichita County Juvenile Board shall have power and authority to accept and hold in trust for the operation of the Wichita County Family Court Services Department or any duties or functions of the Wichita County Family Court Services Department, any grant or devise of land or any gift or bequest, or any donation to be applied for the benefit of the Family Court Services Department and to apply same in accordance with the terms of such gift.

Sec. 10. (a) Each month for which a person has been ordered by a District Court of Wichita County to pay child support, alimony, or separate maintenance into the Wichita County Family Court Services Department, the payor of such child support, alimony, or separate maintenance shall also be responsible for payment of a child support service fee in the sum of \$1.00 per month, payable annually in advance. However, in those instances where the payor is a member of the Armed Services and wherein the monthly child support, alimony, or separate maintenance payments exceed that amount ordered by the court, the recipient (payee) of such child support, alimony, or separate maintenance shall be the person responsible for paying such annual child support service fee into the Family Court Services Department.

(b) The first such child support service fee shall be due on the date such payor of child support, alimony, or separate maintenance has been ordered by the District Court to commence payments of child support, alimony, or separate maintenance and thereafter for all such persons ordered to pay child support, alimony, or separate maintenance on each succeeding annual anniversary of the original court order for payment. In those instances where the payee is charged with the responsibility of making such service fee payments, the first such payment shall become due on the date of receipt of the initial child support payment and annually thereafter on the anniversary of the date of the receipt of the first child support allotment check so long as the payor is a member of the Armed Services and so long as child support allotment payments exceed the amount of child support ordered by the court.

(c) Such child support service fees shall be for the purpose of meeting certain expenses of the child support office, including postage, equipment, stationery, office supplies, subpoenas, salaries and other expenses of the Family Court Services Department authorized by the Wichita County Juvenile Board.

(d) A record shall be kept of all child support service fees collected, and expended, and such moneys shall be deposited in the child support fund and shall be administered by the Juvenile Board of Wichita County.

(e) Failure or refusal of a person to pay such child support service fee on time and in the amount ordered by the court shall make such person susceptible to an action for contempt of court.

(f) This fund shall be subject to regular audit by the county auditor or other duly authorized persons. Annual report of receipts and expenditures in this account shall be made to the Commissioners Court.

Sec. 10a. (a) For purposes of providing legal services, court costs and expenses of service in the handling of child support, separate maintenance, and temporary alimony, there shall be assessed the sum of Ten Dollars (\$10) in all matters involving contempt of court for failure and refusal to pay such child support, separate maintenance, or temporary alimony, and in matters involving contempt of court for failure or refusal to abide by orders of the court with respect to child visitation privileges in all such contempt action initiated through the Wichita County Family Court Services Department.

(b) Such fee of Ten Dollars (\$10) shall be paid into the Wichita County Family Court Services Department by the person initiating such contempt proceedings but this sum, in addition to any other expenses incurred by the complainant in the prosecution of the contempt action may, in the judgment of the court, be assessed against the contemner for reimbursement to the complainant.

(c) In any such actions filed with the Wichita County Family Court Services Department for alleged contempt of court, the \$10 assessment shall be used, as needed, for the payment of services rendered by the office of the District Clerk and/or any peace officer. Provided, however, that the complainant may be required to deposit an additional sum when the cost of service in such action for contempt is expected to exceed the \$10 assessment. In such instance, however, any unused funds over and above the \$10 assessment shall be refunded to the depositor by the Family Court Services Department.

(d) Receipts of all disbursements of moneys paid into the Family Court Services Department for matters involving actions of contempt shall be kept on file and all such funds received by the Family Court

Services Department shall be deposited to the Child Support Account. This fund shall be administered by the Wichita County Juvenile Board and shall be subject to regular audit by the county auditor or other duly authorized person. Annual report of receipts and expenditures in this account shall be made to the Commissioners Court.

(e) The fee prescribed by this Section shall not be collected from any person who has applied for or receives public assistance under the law of this State.

Sec. 11. For the purpose of maintaining adoption investigation services, there shall be taxed, collected and paid as other costs the sum of Ten Dollars (\$10) in each adoption case hereafter filed in any District Court in Wichita County. Such cost shall be collected by the District Clerk, and when collected, shall be paid by said District Clerk to the Wichita County Family Court Services Department to be kept by that Department in a separate fund and such fund to be known as the "Adoption Investigation Fund." This Fund shall be administered by the Juvenile Board of Wichita County for the purpose of assisting in paying the cost of maintaining adoption investigation services in the Family Court Services Department of Wichita County, including salaries and other expenses of the Adoption Investigator and his assistants, the purchase of supplies and equipment, and all other necessary expenses of the Investigator. This Fund shall be supplemented out of the General Fund or other available funds of the County where necessary.

Sec. 12. In all suits for divorce filed in any District Court in Wichita County, where it appears from the petition or otherwise that the parties to such suit have a child or children under eighteen (18) years of age, it shall be the duty of the Administrator, upon order of the Court, to make a complete and thorough examination into the merits of the claim of the parties for custody of the children involved and to report his findings to the Court in connection therewith, and to make a thorough and complete investigation as to the necessities of the child or children, and to make a report thereof to the Court prior to the trial of said case, and if desired by the Court, to produce such evidence as may have been developed in connection with such matters.

Sec. 13. It shall be the duty of the Administrator to keep a record which will at all times show the names of all dependent, neglected or delinquent juveniles within Wichita County, and the names and addresses of the persons having custody of such juveniles; and visitations by such officer and his assistants shall be made at such reasonable times as seem necessary or proper or as may be directed by the Juvenile Board, and a written report shall be made to the Judge of the Juvenile Court showing

such facts relating to the environment, treatment, education, welfare and other information which may assist the Court in determining the proper disposition to be made of any juvenile.

[Amended by Acts 1975, 64th Leg., p. 573, ch. 232, § 1, eff. May 20, 1975.]

¹ Family Code, § 11.01 et seq.
² Family Code, § 51.01 et seq.

**Art. 5142c-1. Juvenile Officers for Counties
Within 23rd and 130th Judicial Dis-
tricts**

[See Compact Edition, Volume 3 for text of 1
to 7]

Child Support Office

Sec. 7a. (a) Notwithstanding any other provision of this Act, the judges of the District Courts and Domestic Relations Courts in each of the counties of Brazoria, Fort Bend, Matagorda, and Wharton may create a child support office in the juvenile office of the county to receive payments for the support of children made under the order of a District Court or Domestic Relations Court. A child support office may serve more than one county. The child support office shall receive the payments and shall disburse the funds in the manner the court determines to be for the best interest of the parties involved in each case.

(b) The judges of the District Courts and Domestic Relations Courts may appoint an administrator and such assistants as in their judgment may be necessary for a term of two years. The judges of the District Courts and Domestic Relations Courts shall determine the duties to be assigned the administrator and his assistants and the salaries of the personnel of the child support office to be paid in equal monthly installments out of the general fund of the county, the child support fund, or other available fund. All claims for expenses of the administrator and his assistants and administrative expenses for operation of the child support office, including all necessary equipment and supplies, shall, before payment, be approved by the judges.

(c) If a child support office serves more than one county, the judges of the District Courts and the Domestic Relations Courts in those counties shall determine the location of the child support office. The powers and duties of the county officials and employees prescribed in this section shall be performed by the officials and employees of the county in which the child support office is located. The counties served by the child support office shall pay the salaries of the personnel, premiums for a bond, and other expenses in accordance with the proportion that the population of each county bears to the total population of all counties served by that office.

(d) Each administrator of a child support office shall make a surety bond in a solvent surety company authorized to make such bonds in Texas, conditioned on the faithful performance of the duties of his position and further conditioned on his properly accounting for the money entrusted to him. The bond shall be in an amount to be fixed by the County Auditor and subject to approval of the County Auditor. The county shall pay the premiums for the bond out of the general fund, the child support fund, or other available fund.

(e) Each child support office shall keep an accurate and complete record of its receipts and disbursements of support payment funds. The record is open to inspection by the public. It is the duty of the County Auditor or other duly authorized person in each county with a child support office to inspect and examine the records and audit the accounts quarterly and to report his findings and recommendations to the judges.

(f) A service fee for receiving and disbursing payments, not to exceed \$1 per month, shall be assessed each payor or payee of child support who is ordered by a court to pay support to a child support office. However, if the payor is a member of the armed services and the monthly payments for child support exceed the amount ordered by the court, the recipient (payee) of the support payments shall be the person responsible for paying the service fee into the child support office. The service fee applies to all support payments ordered paid to a child support office after the effective date of this amendment and to all other such payments, even though ordered prior to the effective date of this amendment, when the person ordered to make such payments has defaulted and has been cited for contempt of court. The service fee shall be collected by the child support office from the payor annually in advance and shall be paid to the county treasurer on the last day of each calendar month, to be kept in a separate account to be known as the "Child Support Fund." This fund shall be administered by the judges of the District Courts and Domestic Relations Courts, subject to the approval of the Commissioners Court, for the purpose of assisting in the payment of the salaries and operating expenses of the child support office. The first service fee shall be due on the date the payor of support payments has been ordered by the court to commence payments for child support and thereafter on each succeeding annual anniversary of the original court order for payment. In those instances where the payee is charged with the responsibility of making the service fee payments, the first payment shall be due on the date of receipt of the initial support payment and annually thereafter on the anniversary of the date of the receipt of the first support allotment check so long as the payor is a member of the armed services and so long as support allotment payments exceed the amount of

support ordered by the court. Failure or refusal of a person to pay the service fee on time and in the amount ordered by the court shall make that person susceptible to an action of contempt of court. A record shall be kept of all service fees collected and expended. The Child Support Fund is subject to regular audit by the County Auditor or other duly authorized person. Annual reports of receipts and expenditures in this account shall be made to the Commissioners Court.

[See Compact Edition, Volume 3 for text of 8 and 9]

[Amended by Acts 1977, 65th Leg., p. 2069, ch. 821, § 1, eff. Aug. 29, 1977.]

Art. 5143c. Repealed by Acts 1977, 65th Leg., p. 108, ch. 52, § 1, eff. April 5, 1977

Art. 5143d. Repealed by Acts 1979, 66th Leg., p. 2429, ch. 842, art. 1, § 2(1), eff. Sept. 1, 1979

Acts 1979, 66th Leg., ch. 842, repealing this article, enacts the Human Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Human Resources Code.

Prior to repeal, this article was amended by:

Acts 1975, 64th Leg., p. 279, ch. 121, §§ 1, 2.

Acts 1975, 64th Leg., p. 2159, ch. 693, § 25.

Acts 1975, 64th Leg., p. 2164, ch. 696, § 1.

Acts 1977, 65th Leg., p. 327, ch. 158, § 1.

Acts 1977, 65th Leg., p. 1852, ch. 735, § 2.143.

Acts 1979, 66th Leg., p. 1116, ch. 532, § 1.

Art. 5143f. Repealed by Acts 1979, 66th Leg., p. 2429, ch. 842, art. 1, § 2(1), eff. Sept. 1, 1979

Acts 1979, 66th Leg., ch. 842, repealing this article, enacts the Human Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Human Resources Code.

TITLE 83

LABOR

CHAPTER ONE. DEPARTMENT

Article

5144a. Application of Sunset Act.

Art. 5144. Appointment of Commissioner

A Commissioner of Labor and Standards, whose office shall be in Austin, shall be biennially appointed by the Governor for a term of two years. The Commissioner may be removed for cause by the Governor, record thereof being made in his office. The Commissioner shall give a good bond in the sum of two thousand dollars, to be approved by the Governor, conditioned for the faithful discharge of the duties of his office.

[Amended by Acts 1975, 64th Leg., p. 1903, ch. 611, § 1, eff. June 19, 1975.]

Art. 5144a. Application of Sunset Act

The office of Commissioner of Labor and Standards is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the office is abolished effective September 1, 1989. [Added by Acts 1977, 65th Leg., p. 1855, ch. 735, § 2.167, eff. Aug. 29, 1977.]

¹ Article 5429k.

Art. 5151a. Change of Names

(a) The names of the Bureau of Labor Statistics and the Commissioner of Labor Statistics are changed to the "Texas Department of Labor and Standards" and the "Commissioner of Labor and Standards."

(b) Wherever the names Bureau of Labor Statistics and/or Commissioner of Labor Statistics appear in any legislative Act in this state, such names shall hereafter mean and apply to the Texas Department of Labor and Standards and the Commissioner of Labor and Standards.

[Amended by Acts 1975, 64th Leg., p. 1903, ch. 611, § 2, eff. June 19, 1975.]

CHAPTER TWO. LABOR ORGANIZATIONS

Art. 5154a. Labor Unions, Regulations of

[See Compact Edition, Volume 4 for text of 1 and 2]

Reports

Sec. 3. It shall be the duty of every labor union required to file reports with the Secretary of Labor

pursuant to Section 201 of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C.A. 431), or any similar statute subsequently enacted, to file a copy of each report with the Secretary of State not later than the 30th day following the date the report was filed with the Secretary of Labor.

[See Compact Edition, Volume 4 for text of 4 to 15]

[Amended by Acts 1975, 64th Leg., p. 355, ch. 150, § 1, eff. Sept. 1, 1975.]

Section 2 of the 1975 amendatory act provided:

"The secretary of state is authorized to remove from the files and destroy all reports filed pursuant to Section 3, Chapter 104, Acts of the 48th Legislature, 1943 (Article 5154a, Vernon's Texas Civil Statutes), as that section existed prior to the effective date of this Act."

CHAPTER THREE. PAYMENT OF WAGES

Art. 5159d. Minimum Wage Act of 1970

[See Compact Edition, Volume 4 for text of 1 to 3]

Exemptions

Sec. 4.

[See Compact Edition, Volume 4 for text of 4(a) to (c)]

(d) Notwithstanding the provisions of any other section of this Act the provisions of this Act shall not apply to any employee who is employed with his spouse by a nonprofit educational institution to serve as the parents of children:

(1) who are orphans or one of whose natural parents is deceased, or

(2) who are enrolled in such institution and reside in residential facilities of the institution while such children are in residence at such institution, if such employee and his spouse reside in such facilities and received, without cost, board and lodging from such institution.

[See Compact Edition, Volume 4 for text of 5 to 10]

Mental Health and Retardation Department
Patient-Student Workers

Sec. 10a. Patients and students who are clients of any facility of the Texas Department of Mental Health and Mental Retardation, whose productive capacity is impaired and who are assisting in the operation of the institutions as part of their therapy, or who are receiving occupational training in shel-

tered workshops or other programs operated by the Texas Department of Mental Health and Mental Retardation, where the institution or department derives an economic benefit from their services, may be compensated for such services at a percentage of the base wage, which percentage corresponds to the percentage of their productive capacity when compared with employees not so impaired performing the same or similar tasks. The Texas Department of Mental Health and Mental Retardation shall promulgate rules for determining said base wage and said percentage of productive capacity of such clients and such other rules as may be necessary to fulfill the provisions of this section of the Act. It is the specific intent of the legislature that this provision be enacted in order to prevent the curtailment of appropriate occupational training or therapeutic opportunities for such clients. To further such purpose, it is specifically provided that the services rendered and the payment provided for such services herein shall not be construed to create an employer-employee relationship between the Texas Department of Mental Health and Mental Retardation and the patients and students engaged in such training, therapeutic or rehabilitative services.

[See Compact Edition, Volume 3 for text of 11 to 16]

[Amended by Acts 1975, 64th Leg., p. 1237, ch. 462, § 1, eff. June 19, 1975; Acts 1977, 65th Leg., p. 269, ch. 130, § 1, eff. May 11, 1977.]

Section 2 of the 1977 amendatory act provided:

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

CHAPTER FOUR. CONTRACTORS' PERFORMANCE AND PAYMENT BONDS

Art. 5160. Bond for Labor and Material; Performance Bond

Contractors' Bonds for Performance and Payment for Labor and Material

A. Any person or persons, firm, or corporation, hereinafter referred to as "prime contractor," entering into a formal contract in excess of \$25,000 with this State, any department, board or agency thereof; or any county of this State, department, board or agency thereof; or any municipality of this State, department, board or agency thereof; or any school district in this State, common or independent, or subdivision thereof; or any other governmental or quasi-governmental authority, whether specifically named herein or not, authorized under any law of this State, general or local, to enter into contractual agreements for the construction, alteration or repair of any public building or the prosecution or completion of any public work, shall be required before commencing such work to execute to the aforemen-

tioned governmental authority or authorities, as the case may be, the statutory bonds as hereinafter prescribed, but no governmental authority may require a bond if the contract does not exceed the sum of \$25,000. Each such bond shall be executed by a corporate surety or corporate sureties duly authorized to do business in this State. In the case of contracts of the State or a department, board, or agency thereof, the aforesaid bonds shall be payable to the State and shall be approved by the Attorney General as to form. In case of all other contracts subject to this Act, the bonds shall be payable to the governmental awarding authority concerned, and shall be approved by it as to form. Any bond furnished by any prime contractor in an attempted compliance with this Act shall be treated and construed as in conformity with the requirements of this Act as to rights created, limitations thereon, and remedies provided.

(a) A Performance Bond in the amount of the contract conditioned upon the faithful performance of the work in accordance with the plans, specifications, and contract documents. Said bond shall be solely for the protection of the State or the governmental authority awarding the contract, as the case may be.

(b) A Payment Bond, in the amount of the contract, solely for the protection of all claimants supplying labor and material as hereinafter defined, in the prosecution of the work provided for in said contract, for the use of each such claimant.

[See Compact Edition, Volume 4 for text of B to G]

[Amended by Acts 1975, 64th Leg., p. 2284, ch. 713, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 2028, ch. 809, § 1, eff. Aug. 29, 1977.]

CHAPTER FIVE. HOURS OF LABOR

Art. 5165a. Weekly Working Hours of State Office Employees

Sec. 1. All state employees who are employed in the offices of state departments or institutions or agencies, and who are paid on a fulltime salary basis, shall work forty (40) hours a week. Provided, however, that the administrative heads of agencies whose functions are such that certain services must be maintained on a twenty-four (24) hours per day basis are authorized to require that essential employees engaged in performing such services be on duty for a longer work-week in necessary or emergency situations. Provided further that the provisions of this Act do not apply to houseparents who are employed by and who live at the facilities of the Texas Youth Council.

[See Compact Edition, Volume 3 for text of 2]
[Amended by Acts 1977, 65th Leg., p. 315, ch. 148, § 1, eff. May 13, 1977.]

Art. 5167a. Hours of Peace Officers and Compensation for Extra Hours in Counties over 500,000

Except in cases of emergency, as determined by the sheriff or constable of such county, it shall be unlawful for any county having more than five hundred thousand (500,000) inhabitants according to the last preceding Federal Census to require any Peace Officer to work more hours during any calendar week than the number of hours in the normal work week of the majority of the employees of said county other than Peace Officers. If a Peace Officer elects to work extra hours during any calendar week, the county shall compensate the officer for the overtime work on a basis consistent with the overtime provisions of the county personnel policy. [Amended by Acts 1979, 66th Leg., p. 1115, ch. 531, § 1, eff. June 11, 1979.]

CHAPTER EIGHT. CHILD LABOR

Art. 5181g. Exceptions

Provided that nothing in this Act shall be construed as prohibiting the employment by any person of nurses, maids, yard servants or others for private houses and families, regardless of their age. Nothing in this Act shall apply to the employment at farm labor of the members of the family of a farmer, rancher, or dairyman on their own premises, whether owned or leased. Nothing in this Act applies to the employment of a student or an apprentice enrolled in a public school vocational education program operated in accordance with rules of the Central Education Agency and the federal government. [Amended by Acts 1979, 66th Leg., p. 1046, ch. 476, § 1, eff. June 7, 1979.]

CHAPTER NINE-A. OCCUPATIONAL SAFETY

Art. 5182a. Occupational Safety

[See Compact Edition, Volume 3 for text of 1 to 3]

Occupational Safety Board

Sec. 4.

[See Compact Edition, Volume 3 for text of 4(a) to (c)]

(d) The Occupational Safety Board is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1985.

¹ Article 5429k.

[See Compact Edition, Volume 3 for text of 5 to 16]

[Amended by Acts 1977, 65th Leg., p. 1848, ch. 735, § 2.115, eff. Aug. 29, 1977.]

CHAPTER TEN. INDUSTRIAL COMMISSION

Article

- 5183a. Application of Sunset Act.
- 5186a. Minority Business Enterprise Division.
- 5190.3. Small Business Assistance Act of 1975.
- 5190.4. Metric System Advisory Council.
- 5190.5. Loans for Manufacture of Fuel from Agricultural Products.
- 5190.6. Development Corporation Act of 1979.

Art. 5183a. Application of Sunset Act

The Industrial Commission is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished effective September 1, 1983.

[Added by Acts 1977, 65th Leg., p. 1840, ch. 735, § 2.057, eff. Aug. 29, 1977.]

¹ Article 5429k.

Art. 5186a. Minority Business Enterprise Division

Sec. 1. The Minority Business Enterprise Division is established as a division of the Texas Industrial Commission. The Office of Minority Business Enterprise within the Texas Industrial Commission is abolished and all the powers, duties, and functions of the Office of Minority Business Enterprise are transferred to the Minority Business Enterprise Division.

Sec. 2. The Minority Business Enterprise Division shall be under the direction of a director for Minority Business Enterprise who shall serve under the direction and at the pleasure of the executive director of the Texas Industrial Commission.

Sec. 3. The division shall be responsible to the Texas Industrial Commission for the encouragement, support, and development of minority business ownership throughout the state. The division is authorized to cooperate with the federal government and with any political subdivisions of the state in research designed to encourage minority business ownership and to accept any federal funds available for this purpose.

[Acts 1977, 65th Leg., p. 2074, ch. 825, § 1, eff. Aug. 29, 1977.]

Art. 5190.2. Rural Industrial Development Act

[See Compact Edition, Volume 4 for text of 1]

Definitions

Sec. 2. When used in this Act, unless otherwise apparent from the context:

[See Compact Edition, Volume 4 for text of 2(a) to (c)]

(d) "Industrial Development Agency" means a corporation established under the Texas Non-Profit Corporation Act to promote and encourage industrial development within the State or a designated area of the State whose articles of incorporation provide that upon dissolution or winding up of its corporate affairs any property remaining after payment of debts of the corporation shall be conveyed, transferred, or vest in the Rural Industrial Development Fund of the State, a school district, a city, or county or be conveyed to a nonprofit corporation established for similar purposes.

[See Compact Edition, Volume 4 for text of 2(e) to (g)]

(h) "Rural area" means an area which is predominately rural in character, being one which the Commission after public hearing defines and declares to be a rural area in that it (1) sustained out-migration of population between the then last two federal censuses, or (2) an area that sustained a gain in population less than the average for standard State statistical metropolitan areas between the then last two federal censuses, or (3) an area in which manufacturing employment is less than the average for standard State statistical metropolitan areas according to the then preceding federal census, or (4) an incorporated city with a population of less than 20,000 according to the then preceding federal census; provided, however, no area of the State shall be included in more than one rural area, nor shall any one rural area contain territory in more than four counties. Rural areas may be defined and redefined by the Commission from time to time, after public hearing.

[See Compact Edition, Volume 4 for text of 3 to 10]

[Amended by Acts 1975, 64th Leg., p. 626, ch. 257, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1511, ch. 611, § 1, eff. Aug. 29, 1977.]

Art. 5190.3. Small Business Assistance Act of 1975

Title of Act

Sec. 1. This Act may be cited as the Small Business Assistance Act of 1975.

Legislative Intent

Sec. 2. The legislature finds that an indispensable element of the American economic system is free and vigorous competition and that the preservation and expansion of economic competition is essential to the economic well-being of this state and of the United States. The legislature further finds that the continuing vitality of small business entities is of utmost importance to economic competition and

that it is the policy of this state to insure economic competition by assisting small business entities to the greatest extent possible. It is the intent of the legislature, by this Act, to provide that assistance to small business entities and, by doing so, to promote economic competition to the benefit of all persons in this state. It is the intent of the legislature that each state agency shall attempt to award ten percent of all purchases of articles, supplies, commodities, materials, services, or contracts for services to small business.

Definitions

Sec. 3. In this Act:

(1) "Small business" means a corporation, partnership, sole proprietorship, or other legal entity formed for the purpose of making a profit, which is independently owned and operated, has either fewer than 100 employees or less than \$1,000,000 in annual gross receipts, and is designated a small business as provided by this Act.

(2) "Council" means the Advisory Council on Small Business Assistance.

(3) "State agency" means all agencies, departments, councils, commissions, or boards of the State of Texas.

Advisory Council on Small Business Assistance

Sec. 4. (a) The Advisory Council on Small Business Assistance is created.

(b) The council consists of the executive director of the industrial commission as chairman ex officio, and nine members, appointed by the governor with the advice and consent of the senate, at least six of whom are owners or employees of small businesses.

(c) Service as chairman ex officio of the council is an additional duty of the office of the executive director of the industrial commission.

Appointment and Terms

Sec. 5. (a) Except as provided by Subsection (b) of this section, appointive members of the council are appointed for terms of six years that terminate on January 1 of odd-numbered years.

(b) For terms beginning on the effective date of this Act the governor shall appoint:

(1) three members for terms that expire January 31, 1981;

(2) three members for terms that expire January 31, 1979; and

(3) three members for terms that expire January 31, 1977.

Meetings; Quorum

Sec. 6. (a) The council shall meet at least once each quarter at the call of the chairman.

(b) Five members constitute a quorum.

Expenses

Sec. 7. Members of the council receive no salary for service on the council, but each is entitled to reimbursement for his expenses incurred in attending a meeting of the council.

Assistance to Industrial Commission

Sec. 8. The council shall provide assistance, guidance, and expertise to the industrial commission in the administration of this Act.

Administration by Industrial Commission

Sec. 9. (a) The industrial commission has the primary responsibility for the administration of the provisions of this Act. In order to meet this responsibility the industrial commission may:

(1) provide technical and managerial assistance to small businesses by offering advice and counsel with particular emphasis on how to bid on state supply requirements to which end the board of control may also help;

(2) provide technical and managerial assistance to small businesses by offering advice and counsel on sound management procedures;

(3) cooperate with business, professional, educational, and other organizations and with agencies of this state, and make available to any of these information concerning the management, financing, and operation of small businesses; and

(4) promulgate rules necessary for the proper administration of this Act.

(b) The industrial commission and the board of control may conduct research necessary to:

(1) ascertain which business associations qualify as small businesses under the terms of this Act, designate each as a small business, maintain a master list of small businesses, and revoke the designation when an entity ceases to be a small business;

(2) determine the methods and practices of prime contractors and encourage the letting of subcontracts to small businesses; and

(3) ascertain the means by which the productive capacity of small businesses can be used most effectively.

Assistance by State Agencies

Sec. 10. (a) The industrial commission shall obtain from the agencies of this state appropriate information needed by the industrial commission to carry out its responsibilities under this Act.

(b) The agencies of this State, including, but not limited to, the State Highway Department, Department of Mental Health and Mental Retardation, Texas Youth Council, Texas Department of Corrections, State Building Commission, and State Board of Control, are charged by this Act with the respon-

sibility to assist the industrial commission in furthering the purposes of this Act; and shall take positive steps to include small businesses on master bid lists, shall take positive steps to inform small businesses of state procurement opportunities, waive bond requirements where feasible, inform small business entrepreneurs as to applicable rules and procedures relating to bidding and the procurement of contracts, and continually monitor the effectiveness of this Act in improving the ability of designated small businesses to do business with the State.

(c) Each state agency shall prepare a written report of its performance each year and shall submit it to the Texas Industrial Commission who will consolidate the reports and, on or before December 1 of each year, shall deliver a copy of the consolidated report to the governor, the lieutenant governor, and the speaker of the house of representatives.

Procurement and Assistance Goals by State Agencies

Sec. 11. Each state agency shall establish annually small business procurement and assistance goals for which positive action will be taken by the state agency.

Inapplicability of Act

Sec. 12. This Act does not apply to purchases made pursuant to Article XVI, Section 21, of the Texas Constitution.

Effective Date

Sec. 13. This Act takes effect September 1, 1975. [Acts 1975, 64th Leg., p. 2301, ch. 718, §§ 1 to 13, eff. Sept. 1, 1975.]

Art. 5190.4. Metric System Advisory Council

Text of article effective until August 31, 1983

Definitions

Sec. 1. As used in this Act:

(1) "advisory council" means the Metric System Advisory Council;

(2) "metric system" means the International System of Units as established by the General Conference of Weights and Measures in 1960 and interpreted or modified for the United States by the United States Secretary of Commerce.

Advisory Council

Sec. 2. There is created within the Industrial Commission a Metric System Advisory Council.

Membership; Appointment; Vacancies

Sec. 3. (a) The advisory council consists of 12 appointed members and an ex officio member. The executive director of the Industrial Commission shall be an ex officio member with no voting privileges and shall serve as executive secretary. The members shall be appointed by the governor, with the

advice and consent of two-thirds of the membership of the senate, on the following basis:

(1) one member representing the Central Education Agency;

(2) one member representing all other state agencies of the executive branch except the Central Education Agency;

(3) one member representing the Office of the Governor;

(4) one member representing trade and labor organizations;

(5) one member representing universities and colleges;

(6) one member representing private small businesses and industries with less than 100 employees and less than \$1,000,000 annual gross sales;

(7) one member representing private businesses and industries which do not fit into category six;

(8) one member representing consumer interests;

(9) four members to be appointed at large at the discretion of the governor.

(b) Each member is appointed to serve a term of two years.

(c) If a vacancy occurs on the advisory council, the governor shall appoint a member to serve the unexpired term.

Officers; Meetings; Quorum

Sec. 4. (a) The advisory council shall elect a chairman from its membership.

(b) The advisory council shall meet four times annually in Austin, once in each quarter of the calendar year, at the call of the chairman.

(c) Seven members constitute a quorum of the advisory council. A majority of the members of a subcommittee of the advisory council constitutes a quorum of the subcommittee.

Expenses of Members

Sec. 5. (a) Members of the advisory council receive no salary for their services on the advisory council.

(b) Members of the advisory council are entitled to reimbursement for actual and necessary expenses incurred in attending a meeting of the advisory council. The total amount of reimbursement, excluding that for travel, shall not exceed the amount allowed for employees of the Industrial Commission at the time the expenses are incurred. Reimbursement for travel is at the same rate as for employees of state agencies, and reimbursement is allowed only for travel between the meeting and the home of the member.

(c) An advisory council member who is not employed by and does not represent a unit of state government on the advisory council shall be reimbursed by the Industrial Commission. A member who is employed by and represents a unit of state government on the advisory council shall be reimbursed by the unit of government with which the member is employed.

Executive Director; Staff

Sec. 6. The advisory council may employ an executive director to supervise the administration of this Act. The executive director may employ additional persons if necessary.

Duties of Advisory Council

Sec. 7. The advisory council shall:

(1) conduct appropriate research to determine the statutory changes that will be required for transition to the metric system;

(2) conduct appropriate research and investigation to determine the problems faced by business, industry, science, engineering, education, labor, consumers, and government agencies at the state and local levels in making a transition to the metric system;

(3) disseminate information to business, industry, science, engineering, labor, education, consumers, and government agencies at the state and local level that pertains to the transition to the metric system;

(4) recommend to the Industrial Commission and the legislature ways to help affected groups or individuals who face problems in making a transition to the metric system;

(5) cooperate with the United States Metric Board where appropriate;

(6) report to the legislature and the governor on the work of the advisory council in January of odd-numbered years; and

(7) perform such other activities as may be deemed necessary to carry out the intent of this Act.

Acceptance of Grants

Sec. 8. The advisory council may accept, on behalf of the state, a gift, grant, or donation from any source, or funds from an agency of the United States, to be used by the advisory council in the performance of its duties.

Expiration and Abolishment

Sec. 9. This Act expires and the Metric System Advisory Council is abolished on August 31, 1983. [Acts 1977, 65th Leg., p. 1380, ch. 552, §§ 1 to 9, eff. Aug. 29, 1977.]

Art. 5190.5. Loans for Manufacture of Fuel from Agricultural Products

Definition

Sec. 1. In this Act, "agricultural product" includes a processed or refined agricultural product, such as molasses or sugar, as well as an agricultural product in its natural state.

Loans for Fuel Development

Sec. 2. (a) The Texas Industrial Commission may make loans from the industrial development fund to individuals or other legal entities for the establishment of plants in this state to manufacture alcohol or other fuels from agricultural products as authorized by law. The commission may contract to loan to one or more legal entities an amount not in excess of 90 percent of the cost of any one plant and no more than \$25,000 may be loaned to any one legal entity for the establishment of a plant or plants, except that a loan not exceeding \$500,000 may be made to a small business corporation as defined by the Internal Revenue Code, Chapter 1, Subchapter S.¹

(b) A recipient of a loan may use the proceeds of the loan only for the following purposes related to the establishment of a plant of the type described in Subsection (a) of this section:

- (1) the purchase of land; and
- (2) the acquisition of buildings, machinery, and fixtures.

(c) The Industrial Commission may include in the loan agreement any conditions not inconsistent with this Act that the commission considers proper. The commission shall require that the loan be wholly secured by a first lien on real property. Each loan must be payable to the state.

(d) All loans must be repayable not later than 10 years from the date of the loan. The Industrial Commission may require that a loan agreement provide for a shorter repayment period.

(e) Interest shall be charged on a loan made under this Act at a rate determined by the Industrial Commission.

¹ 26 U.S.C.A. § 1371 et seq.

Maximum Amount of Loans

Sec. 3. (a) The Industrial Commission may not make a loan that will cause the total unpaid principal balance of all loans made under this Act then outstanding to exceed \$15 million.

(b) In applying the limit prescribed by Subsection (a) of this section, the unpaid principal balance of a loan is not counted if the loan:

- (1) is in default; and
- (2) the state has obtained a final judgment against the borrower or the borrower's heirs or assigns for the amount owed.

Loan Repayments

Sec. 4. The Industrial Commission shall deposit all repayments on loans made under this Act in the state treasury to the credit of the industrial development fund.

Rules

Sec. 5. The Industrial Commission may adopt rules to implement this Act. [Acts 1979, 66th Leg., p. 1073, ch. 503, §§ 1 to 5, eff. June 7, 1979.]

Art. 5190.6. Development Corporation Act of 1979

Short Title

Sec. 1. This Act may be cited as the "Development Corporation Act of 1979."

Definitions

Sec. 2. Wherever used in this Act unless a different meaning clearly appears in the context, the following terms, whether singular or plural, shall mean as follows:

(1) "Board of directors" shall mean the board of directors of any corporation organized pursuant to the provisions of this Act.

(2) "Commission" shall mean the Texas Industrial Commission.

(3) "Corporation" shall mean any industrial development corporation or medical development corporation organized pursuant to the provisions of this Act.

(4) "Cost" as applied to a project or medical research project shall mean and embrace the cost of acquisition, construction, reconstruction, improvement, and expansion, including the cost of the acquisition of all land, rights-of-way, property rights, easements, and interests, the cost of all machinery and equipment, financing charges, interest prior to and during construction and for one year after completion of construction whether or not capitalized, necessary reserve funds, cost of estimates and of engineering and legal services, plans, specifications, surveys, estimates of cost and of revenue, other expenses necessary or incident to determining the feasibility and practicability of acquiring, constructing, reconstructing, improving, and expanding any such project or medical research project, administrative expense and such other expense as may be necessary or incident to the acquisition, construction, reconstruction, improvement, and expansion thereof, the placing of the same in operation, and the financing or refinancing of any such project or medical research

project, including the refunding of any outstanding obligations, mortgages, or advances issued, made or given by any person for any of the aforementioned costs.

(5) "City" shall mean any municipality of the state incorporated under the provisions of (i) any general or special law or (ii) the home-rule amendment to the constitution.

(6) "County" shall mean a political subdivision of the state created and established under Article IX, Section 1, of the Texas Constitution.

(7) "District" shall mean a conservation and reclamation district established under authority of Article XVI, Section 59, of the Texas Constitution.

(8) "Governing body" shall mean the board, council, commission, commissioners court, or legislative body of the unit.

(9) "Industrial development corporation" shall mean a corporation created and existing under the provisions of this Act as a constituted authority for the purpose of financing one or more projects.

(10) "Medical development corporation" shall mean a corporation created and existing under the provisions of this Act as a constituted authority for the purpose of financing one or more medical research projects.

(11) "Medical research project" shall mean the land, buildings, equipment, facilities, and improvements (one or more) found by the board of directors to be required for medical research, irrespective of whether in existence or required to be acquired or constructed after the making of such finding by the board of directors.

(12) "Project" shall mean the land, buildings, equipment, facilities, and improvements (one or more) found by the board of directors to be required or suitable for the promotion of commercial or industrial development and expansion, the promotion of employment, or for use by commercial, manufacturing, or industrial enterprises, irrespective of whether in existence or required to be acquired or constructed after the making of such findings by the board of directors.

(13) "Resolution" shall mean the resolution, order, ordinance, or other official action by the governing body of a unit.

(14) "Unit" shall mean a city, county, or district which may create and utilize a corporation.

Findings and Construction

Sec. 3. It is hereby found, determined, and declared:

(1) that the present and prospective health, safety, right to gainful employment, and general welfare of the people of this state require as a public purpose the promotion and development of new and expanded commercial, industrial, manufacturing, medical, and research enterprises;

(2) that the existence, development, and expansion of commerce and industry are essential to the economic growth of the state and to the full employment, welfare, and prosperity of its citizens;

(3) that the means and measures authorized by this Act and the assistance provided in this Act, especially with respect to financing, are in the public interest and serve a public purpose of the state in promoting the health, welfare, and safety of the citizens of the state, not only physically by encouraging medical research but also economically by the securing and retaining of private industrial, commercial, manufacturing, and other enterprises and the resulting maintenance of a higher level of employment, economic activity and stability;

(4) that community industrial development corporations in Texas have themselves invested substantial funds in successful industrial development projects and have experienced difficulty in undertaking such additional projects by reason of the partial inadequacy of their own funds or funds potentially available from local subscription sources and by reason of limitations of local financial institutions in providing additional and sufficiently sizable first mortgage loans; and

(5) that communities in this state are at a critical disadvantage in competing with communities in other states for the location or expansion of such enterprises by virtue of the availability and prevalent use in all other states of financing and other special incentives; therefore, the issuance of revenue bonds by corporations on behalf of political subdivisions of the state as hereinafter provided for the promotion and development of new and expanded commercial, industrial, manufacturing, medical, and research enterprises to provide and encourage employment, public health, and the public welfare is hereby declared to be in the public interest and a public purpose.

This Act shall be liberally construed in conformity with the intention of the legislature herein expressed.

Creation of Corporation

Sec. 4. Any number of natural persons, not less than three, each of whom is at least 18 years of age and a qualified elector of the unit may file with the governing body of a unit a written application requesting that the unit authorize and approve creation of a corporation to act on behalf of the unit. If the governing body by appropriate resolution finds and determines that it is advisable that the corporation be authorized and created and approves the articles of incorporation proposed to be used in organizing the corporation, then the articles of incorporation for the corporation may be filed as herein-

after provided. A unit may authorize and approve creation of one or more corporations, provided that the resolution approving the creation of each corporation shall specify the public purpose or purposes of the unit which the corporation may further on behalf of the unit, which purpose or purposes shall be limited to the promotion and development of commercial, industrial, manufacturing, and medical research enterprises to promote and encourage employment, public health, and the public welfare. No corporation may be formed unless the unit has properly adopted a resolution as herein described.

Form of Corporation

Sec. 5. The corporation shall be a nonmember, nonstock corporation.

Articles of Incorporation

Sec. 6. The articles of incorporation shall set forth:

- (1) the name of the corporation;
- (2) a statement that the corporation is a non-profit corporation;
- (3) the period of duration which may be perpetual;
- (4) the specific purpose or purposes for which the corporation is organized and may issue bonds on behalf of the unit;
- (5) that the corporation has no members and is a nonstock corporation;
- (6) any provision not inconsistent with law, including any provision which under this Act is required or permitted to be set forth in the by-laws, for the regulation of the internal affairs of the corporation;
- (7) the street address of its initial registered office and the name of its initial registered agent at such street address;
- (8) the number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as the initial directors;
- (9) the name and street address of each incorporator; and
- (10) a recital that the unit has specifically authorized the corporation by resolution to act on its behalf to further the public purpose or purposes stated in the resolution and in the articles of incorporation and has approved the articles of incorporation.

Certificate of Incorporation

Sec. 7. (a) Triplicate originals of the articles of incorporation shall be delivered to the secretary of state. If the secretary of state finds that the articles of incorporation conform to the requirements of this Act, he shall, when a fee of \$25 has been paid:

- (1) endorse on each original the word "Filed" and the month, day, and year of the filing thereof;
- (2) file one of such originals in his office; and
- (3) issue two certificates of incorporation to each of which he shall affix one of such originals.

(b) A certificate of incorporation together with an original of the articles of incorporation affixed thereto by the secretary of state shall be delivered to the incorporators or their representatives and to the governing body of the unit under whose auspices the corporation was created.

(c) Upon the issuance of the certificate of incorporation, the corporate existence shall begin, and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators and by the unit have been complied with and that the corporation has been incorporated under this Act.

Registered Office and Agent

Sec. 8. Each corporation shall have and continuously maintain in this state:

- (1) a registered office which may be, but need not be, the same as its principal office; and
- (2) a registered agent, which agent may be an individual resident in this state whose business office is identical with such registered office, or a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized to transact business or to conduct its affairs in this state which has a principal or business office identical with such registered office.

Change of Registered Office or Agent

Sec. 9. (a) A corporation may change its registered office or change its registered agent or both upon filing in the office of the secretary of state a statement setting forth:

- (1) the name of the corporation;
- (2) the post-office address of its then registered office;
- (3) if the post-office address of its registered office is to be changed, the post-office address to which the registered office is to be changed;
- (4) the name of its then registered agent;
- (5) if its registered agent is to be changed, the name of its successor registered agent;
- (6) that the post-office address of its registered office and the post-office address of the business office of its registered agent as changed will be identical; and
- (7) that such change was authorized by its board of directors or by an officer of the corporation so authorized by the board of directors.

(b) Duplicate originals of such statement shall be executed by the corporation by its president or vice-president and verified by him and delivered to the secretary of state. If the secretary of state finds that such statement conforms to the requirements of this Act, he shall, when a fee of \$25 has been paid:

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

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

(d) Any registered agent of a corporation may resign:

- (1) by giving written notice to the corporation at its last known address; and
- (2) by giving written notice in triplicate to the secretary of state within 10 days after mailing or delivery of said notice to the corporation.

Such notice shall include the last known address of the corporation and shall include the statement that written notice of resignation has been given to the corporation and the date thereof. Upon compliance with the requirements as to written notice, the appointment of such agent shall terminate upon the expiration of 30 days after receipt of such notice by the secretary of state.

(e) If the secretary of state finds that such written notice conforms to the provisions of this Act, he shall:

- (1) endorse on each of such originals the word "Filed" and the month, day, and year of the filing thereof;
- (2) file one of such originals in his office;
- (3) return one original to such resigning registered agent; and
- (4) return one original to the corporation at the last known address of the corporation as shown in such written notice.

Service of Process on President or Vice-President; Service on Secretary of State

Sec. 10. (a) The president and all vice-presidents of the corporation and the registered agent of the corporation shall be agents of such corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation may be served.

(b) Whenever a corporation shall fail to appoint or maintain a registered agent in this state or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the

secretary of state shall be an agent of such corporation upon whom any such process, notice, or demand may be served. Service on the secretary of state of any process, notice, or demand shall be made by delivering to and leaving with him or with the assistant secretary of state or with any clerk having charge of the corporation department of his office duplicate copies of such process, notice, or demand. In the event any such process, notice, or demand is served on the secretary of state, he shall immediately cause one of the copies thereof to be forwarded by registered mail, addressed to the corporation at its registered office. Any service so had on the secretary of state shall be returnable in not less than 30 days.

(c) The secretary of state shall keep a record of all processes, notices, and demands served upon him under this article and shall record therein the time of such service and his action with reference thereto.

Board of Directors

Sec. 11. The corporation shall have a board of directors in which all powers of the corporation shall be vested and which shall consist of any number of directors, not less than three, each of whom shall be appointed by the governing body of the unit under whose auspices the corporation was created for a term of no more than six years, and each of whom shall be removable by the unit for cause or at will. The directors shall serve as such without compensation except that they shall be reimbursed for their actual expenses incurred in the performance of their duties hereunder.

Organizational Meeting of Board

Sec. 12. After the issuance of the certificate of incorporation, an organizational meeting of the board of directors named in the articles of incorporation shall be held within this state for the purpose of adopting bylaws, electing officers, and for such other purposes as may come before the meeting. The incorporators calling the meeting shall give at least three days' notice thereof by mail to each director named in the articles of incorporation, which notice shall state the time and place of the meeting.

Adoption and Approval of Initial Bylaws

Sec. 13. The initial bylaws of a corporation shall be adopted by its board of directors and approved by resolution of the governing body of the unit under whose auspices the corporation was created.

Quorum; Actions of Majority at Meeting; Action Without Meeting

Sec. 14. (a) A quorum for the transaction of business by the board of directors shall be whichever is less:

- (1) a majority of the number of directors fixed by the bylaws or in the absence of a bylaw fixing

the number of directors a majority of the number of directors stated in the articles of incorporation; or

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

(b) The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by the articles of incorporation or the bylaws.

(c) Any action required by this Act to be taken at a meeting of the directors of a corporation or any action which may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action to be taken, shall be signed by all of the directors. Such consent shall have the same force and effect as a unanimous vote and may be stated as such in any articles or document filed with the secretary of state under this Act.

Indemnification of Directors and Officers; Notice of Meetings; Waiver of Notice

Sec. 15. (a) The corporation shall have the power to indemnify any director or officer or former director or officer of the corporation for expenses and costs (including attorneys' fees) actually and necessarily incurred by him in connection with any claim asserted against him by action in court or otherwise by reason of his being or having been such director or officer, except in relation to matters as to which he shall have been guilty of negligence or misconduct in respect of the matter in which indemnity is sought.

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

(c) Regular meetings of the board of directors may be held within the state with or without notice as prescribed in the bylaws. Special meetings of the board of directors shall be held upon such notice as is prescribed in the bylaws. Attendance of a director

at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened. Neither the business to be transacted at nor the purpose of any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting, unless required by the bylaws.

(d) Whenever any notice is required to be given to any member or director of a corporation under the provisions of this Act or under the provisions of the articles of incorporation or bylaws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

Officers

Sec. 16. The officers of a corporation shall consist of a president, one or more vice-presidents, a secretary, a treasurer, and such other officers and assistant officers as may be deemed necessary, each of whom shall be elected or appointed at such time and in such manner and for such terms not exceeding three years as may be prescribed in the articles of incorporation or the bylaws. In the absence of any such provisions, all officers shall be elected or appointed annually by the board of directors.

Amendment of Articles

Sec. 17. (a) The articles of incorporation may at any time and from time to time be amended, provided that the board of directors files with the governing body of the unit under whose auspices the corporation was created a written application requesting that the unit approve such amendment to the articles of incorporation, specifying in such application the amendment or amendments proposed to be made. If the governing body by appropriate resolution finds and determines that it is advisable that the proposed amendment be made, authorizes the same to be made, and approves the form of the proposed amendment, the board of directors shall proceed to amend the articles as hereinafter provided.

(b) The articles of incorporation may also be amended at any time by the governing body of the unit under whose auspices the corporation was created at its sole discretion by adopting an amendment to the articles of incorporation of the corporation by resolution of such governing body and delivering the articles of amendment to the secretary of state as hereinafter provided.

Execution and Verification of Amendments

Sec. 18. The articles of amendment shall be executed in duplicate by the corporation by its president

or by a vice-president and by its secretary or an assistant secretary or by the presiding officer and the secretary or clerk of the governing body of the unit under whose auspices the corporation was created, shall be verified by one of the officers signing such articles, and shall set forth:

(1) the name of the corporation;

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

(3) the fact that such amendment was adopted or approved by the governing body of the unit and the date of the meeting at which the amendment was adopted or approved by such governing body.

Certificate of Amendment; Effect of Amendment

Sec. 19. (a) Triplicate originals of the articles of amendment shall be delivered to the secretary of state. If the secretary of state finds that the articles of amendment conform to the requirements of this Act, he shall, when a fee of \$25 has been paid:

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

(2) file one of such originals in his office; and

(3) issue two certificates of amendment to each of which he shall affix an original.

(b) A certificate of amendment together with an original of the articles of amendment affixed thereto by the secretary of state shall be delivered to the corporation or its representative and to the governing body of the unit under whose auspices the corporation was created.

(c) Upon the issuance of the certificate of amendment by the secretary of state, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.

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

Restated Articles of Incorporation and Restated Certificate of Incorporation

Sec. 20. (a) A corporation may, by following the procedure to amend the articles of incorporation provided by this Act including obtaining the approval of the governing body of the unit under whose

auspices the corporation was created, authorize, execute, and file restated articles of incorporation which may restate either:

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

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

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

(c) If the restated articles of incorporation restate the entire articles of incorporation as amended and supplemented by all certificates of amendment previously issued by the secretary of state and as further amended by such restated articles of incorporation, the instrument containing such articles shall:

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

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

(3) restate the text of the entire articles of incorporation as amended and supplemented by all certificates of amendment previously issued by the secretary of state and as further amended by the restated articles of incorporation.

(d) Such restated articles of incorporation shall be executed in triplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary and shall be verified by one of the officers signing such articles. Triplicate originals of the restated articles of incorporation shall be delivered to the secretary of state. If the secretary of state finds that the restated articles of incorporation conform to law, he shall, when a fee of \$25 has been paid:

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

(2) file one of such originals in his office; and

(3) issue two restated certificates of incorporation to each of which he shall affix one of such originals.

(e) A restated certificate of incorporation together with a triplicate original of the restated articles of incorporation affixed thereto by the secretary of state shall be delivered to the corporation or its representative and to the governing body of the unit under whose auspices the corporation was created.

(f) Upon the issuance of the restated certificate of incorporation by the secretary of state, the original articles of incorporation and all amendments thereto shall be superseded and the restated articles of incorporation shall be deemed to be articles of incorporation of the corporation.

Authority to Issue Obligations; Approval of Programs and Expenditures; Financial Statements, Books and Records

Sec. 21. Every unit is hereby authorized to utilize a corporation to issue obligations on its behalf to finance the cost of projects or medical research projects to promote and develop commercial, industrial, manufacturing, medical, and research enterprises to promote and encourage employment, the public health, and the public welfare. No unit is or shall be authorized to lend its credit or grant any public money or thing of value in aid of a corporation. The unit will approve all programs and expenditures of the corporation and annually review any financial statements of the corporation, and at all times the unit will have access to the books and records of the corporation.

Bonds Not Debt of State or Political Subdivision; Corporation as Constituted Authority and Instrumentality but not Political Subdivision or Corporation

Sec. 22. Bonds issued under the provisions of this act shall be deemed not to constitute a debt of the state, of the unit, or of any other political corporation, subdivision, or agency of this state or a pledge

of the faith and credit of any of them, but such bonds shall be payable solely from the funds herein provided therefor from revenues. All such revenue bonds shall contain on the face thereof a statement to the effect that neither the state, the unit, nor any political corporation, subdivision, or agency of the state shall be obligated to pay the same or the interest thereon and that neither the faith and credit nor the taxing power of the state, the unit, or any other political corporation, subdivision, or agency thereof is pledged to the payment of the principal of or the interest on such bonds. The corporation shall not be authorized to incur financial obligations which cannot be paid from proceeds of the obligations or from revenues realized from the lease or sale of a project or medical research project or realized from a loan made by the corporation to finance or refinance in whole or in part a project or a medical research project. The corporation when established and created pursuant to the terms of the Act shall be a constituted authority and an instrumentality (within the meaning of those terms in the regulations of the treasury and the rulings of the Internal Revenue Service prescribed and promulgated pursuant to Section 103 of the Internal Revenue Code of 1954, as amended¹) and shall be authorized to act on behalf of the unit under whose auspices it is created for the specific public purpose or purposes authorized by such unit; but the corporation is not intended to be and shall not be a political subdivision or a political corporation within the meaning of the constitution and the laws of the state, including without limitation Article III, Section 52, of the Texas Constitution, and a unit shall never delegate to a corporation any of such unit's attributes of sovereignty, including the power to tax, the power of eminent domain, and the police power.

¹ 26 U.S.C.A. § 103.

Powers of Corporation

Sec. 23. (a) In addition to the powers granted to such corporations elsewhere in the laws of Texas that are necessary for the corporation to achieve its purposes, the corporation shall have the following powers with respect to projects and medical research projects together with all powers incidental thereto or necessary for the performance of those hereinafter stated:

(1) to acquire, whether by construction, devise, purchase, gift, lease, or otherwise or any one or more of such methods and to construct, improve, maintain, equip, and furnish one or more projects and medical research projects located within the state and within or partially within the limits of the unit under whose auspices the corporation was created or within the limits of a different unit where the governing body thereof requests the corporation to exercise its powers therein;

(2) to lease to a lessee all or any part of any project or medical research project for such rentals and upon such terms and conditions as its board of directors may deem advisable and not in conflict with the provisions of this Act;

(3) to sell by installment payments or otherwise and convey all or any part of any project or medical research project for such purchase price and upon such terms and conditions as its board of directors may deem advisable and not in conflict with the provisions of this Act;

(4) to make secured or unsecured loans for the purpose of providing temporary or permanent financing or refinancing of all or part of the cost of any project or medical research project, including the refunding of any outstanding obligations, mortgages, or advances issued, made, or given by any person for the cost of a project or medical research project; and to charge and collect interest on such loans for such loan payments and upon such terms and conditions as its board of directors may deem advisable and not in conflict with the provisions of this Act;

(5) to issue revenue bonds for the purpose of defraying all or part of the cost of any project or medical research project and to secure the payment of such bonds as provided in this Act, provided that a corporation created under the auspices of a district may not issue revenue bonds for a medical research project;

(6) as security for the payment of the principal of and interest on any revenue bonds issued and any agreements made in connection therewith, to mortgage and pledge any or all of its projects and medical research projects or any part or parts thereof, whether then owned or thereafter acquired, and to assign any mortgage and repledge any security conveyed to the corporation to secure any loan made by the corporation and to pledge the revenues and receipts therefrom;

(7) to sue and be sued, complain and defend, in its corporate name;

(8) to have a corporate seal and to use the same by causing it or a facsimile thereof to be impressed on, affixed to, or in any manner reproduced upon instruments of any nature required to be executed by its proper officers;

(9) to make and alter bylaws not inconsistent with its articles of incorporation or with the laws of this state with the approval of the unit under whose auspices the corporation was created by resolution of the governing body for the administration and regulation of the affairs of the corporation;

(10) to cease its corporate activities and terminate its existence by voluntary dissolution as provided herein; and

(11) whether included in the foregoing or not, to have and exercise all powers necessary or appropriate to effect any or all of the purposes for which the corporation is organized which powers shall be subject at all times to the control of the governing body of the unit under whose auspices the corporation was created.

(b) The corporation shall not have the power to operate any project or medical research project as a business other than as lessor, seller, or lender. The purchase and holding of mortgages, deeds of trust, or other security interests and contracting for any servicing thereof shall not be deemed the operation of a project.

Leases, Sales, and Loan Agreements; Approval of Bonds and Permit for Offer and Sale of Securities

Sec. 24. (a) The commission shall approve the contents of any lease, sale, or loan agreement made under this Act. The commission shall prescribe rules and regulations setting forth minimum standards for lease, sale, and loan agreements and guidelines with respect to financial responsibilities of the lessee, purchaser, or borrower under any such agreement, but in no event shall the commission approve any agreement unless it affirmatively finds the lessee, purchaser, or borrower has the business experience, financial resources, and responsibility to provide reasonable assurance that all bonds and interest thereon to be paid from or by reason of such agreement will be paid as the same become due. Appeal from any adverse ruling or decision of the commission under this subsection may be made by the corporation to the District Court of Travis County. The substantial evidence rule shall apply. Rules, regulations, and guidelines promulgated by the commission and amendments thereto shall be effective only after they have been filed with the secretary of state.

(b) The corporation may submit a transcript of proceedings in connection with the issuance of the bonds to the commission and request that the commission approve such bonds. If the commission refuses to approve such bond issue solely on the basis of law, the corporation may seek a writ of mandamus from the Supreme Court, and for this purpose the chairman of the commission shall be considered a state officer as provided in Article 1733, Revised Civil Statutes of Texas, 1925.

(c) The commission may delegate to the executive director of the commission the authority to approve a bond issue or any documents submitted as provided herein.

(d) No corporation shall sell or offer for sale any bonds or other securities until a permit authorizing the corporation to offer and sell such securities has been granted by the securities commissioner under the registration provisions of The Securities Act, as amended (Article 581-1 et seq., Vernon's Texas Civil

Statutes), except as the State Securities Board may exempt from registration by rule, regulation, or order. Appeal from any adverse decision of the securities commissioner or the State Securities Board shall be as provided by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes). The substantial evidence rule shall apply in all such appeals.

Bonds and Proceeds of Bonds

Sec. 25. (a) The principal of and the interest on any bonds issued by a corporation shall be payable solely from the funds provided for such payment and from the revenues of the one or more projects or medical research projects for which the bonds were authorized. The bonds of each issue shall be dated, shall bear interest at such rate or rates, shall mature at such time or times not exceeding 40 years from their date as may be determined by the board of directors, and may be made redeemable before maturity at the option of the board of directors at such price or prices and under such terms and conditions as may be fixed by the board of directors of the corporation prior to the issuance of the bonds.

(b) The board of directors shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest. In cases where any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature for all purposes the same as if he had remained in office until such delivery. The bonds may be issued in coupon or in registered form or both as the board of directors of the corporation may determine, and provisions may be made for the registration of any coupon bonds as to the principal alone and also as to both principal and interest and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The corporation may sell bonds at public or private sale and at an interest rate not to exceed that permitted by the constitution or laws of the state.

(c) The proceeds of the bonds of each issue shall be used solely for the payment of all or part of the cost of or for the making of a loan in the amount of all or part of the cost of the project or projects or medical research project or medical research projects for which authorized as defined herein and shall be disbursed in such manner and under such restrictions, if any, provided in the resolution authorizing the issuance of the bonds or in the trust agreement securing the same. Bond proceeds may be used to pay all costs incurred in issuing the bonds, interest on the bonds for such time as may be determined by the board of directors of the corporation, and to

establish reserve funds and sinking funds for the bonds. If the proceeds of the bonds of any series issued with respect to the cost of any project or medical research project shall exceed the cost of the project or medical research project for which the same shall have been issued, the surplus shall be deposited to the credit of the sinking fund for such bonds or used to purchase bonds in the open market.

(d) Prior to the preparation of definitive bonds, the corporation may under like restrictions issue interim notes or temporary bonds with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. Bonds may be issued and lease, sale, and loan agreements entered into under the provisions of this Act without obtaining the consent or approval of any department, division, commission, board, bureau, or agency of the state except as otherwise provided herein. Bonds may not be issued for a medical project until compliance with the provisions of the Texas Health Planning and Development Act, Chapter 323, Acts of the 64th Legislature, Regular Session, 1975, as amended (Article 4418h, Vernon's Texas Civil Statutes).

(e) The principal of and interest on any bonds issued by the corporation shall be secured by a pledge of the revenues and receipts derived by the corporation from the lease or sale of the project or medical research project so financed or from the loan made by the corporation with respect to the project or medical research project so financed or refinanced and may be secured by a mortgage covering all or any part of such project or medical research project, including any enlargements of and additions to such project or medical research project thereafter made. The resolution under which the bonds are authorized to be issued and any such mortgage may contain any agreements and provisions respecting the maintenance of the project or medical research project covered thereby, the fixing and collection of rents, purchase price payments or loan payments, the creation and maintenance of special funds from such revenues and the rights and remedies available in the event of default, all as the board of directors shall deem advisable and not in conflict with the provisions hereof. Each pledge, agreement, and mortgage made for the benefit or security of any of the bonds of the corporation shall continue effective until the principal of and interest on the bonds for the benefit for which the same were made have been fully paid.

(f) The governing body of the unit under whose auspices the corporation was created shall approve by written resolution any agreement to issue bonds adopted by a corporation, which agreement and resolution shall set out the amount and purpose of the bonds. Additionally, no issue of bonds, including refunding bonds, shall be sold and delivered by the

corporation without a written resolution of the governing body adopted no more than 60 days prior to the date of sale of the bonds specifically approving the resolution of the corporation providing for the issuance of the bonds.

Refunding Bonds

Sec. 26. Each corporation is hereby authorized to provide by resolution for the issuance of its revenue refunding bonds for the purpose of refunding any bonds then outstanding, issued on account of a project or medical research project, which shall have been issued under the provisions of this Act, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds and, if deemed advisable by the corporation, for the additional purpose of financing improvements, extensions, or enlargements to the project or the medical research project in connection with which the bonds to be refunded shall have been issued or for another project. The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties, and obligations of the corporation in respect to the same shall be governed by the provisions of this Act insofar as the same may be applicable. Within the discretion of the corporation, the refunding bonds may be issued in exchange for outstanding bonds or may be sold and the proceeds used for the purpose of redeeming outstanding bonds.

Trust Agreements

Sec. 27. Any bonds issued under the provisions of this Act may be secured by a trust agreement by and between the corporation and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the state. Any such trust agreement may evidence a pledge or assignment of the lease, sale, or loan revenues to be received from a lessee or purchaser of or borrower with respect to a project or medical research project for the payment of principal of and interest and any premium on such bonds as the same shall become due and payable and may provide for creation and maintenance of reserves for such purposes. Any such trust agreement or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties in relation to the acquisition of property and the construction, improvement, maintenance, repair, operation, and insurance of the project or medical research project in connection with which such bonds shall have been authorized, and the custody, safeguarding, and application of all money. It shall be lawful for any bank or trust company incorporated under the

laws of the state which may act as depository of the proceeds of bonds or of revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the corporation. Any such trust agreement may set forth the rights and remedies of the bondholders and of the trustee and may restrict the individual right of action by bondholders as is customary in trust agreements or trust indentures securing bonds and debentures of private corporations. In addition to the foregoing, any such trust agreement may contain such provisions as the corporation may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of any such trust agreement may be treated as a part of the cost of the operation of the project or medical research project.

Enforcement of Agreements or Mortgages

Sec. 28. (a) Any agreement relating to any project or medical research project shall be for the benefit of the corporation. Any such agreement shall contain a provision that, in the event of a default in the payment of the principal of or the interest or premium on such bonds or in the performance of any agreement contained in such proceedings, mortgage, or instrument, such payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect rents, purchase price payments, and loan payments and to apply the revenues from the project or medical research project in accordance with such resolution, mortgage, or instrument.

(b) Any mortgage to secure bonds issued thereunder may also provide that, in the event of a default in the payment thereof or the violation of any agreement contained in the mortgage, the mortgage may be foreclosed and sold under proceedings in equity or in any other manner now or hereafter permitted by law. Such mortgage may also provide that any trustee under such mortgage or the holder of any of the bonds secured thereby may become the purchaser at any foreclosure sale if the highest bidder therefor.

Option to Purchase Granted to Lessee

Sec. 29. A corporation may grant a lessee an option to purchase all or any part of a project or medical research project when all bonds of the corporation delivered to provide such facilities have been paid or provision has been made for their final payment, provided during the time the bonds or interest thereon remains unpaid there is no failure to pay the lease rentals at the time and in the manner as the same become due, provided a payment shall be deemed paid when and as due if no event of default is declared and the payment is made within 15 calendar days of the date it was scheduled

to become due. The provisions of this law are procedurally exclusive for authority to convey or grant an option to purchase, and reference to no other law shall be required.

Authority of Corporation Regarding Bonds, Lease, Sale, or Loan Agreements

Sec. 30. Except as limited by the provisions of this Act or as limited by the rules, regulations, and guidelines of the commission, each corporation shall have full and complete authority with respect to bonds, lease, sale, or loan agreements and the provisions thereof.

Bonds as Legal and Authorized Investments

Sec. 31. Any bonds issued pursuant to this Act shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies, fiduciaries, trustees, and for the sinking funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas. Such bonds or notes shall be eligible to secure the deposit of any and all public funds of the State of Texas and any and all public funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas; and such bonds shall be lawful and sufficient security for said deposits to the extent of their face value when accompanied by all unmatured coupons appurtenant thereto.

Exemption from Taxation

Sec. 32. The legislature finds, determines, and declares that the activities of a corporation created and organized under the provisions of this Act affect all the people of the unit under whose auspices it is created by assuming to a material extent that which might otherwise become the obligation or duty of such unit, and therefore such corporation is an institution of purely public charity within the tax exemption of Article VIII, Section 2, of the Texas Constitution. Accordingly, the corporation, all properties at any time owned by it, the income therefrom, and all bonds issued by it, their transfer, and the income therefrom shall be exempt from all taxation by the state.

Nonprofit Nature of Corporation

Sec. 33. The corporation shall be a nonprofit corporation, and no part of its net earnings remaining after payment of its expenses shall inure to the benefit of any individual, firm, or corporation, except that in the event the board of directors shall determine that sufficient provision has been made for the full payment of the expenses, bonds, and other obligations of the corporation, then any net earnings of the corporation thereafter accruing shall be paid to the unit under whose auspices the corporation was created.

Authority to Alter or Dissolve Corporation

Sec. 34. At any time the unit may in its sole discretion alter the structure, organization, programs, or activities of the corporation or terminate and dissolve the corporation, subject only to any limitation provided by the constitution and laws of the state on the impairment of contracts entered into by the corporation. Such alteration or dissolution shall be made by written resolution of the governing body of the unit and as hereinafter provided.

Dissolution Upon Completion of Purposes

Sec. 35. Whenever the board of directors of the corporation by resolution shall determine that the purposes for which the corporation was formed have been substantially complied with and that all bonds theretofore issued and all obligations theretofore issued by the corporation have been fully paid, the members of the board of directors of the corporation shall, with the approval by written resolution of the unit under whose auspices the corporation was created, thereupon dissolve the corporation as hereinafter provided.

Dissolution and Certificate of Dissolution

Sec. 36. (a) Articles of dissolution shall be executed in triplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary or by the presiding officer and secretary or clerk of the governing body under whose auspices the corporation was created. Triplicate originals of such articles of dissolution shall be delivered to the secretary of state. If the secretary of state finds that such articles of dissolution conform to the requirements of this Act, he shall, when a fee of \$25 has been paid:

- (1) endorse on each of such originals the word "Filed" and the month, day, and year of the filing thereof;
- (2) file one of such originals in his office; and
- (3) issue two certificates of dissolution to each of which he shall affix an original.

(b) A certificate of dissolution together with an original of the articles of dissolution affixed thereto by the secretary of state shall be returned to the representative of the dissolved corporation and to the governing body of the unit. Upon the issuance of such certificate of dissolution the existence of the corporation shall cease, except for the purpose of suits, other proceedings, and appropriate corporate action by members, directors, and officers as provided in this Act.

(c) Whenever dissolution occurs, whether instituted by the governing body unit or by the board of directors of the corporation, the dissolution proceedings shall transfer the title to all funds and properties then owned by the corporation to the unit under whose auspices the corporation was created.

Construction With Other Laws and Federal and State Constitutions; Severability

Sec. 37. This Act shall be cumulative of all other laws on the subject, but this Act shall be wholly sufficient authority within itself for the creation of the corporations authorized herein and all actions by such corporations authorized hereby without reference to any other general or special laws or specific acts or any restrictions or limitations contained therein; and in any case, to the extent of any conflict or inconsistency between any provisions of this Act and any other provisions of law, this Act shall prevail and control; provided, however, any unit and any corporation shall have the right to use the provisions of any other laws not in conflict with the provisions hereof to the extent convenient or necessary to carry out any power or authority, express or implied, granted by this Act.

No proceedings, notice, or approval shall be required for the organization of the corporation or the issuance of any bonds or any instrument as security therefor, except as is herein provided, any other law to the contrary notwithstanding; provided that nothing herein shall be construed to deprive the state and its governmental subdivisions of their respective police powers over any properties of the corporation or to impair any police power thereover of any official or agency of the state and its governmental subdivisions as may be otherwise provided by law.

Nothing in this Act shall be construed to violate any provision of the federal or state constitution, and all acts done under this Act shall be in such manner as will conform thereto, whether expressly provided or not. Where any procedure hereunder may be held by any court to be violative of either of such constitutions, the corporation shall have the power by resolution to provide an alternative procedure conformable with such constitutions. If any provisions of this Act should be invalid, such fact shall not affect the validity of any other provisions of this Act, and the legislature hereby declares that it would have enacted the valid provisions of this Act notwithstanding the invalidity of any other provision or provisions hereof.

[Acts 1979, 66th Leg., p. 1675, ch. 700, §§ 1 to 37, eff. June 13, 1979.]

CHAPTER TWELVE. RESTRICTIONS ON LABOR

Article

5207b. Jury Service; Right to Reemployment.

Art. 5207b. Jury Service; Right to Reemployment

(a) No private employer may terminate the employment of a permanent employee because such employee serves as a juror. The employee is entitled

to return to the same employment that he or she held at the time he or she was summoned for jury service.

(b) To be entitled to take advantage of the right to reemployment granted in Subsection (a) of this section, the employee must, as soon as practical upon his or her release from jury service, give actual notice of his or her intention to return to his or her employment.

(c) A person who is injured because of a violation of this section is entitled to just damages, recoverable at law, in an amount not to exceed six months' compensation at the rate at which he or she was compensated at the time he or she was summoned for jury duty. In addition to damages, the injured person is entitled to recover reasonable attorney's fees, to be approved by the court.

(d) It is a defense in an action brought under this section that the employer's circumstances changed to such an extent during the time that the employee served as a juror that reemployment was impossible or unreasonable.

[Acts 1975, 64th Leg., p. 244, ch. 94, § 1, eff. Sept. 1, 1975.]

CHAPTER THIRTEEN. EMPLOYMENT AGENTS

Article

5221a-7. Personnel Employment Services.

Art. 5221a-5. Labor Agency Law

Definitions as Used in the Act

Sec. 1.

[See Compact Edition, Volume 4 for text of (a)]

(b) "Fee" means anything of value including money or other valuable consideration or services or the promise of any of the foregoing received by a Labor Agent or Agency from or on behalf of any person seeking employment, or employers seeking employees, in payment for any service, either directly or indirectly. The term "fee" includes the difference between the amount received by a Labor Agent and the amount paid out by him to persons employed to render personal services to, for, or under the direction of a third person.

[See Compact Edition, Volume 4 for text of 1(c) and (d)]

(e) "Labor Agent" means any person in this State who, for a fee, offers or attempts to procure, or procures employment for employees, or without a fee offers or attempts to procure, or procures employment for common or agricultural workers; or any person who for a fee attempts to procure, or procures employees for an employer, or without a fee offers or attempts to procure common or agricul-

tural workers for employers, or any person, regardless whether a fee is received or due, offers or attempts to supply or supplies the services of common or agricultural workers to any person. The term "Labor Agent" includes any person who, for a fee, employs workers to render personal services in connection with the production of any farm products to, for, or under the direction of a third person, or who recruits, solicits, supplies, or hires workers on behalf of an employer engaged in the growing or producing of farm products, and who, for a fee, provides in connection therewith one or more of the following services: furnishes board, lodging, or transportation for such workers; supervises, times, checks, counts, weighs, or otherwise directs or measures the work; or disburses wage payments to the workers.

[See Compact Edition, Volume 4 for text of 1(f)]

Exceptions

Sec. 2. The provisions of this Act shall not apply to persons who charge a fee of not more than Two Dollars (\$2) for registration only for procuring employment for school teachers; provisions of this Act shall not apply to any employment agency established and operated by this State, the United States Government, or any municipal government of this State; the provisions of this Act shall not apply to any person who may operate a labor bureau or employment office in conjunction with his own business for the sole and exclusive purpose of employing help for his own use within this State, nor to any common carrier operating in this State who may operate an employment office in conjunction with his own business for the exclusive purpose of employing help for his own use within or without this State, provided, that no fee or other charge or reduction is exacted from the salary or wages of the worker for employment given. If a fee or charge of any kind, either directly or indirectly, is exacted of the worker, then said employer is deemed an employment or labor agent and is subject to the provisions of this Act. The provisions of this Act shall not apply to farmers or stock raisers acting jointly or severally in securing laborers for their own use in this State where no fee is charged or collected, either directly or indirectly, for employment given; the provisions of this Act shall not apply to any person, corporation, or charitable association chartered under the laws of Texas for the purpose of conducting a free employment bureau or agency; nor to any veterans' organization or labor union; nor to any nurses' organizations operated not for profit, to be conducted by recognized professional registered nurses for the enrollment of its professional members only for the purpose of providing professional service to the public; nor shall the provisions of this Act apply to employers, their representatives and/or crew leaders engaged in agricul-

tural production and/or agricultural related services (packing, packaging, and processing), who recruit workers through the Texas Employment Commission.

Application and Bond

Sec. 3. (a) Application and Bond for a Labor Agency license shall be executed on blank forms prescribed and furnished by the Commissioner. Application for license to act as a Labor Agent may be made in person or by mail to the Commissioner upon blank application form which shall be verified by the applicant. Such application shall also be accompanied by affidavits of at least five (5) creditable citizens who have resided in the county in which said applicant resides for at least three (3) years prior thereto, to the effect that applicant or applicants are persons of good moral character. The application must state the names and addresses of all partners, associates, and profit sharers of the business and shall list the amount of their respective interests.

(b) The Commissioner shall investigate each applicant and the Department of Public Safety shall make available to the Commissioner all arrest and conviction records, of their files, on any applicant for license under this Act.

(c) The application shall be examined by the Commissioner. If he finds that the same complies with the law and that the applicant is entitled to a license and pays the annual license fee of Fifty Dollars (\$50), then he shall issue a license to the applicant. Each license issued by the Commissioner shall be good for a period of one year from date of issuance.

(d) Each application for a labor agency license must be accompanied by a surety or cash performance bond in the principal amount of Two Thousand Five Hundred Dollars (\$2,500). The bond shall be payable to the State for the use and benefit of any damaged party and conditioned that the licensee will pay any judgment recovered by any consumer, the State, or any political subdivision thereof in any suit for damages, penalties or expenses, including reasonable attorney's fees resulting from a cause of action involving the licensee's labor agency activities.

Fees

Sec. 3A. Where a fee is charged for obtaining employment such fee in no event shall exceed the sum of Three Dollars (\$3), which may be collected from the applicant only after employment has been obtained and accepted by the applicant. A labor agent may not charge a registration fee.

Persons Disqualified

Sec. 3B. No license to operate as a labor agent may be granted to:

(1) a person who sells or proposes to sell alcoholic beverages in a building or on premises where he

operates or proposes to operate as a labor agent; or

(2) a person whose license has been revoked within three (3) years preceding the date of application.

Notice of Cancellation of Bond

Sec. 3C. Where the surety intends to cancel a bond, thirty (30) days' notice of the cancellation shall be furnished by the surety to the Commissioner prior to the effective date of the cancellation.

Sec. 4. Repealed by Acts 1979, 66th Leg., p. 259, ch. 134, § 9, eff. May 9, 1979.

Revocation or Suspension of License

Sec. 5. The Commissioner shall have the authority, and it shall be his duty, to revoke the license of any labor agent when it shall appear to his satisfaction, upon hearing, that such agent has been convicted in a State or Federal Court of an offense which under the laws of this State is a felony, or for any offense involving moral turpitude, or that the agent had obtained his license illegally or fraudulently or was guilty of fraud, false swearing, or deception in securing his license. The Commissioner shall have the authority, and it shall be his duty, to revoke or suspend the license of any labor agent when it shall appear to his satisfaction, upon hearing, that the agent has violated any provision of this Act.

The Commissioner shall not revoke or suspend the license of any agent until complaint in writing, made by a credible person, shall be filed with him, specifying in general terms the grounds of the proposed revocation or suspension, and a full and fair hearing given to him thereon. Upon the filing of such complaint, the Commissioner shall fix a time and place, reasonably accessible to the agent complained against of the hearing of said complaint. The Commissioner shall notify the agent so complained against of the time and place fixed for said hearing by a registered letter addressed to him at his post-office address as the same appears upon his application for license, accompanied by an exact copy of the complaint against him; and mailing of such notice and copy shall be sufficient and conclusive evidence of proper service of the procedure upon the agent so complained against. The agent so complained against shall have at least ten (10) days after the date said notice is mailed, exclusive of the day of mailing and the day of hearing, before hearing upon said complaint shall be had, and shall have the right to file answer, introduce evidence and to be heard both in person and by counsel. The Commissioner shall have the power to summon and compel the attendance of witnesses before him to testify in relation to any such complaint, and may require the production of any book, paper or document deemed pertinent thereto. Said Commissioner shall also

have the power to provide for the taking of depositions of witnesses and evidence may be heard either from witnesses present testifying orally, or by deposition taken under such rules, and in such fair and impartial manner as the Commissioner may prescribe. Said hearing shall be had before the Commissioner and shall be conducted in a fair and orderly manner, and in accordance with rules of procedure to be adopted by the Commissioner, which must be in accordance with the terms and provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). Any appeal from the decisions of the Commissioner shall be filed in the District Court of Travis County and said appeal shall not have the effect of automatically staying the decisions of the Commissioner.

Failure to File Bond; Suspension of License

Sec. 5A. If a licensee fails to file a bond with the Commissioner within 30 days after notice of cancellation by the surety of the bond, the license issued to the principal under the bond is automatically suspended until such time as a bond is filed. A person whose license is suspended pursuant to this section shall not operate as a labor agent during the period of the suspension.

[See Compact Edition, Volume 4 for text of 6]

Reports to Workers

Sec. 7. Any labor agent hiring, enticing, or soliciting common or agricultural workers in this State to be employed beyond the limits of this State, shall provide to each person who was hired, enticed, or solicited to be employed beyond the limits of this State a report correctly showing:

- (a) The name and address of the person.
- (b) The name and address of the employer.
- (c) The kind of work to be performed.
- (d) The place where the person is to be employed.
- (e) The term of employment.
- (f) The wages to be paid, and
- (g) Whether or not transportation is to be furnished, arranged for, or paid for any such common laborer or agricultural worker either leaving or returning to this State.

The said Commissioner shall have the authority and it shall be his duty to issue the forms necessary for this section.

Duties of Licensee

Sec. 7A. (a) In addition to the duties inherent in being a labor agent and the duties required by this Act or any other provision of law, a licensee has the duties set forth in this section if he employs workers to render services for third persons.

(b) A licensee shall promptly pay or distribute to the proper individuals all money or other things of value entrusted to the licensee by a third person for such purpose.

(c) A licensee shall comply with the terms and provisions of legal and valid agreements and contracts entered into between the licensee in his capacity as a labor agent and third persons.

(d) A licensee shall have available for inspection by his employees and by the third persons with whom he has contracted a written statement in English and Spanish showing the rate of compensation he receives from the third persons and the rate of compensation he is paying to his employees for services rendered to, for, or under the control of such third persons.

(e) A licensee shall take out a policy of insurance with an insurance carrier authorized to do business in the State of Texas in an amount satisfactory to the Commissioner, which insures the licensee against liability for damage to persons or property arising out of the licensee's operation of, or ownership of, any motor vehicle for the transportation of individuals in connection with his business, activities, or operations as a labor agent.

(f) A licensee shall have displayed prominently at the site where the work is to be performed and on all vehicles used by the licensee for the transportation of employees the rate of compensation the licensee is paying to his employees for their services, printed in both English and Spanish.

(g) All vehicles used by a licensee for the transportation of individuals in his operations as a labor agent shall have displayed prominently at the entrance of the vehicle the name of the labor agent and the number of his license issued by the Commissioner.

(h) Each licensee shall, semimonthly or at the time of each payment of wages, furnish each worker employed by him either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing in detail each and every deduction made from the wages.

[See Compact Edition, Volume 4 for text of 7C to 9]

To Display License

Sec. 10. (a) A labor agent shall keep conspicuously posted in his office the license issued to him under this law.

(b) A labor agent shall display a duplicate of his license to each person with whom he deals in his capacity as a labor agent.

Doing Business Without License

Sec. 11. Any person acting as a Labor Agent, as defined by this Act, without having first filed with the Commissioner of Labor and Standards of the State of Texas, an application for license as Labor Agent, as provided by this Act, and without having first secured a State license as provided, shall be guilty of a misdemeanor and upon conviction shall be punished by fine of not less than Fifty Dollars (\$50) nor more than Three Hundred Dollars (\$300).

Authority of the Commissioner

Sec. 12. The Commissioner of Labor and Standards and his deputies or inspectors are hereby empowered to enforce the provisions of this Act, and shall have the authority of peace officers in making arrests of any person or persons who violate, in their presence, any of the provisions of this Act; and when such arrest has been made, the Commissioner or his duly appointed deputies or inspectors may enter any employment office at any time when such employment office is open for business and inspect the registers and all other records of whatsoever kind and character of such employment or labor agent for the purpose of ascertaining whether the provisions of this law are being violated, and the refusal of any employment or labor agent to permit such inspection shall be a violation of the Act, and be sufficient reason for the Commissioner to suspend or revoke the license of such agent in accordance with the provisions of Section 5 of this Act.

Rules and Regulations

Sec. 12A. The Commissioner shall promulgate rules and regulations to carry out the provisions of this Act.

[See Compact Edition, Volume 4 for text of 13 to 15]

[Amended by Acts 1975, 64th Leg., p. 409, ch. 182, §§ 1, 2, eff. May 13, 1975; Acts 1979, 66th Leg., p. 256, ch. 134, §§ 1 to 9, eff. May 9, 1979.]

Art. 5221a-6. Repealed by Acts 1979, 66th Leg., p. 574, ch. 263, § 9

Prior to repeal, this article was amended by Acts 1977, 65th Leg., p. 1834, ch. 735, § 2.014; Acts 1977, 65th Leg., p. 1953, ch. 777, §§ 1, 2. See, now, art. 5221a-7.

Art. 5221a-7. Personnel Employment Services

Definitions

Sec. 1. In this Act:

(1) "Person" means an individual, partnership, association, corporation, legal representative, trustee in bankruptcy, or receiver.

(2) "Fee" means anything of value. The term includes money or other valuable consideration or services or the promise of money or other valuable consideration or services received directly or indi-

rectly by a personnel service from a person seeking employment in payment for a service.

(3) "Employer" means a person employing or seeking to employ an employee.

(4) "Applicant" means a person engaging the services of a personnel service for the purpose of securing employment or a person placed by a personnel service with an employer.

(5) "Personnel service" means a person who for a fee or without a fee offers or attempts to procure directly or indirectly permanent employment for an employee or procures or attempts to procure a permanent employee for an employer.

(6) "Counselor" means an individual who interviews and refers an applicant to a prospective employer or who solicits job orders from an employer.

(7) "Owner" means a person possessing a proprietary interest in a personnel service.

(8) "Service file" means a job order, resume, application, workpaper, or other record containing any information relating to an applicant, employer, or position or the operations of a personnel service.

(9) "Job order" means a verbal or written notification from an employer of a job opening.

(10) "Principal location" means the place at which the day-to-day business of the personnel service is operated. An owner may have more than one principal location.

(11) "Management search consultant" means a personnel service that is retained by, acts solely on behalf of, and is compensated only by an employer and that does not collect directly or indirectly any fee from an applicant on account of any service performed by the personnel service.

(12) "Commissioner" means the commissioner of labor and standards.

Exemption

Sec. 2. (a) This Act does not apply to:

(1) a person regulated by Chapter 234, Acts of the 51st Legislature, Regular Session, 1949, as amended (Article 5221a-5, Vernon's Texas Civil Statutes);

(2) a personnel service operated by this state, the United States government, or any municipal government of this state;

(3) a personnel service operated by a person in conjunction with the person's own business for the exclusive purpose of employing help for use in the business; or

(4) a labor union.

(b) Section 7 of this Act does not apply to a management search consultant.

Conduct

Sec. 3. (a) A person who acts as a personnel service in the capacity of an owner, operator of the service, counselor, or agent or employee of the service may not:

(1) impose a fee for the registration of an applicant for employment or other fee on an applicant except for the furnishing of an employment referral that results in the applicant obtaining employment;

(2) engage or attempt to engage in splitting or sharing with an employer, an agent or other employee of an employer, or other person to whom the personnel service has furnished services a payment received by a personnel service from a person seeking employment or from an employer;

(3) make, give, or cause to be made or given to any applicant for employment any false promise, misrepresentation, or misleading statement or information;

(4) refer any applicant for employment except on a valid job order for the referral;

(5) advertise a position without there first being a valid job order verifiable by the employer;

(6) procure or attempt to procure the discharge of a person from his or her current employment;

(7) induce, solicit, or attempt to induce or solicit an employee to terminate his or her employment in order to obtain new employment if the employee's present employment was obtained by the efforts of the inducing or soliciting personnel service or any other personnel service having a common ownership with the inducing or soliciting personnel service unless the employee initiates the new contact;

(8) deliver, disclose, distribute, receive, or otherwise communicate any service file or any information contained in a service file to or from a person except as authorized by the personnel service owning the file;

(9) advertise in any medium, including a newspaper, trade publication, billboard, radio, television, card, printed notice, circular, contract, letterhead, and any other material made for public distribution, except an envelope, without clearly stating that the advertisement is by a firm providing a private personnel service;

(10) refer an applicant to a place where a strike or lockout exists without first furnishing the applicant a written statement of the existence of the strike or lockout if the personnel service has knowledge of the fact of the strike or lockout;

(11) refer an applicant to employment deleterious to his or her health or morals if the personnel service has knowledge of the deleterious condition of the employment; or

(12) charge a fee of more than 20 percent of the applicant's gross wages if the position that the applicant accepted as a result of a referral by a personnel service lasts less than 30 calendar days and if the applicant leaves the position with good cause.

(b) An employer seeking employees or a person seeking employment may not:

(1) make any false statement or conceal any material fact for the purpose of obtaining employees or employment by or through a personnel service; or

(2) engage or attempt to engage in the splitting or sharing of fees or payments for services of a personnel service with any person to whom this Act is applicable.

Service File as Trade Secret

Sec. 4. A service file and its contents are trade secrets as defined by Section 31.05 of the Penal Code.

Criminal Penalty

Sec. 5. A person who knowingly or intentionally violates or fails to comply with a provision of this Act commits an offense. An offense under this section is a Class A misdemeanor.

Civil Remedy

Sec. 6. (a) A person who violates a provision of this Act is liable to a person adversely affected by the violation for the amount of all actual damages produced by the violation. In the event a person adversely affected establishes that a violation was committed knowingly, the person shall be awarded three times the amount of actual damages. In this subsection, "knowingly" means actual awareness of the act or practice that is the alleged violation, but actual awareness may be inferred if objective manifestations indicate that a person acted with actual awareness.

(b) In an action filed under this section, a plaintiff who prevails shall receive court costs and attorney's fees reasonable in relationship to the amount of reasonably necessary work expended.

(c) In an action filed under this section, a plaintiff may seek and the court in its discretion may grant:

(1) an order enjoining the defendant in the suit from violating this Act;

(2) any order necessary to restore to the person any property acquired by the defendant in the suit in violation of this Act; or

(3) other relief that the court considers proper, including the appointment of a receiver if the court's judgment against the defendant in the suit is not satisfied within three months after the date of the final judgment, the revocation of a certifi-

cate authorizing the defendant in the suit to engage in business in this state, or an order enjoining the defendant in the suit from acting as a personnel service.

(d) If a court finds that a civil action filed under this section is groundless and brought in bad faith or for the purpose of harassment, the court may award court costs and reasonable attorney's fees to the defendant.

(e) This Act does not affect any public or private remedy or enforcement power available under other laws.

Certificate of Authority

Sec. 7. (a) Any person desiring to own a personnel service that is to operate in this state shall file notification of that fact with the commissioner. The notice shall be filed by the owner of the personnel service not later than the 30th day before the commencement of the operation. The notice shall include the principal location of the personnel service, the name and residence address of each owner, the assumed name, if any, under which the personnel service is to operate, and a statement that each owner has read and is familiar with the provisions of this Act. The notice shall be signed and sworn to by the owner before a notary public or other officer authorized to administer oaths.

(b) The notice shall be accepted by the commissioner, and on payment of a filing fee of \$50, the commissioner shall issue to the owner a certificate of authority to do business as a personnel service in this state not later than the 15th day after the day of the filing.

(c) The owner shall file with each notification or renewal a good and sufficient bond executed by the applicant with a good and sufficient surety in the sum of \$5,000 payable to the State of Texas, conditioned that the obligor will not violate any of the provisions of this Act. The bond shall recite that any person injured or aggrieved by any violation of this Act by the principal or his or her agents or representatives is entitled to bring suit on the bond. One bond is sufficient if an owner has more than one principal location. The commissioner may not issue the certificate of authority until the bond is filed. An owner may deposit \$5,000 in cash in lieu of the bond.

(d) The certificate of authority shall be valid for a period of one year from the date of its issuance. It shall be displayed in a prominent place in the principal location of the personnel service.

(e) Renewals of the certificate of authority shall be issued by the commissioner on the filing by an owner of a notice containing the same information specified in Subsection (a) of this section and on the receipt by the commissioner of a filing fee of \$50.

(f) Each person who holds on the effective date of this Act a license under the terms of Chapter 245, Acts of the 51st Legislature, Regular Session, 1949, as amended (Article 5221a-6, Vernon's Texas Civil Statutes), must file the notice required by this section not later than the 60th day after the effective date of this Act if the person is required to do so by this Act. The commissioner shall notify these persons of this Act and shall furnish, not later than the 30th day after the effective date of this Act, the persons with the forms necessary for filing in compliance with this section.

Disposition of Fees

Sec. 8. The commissioner shall deposit all money received by him or her from fees under this Act in the State Treasury to the credit of the General Revenue Fund.

[Acts 1979, 66th Leg., p. 570, ch. 263, §§ 1 to 8, eff. Aug. 27, 1979.]

Section 9 of the 1979 Act repealed art. 5221a-6.

CHAPTER FOURTEEN. UNEMPLOYMENT COMPENSATION

Art. 5221b-1. Benefits

[See Compact Edition, Volume 4 for text of (a)]

(b) Benefit Amount for Total Unemployment: Each eligible individual who is totally unemployed in any benefit period shall be paid with respect to such benefit period, benefits at the rate of one twenty-fifth ($\frac{1}{25}$) of his wages received from employment by employers during that quarter in his base period in which wages were highest, provided that:

[See Compact Edition, Volume 4 for text of
(b)(1)]

(2) Such rate shall not be more than Eighty-four Dollars (\$84) per benefit period nor less than Fifteen Dollars (\$15) per benefit period on valid initial claims filed on or after October 1, 1977; provided that if the annual average of the manufacturing production workers average weekly wage in Texas exceeds by Ten Dollars (\$10) the average weekly wage for those workers in 1976 as determined by the Texas Employment Commission and published in its report, "The Average Weekly Wage," the maximum weekly benefit amount shall be increased by Seven Dollars (\$7) and the minimum weekly benefit amount shall be increased by One Dollar (\$1) above the maximum and minimum amounts established herein, the increases to become effective on valid initial claims filed on or after October 1 following publication of "The Average Weekly Wage" report. Thereafter, each cumulative (additional) Ten Dollar (\$10) increase in the average weekly wage for manufacturing production workers in Texas, as annually determined and reported by the Texas Employment Commission, shall cumulatively increase the

maximum weekly benefit amount by an additional Seven Dollars (\$7) and the minimum weekly benefit amount by an additional One Dollar (\$1) beginning with the next October 1 following publication of "The Average Weekly Wage" report. The maximum benefit amount payable per benefit period under this section to any individual on the effective date of a valid claim shall remain the maximum benefit amount payable to that individual until that individual establishes a new benefit year.

[See Compact Edition, Volume 4 for text of
(c) and (d)]

(e) Benefit Wage Credits: "Benefit wage credits" means those wages as defined in this subsection of the Act, which are used in determining an individual's right to benefits. "Wages" as used in this Section shall be as defined in subsection (n) of Section 19 of this Act,¹ except that the six-thousand-dollar limitation on wages as set out in subsection (n)(1) of Section 19 shall not be applicable for the purposes of this Section 3; provided that, for the purposes of this Section 3, wages received by an individual in any calendar year shall include all remuneration from each employer for employment up to the maximum amount of wages as defined in the Federal Insurance Contributions Act (Section 3121, Chapter 21, Subtitle C, Internal Revenue Code of 1954),² as amended, or as it may hereafter be amended; and provided further, that wages which have been used to qualify an individual for regular benefits under this Act or under any other unemployment compensation law shall not be used again to qualify such individual for regular benefits.

If an employer fails to report wages which were paid to a claimant during a base period when requested by the Commission, the Commission may establish wage credits for such claimant for such base period on the basis of the best information which has been obtained by the Commission.

(f) Equal Treatment: Benefits based on services for all employers in employment defined in subsection 19(f) shall be payable in the same amount, on the same terms, and subject to the same conditions; except that:

(1) with respect to services in an instructional, research, or principal administrative capacity for an educational institution, benefits shall not be payable based on those services for any week commencing during the period between two (2) successive academic years or terms (or, when an agreement provides instead for a similar period between two (2) regular but not successive terms, during that period) to any individual if the individual performs those services in the first of the academic years (or terms) and if there is a contract or reasonable assurance that the individual

will perform services in that capacity for any educational institution in the second of the academic years (or terms);

(2) with respect to services in any other capacity for an educational institution (other than an institution of higher education), benefits shall not be payable on the basis of those services to any individual for any week which commences during a period between two (2) successive academic years or terms if the individual performs those services in the first of the academic years or terms and there is a reasonable assurance that the individual will perform those services in the second of the academic years or terms; and

(3) with respect to any services described in Paragraphs (1) and (2), benefits shall be denied to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess.

(g) Athletes: Benefits shall not be payable to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two (2) successive sport seasons (or similar periods) if the individual performed those services in the first of the seasons (or similar periods) and there is a reasonable assurance that the individual will perform those services in the later of the seasons (or similar periods).

(h) Aliens: Benefits shall not be payable on the basis of services performed by an alien unless the alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed (including an alien who was lawfully present in the United States as a result of the application of the provisions of Section 203(a)(7) or Section 212(d)(5) of the Immigration and Nationality Act),³ provided that:

(1) any data or information required of individuals applying for benefits to determine whether or not benefits are payable to them because of their alien status shall be uniformly required from all applicants for benefits; and

(2) in the case of an individual whose application for benefits would otherwise be approved, no determination that benefits are not payable to that individual because of his alien status may be made except on a preponderance of the evidence.

Provided that any modifications to the provisions of Section 3304(a)(14) of the Federal Unemployment Tax Act as provided by Public Law 94-566⁴ which specify other conditions or other effective date for the denial of benefits based on services performed by aliens and which modifications are required to be implemented under state law as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act shall be considered applicable under the provisions of this Section.

(i) Previously Uncovered Services: With respect to weeks of unemployment beginning after December 31, 1977, benefit wage credits shall include wages for previously uncovered services, provided that benefit payments based on those services are reimbursable from the federal government in accordance with provisions of Public Law 94-566 and provided that no employer's account shall be charged with payments based on those benefit wage credits either as chargebacks or reimbursements. For the purpose of this subsection, the term "previously uncovered services" means services which were not employment and which were not services for an employer under any provision of this Act at any time during the one-year period ending December 31, 1975, and which constitute employment and services for an employer after December 31, 1977, in accordance with the provisions of Section 19 of this Act as services in agricultural labor, domestic services, services for a governmental employer, or services for a nonprofit educational institution which is not an institution of higher education, except to the extent that assistance under Title II of the federal Emergency Jobs and Unemployment Assistance Act of 1974⁵ was paid on the basis of those services.

[Amended by Acts 1975, 64th Leg., p. 897, ch. 334, § 9, eff. June 6, 1975; Acts 1977, 65th Leg., p. 981, ch. 368, §§ 1, 2, eff. Jan. 1, 1978.]

¹ Article 5221b-17(n).

² 26 U.S.C.A. § 3121.

³ 8 U.S.C.A. §§ 1153(a)(7), 1182(d)(5).

⁴ 26 U.S.C.A. § 3304(a)(14).

⁵ Public Law 93-567; see 26 U.S.C.A. § 3304 note.

Sections 20 to 22 of the 1977 amendatory act provided:

"Sec. 20. All laws or parts of laws in conflict herewith, insofar as they do conflict herewith, are hereby repealed, but such repeal may in no way be construed as forfeiting or waiving any rights of the State of Texas or of the Texas Employment Commission which have accrued thereunder, including but not limited to the right to collect contributions, interest, or penalties that have accrued and the right of prosecution for violation of any provision thereof; nor may this repeal in any way be construed as forfeiting or waiving the rights of any individual to benefits which accrued thereunder; provided that the commission's determination of the benefit year, the benefit amount for total unemployment, and the duration of benefits made with respect to an initial claim filed prior to January 1, 1978, shall be effective for the remainder of that benefit year.

"Sec. 21. The amendment to Subsection (b), Section 3, Texas Unemployment Compensation Act, as amended (Article 5221b-1, Vernon's Texas Civil Statutes), contained in Section 1 of this Act takes effect on October 1, 1977. All other provisions of this Act take effect on January 1, 1978.

"Sec. 22. If any provision of this Act is held invalid, the invalidity does not affect any provision of this Act which can be given effect without the invalid provision. Provided further, should any part or parts of Public Law 94-566 or the federal acts it amends be finally adjudged unconstitutional or invalid by any court of competent jurisdiction, then this Act is automatically repealed to the extent of such invalidity."

Art. 5221b-2. Benefit Eligibility Conditions

An unemployed individual shall be eligible to receive benefits with respect to any benefit period only if the Commission finds that:

(a) He has registered for work at, and thereafter has continued to report at, an employment

office in accordance with such regulations as the Commission may prescribe;

(b) He has made a claim for benefits in accordance with the provisions of Subsection 6(a) of this Act;¹

(c) He is able to work;

(d) He is available for work;

(e) He has within his base period received benefit wage credits for employment by employers of not less than Five Hundred Dollars (\$500) and has total benefit wage credits in his base period of not less than one and one-half (1½) times his high quarter benefit wage credits in his base period, or within at least one quarter of his base period received wages for employment by employers equal to two-thirds (⅔) of the maximum amount of wages as defined in the Federal Insurance Contributions Act (Section 3121, Chapter 21, Subtitle C, Internal Revenue Code),² as amended, or as it may hereafter be amended, provided that any claimant who has had a prior benefit year must have earned wages of Two Hundred Fifty Dollars (\$250) or more subsequent to the beginning date of the prior benefit year.

(f) Prior to the first payment of benefits following an initial claim he has been totally or partially unemployed for a waiting period of seven (7) consecutive days. No week shall be counted as a waiting period week for the purposes of this Subsection:

(1) Unless he has registered for work at an employment office in accordance with Subsection (a) of this Section;

(2) Unless it is a week following the filing of an initial claim;

(3) Unless he reports at an office of the Commission and certifies that he has met the waiting period requirements herein prescribed for the preceding seven (7) days;

(4) If benefits have been paid or are payable with respect thereto;

(5) If the individual does not meet the eligibility conditions of Subsections (c) and (d) of this Section 4;

(6) If the individual has been disqualified for benefits for such seven (7) day period under the provisions of Subsections (a), (b), (c), or (d) of Section 5 of this Act;³

(7) Provided, notwithstanding any other provision of this Subsection (f), when an individual has been paid benefits in his current benefit year equal to three times his weekly benefit amount, he shall be eligible to receive benefits on his waiting period claim in accordance with the terms of the Act.

[Amended by Acts 1977, 65th Leg., p. 984, ch. 368, § 3, eff. Aug. 29, 1977.]

¹ Article 5221b-4(a).

² 26 U.S.C.A. § 3121.

³ Article 5221b-3.

Art. 5221b-2a. Prohibitions Against Denial of Benefits

[See Compact Edition, Volume 4 for text of (a) and (b)]

(c) Benefits shall not be denied to an individual solely on the basis of pregnancy or termination of pregnancy.

[Amended by Acts 1977, 65th Leg., p. 985, ch. 368, § 4, eff. Jan. 1, 1978.]

Art. 5221b-3. Disqualification for Benefits

An individual shall be disqualified for benefits:

(a) If the Commission finds that he has left his last work voluntarily without good cause connected with his work. Such disqualification shall be for not less than one (1) nor more than twenty-five (25) benefit periods following the filing of a valid claim, as determined by the Commission according to the circumstances in each case.

(b) If the Commission finds he has been discharged for misconduct connected with his last work. Such disqualification shall be for not less than one (1) nor more than twenty-six (26) benefit periods following the filing of a valid claim, as determined by the Commission according to the seriousness of the misconduct.

(c) If the Commission finds that during his current benefit year he has failed, without good cause, either to apply for available, suitable work when so directed by the Commission or to accept suitable work when offered him, or to return to his customary self-employment (if any) when so directed by the Commission. Such disqualification shall be for not less than one (1) nor more than thirteen (13) benefit periods following the failure, as described above to apply for or accept suitable work, the degree of disqualification to be determined by the Commission according to the circumstances in each case.

(1) In determining whether or not any work is suitable for an individual, the Commission shall consider the degree of risk involved to his health, safety and morals at the place of performance of his work, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

(2) Notwithstanding any other provisions of this Act, no work shall be deemed suitable and benefits shall not be denied under this Act to any otherwise eligible individual for refusing to accept new work under any of the following

conditions: (a) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (b) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (c) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(d) For any benefit period with respect to which the Commission finds that his total or partial unemployment is (i) due to the claimant's stoppage of work because of a labor dispute at the factory, establishment, or other premises (including a vessel) at which he is or was last employed, or (ii) because of a labor dispute at another place, either within or without this State, which is owned or operated by the same employing unit which owns or operates the premises at which he is or was last employed, and supplies materials or services necessary to the continued and usual operation of the premises at which he is or was last employed; provided that this subsection shall not apply if it is shown to the satisfaction of the Commission that:

(1) He is not participating in or financing or directly interested in the labor dispute; provided, however, that failure or refusal to cross a picket line or refusal for any reason during the continuance of such labor dispute to accept and perform his available and customary work at the factory, establishment, or other premises (including a vessel) where he is or was last employed shall be considered as participation and interest in the labor dispute; and

(2) He does not belong to a grade or class of workers of which, immediately before the commencement of the labor dispute, there were members employed at the premises (including a vessel) at which the labor dispute occurs, any of whom are participating in or financing or directly interested in the dispute; provided, that if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment, or other premises; and where a disqualification arises from the employee's failure to meet the requirements of this paragraph (2) of this subsection (d) his disqualification shall cease if he shall show that he is not, and at the time of the labor dispute was not, a member of a labor organization which is the same as, represented by, or directly affiliated with, or that he, or such organization of which he is a member, if any, is not acting in concert or in sympathy with

a labor organization involved in the labor dispute at the premises at which the labor dispute occurred, and he has made an unconditional offer to return to work at the premises at which he is or was last employed.

(e) For any benefit period with respect to which he is receiving or has received remuneration in the form of:

(1) Wages in lieu of notice;

(2) Compensation for temporary partial disability, temporary total disability or total and permanent disability under the Workmen's Compensation Law of any State or under a similar law of the United States;

(3) Old Age Benefits under Title II of the Social Security Act as amended,¹ or similar payments under any Act of Congress, or a State Legislature; provided, that if such remuneration is less than the benefits which would otherwise be due under this Act, he shall be entitled to receive for such benefit period, if otherwise eligible, benefits reduced by the amount of such remuneration. If any such benefits, payable under this subsection, after being reduced by the amount of such remuneration, are not an even multiple of One Dollar (\$1), they shall be adjusted to the next higher multiple of One Dollar (\$1).

(f) In determining the number of benefit periods during which any individual is entitled to receive benefits in a benefit year, the Commission shall deduct any period of disqualification as provided in subsections (a), (b), and (c) of this Section from the total number of benefit periods during which he would otherwise be entitled to receive benefits except for such disqualification; provided, that in no case shall the number of benefit periods so deducted exceed the number of benefit periods during which the claimant is then eligible to receive benefits except for such disqualification; and provided further, that in no event shall a disqualification imposed under subsection (a) or (c) of this Section result in a total reduction of the claimant's benefit rights in his benefit year.

(g) For the duration of any period of unemployment with respect to which the Commission finds that such individual has left his most recent work for the purpose of attending an established educational institution; provided, that this subsection shall not apply during a period in which an individual is in training with the approval of the Commission.

(h) For weeks of unemployment beginning after March 31, 1980, for any benefit period with respect to which the individual is receiving a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on the previous work of the individ-

ual and which is reasonably attributable to that benefit period; provided that if the remuneration is less than the benefits which would otherwise be due under this Act, the individual shall be entitled to receive for that benefit period, if otherwise eligible, benefits reduced by the amount of the remuneration. If those benefits payable under this subsection, after being reduced by the amount of the remuneration, are not an even multiple of One Dollar (\$1), they shall be adjusted to the next higher multiple of One Dollar (\$1).

The Legislature declares that the preceding paragraph is enacted because Section 3304(a)(15) of the Federal Unemployment Tax Act as provided in Public Law 94-566² requires this provision in State law as of January 1, 1978, as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act; and it further declares that if Section 3304(a)(15) is amended to provide modifications of these requirements, the modified requirements, to the extent that they are required for full tax credit, shall be considered applicable under the provisions of this Section rather than the provisions stated in the preceding paragraph.

[Amended by Acts 1977, 65th Leg., p. 985, ch. 368, § 5, eff. Jan. 1, 1978.]

¹ 42 U.S.C.A. § 401 et seq.

² 26 U.S.C.A. § 3304(a)(15).

Art. 5221b-4. Claims for Benefits

[See Compact Edition, Volume 4 for text of (a)]

(b) An unemployed individual who has no current benefit year may file an initial claim in accordance with rules or regulations prescribed by the Commission. The Commission shall mail a notice of the filing of such initial claim to the individual or organization for which the claimant last worked prior to the effective date of the initial claim. If the individual or organization has more than one branch or division operating at different locations, notice of the filing of such initial claim shall be mailed to the branch or division where claimant last worked. Mailing of notice of the initial claim to the correct address of the individual or organization or the branch or division where claimant last worked shall constitute due notice to such individual or organization. If the individual or organization to which such notice is mailed has knowledge of any facts that may adversely affect such claimant's right to benefits, or that may affect a charge to its account, it shall notify the Commission of such facts promptly. If such individual or organization does not mail or deliver such notification to the Commission within twelve (12) days from the date notice of a claim was mailed to it by the Commission, such individual or organization shall be deemed to have waived all rights in connection with such claim, including any rights it may have under subsection 7(c)(2) of this Act,¹ except with respect to a clerical or machine

error as to the amount of its chargeback or maximum potential chargeback in connection with such claim.

The Commission shall determine whether such initial claim is valid. If such initial claim is valid, the Commission shall determine the benefit year, the benefit amount for total unemployment and the duration of benefits. A notice of the determination of the initial claim shall be mailed to the claimant at his last known address as reflected by Commission records. The claimant may within twelve (12) calendar days from the date such notice was mailed request a redetermination or appeal in the manner provided in this Section.

If such individual or organization for which claimant last worked has filed a notification with the Commission in accordance with this Section, an examiner shall make a determination as to whether the claimant is disqualified from receipt of benefits under Section 5 of this Act,² as to any other issue affecting the claimant's right to receive benefits which may have arisen under any other provision of this Act, and as to whether a chargeback shall be made to the account of the individual or organization if benefits are paid, and shall mail a copy of the determination to the claimant and to such individual or organization, or the branch or division for which the claimant last worked. In the absence of such notification from such individual or organization, if, from information on the claim or other information secured, an issue is raised affecting the claimant's rights to benefits under any provision of this Act, an examiner shall prepare a determination reflecting his decision and mail a copy of it to the claimant at his last known address.

Unless the claimant or the individual or organization or branch thereof to which the copy of the determination is mailed files an appeal from such determination within twelve (12) calendar days after such copy of the determination is mailed to his or its last known address as reflected by Commission records, such determination shall be final for all purposes and benefits shall be paid or denied in accordance therewith; provided, that within the same period of time, an examiner may file an appeal from such determination, or may, if he discovers error in connection therewith or additional information not previously available, reconsider and redetermine any such determination, and such redetermination shall replace such determination and shall become final unless an appeal therefrom is filed by such claimant or such individual or organization within twelve (12) calendar days after a copy of such redetermination was mailed to his or its last known address as reflected by Commission records.

Notwithstanding any provision in this Act under which benefits may be paid or denied, benefits shall

be paid promptly in accordance with a determination or redetermination of an examiner, a decision of an appeal tribunal, the Commission, or a reviewing court, on the issuance of that determination, redetermination or decision (regardless of the pendency of the period to apply for reconsideration, file an appeal, or petition for judicial review, or the pendency of that application, filing, or petition), unless and until that determination, redetermination, or decision has been modified or reversed by a subsequent redetermination or decision, in which event benefits shall be paid or denied in accordance with the modifying or reversing redetermination or decision. If a determination or decision is finally modified or reversed to deny benefits, no chargeback shall be made to the employer's account by reason of payments made to the claimant for any benefit period with respect to which he is finally denied benefits, and any benefits paid to the claimant which were not in accordance with the final decision shall be refunded by the claimant to the Commission or in the discretion of the Commission shall be deducted from future benefits payable to him under this Act.

[See Compact Edition, Volume 4 for text of (c) to (e)]

(f) Procedure: The manner in which disputed claims shall be presented, the reports thereon required from the claimant and from employers, or other individuals or organizations, and the conduct of hearings and appeals shall be in accordance with rules or regulations prescribed by the Commission for determining the rights of the parties. A full and complete record shall be kept of all proceedings in connection with a disputed claim and all testimony at any hearing upon a disputed claim shall be recorded.

[See Compact Edition, Volume 4 for text of (g) to (i)]

[Amended by Acts 1977, 65th Leg., p. 987, ch. 368, § 6, eff. Jan. 1, 1978.]

¹ Article 5221b-5(c)(2).

² Article 5221b-3.

Art. 5221b-4a. Extended Benefits

(a) Definitions: As used in this Section, unless the context clearly requires otherwise:

[See Compact Edition, Volume 4 for text of (a)(1)]

(2) There is a national "on" indicator for a week if, for the period consisting of that week and the immediately preceding twelve (12) weeks, the rate of insured unemployment (seasonally adjusted) for all states equaled or exceeded four and five-tenths percent (4.5%). The rate of insured unemployment, for the purposes of this subsection, shall be determined by the Secretary of Labor by reference to the average monthly covered employment for the first four (4) of the most recent six (6) calendar quarters ending before the close of that period.

(3) There is a national "off" indicator for a week if, for the period consisting of that week and the immediately preceding twelve (12) weeks, the rate of insured unemployment (seasonally adjusted) for all states was less than four and five-tenths percent (4.5%). The rate of insured unemployment, for the purposes of this subsection, shall be determined by the Secretary of Labor by reference to the average monthly covered employment for the first four (4) of the most recent six (6) calendar quarters ending before the close of that period.

[See Compact Edition, Volume 5 for text of (a)(4)]

(5) There is a State "off" indicator for this State for a week if the Commission determines, in accordance with the regulations of the United States Secretary of Labor, that, for the period consisting of such week and the immediately preceding twelve (12) weeks, either paragraph (A) or (B) of subdivision (4) is not satisfied. Provided that with respect to benefits for weeks of unemployment beginning after December 31, 1977, the determination of whether there has been a State "on" or "off" indicator beginning or ending any extended benefit period shall be made under this section as if subdivision (4) did not contain paragraph (A) thereof, and as if the figure "four" (4) contained in paragraph (B) thereof were "five" (5); except that, notwithstanding any other provision of this Section, any week for which there would otherwise be a State "on" indicator shall continue to be such a week and shall not be determined to be a week for which there is a State "off" indicator.

[See Compact Edition, Volume 4 for text of (a)(6) to (9)]

(10) "Exhaustee" means an individual who, with respect to any benefit period of unemployment in his eligibility period:

(A) has received, prior to such benefit period, all of the regular benefits that were available to him under this Act or any other state law (including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. Chapter 85) in his current benefit year that includes such benefit period;

Provided, that, for the purposes of this subparagraph, an individual shall be deemed to have received all of the regular benefits that were available to him although, as a result of a pending appeal with respect to wage credits that were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits, or

(B) had a benefit year that expired prior to such benefit period and has no, or insufficient, wage credits on the basis of which he could establish a new benefit year that would include such benefit period; and

(C)(i) has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Trade Act of 1965, or such other federal laws as are specified in regulations issued by the United States Secretary of Labor, and

(ii) has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada; but if he is seeking such benefits and the appropriate agency finally determines that he is not entitled to benefits under such law, he is considered an exhaustee.

[See Compact Edition, Volume 4 for text of (a)(11), (b) to (f)]

(g) Financing:

[See Compact Edition, Volume 4 for text of (g)(1) to (5)]

(6) Notwithstanding any other provision in this Act, with respect to weeks of unemployment beginning after December 31, 1978, extended benefit payments based on benefit wage credits earned from a state, or any political subdivision thereof, or any instrumentality of any one (1) or more of the foregoing which is wholly owned by one (1) or more states or political subdivisions shall be charged to the employer at the rate of one hundred per cent (100%) rather than at the rate of fifty per cent (50%) as provided for other employers under this Act, and any such employer which is a taxed employer shall receive notice that its maximum potential chargeback may be increased by as much as fifty per cent (50%) rather than twenty-five per cent (25%) as provided for other employers.

(h) Repealed by Acts 1977, 65th Leg., p. 1001, ch. 368, § 19, eff. Jan. 1, 1978.

[Amended by Acts 1975, 64th Leg., p. 1, ch. 1, § 1, eff. Jan. 20, 1975; Acts 1977, 65th Leg., p. 989, ch. 368, §§ 7, 8, 19, eff. Jan. 1, 1978.]

Sections 2 and 3 of Acts 1975, 64th Leg., p. 1, ch. 1, provided:

"Sec. 2. All laws or parts of laws in conflict herewith, insofar as they do conflict herewith, are hereby repealed, but such repeal shall in no way be construed as forfeiting or waiving any rights of the State of Texas or of the Texas Employment Commission which have accrued thereunder.

Sec. 3. "If any word, phrase, sentence, paragraph, subsection, or section of this Act shall be held invalid or unconstitutional, such holding shall not invalidate any other word, phrase, sentence, paragraph, subsection, or section hereof, and the legislature hereby expressly declares that it would have passed such remaining words, phrases, sentences, paragraphs, subsections, and sections despite such invalidity."

Art. 5221b-5. Contributions

(a) Payment: Contributions shall accrue and become payable by each employer for each calendar year, or portion thereof, in which he is subject to this Act, with respect to wages for employment paid during such calendar year, or portion thereof. Such contributions shall become due and be paid by each employer to the Commission for the fund in accordance with such rules or regulations as the Commission may prescribe, and shall not be deducted in

whole or in part from the wages of individuals in such employer's employ. For agricultural employers subject to this Act, the Commission may require estimated contributions quarterly, but shall require a full report only once each year.

[See Compact Edition, Volume 4 for text of (b)]

(c) Experience rating:

[See Compact Edition, Volume 4 for text of (c)(1) and (2)(A)]

(2)(B) To each employer to whom notice of an initial claim has not already been mailed under subsection 6(b) of this Act,² and whose account is potentially chargeable with benefits as the result of such initial claim and payment of benefits, a notice of his maximum potential chargebacks shall be mailed when benefits are first paid and an opportunity afforded for protest of his potential chargebacks. If any such employer desires to protest his potential chargebacks, he shall, within twelve (12) days after such notice was mailed to him, mail his protest, including a statement of the facts upon which his protest is based, to the Commission at Austin, Texas. Any employer who does not protest his potential chargebacks within twelve (12) days after notice was mailed to him shall be deemed to have waived his right to protest such chargebacks. If a timely protest is filed, the examiner shall promptly decide the issues involved in such protest and shall mail a notice of his decision thereon to the protesting employer. Such decision shall become final twelve (12) days from the date of mailing thereof, unless such employer mails to the Commission at Austin, Texas, a written appeal therefrom within such twelve (12) days. Administrative review hereunder shall be in accordance with Commission rules or regulations, and appeals to the Courts shall be permitted only after such employer has exhausted his administrative remedies (not including a motion for rehearing) before the Commission, and within the time prescribed by subsection 6(h) and subsection 6(i) of this Act³ with respect to Commission decisions on benefits. Venue and jurisdiction of appeals to the Courts with respect to chargebacks shall be the same as venue and jurisdiction of suits to collect contributions and penalties under this Act.

If notice of the claim has been sent previously to the employer under the provisions of Section 6 of this Act,⁴ the employer shall be mailed a notice of the amount of his potential chargeback resulting from the claim, and may, within twelve (12) days from the date such notice was mailed, protest any clerical or machine error as to amounts. Such employer shall be mailed a decision on such protest and may appeal within twelve (12) days from the date notice of such decision was mailed to him.

[See Compact Edition, Volume 4 for text of (c)(3) and (4)]

(5) The replenishment ratio for a calendar year is a quotient, stated to the nearest hundredth, derived from the following numerator and denominator.

The numerator of the replenishment ratio shall be the amount of benefits paid from the Unemployment Compensation Fund during the twelve (12) months ending September 30 of the preceding year after deductions have been made for:

- (A) benefit warrants canceled,
- (B) repayment of benefits which have been overpaid, and
- (C) benefits paid which are repayable from reimbursing employers, the federal government, or any other governmental entity.

The denominator of the replenishment ratio shall be the total amount of chargebacks to the accounts of all taxed employers during the twelve (12) months ending September 30, of the preceding year.

The replenishment ratio for each calendar year shall be determined prior to the due date of the first contribution payment with respect to wages for employment paid in that year and such replenishment ratio thus determined shall not be affected or revised by virtue of any subsequent adjustment of any chargebacks of any employer.

[See Compact Edition, Volume 4 for text of (c)(6) to (d)]

(e) Repealed by Acts 1977, 65th Leg., p. 1001, ch. 368, § 19, eff. Jan. 1, 1978.

[Amended by Acts 1977, 65th Leg., p. 991, ch. 386, §§ 9, 19, eff. Jan. 1, 1978; Acts 1979, 66th Leg., p. 910, ch. 418, § 1, eff. June 6, 1979.]

- ² Article 5221b-4(b).
- ³ Article 5221b-4(h), (i).
- ⁴ Article 5221b-4.

Art. 5221b-5a. Reimbursements

[See Compact Edition, Volume 4 for text of (a) to (h)]

(i) Authority to Terminate Elections: If any reimbursing employer is delinquent in making reimbursements as provided under this Section, the Commission may terminate such reimbursing employer's election to make reimbursements as of the beginning of the next taxable year and such termination shall be effective for that and the succeeding taxable year.

(j) Bond: In the discretion of the Commission, any reimbursing employer (or group of such employers) that elects to become liable for reimbursements may be required to execute and file with the Commission a surety bond approved by the Commission. The amount of such bond shall be determined in accord-

ance with rules prescribed by the Commission. The Commission may require adjustments to be made in a previously filed bond if it deems such action appropriate. Failure by any reimbursing employer covered by such bond to pay the full amount of reimbursements when due, together with any applicable interest and penalties provided for under this Act, shall render the surety liable on such bond to the extent of the bond, as though the surety was such employer. If any reimbursing employer fails to make bond when directed to do so by the Commission, the Commission may terminate such employer's election to make reimbursements as of the beginning of the next taxable year and such termination shall be effective for that and the succeeding taxable year.

[See Compact Edition, Volume 5 for text of (k) and (l)]

(m) Notwithstanding any other provision in this Act, with respect to benefits paid for weeks of unemployment beginning after December 31, 1978, if the reimbursing employer is a state or political subdivision thereof, or any instrumentality of any one (1) or more of the foregoing which is wholly owned by one (1) or more states or political subdivisions, that employer shall pay one hundred percent (100%) of the extended benefits based on benefit wage credits earned from that employer instead of one-half (½) or fifty percent (50%) as indicated for other employers covered under this Act.

[Amended by Acts 1977, 65th Leg., p. 992, ch. 368, §§ 10, 11, eff. Jan. 1, 1978.]

Art. 5221b-5b. Special Contributions for Governmental Employers

(a) Notwithstanding any provision in this Act to the contrary, after December 31, 1977, a governmental employer subject to the provisions of this Act and which pays contributions shall pay in accordance with the following.

(b) Contributions:

(1) Payments: Contributions shall accrue and become payable by each governmental employer for each calendar year, or portion thereof, in which it is subject to this Act with respect to wages for employment paid during the calendar year or portion thereof. The contributions shall become due and be paid by each such employer to the Commission for the fund in accordance with rules prescribed by the Commission and shall not be deducted in whole or in part from the wages of individuals in the employer's employ.

(2) Rate of Contributions: Each governmental employer shall pay contributions equal to one percent (1%) of the wages paid by the employer with respect to employment during each quarter for calendar years 1978 and 1979. The contribution

rate for calendar year 1980 shall be a percentage adjusted to the next higher one-tenth of one percent ($\frac{1}{10}$ of 1%) based on the following numerator and denominator: The numerator shall include all benefits paid during the preceding two (2) calendar years based on wage credits earned from employers which pay contributions under this Section (not including benefit payments which are reimbursable from any other source), and the denominator shall include the total wages paid by all employers which pay contributions under this Section for the same period. The contribution rate for calendar year 1981 and each calendar year thereafter shall be derived in the same manner as for calendar year 1980, except the numerator and denominator shall include benefit payments and wages paid by the employers for only the one calendar year prior to the calendar year for which the rate is computed.

Provided, if the total benefits paid during the period used for determining the rate are greater than the total contributions paid by these same employers for the same period, the amount of benefits paid in excess of the amount of contributions collected for the period shall be added to the numerator in determining the contribution rate, and if the amount of benefits paid for the period is less than the contributions paid by these employers for the same period, that amount shall be deducted from the numerator in computing the rate; provided that in no year shall the contribution rate under this Section be less than one-tenth of one percent ($\frac{1}{10}$ of 1%).

(3) Interest and Penalties on Past Due Contributions: If any governmental employer shall fail to pay contributions due under this Section on the date on which they are due and payable as prescribed by the Commission, the employer shall be subject to the same penalties as provided for other employers under subsection 14(a) of this Act.¹

(c) Collections:

(1) The provisions for collecting delinquent contributions provided under Section 14 of this Act² shall be applicable with respect to governmental employers.

(2) If any governmental employer is delinquent in payment of contributions or reimbursements under any section of this Act, the Commission shall notify the Comptroller of Public Accounts in writing of the name of the governmental employer and the amount of the delinquency. On receipt of this notice, the Comptroller shall pay a sum to the Commission in the amount of the delinquency from any funds which would otherwise be due from the State to the delinquent governmental employer.

(d) Reports: Each governmental employer shall keep such records and file such reports with the

Commission with respect to individuals in its employment as the Commission may prescribe by rules. A governmental employer failing to keep or file these reports when due shall be subject to the same penalties as provided for other employers under subsection 14(c) of this Act.³

(e) Separate Accounting: Benefit payments based on wages from employers under this Section shall be paid from the fund; provided the Commission shall establish separate accounting with respect to benefits paid and contributions collected under this Section and these benefits and contributions shall not be used in determining contribution rates under Section 7 of this Act.⁴

[Added by Acts 1977, 65th Leg., p. 992, ch. 368, § 12, eff. Jan. 1, 1978.]

¹ Article 5221b-12(a).

² Article 5221b-12.

³ Article 5221b-12(c).

⁴ Article 5221b-5.

Art. 5221b-6. Duration of Coverage and Elections

[See Compact Edition, Volume 4 for text of (a) and (b)(1)]

(2) A State or an instrumentality thereof may voluntarily elect, for a period of not less than two (2) calendar years, to pay reimbursements for benefits paid or to pay contributions.

(3) A political subdivision of a State or any instrumentality thereof may voluntarily elect for a period of not less than two (2) calendar years to pay reimbursements for benefits paid or to pay contributions.

(4) An election by an employer under subsection 8(b)(2) or 8(b)(3) of this Act to be a reimbursing employer shall be made within forty-five (45) days after the date notice is mailed to the employer that it is subject to the provisions of this Act. The election will be effective January 1 of the year in which the employer became subject to the Act. All elections under subsections 8(b)(2) and 8(b)(3) of this Act may be terminated after the minimum required period by filing with the Commission a written request for termination not later than thirty (30) days preceding the last day of a calendar year, and such termination shall be effective January 1 of the following year.

[See Compact Edition, Volume 4 for text of (b)(5) and (6)]

(c)(1) No employing unit shall cease to be an employer subject to this Act except as of the first day of January of any calendar year, and only then if such employer files with the Commission, within the period from January 1 through March 31 of such year, a written application for termination of coverage, and the Commission finds that the employing unit was not an employer as defined in subsection 19(f) of this Act¹ during the preceding year.

[See Compact Edition, Volume 4 for text of (c)(2) and (d)]

[Amended by Acts 1977, 65th Leg., p. 994, ch. 368, §§ 13, 14, eff. Jan. 1, 1978.]

¹ Article 5221b-17(f).

Art. 5221b-8. Texas Employment Commission

[See Compact Edition, Volume 4 for text of (a) to (f)]

(g) The Texas Employment Commission is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished effective September 1, 1983.

[Amended by Acts 1977, 65th Leg., p. 1840, ch. 735, § 2.059, eff. Aug. 29, 1977.]

¹ Article 5429k.

Art. 5221b-17. Definitions

As used in this Act, unless the context clearly requires otherwise:

[See Compact Edition, Volume 4 for text of (a) to (c)]

(d) "Contributions" means the money payments (taxes) to the State Unemployment Compensation Fund required under this Act. Employers who pay contributions under this Act may be referred to as "taxed employers".

[See Compact Edition, Volume 4 for text of (e)]

(f) "Employer" means:

(1) Any employing unit, other than one to which paragraph (3) or (6) below is applicable, which during any calendar quarter in the current calendar year or the preceding calendar year paid wages of One Thousand Five Hundred Dollars (\$1,500) or more, or on each of some twenty (20) days during the current calendar year or during the preceding calendar year, each day being in a different calendar week, employed at least one (1) individual in employment for some portion of the day;

(2) Any individual or employing unit which acquired the organization, trade, or business, or substantially all of the assets thereof, of another which at the time of such acquisition was an employer subject to this Act;

(3) Any employing unit which is a nonprofit organization as described in Section 501(c)(3) of the Internal Revenue Code of 1954¹ which is exempt from income tax under Section 501(a) of such Code² and which on each of some twenty (20) days during the current calendar year or during the preceding calendar year, each day being in a different calendar week, employed four (4) or more individuals in employment for some portion of the day;

(4) Any employing unit which has elected to become an employer under Section 8 of this Act;³

(5) Any employing unit which is liable for the payment of taxes under the Federal Unemployment Tax Act⁴ for the current calendar year;

(6) A state or any political subdivision thereof, or any instrumentality of any one (1) or more of the foregoing which is wholly owned by one (1) or more states or political subdivisions;

(7) Any employing unit not an employer by reason of any other paragraph of this subsection which, as a condition for approval of this Act for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required, pursuant to such Act, to be an "employer" under this Act;

(8) Any employing unit which paid wages for or employed individuals in agricultural labor in accordance with the following; notwithstanding any other provision in this Act, agricultural labor as defined in subsection 19(g)(5)(B) of this Act shall constitute employment if performed for any employing unit which during any calendar quarter in the current calendar year or the preceding calendar year paid wages in cash of Twenty Thousand Dollars (\$20,000) or more for such services, or on each of some twenty (20) days during the current calendar year or during the preceding calendar year, each day being in a different calendar week, employed at least ten (10) or more individuals in that employment for some portion of the day; provided that

(A) for purposes of this provision, any individual who is a member of a crew furnished by a crew leader to perform agricultural labor for any other person shall be treated as an employee of the crew leader,

(i) if:

(I) the crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963;⁵ or

(II) substantially all the members of the crew operate or maintain tractors, mechanized harvesting or crop-dusting equipment, or any other mechanized equipment which is provided by the crew leader; and

(ii) if the individual is not an employee of such other person;

(B) for purposes of this provision, in the case of any individual who is furnished by a crew leader to perform agricultural labor for any other person and who is not treated as an employee of the crew leader under paragraph (A) of this subdivision:

(i) the other person and not the crew leader shall be treated as the employer of that individual; and

(ii) the other person shall be treated as having paid cash remuneration to that individual in

an amount equal to the amount of cash remuneration paid to that individual by the crew leader (either on his behalf or on behalf of the other person) for the agricultural labor performed for the other person;

(C) for purposes of this provision, the term "crew leader" means an individual who:

(i) furnishes individuals to perform agricultural labor for any other person,

(ii) pays (either on his behalf or on behalf of the other person) the individuals so furnished by him for the agricultural labor performed by them, and

(iii) has not entered into a written agreement with the other person under which the individual is designated as an employee of the other person;

(D) for the purposes of this provision, wages shall not include remuneration paid in any medium other than cash;

(E) this provision shall not be applicable to agricultural labor performed before January 1, 1980, by an individual who is an alien admitted to the United States to perform agricultural labor pursuant to Sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act.⁶

(9) Any employing unit which paid wages for domestic service in accordance with the following: notwithstanding any other provision in this Act, domestic service in a private home, local college club, or a local chapter of a college fraternity or sorority shall constitute employment if performed for any employing unit which during any calendar quarter in the current calendar year or the preceding calendar year paid wages in cash of One Thousand Dollars (\$1,000) or more for the domestic service, provided that an employer under this provision shall not be treated as an employer with respect to wages paid for any service other than domestic service unless the employer is treated as an employer under some other provision of this Act with respect to the service.

[See Compact Edition, Volume 4 for text of (g)(1) to (g)(3)(C)]

(D) The term "employment" shall include any service (other than service which is deemed "employment" under the provisions of subsections (g)(2) and (g)(3) of this Section or the parallel provisions of another state's law) performed after 1971 outside the United States (except in a contiguous country with which the United States has an agreement relating to unemployment compensation) by a citizen of the United States as an employee of an American employer, if:

(i) the employer's principal place of business in the United States is located in this State; or

(ii) the employer has no place of business in the United States, but:

(I) the employer is an individual who is a resident of this State; or

(II) the employer is a corporation which is organized under the laws of this State; or

(III) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this State is greater than the number who are residents of any one (1) other state; or

(iii) none of the criteria of divisions (i) and (ii) of this subparagraph is met but the employer has elected coverage in this State or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this State.

[See Compact Edition, Volume 4 for text of (g)(3)(E)]

(F) The term "United States" when used in a geographical sense includes the States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

[See Compact Edition, Volume 4 for text of (g)(3)(G) and (g)(4)]

(5) The term "employment" shall not include:

(A) Service with respect to which unemployment compensation is payable under an Unemployment Compensation System established by an Act of Congress; provided that the Commission is hereby authorized to enter into agreements with the proper agencies under such Act of Congress, which agreements shall become effective ten (10) days after publication thereof in the manner provided in subsection 11(b) of this Act¹⁰ for general rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this Act, acquired rights to unemployment compensation under such Act of Congress, or who have, after acquiring potential rights to unemployment compensation under such Act of Congress, acquired rights to benefits under this Act.

(B) Agricultural labor, which is hereby defined as all services performed:

(i) on a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;

(ii) in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools

and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

(iii) in connection with the production or harvesting of any commodity defined as an agricultural commodity in Section 15(g) of the Agricultural Marketing Act, as amended (46 Stat. 1550, 3; 12 U.S.C. 1141j),¹¹ or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(iv)(I) in the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half ($\frac{1}{2}$) of the commodity with respect to which such service is performed;

(II) in the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in subparagraph (I) above, but only if such operators produced more than one-half ($\frac{1}{2}$) of the commodity with respect to which such service is performed;

(III) the provisions of subparagraphs (I) and (II) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption;

(v) on a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer.

As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(C) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority;

(D) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one (21) years in the employ of his father or mother;

(E) Service performed in the employ of a church, convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(F) Services performed in the employ of a political subdivision or any instrumentality thereof which is wholly owned by one (1) or more political subdivisions:

(i) as an elected official;

(ii) as a member of a legislative body;

(iii) as a member of the judiciary;

(iv) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency; or

(v) in a position which, under or pursuant to law, is designated as a major nontenured policy-making or advisory position, or a policy-making or advisory position the performance of the duties of which ordinarily does not require more than eight (8) hours per week;

(G) Service performed in the employ of a foreign government (including services as a consular or other officer or employee, or a nondiplomatic representative);

(H) Service performed in the employ of an instrumentality wholly owned by a foreign government (i) if the service is of a character similar to that performed in foreign countries by the employees of the United States Government or of an instrumentality thereof; and (ii) if the Commission finds that the United States Secretary of State has certified to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar services performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

(I) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law; and service performed as an intern in the employ of a hospital by an individual who has completed a four-year course in a medical school chartered or approved pursuant to State law;

(J) Service performed by an individual for a person as an insurance agent or an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission;

(K) Service performed by an individual under the age of eighteen (18) years in the delivery or

distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(L) Service covered by an arrangement between the Commission and the agency charged with the administration of any other state or federal unemployment compensation law pursuant to which all services performed by an individual for an employing unit during the period covered by such employing unit's duly approved election are deemed to be performed entirely within such agency's state or under such federal law;

(M) Service performed in the employ of the United States Government or an instrumentality of the United States exempt under the Constitution of the United States from the contributions imposed by this Act, except that to the extent that the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this Act shall be applicable to such instrumentalities, and to services performed for such instrumentalities, in the same manner, to the same extent, and on the same terms as to all other employers, employing units, individuals, and services; provided, that if this State shall not be certified for any year by the Social Security Board or successor under Section 1603(c) of the Internal Revenue Code of 1954,¹² the payments required by such instrumentalities with respect to such year shall be refunded by the Commission from the fund in the same manner and within the same period as is provided in subsection 14(j) of this Act¹³ with respect to contributions erroneously collected;

(N) Service performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

(O) [Deleted]

(P) Service performed in the employ of a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitative or remunerative work;

(Q) Service performed as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or politi-

cal subdivision thereof, by an individual receiving such work relief or work training;

(R) Service performed by an inmate of a custodial or penal institution which is owned or operated by the State or a political subdivision thereof;

(S) Service performed in the employ of a school, college, or university, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university;

(T) Service performed by an individual under the age of twenty-two (22) who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employing unit, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers; and

(U) Service performed in the employ of a hospital, if such service is performed by a patient of such hospital;

(V) Service performed on a fishing vessel normally having a crew of fewer than ten (10) if the crew member's reimbursement for services performed is a share of the catch and the services are determined not to be employment under the Federal Unemployment Tax Act.¹⁴

[See Compact Edition, Volume 4 for text of (g)(6) to (j)]

(k) "State" includes, in addition to the States of the United States of America, Puerto Rico, the District of Columbia, and the Virgin Islands.

[See Compact Edition, Volume 4 for text of (l) and (m)]

(n) "Wages" means all remuneration paid for personal services, including the cash value of all remuneration paid in any medium other than cash and gratuities received by any employee in the course of employment to the extent that the gratuities are considered as wages in the computation of taxes under the Federal Unemployment Tax Act, 26 U.S.C. Sec. 3301 et seq., except that such term shall not include:

(1) That part of the remuneration which, after remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) equal to Six Thousand Dollars (\$6,000) with respect to employment has been

paid to an individual by an employer during any calendar year, is paid to such individual by such employer during any such calendar year;

(2) The amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents), or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of:

- (A) Retirement, or
- (B) Sickness or accident disability, or
- (C) Medical or hospitalization expenses in connection with sickness or accident disability, or
- (D) Death;

(3) Any payment made to an employee (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement;

(4) Any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of six (6) calendar months following the last calendar month in which the employee worked for such employer;

(5) Any payment made to, or on behalf of, an employee or his beneficiary:

(A) From or to a trust described in Section 401(a) of the Internal Revenue Code of 1954¹⁵ which is exempt from tax under Section 501(a) of said Code¹⁶ at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust, or

(B) Under or to an annuity plan which, at the time of such payment, is a plan described in Section 403(a) of the Internal Revenue Code of 1954,¹⁷ or

(C) Under or to a bond purchase plan which, at the time of such payment, is a qualified bond purchase plan described in Section 405(a) of the Internal Revenue Code of 1954;¹⁸

(6) The payment by an employer (without deduction from the remuneration of the employee):

(A) Of the tax imposed upon an employee under Section 3101 of the Internal Revenue Code of 1954¹⁹ (or the corresponding section of prior law);

(7) Remuneration paid in any medium other than cash to an employee for service not in the course of the employer's trade or business;

(8) Any payment (other than vacation or sick pay) made to an employee after the month in which he attains the age of sixty-five (65), if he did not work for the employer in the period for which such payment is made;

(9) Within any calendar year that part of an individual's remuneration from a single employer which, after Six Thousand Dollars (\$6,000) has been paid him upon which contributions have been paid under the unemployment law of any state, is paid with respect to employment.

[See Compact Edition, Volume 4 for text of (o) and (p)]

(q) Repealed by Acts 1977, 65th Leg., p. 1001, ch. 368, § 19, eff. Jan. 1, 1978.

[Amended by Acts 1977, 65th Leg., p. 994, ch. 368, §§ 15 to 19, eff. Jan. 1, 1978; Acts 1979, 66th Leg., p. 384, ch. 175, § 1, eff. Aug. 27, 1979.]

¹ 26 U.S.C.A. § 501(c)(3).
² 26 U.S.C.A. § 501(a).
³ Article 5221b-6.
⁴ 26 U.S.C.A. § 3301 et seq.
⁵ 7 U.S.C.A. § 2041 et seq.
⁶ 8 U.S.C.A. §§ 1101(a)(15)(H), 1184(c).
⁷ 26 U.S.C.A. § 3306(c).
⁸ 26 U.S.C.A. § 3306(c)(4).
⁹ Subsection (g)(3)(D) of this article.
¹⁰ Article 5221b-9(b).
¹¹ 26 U.S.C.A. § 1141j, subsec. (g).
¹² 26 U.S.C.A. § 1603(c).
¹³ Article 5221b-12(j).
¹⁴ Subsection (g)(5)(A) of this article.
¹⁵ 26 U.S.C.A. § 401(a).
¹⁶ 26 U.S.C.A. § 501(a).
¹⁷ 26 U.S.C.A. § 403(a).
¹⁸ 26 U.S.C.A. § 405(a).
¹⁹ 26 U.S.C.A. § 3101.

Art. 5221b-22a. Unemployment Compensation Special Administration Fund

There is hereby established as a special fund, separate and apart from all public moneys or funds of this State, an Unemployment Compensation Special Administration Fund which may be used by the Commission for the purposes of paying costs of the administration of this Act including the costs of reimbursing the Unemployment Compensation Benefit Accounts for unemployment compensation benefits paid to former employees of the State of Texas which are based on service for the state, and the costs of construction and purchase of buildings and land necessary in such administration. The State Treasurer shall be the Treasurer and custodian of the fund. He shall administer such fund in accordance with the directions of the Commission, and the Comptroller shall issue warrants upon it in accordance with the directions of the Commission. All interest and penalties collected under the provisions of this Act and all moneys now on deposit in the Unemployment Compensation Special Administration Fund shall be paid into this fund. Said moneys shall not be expended or available for expenditure in any manner which would permit their substitution

for (or a corresponding reduction in) Federal funds which would, in the absence of said moneys, be available to finance expenditures for the administration of the Texas Unemployment Compensation Act. Nothing in this Section, however, shall prevent said moneys from being used as a revolving fund, to cover expenditures, necessary and proper under the Texas Unemployment Compensation Act, for which Federal funds have been duly requested but not yet received, subject to the charging of such expenditures against such funds when received. The Commission may, by resolution duly entered in its Minutes, authorize to be charged against said moneys any expenditures which it deems proper in the interest of good administration of this Act, provided the Commission in such resolution finds that no other funds are available or can properly be used to finance such expenditures. All moneys which are deposited or paid into the Unemployment Compensation Special Administration Fund may be expended in accordance with the provisions of this Act, upon appropriation by the legislature, and shall not lapse at any time or be transferred to any other fund. All moneys in the Unemployment Compensation Special Administration Fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other special funds. The State Treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the Unemployment Compensation Special Administration Fund provided herein. Such liability on the official bond shall be effective immediately upon the enactment of this provision, and such liability shall exist in addition to any liability upon any separate bond existent on the effective date of this provision, or which may be given in the future. All sums recovered on any Surety Bond for losses sustained by the Unemployment Compensation Special Administration Fund shall be deposited in said Unemployment Compensation Special Administration Fund. If it be determined by the Commission in accordance with the provisions of subsection 14(j) of this Act that the Commission should refund penalties which have been erroneously collected and which have been deposited in the Unemployment Compensation Special Administration Fund, the refund of such penalties shall be made, without interest, out of the Unemployment Compensation Special Administration Fund, notwithstanding the provisions of subsection 14(j) of this Act¹ that payment of all refunds shall be made out of the Unemployment Compensation Fund. Such refunds paid out of the Unemployment Compensation Special Administration Fund shall be paid upon warrants issued by the Comptroller under the direction of the Commission.

[Amended by Acts 1979, 66th Leg., p. 1870, ch. 755, § 1, eff. Aug. 27, 1979.]

¹ Article 5221b-12(j).

CHAPTER FIFTEEN. INSPECTION OF STEAM BOILERS

Art. 5221c. Boiler Inspection Law

Definitions

Sec. 1. The following terms used in this Act mean:

- (1) "Act" or "The Act"—The Boiler Inspection Law.
- (2) "Alteration"—A change in a boiler that substantially alters the original design.
- (3) "Approved"—Approved by the Commissioner.
- (4) "ASME Code"—The American Society of Mechanical Engineers Boiler and Pressure Vessel Code with addenda Code cases, and interpretations adopted by the Council of the Society.
- (5) "Authorized Inspector"—Any Inspector of boilers holding a commission issued by the Commissioner pursuant to Section 10 of this Act.
- (6) "Board"—The Board of Boiler Rules.
- (7) "Boiler"—Any heating boiler, nuclear boiler, power boiler, or unfired steam boiler.
 - (A) "Power Boiler"—A boiler in which steam is generated at a pressure in excess of 15 psi (103 kPa) or a High-Temperature Water Boiler.
 - (B) "High-Temperature Water Boiler"—A water boiler intended for operation at pressures in excess of 160 psi (1,103 kPa) and/or temperatures in excess of 250 degrees F. (121 degrees C.).
 - (C) "Electric Boiler"—A boiler in which the source of heat is electricity.
 - (D) "Unfired Steam Boiler"—A steam generating system that includes:
 - (i) Vessels known as evaporators or heat exchangers.
 - (ii) Vessels in which steam is generated by the use of heat resulting from operation of a processing system containing a number of pressure vessels such as used in the manufacture of chemical and petroleum products.
 - (iii) Waste Heat Boilers.
 - (E) "Miniature Boiler"—Any power boiler which does not exceed the following limits:
 - (i) Sixteen-inch (406 mm) inside diameter of shell.
 - (ii) Twenty-square-foot (1.86 square meter) heating surface (not applicable to electric boiler).
 - (iii) Five-cubic-foot gross (0.14 cubic meter) volume exclusive of casing and installation.
 - (iv) One hundred psi (689 kPa) maximum allowable working pressure.

(F) "Nuclear Boiler"—A nuclear power plant system which produces and controls an output of thermal energy from nuclear fuel and those associated systems essential to the functions of the power system. The components of the system include such items as pressure vessels, piping systems, pumps, valves, and storage tanks.

(G) "Heating Boiler"—Any steam heating boiler, hot water heating boiler, hot water supply boiler, or lined potable water heater, which is directly fired with oil, gas, solar energy, electricity, coal, or other solid or liquid fuels.

(i) "Steam Heating Boiler"—A boiler for operation at pressures not exceeding 15 psi.

(ii) "Hot Water Heating Boiler"—A boiler for operation at a pressure not exceeding 160 psi and/or temperatures not exceeding 250 degrees F. at or near the boiler outlet.

(iii) "Hot Water Supply Boiler"—A boiler for operation at pressures not exceeding 160 psi and/or temperatures not exceeding 250 degrees F. at or near the boiler outlet when any of the following limitations is exceeded:

(a) Heat input of 200,000 Btu/hour.

(b) Water temperatures of 210 degrees F.

(c) Nominal water-containing capacity of 120 gallons (454.21).

(iv) "Potable Water Heater"—A boiler for operation at pressures not exceeding 160 psi and water temperatures not in excess of 210 degrees F. when any of the following limitations is exceeded:

(a) Heat input of 200,000 Btu/hour.

(b) Nominal water-containing capacity of 120 gallons.

(8) "Chief Inspector"—The Inspector appointed in accordance with Section 8 of this Act.

(9) "Code"—ASME Code.

(10) "Commissioner"—The Commissioner of the Department of Labor and Standards of the State of Texas.

(11) "Condemned Boiler"—A boiler inspected and declared unfit for further service by the Chief Inspector, the Deputy Inspector, or the Commissioner.

(12) "Certificate Inspection"—An inspection, the report of which is used by the Chief Inspector to decide whether or not a Certificate of Operation may be issued.

(13) "Certificate of Operation"—A Certificate issued by the Commissioner permitting the operation of a boiler.

(14) "Deputy Inspector"—An Inspector appointed by the Commissioner.

(15) "Existing Installation"—Any boiler constructed, installed, placed in operation, or contracted for before June 3, 1937.

(16) "External Inspection"—An inspection of the exterior of the boiler and its appurtenances made when a boiler is in operation, where possible.

(17) "Electric Boiler"—See Boiler, "Electric".

(18) "Heating Boiler"—See Boiler, "Heating".

(19) "High-Temperature Water Boiler"—See Boiler, "High Temperature Water".

(20) "Hot Water Heating Boiler"—See Boiler, "Hot Water Heating".

(21) "Hot Water Supply Boiler"—See Boiler, "Hot Water Supply".

(22) "Inspection Agency"—An authorized inspection agency providing inspection services in accordance with Section 10 of this Act.

(23) "Inspector"—Chief Inspector, Deputy Inspector, or Authorized Inspector.

(24) "Internal Inspection"—A complete and thorough inspection of the interior of the boiler where construction will permit.

(25) "Lined Potable Water Heater"—See Boiler, "Potable Water Heater".

(26) "Major Repair"—A repair upon which the strength of the boiler will depend.

(27) "Miniature Boiler"—See Boiler, "Miniature".

(28) "National Board"—The National Board of Boiler and Pressure Vessel Inspectors.

(29) "National Board Inspection Code"—The Manual for Boiler and Pressure Vessel Inspectors published by the National Board.

(30) "New Installations"—A boiler constructed, installed, or placed in operation after June 3, 1937.

(31) "Nuclear Boiler"—See Boiler, "Nuclear".

(32) "Non-Standard Boiler"—A boiler that does not qualify as a standard boiler.

(33) "Owner or User"—Any person, firm, or corporation owning or operating boilers within the State.

(34) "Portable Boiler"—A boiler which is primarily intended for use in a temporary location.

(35) "Power Boiler"—See Boiler, "Power".

(36) "Preliminary Order"—A written order issued by the Chief Inspector or any Deputy Inspector to require repairs or alterations to render a boiler safe for use or to require that operation of the boiler be discontinued.

(37) "Reinstalled Boiler"—A boiler removed from its original setting and reinstalled at the same location or at a new location without change of ownership.

(38) "Repair"—The work necessary to return a boiler to a safe and satisfactory operating condition without changing the original design.

(39) "Rules and Regulations"—The Code of Rules and Regulations promulgated and enforced by the Commissioner in accordance with Section 6 of this Act.

(40) "Safety Appliance"—Safety devices such as safety valves or safety relief valves (within the jurisdictional limits of the boiler as prescribed by the ASME Code and the Rules and Regulations) provided for the purpose of diminishing the danger of accidents.

(41) "Secondhand Boiler"—A boiler of which both the location and ownership have changed.

(42) "Special Inspection"—An inspection by the Chief Inspector or Deputy Inspector other than those in Sections 4, 4a, and 5 in this Act.

(43) "Standard Boiler"—A boiler which bears a Texas stamp, the ASME stamp, or the stamp of any jurisdiction which has adopted a standard of construction equivalent to that required by the Commissioner.

(44) "Steam-Heating Boiler"—See Boiler, "Steam Heating".

(45) "Unfired Steam Boiler"—See Boiler, "Unfired".

Registration of Boilers; Certificate of Operation; Injunction Against Operation of Unsafe Boiler

Sec. 2. Unless otherwise specifically exempted in this Act, all boilers operated within the State shall be registered with the Department of Labor and Standards. In addition, such boilers shall not be operated unless they have satisfactorily passed a Certificate Inspection and have qualified for a Certificate of Operation. The Certificate of Operation shall remain in full force and effect until expiration unless cancelled for cause by the Commissioner and shall be placed under glass in a conspicuous place on or near the boiler for which it is issued. No prosecution shall be maintained where the issuance of or the renewal of such Certificate of Operation shall have been requested and shall remain unacted upon. However, if the operation of such boiler without a Certificate of Operation shall constitute a serious menace to the life and safety of any person or persons in or about the premises, the Commissioner, as hereinafter provided for, shall apply to the District Court in a suit brought by either the Attorney General of the State, or any District or County Attorney, in the county in which such boiler is located, for an injunction restraining the operation of said boiler until the unsafe condition restraining its use shall be corrected and a Certificate of Operation issued. In all such cases it shall not be necessary for the attorney bringing the suit to verify the pleadings or for the State to execute a bond as a

condition precedent to the issuing of any injunction or restraining order hereunder. The affidavit of the Commissioner that no application for or no Certificate of Operation exists for such boiler, and the affidavit of the Chief Inspector or any Deputy Inspector that its operation constitutes a menace to the life and safety of any person or persons in or about the premises, shall be sufficient proof to warrant the immediate granting of a temporary restraining order.

Board of Boiler Rules

Sec. 2a. There is established within the Department of Labor and Standards a Board of Boiler Rules, consisting of nine members appointed by the Commissioner. Except for the initial appointees, members hold office for terms of six years expiring on January 31 of odd-numbered years. In making the initial appointments, the Commissioner shall designate three for terms expiring in 1979, three for terms expiring in 1981, and three for terms expiring in 1983.

The Commissioner may remove any member of the Board for inefficiency or neglect of duty in office. Upon the resignation, death, suspension, or incapacity of any member, the Commissioner shall fill the vacancy for the remainder of the vacated term with an individual representative of the same interests with which the predecessor was identified.

The nine members shall have experience with boilers, and at least four, when available, shall be registered professional engineers licensed in the State of Texas. Three members shall be representatives of owners or users of boilers, one shall be representative of boiler manufacturers or installers, three shall be representatives of companies insuring boilers in this State, one shall be a mechanical engineer on the faculty of a recognized engineering college within the State, and one shall be a representative of a labor union.

The Chief Inspector shall serve as chairman, and the Commissioner shall be an ex officio member. At the call of the chairman, the Board shall meet at least twice each year at a place designated by the Board. No decision of the Board shall be effective unless supported by the vote of at least five members.

The Board shall act in an advisory capacity to the Commissioner in formulating definitions, rules and regulations for the safe construction, installation, inspection, operating limits, alteration, and repair of boilers and their appurtenances.

The Board members shall serve without salary, but are entitled to reimbursement for actual expenses incurred in the performance of their duties as board members.

Exemptions from Act

Sec. 3. The following are exempt from the provisions of this Act:

- (1) Boilers owned or operated by the Federal Government;
- (2) Pressure Vessels and unfired steam boilers, except:
 - a. Steam drums of unfired steam boilers.
 - b. Waste heat boilers.

Exemptions from Sections 4, 5, and 11 of Act

Sec. 3a. The following shall be exempt from the requirements of Sections 4, 5, and 11 of this Act:

1. Heating Boilers used for heating in buildings occupied solely for residence purposes with accommodations not to exceed four (4) families.

Inspections; Ordering Repairs to Unsafe Boiler; Hearing; Temporary Certificate of Operation

Sec. 4. The Commissioner shall cause boilers subject to the provisions of this Act to be inspected internally and externally (except as provided for in Sections 4 and 4a) as follows:

- (1) Power boilers shall receive a certificate inspection annually and shall also be externally inspected annually while under pressure if possible.
- (2) Steam heating boilers and hot water heating boilers shall receive a certificate inspection biennially.
- (3) Hot water supply boilers and lined potable water heaters shall receive a certificate inspection triennially.
- (4) Portable steam boilers shall be inspected externally each time it is moved to a new location, provided that an internal inspection shall be made of each such boiler at least once each twelve (12) months.
- (5) Nuclear boilers shall be inspected and reported in such form and with such appropriate information as the Commissioner shall designate.

If such boilers referred to herein are found, upon inspection, to be in a safe condition for operation, a Certificate of Operation shall be issued by the Commissioner for its operation for a period not longer than the interval required for certificate inspections. If any inspection authorized hereunder shall show the inspected boiler to be in an unsafe or dangerous condition, the Chief Inspector or any Deputy Inspector shall issue a preliminary order requiring such repairs and alterations to be made to such boiler as may be necessary to render it safe for use, and may also order the use of such boiler discontinued until such repairs and alterations are made or such dangerous and unsafe conditions are remedied. Unless such preliminary order be complied with by the owner or user, a hearing before the Commissioner shall be allowed, upon written request, at which the

owner or user, making the request, shall have opportunity to appear and show cause why the preliminary order should not be complied with. If it shall thereafter appear to the Commissioner that such boiler is unsafe and that the requirements contained in said preliminary order should be complied with, or that other things should be done to make said boiler safe, the Commissioner may order or confirm the withholding of the Certificate of Operation for said boiler and may make such requirements as may be deemed proper for the repair or alteration of said boiler or the correction of such dangerous and unsafe conditions. The Chief Inspector may issue a temporary Certificate of Operation for a period not to exceed thirty (30) days, pending the completion of replacements or repairs. Nothing in this Section shall be construed to limit the authority of the Commissioner as set forth in Section 6 of this Act. Any boiler which cannot be rendered safe for use shall be condemned and the use of such boiler shall be prohibited.

Interval Between Internal Inspections

Sec. 4a. Upon the approval of the Commissioner and the inspection agency having jurisdiction, the interval between internal inspections may be extended to a period not to exceed twenty-four (24) months for power boilers and forty-eight (48) months for waste heat boilers and for other unfired steam boilers using heat resulting from the operation of a process system, the interval may be extended to the next scheduled down time, but not to exceed 60 months provided: (1) continuous water treatment under competent and experienced supervision has been in effect since the last internal inspection for the purpose of controlling and limiting corrosion and deposits; (2) accurate and complete records are available showing that since the last internal inspection samples of boiler water have been taken or monitored at regular intervals not greater than twenty-four (24) hours of operation and that the water condition in the boiler is satisfactorily controlled; (3) accurate and complete records are available showing the dates such boiler has been out of service and the reasons therefor since the last internal inspection, and such records shall include the nature of all repairs to the boiler, the reasons why such repairs were made; and (4) the last internal and current external inspection of the boiler indicates the inspection period may be safely extended. When such an extended period between internal inspections has been approved by the Commissioner and the inspection agency having jurisdiction, as outlined in this Section, a new Certificate of Operation shall be issued for that extended period of operation.

Intervals of Inspection for Nuclear Boilers

Sec. 4b. Intervals of inspection for Nuclear Boilers shall be as established by the Commissioner and the owner.

Insurance Company Reports; Inspection by Authorized Inspector; Certificate of Operation; Notice of Cancellation or Expiration of Insurance Policy

Sec. 5. Every insurance company authorized to insure and inspect boilers in this State shall, within thirty (30) days after a certificate inspection file a report with the Commissioner stating the condition of the boiler. The report shall also include the location of the boiler, date inspected, and the name of the inspector.

Any boiler inspected by an authorized inspector shall be exempt from other inspections and inspection fees under the provisions of this Act; provided nothing in this Section shall prevent the Commissioner from authorizing the inspection of any boiler at any reasonable time when, in the opinion of the Commissioner, such boiler may be in an unsafe condition. The Commissioner shall contact the insurance company carrying insurance on the boiler and request the authorized inspector to participate with the Chief Inspector or Deputy Inspector to jointly inspect the boiler, within twenty (20) days. No additional charge shall be made for this inspection.

The Commissioner is authorized to issue a Certificate of Operation to the owner or user of all boilers subject to inspection under this Act. The owner or user shall remit to the Texas Department of Labor and Standards the sum of Five Dollars (\$5) for each Certificate of Operation to be issued. This fee is included in the internal and external inspection fee authorized in Section 11 of this Act.

Every insurance company shall notify the Commissioner in writing of the cancellation or expiration of every policy of insurance issued by it with reference to boilers in this State, within twenty (20) days after the expiration or cancellation of said policy, giving the cause or reason for such cancellation or expiration. Such notice of cancellation or expiration shall show the date of the policy and the date when the cancellation or expiration has or will become effective.

Rules and Regulations; Special Inspection Service; Exchange of Information

Sec. 6. The Commissioner is hereby authorized and empowered to promulgate and enforce a code of rules and regulations in keeping with standard usage, for the construction, inspection, installation, use, maintenance, repair, alteration, and operation of boilers. The Commissioner may adopt rules and regulations to provide inspection procedures for use of nondestructive examination equipment to comply with the inspection requirements specified in Section

4 of this Act. The Commissioner is empowered to provide special inspection service to owner-users and manufacturers including surveys required for certification to construct, assemble or repair boilers or pressure vessels. Provided that the Commissioner or any employee of the Department, shall not have authority to prescribe the make, brand or kind of boilers to buy or purchase.

The Commissioner may exchange information and experience data with other authorities having boiler inspection divisions or departments in assembling data for the promulgation of rules and regulations authorized under the provisions of this Act.

Prior to the adoption, amendment, or repeal of any rules, the Commissioner shall give at least 30 days' notice of the intended action. Notice of the proposed rule shall be filed with the secretary of state and published by the secretary of state in the Texas Register. The notice must include:

- (1) a brief explanation of the proposed rule;
- (2) the text of the proposed rule prepared in a manner to indicate the words to be added or deleted from the current text, if any;
- (3) a statement of the statutory or other authority under which the rule is proposed to be promulgated;
- (4) a request for comments on the proposed rule from any interested person; and
- (5) any other statement required by law.

Each notice of a proposed rule becomes effective as legal notice when published in the Texas Register. The notice shall be mailed to all persons who have made timely written requests of the Commissioner for advance notice of the rulemaking proceedings. However, failure to mail the notice does not invalidate any actions taken or rules adopted.

Prior to the adoption of any rule, the Commissioner shall afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. In the case of substantive rules, opportunity for public hearing must be granted if requested by at least 25 persons or by any association having at least 25 members. The Commissioner shall consider fully all written and oral submissions concerning the proposed rule. On adoption of a rule, the Commissioner if requested to do so by an interested person either prior to adoption or within 30 days after adoption, shall issue a concise statement of the principal reasons for and against its adoption, incorporating in the statement its reasons for overruling the considerations urged against its adoption.

If the Commissioner finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice and states in writing his reasons for that finding, he may proceed without prior notice or hearing or on any

abbreviated notice and hearing that he finds practicable to adopt an emergency rule. The rule may be effective for a period of not longer than 120 days renewable once for a period not exceeding 60 days, but the adoption of an identical rule under the provisions of this section is not precluded. An emergency rule adopted under these provisions and the Commissioner's written reasons for the adoption, shall be filed in the office of the secretary of state for publication in the Texas Register.

No rule adopted is valid unless adopted in substantial compliance with this section and the provisions of the Administrative Procedure and Texas Register Act.¹

¹ Article 6252-13a.

Grievance Procedure

Sec. 7. When any person is aggrieved by any fundamental rule, regulation or order promulgated by the Commissioner, that person shall notify the Commissioner of such grievance by formal notice in writing, whereupon the Commissioner shall give consideration of such grievance and may modify, change, alter or amend same by motion upon failure or refusal of the Commissioner, within ten (10) days, to change, alter or modify such fundamental rule, regulation or order, the Commissioner, shall, upon written application for hearing, cause the same to be held within five (5) days thereafter, at which the person complaining shall have opportunity to show cause, if any, why such fundamental rule, regulation or order complained of should be set aside, altered, amended or repealed.

Appointment and Qualifications of Chief and Deputy Inspectors

Sec. 8. The Commissioner shall appoint a Chief Inspector of boilers who shall be the Administrator of the boiler program. The Chief Inspector shall be a resident of Texas and a citizen of the U.S.A. The appointee shall have at least five (5) years experience in the construction, installation, inspection, operation, maintenance, or repair of boilers and shall have passed a written examination demonstrating the necessary ability to judge the safety of boilers for use. The Chief Inspector shall not have a commercial interest in the manufacture, ownership, insurance, or agency of boilers or their appurtenances. The Commissioner shall appoint Deputy Inspectors, as needed, with qualifications similar to those of the Chief Inspector, and such clerical assistants as may be necessary to carry out the provisions of this Act.

Salaries and Expenses

Sec. 9. The salaries and expenses of persons employed or appointed pursuant to the terms of this Act shall be established by the Legislature.

Persons Authorized to Inspect; Commission of Authorized Inspectors; Revocation of Certificate of Operation

Sec. 10. The Commissioner may cause the inspection provided for in this Act to be made either by the Chief Inspector, a Deputy Inspector, or an Authorized Inspector. However, Authorized Inspectors shall be continuously employed by an insurance company and shall first obtain from the Commissioner a Texas commission as an inspector of boilers. The Commissioner is vested with full power and authority to determine the qualifications (by written examination) of any applicant seeking a commission as inspector. The Commissioner may accept, after proper investigation, the commission issued to an inspector by any other jurisdictional authority having a written examination equal to that of the State of Texas. The Commissioner may rescind for good cause, any Texas commission issued to any person. The Commissioner may revoke any Certificate of Operation issued for any boiler within this State upon good cause being shown therefor and after notice and opportunity for hearing thereon.

Fees

Sec. 11. (a) The Commissioner may fix and collect fees for the inspection of boilers.

Such fees must be paid by the owner or user before the issuance of a Certificate of Operation for the boiler inspected.

(b) The Commissioner may fix and collect fees for administering examinations as provided by this Act to insurance companies' boiler inspectors.

(c) The Commissioner may fix and collect fees for the inspection and certification as provided by this Act of safety valve repairmen or manufacturers.

(d) With the advice of the Board of Boiler Rules, the Commissioner shall fix the fees provided by this Act in amounts that produce income sufficient to cover the expenses incurred in the administration of this Act. Fees collected by the Commissioner under the provisions of this Section of the Act shall be paid into the State Treasury to the credit of the General Revenue Fund.

(e) The Commissioner may fix and collect fees for special inspections as referred to in Section 6 of this Act. Such fees, travel, and per diem collected under the provisions of this Section of the Act shall be reappropriated to the credit of the Boiler Inspection Division.

Penalty for Violations by Persons in Charge of Boilers

Sec. 12. Any person, firm, corporation, or agent thereof, owning or having the custody, management, use or operation of any boiler in this State, who shall violate any provision of this Act, or who violates any rule, regulation or order promulgated by authority hereof by the Commissioner or any regularly employed inspector authorized to enforce any provision

or any rule, regulation or order authorized herein, or any person, firm, corporation, or agent thereof coming within any provision of this Act, or any rule, regulation or order authorized herein, who shall fail or refuse to comply therewith, shall be deemed guilty of a misdemeanor and upon conviction therefor shall be subject to a fine of not less than Fifty Dollars (\$50) nor more than Two Hundred Dollars (\$200), or by imprisonment in the county jail not to exceed sixty (60) days, or by both such fine and imprisonment.

Penalty for Violations by Operators of Factory, Mill, Workshop, Mine, Store, Business House, Public or Private Work

Sec. 13. Any owner, manager, superintendent or other person in charge or in control of any factory, mill, workshop, mine, store, business house, public or private work, or the lessee or operator of same, or the owner or lessee of any place where a boiler subject to inspection hereunder is located, who shall refuse to allow any official or employee of the Department of Labor and Standards to enter the same and remain thereon or therein for such time as reasonably necessary, or who shall hinder any such official or employee in any way, or who shall in any way prevent or deter said official or employee from carrying out the provisions of this Act, shall be deemed guilty of a misdemeanor and upon conviction shall be fined not to exceed One Hundred Dollars (\$100) or by imprisonment in the county jail not to exceed sixty (60) days, or by both such fine and imprisonment.

Notice of Rule, Regulation or Order Violation Prerequisite to Criminal Action

Sec. 14. Whenever there shall have been adopted, amended or repealed as provided for under this Act, any rule, regulation or order, no criminal action shall be maintained against any person involving the violation of any provision of such rule, regulation or order, until the Commissioner shall have given notice of such rule, regulation or order.

Admission in Evidence of Affidavit Setting Forth Terms of Order

Sec. 15. An affidavit under the Seal of the Commissioner executed by the said Commissioner or the Chief Inspector or any Deputy Inspector, setting forth the terms of any order of the Commissioner and that it has been adopted, promulgated and published, and was in effect at any date during any period specified in such affidavit, shall be admitted in evidence in any action, civil or criminal, involving such order and the publication thereof without further proof of such promulgation, adoption or publication and without further proof of its contents.

Partial Invalidity

Sec. 16. Should any section, subsection, sentence, clause, phrase, provision or exemption of this Act be declared unconstitutional or invalid for any reason

such invalidity shall not affect the remaining portions or provisions hereof.

[Amended by Acts 1977, 65th Leg., p. 162, ch. 82, § 1, eff. April 25, 1977; Acts 1979, 66th Leg., p. 149, ch. 81, §§ 1, 2, eff. Sept. 1, 1979.]

The 1979 amendatory act, inter alia, redesignated former § 11a, relating to a special inspection fee, as subsec. (e) of § 11.

CHAPTER SIXTEEN. MISCELLANEOUS PROVISIONS

Article

5221g. Employment Counseling Program for Displaced Homemakers.

Art. 5221e-1. Migrant Labor Camps; Licensing

Sec. 1. The following words and phrases shall mean:

(a) Migrant labor camp: One or more buildings, structures, trailers, or vehicles, contiguous or grouped, together with the land appertaining thereto, established, operated, or used as living quarters for two or more seasonal, temporary, or migrant families or three or more seasonal, temporary, or migrant workers and accompanying dependents for more than three days, whether or not rent is paid or reserved in connection with the use or occupancy of such premises.

(b) Person: An individual or group of individuals, association, partnership, corporation, or political subdivision.

(c) Migrant agricultural worker: An individual working or available for work, primarily in agricultural or related industry on a seasonal or temporary basis, who moves one or more times from one place to another for the purpose of such employment or availability for seasonal or temporary employment.

[See Compact Edition, Volume 4 for text of 2 to 9]

Sec. 10. All decisions of the State Commissioner of Health hereunder may be reviewed in the county, or district court of the county in which such migrant labor camp is located or contemplated.

Sec. 11. (a) Any person, as defined in this Act, establishing, conducting, maintaining, or operating any migrant labor camp, within the meaning of this Act, without first obtaining a license therefor as provided herein or without having secured renewal of license as provided by this Act or who shall violate any of the provisions of this Act, or regulations lawfully promulgated thereunder is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25 or confinement in county jail for not more than 30 days or both. Each day of violation shall be considered a separate offense.

(b) Any individual, employee or occupant who commits an act of vandalism or misuse of the facilities, or who violates applicable regulations lawfully promulgated within the meaning of this Act shall be guilty of a misdemeanor, and upon conviction hereof be subject to a fine of not more than \$25 or confinement in county jail for not more than 10 days or both.

(c) In addition to other remedies, the Commissioner of Health or his designated representative is hereby authorized to apply to the district court for, and such court shall have jurisdiction upon hearing and for good cause shown to grant, a temporary or permanent injunction restraining and enjoining any person, as defined in this Act, employee, or occupant from violating any of the provisions of this Act. Such person, employee, or occupant, so enjoined, shall have the right to appeal such injunction, temporary or permanent, to the Supreme Court of the State of Texas, as in other cases.

[See Compact Edition, Volume 4 for text of 12 to 14]

[Amended by Acts 1975, 64th Leg., p. 954, ch. 361, § 1, eff. June 19, 1975.]

Art. 5221f. Manufactured Housing Standards Act

Short Title

Sec. 1. This Act may be cited as the Texas Manufactured Housing Standards Act.

Purpose

Sec. 2. The legislature finds that there is a growing need to provide the citizens of the state with safe, affordable, and well-constructed housing. The legislature finds that manufactured housing has become a primary housing source of many of the state's citizens. It is the specific intent of the legislature to encourage the construction of housing for the state's citizens and to improve the general welfare and safety of purchasers of manufactured housing in this state. The legislature finds that existing statutes and regulations are not adequate to provide for the full protection of the consumer and to prevent certain discriminations that exist in the state with regard to manufactured housing. The legislature finds that it is the responsibility of the state to provide for the protection of its citizens who desire to purchase housing by imposing certain regulations on the construction and installation, to provide economic stability of manufactured housing manufacturers, retailers, installers, and brokers, and to provide fair and effective consumer remedies. In recognition of these findings, the legislature deems it necessary to expand various regulatory powers to deal with these problems. The legislature finds this to be the most economical and efficient means of dealing with this problem and serving the public interest. Accordingly, this Act shall be liberally

construed and applied to promote its underlying policies and purposes.

Definitions

Sec. 3. Whenever used in this Act, unless the context otherwise requires, the following words and terms have the following meanings:

(a) "Mobile home" means a structure, transportable in one or more sections, which is eight body feet or more in width and is 32 body feet or more in length, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein.

(b) "Retailer" means any person engaged in the business of buying for resale, selling, or exchanging manufactured homes or offering such for sale, exchange, or lease-purchase to consumers. No person shall be considered a retailer unless engaged in the sale, exchange, or lease-purchase of two or more manufactured homes to consumers in any consecutive 12-month period.

(c) "Manufacturer" means any person who constructs or assembles manufactured housing for sale, exchange, or lease-purchase within the state.

(d) "Department" means the Texas Department of Labor and Standards.

(e) "Person" means an individual, partnership, company, corporation, association, or other group, however organized.

(f) "Broker" means a person engaged by others to negotiate or offer to negotiate bargains or contracts for the sale, exchange, or lease-purchase of their manufactured homes at the site where installed to consumers. A broker may or may not be an agent of any party involved in the transaction. No person shall be considered a broker unless engaged in brokerage activities related to the sale, exchange, or lease-purchase of two or more manufactured homes to consumers in any consecutive 12-month period.

(g) "Consumer" means any person who seeks or acquires by purchase, exchange, or lease-purchase a manufactured home.

(h) "Decal" means a device or insignia issued by the department that is permanently affixed to each transportable section of each modular home to indicate compliance with the standards, rules, and regulations established by the department.

(i) "Seal" means a device or insignia issued by the department to be affixed to used mobile homes to indicate compliance with the standards, rules, and regulations established by the department. The seal shall remain the property of the department.

(j) "Label" means a device or insignia issued by the department to indicate compliance with the stan-

dards, rules, and regulations established by the Department of Housing and Urban Development, and is permanently affixed to each transportable section of each mobile home manufactured after June 15, 1976, for sale to a consumer.

(k) "Installation," when used in reference to manufactured housing, means the transporting of manufactured homes to the place where they will be used by the consumer, the construction of the foundation system, whether temporary or permanent, and the placement of a manufactured home on the foundation system, and includes supporting, blocking, leveling, securing, anchoring, and proper connection of multiple or expandable units and minor adjustments.

(l) "Installer" means any person, including a retailer or manufacturer, who performs installation functions on manufactured housing.

(m) "Alteration" means the replacement, addition, and modification, or removal of any equipment or its installation after sale by a manufacturer to a retailer but prior to sale and installation by a retailer to a purchaser which may affect the construction, fire safety, occupancy, plumbing, heat-producing or electrical system. It includes any modification made in the manufactured home which may affect the compliance of the home with the standards, but it does not include the repair or replacement of a component or appliance requiring plug-in to an electrical receptacle where the replaced item is of the same configuration and rating as the one being replaced. It also does not include the addition of an appliance requiring "plug-in" to an electrical receptacle, which appliance was not provided with the manufactured home by the manufacturer, if the rating of the appliance does not exceed the rating of the receptacle to which it is connected.

(n) "Lease-purchase" means to enter into a lease contract with a provision conferring on the lessee an option to purchase the manufactured home.

(o) "Commissioner" means the Commissioner of the Texas Department of Labor and Standards.

(p) "Code" means the Texas Manufactured Housing Standards Code.

(q) "Modular home" means a structure or building module that is manufactured at a location other than the location where it is installed and used as a residence by a consumer, transportable in one or more sections on a temporary chassis or other conveyance device, and designed to be used as a permanent dwelling when installed and placed upon a permanent foundation system. The term includes the plumbing, heating, air-conditioning, and electrical systems contained in the structure. The term does not include a mobile home as defined in this Act; nor does it include building modules incorporating concrete or masonry as the primary structural component.

(r) "Salesperson" means any person who for any form of compensation sells or lease-purchases or offers to sell or lease-purchase manufactured housing to consumers as an employee or agent of a retailer or broker.

(s) "Manufactured housing" or "manufactured home" means a mobile home or a modular home or both.

(t) "Registrant" means any person who has registered with the department and has been issued a certificate of registration as a manufactured housing manufacturer, retailer, broker, or installer.

Manufactured Housing Standards

Sec. 4. (a) The department shall adopt standards and requirements for the installation and for the construction of manufactured housing, that are reasonably necessary in order to protect the health, safety, and welfare of the occupants and the public. The collection of these standards and requirements is the Texas Manufactured Housing Code.

(1) The requirements and standards for the plumbing, heating, air-conditioning, and electrical systems and construction of mobile homes in effect on September 1, 1979, remain in full force and effect until amended in accordance with the procedure set forth in this section.

(2) The department shall adopt standards and requirements for the construction of mobile homes in compliance with the federal standards and requirements established under Title VI of the Housing and Community Development Act of 1974, entitled the National Mobile Home Construction and Safety Standards Act of 1974.¹

(3) The department shall adopt standards and requirements for the construction of modular homes which shall not be less stringent than the standards and requirements for the construction of mobile homes.

(b) The department shall adopt standards and requirements for the installation of all manufactured housing in the state that are necessary for the protection of the health, safety, and welfare of all the citizens. The standards must assure that manufactured housing in the first two tiers of coastal counties in the state is capable of withstanding winds of hurricane-force velocity of not less than 105 miles per hour and that manufactured housing in all other counties of the state is capable of withstanding winds of a minimum gale-force velocity.

(1) The requirements and standards for the installation of mobile homes as adopted by the department in existence on August 31, 1979, remain in force until amended in accordance with the procedure set forth in this section.

(2) All manufactured housing must be installed in compliance with the standards, rules, regulations, or administrative orders of the department.

(3) The department may cooperate with all units of local government within this state in the establishment of inspection training programs and, when requested, may authorize local units of government to make and perform inspection and enforcement activities related to the installation of manufactured housing pursuant to contracts or other official designations and the rules and regulations of the department.

(c) A political subdivision of this state, without the express approval of the department following a hearing on the matter, may not adopt different standards from those promulgated by the department for the construction or installation of manufactured housing within the political subdivision.

(d) Before the adoption or promulgation of any standards or requirements authorized by this section, any change in or addition to the standards authorized in this section, or the approval of different standards by any political subdivision, the department shall publish a notice and conduct a public hearing in accordance with the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), not sooner than the 30th day following the publication of notice.

(e) Every requirement or standard or modification, amendment, or repeal of a requirement or standard adopted by the department shall state the date it shall take effect.

¹ 42 U.S.C.A. § 5401 et seq.

Sec. 5. Repealed by Acts 1979, 66th Leg., p. 1417, ch. 625, § 18, eff. Sept. 1, 1979.

Regulations

Sec. 6. (a) It is unlawful for any manufacturer to construct mobile homes in this state for sale or resale unless such manufacturer has supplied the department with proof of acceptance by a Design Approval Primary Inspection Agency authorized by the Department of Housing and Urban Development, has purchased the required labels, and has all mobile homes manufactured in this state inspected by an accepted In-Plant Inspection Agency authorized by the Department of Housing and Urban Development. It is unlawful for a manufacturer to ship mobile homes into the state for sale or resale unless the manufacturer has complied with all requirements of the National Mobile Home Construction and Safety Standards Act of 1974 and all standards, rules, and regulations of the Department of Housing and Urban Development.

(b) It is unlawful for any manufacturer to construct modular homes in the state or to ship modular homes into the state for sale or resale unless constructed to the code and unless the manufacturer has received approval by the department of the design and specifications for the construction of its modular homes and of its quality control program to

assure compliance with the requirements and standards of the Texas Manufactured Housing Standards Code, has purchased the required decals, and has the modular homes inspected pursuant to the regulations of the department.

(c) Before the sale of a manufactured home to a consumer and before its installation, it is unlawful for any manufacturer, retailer, broker, or installer to make any alteration on a manufactured home to which a seal, label, or decal has been affixed or cause such an alteration to be made, unless prior written approval has been obtained from the department.

(d) It is unlawful for any retailer, broker, or salesperson to sell, exchange, or lease-purchase or offer to sell, exchange, or lease-purchase any manufactured home to a person in the state for use as a residence or dwelling, unless the manufactured home has affixed to it the appropriate seal, label, or decal.

(e) It is unlawful for a manufacturer to sell, exchange, or lease-purchase or offer to sell, exchange, or lease-purchase a manufactured home to any person in the state other than a registered retailer.

(f) A person may not sell, exchange, or lease-purchase any manufactured home to another person in the state for use as a dwelling or residence, unless the manufactured home is habitable.

Registration

Sec. 7. (a) A person may not construct or assemble a manufactured home in the state or ship a manufactured home into the state, unless the person is registered as a manufactured housing manufacturer by the department and possesses a valid manufacturer's certificate of registration.

(b) A person may not sell, exchange, lease-purchase, or offer to sell, exchange, or lease-purchase two or more manufactured homes to consumers in the state in any consecutive 12-month period, unless the person possesses a valid manufactured housing retailer's certificate of registration.

(c) A person may not offer to negotiate or negotiate for others a bargain or contract for the sale, exchange, or lease-purchase of two or more manufactured homes to consumers in the state in any 12-month period, unless the person possesses a valid manufactured housing broker's certificate of registration.

(d) A person may not perform any installation functions on manufactured housing in the state, unless the person possesses a valid installer's certificate of registration.

(e) Each applicant for a certificate of registration as a manufacturer, retailer, broker, or installer must file with the department an application for registration containing the following information:

(1) the legal name, address, and telephone number of the applicant;

(2) the trade name by which the applicant does business and, if incorporated, the name registered with the secretary of state and the address of the business; and

(3) the dates on which the applicant became the owner and operator of the business.

(f) Each application for a certificate of registration must be accompanied by proof of the security required by this Act and payment of the required fee for the issuance of the certificate.

(g) All certificates of registration are valid for one year from the date of issue and are renewable annually on payment of the annual fee; provided, however, that the initial certificates of registration issued to registrants as of September 1, 1979, may be issued for periods of less than one year and the annual fee shall be prorated proportionally.

(h) The department by rule may adopt a system under which the licenses issued under this article expire on various dates during the year. For the year in which the expiration date is changed, license fees payable on the date of issuance shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee that is applicable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license fee is payable.

(i) If a change occurs in the information filed with the department under Subsection (e) of this section, the applicant shall file an amendment to his or her application that states the correct information.

(j) While acting as an agent for a registrant, an employee is covered by the business entity's certificate of registration and is not required to be individually registered. An independent contractor or business entity may not operate under the certificate of registration of another business entity except as an agent or subcontractor of a registered installer who shall remain fully responsible for all installation functions performed by such agent as subcontractor.

(k) The commissioner, after notice and hearing, may revoke or suspend for a definite period of time and for a particular geographic area any certificate of registration issued under this Act if the commissioner finds that the registrant:

(1) knowingly and willfully violated any provision of this Act or any rule or regulation made pursuant to this Act after receipt of actual notice of any failure to comply;

(2) without lawful authorization retained or converted any money, property, or any other thing of value from consumers in the form of down payments, sales and use taxes, deposits; or insurance premiums;

(3) failed to deliver proper title documents or certificates of title to consumers;

(4) failed to give or breached any manufactured home warranty required by this Act or by the Federal Trade Commission;

(5) engaged in any false, misleading, or deceptive acts or practices as the term is set forth in and as those acts are declared unlawful by the provisions of Chapter 17, Subchapter E, Business & Commerce Code;¹ or

(6) failed to furnish or file any reports required by the department for the administration and enforcement of this Act.

(l) The commissioner shall conduct any hearing involving the revocation or suspension of a certificate of registration in accordance with the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

¹ Business and Commerce Code, § 17.41 et seq.

Used Mobile Homes

Sec. 8. A retailer or broker may not sell, exchange, or lease-purchase or negotiate for the sale, exchange, or lease-purchase of a used mobile home manufactured after December 12, 1969, unless an appropriate seal or label is affixed to it. If the used mobile home does not have a seal or label, the retailer or broker must apply to the department for a seal with an affidavit that the manufactured home is habitable.

Administration and Enforcement

Sec. 9. (a) The department is hereby charged with the administration and enforcement of this Act.

(b) The department shall adopt rules and regulations, promulgate administrative orders, and take all action necessary to assure compliance with the intent and purpose of this Act to effectuate and to provide for uniform enforcement of all provisions of this Act and of the Texas Manufactured Housing Standards Code. The department shall make and enforce rules and regulations reasonably required to effectuate the notification and correction procedures provided in Section 615 of the National Mobile Home Construction and Safety Standards Act of 1974.¹

(c) The department shall adopt rules and regulations, promulgate administrative orders, and take all actions necessary to comply with the provisions of the National Mobile Home Construction and Safety Standards Act of 1974 and to provide for the effective enforcement of all mobile home construction and safety standards in order to have its state plan approved by the secretary of the United States Department of Housing and Urban Development.

(d) At least 30 days before the adoption or promulgation of any change in or addition to the rules and regulations authorized in Subsections (b) and (c) of this section, the department shall publish in the Texas Register a notice including:

(1) a copy of the proposed changes and additions; and

(2) the time and place that the department will consider any objections to the proposed changes and additions.

(e) After giving the notice required by Subsection (d) of this section, the department shall afford interested persons an opportunity to participate in the rule-making through submission of written data, views, or arguments with or without opportunity to present the same orally on any matter.

(f) Every rule or regulation or modification, amendment, or repeal of a rule or regulation adopted by the department shall state the date it shall take effect.

(g) Immediately after their promulgation, the department shall publish in the Texas Register all rules and regulations or amendments thereto.

(h) The department through its authorized representatives is authorized to enter at reasonable times and without advance notice any factory, warehouse, establishment, or location of a registrant to make any inspections that are reasonably required to determine whether a registrant is in compliance with this Act and the rules, regulations, and administrative orders promulgated under this Act.

(i) The department is authorized to inspect, at reasonable times and within reasonable limits and in a reasonable manner, any such factory, warehouse, or establishment, and to inspect such books, papers, records, plans, and documents as may reasonably be required. Each such inspection shall be commenced and completed with reasonable promptness.

(j) The department may employ state inspectors to carry out the functions required of the department pursuant to this Act, to effectuate the provisions of this Act, and to enforce the rules, regulations, and administrative orders promulgated pursuant to this Act. The department may authorize state inspectors to travel inside or outside of the state to inspect manufacturing facilities in connection with the enforcement of this Act.

(k) The department may contract with any federal agency or any agency or political subdivision of any state for the performance of any inspections or inspection programs pursuant to this Act or the rules and regulations of the department to assure that manufactured homes sold or installed in the state comply with the Texas Manufactured Housing Standards Code.

(l) The department may enter into contracts with the Department of Housing and Urban Development or its designees to monitor the Department of Housing and Urban Development programs.

(m) When necessary or required by law, the department may obtain inspection search warrants.

Sec. 10. Repealed by Acts 1979, 66th Leg., p. 1417, ch. 625, § 18, eff. Sept. 1, 1979.

Sec. 11. (a) There shall be a fee of \$15 for the inspection of the installation of mobile homes which shall be paid by the installer of the mobile home. Said fee shall be paid to the state and shall accompany notification to the department of the exact location of the mobile home. The department shall make fee distributions to local governmental subdivisions performing inspections pursuant to contracts or other official designations.

(b) Looking for guidance to the rules and regulations promulgated under Title VI of the Housing and Community Development Act of 1974¹ and to that Act itself, the commissioner shall set fees for the following functions:

(1) There shall be a schedule of fees for the review of mobile home blueprints and supporting data when the department acts as a Design Approval Primary Inspection Agency. This fee shall be paid by the manufacturer seeking approval.

(2) There shall be an inspection fee on all mobile homes manufactured or assembled within the State of Texas. This fee shall be paid by the manufacturer of the home. The manufacturer shall also be charged for the actual cost of travel for representatives of the department to and from the manufacturing facility.

(3) The fees in Subsections (1) and (2) shall not be applicable when an accepted inspection agency authorized by the Department of Housing and Urban Development, other than the department, acts as the Design Approval Primary Inspection Agency or the In-Plant Inspection Agency.

(4) There shall be a fee for inspection of used mobile homes at retailer locations to check compliance with the code and to determine if the mobile home has been damaged in transit. This fee shall be paid by the retailer in possession of the mobile homes at the time the inspection was made. For any given mobile home at a retailer location, this fee may not be assessed more than one time.

(5) There shall be a fee charged on an hourly basis for inspection of alterations made upon the structure, plumbing, heating, or electrical systems of mobile homes. This fee shall be paid by the person making the alteration. The person shall also be charged for the actual cost of travel for representatives of the department to and from the place of inspection.

(6) There shall be a fee for the issuance of seals for used mobile homes which shall be paid by the retailer or broker.

(c) The installer of a modular home shall pay to the state a fee set by the commissioner for the inspection of the installation of the modular home.

¹ 42 U.S.C.A. § 5414.

Before installation the installer shall notify the department of the exact location of the modular home and shall pay the fee.

(d) Following a hearing pursuant to the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), the commissioner shall set fees for the following functions:

(1) a fee paid by the manufacturer for the review of modular home designs, blueprints, and specifications;

(2) an inspection fee paid by the manufacturer for all modular homes manufactured in the state and for all modular homes manufactured outside of the state to be transported to retailers or consumers in the state;

(3) a fee charged on an hourly basis and paid by the person making the alteration for an inspection of the alterations made on a modular home after construction and certification by the manufacturer and before the closing of a sale to the consumer;

(4) annual fees for the issuance and renewal of manufacturers', retailers', brokers', and installers' certificates of registration; and

(5) a fee for the issuance of decals that shall be paid by the manufacturer.

(e) The person required to pay an inspection fee set in accordance with Subsection (d) of this section shall pay the cost of travel to and from the place of the inspection for representatives of the department who make the inspection.

(f) All fees assessed under this Act shall be paid to the State Treasurer and placed in the General Revenue Fund.

(g) The fees charged by the department in effect August 31, 1979, shall remain in effect until the new schedule of fees set forth in this section has been promulgated and adopted.

Sec. 12. [Deleted.]

Security Required

Sec. 13. (a) The department may not issue a certificate of registration, unless the applicant first files a surety bond, a cash deposit, or other security in such form as the commissioner may prescribe and a written irrevocable designation of the commissioner as agent for service of legal process.

(b) If a surety bond is filed, it shall be continuous and remain in effect until cancelled by the surety company with notice as provided by this Act. A cash deposit or other security need not be posted annually so long as the applicable amount specified in this section remains posted. If a claim is made against a cash deposit causing the deposit to be lessened, the depositor has 20 calendar days in which

to deposit additional money or other security so that compliance may be had with the requirements of this section. If the deficit is not eliminated within 20 days, the certificate of registration of the inadequately covered manufacturer, retailer, broker, or installer is immediately suspended. If a bond is cancelled, the certificate of registration is immediately suspended.

(c) If a cash deposit or other security is posted, the interest from said deposit shall go to the depositor.

(d) The bond shall be a surety bond issued by a company authorized to do business in this state and shall be in conformity with the Insurance Code. The cash deposit or other security shall be in such a form as the commissioner may deem appropriate.

(e) The bond, cash deposit, or other security shall be to the state for the use by a consumer, the state, or any political subdivision thereof who secures any judgment against a manufacturer, retailer, broker, installer or salesperson for damages, restitution, or expenses including reasonable attorney's fees resulting from a cause of action connected with the sale, lease-purchase, exchange, brokerage, or installation of a manufactured home, including but not limited to

(1) retention or conversion of money, property, or any other thing of value from consumers in the form of down payments, any sales and use taxes, deposits, or insurance premiums;

(2) failure to deliver proper title documents or certificates of title to consumers;

(3) failure to give or the breach of any manufactured home warranty required by this Act or by the Federal Trade Commission; or

(4) engaging in any false, misleading, or deceptive acts or practices as the term is set forth in and as those acts or practices are declared unlawful by the provisions of Chapter 17, Subchapter E, Business & Commerce Code. The bond or other security shall not be liable for judgments resulting from tort claims, except as expressly set forth hereinabove, nor for any punitive, exemplary, or treble damages. A consumer, the state, or any political subdivision thereof may recover against the principal or surety jointly and severally for such damages, restitution, or expenses; provided, however, that in no event shall a surety or the cash deposit or other security posted under this section be liable for an amount in excess of actual damages, restitution, or expenses, including reasonable attorney's fees. Any judgment obtained against a principal is conclusive against the surety or other security if notice of the filing of suit is given as required by this section. The bond or other security shall be open to successive claims up to the amount of face value of the bond or other

required security. The surety shall not be liable for successive claims in excess of the bond amount, regardless of the number of years the bond remains in force.

(f) A consumer shall inform the manufacturer, retailer, installer, or salesperson, and the department of any claim against the bond or security no later than two years after the purchase of the mobile home. Whenever the department receives notice of the claim against a bond, the department shall promptly notify the bonding company involved. If the consumer claim results in a private lawsuit being filed by the consumer, the consumer shall notify the attorney general's office and the surety company by certified mail of the filing of the lawsuit. At the time of sale or delivery of a manufactured home to a consumer, the consumer must be given conspicuous written notification of this two-year limit and the notice requirements.

(g) Any manufacturer, retailer, broker, or installer who maintains a place of business at one or more locations shall file with the department a separate bond or other security for each location. A manufactured home installed on a permanent foundation system and offered for sale as real estate is not a business location that requires a bond.

(h) A manufacturer shall be bonded, supply a cash deposit or other security in the amount of \$100,000. A retailer shall be bonded, supply a cash deposit, or other security in the amount of \$25,000. A salesperson shall be bonded, supply a cash deposit or other security in the amount of \$2,000. A broker shall be bonded, supply a cash deposit or other security in the amount of \$15,000. An installer shall be bonded, supply a cash deposit or other security in the amount of \$2,000. A retailer holding a valid certificate of registration shall not be required to be bonded or file any security to secure a certificate of registration as a broker or an installer.

(i) The bonding company must provide written notification to the department at least 60 days prior to the cancellation of any bond required by this Act. Any cash deposit or other security on file with the department shall remain on file with the department two years after the person ceases business as a manufacturer, retailer, broker, or installer or salesperson or at such time as the department may determine that no claims exist against the cash deposit or security.

Warranties

Sec. 14. (a) After the effective date of this Act, all new manufactured homes sold to consumers in the state shall be covered by the manufactured home warranty set forth in this section.

(b) The manufactured home warranty provided for in this Act is given by the manufacturer of the manufactured home.

(c) The manufactured home warranty shall be set forth in a separate written document; shall be delivered to the consumer by the retailer at the time the contract of sale is signed; and shall contain, but is not limited to, the following terms:

(1) that the manufactured home complies with the code;

(2) that the warranty shall be in effect for a period of at least one year from date of sale or initial installation, whichever is later;

(3) that the manufactured home and all appliances and other equipment installed and included therein by the manufacturer or retailer are free from defects in materials or workmanship;

(4) that the manufactured home is installed in accordance with all standards, rules, regulations, administrative orders, and requirements of the department;

(5) that the manufacturer or the retailer or both shall take appropriate corrective action within a reasonable period of time in instances of defects in materials or workmanship, or failures to comply with the code;

(6) that the warranty contains the address of the retailer and manufacturer where notices of defects may be given; and

(7) that the purchaser shall notify either the manufacturer or the retailer or both in writing of the need for appropriate corrective action in instances of defects in materials or workmanship or in failures to comply with the code.

(d) The manufacturer and retailer are jointly and severally liable to the consumer for the fulfillment of the manufactured home warranty.

(e) For all installations not covered by the warranty as set forth in Subsection (c) of this section, the installer shall give each manufactured home owner a written warranty that the installation of the home was done in accordance with all standards, requirements, rules, regulations, and administrative orders of the department.

Sec. 15. Repealed by Acts 1979, 66th Leg., p. 1417, ch. 625, § 18, eff. Sept. 1, 1979.

Penalties

Sec. 17. (a) A person, individual, or director, officer, or agent of a corporation who knowingly and willfully violates a provision of this Act or any rule, regulation, or administrative order of the department in a manner that threatens the health or safety of any purchaser or consumer commits a misdemeanor and on conviction shall be fined not more than \$1,000 or shall be confined in the county jail not longer than one year or both.

(b) Any person who violates any provision of this Act or the rules and regulations of the department may be assessed a civil penalty to be paid to the State of Texas in an amount not to exceed \$1,000 for each such violation as the court may deem proper, except that the maximum civil penalty may not exceed \$1,000,000 for any related series of violations occurring within one year from the date of the first violation.

(c) Whenever it appears that any person has violated or is threatening to violate any of the provisions of this Act or of the rules, regulations, and administrative orders of the department, either the attorney general or the department may cause a civil suit to be instituted either for injunctive relief to restrain the person from continuing the violation or threat of violation or for the assessment and recovery of the civil penalty or for both.

(d) Failure by a manufacturer or retailer to comply with the warranty provisions of this Act or any implied warranties or the violation of any provision of this Act by any person is a deceptive trade practice in addition to those practices delineated in Chapter 17, Subchapter E, Business & Commerce Code¹ and is actionable pursuant to said subchapter. As such, the venue provisions and all remedies available in said subchapter apply to and are cumulative of the remedies in this Act.

¹ Business and Commerce Code, § 17.41 et seq.

Miscellaneous Provisions

Sec. 18. (a) Any waiver by a consumer of the provisions of this Act is contrary to public policy and is unenforceable and void.

(b) No provision of this Act shall exclude any other remedy available at law or equity to the consumer.

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

(d) If a retailer, broker, or installer does not possess a valid certificate of registration at the time of entering into any contract with a consumer, the contract between the consumer and the retailer, broker, or installer is voidable at the option of the consumer.

(e) Nothing in this Act shall be construed to modify or amend any provisions of The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes).

(f) Notwithstanding any provisions of any other statute, regulation, or ordinance to the contrary, an installer is not required to secure any permit, certifi-

cate, or license or pay any fee for the transportation of manufactured housing to the place where it is to be installed except as required by the department or the State Department of Highways and Public Transportation. The State Department of Highways and Public Transportation shall cooperate with the department in the routing of the transportation of housing and shall not issue any permits for the transportation of manufactured housing except to persons holding valid certificates of registration issued by the department.

[Amended by Acts 1975, 64th Leg., p. 2036, ch. 674, §§ 1 to 18, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 288, ch. 139, § 1, eff. May 13, 1977; Acts 1979, 66th Leg., p. 1405, ch. 625, §§ 1 to 19, eff. Sept. 1, 1979.]

Section 19 of the 1979 amendatory act provided:

"This Act takes effect September 1, 1979. The standards and requirements for the construction and installation of modular homes established by this Act are effective January 1, 1980."

Art. 5221g. Employment Counseling Program for Displaced Homemakers

Purpose

Sec. 1. Because of the increasing number of persons in this state who, having fulfilled a role as homemaker, find themselves "displaced" through divorce, death of spouse, or other loss of family income, and because of homemakers' unique and invaluable contribution to the welfare of society as unpaid workers, it is the intention of the legislature in enacting this legislation to provide the counseling necessary to enable displaced homemakers to assume or resume a valuable role commensurate with their talents and abilities in the paid work force.

Definitions

Sec. 2. In this Act:

(1) "Commission" means the Texas Employment Commission.

(2) "Displaced homemaker" means an individual:

(A) who:

(i) has worked without pay as a homemaker for his or her family;

(ii) is not gainfully employed; and

(iii) has had, or would have, difficulty in finding employment; and

(B) who also:

(i) has depended for financial support on the income of a family member and has lost that income; or

(ii) has depended on government assistance as the parent of dependent children, but is no longer eligible for the assistance.

Establishment

Sec. 3. The Texas Employment Commission shall establish a special assistance job-counseling program

for displaced homemakers. The commission shall design the program specifically for a person reentering the paid work force after a number of years as a homemaker. The counseling shall consider and build upon the skills and experiences of a homemaker and shall prepare the person through employment counseling to reenter the paid work force as well as develop and hone job skills. The program shall assist displaced homemakers in obtaining training and education as well as place displaced homemakers in suitable employment. The commission may not charge a fee for participation by a displaced homemaker in the program.

Utilization of Existing Personnel, Equipment, Etc.

Sec. 4. In establishing the job-counseling program, the commission shall utilize existing commission personnel, services, facilities, and equipment.

Cooperation in Securing Employment

Sec. 5. Agencies, departments, and commissions of the state and political subdivisions of the state shall cooperate with the commission in securing suitable employment for displaced homemakers counseled by the commission.

[Acts 1977, 65th Leg., p. 323, ch. 159, §§ 1 to 5, eff. May 17, 1977.]

TITLE 84

LANDLORD AND TENANT

Article

5236f. Rights and Duties of Landlord and Tenant.

Art. 5236f. Rights and Duties of Landlord and Tenant

Definitions

Sec. 1. In this Act:

(a) "Landlord" means the owner, lessor, or sublessor of a residential rental unit. A managing agent, leasing agent, or resident manager shall be considered the agent of the landlord for purposes of notice and other communications required or allowed under this Act. Otherwise, a managing agent, leasing agent, or resident manager shall be considered a landlord under this Act only if such agent purports to be the owner or lessor in the rental agreement.

(b) "Tenant" means any person entitled under a rental agreement to occupy a residential rental unit to the exclusion of others.

(c) "Premises" means a residential rental unit and the appurtenances, grounds, and facilities held out for the use of the tenants generally, and any other area or facility the use of which is provided to the tenant in the rental agreement.

(d) "Rental agreement" means any agreement, written or oral, which establishes or modifies the terms, conditions, rules, regulations, or any other provisions regarding the use and occupancy of a residential rental unit, including any rental agreement as modified or changed pursuant to the provisions of Section 6(b) of this Act.

(e) "Normal wear and tear" means that deterioration which occurs, based upon the use for which the rental unit is intended, without negligence, carelessness, accident, or abuse of the premises or equipment or chattels by the tenant or members of his household, or his invitees or guests. Provided, however, "accident" shall not include breakage or malfunction due to age or deteriorated condition.

Landlord's Duty to Repair Certain Conditions

Sec. 2. (a) The landlord shall have a duty upon actual notice as provided herein, to make a diligent effort to repair or remedy any condition which materially affects the physical health or safety of an ordinary tenant.

(b) The landlord shall not have a duty to repair or remedy any condition which is caused by the tenant or the tenant's family, guests, or invitees during the term of the rental agreement or any renewal or extension period. The foregoing shall not relieve the landlord from a duty to repair a condition which was caused by normal wear and tear and which also materially affects the physical health or safety of an ordinary tenant.

(c) This Act shall not require a landlord to furnish utilities from a utility company if, as a practical matter, the utility lines of the utility company are not reasonably available. This Act shall not require a landlord to furnish security guards for the premises. This Act shall not extend to breakages, malfunctions, or other conditions which do not materially affect the health or safety of an ordinary tenant.

Landlord's Failure to Repair: Prerequisites for Statutory Remedies

Sec. 3. The tenant shall be entitled to all of the rights and remedies set forth in this Act if all of the following have occurred:

(a) the tenant has given notice to the person or place where rent is normally paid, specifying such condition. Written notice may be required only if such requirement is contained in a written rental agreement;

(b) the tenant was not delinquent in payment of rent under the rental agreement, as defined in Section 1(d), or any portion thereof at the time of notice of the condition to the landlord;

(c) the condition materially affects the physical health or safety of an ordinary tenant;

(d) the landlord has failed to make a diligent effort to repair or remedy the condition;

(e) the landlord has had a reasonable time, after receipt of notice as provided above, to repair or remedy the condition, considering the nature of the problem and the reasonable availability of material, labor, and utilities from a utility company.

In any judicial action for enforcement of rights and remedies which are conditioned on the above requirements, the tenant shall have the burden of proof. Provided, however, the landlord shall have the burden to prove that the landlord made a diligent effort to repair and that a reasonable time for repair did not elapse if the landlord fails to provide a written explanation of the reasons for delay within

five days after receipt of written demand from the tenant for such explanation.

Fire or Casualty Loss

Sec. 4. (a) Where the condition is the result of an insured casualty loss such as fire, smoke, hail, explosion, or similar cause, the time period for repair shall not commence until insurance proceeds are received by the landlord.

(b) If the rental premises are as a practical matter totally unusable for residential purposes after a casualty loss, and if the casualty loss is not due to the negligence or fault of the tenant or the tenant's family, guests, or invitees, either landlord or tenant may terminate the rental agreement at any time prior to completion of repairs by giving written notice to the other. In such event, the tenant shall only be entitled to a pro rata refund of rent from date of move-out and a refund of any security deposit as required by law.

(c) If the rental premises are partially unusable for residential purposes after a casualty loss, and if the casualty loss is not due to the negligence or fault of the tenant or the tenant's family, guest, or invitees, a tenant occupying the premises shall have a right of partial rent reduction only upon application by the tenant to the county or district court; provided, however, a landlord and tenant may agree otherwise in the written rental agreement. Any partial rent reduction shall be in relation to the extent of unusability of the premises due to the casualty.

Nonjudicial Remedy for the Tenant

Sec. 5. (a) The tenant shall have the right to terminate the rental agreement if:

(1) all the events in Sections 3(a), (b), (c), (d), and (e) have occurred; and

(2) after the lapse of a reasonable time for repair as set forth in Section 3(e), the tenant has given the landlord written notice that the tenant will terminate the rental agreement unless the condition is repaired or remedied within seven days.

(b) In the event of termination of the rental agreement by the tenant under this section and delivery of possession to the landlord, the tenant shall be entitled to a pro rata refund of rent from date of termination or move-out (whichever occurs later) and a refund of any security deposit as required by law. Termination of the rental agreement by the tenant shall preclude the remedies of Sections 6(a) and (b) of this Act.

Judicial Remedies for the Tenant

Sec. 6. The tenant shall have the right to recover judgment for any one or more of the remedies as set forth below, provided that all of the events in Sec-

tions 3(a), (b), (c), (d), and (e) have occurred and that the tenant has given the landlord written notice that the tenant will file suit under this Act unless the condition is repaired or remedied within seven days:

(a) a court order directing the landlord to take reasonable action to repair or remedy the condition which materially affects the physical health or safety of an ordinary tenant;

(b) a court order for a partial rent reduction in proportion to the reduction in rental value due to the condition in question until the condition is repaired or remedied;

(c) a court order imposing a civil penalty against the landlord in the amount of one month's rent plus \$100;

(d) a court order awarding actual damages to the tenant; and

(e) a court order assessing against the landlord court costs and attorney's fees pursuant to Section 10 hereof; provided, however, nothing in this Act shall authorize the recovery of attorney's fees for a cause of action for damages of any kind or nature relating to or arising out of personal injuries.

Retaliation by Landlord

Sec. 7. (a) A landlord shall not, within six months from the date of the tenant's repair notice, do any of the following acts in retaliation for the tenant's notice to repair or exercise of remedies for nonrepair of a condition which materially affects the health and safety of the ordinary tenant: (1) filing an eviction proceeding on grounds other than those set forth in Section 7(b) below, (2) depriving the tenant of the use of the premises except where authorized by law, (3) decreasing services to the tenant, or (4) giving the tenant notice of termination of the rental agreement or notice of rent increase, which is effective within six months from the date of such notice. The landlord shall have a defense to a cause of action for retaliation by proving that the landlord's actions were not for purposes of retaliation.

(b) The following shall not constitute retaliation and shall constitute valid grounds for eviction in any event:

(1) where the tenant was delinquent in rent as of the time of the landlord's written notice to vacate or as of the time of the filing of the eviction lawsuit;

(2) where property damage to the premises was intentionally caused by the tenant or the tenant's family, guests, or invitees;

(3) where the tenant or the tenant's family, guest, or invitee has threatened, by word or conduct, the personal safety of the landlord, the landlord's employees or other tenants;

(4) where the tenant has materially breached the rental agreement; provided, however, material breach for purposes of this subsection shall not include holding over except as provided below;

(5) where the tenant has held over after the tenant has given notice of termination of the rental agreement or notice of intent to vacate;

(6) where the tenant has held over after the landlord has given notice of termination of the rental agreement at the end of the rental term, and the landlord's termination notice was prior to receipt of actual notice to repair from the tenant; or

(7) where the tenant has held over and the landlord's notice of termination was motivated by a good faith belief that the tenant or the tenant's family, guests, or invitees may: (i) adversely affect the quiet enjoyment by other tenants or neighbors, or (ii) materially affect the health or safety of the landlord, other tenants, or neighbors, or (iii) cause damage to property of the landlord, other tenants, or neighbors.

(c) The following shall not constitute retaliation under this Act unless prohibited by previous court order under Section 6 hereof: (1) increases in rent pursuant to an escalation clause for utilities, taxes, or insurance in a written rental agreement, and (2) increases in rent or reduction in services which are part of a pattern of rental increases or service reductions for an entire multidwelling project.

(d) If the landlord has retaliated against the tenant in violation of this section, the tenant shall be entitled to recover from the landlord the following: (1) a court order imposing against the landlord a civil penalty of one month's rent plus \$100, (2) a court order against the landlord awarding the tenant reasonable moving costs, and (3) a court order assessing against the landlord court costs and attorney's fees pursuant to Section 10 hereof.

Retaliation by the Tenant

Sec. 8. The landlord shall be entitled to recover from the tenant a civil penalty of one month's rent plus \$100 and attorney's fees as defined in Section 10 hereof if the tenant has, after written notice by the landlord to the tenant of the penalties of this section, withheld payment of any portion of the rent due the landlord in retaliation for an alleged failure by the landlord to repair or remedy a condition of the premises complained of by the tenant. Written notice by the landlord may be in person, by mail, or by delivery to the rental premises.

Forcible Entry and Detainer Suits

Sec. 9. The landlord's failure to repair or remedy a condition pursuant to the provisions of Sections 2 and 3 of this Act shall not be a defense to eviction; however, retaliation by the landlord pursuant to

Section 7 of this Act shall be a defense to eviction and shall entitle the tenant to all other remedies set forth in Section 7.

Attorney's Fees

Sec. 10. Any party who prevails in a lawsuit brought under this Act shall be entitled to recover from the other party reasonable attorney's fees, together with costs of court. Attorney's fees, as referred to in this Act, shall mean attorney's fees in relation to work reasonably expended.

Harassment

Sec. 11. Any tenant or landlord who files or prosecutes a lawsuit under this Act in bad faith or for purposes of harassment shall be liable to the defendant for a civil penalty of one month's rent plus \$100 and attorney's fees as defined in Section 10 hereof.

Closing of the Rental Premises

Sec. 12. (a) Notwithstanding any provision of this Act, the landlord may at any time give written notice by certified mail return receipt requested, to the tenant and to the local health officer and to the local building inspector, if there is one, stating: (1) that the landlord is terminating the rental agreement as soon as legally possible, and (2) that when the tenant moves out, the landlord will immediately either demolish the rental unit or refrain from further use of the rental unit for residential purposes. Reoccupancy and reconnection of utilities shall be allowed only pursuant to Section 12(b) below.

(b) After such notice is received by the tenant and after the tenant moves out, the local health officer and/or building inspector shall not permit further occupancy or utility service by separate meter to the rental unit until such official certifies that there is no condition, known to said official, which materially affects the physical health or safety of an ordinary tenant. The landlord shall not allow reoccupancy or reconnection of utilities by separate meter within six months after the tenant moves out. Nothing herein shall be construed as prohibiting occupancy of other apartments. Nothing in this Act shall be construed as prohibiting occupancy of or utility service by master meter or individual meter to other rental units in an apartment complex which have not been closed down by the landlord pursuant to Section 12(a) of this Act.

(c) If such notice of closing of the rental unit occurs prior to the tenant's repair notice to the landlord, the remedies of this Act shall not apply.

(d) If such notice of closing of the rental unit occurs after the tenant's repair notice to the landlord but before a reasonable time has elapsed for repair by the landlord, only the remedies of Sections 12(f) and (g) shall apply.

(e) If such notice of closing of the rental unit occurs after the tenant's repair notice to the landlord and after a reasonable time has elapsed for repair by the landlord, only the remedies of Sections 6(c), (d), and (e) and Sections 12(f) and (g) shall apply.

(f) In the event a tenant moves out on or before the ending of the rental term after receiving notice as referred to in Section 12(d) and (e) above, the landlord shall pay to the tenant reasonable moving expenses actually incurred and the landlord shall make a pro rata return of rent from date of move-out and a return of any security deposit as required by law.

(g) Violation by the landlord of Section 12(b) or (f) shall entitle the tenant to recover a penalty of one month's rent plus \$100 and attorney's fees as defined in Section 10 hereof.

Waiver

Sec. 13. The provisions of this Act may not be waived except where the rental agreement is in writing and the waiver is underlined or in bold print in the written rental agreement or in a separate written addendum. Such waiver must be specific and must list with clarity what duties are being waived. Such waiver must be made knowingly, voluntarily, and for consideration.

Other Rights

Sec. 14. The duties of the landlord and remedies of the tenant as set forth in this Act shall apply in lieu of existing common law and statutory law regarding the landlord's warranties or duties of main-

tenance, repair, security, habitability, and nonretaliation, and the tenant's remedies for violation thereof. Otherwise, nothing in this Act shall serve to affect or diminish any other rights of the landlord or tenant under contract, statute, or common law which are consistent with the purposes of this Act or any right the landlord or tenant may have to bring actions for personal injury or property damage under the laws of this state. Nothing in this Act shall be construed as imposing obligations on the landlord or tenant other than those expressly stated herein.

Laws in Conflict

Sec. 15. All laws in conflict or inconsistent herewith are hereby repealed to the extent of such conflict or inconsistency.

Jurisdiction and Venue Actions Under This Act

Sec. 16. The repair-order and rent-abatement remedies contained in Section 6(a) and (b) of this Act shall be available only in the county and district courts of this state. Venue for all actions under this Act shall be in the county where the premises are located.

Effective Date

Sec. 17. This Act shall take effect on September 1, 1979, and shall apply only to residential rental agreements executed or entered into, renewed, or extended after that date.

[Acts 1979, 66th Leg., p. 1978, ch. 780, §§ 1 to 17, eff. Sept. 1, 1979.]

Section 18 of the 1979 Act provided in part: "If any portion or provision of this Act or application thereof is held unconstitutional, the remainder of this Act shall nevertheless be valid."

TITLE 85

LANDS—ACQUISITION FOR PUBLIC USE

2. FEDERAL USE

Article

5248g-1. Grant of Portions of Bed and Banks of Rio Grande to United States.

2. FEDERAL USE

Art. 5248. Exempt from Taxation

Repeal

This article is repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Art. 5248g-1. Grant of Portions of Bed and Banks of Rio Grande to United States

Sec. 1. The Governor of the State of Texas is authorized to grant to the United States of America, in accordance with the conditions set out in this Act, those portions of the bed and banks of the Rio Grande or easements thereupon in Hudspeth, Jeff Davis, Presidio, Brewster, Terrell, Val Verde, Kinney, Maverick, Webb, Zapata, Starr, Hidalgo, and Cameron Counties consisting of the bed and banks as exist on the United States side of the boundary, as may be necessary or expedient to facilitate the accomplishment of projects for the relocation and rectification of the Rio Grande and construction of works for flood control in the Presidio-Ojinaga Valley, the rectification of and channel stabilization on the Rio Grande between Fort Quitman in Hudspeth County and Haciendita in Presidio County, the relocation and rectification of the Rio Grande upstream from Hidalgo-Reynosa in Hidalgo County, the preservation of the Rio Grande as the boundary by prohibiting the construction of works which may cause deflection or obstruction of the normal flow of the Rio Grande or of its floodflows, and other channel relocations and rectifications and boundary adjustments approved by the governments of the United States and Mexico, as provided for in the Treaty to Resolve Pending Boundary Differences and Maintain the Rio Grande and Colorado River as the International Boundary between the United States of America and the United Mexican States, which entered into force April 18, 1972, and the American-Mexican Boundary Treaty Act of 1972, Public Law 92-549 (86 Stat. 1161), approved October 25, 1972.¹

Sec. 2. When the Commissioner of the United States Section of the International Boundary and Water Commission, United States and Mexico, shall make application to the Governor of the State of Texas describing the area and the interest therein which is determined necessary or expedient for use under the treaty and the Act, the governor shall issue a grant of such interest for and on behalf of the State of Texas to the United States of America, conveying to it the area and the interest described in the application, and the grant, except as provided in Section 3 of this Act, shall reserve to the State of Texas all minerals, except rock, sand, and gravel needed by the United States in the operation or construction by the United States or its agents of any of the works described in Section 1 of this Act, subject to the proviso that the minerals so reserved to the state may not be explored for, developed, or produced in a manner which will at any time prevent or interfere with the operation or construction by the United States of America of any of the works described in Section 1 of this Act, and providing further, that prior to exploring for or developing the reserved minerals, the written consent and approval of the United States Section, International Boundary and Water Commission, United States and Mexico, or its successor agency, shall be obtained as to the proposed area sought to be explored or developed by the State of Texas, including, but not by way of limitation, the location of and production facilities for oil and/or gas wells and/or other minerals.

Sec. 3. In locations where the United States Commissioner applies for fee title to the bed and banks of the Rio Grande to be granted to the United States for the relocation and rectification of the channel under the treaty causing a portion of the existing channel to be within the territorial limits of Mexico after its relocation and rectification, the grant shall contain the same reservations and provisos as those prescribed in Section 2 of this Act on that portion only of the existing channel which will remain within the territorial limits of the United States on completion of the relocation and rectification project.

Sec. 4. Successive applications may be made by the United States Commissioner, and successive grants may be made to the United States of America by the governor for and on behalf of the State of

Texas, embracing various tracts within the limits herein specified, and no time limit shall be imposed upon the grants. However, nothing in this Act shall be construed as divesting, limiting, or otherwise affecting the property rights, including, but not by way of limitation, the riparian rights, under the laws of the State of Texas, of private owners of land abutting the Rio Grande in the counties referred to in this Act. The authority granted by this Act to

the Governor of the State of Texas extends only to the bed and banks of the Rio Grande to the extent that title to the bed and banks is by law vested in the State of Texas, whether under the civil law, or common law, or court decisions of the State of Texas, or otherwise.

[Acts 1975, 64th Leg., p. 584, ch. 238, §§ 1 to 4, eff. May 20, 1975.]

¹ 22 U.S.C.A. § 277d-34 et seq.

TITLE 86

LANDS—PUBLIC

Repeal

This Title 86, with certain enumerated exceptions, was repealed by art. 1, § 2(a)(I) of Acts 1977, 65th Leg., p. 2689, ch. 871, enacting the Natural Resources Code, effective September 1, 1977.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

CHAPTER ONE. ADMINISTRATION

Arts. 5249 to 5267. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

CHAPTER TWO. SURVEYORS AND SURVEYS

1B. LICENSED STATE LAND SURVEYORS

Article

5282b. Repealed.

1C. LAND SURVEYING PRACTICES

5282c. Land Surveying Practices Act of 1979.

Arts. 5268 to 5282. Repealed by Acts 1977, 65th Leg., p. 1451, ch. 589, § 20, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1), eff. Sept. 1, 1977

Without reference to repeal of these articles by Acts 1977, 65th Leg., p. 1451, ch. 589, § 20, art. 5268a was added by Acts 1977, 65th Leg., p. 1835, ch. 735, § 2.026, to read:

"The Board of Examiners of State Land Surveyors is subject to the Texas Sunset Act; and unless continued in existence as provided by that Act the board is abolished effective September 1, 1979."

See, now, the Licensed State Land Surveyors' Act, art. 5282b.

1A. REGISTERED PUBLIC SURVEYORS

Art. 5282a. Repealed by Acts 1979, 66th Leg., p. 1277, ch. 597, § 30(1), eff. June 13, 1979

Prior to repeal, this article was amended by Acts 1977, 65th Leg., p. 72, ch. 36, §§ 1 to 3; Acts 1977, 65th Leg., p. 1835, ch. 735, § 2.025.

See, now, art. 5282c.

1B. LICENSED STATE LAND SURVEYORS

Art. 5282b. Repealed by Acts 1979, 66th Leg., p. 1278, ch. 597, § 30(2), eff. June 13, 1979

The repealed article, the Licensed State Land Surveyors Act of 1977, was derived from Acts 1977, 65th Leg., p. 1445, ch. 589.
See, now, art. 5282c.

1C. LAND SURVEYING PRACTICES

Art. 5282c. Land Surveying Practices Act of 1979

Short Title

Sec. 1. This Act may be cited as the Land Surveying Practices Act of 1979.

Definitions

Sec. 2. In this Act:

(1) "Public surveying" means the practice for compensation of determining the boundaries or the topography of real property or of delineating routes, spaces, or sites in real property for public or private use by using relevant elements of law, research, measurement, analysis, computation, mapping, and land description writing. Public surveying includes the practice for compensation of land, boundary, or property surveying or other similar professional practices.

(2) "Registered public surveyor" is any person registered as a public surveyor by the Texas Board of Land Surveying.

(3) "State land surveying" means the science or practice of land measurement according to established and recognized methods engaged in and practiced as a profession or service available to the public for compensation and comprises the determination by means of survey of the location or relocation of original land grant boundaries and corners; the calculation of area and the preparation of field note descriptions of both surveyed and unsurveyed land or any land in which the state or the public free school fund has an interest; the preparation of maps showing such survey results; and the field notes and/or maps of which are to be filed in the General Land Office of the State of Texas.

(4) "Licensed state land surveyor" is a surveyor licensed by the Texas Board of Land Surveying to survey land in which the state or the public free school fund has an interest, or other original surveys, for the purpose of filing field notes in the General Land Office. When acting in this official capacity, such a surveyor is an agent of the State of Texas.

(5) "Board" means the Texas Board of Land Surveying created by this Act.

(6) "Commissioner" means the Commissioner of the General Land Office of the State of Texas.

(7) "Chief clerk" means the chief clerk of the General Land Office of the State of Texas appointed by the commissioner to perform any of the duties of the commissioner if he is sick, is absent, dies, or resigns.

(8) "Secretary" means the executive secretary of the board as herein provided.

(9) "Land surveyor" means a registered public surveyor or licensed state land surveyor.

(10) "Responsible charge" means the direct control and personal direction of the investigation, design, construction, or operation of land surveying work requiring initiative, professional skill, and independent judgment.

(11) "Practice or offer to practice" means to engage in land surveying or by verbal claim, sign, letterhead, card, or in any other way to represent oneself as legally able to perform land surveying in this state.

Practice of Surveying

Sec. 3. In order to safeguard the life, health, or property of the public, the practice of public or state land surveying in Texas is hereby declared to be subject to regulation in the public interest. It shall be unlawful for any person to practice or offer to practice land surveying in this state as defined in this Act or to use in connection with his or her name or otherwise assume or advertise any title or description tending to convey the impression that such person is a land surveyor, unless that individual is duly registered, licensed, or exempted under the provisions of this Act.

Exemptions

Sec. 4. The provisions of this Act do not apply to any of the following:

(1) a county surveyor acting in an official capacity as authorized by law in counties under 25,000 population, but only until the expiration of the term of persons currently holding such office;

(2) an officer of a state, county (except as provided by Subsection (1) of this section when applicable), city, or other political subdivision whose official duties include land surveying when acting in his official capacity, but only until the expiration of the term of persons currently holding such office;

(3) a deputy, assistant, or employee of any person exempt from the provisions of this Act by Subsections (1) and (2) of this section when acting under the direction and supervision of such exempt person;

(4) a land surveyor engaged in public surveying acting solely as an officer or as an employee of the government of the United States;

(5) a land surveyor engaged in public surveying who is not a resident of this state and has no established place of business in this state, who is legally qualified for professional service in his own state, and who gives prior written notification to the board of his intent to practice temporarily in this state and of the nature and duration of that intended practice; or

(6) an assistant or employee of any Public Surveyor registered under this Act when he works for, receives a substantial part of his income from, and acts under the direction and supervision of the Registered Public Surveyor.

Texas Sunset Act

Sec. 5. The Texas Board of Land Surveying is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes), and unless continued in existence as provided by that Act, the board is abolished and this Act expires effective September 1, 1991.

Texas Board of Land Surveying; Qualifications for Board Members; Appointment of Members; Oath of Office

Sec. 6. (a) There is hereby created a Texas Board of Land Surveying which shall consist of the following 10 members, each of whom shall be a citizen of the United States and a resident of this state:

- (1) the commissioner;
- (2) three members of the general public;
- (3) two licensed state land surveyors; and
- (4) four registered public surveyors.

The chief clerk shall perform the duties of the commissioner as a member of the board if the commissioner is sick, is absent, resigns, or dies and in such capacity shall have the same powers and authority as the commissioner.

The licensed state land surveyor members of the board shall be appointed by the governor upon the recommendation of the commissioner and with the advice and consent of the senate and shall have been actively engaged in the practice of state land surveying for not less than five consecutive years immediately prior to his or her appointment. Such members may also be registered as registered public surveyors.

The registered public surveyor members of the board shall be appointed by the governor with the advice and consent of the senate and shall have been actively engaged in the practice of public surveying in this state for not less than five years immediately prior to his or her appointment. The teaching of surveying in a recognized school of engineering or

surveying may be regarded as the practice of public surveying. Such members may also be licensed as licensed state land surveyors.

The public members of the board shall be appointed by the governor with the advice and consent of the senate and such members shall not hold a certificate of registration or license as a surveyor.

(b) The members of the board shall serve a term of six years or until a successor shall be appointed and qualified. Upon the appointment of the first board under this Act and upon February 10th of each odd-numbered year thereafter, the governor shall appoint from among the membership of the board a chairman. Before entering upon the duties of his or her office, each member of the board shall take and subscribe to the constitutional oath of office, and the same shall be filed with the secretary of state. All vacancies occurring in the membership of the board shall be filled by appointment by the governor for the unexpired term of the membership in the manner provided by this Act. All appointments made under this Act shall be made without regard to race, creed, sex, religion, or national origin. A member of the board may be appointed to succeed himself or herself, except that no member shall be eligible to serve more than two consecutive terms.

(c) The persons serving on the effective date of this Act as appointed members of the Board of Examiners of Licensed State Land Surveyors and of the State Board of Registration for Public Surveyors plus one public member constitute the initial Texas Board of Land Surveying.

A person who holds office on the effective date of this Act as a member of the State Board of Registration for Public Surveyors holds office as a member of the Texas Board of Land Surveying for the term for which the member was originally appointed. A person who holds office on the effective date of this Act as a member of the Board of Examiners of Licensed State Land Surveyors and whose term as a member of that board would expire December 2, 1980, holds office as a member of the Texas Board of Land Surveying for a term expiring September 6, 1979. A person who holds office on the effective date of this Act as a member of the Board of Examiners of Licensed State Land Surveyors and whose term as a member of that board would expire December 2, 1983, holds office as a member of the Texas Board of Land Surveying for a term expiring September 6, 1983.

The governor shall appoint to the Texas Board of Land surveying a public member for a term expiring September 6, 1981. The governor shall appoint to the board two public members to fill the offices of the two registered public surveyors whose terms expire September 6, 1979.

The term of office succeeding a Texas Board of Land Surveying member's term that expires September 6, 1979, expires January 31, 1985. The term of office succeeding a board member's term that expires September 6, 1981, expires January 31, 1987. The term of office succeeding a board member's term that expires September 6, 1983, expires January 31, 1989. Each succeeding term of office expires January 31 of an odd-numbered year.

Conflict of Interest Provisions for Board Members and Employees

Sec. 7. (a) A member or employee of the board may not be at any time during the member's term in office or the employee's term of employment any of the following:

(1) an executive officer, employee, or paid consultant of a trade or professional association in the regulated profession or industry; or

(2) related within the second degree of affinity or consanguinity to a person who is an executive officer, employee, or paid consultant of a trade or professional association in the regulated profession or industry.

(b) Members of the board, except those members who are licensed or registered under this Act, may not personally have nor be related to persons within the second degree by affinity or third degree by consanguinity who have, except as consumers, financial interests in the practice of public or state land surveying as officers, directors, partners, owners, employees, attorneys, or paid consultants.

(c) Any person who violates this section is ineligible to hold or continue to hold office or a position of employment with the board.

(d) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9c, Vernon's Texas Civil Statutes), may not serve as a member of the board or act as the general counsel to the board. The general counsel and board members may appear and represent the board at committee hearings and other formal meetings of organs of the legislative or executive departments of government when invited to do so.

Organization and Meetings of the Board

Sec. 8. (a) The first board created under the provisions of this Act shall hold its first meeting within 90 days after the effective date of this legislation and shall elect from its number a vice-chairman, who shall thereafter be elected at the first meeting of the board subsequent to February 10th of each odd-numbered year. An executive secretary shall be appointed by the board to hold office at the pleasure of the board. The secretary shall make and file a bond with the comptroller of public accounts in an amount not less than \$2,500. The premium for the bond

shall be paid out of the "Land Surveying Fund" as provided in this Act. It is the duty of the Texas Board of Land Surveying to hold meetings at least twice each year at such times and places as the board may determine for the purpose of transacting its business and to examine all applicants for registration or licensure as a public surveyor or state land surveyor. Regular meetings of the board shall be held at such times as the board may fix and determine. Special meetings of the board shall be held at such times as the board may fix and determine. Special meetings of the board may be called by the chairman or in his absence from the state or inability to act by the vice-chairman of the board. A majority of the membership of the board constitutes a quorum.

(b) Each member of the board shall be present for at least one-half of the regularly scheduled meetings held each year by the board. The failure of a member to meet this requirement automatically removes the member from the board and creates a vacancy on the board.

(c) The board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

Powers of the Board

Sec. 9. (a) The board shall have the authority and power to make and enforce all reasonable and necessary rules, regulations, and bylaws not inconsistent with the Texas Constitution, the laws of this state, and this Act for the performance of its duties in administering this Act and for the purpose of establishing standards of conduct and ethics for surveyors registered or licensed under this Act. The board shall not promulgate rules restricting competitive bidding by licensees and shall not promulgate rules restricting advertising by licensees except to the extent necessary to prohibit false, misleading, and deceptive practices. The violation by any registered public surveyor or licensed state land surveyor of any provision of this Act or any rule or regulation of the board is sufficient reason or ground to suspend or revoke the certificate of registration or licensure of the surveyor. In addition to any other action, proceeding, or remedy authorized by law, the Texas Board of Land Surveying has the right to institute an action in its own name in a district court of Travis County against any person, firm or corporation, partnership, or any other group or combination of persons to enjoin a violation of any provision of this Act or any rule or regulation of the board. Either party to such an action may appeal to the appellate court having jurisdiction of the cause. The board shall not be required to give an appeal

bond in any cause under this Act. The attorney general or his assistants shall act as legal advisor to the board and render such legal assistance as shall be necessary. If the appropriate standing committees of both houses of the legislature, acting under Subsection (g) of Section 5 of the Administrative Procedure and Texas Register Act, as added (Article 6252-13a, Vernon's Texas Civil Statutes), transmit to the board statements opposing adoption of a rule under this section, the rule may not take effect, or if the rule has already taken effect, the rule is repealed effective as of the date upon which the board receives the committees' statements.

(b) All rules and regulations promulgated by the State Board of Registration for Public Surveyors and the Board of Examiners of Licensed State Land Surveyors prior to the effective date of this Act shall remain in full force and effect until 180 days from the effective date of this Act or until sooner ratified by the board in the manner provided by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

(c) A roster showing the names and places of business of all licensed state land surveyors and registered public surveyors, the rules and regulations promulgated by the board, and a copy of this Act and any amendments thereto shall be prepared by the secretary of the board during the month of July of each odd-numbered year. Copies of this roster shall be mailed to each person so registered or licensed, placed on file with the secretary of state, and furnished to the public upon request without charge.

(d) The board may adopt rules and regulations creating and providing for the administration of a staggered renewal program for all certificates of registration and licensure issued by it beginning in 1981.

(e) The board shall establish a public information program for the purpose of informing the public regarding the practice and regulation of land surveying in this state, including a standard complaint form, and such information shall be made readily available to the general public and other appropriate agencies of the state. Such program shall also include information designed to inform prospective applicants regarding the qualifications and requirements for registration or licensure under this Act.

(f) The board shall employ an executive secretary to conduct the administrative affairs of the board under the board's direction. The board may also employ or retain such other persons as are necessary for the proper performance of its work under this Act, including services of an investigative nature, and may make expenditures for this purpose. The board is authorized to accept at no cost to the board

such services from private sources. The compensation paid under this Act shall not be in excess of compensation paid for similar work in other state departments.

(g) The board shall arrange for such suitable office space and equipment as it may deem necessary, and the rental for such office space and the cost of such equipment shall be considered administration expenses.

Compensation and Expenses of Board Members

Sec. 10. Members of the board, other than the commissioner, shall receive as compensation the sum of \$25 per day for each day they are actually engaged in official board duties, including time spent in necessary travel, together with all legitimate expenses incurred in the performance of their duties. All per diem and expenses incurred under this Act shall be paid from the "Land Surveying Fund" as provided in this Act. The commissioner shall not receive per diem compensation or actual expenses for the discharge of his duties as a member of the board, except as otherwise provided by law.

Records and Reports

Sec. 11. (a) The board shall keep a record of its proceedings, which is open to public inspection at all reasonable times, and which includes a record of all money received and expended by the board and a register of all applicants for registration or licensure, showing the following:

- (1) the name, age, and residence of each applicant;
- (2) the date of application;
- (3) the place of business of such applicant;
- (4) the applicant's qualifications;
- (5) any reasons for rejection of an application;
- (6) the dates and results of all examinations;
- (7) the date and number of all certificates of registration or licensure issued; and
- (8) such other information as may be deemed necessary by the board.

(b) The board also shall keep a record of all registered professional engineers engaged in public surveying who register with the board, which includes the following:

- (1) the name, age, and residence of all registrants;
- (2) the place of business of the registrant;
- (3) the date and serial number of registration as a professional engineer;
- (4) the date of registration with the board; and
- (5) any other information that may be deemed necessary by the board.

Provisions for the Transfer of Personnel, Property, and Assets

Sec. 12. The personnel employed by the State Board of Registration for Public Surveyors and the records, property, and assets in the custody of the State Board of Registration for Public Surveyors and the Board of Examiners of Licensed State Land Surveyors on the effective date of this Act are hereby transferred to the Texas Board of Land Surveying.

Receipts and Disbursements

Sec. 13. The secretary of the board shall receive and account for all fees received under the provisions of this Act and shall deposit these funds in the State Treasury to the credit of a special fund to be known as the "Land Surveying Fund." At the beginning of each biennium all money then in such fund which is not then appropriated or obligated shall be set over and paid into the General Revenue Fund. This fund shall be paid out only by warrants of the comptroller of public accounts upon itemized vouchers approved by the secretary of the board. Under no circumstances shall the total amount of warrants issued by the comptroller of public accounts in payment of the expenses and compensation provided for in this Act exceed the amount in the Land Surveying Fund. All payments to persons retained or employed by the board or to members of the board and all per diem and expenses incurred under this Act shall be paid out of the Land Surveying Fund provided herein, and no part of the expense of administering this Act shall ever be a charge against the general funds of the State of Texas. The board shall as of August 31 of each year after the passage of this Act make a report to the governor, lieutenant governor, and speaker of the house of representatives for all receipts and disbursements under this Act. The financial transactions of the board shall be audited annually by the state auditor.

Practitioners at the Time of Enactment

Sec. 14. (a) All persons holding valid certificates of registration or licenses on the effective date of this Act from either the State Board of Registration for Public Surveyors or the Board of Examiners of Licensed State Land Surveyors shall be automatically registered or licensed under this Act. Those holding a certificate of registration as a registered public surveyor shall be registered as registered public surveyors and those holding a licensed state land surveyor's license shall be licensed as licensed state land surveyors. Those so registered shall retain their same registration numbers and those so registered or licensed shall retain their former certificate or license until such certificate or license is renewed as provided herein.

(b) Any person holding a valid license on the effective date of this Act from the State Board of

Registration for Professional Engineers who has been engaged in the practice of surveying for a period of not less than one year immediately preceding the effective date of this Act may apply for registration as a public surveyor within a period of one year from the effective date of this Act and on payment of the registration fee shall be registered as a public surveyor. The Texas Board of Land Surveying and the State Board of Registration for Professional Engineers shall determine whether an applicant qualifies for registration under this subsection. If the boards disagree about whether an applicant qualifies for registration under this subsection, the decision of the State Board of Registration for Professional Engineers controls.

(c) All persons registered or licensed under this section are presumed to be qualified as long as they annually renew their certificate of registration or licensure as required under this Act.

Qualifications for Registration and Licensure

Sec. 15. (a) No person, except those exempt from the operation of this Act, shall engage or continue in the practice of public surveying as defined in this Act, unless the person is registered or licensed as provided by this Act.

(b) The following classes of persons are qualified for registration or licensure:

(1) all registered professional engineers engaged in the practice of surveying on the effective date of this Act who register with the board in accordance with this Act;

(2) all persons who apply to take and successfully pass a written examination developed and given as provided by this Act under rules developed by the board to determine the knowledge and ability of the applicant shall be qualified for registration as a registered public surveyor; and

(3) all registered public surveyors who apply to take and successfully pass a written examination as provided by this Act under rules developed by the board on the theory of surveying, the law of land boundaries, the history and functions of the General Land Office, and such other matters pertaining to surveying as the board may determine shall be qualified for licensure as a licensed state land surveyor.

(c) All applicants for licensure as a registered public surveyor, except a registered professional engineer, must meet the following minimum requirements:

(1) be of good professional character and reputation;

(2) have satisfied one of the following educational and experience requirements:

(i) have successfully completed a full four-year course of study at an accredited college or university leading to a bachelor's or higher degree and have a specific experience of two or more years as a subordinate to a registered public surveyor or a person qualified in land surveying in the active practice of land surveying of a character indicating the applicant was in delegated responsible charge of the accuracy and correctness of the surveying work performed. The course of study shall have included not less than 32 semester hours of study or its academic equivalent in any combination of courses in civil engineering, land surveying, mathematics, photogrammetry, forestry, or land law and the physical sciences; or

(ii) have successfully completed a course of study in land surveying or board-approved survey-related courses of 32 semester hours of study or its academic equivalent and have a specific experience record of four or more years as a subordinate to a registered public surveyor or a person qualified in land surveying in the active practice of land surveying of a character indicating that the applicant was in delegated responsible charge as defined herein; or

(iii) have graduated from an accredited high school and have a specific experience record of six or more years as a subordinate to a registered public surveyor or a person qualified in land surveying in the active practice of land surveying of a character indicating that the applicant was in delegated responsible charge of the accuracy and correctness of the surveying work performed. Applicants under this subsection without the college, university, or board-approved courses listed in paragraphs (i) and (ii) must show they have become self-educated in the surveying field.

(d) Notwithstanding the requirements for registration set forth in Subdivision (2) of Subsection (c) of this section, the board shall adopt reasonable rules and regulations necessary to establish a surveyor-in-training program designed to reduce the educational and experience requirements set forth in said Subsection (c) through a concentrated course of study and training. Such program shall include the following provisions:

(i) minimum educational requirements of a lesser degree than those set forth in said Subsection (c);

(ii) examination for basic mathematical skills necessary to the practice of public surveying;

(iii) a board-approved program of intensive study through formal educational programs, private educational and professional programs and seminars, or both; and

(iv) a board-approved program of intensive experience covering a lesser period of time than that set forth in said Subsection (c); and

(v) examination for other basic skills and knowledge necessary to the practice of public surveying.

Upon proof of qualification under Paragraph (i) of this subsection and successful completion of the basic examination required by Paragraph (ii) of this subsection, an applicant shall receive a certificate declaring him or her a surveyor-in-training in a form to be approved by the board, and a record shall verify and note successful completion of each additional requirement of the surveyor-in-training program by the applicant. Upon successful completion of the program, the applicant shall receive a certificate of registration as a registered public surveyor upon payment of the necessary fee.

Applications, Examinations, and Fees for Licensure

Sec. 16. Any applicant seeking registration as a registered public surveyor or licensure as a licensed state land surveyor shall file an application in writing with the Texas Board of Land Surveying. An application fee, not to exceed \$50, shall be submitted with the application. If the board determines that the applicant is qualified to take the examination, it shall set and notify the applicant of the time and place of the examination. The applicant may take the examination on payment of an examination fee determined by the board, not to exceed \$100 for registered public surveyor examinations or \$50 for licensed state land surveyor examinations.

Applications for registration or licensure shall be on forms prescribed and furnished by the board and shall contain statements made under oath showing the applicant's education and experience. Applications for registration shall contain a detailed summary of the applicant's technical work and references of at least three surveyors having personal knowledge of his surveying experience.

The scope of the examination and the methods of procedure shall be prescribed by the board with special reference to the applicant's ability in order to insure the public safety, welfare, and property rights.

Not later than the 30th day after the day on which a person completes an examination administered by the board, the board shall send to the person his or her examination results. If requested in writing by a person who fails the examination, the board shall send to the person not later than the 30th day after the day on which the request is received by the board an analysis of the person's performance on the examination.

An applicant failing an examination may apply for and take a subsequent examination at the expiration of six months from the date of the preceding examination by filing an updated application and paying an additional examination fee not to exceed \$100.

On passing the appropriate examination, the applicant is entitled to a certificate of registration as a registered public surveyor or a certificate of licensure as a licensed state land surveyor. No certificate of licensure as a licensed state land surveyor shall be issued until the applicant has taken the oath of office and filed the bond as required by this Act. Each registered public surveyor shall also be issued a registration number which shall not thereafter be assigned to nor used by any other surveyor. The number shall be placed on the certificate of registration and recorded in the permanent records of the board and shall constitute the registration number of that surveyor to be used on all official documents. The certificate of registration and the certificate of licensure shall also show the full name of the registrant or licensee and shall be signed by the chairman and secretary of the board.

Renewal, Renewal Fees, Penalty for Late Renewals

Sec. 17. All certificates of registration or licensure shall expire on December 31 of each year or on a date set by the board as part of a staggered renewal system and shall become invalid on that date unless renewed. It shall be the duty of the secretary of the board to notify every person registered under this Act of the date of expiration of his or her certificate and the amount of the fee that shall be required for its renewal for one year. The notice shall be mailed at least one month in advance of the date of expiration of the certificate. For this and other purposes, each registrant or licensee shall notify the secretary of any change of address as it occurs. For the year in which the expiration date is changed, renewal fees payable on December 31 shall be prorated on a monthly basis so that each registrant or licensee shall pay only that portion of the renewal fee which is allocable to the number of months during which the renewal is valid. On renewal of the registration or license on the new expiration date, the total renewal fee is payable. Renewal may be effected at any time during the month of expiration by the payment of a fee set by the board, not to exceed \$50 for certificates of registration of registered public surveyors or \$25 for certificates of licensure for licensed state land surveyors. On receipt of the required fee within the time and in the manner prescribed by the board, the designated officer or employee of the board shall issue to the licensed or registered surveyor a certificate of renewal of his or her certificate for the term of one year. The failure on the part of a surveyor to

renew a certificate annually by the expiration date established by the board shall not deprive an individual of the right of renewal, but shall result in an increase in the renewal fee of \$20. If failure to renew shall continue for more than 90 days after the date of expiration of the certificate of registration or licensure, the board may require such registrant or licensee to reapply for registration or licensure and he or she must qualify and pay all fees provided herein as an original applicant therefor. All renewal certificates of registration shall carry the same registration number as the original certificate. All original and renewal certificates of registration or licensure shall be evidence that the person whose name and registration number appears thereon is qualified to practice as a registered public surveyor or a licensed state land surveyor so long as the certificate is valid and in force. Each person holding a certificate of registration or licensure shall display it at his or her place of business or practice and be prepared to substantiate annual renewal for the current year. The secretary shall immediately notify the commissioner whenever the license of any licensed state land surveyor is rendered invalid for his or her failure to timely renew such license.

Official Seals

Sec. 18. Each registered public surveyor on receiving a certificate of registration shall obtain an authorized seal bearing the registrant's name and number and the legend "Registered Public Surveyor." No licensee shall affix his or her name, seal, or certification to any plat, design, specification, or other work constituting the practice of the occupation regulated by this Act and prepared by an unlicensed person, unless the work was performed under the direction and supervision of the licensee and the unlicensed person is an employee of the same firm and under the licensee's direct supervision. For the purpose of this section, an "employee" means an individual who receives compensation for work performed from a firm which employs or has a principal licensed or registered surveyor on a full-time basis. No licensee shall allow a nonlicensed person to exert control over the end product of his or her professional work. Only one surveyor's seal is required for the documents of a single project as prepared by each firm. However, the surveyor whose seal is to be used must be a principal in the firm who has the primary responsibility for the particular project. In addition, the seals of other professionals in the firm may be used. When there is a joint surveying venture comprising an association of two or more firms, each firm shall use the seal of the surveyor who has the primary responsibility for the firm. Each licensed state land surveyor shall procure a seal of office. Around the margin shall be the words "Licensed State Land Surveyor," which shall be his or her official title, and between the points of

the star in the seal shall be the word "Texas." A licensed state land surveyor shall attest with the seal all official acts authorized under the provisions of the law. No act, paper, or map of a licensed state land surveyor shall be filed in the county records of the General Land Office unless certified to under the seal of the surveyor.

Oath and Bond

Sec. 19. (a) Before a licensed state land surveyor's license is issued and before one who has successfully passed the examination as provided in this Act is authorized to perform the duties of a licensed state land surveyor, he or she shall take the official oath and shall make a good and sufficient bond in the sum of \$1,000, payable to the governor and conditioned that he or she will faithfully, impartially, and honestly perform all the duties of a licensed state land surveyor to the best of his or her skill and ability in all matters wherein he or she may be employed. No state land surveyor's license may be issued under this Act to any person residing outside the State of Texas.

(b) The bond may be executed by two or more solvent personal sureties or by a solvent surety company authorized to transact business in this state. If the bond is signed by personal sureties, each shall take and subscribe an oath that he or she is worth, over and above all debts and exemptions, at least double the penalty of the bond. A personal bond also shall be approved by the commissioners court of the county where the applicant resides. After the oath and bond have been executed as provided by this Act, they shall be recorded in the office of the county clerk of the county in which the applicant resides and after being so recorded shall be filed at the Texas Board of Land Surveying, accompanied by a filing fee in an amount to be fixed by the board. Thereupon a license shall be issued to the applicant, and he or she is authorized to enter upon the discharge of the duties of a licensed state land surveyor. If for any reason the liability on the bond provided for by this Act is terminated, the licensee is not authorized to perform the duties of a licensed state land surveyor until a new bond is made as in the first instance. No surety on a bond shall be relieved of liability on the bond without first giving the board 30 days' notice in writing. The termination of a bond as provided in this Act or the revocation of a surveyor's license does not relieve the sureties on the bond from any liability that may have theretofore accrued on the bond. The board is directed to provide the General Land Office with a current list of bondholders.

(c) The secretary shall immediately advise the commissioner whenever any applicant has qualified for and has been issued a license as a licensed state land surveyor under this Act. The secretary shall

also immediately advise the commissioner whenever the liability on the bond of any licensee under this Act has been terminated for any reason.

Reciprocal Certificate

Sec. 20. The Texas Board of Land Surveying shall issue a certificate of registration as a registered public surveyor on a reciprocal basis to any person who:

(1) holds a public surveyor license or other form of permission issued by a governmental authority outside of this state if the licensing standards of the governmental authority are substantially equivalent to those of this state; and

(2) applies with the board for the certificate of registration and pays a fee set by the board not to exceed \$50.

Firm Names; Assumed Names

Sec. 21. Registrants and licensees holding current certificates of registration or licensure may organize or engage in any form of individual or group practice of surveying allowed by the statutes of this state, if the firm identity of that practice does not publicly imply registration authority to practice public or state land surveying without properly identifying the registrant responsible for that practice. Any person engaging in the practice of surveying in this state under any business title other than the real name or names of those legally authorized to engage in public or state land surveying, whether individually or as an association, partnership, or corporation, shall file in the office of this board a certificate stating the full name and residence of each person engaging in that practice and the place, including street, number, city, and zip code, where that practice or business is principally conducted.

Resignation of a Licensed State Land Surveyor

Sec. 22. A licensed state land surveyor may resign as such surveyor at any time by filing a resignation in writing with the Texas Board of Land Surveying. On the receipt of the resignation, the board shall note the receipt and inform the General Land Office. Resignation does not relieve the principal and sureties of the surveyor's official bond of any liability that may have accrued prior to the effectiveness of the resignation.

Penalties

Sec. 23. (a) The Texas Board of Land Surveying has the power to reprimand or suspend or to revoke the license and/or registration of any surveyor found guilty of:

(1) the practice of any fraud or deceit in obtaining a certificate of registration for registered public surveyors or a certificate of licensure for licensed state land surveyors;

(2) any gross negligence, incompetency, or misconduct in the practice of surveying as a registered public surveyor or licensed state land surveyor; or

(3) the violation of a provision of this Act or a rule or regulation promulgated by the board.

(b) The license of any licensed state land surveyor found to be directly or indirectly interested in the purchase or acquisition of title to public land is subject to revocation.

(c) After the effective date of this Act, any person found guilty of the following offenses shall be deemed guilty of a Class B misdemeanor:

(1) practicing or offering to practice public surveying or state land surveying in this state without being registered or licensed or exempt in accordance with the provisions of this Act;

(2) presenting or attempting to use the certificate of registration or licensure or seal of another;

(3) giving any false or forged evidence in order to obtain or assist another in obtaining a certificate of registration or licensure; or

(4) violating any of the provisions of this Act or any rules or regulations promulgated by the board.

Enforcement; Complaints; Hearings

Sec. 24. (a) Any person may file a complaint with the Texas Board of Land Surveying regarding a violation of this Act or any rule or regulation of the board. The board may also institute proceedings against a registrant or licensee on its behalf without a formal written third party complaint. Each alleged violation of applicable statutes, when duly reported and substantiated by sworn affidavits, shall be investigated. The board may employ the investigators or inspectors necessary to enforce properly the provisions of this Act.

(b) If it is determined that the complaint is not within the board's jurisdiction, the complainant shall be notified in writing within 30 days. If the board determines the complaint to be within its statutory jurisdiction, a written notice stating the nature of the charge or charges and the time and place of the hearing before the board shall be served on the accused not less than 20 days prior to the date of the hearing and within three months after the date on which the complaint was filed. The board or its legal counsel is authorized to hold conferences before or during the hearing process for the settlement or simplification of the issues and for such purposes as the demands of justice require. At any hearing, the respondent is entitled to appear in person and by counsel, present all relevant evidence and witnesses on his or her own behalf, cross-examine witnesses, and examine such evidence as may be produced against him or her. The failure of a respondent to

appear at a hearing may be deemed a waiver of all rights except the right to be served with any sanction imposed by the board. The board may, however, grant continuances on a written request, indicating good cause for failure to appear, filed with the board prior to the date of the hearing. The board is empowered to issue notices, subpoena witnesses, administer oaths, hear testimony, rule on objections and motions, and otherwise regulate and expedite the course and conduct of the hearing. Any individual appearing at a hearing in response to a subpoena or by request or permission of the board may be accompanied, represented, or advised by counsel.

(c) After all the parties have been given an opportunity to present proposed findings and arguments, the board shall prepare findings of fact, conclusions of law, and any subsequent order, ruling, or decision of the board to be served on all parties. In the proceedings under this section and the other sections of this Act, a majority of the board shall constitute a quorum.

(d) A stenographic record or tape recording of all hearings shall be kept and transcribed. A transcript shall be made available to any party on payment of the lawfully prescribed cost.

(e) A person, firm, partnership, or corporation aggrieved by an order, ruling, or decision of the board may file a motion for rehearing which must be filed within 15 days after the rendition of the order, ruling, or decision. Replies to motions for rehearings must be filed within 25 days after the rendition of the order, ruling, or decision. A party aggrieved by a final order, ruling, or decision of the board has the right to file suit in a district court of Travis County. The petition must be filed within 30 days after the decision, ruling, or order in question is final and appealable. The board may not be required to give bond in any cause or appeal arising under this Act. Neither the Texas Board of Land Surveying nor any member of the board is liable to any person, firm, or corporation charged or investigated by the board for any damages incident to the investigation or incident to any complaint, charge, prosecution, proceeding, or trial of the results of the investigation.

(f) The board for reasons it may deem sufficient may reissue a certificate of registration or licensure to any surveyor whose certificate has been revoked provided five or more members vote in favor of the reissuance. A new certificate of registration or licensure to replace a certificate revoked, lost, destroyed, or mutilated may be issued, subject to the rules of the board and a charge of \$5.

(g) The attorney general or his assistants shall act as legal advisor to the board and shall render such legal assistance as may be necessary in enforcing the provisions of this Act and the rules and regulations of the board.

(h) The board shall keep an information file on the disposition of each complaint filed with the board relating to a registrant or licensee. If a written complaint is filed with the board relating to a registrant or licensee, the board at least as frequently as quarterly shall notify the complainant of the status of the complaint until finally determined.

Authority of Licensee and Method of Obtaining Right to
Survey on Private Land

Sec. 25. (a) Licensed state land surveyors licensed under this Act are authorized to perform surveys under the provisions of Section 21.011, Natural Resources Code, and to perform the duties that may be performed by the county surveyors and are subject to the direction of the Commissioner of the General Land Office in matters of land surveying in such cases as may come under the supervision of such authorities. The jurisdiction of such licensees shall be coextensive with the limits of the state.

(b) Licensed state land surveyors may hold the office of county surveyor, and if so elected shall qualify as provided by law for county surveyors. The election of a county surveyor for a particular county does not limit the jurisdiction of the surveyor to that county, and the election of a county surveyor for any particular county does not prevent any licensed state land surveyor from performing the duties of a surveyor in that county.

(c) All official field notes made by a surveyor licensed under this Act shall be signed by the surveyor, followed by the designation, "Licensed State Land Surveyor."

(d) If a licensed state land surveyor is denied permission to cross the land owned by a private party when surveying in his or her official capacity, the county attorney of the county in which the land is located shall promptly seek an order from a court of competent jurisdiction giving the licensee authority to cross the private lands.

Field Notes to be Recorded

Sec. 26. The field notes and plats of every survey of public land made by a licensed state land surveyor licensed under this Act shall be recorded in the county surveyor's records of the county in which the land is situated. The field notes and plats of public land made by a licensed state land surveyor affecting the lines, boundaries, and areas of such land shall be forwarded to the General Land Office after the same have been recorded under the provisions of this Act. All field notes made by licensed state land surveyors in any county in this state have the same force and effect and are admissible in evidence the same as field notes made by a county surveyor.

Undisclosed Land

Sec. 27. If a licensed state land surveyor discovers any undisclosed tract of public land, the surveyor shall not make known that fact to anyone except to such person as may have it enclosed, except that the surveyor shall forward to the Commissioner of the General Land Office a report of the existence of the tract, the acreage in the tract, and its probable value.

County Surveyor Authorized to Record Field Notes and Documents in County Surveyor's Records; Exceptions; Fees; Access to Records

Sec. 28. (a) In cases where a county has a county surveyor, the county surveyor alone is authorized to file and record field notes and plats of all surveys made in that county and other documents required by law to be recorded in the county surveyor's records and to issue certificates of fact and certify the correctness of copies of any document, record, or entry shown by the records of a county surveyor. However, if a county surveyor and his or her authorized deputy or deputies are absent from the office, the county clerk of the county has free access to the county surveyor's office and public records and, in such event, is authorized to record field notes, plats, and other documents required to be recorded in the county surveyor's records and to issue certificates of fact and certify the correctness of copies of any document, record, or entry shown on the official records of the county surveyor. In cases where a county has no county surveyor, the county clerk of the county is the legal custodian of the surveyor's records and is authorized to make all the certificates and certify the copies that a legally authorized county surveyor may make.

(b) The fees for recording documents in the surveyor's records and issuing certificates and making certified copies are the fees now or hereafter provided by law. The county surveyor is entitled to fees for all documents recorded by the county surveyor or his or her deputies and for all certificates and certified copies issued by the county surveyor or his or her deputies. The county clerk is entitled to all fees for documents recorded by the county clerk and for all certificates and certified copies issued by the county clerk under the provisions of this Act.

(c) All licensed state land surveyors shall for the purpose of information and examination have access to the records of county surveyors, and no examination fee shall be charged in cases where an investigation of the records is being made with a view to making surveys of public lands under the laws regulating the sale or lease of the same or of identifying and establishing the boundaries of public land. All examinations shall be made under such regulations as may be provided by the county surveyor or the commissioners court for the safekeeping and preservation of the records.

Informing the Public Concerning the Regulation of Surveying

Sec. 29. All written contracts for surveying services in this state shall contain the name, mailing address, and telephone number of the regulatory board having jurisdiction over that licensed individual in responsible charge of providing those services and shall contain a statement that complaints about¹ surveying services may be forwarded to that regulatory board.

¹ So in enrolled bill.

[Acts 1979, 66th Leg., p. 1261, ch. 597, §§ 1 to 29, eff. June 13, 1979.]

2. COUNTY SURVEYORS

Arts. 5283 to 5298. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Art. 5298a. Abolition of Office of County Surveyor in Counties of 39,800 to 39,900

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Arts. 5299 to 5305a. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

CHAPTER THREE. SURFACE AND TIMBER RIGHTS

Arts. 5306 to 5311a. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Art. 5311b. Validating Sales

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Arts. 5312 to 5326h. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Art. 5326i. Reinstatement of Purchases in Hutchinson County**Saved from Repeal**

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Arts. 5326j to 5330. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Art. 5330a. Regulating Sale and Patenting of Lands Formerly Part of Oklahoma; Special Land Board Abolished; Powers and Duties of General Land Office**Saved from Repeal**

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5330b. Sale of Public Lands Along Western Oklahoma and Eastern Texas Boundary Authorized**Saved from Repeal**

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Arts. 5331 to 5337-1. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Prior to repeal, art. 5331 was amended by Acts 1975, 64th Leg., p. 745, ch. 291, § 1 and art. 5337 was amended by Acts 1975, 64th Leg., p. 577, ch. 233, § 1.

Art. 5337-2. Execution in Favor of Nueces County Water Control and Improvement District No. 4 for Water Supply**Saved from Repeal**

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

CHAPTER FOUR. OIL AND GAS**Arts. 5339 to 5341c. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977**

2 West's Tex.Stats. & Codes '79 Supp.—65

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Art. 5341d. Extension of Leases on University Land; War Agency Restriction**Saved from Repeal**

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5341e. Suspension of Running of Terms of Leases While Owner is Denied Access by United States**Saved from Repeal**

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Arts. 5342 to 5366. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Prior to repeal, art. 5344d was amended by Acts 1975, 64th Leg., p. 590, ch. 241, § 1.

Art. 5366a. Extension of Oil and Gas Leases on Areas Covered by Coastal Waters or Within Gulf**Saved from Repeal**

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Arts. 5367 to 5379. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Prior to repeal, art. 5372 was amended by Acts 1975, 64th Leg., p. 1938, ch. 635, § 1.

Arts. 5380 to 5382b. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Prior to repeal, art. 5380 was amended by Acts 1975, 64th Leg., p. 1939, ch. 635, § 2.

Art. 5382b-1. Validation of Leases Advertised for 30 Days Prior to Act of 1949

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Arts. 5382c to 5382f. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Prior to repeal, art. 5382d was amended by Acts 1975, 64th Leg., p. 1824, ch. 560, § 1.

Acts 1977, 65th Leg., p. 1845, ch. 735, § 2.095, added § 1a to art. 5382d to read:

"The Boards for Lease of State-Owned Lands are subject to the Texas Sunset Act [art. 5429k]; and unless each board is continued in existence as provided by that Act the board is abolished effective September 1, 1985."

Former art. 5382f, relating to sale of gas for use outside state by certain persons, agencies, and entities, was derived from Acts 1975, 64th Leg., p. 82, ch. 38.

CHAPTER SIX. PATENTS

Arts. 5404 to 5414. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Art. 5414a. Validating Patents on Lands Lying Across or Partly Across Water Courses or Navigable Streams

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5414a-1. Validating Deeds of Acquittance on Lands Lying Across or Partly Across Water Courses or Navigable Streams

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5414c. Effect of Judgment in Action to Recover Abandoned Land Titled Before Adoption of Common Law

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

CHAPTER SEVEN. GENERAL PROVISIONS

Article

5415e-1.5. Repealed.

5415e-3. Repealed.

5415e-4. Dredge Materials Act.

5415i. Deepwater Port Procedures Act.

5415j. Repealed.

5421s. Geothermal Resources Act of 1975.

Arts. 5415 to 5415c. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Art. 5415d. Study Committee to Study Development of State Beaches

Secs. 1 to 6. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977.

Saved from Repeal

Section 7 of this article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Secs. 8 to 10. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977.

Arts. 5415d-1 to 5415d-4. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Acts 1977, 65th Leg., p. 1263, ch. 487, § 1, amended § 7 of art. 5415d-3, without reference to repeal of said article by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1). As so amended (with deletions in brackets and additions underscored), § 7 reads:

Jurisdiction and Powers of Board

"Sec. 7. All lands used as parks in connection with public beaches but not located within the boundaries of any incorporated city and not within the area bordering on the Gulf of Mexico from the line of mean low tide to the line of vegetation as that term is defined in Chapter 19, Acts of the 56th Legislature, 2nd Called Session, 1959, as amended (Article 5415d, Revised Civil Statutes of Texas), and all public beaches owned in fee by the county, shall be under the jurisdiction of the board. The commissioners court of such county may designate any additional parks and facilities owned by the county, or to be managed by the county under the terms of a written contract, to be under the management and control of the board. In addition to the powers and authority herein granted, the board shall have and exercise the following powers and authority:

"(a) To manage, operate, maintain, equip, improve, and finance any and all existing public parks placed under its jurisdiction by the commissioners court;

"(b) To improve, manage, operate, maintain, equip, and finance additional parks acquired by gift or otherwise, but not by the exercise of the power of eminent domain;

"(c) To accept, receive, and expend gifts of money or other things of value from any person, group of persons, corporation, or association for the purpose of performing any function, power or authority herein invested in the board;

"(d) To publish brochures and otherwise advertise the county's recreational advantages for the purposes of attracting tourists, residents, and other users of the public facilities operated by the board;

"(e) To accept and receive from the county and to expend such funds as may be appropriated by the county from time to time for the purpose of improving, equipping, maintaining, operating, and promoting recreational facilities under the board's supervision and control;

"(f) To enter into contracts, leases, or other agreements connected with or incident to or in any manner affecting the financing, construction, equipping, maintaining, or operating all facilities located or to be located on or pertaining to any lands under its jurisdiction, or any facilities under its control, and to execute and perform its lawful powers and functions on lands leased from others;

"(g) To have general power to make and enter into all contracts, leases, and agreements with persons, associations, and corporations relating to the management, operation, and maintenance of any concession, facility, improvement, leasehold, lands, or other property of any nature whatsoever over which such board shall have jurisdiction and control; provided that the board shall not enter into any such lease or agreement for a longer term than 40 years;

"(h) To adopt, promulgate, and enforce all reasonable rules and regulations for the use of parks and facilities under the jurisdiction and control of the board by the public or by lessees, concessionaires, and other persons or corporations carrying on any business activity within the area of such public parks and facilities;

"(i) To employ secretaries, stenographers, bookkeepers, accountants, technical experts, and other such agents and employees, permanent or temporary, as it may require, and shall determine their qualifications, duties, and compensation. In addition, the board may also employ and compensate a manager for any parks or facilities and may give him full authority in the management and operation of the park or parks or facilities subject only to the direction and orders of the board. For such legal services as it may require the board may call upon the county attorney of such county and in lieu thereof or in addition thereto the board may employ and compensate its own counsel and legal staff. The board shall adopt a seal which shall be placed on all leases, deeds, and other instruments which are usually executed under seal, and on other such instruments as may be required by the board;

"(j) To sue and be sued in its own name;

"(k) To expend any moneys appropriated by the commissioners court for the purpose of cleaning and maintaining lands within its jurisdiction and public beaches including any moneys appropriated to the commissioners court by the State of Texas for such purpose;

"(l) To issue revenue bonds in the name of the board which shall be payable solely from the revenues of all or any designated part or parts of the properties or facilities under the jurisdiction and control of the board or from any other source of funds the board may wish to dedicate for that purpose, for the purpose of acquiring, developing, improving, and enlarging public recreational areas [parks] and facilities. Such bonds may be issued in one or more installments or series by resolutions adopted by the board without the necessity of an election, shall bear interest at a rate not to exceed 10 [six] percent per annum, shall mature serially or otherwise within 40 years from their date or dates, shall be sold by the board on the best terms obtainable, ~~except that the annual interest rate and discount may not exceed 10 percent per annum~~ [but not for less than par and accrued interest], shall be executed by the chairman and secretary of the board, shall be signed by the chairman and the secretary of the board, or shall bear the facsimile signature of either or both, shall display the seal of the board either impressed, printed, or lithographed thereon, shall not be delivered until a transcript of the proceedings authorizing their issuance has been submitted to the Attorney General of Texas and by him approved as to legality and the bonds registered by the Comptroller of Public Accounts of the State of Texas, and shall be issued upon such terms and conditions in regard to the security, manner, place and time of payment, pledge of designated revenue, redemption before maturity, and the issuance of additional parity or junior lien bonds as the board shall specify in the resolution or resolutions authorizing such bonds. All bonds issued under the provisions of this Act are hereby declared to be legal and authorized investments for banks, saving banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, guardians, and for the sinking funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas. Such bonds shall be eligible to secure the deposit of any and all public funds of the State of Texas, and any and all public funds of cities, towns, villages, or other political corporations or subdivisions of the State of Texas, and such bonds shall be lawful and sufficient security for said deposits to the extent of their face value when accompanied by all unmatured interest coupons appurtenant thereto;

"(m) The board shall not have the power or authority to issue any bonds payable in whole or in part from ad valorem taxes but shall be authorized to receive and expend the proceeds of any bonds payable from taxes which may be issued by the governing body of the county for park purposes after the same have been authorized at an election held in the manner required by law;

"(n) To issue refunding bonds for the purpose of refunding one or more series or installments of original or refunding revenue bonds of the board outstanding which refunding bonds shall be issued, approved as to legality by the Attorney General of Texas, and registered by the Comptroller of Public Accounts of Texas, in the manner and upon the terms and conditions prescribed for the issuance of original revenue bonds herein, such refunding bonds to bear interest at a rate or rates not exceeding that herein provided for the original bonds;

"(o) To enter into contracts with adjacent counties, with Beach Park Boards in adjacent counties, and with Beach Park Boards in any city of the same county as the board, to accomplish any of the purposes authorized by this Act;

"(p) To charge and collect a reasonable fee for access or entrance to, or parking upon, any lands under its jurisdiction other than public beaches owned by the county, or for the use of any facility located on land under the jurisdiction of the board."

Art. 5415e-1. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Natural Resources Code.

Art. 5415e-1.5. Repealed by Acts 1979, 66th Leg., p. 2007, ch. 785, § 9, eff. June 13, 1979

The repealed article, derived from Acts 1977, 65th Leg., p. 1900, ch. 757, related to a coastal resources coordination program.

See, now, Natural Resources Code, § 33.201 et seq.

Art. 5415e-2. Coastal Waterway Act of 1975

Short Title

Sec. 1. This Act may be cited as the "Texas Coastal Waterway Act of 1975."

Policy

Sec. 2. It is the policy of the State of Texas (i) to support the marine commerce and economy of this state by providing for the shallow draft navigation of the state's coastal waters in an environmentally sound fashion, and (ii) to prevent waste of both publicly and privately owned natural resources, to prevent or minimize adverse impacts on the environment, and to maintain, preserve, and enhance wildlife and fisheries; and to accomplish such policy the State of Texas shall act as the nonfederal sponsor of the main channel of the Gulf Coast Intracoastal Waterway from the Sabine River to the Brownsville Ship Channel, and shall satisfy the responsibilities of the nonfederal sponsor as determined by federal law consistent with the policy of the State of Texas as declared in this section.

Findings

Sec. 3. The legislature finds and declares that:

(a) Marine commerce is a vital element of the state's economy and the benefits derived therefrom are realized directly or indirectly by the entire state.

(b) The coastal public lands and the coastal marshes and similar coastal areas located on both publicly and privately owned lands are similarly vital elements of the state's economy, and to the maintenance, preservation, and enhancement of the environment, wildlife, and fisheries, the benefits of which are similarly realized directly or indirectly by the entire state.

(c) The coastal public lands and related natural resources constitute a vital asset of the state to be managed for the benefit of all citizens of the State of Texas.

(d) The Gulf Intracoastal Waterway traverses coastal public lands and areas in close proximity to the coastal marshes and similar coastal areas located on both publicly and privately owned lands.

(e) The Gulf Intracoastal Waterway can be maintained, operated, and improved in such a way as to prevent waste of both publicly and privately owned natural resources, that adverse environmental impacts are avoided or minimized, and that in some cases beneficial environmental effects can be realized.

(f) It is in the best interest of all citizens to accomplish the policy of the State of Texas as stated in Section 2 of this Act for the State of Texas to meet the responsibilities as required by federal law of the nonfederal sponsor of the Gulf Intracoastal Waterway.

Definitions

Sec. 4. As used in this chapter:

(a) "Coastal public lands" means all or any portion of the state-owned submerged land, the waters overlying those lands, and all state-owned islands or portions of islands that may be affected by the ebb and flow of the tide.

(b) "Coastal marshes and similar areas" means those soft, low-lying watery or wet lands and drainage areas in the coastal areas of the state which may or may not be subject to the ebb and flow of the tide but which are of ecological significance to the environment and to the maintenance, preservation, and enhancement of wildlife and fisheries.

(c) "Commission" means the State Highway Commission.

(d) "Gulf Intracoastal Waterway" means the main channel, not including tributaries or branches, of the shallow draft navigation channel running from the Sabine River southward along the Texas coast to the Brownsville Ship Channel near Port Isabel that is generally referred to as the Gulf Intracoastal Canal.

(e) "Person" means any individual, firm, partnership, association, corporation (public or private, profit or nonprofit), trust, or political subdivision or agency of the state.

Administrative Provisions

Sec. 5. (a) This Act shall be administered by the State Highway Commission.

(b) The provisions of this Act are cumulative of all other Acts relating to the commission.

(c) Nothing in this Act shall diminish the duties, powers, and authorities of the School Land Board to manage the coastal public lands of the state.

Duties and Powers

Sec. 6. (a) The commission shall cooperate and work with the Department of the Army, all other appropriate federal and state agencies, navigation districts and port authorities, counties, and other appropriate persons to determine specifically what must be done by the State of Texas to satisfy federal local sponsorship requirements relating to the Gulf Intracoastal Waterway in a manner consistent with the policy of the State of Texas as stated in Section 2 of this Act.

(b) The commission shall fulfill, in a manner consistent with the policy of the state as stated in Section 2 of this Act, the local sponsorship requirements of the Gulf Intracoastal Waterway as agent for the state.

(c) Subject to the provisions of Subsection (g) of this section, the commission is authorized to acquire

by gift, purchase, or condemnation any property or interest in property of any kind or character deemed necessary by the commission to fulfill its responsibilities under this Act as the nonfederal sponsor of the Gulf Intracoastal Waterway, including but not limited to easements and rights-of-way for dredge material disposal sites and easements and rights-of-way for channel expansion, relocation, or alteration, save and except oil, gas, sulphur, and other minerals of any kind or character which can be recovered without utilizing the surface of any such land for exploration, drilling, or mining purposes. All other provisions relating to the exercise of the power of eminent domain shall be in accord with the commission's existing powers and authority relating to eminent domain. However, the commission does not have the authority to condemn any submerged public lands under the jurisdiction of the School Land Board.

(d) Proposed actions and actions of the commission pursuant to this Act which have potential for significant environmental impact or effect upon coastal public lands, coastal marshes and similar areas, wildlife, and fisheries shall be coordinated with appropriate state and federal agencies having environmental, wildlife, and fisheries responsibilities.

(e) All agencies and political subdivisions of the State of Texas shall, within their legal authority and available resources, assist the commission in carrying out the purposes of this Act. All such agencies and political subdivisions are hereby authorized without any form of advertisement to make conveyance of title or rights and easements, owned by any such body, to any property needed by the commission to meet its responsibilities under this Act as the nonfederal sponsor of the Gulf Intracoastal Waterway.

(f) The commission, in cooperation with all appropriate persons, shall continually evaluate the Gulf Intracoastal Waterway as it relates to Texas. Such evaluations shall include an assessment of the importance of the Gulf Intracoastal Waterway, including an identification of direct and indirect beneficiaries; identification of principal problems and possible solutions to such problems, including estimated costs, economic benefits, and environmental effects; evaluation of the need for significant modifications to the Gulf Intracoastal Waterway; and specific recommendations for legislative actions that the commission believes to be in the best interest of the state in carrying out the policy of the state as declared in Section 2 of this Act. The results of this evaluation shall be published in a report to be presented to each regular session of the legislature.

(g) Prior to approval or implementation by the commission of any plan or project for acquisition or acquisition of any property or interest in property for any dredge material disposal site, or for the widening, relocation, or alteration of the main chan-

nel of the Gulf Intracoastal Waterway which requires the acquisition of any additional property or interest in property, to satisfy federal local sponsorship requirements, the commission shall hold public hearings for the purpose of receiving evidence and testimony concerning the desirability of such proposed dredge material disposal site and of any such widening, relocation, or alteration of the main channel of the Gulf Intracoastal Waterway, prior to which hearing the commission shall publish notice of such plan, project, and hearing, at least once a week for three successive weeks in a newspaper of general circulation published in the county seat of each county in which any such proposed dredge material disposal site or part thereof is located and in which the channel or any portion of the channel of the Gulf Intracoastal Waterway to be widened, relocated, or altered is located, of the date, time, and place of such hearing. If after such public hearing the commission shall determine that such proposed dredge material site plan or project or such proposed plan or project for widening, relocation, or alteration of the main channel of the Gulf Intracoastal Waterway, as the case may be, can be accomplished without unjustifiable waste of publicly or privately owned natural resources and without permanent substantial adverse impact on the environment, wildlife, or fisheries, the commission may then, upon its approval of such plan or project, proceed to implement such plan or project and acquire, in such manner as is provided in Section 6(c) of this Act, such additional property or interest in property necessary to satisfy federal local sponsorship requirements for implementation of such plans for such dredge material site or for such widening, relocation, or alteration of the main channel of the Gulf Intracoastal Waterway.

Funding

Sec. 7. The legislature is hereby authorized to appropriate from the General Revenue Fund funds in the amount necessary to accomplish the purposes of this Act.

[Acts 1975, 64th Leg., p. 405, ch. 181, §§ 1 to 7, eff. Sept. 1, 1975.]

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5415e-3. Repealed by Acts 1979, 66th Leg., p. 2007, ch. 785, § 9, eff. June 13, 1979

The repealed article, derived from Acts 1977, 65th Leg., p. 1902, ch. 758, related to coastal wetlands acquisition.
See, now, Natural Resources Code, § 33.231 et seq.

Art. 5415e-4. Dredge Materials Act

Short Title

Sec. 1. This Act may be cited as the Dredge Materials Act.

Policy

Sec. 2. (a) It is the declared policy of the state to seek, to the fullest extent permissible under all applicable federal law or laws, the delegation to the state of the authority which the corps of engineers exercises under Section 404, as defined in this Act, over the discharge of dredged or fill material in the navigable waters of the State of Texas.

(b) It is the declared policy of the state that the state should not duplicate the exercise of such authority by the corps of engineers, but should instead exercise such authority in lieu of the corps of engineers, so that no permit application is subject to duplicate levels of regulation.

Definitions

Sec. 3. As used in this Act, unless the context clearly requires otherwise:

(a) "Agency" means the Texas Water Quality Board.

(b) "Agreement" means a written agreement or contract between the State of Texas and the United States, authorizing the State of Texas, through (name of an existing agency), to regulate the discharge of dredged or fill material in the navigable waters of the state under the authority granted by Section 404, as defined in this Act.

(c) "Corps of engineers" means the United States Army Corps of Engineers.

(d) "Discharge of dredged or fill material" has the same meaning as it has in Section 404 as defined in this Act.

(e) "Navigable waters" has the same meaning within the boundaries of the State of Texas as it has in Section 404 as defined in this Act.

(f) "Section 404" means Section 404, Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. Section 1344), as it may be amended, and such regulations as may be from time to time promulgated thereunder.

Limitations

Sec. 4. (a) Nothing in this Act shall be construed as authorizing any state agency or political subdivision to regulate the discharge of dredged or fill material in the navigable waters of the state in any manner different from or inconsistent with the requirements of Section 404.

(b) Nothing in this Act shall be construed as authorizing any state agency or political subdivision to regulate the discharge of dredged or fill material in the navigable waters of the state:

(1) by the corps of engineers;

(2) by persons operating under contract with the corps of engineers;

(3) when the corps of engineers certifies that such discharge is incidental to a project undertaken by the corps of engineers or persons operating under contract with the corps of engineers, and that such incidental discharge was announced and reviewed at the same time and under the same conditions as such project; or

(4) by cities which own and operate deepwater port facilities, or by navigation districts or port authorities, or by persons operating under contract with such cities, navigation districts, or port authorities, when such discharges are part of or incidental to a navigation project to be paid for with public funds or when such navigation project is to be owned by such cities, navigation districts, or ports.

(c) Nothing in this Act shall be construed as authorizing any state agency or political subdivision to regulate the discharge of dredged or fill material in the navigable waters of the state in any manner unless and until an agreement as described in this Act is validly entered into and in effect.

(d) Nothing in this Act shall be construed as authorizing any state agency or political subdivision to exercise any authority under this Act except in accordance with an executive order of the governor.

(e) Nothing in this Act shall be construed as authorizing any state agency or political subdivision to regulate the discharge of dredged or fill material in the navigable waters of the state in any manner different from, or inconsistent with, the agreement described in this Act.

(f) Nothing in this Act shall be construed as affecting any application for a permit from the corps of engineers to discharge dredged or fill material in the navigable waters of the state if such application is received by the corps of engineers or postmarked before the effective date of the agreement described in this Act.

Agreement

Sec. 5. (a) The governor is hereby authorized to enter into an agreement on behalf of the State of Texas, with the United States, acting through its authorized officials, under the terms of which the agency will regulate the discharge of dredged or fill material in the navigable waters of the state.

(b) The governor is expressly authorized to include whatever terms and conditions in such agreement he may deem to be in the best interest of the state, including provisions regarding the termination of such agreement.

(c) The authority of the governor under the Act to enter into such an agreement shall not be delegated.

(d) The legislature expressly finds that the provisions of this section are necessary to enable the governor to carry out his responsibilities under this Act.

Not Severable

Sec. 6. The provisions of this Act are expressly declared not to be severable, and if any provision of this Act shall be found to be invalid, the entire Act shall be null and void and of no further force or effect.

[Acts 1977, 65th Leg., p. 1906, ch. 759, §§ 1 to 6, eff. Aug. 29, 1977.]

Arts. 5415f to 5415h. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Prior to repeal, § 12A was added to art. 5415g by Acts 1975, 64th Leg., p. 2218, ch. 705, § 12.

Art. 5415i. Deepwater Port Procedures Act

[GENERAL PROVISIONS]

Short Title

Sec. 1. This Act shall be entitled the Texas Deepwater Port Procedures Act.

Purpose

Sec. 2. The purpose of this Act is to authorize state and local governmental agencies to perform and fulfill the responsibilities of the State of Texas under the federal Deepwater Port Act of 1974, 33 U.S.C.A. 1501 et seq., and to establish the procedures by which such state and local agencies will determine that applications for deepwater ports off the Texas Gulf Coast are in compliance with applicable state and local laws.

Definitions

Sec. 3. In this Act:

(1) "Adjacent coastal county" means any Texas county, bordering on the Gulf of Mexico, in which are located the onshore storage facilities of a deepwater port, as defined in Subdivision (5) here-in.

(2) "Applicant" means a person who has filed an application, as defined in Subdivision (3) below.

(3) "Application" means any application submitted under the federal Deepwater Port Act of 1974, 33 U.S.C.A. 1501 et seq., (A) for a license for the ownership, construction, and operation of a deepwater port; (B) for transfer of any such license; or (C) for any substantial change in any of the conditions and provisions of any such license.

(4) "Commissioner" means the commissioner of the general land office, or his designated representative.

(5) "Deepwater port" means (A) the facilities defined in Section 3(10) of the federal Deepwater Port Act of 1974, 33 U.S.C.A. 1501 et seq., and also

includes (B) the onshore storage tank facilities and the pipelines located within the State of Texas which connect such onshore storage facilities with the offshore facilities of a deepwater port.

(6) "Governor" means the Governor of the State of Texas.

(7) "Person" means any individual, association, organization, trust, partnership, or corporation.

(8) "State" means the State of Texas.

(9) "State or local agency" means any board, commission, department, office, agency, or political subdivision of the state or of any county or city in the state, or any other public body created by or pursuant to state law.

Administration of the Act

Sec. 4. The governor is hereby designated as the officer of the state to approve or disapprove an application to the secretary of transportation to own, construct, or operate a deepwater port off the Texas Gulf Coast. The commissioner of the general land office is hereby designated the officer of the state charged with the administration, implementation, and coordination of the provisions of this Act relating to the determination by state or local agencies that such an application complies with state and local laws relating to environmental protection, land and water use, and coastal zone management.

Determination of Compliance with State and Local Law

Sec. 5. (a) Upon receipt of a copy of an application transmitted from the secretary of transportation pursuant to the federal Deepwater Port Act of 1974, 33 U.S.C.A. 1501 et seq., the governor shall immediately transmit a copy of the application to the commissioner of the general land office and to the Attorney General of Texas.

(b) If the governor determines that the application transmitted from the secretary of transportation is substantially similar to a previous application already reviewed under the terms of this Act, the governor may notify the secretary of transportation whether the governor approves or disapproves the application, and there shall be no further proceedings under this Act on such application.

(c) Within 15 days after the receipt of an application from the governor, the commissioner shall publish notice of the application in any official register of the State of Texas, in the newspaper of greatest general circulation in Travis County and in each of the five most populous counties in Texas, according to the latest United States census, and in a newspaper in the adjacent coastal county and in any county adjoining the adjacent coastal county in which such notice would not have otherwise been published under this subsection.

(d) Within 30 days after the receipt of an application from the governor, the attorney general shall determine and forward to the governor and to the commissioner a list of the state or local agencies which have jurisdiction to administer laws relating to environmental protection, land and water use, and coastal zone management, and also within whose boundaries are located facilities constituting a deepwater port, as defined by Section 3(5) herein.

(e) Upon receipt of the list of state or local agencies prepared by the attorney general pursuant to Subsection (c) of this section, the commissioner shall immediately transmit a copy of the application to each such state or local agency for review and determination of whether the application complies with the laws or regulations administered by such state or local agency.

(f) The state or local agency shall report such determination to the commissioner in writing within 60 days after its receipt of a copy of the application from the commissioner.

(g) If any state or local agency reports to the commissioner that the application is not in compliance, such agency shall set forth in detail the manner in which the application does not comply with any law or regulation administered by the agency and shall report to the commissioner how the application can be brought into compliance with the law or regulation involved. A copy of such report shall be forwarded by the commissioner to the applicant, and the applicant shall be entitled to respond in writing to the state or local agency which issued such report and to request that a public hearing be held by the commissioner on the provisions of the application determined by the state or local agency not to comply with state or local law.

(h) The failure of a state or local agency to forward a determination report to the commissioner within the time period established in Subsection (e) of this section shall constitute a presumption that the application complies with the law or regulations administered by that agency.

(i) One copy of the application shall be filed in the general land office and in the office of the county judge of the adjacent coastal county for public inspection and shall be available to the public for inspection or duplication during normal business hours. A person requesting a copy of the application may be charged a reasonable fee for duplicating and mailing costs. The applicant may be charged a reasonable fee to cover the costs of reproducing and mailing copies of applications to state and local agencies, unless the applicant provides the number of copies required by such agencies.

Hearings on the Application

Sec. 6. (a) As provided in Section 5(f) of this Act, an applicant shall be entitled to a public hearing

on the provisions in his application which have been determined by a state or local agency not to be in compliance with the laws which they have jurisdiction to administer.

(b) Upon receipt of a request from an applicant for such a hearing, the commissioner shall publish notice of such hearing as provided in Section 5(b) of this Act. The notice shall describe the purpose of the hearing and the date, time, and place of the hearing. The date of the publication and of any personal notice of the hearing shall be not less than 10 days before the date set for the hearing.

(c) The commissioner may also hold a public hearing on the determination of compliance reports submitted to him by the state and local agencies. Notice of such hearing shall be given as provided by Subsection (b) of this section.

(d) The commissioner may consolidate any hearing held under this section with the hearing required by the federal Deepwater Port Act of 1974, 33 U.S.C.A. 1501 et seq., to be held in Texas by the secretary of transportation.

(e) All hearings on the application shall be concluded not later than 120 days after the date on which the commissioner received the application from the governor; provided, however, that the commissioner shall be entitled to hold a hearing after such 120 day period if the federal hearing required to be held in Texas has not been held and the commissioner has determined and given notice that a hearing provided for in this section will be held in conjunction with the federal hearing.

(f) Notwithstanding Subsection (e) of this section, the commissioner shall be required to comply with the date provided in Section 7(a) for transmitting his report to the governor.

Report to the Governor

Sec. 7. (a) Within 150 days after the receipt of an application from the governor, the land commissioner shall transmit to the governor a report in the form of a written summary of the determination of compliance reports submitted by any state or local agency, together with the transcript and testimony from any public hearing held by the commissioner or any joint hearing held in the state with the secretary of transportation.

(b) If the commissioner's report contains a determination by a state or local agency that the application does not comply with a law relating to environmental protection, land and water use, or coastal zone management, the commissioner shall include in his report the manner in which the application does not comply and how the application can be brought into compliance.

(c) The failure of the commissioner to transmit his summary report to the governor within the time

period established in Subsection (a) of this section shall constitute a presumption that the application complies with state and local law.

Action on the Application by the Governor

Sec. 8. (a) Upon receipt of the report from the commissioner, and not later than 45 days after the last public hearing held on the application by the secretary of transportation pursuant to Section 5(g) of the federal Deepwater Port Act of 1974, 33 U.S.C.A. 1501 et seq., the governor shall notify the secretary of transportation whether he approves or disapproves the application.

(b) If the governor concludes that the application does not comply with state laws relating to environmental protection, land and water use, and coastal zone management, he may disapprove the application. However, if he concludes that the application can be amended to comply with such laws, he may approve the application and shall notify the secretary of transportation of the manner in which the application does not comply and how the application can be brought into compliance with such laws.

(c) The governor shall transmit copies of his notification to the secretary, the applicant, the commissioner, and to the state and local agencies to whom were transmitted copies of the application by the commissioner pursuant to Section 5(d) herein.

MISCELLANEOUS PROVISIONS

Secs. 9 to 12. [Amends art. 6020a, §§ 1, 3; adds § 4 of art. 6020b and § 12A of art. 5415g]

Effect on Other Laws

Sec. 13. Nothing herein shall be construed in any way to limit, impair, diminish, change, or curtail the power, authority, and activities of any state or local governmental agency, but all power and authority vested in and exercised by such agencies are hereby specifically reserved as to them; and none of the statutory law pertaining to those existing authorities or districts is amended, changed, or repealed by the provisions hereof.

[Acts 1975, 64th Leg., p. 2213, ch. 705, §§ 1 to 13, eff. June 21, 1975. Amended by Acts 1977, 65th Leg., 1st C.S., p. 73, ch. 5, § 2, eff. July 26, 1977.]

Art. 5415j. Repealed by Acts 1979, 66th Leg., p. 2007, ch. 785, § 9, eff. June 13, 1979

The repealed article, derived from Acts 1977, 65th Leg., p. 565, ch. 200, related to cavern protection.

See, now, Natural Resources Code, § 201.001 et seq.

Arts. 5417 to 5421a. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Art. 5421b. Withdrawal from Market of Lands Adjacent to Caddo Lake**Saved from Repeal**

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5421b-1. Leasing for Minerals of Lands Under and Adjacent to Caddo Lake and Tributaries**Saved from Repeal**

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5421c. Regulating Sale and Lease of School Lands, Public Lands and River Bed; Board of Mineral Development Created**Repeal**

This article was repealed by art. 1, § 2(a)(1) of Acts 1977, 65th Leg., p. 2689, ch. 871, enacting the Natural Resources Code except for sec. 8-A, subsecs. 6b and 6c [see Compact Edition, Volume 4], which were expressly saved from repeal by § 2(b) of the 1977 Act.

Arts. 5421c-1 to 5421c-3. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Prior to repeal, art. 5421c-1 was amended by Acts 1975, 64th Leg., p. 969, ch. 368, § 1.

Without reference to repeal of art. 5421c-3 by Acts 1977, 65th Leg., p. 2689, art. 1, § 2(a)(1), Acts 1977, 65th Leg., p. 1846, ch. 735, § 2.099, added subd. 3a thereto to read:

"The School Land Board is subject to the Texas Sunset Act [art. 5429K]; and unless continued in existence as provided by that Act the board is abolished effective September 1, 1985."

Art. 5421c-4. Easements or Surface Leases of Gulf Lands to United States for National Defense; Authority of School Land Board**Saved from Repeal**

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5421c-5. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Natural Resources Code.

Art. 5421c-6. Patents Validated**Saved from Repeal**

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Arts. 5421c-7, 5421c-8. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Art. 5421c-9. Sale of School Land; Extension of Time for Payment of Notes or Obligations**Saved from Repeal**

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Arts. 5421c-10, 5421c-11. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977**Art. 5421c-12. Publication of Notice of Intended Sale or Trade of Land by Political Subdivision****Saved from Repeal**

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5421c-13. Trades of Interests in Public Free School Fund Lands

Sec. 1. (a) The School Land Board in conjunction with the General Land Office is authorized to trade fee and lesser interests in Public Free School Fund Lands for fee and lesser interests in lands not dedicated to the Public Free School Fund upon a decision by the School Land Board and the Commissioner of the General Land Office that such trade or trades are in the best public interest of the People of Texas. Such trade or trades may be made either for the purpose of aggregating sufficient acreage of contiguous lands to create a manageable unit; for acquiring lands having unique biological, geological, cultural, or recreational value; or to create a buffer zone for the enhancement of already existing public land, facilities, or amenities. Such trades shall be on an appraised value basis (such appraisal to be made by appraisers of the General Land Office and concurred in by the School Land Board, and such appraisal shall be conclusive proof of the value of the land). The trades shall be for land of at least equal value. Such trades shall be by a deed to be signed

jointly by the Commissioner of the General Land Office and the Governor. Failure of the Governor to sign such a deed constitutes his veto of the proposed trade, and the proposed trade shall not be made.

(b) All lands acquired by trade under the authority of this Act shall be dedicated to the Public Free School Fund.

Sec. 1A. If the State of Texas retains the subsurface mineral rights to all oil, gas, and other minerals in public free school fund land traded under Section 1 of this Act, an unrestricted right of ingress to and egress from the land by the state and its lessees shall be retained for the purpose of exploration, development, and production of the oil, gas, and other minerals to which rights are retained by the state. The state is entitled to lease the subsurface mineral rights retained under this section in the same manner and under the same conditions as subsurface mineral rights in permanent school fund land in which the state owns the surface title and the subsurface mineral rights. A lessee of the subsurface mineral rights retained under this section is liable to the owner of the land for actual damages to the land that may occur as a result of exploration for and development and production of the oil, gas, and other minerals to which rights are retained under this section. Notwithstanding anything to the contrary in this article, the School Land Board, in order to consummate a trade of equal value, is given the discretionary right to convey the surface estate and to reserve all the oil, gas, and other minerals with the surface owner acting as agent for the state under what is commonly known as the Relinquishment Act,¹ thereby receiving one-half the bonus, rental, and royalty as agent for the state in leasing the land and for surface damages in the leasing of oil and gas. The surface owner shall also receive 40 percent of the bonus, rental, and royalty for leasing and as compensation for surface damages for all leases negotiated by such agent covering sulphur, coal, lignite, uranium, and potash as set out under Chapter 16, Acts of the 62nd Legislature, Regular Session, 1967, as amended (Article 5421c-10, Vernon's Texas Civil Statutes).²

Sec. 2. In the event any such trade or trades be made, the School Land Board shall report each trade to the succeeding legislature, setting out such facts as warranted the trade or trades.

Sec. 3. The authority granted by this Act to trade Public Free School Fund Lands shall expire on December 31, 1982, and no trades shall be made after that date.

[Amended by Acts 1975, 64th Leg., p. 1296, ch. 487, §§ 1 to 3, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 823, ch. 307,

§§ 1, 2, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 73, ch. 47, § 1, eff. April 11, 1979.]

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5421d. Patents to Lands Formerly Claimed as in New Mexico

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5421e. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Natural Resources Code.

Art. 5421f. Extension of Payment of Unpaid Balances of Principal on Purchases of School Lands

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5421f-1. Extension of Time for Payment of Installments of Principal of School Land Purchase Contracts

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5421f-2. Reinstatement of Claims to Lands Forfeited Under Article 5326

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5421i. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Natural Resources Code.

¹ See Natural Resources Code, § 52.171 et seq.

² Repealed; see, now, Natural Resources Code, § 53.061 et seq.

Art. 5421j. Grant of Filled-in Land to City of Corpus Christi**Saved from Repeal**

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5421j-1. Lease of Filled-in Land by City of Corpus Christi**Saved from Repeal**

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5421j-2. Lease by City of Corpus Christi of Submerged Lands Previously Relinquished to City by State**Saved from Repeal**

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5421k. Submerged Lands Across Nueces Bay and Pass Conveyed to State Highway Commission**Saved from Repeal**

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5421k-1. Conveyance of Lands to Widen State Highway No. 24 in Denton County**Saved from Repeal**

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5421k-2. Submerged Right-of-Way Across Cayo Del Oso in Nueces County; Conveyance to State Highway Commission**Saved from Repeal**

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5421k-3. Sale of Land in Cayo Del Oso to City of Corpus Christi; Validation**Saved from Repeal**

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5421l. Control of Certain Property in Austin Transferred to University Regents**Saved from Repeal**

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Arts. 5421m, 5421n. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Prior to repeal, art. 5421m was amended by Acts 1975, 64th Leg., p. 158, ch. 67, § 1.

Without reference to repeal of art. 5421m, Acts 1977, 65th Leg., p. 1845, ch. 735, § 2.098, added § 2(D) thereto, which reads:

"The Veterans' Land Board is subject to the Texas Sunset Act [art. 5429k], but it is not abolished under that Act. The board shall be reviewed under the Texas Sunset Act during the period in which state agencies abolished effective September 1 of 1985 and of every 12th year after 1985 are reviewed."

Art. 5421o. Oil, Gas and Mineral Leases by Cities, Towns and Political Subdivisions; Failure to Publish Notice of Intent; Effect**Saved from Repeal**

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5421p. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Natural Resources Code.

Prior to repeal, this article was amended by Acts 1975, 64th Leg., p. 1234, ch. 459, §§ 1, 2.

Art. 5421q. Taking Park, Recreational, etc., Land for Other Public Use; Notice; Hearing

[See Compact Edition, Volume 4 for text of 1]

Sec. 1a. The department, agency, board, or political subdivision having control of the public land is not required to comply with Section 1 of this Article if:

(1) The land is originally obtained and designated for another public use and is temporarily used as a park, recreation area, or wildlife refuge pend-

ing its utilization for the originally designated purpose;

(2) The program or project that requires the use or taking of the land being used temporarily as a park, recreation area, or wildlife refuge is the same program or project for which the land was originally obtained and designated; and

(3) The land was not designated by the department, agency, political subdivision, county, or municipality for use as a park, recreation area, or wildlife refuge prior to the effective date of Section 1a of this Act.

[See Compact Edition, Volume 4 for text of 2 and 3]

[Amended by Acts 1975, 64th Leg., p. 1295, ch. 486, § 1, eff. Sept. 1, 1975.]

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5421r. Lists of Public Lands for Sale or Lease; Reproducing, Preparing, Selling or Furnishing

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5421s. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Natural Resources Code.

The repealed article, the Geothermal Resources Act of 1975, was enacted by Acts 1975, 64th Leg., p. 592, ch. 243.

Art. 5421z. Indian Commission

SUBCHAPTER A. STRUCTURE OF COMMISSION

Texas Indian Commission

Sec. 1. The Texas Indian Commission, formerly the Commission for Indian Affairs, is an agency of the state.

Application of Sunset Act

Sec. 1a. The Texas Indian Commission is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1989.

¹ Article 5429k.

Members of Commission

Sec. 2. The commission consists of three members, one of whom shall be an Indian, appointed by the governor with the advice and consent of the senate.

Terms of Office

Sec. 3. Each member holds office for a term of six years and until his successor is appointed and qualified. One member's term expires on January 31 of each odd-numbered year.

Chairman

Sec. 4. The commission shall elect a chairman from among its members, who shall serve for a period of two years or until his successor is elected. The chairman shall preside over all meetings, appoint committees, make periodic reports to the governor and the legislature, represent the Texas Indian Commission at ceremonies and public functions, and make policy and budget recommendations to the legislature and fellow commission members.

Meetings of Commission

Sec. 5. The commission shall hold at least three public meetings per year at times and places fixed by rule of the commission. One public meeting shall be held at the Alabama-Coushatta Indian Reservation one at the Tigua Indian Reservation, and one in the Dallas area each year. The chairman shall notify each member at least two weeks prior to each regular meeting date and three days before each special meeting date. Two members of the commission constitute a quorum for the transaction of business.

Compensation of Members

Sec. 6. Each member is entitled to receive per diem compensation for each day he actually attends a meeting or travels or attends to commission business, and is entitled to reimbursement for actual and necessary expenses incurred in attending meetings, as provided in the General Appropriations Act.

SUBCHAPTER B. ALABAMA—COUSHATTA INDIAN RESERVATION

Commission Responsibilities

Sec. 7. A responsibility of the commission is the development of the human and economic resources of the Alabama-Coushatta Indian Reservation and the Tigua Indian Reservation, and to assist the Texas Indian people in making their reservations self-sufficient. Specifically, the commission shall assist the Texas Indian tribes in improving their health, educational, agricultural, business, and industrial capacities.

Executive Director

Sec. 8. The commission shall appoint an executive director. The executive director serves at the will of the commission. He is responsible for the management, supervision, and implementation of the policies of the commission in carrying out the responsibilities of the commission as set forth in Section 7 of this Act. The executive director shall employ a superintendent for each reservation. The superintendents shall answer to the executive director and carry out the programs and policies of the commission. The executive director, at the direction of the commission, shall seek all possible federal funds, grants, gifts, and other types of assistance available to help expedite the commission's expressed policy for development and responsibility as outlined in Section 7 of this Act.

Contracts with Local Agencies

Sec. 9. The commission may cooperate, negotiate, and contract with local agencies and with private organizations and foundations concerned with the development of the human and economic resources of the reservations in order to implement the planning and development of the reservations. Counties and local units of government are authorized to cooperate with the commission and may furnish the use of any equipment necessary in the development of the reservations.

Gifts; Grants

Sec. 10. The commission may accept gifts, grants, and donations of money, personal property, and real property for use in development of the reservations. It may acquire by gift or purchase any additional land necessary for improvement of the reservations, their income, and their economic self-sufficiency.

Federal Grants

Sec. 11. The commission may negotiate with any agency of the United States in order to obtain grants to assist in the development of the reservations.

Assistance to Kickapoo Indians and Intertribal Indian Organizations

Sec. 11A. (a) The Traditional Kickapoo Indians of Texas are recognized as a Texas Indian tribe.

(b) The commission shall assist the Traditional Kickapoo Indians and the intertribal Indian organizations chartered in this state in applying for and managing, jointly with the commission, federal programs and funds secured from the federal government or private sources for the purpose of improving health, education, and housing standards of these Indians or increasing their economic capabilities.

(c) The commission may seek the cooperation of local and state agencies in administering programs or funds covered by Subsection (b) of this section.

Tribal Councils May Issue Bonds

Sec. 12. Subject to the written approval of the commission, the Tribal Councils may issue revenue bonds or any other evidence of indebtedness in order to finance the construction of improvements on the reservations and for the purchase of additional land necessary therefor or for improvement of the income and economic conditions of the reservations. The bonds or other evidences of indebtedness may be secured by the income from one or more revenue-producing properties, interests, or facilities of the land which is held in trust by the State of Texas for the benefit of the Indians.

Maturity; Redemption

Sec. 13. All bonds issued by either Tribal Council shall mature serially or otherwise not more than 40 years from the date of issuance, and they may be made redeemable prior to maturity, at the option of the Tribal Council, with the written approval of the commission, at times and prices and under terms and conditions prescribed in the authorizing proceedings.

Form, Conditions, Details of Bonds

Sec. 14. Subject to the restrictions contained in this Act, either Tribal Council and the commission have complete discretion in fixing the form, conditions, and details of the bonds; and the bonds may be refunded or otherwise refinanced whenever the Tribal Council, with the approval of the commission, deems such action to be necessary or appropriate.

Sale; Terms; Price; Interest

Sec. 15. The bonds may be sold, either at public or private sale, at a price and under terms determined by the Tribal Council and the commission to be the most advantageous price and terms reasonably obtainable. Interest on loans and bonds shall not exceed interest limits approved by the appropriate Tribal Council and the commission; provided, however, that interest on loans and bonds shall not exceed 10 percent per annum.

Expenses; Fees

Sec. 16. Each Tribal Council, with the approval of the commission, may employ attorneys, fiscal agents, and financial advisors in connection with the issuance and sale of bonds; and proceeds from the sale of the bonds may be used to pay their fees and all other expenses of the issuance and sale of the bonds.

Bonds as Investments and Security

Sec. 17. All bonds issued under this Act are legal, authorized investments for banks, savings banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, guardians, and for the sinking funds of all political subdivisions and public agencies of the state, and when accompanied by all unmatured coupons appur-

tenant to the bonds, are lawful and sufficient security for deposits in the amount of the par value of the bonds.

Pledge of Revenues and Income

Sec. 18. Each Tribal Council, with the approval of the commission, may pledge the rents, royalties, revenue, and income from revenue-producing properties and facilities of the state trust lands to the payment of the interest on and the principal of the bonds, and may enter into agreements regarding the imposition of sufficient charges and other revenues and the collection, pledge, and disposition of them. In making such a pledge, the Tribal Council may specifically reserve the right to issue, with the approval of the commission, additional bonds which will be on a parity with, or subordinate to, the bonds then being issued.

Disposition of Oil and Gas Revenue

Sec. 19. All revenue realized from leasing of Indian reservation land shall be paid to the Commissioner of the General Land Office, and he shall immediately place such money in a depository or depositories designated by the appropriate Tribal Council and commission. These funds shall be placed in a special account known as either the Alabama-Coushatta Mineral Fund or the Tigua Mineral Fund and shall be expended for such purposes as the appropriate Tribal Council shall recommend and the commission shall approve.

Debt Against State

Sec. 20. No obligation created by a contract, bond, note, or other evidence of indebtedness issued by either Tribal Council under this Act shall be

construed as creating a debt against the state; and every such contract, bond, note, or other evidence of indebtedness shall contain this clause: "The holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation."

Leases to Tribal Members for Residential Purposes

Sec. 21. The Tribal Council, with the approval of the commission, may execute lease agreements under which any member of the tribe, as lessee, may occupy for residential purchase, for a term of not more than 50 years with the option to renew for a term of not more than 50 years, any designated lot or tract of land which may be included in the 1,280-acre tract conveyed to the Alabama Indians by authority of Chapter XLIV, Acts of the 5th Legislature, 1854.

[Amended by Acts 1975, 64th Leg., p. 435, ch. 185, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1090, ch. 399, §§ 1, 2, eff. June 15, 1977; Acts 1977, 65th Leg., p. 1854, ch. 735, § 2.160, eff. Aug. 29, 1977.]

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Section 2 of the 1975 Act repealed art. 5421z-1; § 3 thereof provided: "Those persons holding office as members of the Commission for Indian Affairs on the effective date of this Act continue to hold office as members of the Texas Indian Commission for the terms for which they were originally appointed."

The 1977 Act, amending §§ 2 and 5 of this article, and adding § 11A, provides in § 3 as follows:

"Those persons holding office as members of the Texas Indian Commission on the effective date of this Act continue to hold office as members of the Texas Indian Commission for the terms for which they were originally appointed."

Art. 5421z-1. Repealed by Acts 1975, 64th Leg., p. 435, ch. 185, § 2, eff. Sept. 1, 1975

TITLE 87. LEGISLATURE

Article

- 5429c-4. Limit on Rate of Growth of Appropriations.
5429g. Cooperation between Legislative Houses and Agencies.
5429h. State of the Judiciary Message by Supreme Court Chief Justice.
5429i. Economic Impact Statement Act.
5429j. Biennial Reports by Governor on Organization and Efficiency.
5429k. Sunset Act.

Art. 5428a. Candidate for Speaker: Campaign Financing

Saved from Repeal

Acts 1975, 64th Leg., p. 2272, ch. 711, enacting the Political Funds Reporting and Disclosure Act of 1975, provided in § 15: "Nothing in this Act repeals or otherwise affects Article 5428a, Vernon's Texas Civil Statutes, as added by Chapter 48, Acts of the 63rd Legislature, Regular Session, 1973."

Art. 5429b. Texas Legislative Council

[See Compact Edition, Volume 4 for text of 1]

Application of Sunset Act

Sec. 1a. The State Legislative Council is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the council is abolished, and this Act expires effective September 1, 1989.

¹ Article 5429k.

[See Compact Edition, Volume 4 for text of 2 to 9]

[Amended by Acts 1977, 65th Leg., p. 1854, ch. 735, § 2.163, eff. Aug. 29, 1977.]

Art. 5429c. Legislative Budget Board

[See Compact Edition, Volume 4 for text of 1]

Application of Sunset Act

Sec. 1a. The Legislative Budget Board is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1989.

¹ Article 5429k.

[See Compact Edition, Volume 4 for text of 2 to 6]

[Amended by Acts 1977, 65th Leg., p. 1854, ch. 735, § 2.162, eff. Aug. 29, 1977.]

Art. 5429c-4. Limit on Rate of Growth of Appropriations

Limit

Sec. 1. In no biennium shall the rate of growth of appropriations from state tax revenues not dedicated by the constitution exceed the estimated rate of growth of the state's economy.

Board to Establish

Sec. 2. (a) Prior to submission of the budget adopted by the Legislative Budget Board, the board shall establish the following:

(1) the estimated rate of growth of the state's economy from the then current biennium to the next biennium;

(2) the level of appropriations for the current biennium from state tax revenues not dedicated by the constitution; and

(3) the amount of state tax revenues not dedicated by the constitution which could be appropriated for the succeeding biennium within the limit established by the estimated rate of growth of the state's economy.

(b) Estimated rate of growth of the state's economy shall be the quotient of the estimated Texas total personal income for the next following fiscal biennium divided by the estimated Texas total personal income for the current biennium. The estimate shall be made by projecting through the biennium estimates of Texas total personal income as reported by the United States Department of Commerce, or its successor in this function, using standard statistical methods. However, if a more comprehensive definition of the rate of growth of the state's economy is developed and is approved by the committee, the board may utilize this definition in its calculation of the limit on appropriations.

Publication; Hearing

Sec. 3. Prior to final board approval of the stipulated items of information in Section 2 of this article, the board shall publish in the Texas Register the proposed items of information together with a description of the methodology and sources utilized in the calculations. In addition, the board shall hold a public hearing no later than December 1 of each even-numbered year at which testimony shall be solicited with regard to the proposed items of information and the methodology utilized in the calculations.

Adoption by Committee

Sec. 4. (a) After the board approves the items of information required by Section 2 of this article, it shall submit them for final adoption to a committee composed of the governor, the lieutenant governor, the speaker of the house of representatives, and the comptroller of public accounts.

(b) The committee shall meet within 10 days after the date the board submits the items and finally adopt the items, either as submitted by the board or as amended by the committee.

(c) If the committee fails to act within the allotted 10-day period, the items of information as submitted by the board are treated as if the committee had adopted them.

Limit on Budget Recommendations

Sec. 5. Unless authorized by a majority vote of house and senate members of the board separately, the budget recommendations of the board with respect to proposed appropriations of state tax revenues not dedicated by the constitution may not exceed the limit adopted by the committee under Section 4 of this article.

Transmission to Legislature, Governor

Sec. 6. The proposed limit of appropriations from state tax revenues not dedicated by the constitution shall be included in the recommendations of the Legislative Budget Board and shall be transmitted to all members of the legislature and the governor.

Effect of Proposed Limit; Enforcement

Sec. 7. The proposed limit is binding on the legislature with respect to all appropriations of tax revenue not dedicated by the constitution made for the ensuing biennium unless the legislature adopts a resolution raising the limit under the provisions of Article VIII, Section 22(b), of the Texas Constitution. Enforcement of this provision shall be provided for in the rules of the house of representatives and the senate.

[Added by Acts 1979, 66th Leg., p. 695, ch. 302, art. 9, § 1, eff. May 31, 1979.]

Art. 5429f. Legislative Reorganization Act of 1961

[See Compact Edition, Volume 5 for text of 1 to 12]

Refusal to Testify

Sec. 13. No witness is privileged to refuse to testify to any fact, or to produce any paper, respecting which he shall be examined by either House of the Legislature, or by any Committee of either House, upon the ground that his testimony to such fact or his production of such paper may tend to disgrace him or otherwise render him infamous.

Any person called upon to testify or to give testimony or to produce papers upon any matter under inquiry before either House or in the committee of either House of the Legislature or Joint Committee of both Houses, who refuses to testify, give testimony or produce papers upon any matter under inquiry upon the ground that his testimony or the production of papers would incriminate him, or tend to incriminate him, may nevertheless be required to testify and to produce papers but when so required, over his objections for the reasons above set forth, such person shall not be subject to indictment or prosecution for any transaction, matter or thing concerning which he truthfully testified or produces evidence, documentary, or otherwise. Any person testifying before the Legislature or any committee thereof shall have the right to counsel.

[See Compact Edition, Volume 4 for text of 14 to 19].

Travel Expenses of Legislative Members and Employees

Sec. 20. Members and employees of each House of the Legislature, while in travel status properly authorized by that House, are entitled to receive, as provided by resolution, either actual and necessary expenses or a per diem not to exceed that provided by law for state officials or state employees, and shall also be reimbursed for mileage or other transportation expenses at the same rate as provided by law for state officials or state employees. While in authorized travel status outside the state, members and employees shall be reimbursed for actual and necessary expenses if in excess of the per diem.

[See Compact Edition, Volume 4 for text of 21]

[Amended by Acts 1975, 64th Leg., p. 1975, ch. 656, § 1, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1104, ch. 405, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 998, ch. 437, § 1, eff. Aug. 27, 1979.]

Art. 5429g. Cooperation between Legislative Houses and Agencies

Sec. 1. In this Act, "legislative agency" means:

- (1) the Senate;
- (2) the House of Representatives;
- (3) a committee, division, department, or office of the Senate or the House;
- (4) the Texas Legislative Council;
- (5) the Legislative Budget Board;
- (6) the Legislative Reference Library;
- (7) the State Auditor's Office; or
- (8) the Legislative Information System Committee.

Sec. 2. A legislative agency may provide administrative, professional, clerical, and other services to another legislative agency with or without reim-

bursement. Reimbursement, if any, shall be made pursuant to a written contract executed by the officer or officers who are authorized to execute contracts for each agency.

[Acts 1977, 65th Leg., p. 3, ch. 3, §§ 1, 2, eff. Feb. 23, 1977.]

Section 3 of the 1977 Act provided:

"From funds appropriated to the House of Representatives for the fiscal year ending August 31, 1977, there is hereby transferred and appropriated to the Texas Legislative Council the sum of \$125,000, and from funds appropriated by Section 10(e), Chapter 334, Acts of the 64th Legislature, Regular Session, 1975, there is hereby transferred and appropriated to the Texas Legislative Council the sum of \$250,000, to provide for document processing, printing, distribution, computer services, and other services for the legislature."

Art. 5429h. State of the Judiciary Message by Supreme Court Chief Justice

At a convenient time at the commencement of each regular session of the legislature, the chief justice of the supreme court of the state shall deliver a "state of the judiciary" message evaluating the accessibility of the courts to the citizens of the state and the future directions and needs of the courts of the state. It is the intent of the legislature that such "state of the judiciary" message promote better understanding between the legislative and judicial branches of government and thereby promote the more efficient administration of justice in Texas. [Acts 1977, 65th Leg., p. 172, ch. 83, § 1, eff. Aug. 29, 1977.]

Art. 5429i. Economic Impact Statement Act

Short Title

Sec. 1. This Act may be cited as the Economic Impact Statement Act.

Definition

Sec. 2. In this Act, "state agency" means:

(1) any department, commission, board, office, or other agency that:

(A) is in the executive branch of state government;

(B) has authority that is not limited to a geographical portion of the state; and

(C) was created by the constitution or a statute of this state; or

(2) an institution of higher education as defined in Section 61.003, Texas Education Code, as amended, other than a public junior college or community college.

State Policy

Sec. 3. The Legislature of the State of Texas, recognizing the impact of the laws, rules, and regulations of this state on the economy, employment, and enterprise of its people, hereby declares it to be the continuing policy of this state to maintain and create conditions which will sustain and promote the economy, employment, and economic opportunities of the people of Texas.

Economic Impact Statement

Sec. 4. (a) At the request of the lieutenant governor or the speaker of the house of representatives, a state agency shall prepare an economic impact statement for any pending bill or joint resolution that directly affects that agency. Preparation of the economic impact statement shall be coordinated through the director of the Legislative Budget Board.

(b) The economic impact statement shall include:

(1) a brief description of the nature and effect of the proposal; and

(2) the manner and extent to which the proposal, if implemented, will directly or indirectly during each of the two years following its effective date:

(A) affect employment in the state, including the number of people affected, the geographic area or areas affected, and the existing level of employment and unemployment in those areas;

(B) affect the construction, modification, alteration, or utilization of any structure, equipment, facility, process, or other asset in the state, the estimated dollar measure of the action, and the geographic area or areas affected;

(C) result in changes in costs of goods and services in the state;

(D) result in changes in revenue and expenditures of state and local governments;

(E) have economic impacts within the state other than those specifically described by this subsection.

(c) An economic impact statement that omits any information required by this Act shall specifically note its omission, state the reason for its omission, and estimate the additional time and effort required to obtain the information.

[Acts 1977, 65th Leg., p. 653, ch. 243, §§ 1 to 4, eff. May 25, 1977.]

Art. 5429j. Biennial Reports by Governor on Organization and Efficiency of State Agencies

Definitions

Sec. 1. In this Act:

(1) "State agency" means a department, commission, board, office, or other agency, except a university system or an institution of higher education as defined in Section 61.003, Texas Education Code, as amended, that:

(A) is in the executive branch of the state government;

(B) has authority that is not limited to a geographical portion of the state; and

(C) was created by the constitution or a statute of this state.

(2) "Functional area" means one of the following areas of concern to the state government: natural resources, health and human resources, education, economic development and transportation, agriculture, public protection, consumer protection, manpower, and other areas in which the governor creates an interagency planning council.

Governor's Report

Sec. 2. (a) Before the end of each even-numbered year, the governor shall prepare and submit to the legislature a report on the organization and efficiency of state agencies.

(b) In preparing the report, the governor shall use the staff of the Governor's Budget and Planning Office.

(c) In the report, the governor shall group state agencies into functional areas and shall include the following matters about the state agencies in each functional area;

- (1) information regarding the efficiency with which the state agencies operate;
- (2) recommendations regarding the reorganization of the state agencies and the consolidation, transfer, or abolition of their functions; and
- (3) any other material relating to the organization or efficiency of state agencies that the governor considers necessary to include.

(d) The Legislative Budget Board shall coordinate the collection of information in this report.

Recommendations of Interagency Planning Councils

Sec. 3. (a) In preparing the report, the governor shall request and consider information from each interagency planning council regarding the efficiency of state agencies within the functional area represented by that interagency planning council and recommendations regarding the need for reorganization of state agencies within the functional area.

(b) Before submitting the report to the legislature, the governor shall present to each interagency planning council for review and comment the part of the proposed report dealing with the state agencies in the functional area represented by that interagency planning council, and the comments of each interagency planning council shall accompany the report when it is submitted to the legislature.

Preparation of Legislation

Sec. 4. The staff of the Texas Legislative Council shall draft any legislation required to put the governor's recommendations into effect.

[Acts 1977, 65th Leg., p. 939, ch. 350, §§ 1 to 4, eff. Aug. 29, 1977.]

Art. 5429k. Sunset Act

Short Title

Sec. 1.01. This Act may be cited as the Texas Sunset Act.

Definitions

Sec. 1.02. In this Act:

(1) "State agency" means:

(A) an agency that is expressly made subject to this Act; or

(B) a department, commission, board, or other agency (except a university system or an institution of higher education as defined in Section 61.003, Texas Education Code, as amended) that:

- (i) is created by statute after January 1, 1977;
- (ii) is part of any branch of state government; and
- (iii) has authority that is not limited to a geographical portion of the state.

(2) "Advisory committee" means a committee, council, commission, or other entity created by or pursuant to state law whose primary function is to advise a state agency.

(3) "Commission" means the Sunset Advisory Commission.

Sunset Advisory Commission

Sec. 1.03. (a) The Sunset Advisory Commission is created.

(b) The commission is composed of four members of the senate appointed by the lieutenant governor and four members of the house appointed by the speaker of the house. Each appointing authority may designate himself as one of the four appointees.

(c) Members appointed by the lieutenant governor and the speaker of the house serve four-year terms, with terms staggered so that the terms of one-half of the membership from each house expire every two years. When making the initial appointments, the lieutenant governor and the speaker of the house shall determine which of their respective appointees serve two-year terms and which serve four-year terms. If the lieutenant governor or the speaker serves on the commission, he continues to serve until resignation from the commission or until he ceases to hold the office.

(d) Once a person has served six years on the commission, he is not eligible for appointment to another term or part of a term. A member who has served more than half of a full term may not be appointed to an immediately succeeding term. These restrictions do not apply to the lieutenant governor or the speaker of the house.

(e) Each appointing authority shall make his appointments to the commission as soon as possible after final adjournment of the regular session.

(f) A member of the commission vacates his position on the commission when he ceases to be a member of the house from which he was appointed.

(g) A vacancy on the commission shall be filled for the unexpired part of the term in the same manner as the original appointment.

(h) The members of the commission elect a chairman every two years from among their members. The chairmanship must alternate between the house and senate.

(i) A quorum shall consist of at least six members, three of whom must be appointees of the lieutenant governor, and three of whom must be appointees of the speaker of the house. No final action or recommendation may be made unless approved by a record vote of a majority of the full membership of the appointees of the lieutenant governor and of the appointees of the speaker of the house.

(j) Each member of the commission is entitled to reimbursement from the appropriate fund of the member's respective house for the expenses he actually and necessarily incurs in performing the duties of the commission.

Staff

Sec. 1.04. (a) The personnel of the Performance and Evaluation Section, or its successor, of the Legislative Budget Board shall serve as the staff of the commission.

(b) In addition to the staff provided for under Subsection (a) of this section, the commission may employ other persons authorized by appropriations and necessary for administering the provisions of this Act.

Report on Advisory Committees

Sec. 1.05. Before October 30 of each calendar year, each state agency shall file an annual report with the Secretary of State to register all of its advisory committees and report the following information regarding the agency's advisory committees:

- (1) the official names of the advisory committees;
- (2) the statutory authority, if any, for the advisory committees;
- (3) the advisory committees' objectives and functions;
- (4) the period of time necessary for the advisory committees to carry out their objectives;
- (5) a reference to the reports that the advisory committees have presented to the agency;
- (6) the names and occupations of the current members of the advisory committees; and
- (7) other available information that will assist the staff and the commission to determine the need for continuing the advisory committees.

Agency Report to Commission

Sec. 1.06. Before October 30 of the odd-numbered year before the year a state agency is abolished according to this Act, the agency shall report to the commission:

- (1) information regarding the application to the agency of the criteria in Section 1.10 of this Act;
- (2) information specified in Section 1.05 of this Act regarding each of the agency's advisory committees; and
- (3) any other information that the agency considers appropriate or that is requested by the commission.

Commission Duties

Sec. 1.07. Before June 1 of the even-numbered year before the year a state agency and its advisory committees are abolished according to this Act, the commission shall:

- (1) review and take action necessary to verify the reports submitted by the agency under Section 1.06 of this Act;
- (2) consult the Legislative Budget Board, the Governor's Budget and Planning Office, the state auditor, and the comptroller of public accounts, or their successors, on the application to the agency of the criteria provided in Section 1.10 of this Act; and
- (3) conduct a performance evaluation of the agency based on the criteria provided in Section 1.10 of this Act and prepare a written report, which is a public record.

Public Hearings

Sec. 1.08. Between June 1 and November 1 of the calendar year before the year a state agency and its advisory committees are abolished according to this Act, the commission shall conduct public hearings on but not limited to the application to the agency of the criteria provided in Section 1.10 of this Act, except that the commission may hold the public hearings before June 1 if the evaluation required by Section 1.07(3) of this Act has been completed and made available to the public.

Commission Report

Sec. 1.09. Before December 15 of the calendar year before the year a state agency and its advisory committees are abolished according to this Act, the commission shall present to the legislature and the governor a report on the agency and its advisory committees. In the report the commission shall include its specific findings with regard to each of the criteria set forth in Section 1.10 of this Act, its recommendations based on the matters set forth in Section 1.11 of this Act, and other information considered necessary by the commission for a complete evaluation of the agency.

Criteria for Review

Sec. 1.10. The staff and the commission shall consider the following criteria in determining whether a public need exists for the continuation of a state agency or its advisory committees or for the performance of the functions of the agency or its advisory committees:

- (1) the efficiency with which the agency or advisory committee operates;
- (2) an identification of the objectives intended for the agency or advisory committee and the problem or need which the agency or advisory committee was intended to address, the extent to which the objectives have been achieved, and any activities of the agency in addition to those granted by statute and the authority for these activities;
- (3) an assessment of less restrictive or other alternative methods of performing any regulation that the agency performs which could adequately protect the public;
- (4) the extent to which the advisory committee is needed and is used;
- (5) the extent to which the jurisdiction of the agency and the programs administered by the agency overlap or duplicate those of other agencies and the extent to which the programs administered by the agency can be consolidated with the programs of other state agencies;
- (6) whether the agency has recommended to the legislature statutory changes calculated to be of benefit to the public rather than to an occupation, business, or institution that the agency regulates;
- (7) the promptness and effectiveness with which the agency disposes of complaints concerning persons affected by the agency;
- (8) the extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by those it regulates, and the extent to which the public participation has resulted in rules compatible with the objectives of the agency;
- (9) the extent to which the agency has complied with applicable requirements of an agency of the United States or of this state regarding equality of employment opportunity and the rights and privacy of individuals;
- (10) the extent to which changes are necessary in the enabling statutes of the agency so that the agency can adequately comply with the criteria listed in this section;
- (11) the extent to which the agency issues and enforces rules relating to potential conflict of interests of its employees;
- (12) the extent to which the agency complies with the "Open Records Act," Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973, as amended

(Article 6252-17a, Vernon's Texas Civil Statutes), and with the "Open Meetings Act," Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes); and

(13) the impact in terms of federal intervention or loss of federal funds if the agency is abolished.

Recommendations

Sec. 1.11. In its report on a state agency, the commission shall:

- (1) make recommendations on the abolition, continuation, or reorganization of each affected state agency and its advisory committees and on the need for the performance of the functions of the agency and its advisory committees;
- (2) recommend appropriation levels for each state agency and advisory committee for which abolition or reorganization is recommended under Subdivision (1) of this section; and
- (3) include drafts of legislation necessary to carry out the commission's recommendations under Subdivision (1) of this section.

Rules

Sec. 1.12. The commission shall adopt rules necessary to carry out this Act.

Abolition of Advisory Committees

Sec. 1.13. Except as otherwise expressly provided by law, every advisory committee whose primary function is to advise a particular state agency is abolished on the date set for abolition of the agency unless the advisory committee is expressly continued by law.

Agencies Created in Future

Sec. 1.14. Every state agency created by law enacted after January 1, 1977, is subject to this Act and to this section except as otherwise expressly provided by the law creating the agency. A state agency created by law enacted in a fiscal biennium is abolished at the end of the sixth succeeding fiscal biennium unless continued by law.

Continuation by Law

Sec. 1.15. (a) During the regular session immediately preceding the abolition of a state agency or an advisory committee that is subject to this Act, the legislature by law may continue the agency or advisory committee for a period not to exceed 12 years.

(b) Nothing in this Act shall be construed to prohibit the legislature from terminating a state agency or advisory committee subject to this Act at a date earlier than that provided in this Act. Nothing in this Act shall be construed to prohibit the legislature from considering any other legislation relative to a state agency or advisory committee subject to this Act.

Legislative Consideration

Sec. 1.16. (a) No more than one state agency and its functions and advisory committees may be considered for continuation, transfer, or modification in a bill, except that when consolidation of agencies or advisory committees or their functions is proposed, only the agencies or advisory committees involved in the consolidation may be considered in a legislative bill.

(b) In a bill to continue a state agency, to transfer its functions, or to consolidate it with another agency, the affected agency or agencies shall be mentioned in the title of the bill.

After Termination

Sec. 1.17. (a) On abolishment in the odd-numbered year, each state agency may continue in existence until September 1 of the next succeeding year for the purpose of concluding its business. Unless otherwise provided by law abolishment does not reduce or otherwise limit the powers or authority of each respective state agency during such concluding year. Upon the expiration of the one-year period after abolishment each respective state agency is terminated and shall cease all activities.

(b) Any unobligated and unexpended appropriations of a state agency or advisory committee lapse on September 1 of the even-numbered year after abolishment of the agency or advisory committee.

(c) All money in a dedicated fund of an abolished state agency or advisory committee on September 1 of the even-numbered year after abolishment of the agency or advisory committee is transferred to the General Revenue Fund, except as provided in subsection (f) of this section and as otherwise provided by law. The part of the law dedicating the money to a specific fund of an abolished agency becomes void on September 1 of the even-numbered year after abolishment of the agency.

(d) If an abolished state agency or advisory committee is funded in the General Appropriations Act for both years of the biennium, the abolished agency or advisory committee may not spend or obligate any of the money appropriated to it for the second year of the biennium, unless otherwise provided by law or rider in the appropriations bill.

(e) Property and records in the custody of a state agency or advisory committee on September 1 of the even-numbered year after abolishment of the agency or advisory committee are transferred to the State Board of Control, except that where an appropriate state agency is designated by the governor pursuant to Subsection (f) of this section, the property and records are transferred to the state agency so designated.

(f) The legislature recognizes the state's continuing obligation to pay bonded indebtedness incurred by any agency abolished by the terms of this Act, and it is not the intention of this Act to impair or impede the payment of bonded indebtedness in accordance with its terms. If an abolished state agency has remaining outstanding bonded indebtedness, the bonds remain valid and enforceable in accordance with their terms and subject to all applicable terms and conditions of the laws and proceedings authorizing the bonds, notwithstanding the abolishment of the agency that issued the bonds. The governor shall designate an appropriate state agency, which shall continue to carry out all covenants contained in the bonds and the proceedings authorizing them, including the issuance of bonds to complete the construction of projects, and shall provide payment from the sources of payment of the bonds in accordance with the terms of the bonds, whether from taxes, revenues, or otherwise, until the bonds and interest on the bonds are paid in full. All funds established by laws or proceedings authorizing the bonds shall remain with the State Treasurer or previously designated trustees, if so provided in the proceedings; if not so provided, the funds shall be transferred to the designated state agency.

Subpoena Power

Sec. 1.18. The commission may issue process to witnesses at any place in the state and compel their attendance and the production of books, records, papers, and other objects that may be necessary or proper for the purposes of the committee proceedings. The commission may issue attachments when necessary to obtain compliance with subpoenas or other process, which may be addressed to and served by any peace officer in this state. The chairman of the commission shall issue, in the name of the commission, the subpoenas that a majority of the commission may direct. In the event the chairman is absent, the designee of the chairman is authorized to issue subpoenas or any other process in the same manner as the chairman. Witnesses attending proceedings of the commission under process are entitled to the same mileage and per diem as allowed witnesses before a grand jury in this state. The testimony taken under subpoena must be reduced to writing and must be given under oath subject to the penalties of perjury.

Assistance of and Access to State Agencies

Sec. 1.19. (a) The commission may request the assistance of state agencies and officers, and they shall assist the commission when requested to do so.

(b) In carrying out their functions under this Act, the commission or its designated staff member may

inspect the records, documents, and files of any state agency.

Relocation of Employees

Sec. 1.20. When an employee is displaced because of the abolishment, reorganization, or continuation of a state agency or its advisory committees, the agency and the Texas Employment Commission shall make a reasonable effort to relocate the displaced employee.

Saving Clause

Sec. 1.21. Except as otherwise expressly provided, abolition of a state agency does not affect rights and duties that matured, penalties that were incurred, civil or criminal liabilities that arose, or proceedings that were begun before the effective date of the abolition.

[Acts 1977, 65th Leg., p. 1826, ch. 735, art. I, §§ 1.01 to 1.21, eff. Aug. 29, 1977. Amended by Acts 1977, 65th Leg., 1st C.S., p. 56, ch. 3, § 1, eff. July 22, 1977.]

TITLE 89

STATE LIBRARY AND ARCHIVES COMMISSION

Article

- 5434a. Application of Sunset Act.
5434b. Change of Name.
5442c. Maintenance and Disposition of Certain County Records.
5446b. Central Media Depository for Individuals Unable to Use Ordinary Print.

Art. 5434. Organization

The Governor shall, by and with the advice and consent of the Senate, appoint six (6) persons who shall constitute the Texas State Library and Archives Commission. Appointments shall be made for a term of six (6) years.

Members of the Commission holding office at the time of passage of this Act shall continue in office until the expiration of their present terms.

Upon the expiration of the terms of office of the two (2) members which expire in 1953, the Governor shall, by, and with the advice of the Senate, appoint three (3) persons as members of the Commission. The Governor shall designate one (1) of the appointees to serve a term of two (2) years to expire concurrent with the term of the present member of the Commission whose term of office expires in 1955.

The other two (2) appointees shall serve for six (6) years.

Thereafter all appointments shall be for a six-year term, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term.

The Commission shall be assigned suitable offices at the Capitol where they shall hold at least one regular meeting annually, and as many special meetings as may be necessary. Each such member while in attendance at said meetings shall receive his actual expenses incurred in attending the meetings, and shall be paid a per diem as set out in the General Appropriations Act.

[Amended by Acts 1979, 66th Leg., p. 856, ch. 382, § 2, eff. Aug. 27, 1979.]

Art. 5434a. Application of Sunset Act

The Texas State Library and Archives Commission is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished effective September 1, 1983. [Added by Acts 1977, 65th Leg., p. 1843, ch. 735, § 2.082, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 857, ch. 382, § 4, eff. Aug. 27, 1979.]

¹ Article 5429k.

Art. 5434b. Change of Name

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

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

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

The Texas State Library and Archives Commission is authorized to adopt a state plan for improving public library services and for public library construction. The plan shall include county and municipal libraries. The Texas State Library shall prepare the plan for the commission, and shall administer the plan adopted by the commission. Money to be used may include that available from local, state, and federal sources, and will be administered according to local, state, and federal requirements. The state plan shall include a procedure by which county and municipal libraries may apply for money under the state plan and a procedure for fair hearings for those applications that are refused money.

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

Art. 5438a. Historical Relics

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

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

Art. 5438c. Removal of Relics

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

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

Art. 5441a. Records Management Division

Establishment and Maintenance; Duties; Qualifications
of Assistant

Sec. 1. The Texas State Library and Archives Commission is hereby authorized to establish and

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

[See Compact Edition, Volume 4 for text of 2 to 6a]

[Amended by Acts 1979, 66th Leg., p. 857, ch. 382, § 7, eff. Aug. 27, 1979.]

Art. 5441d. Preservation of Essential Records Act

[See Compact Edition, Volume 4 for text of 1 to 3]

Records Preservation Advisory Committee

Sec. 4. (a) A Records Preservation Advisory Committee is established to advise the Records Preservation Officer and to perform other duties as this Act requires. The committee is composed of the State Librarian, Secretary of State, State Auditor, State Comptroller, Attorney General, or their delegated agents, the Secretary of the Senate and the Chief Clerk of the House of Representatives, all of whom serve as ex officio members of the committee. The committee shall work with and is a part of the Records Management Division of the Texas State Library and Archives Commission.

[See Compact Edition, Volume 4 for text of 4(b) to 16]

[Amended by Acts 1979, 66th Leg., p. 858, ch. 382, § 8, eff. Aug. 27, 1979.]

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

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

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

Sec. 1. In this Act:

(1) "State publication" means printed matter that is produced in multiple copies by the authority of or at the total or partial expense of a state agency. The term includes publications sponsored by or purchased for distribution by a state agency and publications released by private institutions, such as research and consulting firms, under con-

tract with a state agency, but does not include correspondence, interoffice memoranda, or routine forms.

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

(3) "Depository libraries" means the Texas State Library, the Texas Legislative Reference Library, the Library of Congress, the Center for Research Libraries, and other libraries that the Texas Library and Historical Commission¹ designates as depository libraries.

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

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

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

Sec. 4. The Texas State Library shall:

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

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

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

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

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

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

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

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

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

[Amended by Acts 1979, 66th Leg., p. 858, ch. 382, § 9, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1775, ch. 720, § 2, eff. Aug. 27, 1979.]

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

Art. 5442b. Regional Historical Resource Depositories

Definitions

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

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

[See Compact Edition, Volume 4 for text of 1(2) to (4)]

Designation of Regional Depositories

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

[See Compact Edition, Volume 4 for text of 2A to 4]

Offer, Acceptance and Loan of Resources

Sec. 5. (a) County commissioners, other custodians of public records, and private parties may offer, and the Texas Library and Historical Commission¹ may accept, historical resources for preservation and retention in a depository.

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

[See Compact Edition, Volume 4 for text of 5(b) to 8]

Appropriations

Sec. 9. The legislature may appropriate funds to the Texas State Library and Archives Commission sufficient for the purpose of carrying out the provisions of this Act.

[See Compact Edition, Volume 4 for text of 10]

[Amended by Acts 1979, 66th Leg., p. 858, ch. 382, §§ 10, 12, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1448, ch. 637, § 1, eff. Aug. 27, 1979.]

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

Definitions

Sec. 1. In this Act:

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

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

Records Manual

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

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

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

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

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

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

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

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

Review Committee

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

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

(2) the attorney general;

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

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

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

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

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

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

(d) At least 30 days before making an appointment under Subdivision (4), Subsection (a) of this section, the state librarian shall cause to be published in the Texas Register a notice of his intention to make the appointment. If the state librarian does not receive a nomination for a particular type of officer meeting the requirements of Subsection (b) of this section before the 31st day after the notice is published, a nomination is not required.

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

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

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

Records Schedule and Implementation Plan

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

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

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

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

Disposition of Obsolete Records

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

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

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

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

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

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

Transferral of Records to State Library

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

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

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

Microfilming of Records

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

Exceptions

Sec. 8. This Act does not permit the establishment of a retention period for:

(1) any county record that affects the title to real property, other than a recorded lien that is no longer enforceable;

(2) a will;

(3) the minutes of a commissioners court; or

(4) the pleadings or any order, decree, or judgment, or any instrument incorporated by reference in an order, decree, or judgment, in a civil case in a court of record.

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

Art. 5444a. Legislative Reference Library

[See Compact Edition, Volume 4 for text of 1 and 2]

Application of Sunset Act

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

¹ Article 5429k.

[See Compact Edition, Volume 4 for text of 3 to 9]

[Amended by Acts 1977, 65th Leg., p. 1855, ch. 735, § 2.164, eff. Aug. 29, 1977.]

Art. 5444b. State Law Library

[See Compact Edition, Volume 4 for text of 1 and 2]

Application of Sunset Act

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

¹ Article 5429k.

[See Compact Edition, Volume 4 for text of 3 to 9]

[Amended by Acts 1977, 65th Leg., p. 1852, ch. 735, § 2.141, eff. Aug. 29, 1977.]

Art. 5446a. Library Systems Act

CHAPTER A. GENERAL PROVISIONS

[See Compact Edition, Volume 4 for text of 1]

Definitions

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

[See Compact Edition, Volume 4 for text of 2(1)]

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

[See Compact Edition, Volume 4 for text of 2(3) to 5]

CHAPTER C. MAJOR RESOURCE SYSTEM

[See Compact Edition, Volume 4 for text of 6]

Membership in System

Sec. 7.

[See Compact Edition, Volume 4 for text of 7(a)]

(b) To meet population change, economic change, and changing service strengths of member libraries, a major resource system may be reorganized, merged with another system, or partially transferred to another system by the Commission with the approval of the majority of the appropriate governing bodies of the libraries comprising the system.

[See Compact Edition, Volume 4 for text of 8]

Withdrawal From Major Resource System

Sec. 9.

[See Compact Edition, Volume 4 for text of 9(a)]

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

[See Compact Edition, Volume 4 for text of 9(c)]

Advisory Council

Sec. 10.

[See Compact Edition, Volume 4 for text of 10(a)]

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

[See Compact Edition, Volume 4 for text of 10(c) to 14]

CHAPTER E. STATE GRANTS-IN-AID TO LIBRARIES

[See Compact Edition, Volume 4 for text of 14 to 16]

Funding

Sec. 17.

[See Compact Edition, Volume 4 for text of 17(a) and (b)]

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

[See Compact Edition, Volume 4 for text of 17(d)]

(e) Exclusive of the expenditure of funds for administrative expenses as provided in Section 17(a) of this Act, all funds appropriated pursuant to Section 14 of this Act shall be apportioned among the major resource systems on the following basis:

Twenty-five percent of such funds shall be apportioned equally to the major resource systems and the remaining seventy-five percent shall be apportioned to them on a per capita basis determined by the last decennial census or the most recent official population estimate of the U.S. Department of Commerce, Bureau of the Census. This section takes effect September 1, 1979.

[See Compact Edition, Volume 4 for text of 18 and 19]

[Amended by Acts 1977, 65th Leg., p. 809, ch. 301, §§ 1 to 4, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 859, ch. 382, § 14, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1774, ch. 720, § 1, eff. Sept. 1, 1979.]

Art. 5446b. Repealed by Acts 1979, 66th Leg., p. 2429, ch. 842, art. 1, § 2(1), eff. Sept. 1, 1979

Acts 1979, 66th Leg., ch. 842, repealing this article, enacts the Human Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Human Resources Code.

The repealed article, relating to a central media depository for individuals unable to use ordinary print, was added by Acts 1975, 64th Leg., p. 2389, ch. 734, § 15, as amended by Acts 1979, 66th Leg., p. 677, ch. 301, § 4.

TITLE 90

LIENS

CHAPTER ONE. JUDGMENT LIENS

Article

5449(a). Discharge of Judgments and Judgment Liens Against Bankrupts.

Art. 5449(a). Discharge of Judgments and Judgment Liens Against Bankrupts

Application for Discharge and Cancellation of Judgment and Lien

Sec. 1. At any time after one year has elapsed since a bankrupt or debtor has been discharged from his debts, before or after the effective date of this Act, pursuant to the acts of Congress relating to bankruptcy, the bankrupt or debtor, or his, her, or its receiver, trustee, or any other interested person, including a corporation, may apply, upon proof of the discharge of the bankrupt or debtor, to the court in which a judgment was rendered against the bankrupt or debtor for an order directing the discharge and cancellation of the judgment, any abstract or abstracts of said judgment, and the lien represented thereby.

Order of Discharge and Cancellation: Entry; Effect; Recording

Sec. 2. If it appears upon the hearing that the bankrupt or debtor has been discharged from the payment of the obligation or debt represented by the judgment, the court shall enter an order of discharge and cancellation of said judgment and any abstracts of said judgment, which order of discharge shall be entered upon the docket of the court. Said order of discharge shall constitute a release, discharge, and cancellation of said judgment and any unsatisfied judgment liens represented by all abstracts of said judgment then or thereafter of record; provided, however, that a certified copy of said order of discharge must be duly recorded in the judgment lien records of a county in which an abstract of judgment has been or is thereafter recorded in order to discharge and cancel said abstract of judgment in said county.

Notice of Application for Discharge: Service; Publication

Sec. 3. Notice of said application for discharge, accompanied by copies of the papers upon which it is made, shall be served on the judgment creditor or his attorney of record in the action in which said judgment was rendered, in the manner prescribed for service of a notice in an action, if the residence or place of business of the judgment creditor, or of his attorney, is known. Upon proof by affidavit

that the address of neither the judgment creditor nor his attorney is known, and that the address of neither can be ascertained after due diligence, or that the judgment creditor is a nonresident of this state, and his attorney is dead, or removed from the state, or cannot be found within the state, a judge or justice of the court may by order direct that the notice of the application be published in a newspaper designated in the order once a week for not more than three consecutive weeks. Such publication, shown by the affidavit of the publisher, shall be sufficient service upon the judgment creditor of the application.

Judgment as Lien on Real Property

Sec. 4. Where the judgment was a lien on real property owned by the bankrupt or debtor prior to the time that he, she, or it was adjudged a bankrupt, or that a petition for debtor relief under the federal Bankruptcy Act of July 1, 1898, as amended (Title 11, U.S.C.A.), was filed, and the debt or obligation evidenced by said judgment was not discharged under the provisions of the Bankruptcy Act, the lien thereof upon said real estate shall not be affected by said order and may be enforced, but in all other respects the judgment shall be of no force or validity, nor shall the same be a lien on real property acquired by the bankrupt or debtor subsequent to the discharge in bankruptcy.

Judgment as Lien on Nonexempt Real Property

Sec. 5. Where the judgment was a lien on non-exempt real property owned by the bankrupt or debtor prior to the time he, she, or it was adjudged a bankrupt or that a petition for debtor relief under the federal Bankruptcy Act of July 1, 1898, as amended (Title 11, U.S.C.A.), was filed, and said real property is abandoned during the course of the proceeding, the lien thereof upon said real estate shall not be affected by said order and may be enforced, but in all other respects the judgment shall be of no force or validity, nor shall the same be a lien on real property acquired by the bankrupt or debtor subsequent to the discharge in bankruptcy.

[Amended by Acts 1975, 64th Leg., p. 1030, ch. 396, § 1, eff. June 19, 1975.]

Sections 2 and 3 of the 1975 Act provided:

"Sec. 2. All laws or parts of law in conflict with the provisions of this Act are hereby repealed, to the extent of the conflict only.

"Sec. 3. If any provision or provisions of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

CHAPTER TWO. MECHANICS, CONTRACTORS AND MATERIAL MEN

Art. 5472a. Lien for Material Furnished Public Contractor; Notice

Any person, firm, corporation, or trust estate, furnishing any material, apparatus, fixtures, machinery, or labor to any contractor under a prime contract where such prime contract does not exceed the sum of \$25,000 for any public improvements in this State, shall have a lien on the moneys, or bonds, or warrants due or to become due to such contractor for such improvements provided such person, firm, corporation, trust estate, or stock association shall before any payment is made to such contractor, notify in writing the officials of the state, county, town, or municipality whose duty it is to pay such contractor of his claim, such written notice to provide and be given within the prescribed time as follows:

(a) Such notice to be given by certified or registered mail, with a copy to the contractor at his last known business address, or at his residence, and given within thirty (30) days after the 10th of the month next following each month in which labor, material, apparatus, fixtures, or machinery were furnished for such lien is claimed.

(b) Such notice, whether based on a written or oral agreement shall state the amount claimed, the name of the party to whom such was delivered or for whom it was performed, with dates and place of delivery or performance and describing the same in such manner as to reasonably identify said material, apparatus, fixtures, machinery, or labor and the amount due therefor, and identify the project where material was delivered or labor performed.

(c) Such notice shall be accompanied by a statement under oath stating that the amount claimed is just and correct and that all payments, lawful offsets, and credits known to the affiant have been allowed.

(d) Any person who shall file a willfully false and fraudulent notice and statement shall be subject to the penalties for false swearing.

[Amended by Acts 1975, 64th Leg., p. 2285, ch. 713, § 2, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 2028, ch. 809, § 2, eff. Aug. 29, 1977.]

CHAPTER SEVEN. OTHER LIENS

Article

5504a. Sale of a Motor Vehicle.

Art. 5504. Sale of Property

When possession of any of the property embraced in Articles 5502 and 5503, except property covered

under Article 5504a, Revised Civil Statutes of Texas, 1925, as amended, has continued for sixty days after the charges accrue, and the charges so due have not been paid, it shall be the duty of the persons so holding said property to notify the owner, if in the state and his residence be known, to come forward and pay the charges due, and on his failure within ten days after such notice has been given him to pay said charges, the persons so holding said property, after twenty days notice, are authorized to sell said property at public sale and apply the proceeds to the payment of said charges, and shall pay over the balance to the person entitled to the same. If the owner's residence is beyond the state or is unknown, the person holding said property shall not be required to give such notice before proceeding to sell. [Amended by Acts 1979, 66th Leg., p. 1059, ch. 490, § 1, eff. Aug. 27, 1979.]

Art. 5504a. Sale of a Motor Vehicle

(a) When a person having a possessory lien on a motor vehicle that is subject to the Certificate of Title Act (Article 6687-1, Vernon's Texas Civil Statutes) retains possession of the vehicle for 30 days after the day on which the charges accrue and the charges are unpaid, the person shall give written notice of the amount of charges to the owner and all lienholders whose liens are recorded on the certificate of title and shall request payment. A person shall send the notice by certified mail, return receipt requested.

(b) If a person entitled to notice under Section (a) of this article does not pay the charges due within 30 days after the day on which notice of the amount of charges was mailed, the possessory lienholder may sell the motor vehicle at a public sale. The possessory lienholder shall apply the proceeds to the payment of the charges and shall pay the balance to the person entitled to it.

[Added by Acts 1979, 66th Leg., p. 1060, ch. 490, § 2, eff. Aug. 27, 1979.]

Art. 5506a. Hospital or Clinic's Lien for Services on Cause of Action of Persons Injured

[See Compact Edition, Volume 4 for text of 1 to 4]

Hospital Records Subject to Inspection; Admissibility

Sec. 4a. The records of any such association, corporation, or other institution or body maintaining such hospital in reference to such treatment, care, and maintenance of such injured person shall be made available as promptly as possible for examina-

tion to any party's attorney by, for, or against whom a claim shall be asserted for compensation for such injuries, under such reasonable rules and regulations as such hospital may require, except that access shall not be denied on the basis of such records being incomplete. The records are admissible as evidence

in any civil suit based on those personal injuries subject to applicable rules of evidence.

*[See Compact Edition, Volume 4 for text of
4b and 4c]*

[Amended by Acts 1979, 66th Leg., p. 1080, ch. 509, § 1, eff. Aug. 27, 1979.]

TITLE 91

LIMITATIONS

1. LIMITATIONS OF ACTIONS FOR LANDS

Article

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

3. GENERAL PROVISIONS

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

1. LIMITATIONS OF ACTIONS FOR LANDS

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

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

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

(b) In the written notice and demand to vacate the premises, the party seeking recovery of possession shall give notice that in the event the party unlawfully in possession has not vacated the premises within 10 days and a claim is filed by the party seeking recovery of possession, judgment may be entered against the party unlawfully in possession for attorney's fees in an amount determined by the court to be reasonable, plus costs of suit.

[Acts 1977, 65th Leg., p. 1105, ch. 406, §§ 1, 2, eff. Aug. 29, 1977.]

2. LIMITATIONS OF PERSONAL ACTIONS

Art. 5526. Actions to be Commenced in Two Years

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

1. Actions of trespass for injury done to the estate or the property of another.

2. Actions for detaining the personal property of another, and for converting such property to one's own use.

3. Actions for taking or carrying away the goods and chattels of another.

4. Action for injury done to the person of another.

5. Action for injury done to the person of another where death ensued from such injury; and the cause of action shall be considered as having accrued at the death of the party injured.

6. Actions of forcible entry and forcible detainer.

[Amended by Acts 1979, 66th Leg., p. 1768, ch. 716, § 1, eff. Aug. 27, 1979.]

Art. 5527. What Actions Barred in Four Years

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

1. Actions for debt.

2. Actions for the penalty or for damages on the penal clause of a bond to convey real estate.

3. Actions by one partner against his co-partner for a settlement of the partnership accounts, actions upon stated or open accounts, or upon mutual and current accounts concerning the trade of merchandise between merchant and merchant, their factors or agents; and the cause of action shall be considered as having accrued on a cessation of the dealings in which they were interested together.

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

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

Sec. 1. There shall be commenced and prosecuted within ten years after the substantial completion of any improvement to real property or the commencement of operation of any equipment attached to real property, and not afterward, all actions or suits in court for damages for any injury, damages or loss to property, real or personal, or for any injury to a person, or for wrongful death, arising out of the defective or unsafe condition of any such real prop-

erty or any equipment or improvement attached to such real property, for contribution or indemnity for damages sustained on account of such injury, damage, loss or death against any registered or licensed engineer or architect in this state performing or furnishing the design, planning, inspection of construction of any such improvement, equipment or structure or against any such person so performing or furnishing such design, planning, inspection of construction of any such improvement, equipment, or structure; provided, however, if the claim for damages, contribution or indemnity has been presented in writing to the registered or licensed engineer or architect performing such services within the ten-year period of limitation, said period shall be extended to include two years from the time such notice in writing is presented.

Sec. 2. There shall be commenced and prosecuted within ten years after the substantial completion of any improvement to real property, and not afterward, all actions or suits in court for damages for any injury, damages, or loss to property, real or personal, or for any injury to a person, or for wrongful death, or for contribution or indemnity for damages sustained on account of such injury, damage, loss, or death arising out of the defective or unsafe condition of any such real property or any deficiency in the construction or repair of any improvements on such real property against any person performing or furnishing construction or repair of any such improvement; provided, however, if the claim for damages, contribution or indemnity has been presented in writing to the person performing such services within the ten-year period of limitation, said period

shall be extended to include two years from the time such notice in writing is presented, or if said injury, damage, loss, or death occurs during the tenth year, all actions or suits in court may be brought within two years from the date of such injury, damage, loss, or death; and provided further, however, this section shall not apply and will not operate as a bar to an action or suit in court (a) on a written warranty, guaranty, or other contract which expressly is effective for a period in excess of the period herein prescribed; (b) against persons in actual possession or control of the real property as owner, tenant, or otherwise at the time the injury, damage, loss, or death occurs; or (c) based on willful misconduct or fraudulent concealment in connection with the performing or furnishing of such construction or repair. Nothing in this section shall be construed as extending or affecting the period prescribed for the bringing of any action under Articles 5526, 5527, and 5529, Revised Civil Statutes of Texas, 1925, or any other law of this state.

[Amended by Acts 1975, 64th Leg., p. 649, ch. 269, § 1, eff. Sept. 1, 1975.]

3. GENERAL PROVISIONS

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

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

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

TITLE 92

MENTAL HEALTH

Subtitle	Article
I. Mental Health Code	5547-1
II. Mental Health and Retardation Act	5547-201
III. Mentally Retarded Persons Act [New]	5547-300
IV. Miscellaneous Provisions	5557

I. MENTAL HEALTH CODE

CHAPTER ONE. GENERAL PROVISIONS

Article

- 5547-13. County Attorney to Represent State.
5547-14. Costs.
5547-15. Fees Allowed Court-Appointed Attorneys and Physicians.

Art. 5547-13. County Attorney to Represent State

This article was repealed by Acts 1967, 60th Leg., p. 1785, ch. 680, § 2. However, according to Op.Atty.Gen.1967, No. M-135, the repeal was in violation of Const. art. 3, § 35, since the title to the act gave no notice of an attempt to repeal said article.

Art. 5547-14. Costs

(a) The county from which a patient is committed under an Order of Temporary Hospitalization shall pay the costs of Temporary Hospitalization, Indefinite Commitment and Reexamination and Hearing proceedings, including attorneys' fees and physicians' examination fees, and expenses of transportation to a State mental hospital or to an agency of the United States. If a patient under Order of Temporary Hospitalization requires indefinite commitment, the court from which the patient was committed shall arrange with the appropriate court of the county in which the patient is hospitalized for a hearing on indefinite commitment to be held before the date of expiration of the temporary commitment, or the county in which the committing court is located shall pay the expenses of transportation of the patient back to the county of the committing court for such hearing.

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

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

(d) Neither the county nor the State shall pay any costs for a patient committed to a private hospital. [Amended by Acts 1977, 65th Leg., p. 1469, ch. 596, § 3, eff. Sept. 1, 1977.]

This article was repealed by Acts 1967, 60th Leg., p. 1785, ch. 680, § 2. However, according to Op.Atty.Gen.1967, No. M-135, the repeal was in violation of Const. art. 3, § 35, since the title to the act gave no notice of an attempt to repeal said article.

Art. 5547-15. Fees Allowed Court-Appointed Attorneys and Physicians

The county judge may allow reasonable compensation to attorneys and physicians appointed by him under this Code, provided that any compensation he allows to an attorney is not less than \$25. The compensation paid shall be taxed as costs in the case. [Amended by Acts 1975, 64th Leg., p. 455, ch. 192, § 1, eff. Sept. 1, 1975.]

This article was repealed by Acts 1967, 60th Leg., p. 1785, ch. 680, § 2. However, according to Op.Atty.Gen.1967, No. M-135, the repeal was in violation of Const. art. 3, § 35, since the title to the act gave no notice of an attempt to repeal said article.

CHAPTER THREE. INVOLUNTARY HOSPITALIZATION

PART 4. ORDERS, TRANSPORTATION, PROTECTIVE CUSTODY

Article

- 5547-68. Admission and Detention.

PART 1. EMERGENCY ADMISSION PROCEDURE

Art. 5547-27. Authority of Health or Peace Officer

(a) Any health or peace officer, who has reason to believe and does believe upon the representation of a credible person, in writing, or upon the basis of the conduct of a person or the circumstances under which he is found that the person is mentally ill and because of his mental illness is likely to cause injury to himself or others if not immediately restrained, may upon obtaining a warrant from any magistrate, take such person into custody, and immediately transport him to the nearest hospital or other facility deemed suitable by the county health officer, except in no case shall a jail or similar detention facility be deemed suitable unless such jail or detention facility is specifically equipped and staffed to provide psychiatric care and treatment, and make application for his admission, pursuant to the warrant of the magistrate. Such person admitted upon

such warrant may be detained in custody for a period not to exceed twenty-four (24) hours, unless a further written order is obtained from the County Court or Probate Court of such county, ordering further detention. Provided, however, that should the person be taken into custody after 12:00 o'clock noon on Friday, or on a Saturday or Sunday, or a legal holiday, then the twenty-four-hour period allowed for obtaining the court order permitting further detention shall begin at 9:00 o'clock a. m. on the first succeeding business day.

(b) Any person licensed to practice medicine in this state who has reason to believe and does believe that a person is mentally ill and because of such mental illness is likely to cause injury to himself or others if not immediately restrained may present such information in writing at any time to any magistrate, and if the facts so justify, the magistrate may issue a warrant ordering any health or peace officer to take such person into custody and immediately transport such person to the nearest state hospital, hospital, or other facility deemed suitable by such officer, except in no event shall a jail or similar detention facility be deemed suitable unless such jail or detention facility is specifically equipped and staffed to provide psychiatric care and treatment, and make application for admission for such person, pursuant to the warrant of the magistrate. Such person admitted upon such warrant may be detained in custody for a period not to exceed twenty-four (24) hours, unless a further written order is obtained from the County Court or Probate Court of such county, ordering further detention. Provided, however, that should the person be taken into custody after 12:00 o'clock noon on Friday, or on a Saturday or Sunday, or a legal holiday, then the twenty-four-hour period allowed for obtaining the court order permitting further detention shall begin at 9:00 o'clock a. m. on the first succeeding business day."

[Amended by Acts 1975, 64th Leg., p. 1913, ch. 616, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1093, ch. 402, § 1, eff. Aug. 29, 1977.]

Art. 5547-28. Emergency Admission

The head of a mental hospital, a general hospital, or other facility deemed suitable by the county health officer shall not admit nor detain any person for emergency observation and treatment unless:

(a) A warrant has been obtained from a magistrate ordering the apprehension and taking into custody of such person to be admitted, or an order of protective custody has been issued pursuant to Section 66 of this Code; and

(b) A written and certified opinion is made by the medical officer on duty at the hospital or other facility, that after a preliminary examination, the person has symptoms of mental illness and is

likely to cause injury to himself or others if not immediately restrained.

[Amended by Acts 1975, 64th Leg., p. 1913, ch. 616, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1092, ch. 401, § 1, eff. Aug. 29, 1977.]

Art. 5547-29. Notification of Admission

The head of the facility admitting a person for emergency observation and treatment shall immediately give notice thereof by registered mail to the person's guardian or responsible relative, and shall report the admission to the Board.

[Amended by Acts 1975, 64th Leg., p. 1913, ch. 616, § 1, eff. Sept. 1, 1975.]

Art. 5547-30. Examination and Certification

The head of the facility shall have a physician examine every person within twenty-four (24) hours after his admission to a hospital for emergency observation and treatment and prepare a Certificate of Medical Examination for Mental Illness. A copy of the Certificate shall be sent forthwith to the person's guardian or responsible relative.

[Amended by Acts 1975, 64th Leg., p. 1913, ch. 616, § 1, eff. Sept. 1, 1975.]

PART 2. TEMPORARY HOSPITALIZATION FOR OBSERVATION AND/OR TREATMENT

Art. 5547-31. Application for Temporary Hospitalization

A sworn Application of Temporary Hospitalization of a proposed patient may be filed with the county court of the county in which the proposed patient resides or in which the proposed patient is found or in which the proposed patient is hospitalized by court order. The Application may be made by any adult person, or by the county judge, and shall state upon information and belief that the proposed patient is not charged with a criminal offense, that he is mentally ill, and that for his own welfare and protection or the protection of others he requires observation and/or treatment in a mental hospital. An Order transferring a criminal defendant against whom all charges have been dismissed to the appropriate court for a hearing on temporary commitment pursuant to Section 7 of Article 46.02, Code of Criminal Procedure, 1965, shall state that all such charges have been dismissed and the Order shall serve as the Application for Temporary Hospitalization of the proposed patient.

[Amended by Acts 1975, 64th Leg., p. 1103, ch. 416, § 1, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1470, ch. 596, § 4, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 790, ch. 351, § 1, eff. Aug. 27, 1979.]

Art. 5547-36. Hearing on the Application

(a) The Judge may hold the hearing on an Application for Temporary Hospitalization at any suitable

place within the county. The hearing should be held in a physical setting not likely to have a harmful effect on the mental condition of the proposed patient in the event he is present.

(b) The proposed patient is not required to be present at the hearing, but he shall not be denied the right to be present.

(c) The Court may exclude all persons not having a legitimate interest in the proceedings, provided the consent of the proposed patient first shall have been obtained.

(d) The hearing shall be conducted in as informal a manner as is consistent with orderly procedure.

(e) The hearing shall be before the Court without a jury, unless a jury is demanded by a person authorized to make such demand or by the proposed patient or by the Court.

[Amended by Acts 1975, 64th Leg., p. 1103, ch. 416, § 2, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1470, ch. 596, § 5, eff. Sept. 1, 1977.]

Art. 5547-38. Order Upon Hearing

[See Compact Edition, Volume 4 for text of (a) and (b)]

(c) If upon the hearing the court finds that the proposed patient is mentally ill and requires observation or treatment for his own welfare and protection or the protection of others but that the required observation or treatment can be accomplished without commitment to a mental hospital, the court may order the proposed patient to submit to other treatment, observation, or care as may be found by the court to be likely to promote the welfare or protection of the proposed patient and the protection of others. If the proposed patient fails to fulfill the terms of the court's order, the court may, on its own motion or on the motion of any interested party, order that the mentally ill person be committed as a patient for observation or treatment in a mental hospital for a period not exceeding 90 days.

[Amended by Acts 1975, 64th Leg., p. 486, ch. 209, § 1, eff. Sept. 1, 1975.]

Art. 5547-39b. Transcript on Appeal

When notice of appeal is filed, the clerk shall immediately send a certified transcript of the proceedings to the Court of Civil Appeals of the county. [Amended by Acts 1975, 64th Leg., p. 981, ch. 377, § 1, eff. June 19, 1975.]

Art. 5547-39c. Stay Order

Pending the appeal, the County Judge or District Judge in whose court the cause is pending may stay the Order of Temporary Hospitalization, and release the proposed patient from custody if the Judge is satisfied that the proposed patient is not dangerous to himself or to others, and provided that the proposed patient posts an appearance bond in an amount to be determined by the Court.

[Amended by Acts 1975, 64th Leg., p. 981, ch. 377, § 2, eff. June 19, 1975.]

Art. 5547-39d. Hearing of Appeals

In those counties where there is a statutory probate court, county court at law, or other statutory court exercising the jurisdiction of a probate court in mental illness matters, all proceedings for temporary commitment shall be heard in such courts and the constitutional county courts, rather than in the district courts. In such counties all final orders in such matters shall be appealable to the Courts of Civil Appeals. Such cases shall be advanced on the docket and given a preference setting over all other cases. The Courts of Civil Appeals may suspend all rules concerning the time for filing briefs and the docketing of cases.

[Amended by Acts 1975, 64th Leg., p. 981, ch. 377, § 2, eff. June 19, 1975.]

PART 3. INDEFINITE COMMITMENT

Art. 5547-40. Prerequisite to Commitment

No person may be committed to a mental hospital for an indefinite period unless he has been under observation and/or treatment in a mental hospital for at least sixty (60) days pursuant to an Order of Temporary Hospitalization entered within the twelve (12) months immediately preceding the filing of the Petition or unless he has been under observation and/or treatment in a mental hospital under an Order entered pursuant to Section 5 of Article 46.02, Code of Criminal Procedure, 1965, for at least sixty (60) days within the twelve (12) months immediately preceding the date of the indefinite commitment hearing.

[Amended by Acts 1977, 65th Leg., p. 1471, ch. 596, § 6, eff. Sept. 1, 1977.]

Art. 5547-41. Petition

A sworn Petition for the indefinite commitment of a person to a mental hospital may be filed with the county court of the county in which the proposed patient is hospitalized, the county from which he is temporarily committed, the county in which he resides or is found. The Petition may be filed by any adult person, or by the county judge, and shall be styled "THE STATE OF TEXAS, FOR THE BEST INTEREST AND PROTECTION OF _____, AS A MENTALLY ILL PERSON." The Petition shall contain the following statements upon information and belief:

- (1) Name and address of the proposed patient.
- (2) Name and address of the proposed patient's spouse, parents, children, brothers, sisters, and legal guardian.
- (3) Name and address of petitioner and a statement of his interest in the proceeding, including his relationship, if any, to the proposed patient.
- (4) Name and address of the mental hospital, if any, in which the proposed patient is a patient.

(5) That the proposed patient is not charged with a crime.

(6) That the proposed patient has been under observation and/or treatment in a mental hospital for at least sixty (60) days pursuant to an Order of Temporary Hospitalization entered within the twelve (12) months immediately preceding the filing of the Petition or that he has been under observation and/or treatment in a mental hospital under an Order entered pursuant to Section 5 of Article 46.02, Code of Criminal Procedure, 1965, for at least sixty (60) days within the twelve (12) months immediately preceding the date of the indefinite commitment hearing.

(7) That the proposed patient is mentally ill and requires hospitalization in a mental hospital for his own welfare and protection or the protection of others.

(8) An Order transferring a criminal defendant against whom all charges have been dismissed to the appropriate court for a hearing on indefinite commitment pursuant to Section 7 of Article 46.02, Code of Criminal Procedure, 1965, shall state that all such charges have been dismissed and shall serve as the Petition for indefinite commitment of the proposed patient to a mental hospital.

[Amended by Acts 1975, 64th Leg., p. 1103, ch. 416, § 3, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1471, ch. 596, § 7, eff. Sept. 1, 1977.]

Art. 5547-44. Notice of Hearing

At least seven (7) days prior to the date of the hearing a copy of the Petition and Notice of Hearing shall be personally served on the proposed patient. A copy of the Petition and Notice of Hearing shall be sent by registered mail to the guardian or a responsible relative of the proposed patient. The Notice of Hearing shall read substantially as follows:

THE STATE OF TEXAS NO. _____ IN THE
FOR THE BEST INTER- COUNTY COURT OF
EST AND PROTECTION _____ COUNTY,
OF _____ TEXAS
As a Mentally Ill Person

NOTICE OF HEARING

TO: _____:
(Proposed Patient)

You are hereby notified that on the _____, at _____, in _____
(date and time) (place)

County, Texas, a hearing will be held on the attached Petition to determine whether or not you shall be indefinitely committed to a mental hospital and to determine the issue of your mental competency.

You are advised that you have a right to demand a trial by jury or to have a hearing before the judge alone if you wish to waive trial by jury.

Unless a waiver of trial by jury, signed by you or your next of kin, and your attorney, is filed with the court, a jury will hear and determine the issues in this case.

Mr. _____, attorney at law, whose address is _____ and whose telephone number is _____, has been appointed by the county judge to represent you in this case for your best interest and protection. However, if you desire you may employ a lawyer of your own choosing to represent you. You may consult with your attorney concerning this Petition and your rights in this case.

You have the right to be present at this hearing, but you are not required to be present.

County Judge

[Amended by Acts 1975, 64th Leg., p. 1103, ch. 416, § 4, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1472, ch. 596, § 8, eff. Sept. 1, 1977.]

Art. 5547-45. Waiver of Trial by Jury

Waiver of trial by jury shall be in writing under oath and may be signed and filed at any time subsequent to service of the Petition and Notice of Hearing upon the proposed patient. The waiver of trial by jury shall be signed and sworn to by the proposed patient, or his next of kin, and by the attorney ad litem appointed to represent the proposed patient.

[Amended by Acts 1975, 64th Leg., p. 1103, ch. 416, § 5, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1472, ch. 596, § 9, eff. Sept. 1, 1977.]

Art. 5547-55. Transcript on Appeal

When notice of appeal is filed, the clerk shall immediately send a certified transcript of the proceedings to the Court of Civil Appeals.

[Amended by Acts 1975, 64th Leg., p. 981, ch. 377, § 5, eff. June 19, 1975.]

Art. 5547-56. Stay Order

For good cause shown, the county judge, or district judge in whose court the cause is pending, may stay the Order of Indefinite Commitment pending the appeal.

[Amended by Acts 1975, 64th Leg., p. 981, ch. 377, § 6, eff. June 19, 1975.]

Art. 5547-57. Hearing of Appeals

In those counties where there is no statutory probate court, county court at law, or other statutory court exercising the jurisdiction of a probate court in mental illness matters, all proceedings for indefinite commitment shall be heard by the county court, except that the proposed patient may request that such proceeding shall then be transferred by the County Judge to the district court of the county, and such proceeding shall be heard in the district court as if originally filed in such court. In such counties all final orders in such matters shall be appealable to the Courts of Civil Appeals. Such cases shall be advanced on the docket and given a preference setting over all other cases. The Courts of Civil Appeals may suspend all rules concerning the time for filing briefs and the docketing of cases.

In those counties where there is a statutory probate court, county court at law, or other statutory courts exercising the jurisdiction of a probate court in mental illness matters, all proceedings for indefinite commitment shall be heard in such courts and the constitutional county courts, rather than in the district courts. In such counties all final orders in such matters shall be appealable to the Courts of Civil Appeals. Such cases shall be advanced on the docket and given a preference setting over all other cases. The Courts of Civil Appeals may suspend all rules concerning the time for filing briefs and the docketing of cases.

[Amended by Acts 1975, 64th Leg., p. 981, ch. 377, § 4, eff. June 19, 1975.]

CHAPTER FOUR. GENERAL HOSPITALIZATION PROVISIONS

Art. 5547-68. Admission and Detention

(a) The head of a mental hospital is authorized to admit and detain any patient in accordance with the following procedures provided in this Code:

- (1) Voluntary Hospitalization
- (2) Emergency Admission
- (3) Temporary Hospitalization
- (4) Indefinite Commitment

(b) Nothing in this Code prohibits the admission of voluntary patients to private mental hospitals in any lawful manner.

(c) This Code does not affect the admission to a State mental hospital of an alcoholic admitted in accordance with Acts 1951, Fifty-second Legislature, Chapter 398 (compiled as Texas Civil Statutes, Article 3196c (Vernon's 1952 Supplement)) nor the admission of a person charged with a criminal offense admitted in accordance with Section 5 of Article 46.02, Code of Criminal Procedure.

[Amended by Acts 1975, 64th Leg., p. 1103, ch. 416, § 6, eff. June 19, 1975.]

Art. 5547-69. Persons Charged with Criminal Offense

The sections of this Code concerning the discharge, furlough and transfer of a patient are not applicable to a person charged with a criminal offense who is admitted in accordance with Section 5 of Article 46.02, Code of Criminal Procedure.

[Amended by Acts 1975, 64th Leg., p. 1103, ch. 416, § 7, eff. June 19, 1975.]

Art. 5547-80. Discharge of Patients

(a) The head of a mental hospital may at any time discharge a patient if he determines after examination that the patient no longer requires hospitalization.

(b) The head of a mental hospital may at any time discharge a patient on furlough, and shall discharge a patient who has been on furlough status for a continuous period of eighteen (18) months.

(c) The head of a mental hospital may discharge a non-resident patient who has been absent without authority for a continuous period of thirty (30) days.

(d) The head of a mental hospital may discharge a resident patient who has been absent without authority for a continuous period of eighteen (18) months.

(e) Upon the discharge of a patient, the head of the mental hospital shall prepare a Certificate of Discharge stating the basis therefor. The Certificate of Discharge shall be filed with the committing court, if any, and a copy thereof delivered or mailed to the patient.

[Amended by Acts 1977, 65th Leg., p. 104, ch. 49, § 1, eff. Aug. 29, 1977.]

Art. 5547-87. Disclosure of Information

(a) Hospital records which directly or indirectly identify a patient, former patient, or proposed patient shall be kept confidential except where

(1) consent is given by the individual identified, his legal guardian, or his parent if he is a minor; if the patient is deceased, consent may be given by the executor or administrator of his estate; if there is no appointment of an executor or administrator, consent may be given by the deceased patient's spouse or, if none, by any adult person related to the deceased patient within the first degree of consanguinity;

(2) disclosure may be necessary to carry out the provisions of this Code;

(3) a court directs upon its determination that disclosure is necessary for the conduct of proceedings before it and that failure to make such disclosure would be contrary to the public interest, or

(4) the Board or the head of the hospital determines that disclosure will be in the best interest of the patient.

[See Compact Edition, Volume 4 for text of (b)]
[Amended by Acts 1979, 66th Leg., p. 24, ch. 14, § 1, eff. March 15, 1979.]

Section 2 of the 1979 amendatory act provided:

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

CHAPTER FIVE. PRIVATE MENTAL HOSPITALS

Art. 5547-91. License Issuance

(a) After receipt of proper application for license and the required fees, the Department shall make such investigation as it deems desirable. If the Department finds that the premises are suitable and that the applicant is qualified to operate a mental hospital in accordance with the requirements and standards established by law and by the Department, the Department shall issue a license authorizing the designated licensee to operate a mental hospital on the premises described and for the bed capacity specified in the license. However, if operation of the mental hospital involves acquisition, construction, or modification of a facility, a change in bed capacity, provision of new services, or expansion of existing services for which a certificate of need or an exemption certificate is required under the Texas Health Planning and Development Act,¹ the Department shall not issue the license unless and until the certificate of need or the exemption certificate has been granted to the applicant under that Act.

(b) Subject to the applicable provisions of the Texas Health Planning and Development Act, the authorized bed capacity may be increased at any time upon the approval of the Department and may be reduced at any time by notifying the Department.

[See Compact Edition, Volume 4 for text of (c) and (d)]

[Amended by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.02, eff. May 28, 1975.]

¹ Article 4418h.

Art. 5547-93. Denial, Suspension or Revocation of License

(a) After giving an applicant or licensee opportunity to demonstrate or achieve compliance and after notice and opportunity for hearing, the Department may deny, suspend, or revoke a license, if it finds substantial failure by the applicant or licensee to comply with the rules or regulations established by the Department or the provisions of this Code or with applicable provisions of the Texas Health Planning and Development Act.

[See Compact Edition, Volume 4 for text of (b) to (f)]

[Amended by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.03, eff. May 28, 1975.]

II. MENTAL HEALTH AND RETARDATION ACT

ARTICLE 2. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

Art. 5547-202. Texas Department of Mental Health and Mental Retardation

Composition of Department

Sec. 2.01. The Texas Department of Mental Health and Mental Retardation shall consist of a Texas Board of Mental Health and Mental Retardation, a Commissioner of Mental Health and Mental Retardation, a Deputy Commissioner for Mental Health Services, a Deputy Commissioner for Mental Retardation Services, a staff under the direction of the Commissioner and the Deputy Commissioners, and the following facilities and institutions together with such additional facilities and institutions as may hereafter by law be made a part of the Department:

- (1) the Central Office of the Department;
- (2) the Austin State Hospital;
- (3) the San Antonio State Hospital and the San Antonio State School;
- (4) the Terrell State School;
- (5) the Wichita Falls State Hospital;
- (6) the Rusk State Hospital and Rusk State School and the Skyview Maximum Security Unit;
- (7) the Big Spring State Hospital;
- (8) the Kerrville State Hospital;
- (9) the Vernon Center;
- (10) the Austin State School;
- (11) the Travis State School;
- (12) the Mexia State School;
- (13) the Abilene State School;
- (14) the Lufkin State School;
- (15) the Richmond State School;
- (16) the Denton State School;
- (17) the Corpus Christi State School;
- (18) the Lubbock State School;
- (19) the Brenham State School;
- (20) the Fort Worth State School;
- (21) the Texas Research Institute of Mental Sciences;
- (22) the Beaumont State Center for Human Development;
- (23) the Amarillo State Center for Human Development;
- (24) the El Paso State Center for Human Development;
- (25) the Rio Grande State Center for Mental Health and Mental Retardation;

- (26) the San Angelo Center;
- (27) the Leander Rehabilitation Center.

[See Compact Edition, Volume 4 for text of 2.01A]

Application of Sunset Act

Sec. 2.01B. The Texas Department of Mental Health and Mental Retardation is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the department is abolished, and this article expires effective September 1, 1985.

¹ Article 5429k.

[See Compact Edition, Volume 4 for text of 2.03 and 2.04]

Meetings of Board

Sec. 2.05. (a) The Board shall hold at least four regular meetings per year in the state capital on dates fixed by rule of the Board. The Board shall make rules providing for the holding of special meetings.

[See Compact Edition, Volume 4 for text of 2.05(b) to 2.09]

Advisory Committees

Sec. 2.10. The Board shall appoint a medical advisory committee and any other advisory committees it deems necessary to assist in the effective administration of the mental health and mental retardation programs of the Department. The Department may pay the members of any such committees and the members of any advisory committees, the creation of which is approved by the Board, for travel costs incurred in connection with the exercise of their duties for the Department at rates authorized to be paid to state officers and employees under the provisions of the General Appropriations Act.

[See Compact Edition, Volume 4 for text of 2.11]

Effective Administration

Sec. 2.12.

[See Compact Edition, Volume 4 for text of 2.12(a) and (b)]

(c) The Commissioner shall appoint the head of each facility or institution that is administered by the Department. The appointments are subject to the Board's approval.

(d) The person appointed as head of a facility or institution serves at the pleasure of the Commissioner.

[See Compact Edition, Volume 4 for text of 2.13 to 2.23]

Certificate of Need Requirement

Sec. 2.24. The acquisition, development, construction, modification, and expansion of facilities, provision of additional services, and expansion of existing services under Articles 2, 3, and 4 of this Act are subject to the applicable provisions of the Texas Health Planning and Development Act,¹ including requirements for a certificate of need or an exemption certificate.

Fees for Genetic Counseling Services

Sec. 2.25. The department is authorized to charge for genetic counseling services provided under the authority of this Act at a rate not to exceed the actual cost of providing such services. The proceeds from such charges shall be retained and utilized by the department for the continued provision of such services.

[Amended by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.01, eff. May 28, 1975; Acts 1977, 65th Leg., p. 340, ch. 166, § 1, eff. May 20, 1977; Acts 1977, 65th Leg., p. 1166, ch. 445, § 1, eff. June 15, 1977; Acts 1977, 65th Leg., p. 1847, ch. 735, § 2.106, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 606, ch. 283, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 789, ch. 350, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1797, ch. 730, § 1, eff. Aug. 27, 1979.]

¹ Article 4418h.

ARTICLE 3. COMMUNITY CENTERS FOR MENTAL HEALTH AND MENTAL RETARDATION SERVICES

Art. 5547-203. Community Centers for Mental Health and Mental Retardation Services

Agencies Authorized to Establish and Operate Community Center; Contracts

Sec. 3.01.

[See Compact Edition, Volume 4 for text of 3.01(a) and (b)]

(c) A community center is an agency of the state and a unit of government as defined by Section 2, Texas Tort Claims Act (Article 6252-19, Vernon's Texas Civil Statutes).

[See Compact Edition, Volume 4 for text of 3.02 to 3.03]

Meetings

Sec. 3.04. The boards of trustees shall make rules to govern the holding of regular and special meetings. All meetings of the boards of trustees shall be open to the public to the extent required by and in accordance with the general law of this state requiring meetings of governmental bodies to be open to the public. A majority of the membership of the board of trustees shall constitute a quorum

for the transaction of business. The board shall keep a record of its proceedings, and the record is open to inspection by the public.

[See Compact Edition, Volume 4 for text of 3.05 to 3.14]

Cooperation of Department

Sec. 3.15. (a) The Department shall provide to local agencies, boards of trustees and directors assistance, advice and consultation in the planning, development and operation of community centers.

(b) The Department may transfer ownership of and possession of personal property which is under its control or jurisdiction and which is surplus to its needs to community centers, with or without reimbursement, to be used in providing mental health services or mental retardation services, or both. [Amended by Acts 1975, 64th Leg., p. 562, ch. 220, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 936, ch. 350, § 1, eff. June 19, 1975; Acts 1979, 66th Leg., p. 2028, ch. 797, § 1, eff. Aug. 27, 1979.]

III. MENTALLY RETARDED PERSONS ACT

Art. 5547-300. Mentally Retarded Persons Act of 1977

SUBCHAPTER A. GENERAL PROVISIONS

Short Title

Sec. 1. This Act shall be known and may be cited as the Mentally Retarded Persons Act of 1977.

Purposes

Sec. 2. (a) It is the public policy of the state that mentally retarded persons should have the opportunity to develop to the fullest extent possible their potential for becoming productive members of society. Therefore, it is the purpose of this Act to provide and assure a continuum of quality services to meet the needs of all mentally retarded persons in this state. The responsibility placed upon the state shall not in any way replace or impede parental rights and responsibilities or terminate the activities of those persons, groups, and associations that advocate for and assist mentally retarded persons.

(b) The legislature recognizes that the preservation and promotion of home-living situations where feasible is desirable. When home-living situations are not possible and placement in a residential facility for mentally retarded persons is necessary, the legislature declares that those persons must be admitted in accordance with basic due process requirements, giving due consideration to parental desires where possible, to a facility which provides habilitative training for the person's condition, which fosters

the personal development of the resident and enhances the person's ability to cope with the environment.

(c) Recognizing that persons have been denied rights solely on the basis of mental retardation, the legislature seeks to educate the general public to the fact that mentally retarded persons who have not been adjudicated incompetent and for whom a guardian has not been appointed by a due process proceeding in a court of law have the same rights and responsibilities enjoyed by all citizens of Texas. The legislature urges all citizens to assist mentally retarded persons in acquiring and maintaining their rights and in participating in community life as fully as possible.

SUBCHAPTER B. DEFINITIONS

Definitions

Sec. 3. As used in this Act:

(1) "Department" means the Texas Department of Mental Health and Mental Retardation.

(2) "Commissioner" means the Commissioner of Mental Health and Mental Retardation.

(3) "Director" means the director of a community center.

(4) "Superintendent" means the director of any residential care facility.

(5) "Mental retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and originating during the developmental period.

(6)(a) "Adaptive behavior" means the effectiveness or degree to which the individual meets the standards of personal independence and social responsibility expected of the person's age and cultural group.

(b) "Subaverage general intellectual functioning" refers to measured intelligence on standardized psychometric instruments of two or more standard deviations below the age-group mean for the tests used.

(7) "Mentally retarded person" means a person determined by a comprehensive diagnosis and evaluation to be of subaverage general intellectual functioning with deficits in adaptive behavior.

(8) "Mental retardation services" means programs and assistance for mentally retarded persons which may include, but shall not be limited to, diagnosis and evaluation, education, special training, supervision, care, treatment, rehabilitation, residential care, and counseling for mentally retarded persons, but shall not include those services or programs which have been explicitly delegated by law to other state agencies.

(9) "Service provider" means one who provides mental retardation services.

(10) "Community center" means an entity organized pursuant to Section 3.01 of the Texas Mental Health and Mental Retardation Act, as amended (Article 5547-201 to 5547-204, Vernon's Texas Civil Statutes), which provides mental retardation services.

(11) "Residential care facility" means any facility operated by the department or a community center that provides 24-hour services, including domiciliary services, directed toward enhancing the health, welfare, and development of persons with mental retardation.

(12) "Client" means a person receiving mental retardation services from the department or community center.

(13) "Resident" means a person living in and receiving services from a residential care facility of the department or a community center.

(14) "Group home" means a residential living arrangement for mentally retarded persons operated by the department or a community center in which not more than 15 persons voluntarily live and may share responsibilities for operation of the living unit with appropriate supervision. For the purpose of this Act, a group home is not a residential care facility.

(15) "Habilitation" means the process by which an individual is assisted to acquire and maintain those life skills which enable the person to cope more effectively with the demands of his person and environment and to raise the level of his physical, mental, and social efficiency. Habilitation includes, but is not limited to, programs of formal, structured education and training.

(16) "Treatment" means the process by which a service provider strives to ameliorate a mentally retarded person's condition.

(17) "Training" means the process by which a mentally retarded person is habilitated and may include teaching life skills and work skills.

(18) "Care" means the life support and maintenance services or other aid provided to mentally retarded persons and includes, but is not limited to, dental, medical, nursing, and similar services.

(19) "Labor" means all activity by one person that enures to the economic benefit of another, regardless of any direct or incidental therapeutic value to the client.

(20) "Legally adequate consent" means consent given by a person when each of the following conditions has been met:

(A) legal capacity: The person giving the consent is of the minimum legal age and has not been adjudicated incompetent to manage his personal affairs by an appropriate court of law;

(B) comprehension of information: The person giving the consent has been informed of and comprehends the nature, purpose, consequences, risks, and benefits of and alternatives to the procedure, and the fact that withholding or withdrawal of consent shall not prejudice the future provision of care and services to the client. Furthermore, in cases of unusual or hazardous treatment procedures, experimental research, organ transplantation, and nontherapeutic surgery, the person giving the consent has been informed of and comprehends the method to be used in the proposed procedure; and

(C) voluntariness: The consent has been given voluntarily and free from coercion and undue influence.

(21) "Minor" means a person under 18 years of age who is not and has not been married or who has not had his disabilities of minority removed for general purposes.

(22) "Guardian" means the person who, under court order, is the guardian of the person of another or the guardian of the estate of another.

(23) "Least restrictive alternative" means an available program or facility which is the least confining for the client's condition, and service and treatment which is provided in the least intrusive manner reasonably and humanely appropriate to the individual's needs.

(24) "Comprehensive diagnosis and evaluation" means a study including a sequence of observations and examinations of a person leading to conclusions and recommendations formulated jointly, with dissenting opinions, if any, by a diagnosis and evaluation team. The study shall include but not be restricted to a social and medical history, and medical, neurological, audiological, visual, educational, appropriate psychological, and sociological examinations, and an examination of the person's adaptive behavior level.

(25) "Diagnosis and evaluation team" means a group of persons with special training and experience in the diagnosis, management, and needs of mentally retarded persons, and shall be composed only of individuals who are certified pursuant to standards promulgated by the department and are professionally qualified in the fields necessary to perform the comprehensive diagnosis and evaluation.

(26) "Person" means an individual, firm, partnership, joint-stock company, joint venture, association, corporation, or governmental entity.

SUBCHAPTER C. BASIC BILL OF RIGHTS

Purpose

Sec. 4. The purpose of this subchapter is to recognize and protect the individual dignity and worth of mentally retarded persons.

Rights Guaranteed

Sec. 5. Every mentally retarded person in this state shall have the rights, benefits, and privileges guaranteed by the constitution and laws of the United States and the constitution and laws of the State of Texas. Clients shall enjoy the same rights as other citizens of the United States and Texas except when lawfully restricted. The rights of mentally retarded persons which are specifically enumerated in this Act are in addition to all other rights enjoyed by the mentally retarded, and such listing of rights is not exclusive or intended to limit in any way rights which are guaranteed to the mentally retarded under the laws and constitutions of the United States and the State of Texas.

Right to Protection from Exploitation and Abuse

Sec. 6. Every mentally retarded person shall have the right to protection from exploitation and abuse on the basis of mental retardation.

Right to Least Restrictive Living Environment

Sec. 7. Every mentally retarded person shall have the right to live in the least restrictive setting appropriate to his individual needs and abilities. This includes the person's right to live in a variety of living situations, such as the right to live alone, in a group home, with a family, and in a supervised, protective environment.

Right to Education

Sec. 8. Every mentally retarded person shall have the right to receive publicly supported educational services including, but not limited to, those services provided by the Texas Education Code. The services provided to every mentally retarded person shall be appropriate to his individual needs regardless of chronological age, degree of retardation, accompanying disabilities or handicaps, or admission or commitment to mental retardation services.

Right to Equal Opportunities in Employment

Sec. 9. No employer, employment agency, or labor organization shall deny a person equal opportunities in employment because of mental retardation except when:

- (1) based on a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or enterprise; and
- (2) the person's mental retardation significantly impairs his performance of the duties and tasks of the position for which he has made application.

Right to Equal Housing Opportunities

Sec. 10. No owner, lessee, sublessee, assignee, or managing agent of, or other person having the right to sell, rent, or lease any real property, or agency or employee of any of these shall refuse to sell, rent, or lease to any person or group of persons solely on the basis of mental retardation.

Right to Treatment and Habilitative Services

Sec. 11. Every mentally retarded person shall have the right to receive adequate treatment and habilitative services for mental retardation suited to the person's individual needs to maximize the person's capabilities and enhance the person's ability to cope with his environment. Such treatment and habilitative services shall be administered skillfully, safely, and humanely with full respect for the dignity and personal integrity of the person.

Right to Comprehensive Diagnosis and Evaluation

Sec. 12. (a) Any person thought to be mentally retarded shall have the right to receive promptly a comprehensive diagnosis and evaluation adapted to the cultural background, language, and ethnic origin of the person thought to be mentally retarded, to determine if the person is in need of mental retardation services. The diagnosis and evaluation team shall report its findings in writing and shall make written recommendations for needed services and placement based on those findings. The evaluation shall be performed at a facility approved by the department to conduct comprehensive diagnoses and evaluations nearest the home of the person being evaluated. If the person is indigent, the comprehensive diagnosis and evaluation shall be performed at the expense of the department at a facility designated by the department.

(b) A person who requests a comprehensive diagnosis and evaluation shall have the right to request and receive a prompt administrative hearing pursuant to Section 31 of Subchapter G of this Act for the purpose of contesting the findings of the diagnosis and evaluation team and to determine eligibility and need for mental retardation services.

(c) The person on whom the comprehensive diagnosis and evaluation is performed and any other person who requested the diagnosis and evaluation pursuant to Section 29 of Subchapter G of this Act shall have the right to an additional independent diagnosis and evaluation if such person questions the validity or results of the comprehensive diagnosis and evaluation. Any such independent diagnosis and evaluation will be performed at the expense of the person requesting it.

Additional Rights

Sec. 13. Mentally retarded persons shall also have the following rights: right to presumption of competency, right to due process in guardianship proceedings, and right to fair compensation for labor.

SUBCHAPTER D. ADDITIONAL RIGHTS OF CLIENTS**Additional Rights**

Sec. 14. In addition to the rights guaranteed in Subchapter C of this Act, clients shall have the rights enumerated in this subchapter.

Right to Least Restrictive Alternative

Sec. 15. Each client shall have the right to live in the least restrictive habilitation setting appropriate to the individual's needs and be treated and served in the least intrusive manner appropriate to the individual's needs.

Right to Individualized Habilitation Plan

Sec. 16. Each client shall have the right to a written individualized habilitation plan. Each plan shall be developed by appropriate specialists with the participation of the client and his parent, if a minor, or guardian of the person, and based on the relevant results of the comprehensive diagnosis and evaluation. Implementation of the plan shall begin as soon as possible, but no later than 30 days after the client's admission or commitment to mental retardation services. The content of an individualized habilitation plan shall be as required by the department.

Right to Periodic Review and Reevaluation

Sec. 17. (a) Every client shall have the right to review of the individualized habilitation plan to measure progress, to modify objectives and programs if necessary, and to provide guidance and remediation techniques. The review shall be made at least annually if the client has been placed in a residential care facility; the review shall be at least quarterly if the client has been admitted for services other than placement in a residential care facility.

(b) Every client shall have the right to a comprehensive rediagnosis and reevaluation periodically.

Right to be Informed and Participate in Planning

Sec. 18. Each client and parent of a minor or guardian of the person shall have the right to participate in planning with regard to the client's treatment and habilitation and to be informed in writing of progress at reasonable intervals. Whenever possible, the client or the parent of a minor or the guardian of the person shall be given the opportunity to decide among several appropriate alternative services available to the client from the service provider.

Right to Withdraw From Voluntary Mental Retardation Services

Sec. 19. A client, the parent if the client is a minor, or a guardian of the person shall have the right, subject to the exception of Section 36, Subchapter G of this Act, to withdraw the client from mental retardation services other than court commitment to a residential care facility.

Right to be Free from Mistreatment, Neglect, and Abuse

Sec. 20. Clients shall have the right to be free from mistreatment, neglect, and abuse by service providers.

Right to be Free from Unnecessary and Excessive Medication

Sec. 21. Each client shall have the right to be free from unnecessary and excessive medication. Medication shall not be used as punishment, for the convenience of the staff, as a substitute for a habilitation program, or in quantities that interfere with the client's habilitation program. Medication for each client shall be authorized only by the prescription of a physician and shall be closely supervised by a physician.

Right to Submit Grievances

Sec. 22. A client or any person acting on behalf of a mentally retarded person or group of mentally retarded persons shall have the right to submit to the appropriate public responsibility committee for investigation and appropriate action complaints or grievances against any person, group of persons, organization, or business regarding infringement of the rights of the mentally retarded person and delivery of mental retardation services.

Right to be Informed of Rights

Sec. 23. On admission for mental retardation services, each client and the parent of a minor or guardian of the person of each client shall be given written notice of the rights guaranteed by this Act in plain and simple language. In addition, each client shall be orally informed of these rights in plain and simple language. However, if a client is manifestly unable to comprehend these rights, notice to the parent of a minor or guardian of the person shall be sufficient.

SUBCHAPTER E. ADDITIONAL RIGHTS OF RESIDENTS**Right to Prompt and Adequate Medical and Dental Care and Treatment**

Sec. 24. (a) Each resident shall have the right to prompt, adequate, and necessary medical and dental care and treatment for physical and mental ailments and for the prevention of any illness or disability. Subject to the limitations of his authority under this Act, the superintendent or director shall:

(1) provide such necessary care and treatment to all court-committed residents without further consent; provided, however, that consent shall be required for all surgical procedures.

(2) make available such necessary care and treatment to all voluntary residents.

(b) All medical and dental care and treatment shall be consistent with accepted standards of medical and dental practice in the community and shall be performed under appropriate supervision of licensed physicians or dentists.

(c) Nothing in this subchapter nor in this Act shall be construed to permit the department to perform unusual or hazardous treatment procedures, experi-

mental research, organ transplantation, or nontherapeutic surgery for experimental research.

Additional Rights

Sec. 25. Residents shall also have the following rights: right to a normalized residential environment, right to humane physical environment, right to communication and visits, and right to personal property.

SUBCHAPTER F. RULES AND REGULATIONS

Rules and Regulations

Sec. 26. The department shall promulgate rules and regulations to ensure the implementation of the rights guaranteed in Subchapters C, D, and E of this Act.

SUBCHAPTER G. ADMISSION AND COMMITMENT TO MENTAL RETARDATION SERVICES

Admission

Sec. 27. Persons shall be admitted for mental retardation services offered by the department or community centers under the provisions of this Act only by the procedures prescribed in this subchapter.

Comprehensive Diagnosis and Evaluation Required

Sec. 28. (a) No person shall be eligible to receive mental retardation services, including but not limited to placement in a residential care facility, unless he shall first receive a comprehensive diagnosis and evaluation to determine the need and eligibility for mental retardation services, except as provided in Subsections (g) and (h) of Section 34 of this Act. The diagnosis and evaluation shall be performed at a diagnosis and evaluation center approved by the department.

(b) No person shall be voluntarily admitted for mental retardation services unless the comprehensive diagnosis and evaluation has been performed or updated within three months prior to the initial admission to services, except as provided in Subsections (g) and (h) of Section 34 of this Act.

(c) No person shall be determined to be in need of placement in a residential care facility by a court of law pursuant to Section 37 of this Act unless a comprehensive diagnosis and evaluation has been performed or updated within six months prior to the court hearing on the application for placement in a residential care facility. On receiving an application for placement in a residential care facility, the court shall order a comprehensive diagnosis and evaluation to be performed if a comprehensive diagnosis and evaluation has not been performed or updated within the previous six months.

Application for Diagnosis and Evaluation

Sec. 29. Any person believed to be mentally retarded or the parent of a minor or guardian of the person who is believed to be mentally retarded may make written application to the department on forms provided by the department for a comprehensive diagnosis and evaluation.

Report and Recommendations Required

Sec. 30. (a) Based on its comprehensive diagnosis and evaluation, the diagnosis and evaluation team shall prepare written findings and recommendations for needed services and appropriate placement.

(b) The report and recommendations shall include but not be limited to:

- (1) summary of findings of the diagnosis and evaluation team;
- (2) recommendations as to whether or not the individual needs mental retardation services; and
- (3) recommendations of desirable or appropriate programs or placement consistent with the needs of the applicant.

(c) The report and recommendations shall be signed by each member of the diagnosis and evaluation team.

(d) If a court has ordered the comprehensive diagnosis and evaluation pursuant to Subsection (i) of Section 37 of this Act, the department shall promptly send a copy of the summary report and recommendations of the diagnosis and evaluation team to the court and to the person diagnosed and evaluated or the person's legal representative.

(e) If any person thought to be mentally retarded, parent of a minor, or guardian of the person requests the comprehensive diagnosis and evaluation pursuant to Section 29 of this Act, the person, parent of a minor, or guardian of the person shall be promptly notified of the findings of the diagnosis and evaluation team and its recommendations. The person, parent of a minor, and guardian of the person shall be informed of the right to an independent diagnosis and evaluation and the right to an administrative hearing for the purpose of contesting the findings or recommendations of the diagnosis and evaluation team if they are unsatisfactory.

Administrative Hearing

Sec. 31. (a) If the person, parent of a minor, or guardian of the person who requested the comprehensive diagnosis and evaluation wishes to contest the findings or recommendations of the diagnosis and evaluation team, he may request an administrative hearing by the agency conducting the diagnosis and evaluation. In addition to the requirements of this section, the department shall promulgate rules and regulations to implement the provisions of this section.

(b) The hearing shall be held as promptly as possible within 30 days and in a convenient location and with reasonable notice.

(c) The hearing shall be public unless the client or contestant requests a closed hearing.

(d) The proposed client and the contestant shall have the right to be present and represented at the hearing by any person of their choosing, including legal counsel.

(e) The proposed client, contestant, and representative shall have reasonable access at a reasonable time prior to the hearing to any records concerning the proposed client on which the proposed action may be based.

(f) The proposed client, contestant, and representative shall have the right to present oral or written testimony and evidence, including the results of an independent diagnosis and evaluation, and shall have the right to examine witnesses.

(g) Any interested person may appear and give oral and written testimony.

(h) In all cases, the hearing officer shall promptly report to the parties in writing his decision and findings of fact and the basis for those findings.

(i) Any party to such hearing shall have the right to appeal without the necessity for filing a motion for rehearing with the hearing officer. The appeal shall be brought in the county court of Travis County or the county in which the proposed client resides. The appeal shall be by trial de novo and shall be given a preference setting over all other cases.

(j) The decision of the hearing officer shall be final within 30 days after the date of the decision unless a party files an appeal within such time. The filing of an appeal suspends the decision of the hearing officer, and no party may take any action based on such decision.

Application for Services

Sec. 32. (a) If the diagnosis and evaluation team recommends services, the client or the parent of a minor or guardian of the person may apply for needed services according to the provisions of Sections 33 and 34 of this Act.

(b) If the diagnosis and evaluation team recommends long-term placement in a residential care facility, the client, if an adult, the parent of a minor, or guardian of the person, the department, the court, any community center, or the agency which conducted the diagnosis and evaluation may file an application pursuant to Section 37 of this Act for a judicial determination that the alleged mentally retarded person is in need of long-term placement in a residential care facility.

Application for Voluntary Mental Retardation Services

Sec. 33. If the comprehensive diagnosis and evaluation as required by Section 30 of this Act indicates that the person diagnosed and evaluated is in need of voluntary mental retardation services, that person may be admitted to services as soon as appropriate services are available, and upon application for the services. The departmental facility or the community center shall develop a plan for appropriate programs or placement in programs or facilities approved or operated by the department. These programs or placements shall be suited to the needs of the proposed client and shall be consistent with the rights guaranteed in previous subchapters of this Act. The proposed client, his parent, if he is a minor, and/or his guardian shall be encouraged and permitted to participate in the development of the planned programs or placements.

Application for Voluntary Residential Care Services

Sec. 34. (a) No person shall be admitted voluntarily to a residential care program except pursuant to the provisions of this section.

(b) When voluntary placement in a residential care facility is requested, preference shall be given to the facility located nearest to the residence of the proposed resident except when there are compelling reasons for placement elsewhere.

(c) Application for voluntary admission may be made by a proposed client, the parents of a minor child, or the guardian of the person.

(d) The application for voluntary admission shall be made according to rules and regulations of the department and shall contain a statement of the reasons that placement is requested.

(e) As used in this section, voluntary admissions shall be one or more of the following types:

(1) "Regular voluntary admission" for placement of a mentally retarded person, without a court proceeding, for treatment, training, and/or care.

(2) "Emergency admission" for placement of a mentally retarded person, without court proceedings, when there is an immediate and compelling need for short-term training, treatment, and/or care.

(3) "Respite care" for placement of a mentally retarded person, without court proceeding, to provide special assistance or relief to the mentally retarded person and/or his family for brief periods of time.

(f) Regular voluntary admissions shall be permitted only after a comprehensive diagnosis and evaluation, if:

(1) Space is available at the facility for which placement is requested.

(2) The superintendent or director of the facility determines that the facility can and does provide services that meet the needs of the proposed resident.

(g) Emergency admissions shall be permitted even though a comprehensive diagnosis and evaluation has not been performed if:

(1) there is persuasive evidence that the proposed resident is mentally retarded;

(2) space is available at the facility for which placement is requested;

(3) the superintendent or director of the facility determines that the facility can and does provide services that meet the needs of the proposed resident;

(4) there is an urgent need by the proposed resident for short-term placement and care which the facility provides;

(5) relief for the urgent need of the proposed resident can be afforded within a period of one year following admission; provided that a comprehensive diagnosis and evaluation is performed within 30 days following admission.

(h) Respite care shall be permitted even though a comprehensive diagnostic evaluation has not been performed if:

(1) there is persuasive evidence that the proposed resident is mentally retarded;

(2) space is available at the facility for which respite care is requested;

(3) the superintendent or director of the facility determines that the facility can and does provide services that meet the needs of the proposed resident;

(4) there is a need for the mentally retarded person and/or his family that urgently requires assistance or relief;

(5) that assistance or relief to the mentally retarded person and/or his family can be provided within a brief period of time, not to exceed 30 consecutive days following admission. If the relief sought by the mentally retarded person or his family has not been achieved in the 30-day period, one 30-day extension may be allowed if:

(A) The superintendent or director of the facility determines that the relief may be achieved in the additional time period, and

(B) The parties agreeing to the original placement consent to the extension. If the extension is not permitted, the resident shall be released immediately and application may be made for other services.

**Voluntary Admission or Court Commitment of Minor
Who Reaches Majority**

Sec. 35. At the time a resident who was voluntarily admitted as a minor under Section 34 of this

Act, and who continues to be in need of residential services, approaches the age of majority, the superintendent shall take action to insure that at majority one of the following actions is taken for admission or commitment of the resident:

(1) obtain legally adequate consent for admission from the resident or the guardian of the person, or

(2) file or cause to be filed an application for court commitment under Section 37 of this Act.

**Withdrawal by Persons Voluntarily Admitted for
Residential Care Services**

Sec. 36. No person voluntarily admitted to a residential care facility may be detained more than 96 hours after he, his parents if he is a minor, or the guardian of his person has requested discharge in accordance with rules and regulations promulgated by the department, unless:

(a) The superintendent or director of the facility determines that the condition of the person or other circumstances are such that the person cannot be discharged without endangering the safety of himself or the general public; and

(b) The superintendent or director files or causes to be filed an application for judicial commitment. For purposes of this Act, the county in which the facility is located shall be deemed as the county of residence of the proposed resident; and

(c) Pending a final determination on the application, the court may, upon a finding of good cause, issue an order of protective custody, ordering the resident to remain in the facility where he was voluntarily admitted, or other suitable place designated by the court as provided in Subsection (k) of Section 37 of this Act.

Commitment to a Residential Care Facility

Sec. 37. (a) No person shall be committed to a residential care facility under the provisions of this Act except pursuant to the provisions of this section.

(b) No person shall be committed to a residential care facility unless:

(1) the person is mentally retarded;

(2) evidence is presented showing that because of retardation, the person represents a substantial risk of physical impairment or injury to himself or others, or he is unable to provide for and is not providing for his most basic physical needs;

(3) the person cannot be adequately and appropriately habilitated in an available, less restrictive setting;

(4) the residential care facility does provide habilitative services, care, training, and treatment appropriate to the individual's needs; and

(5) the committing court finds that the conditions of this subsection have been met.

(c) When placement in a residential care facility becomes necessary, preference shall be given to the facility located nearest to the residence of the proposed resident except when no vacancy is available in the nearest facility, or the proposed resident, parent of a minor, or guardian of the person requests otherwise, or there are other compelling reasons.

(d) The procedure prescribed in the following subsections shall be used for commitment to a residential care facility.

(e) The county court shall have original jurisdiction of all judicial proceedings for commitment of mentally retarded persons to residential care facilities.

(f) An alleged mentally retarded person, the parent of a minor, the guardian of the person, or any other interested person may file with the county clerk of the county of residence of the alleged mentally retarded person an application for a determination that the alleged mentally retarded person is in need of long-term placement in a residential care facility.

(g) The application shall be executed under oath and shall set forth:

(1) the name, birthdate, sex, and residence address of the proposed resident;

(2) the name and residence address of the proposed resident's parent or guardian;

(3) a short and plain statement of the facts to show that commitment to a residential care facility is necessary and appropriate; and

(4) a short and plain statement explaining the inappropriateness of admission to less restrictive services.

(h) A copy of the summary report and recommendations of the diagnosis and evaluation team, if completed, shall be included in the application.

(i) On the filing of the application, the court shall immediately set a date for a hearing to determine the appropriateness of the commitment of the proposed resident to a residential care facility. The court shall also order an immediate comprehensive diagnosis and evaluation of the proposed resident unless such a comprehensive diagnosis and evaluation has been completed or updated within six months prior to the date of the scheduled hearing.

(j) Copies of the application, notice of the time and place of the hearing, and if appropriate, the order for the comprehensive diagnosis and evaluation shall be served on the proposed resident or his representative, the parent of a minor, guardian of the person, and the department not less than 10 days before the hearing. The notice shall also specify in plain and simple language the right to an independent diagnosis and evaluation as provided in Subsection (e) of Section 30 of this Act, as well as the provisions of Subsections (l) and (m) of this section.

(k) If the county court in which an application has been filed in accordance with this section finds, pursuant to certificates filed with the court, that the proposed resident is believed to be mentally retarded and is likely to cause injury to himself or others if not immediately restrained, the judge may order any health or peace officer to take the proposed resident into protective custody and immediately transport him to a designated residential care facility when space is available or to a place deemed suitable by a county health officer, and detain him for a period not to exceed 20 days pending order of the court. No person may be detained in protective custody in a nonmedical facility used for the detention of persons charged with or convicted of a crime, except because of and during an extreme emergency and in no case for a period longer than 24 hours. The county health officer shall see that a person held in protective custody receives proper care and medical attention pending removal to a residential care facility. The head of a facility in which a person is held under this subsection shall discharge such person within 20 days if the court has not issued further orders; provided, however, if the head of such facility believes the person is dangerous to himself or others, he shall immediately so advise the court which issued the order of protective custody.

(l) If the proposed resident cannot afford counsel, the court shall appoint an attorney not less than 10 days before the hearing. An attorney appointed pursuant to this section shall be entitled to a reasonable fee to be paid from the general fund of the county in which the proceeding is brought. In all cases the proposed resident's attorney shall represent the rights and legal interests of the proposed resident regardless of who may initiate the proceeding or pay the attorney's fees.

(m) A full hearing on the application shall be held as soon as practicable after the application is filed in accordance with the following procedures:

(1) The hearing shall be open to the public unless the proposed resident or his representative requests that the hearing be closed and the court determines there is good cause therefor.

(2) Any party to the proceedings may demand a jury, or the court on its own motion may order a jury. The Texas Rules of Civil Procedure shall apply to the selection of the jury, the court's charge to the jury, and all other aspects of the proceedings and trial except when inconsistent with the provisions of this section.

(3) The proposed resident shall have the right to be present throughout the entire proceeding. If the court shall determine that the presence of the proposed resident would result in harm to the proposed resident, then the court may waive the requirement of this subsection in writing, clearly stating the basis for the determination.

(4) The proposed resident shall be represented by counsel and be provided the right and opportunity to confront and cross-examine all witnesses. The parent of a minor or guardian of the person may also be represented by counsel.

(5) The usual rules of evidence shall apply. The results of the current diagnosis and evaluation shall be presented in evidence.

(6) The party who filed the application shall prove beyond a reasonable doubt that long-term placement of the proposed resident in a residential care facility is appropriate.

(7) In all cases, the court shall promptly report in writing its decision and findings of fact.

(n) If the court determines that long-term placement in a residential care facility is inappropriate, the court shall enter a finding to that effect, dismiss the application, and, if appropriate, recommend application for admission to voluntary services pursuant to Sections 32, 33, and 34 of this Act.

(o) If the court determines that long-term placement in a residential care facility is appropriate, the court shall order commitment of the proposed resident for care, treatment, and training to a community center or the department when space is available in a residential care facility, and the court shall immediately forward a copy of the commitment order to the department or community center.

(p) Any party shall have the right to appeal the judgment of the court to the appropriate court of civil appeals, and such appeals, if any, shall be controlled by the Texas Rules of Civil Procedure. Appeals pursuant to this section shall be given a preference setting. The county court may grant a stay of the commitment pending appeal.

(q) In no case shall an order for commitment be considered an adjudication of mental incompetency.

(r) When a resident committed to a residential care facility pursuant to the provisions of this section is absent from the assigned facility without permission from the proper authority, the superintendent or director of the facility may immediately issue an order authorizing any peace officer to detain the resident. When a peace officer takes a resident into custody, he shall immediately notify the superintendent or director. When requested by the superintendent or director, the peace officer shall cause the resident to be returned promptly to the assigned facility.

SUBCHAPTER I. TRANSFER AND DISCHARGE OF CLIENTS

Transfer and Discharge

Sec. 38. Transfer and discharge of clients shall be made only in accordance with the rules and regulations of the department and provisions of this subchapter. This subchapter shall not apply to

transfers for emergency medical, dental, or psychiatric care for a period of time not to exceed 30 consecutive days, nor shall it apply to a voluntary withdrawal of a client from mental retardation services. This subchapter shall not apply to a discharge by a superintendent or director on the grounds that a person is not mentally retarded based upon a comprehensive diagnosis and evaluation, in which case a client shall be discharged without further hearings; provided, however, that the administrative hearing to contest the comprehensive diagnosis and evaluation provided for in Section 31 shall be available.

By Service Provider

Sec. 39. When a service provider finds that placement of a client in a facility is no longer appropriate to the person's individual needs or that the client can be better treated and habilitated in another facility, the service provider shall transfer or discharge the client pursuant to this subchapter.

Request of Client, Parent, Guardian

Sec. 40. A client or the parent of a minor or guardian of the person may request a transfer or discharge, and the service provider shall determine the appropriateness of the requested transfer or discharge. If such request is denied, the administrative hearing referred to in Section 41 shall be available.

Right to Administrative Hearing

Sec. 41. (a) A client shall not be transferred to another facility or discharged from any mental retardation services under this subchapter unless provided with a prior opportunity to request and receive an administrative hearing to contest the proposed transfer or discharge.

(b) No transfer of a client from one facility to another shall occur without prior approval and knowledge of the parents or guardian of the client.

Notice

Sec. 42. The client and the parent or guardian shall be given 30 days notice of the proposed transfer or discharge under this subchapter. The client and parent or guardian shall also be informed of the right to an administrative hearing for the purpose of contesting the proposed transfer or discharge.

Hearing to be Held

Sec. 43. If the client, parent of a minor, or guardian of the person wishes to contest the proposed or denied transfer or discharge, an administrative hearing shall be provided in accordance with the requirements of this section:

(a) The hearing shall be held as promptly as possible within 30 days and in a convenient location and with reasonable notice;

(b) The client, parent of a minor, guardian of the person, and the superintendent shall have the right to be present and represented at the hearing;

(c) The client, parent of a minor, and guardian of the person shall have reasonable access at a reasonable time prior to the hearing to any records concerning the client on which the proposed action may be based;

(d) Evidence shall be presented, which shall include oral and written testimony;

(e) In all cases the hearing officer shall promptly report his decision to the parties in writing, including findings of fact and the basis for those findings;

(f) Any party to such hearing shall have the right to appeal without the necessity of filing a motion for rehearing with the hearing officer. The appeal shall be brought in the county court of Travis County or the county in which the proposed client resides. The appeal shall be by trial de novo and shall be given a preference setting over all other cases;

(g) The decision of the hearing officer shall be final within 30 days after the date of the decision, unless a party files an appeal within such time pursuant to Subsection (f). The filing of an appeal suspends the decision of the hearing officer, and no party may take any action based on such decision. If no appeal is filed from a final order that the request for transfer or discharge should be granted, the superintendent shall proceed with such transfer or discharge. If no appeal is filed from a final order that the request for transfer or discharge should be denied, the client shall remain in the same program or facility where he is presently receiving services.

Alternative, Follow-up Supportive Services

Sec. 44. The department shall provide appropriate alternative or follow-up supportive services consistent with available resources. Provision of alternative or follow-up supportive services shall be made by agreement between the department and the client, parent of a minor, or guardian of the person, and shall be consistent with the rights guaranteed in Subchapters C, D, and E of this Act. Placement in a residential care facility, under the provisions of this Act, other than by transfer from another residential care facility shall be made only pursuant to Sections 34 and 37 of this Act.

Leave, Furlough

Sec. 45. The superintendent or director of a residential care facility, shall have the authority to grant or deny a resident a leave of absence or furlough.

Transfer to Mental Hospitals

Sec. 46. (a) Voluntary Residents. No voluntary resident shall be transferred to a state mental hospital for other than the emergency care provided for in Section 38 of this Act without legally adequate consent to such transfer.

(b) The superintendent or director of a residential care facility shall have the authority according to the procedures of this subchapter to transfer a resident committed pursuant to Section 37 of this Act to a state mental hospital under the control and management of the department for mental health care when an examination of the resident by a licensed physician indicates symptoms of mental illness to the extent that care, treatment, control, and rehabilitation in a state mental hospital would be in the best interest of the resident.

(c) For purposes of this Act, upon transfer of a court-committed resident to a state mental hospital, the director of the state mental hospital to which the resident was transferred shall immediately cause an evaluation of the resident's condition to be made. If at any time such an evaluation reveals that continued hospitalization is necessary for a period in excess of 30 days, the director shall promptly initiate appropriate court-ordered transfer proceedings in accordance with this section. In no event shall a resident transferred from a residential care facility to a state mental hospital remain in said hospital for more than 30 consecutive days unless such resident is transferred to the hospital under the provisions of this section.

(d) If a court-committed resident of a residential care facility requires hospitalization in excess of 30 consecutive days, the court transfer referred to in Subsection (c) above shall be accomplished in the following manner. The director of the state mental hospital shall request an order of transfer to the state mental hospital from the court which originally committed the resident to the residential care facility. In support of such request, the director of the state mental hospital shall forward Certificates of Medical Examination for Mental Illness as described in Article 5547-32 of the Texas Mental Health Code, as amended (Articles 5547-1 to 5547-204, Vernon's Texas Civil Statutes), completed by two physicians stating that the resident is mentally ill and requires observation and/or treatment in a mental hospital. Upon receipt of the director's request and the certificates of medical examination, the committing court shall set a date for a hearing on the proposed transfer. At least seven days prior to the date of the hearing, a copy of the transfer request and the notice of the hearing shall be personally served on the proposed patient. If the patient is a minor, notice shall also be served on his parents. If the patient has been declared to be incompetent under the Probate Code and a guardian for his person has

been appointed, notice shall also be served on the guardian. A jury shall be had unless a waiver of trial by jury is made in writing under oath by the adult resident, his parent if a minor, or his guardian of the person. Notwithstanding the executed waiver, the jury shall determine the issues in the case if jury trial is demanded by the adult resident, his parent if a minor, his guardian of the person, or by his attorney at any time prior to determination of the hearing.

The county judge may hold a hearing on the petition at any suitable place within the county, but such hearing should be held in a physical setting not likely to have a harmful effect on the condition of the resident. The resident shall not be denied the right to be present at the hearing, although the court may dispense with the presence of the resident if it is determined by the court to be in the resident's best interest. The hearing shall be open unless the court finds it in the best interests of the resident that the hearing be closed and the court obtains the consent of the adult resident, his parent if a minor, his guardian of the person, and his attorney for the closing of the hearing. At least two physicians, at least one of whom is a psychiatrist, who have examined the resident within the 15 days immediately preceding the hearing shall testify at the hearing. No person shall be transferred under this section to a mental hospital except upon the basis of competent medical or psychiatric testimony. The court or jury as the case may be shall determine:

- (1) whether the resident is mentally ill,
- (2) whether the resident requires a transfer to a state mental hospital for treatment for his own welfare and protection or the protection of others.

If the court or jury, as the case may be, finds that the patient is mentally ill and requires treatment in a state mental hospital for his own welfare and protection or the protection of others, the court shall issue an order approving the transfer of the resident to the state mental hospital.

(e) If the resident no longer requires treatment in a state mental hospital or a residential care facility, he shall be discharged. If he no longer requires treatment in a state mental hospital but requires treatment in a residential care facility, the superintendent or director of the residential care facility from which the resident is transferred shall be responsible for the immediate return of the resident to the residential care facility upon notification by the director of the mental hospital that hospitalization is no longer necessary or appropriate and that care in a residential care facility is required. If the resident has been transferred by a court to the state mental hospital under the provisions of this Act, the transfer to the residential care facility shall be made in accordance with the following provisions. The head of the state mental hospital shall forward a certifi-

cate evidencing that the resident is no longer in need of hospitalization in a state mental hospital but is still in need of care in a residential care facility due to a continuing diagnosis of mental retardation. The head of the state mental hospital shall request that the resident be transferred to a residential care facility. Such requested transfer shall be made only with the approval of the judge of the committing court by the entry of an order approving such transfer, in accordance with the provisions of Article 5547-75A of the Texas Mental Health Code.

Discharge from Residential Care Facility—Notice to Court

Sec. 47. On discharge of a resident committed pursuant to Section 37 of this Act, the department shall notify the committing court.

Habeas Corpus

Sec. 48. Nothing in this subchapter shall in any way alter or limit the right of a resident to a writ of habeas corpus.

Admission and Commitments Under Prior Law

Sec. 49. (a) Mentally retarded persons admitted or committed to facilities under the jurisdiction of the department under law previously in force may remain in the residential care facility unless and until such time as necessary and appropriate alternate placement is found or until such time as they can be admitted or committed to a facility under the provision of this Act if such readmission or commitment is necessary to meet the due process requirements of this Act.

(b) Except as hereinafter provided, a mentally retarded person voluntarily admitted to a residential care facility under laws previously in force shall be discharged within 96 hours of receipt by the superintendent or director of a written request from the person on whose application the mentally retarded person was admitted, or upon his own request. If, however, the superintendent or director deems the person's condition to be such that the person cannot be discharged with safety to himself or with safety to the general public, the superintendent or director may forthwith file or cause to be filed in the county in which the residential care facility is located an application for commitment under Section 37 of this Act. Pending a final determination of the application for commitment, the court may upon showing of good cause order the mentally retarded person placed in protective custody in the residential care facility as provided for in Subsection (k) of Section 37 of this Act.

(c) The state shall reimburse a county for not more than \$50 of the cost of a hearing held by the county court of the county for the commitment of a resident of a facility under the jurisdiction of the department who was committed under prior law and for whom the due process requirements of this Act require another commitment proceeding.

(d) The commissioners court of a county entitled to reimbursement under this Act may file a claim for reimbursement with the comptroller of public accounts.

SUBCHAPTER J. PUBLIC RESPONSIBILITY COMMITTEE

Rules and Regulations

Sec. 50. Pursuant to the provisions of this subchapter, the department shall promulgate rules and regulations to establish a third-party mechanism to safeguard adequately the legal rights of clients.

Creation

Sec. 51. A Public Responsibility Committee, hereinafter referred to as the committee, shall be established at each community center and residential care facility of the department.

Membership

Sec. 52. Each committee shall have seven members and shall have representation by parents, guardians, consumer groups, persons, and organizations which advocate for mentally retarded persons and shall exclude employees of facilities of the department or community centers. Members must reside in the service region served by the facility.

Selection

Sec. 53. Members shall be selected in the following manner:

(a) For facilities of the department, members shall be selected by the executive committee of the Volunteer Services Council with consultation with the local parents' associations, if any.

(b) For community centers, members shall be selected by the local establishing agencies with consultation with the local parents' associations or interest groups, if any.

Meetings

Sec. 54. The committee shall meet not less than four times a year. A majority of members shall constitute a quorum.

Compensation

Sec. 55. Committee members shall serve without compensation other than reimbursement for actual expenses, including travel expenses necessarily incurred in the performance of their duties.

Powers and Duties of the Committee

Sec. 56. (a) The powers and duties of the committee shall be to:

(1) serve as a third-party mechanism for protecting and advocating for the health, safety, welfare, and legal and human rights of mentally retarded persons being served by the department or community center;

(2) receive and investigate complaints made to it by or on behalf of clients and make appropriate recommendations to the facility superintendent or director, to the deputy commissioner of the department with authority over the facility, to the commissioner of the department, and to the governing board as necessary;

(3) investigate and determine the denial of rights of any person receiving services;

(4) submit instances of abuse or denial of rights to the appropriate authorities and the advocacy system created under Section 203 of P.L. 94-103¹ for appropriate action.

(b) When investigating complaints of abuse or denial of rights of clients, the committee shall have the authority with or without notice to inspect the facility which offers services to the mentally retarded person and records relating to the diagnosis, evaluation, or treatment of the mentally retarded person, as those records relate to the complaint of abuse or denial of rights.

(c) Investigations and findings of the committee shall be kept confidential unless the committee orders the information released when legally adequate consent is obtained for its release.

(d) The committee shall present an annual report of its work to the commissioner, the executive director of the community center, the appropriate governing board, and the advocacy system created under Section 203 of P.L. 94-103 for the appropriate action. The report shall include a description of all complaints processed. The names of all individuals shall be kept confidential.

¹ 42 U.S.C.A. § 6012.

SUBCHAPTER K. CONFIDENTIALITY OF RECORDS

Confidentiality of Records

Sec. 57. (a) Records of the identity, diagnosis, evaluation, or treatment of any person which are maintained in connection with the performance of any program or activity relating to mental retardation shall be confidential and disclosed only for the purposes and under the circumstances expressly authorized under Subsection (b) of this section.

(b) The content of any record referred to in Subsection (a) of this section may be disclosed in accordance with the prior written consent of the person with respect to whom such record is maintained, or parent if such person is a minor, or guardian if the person has been adjudicated incompetent to manage his personal affairs or executor or administrator if the person is deceased. If there is no appointment of an executor or administrator, such consent may be given by the deceased person's spouse or, if none, by any adult person related to the deceased person within the first degree of consanguinity. Disclosure

is permitted only to such extent, under the circumstances, and for the purposes as may be allowed under the regulations prescribed pursuant to Subsection (h) of this section. The content of any record referred to in Subsection (a) of this section is to be made available upon the request of any person thought to be mentally retarded upon whose behalf the record was made unless the qualified professional responsible for supervising the client's habilitation states in a signed written statement that it would not be in the best interest of the person in question. However, the parent of a minor or guardian of the person shall have access to the contents of any record referred to in Subsection (a) of this section.

(c) Whether or not the person with respect to whom any given record referred to in Subsection (a) of this section is maintained gives his written consent, the content of such record may be disclosed as follows:

(1) to medical personnel to the extent necessary to meet a bona fide medical emergency;

(2) to qualified personnel for the purpose of management audits, financial audits, program evaluation, or research approved by the department, but such personnel may not identify, directly or indirectly, any individual receiving services in any report of such research, audit, or evaluation, or otherwise disclose identities in any manner;

(3) if authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor. In assessing good cause the court shall weigh the public interest and the need for disclosure against the injury to the person receiving services. On the granting of the order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure; and

(4) to personnel legally authorized to conduct investigations concerning complaints of abuse or denial of rights of mentally retarded persons.

(d) Except as authorized by a court order granted under Subsection (c)(3) of this section, no record referred to in Subsection (a) of this section may be used to initiate or substantiate any criminal charges against a person receiving services or to conduct any investigation of a person receiving services.

(e) The prohibitions of this section continue to apply to records concerning any individual who has received services irrespective of when the person received services.

(f) The prohibitions of this section apply to any interchange of records between governmental agencies or persons, except for interchanges of information necessary for delivery of services to clients or

for payment for mental retardation services as defined in this Act.

(g) A person who receives information deemed confidential by this section, other than the person thought to be mentally retarded on whose behalf the records are made, the parent of a minor, or guardian of the person shall not disclose the information except to the extent that disclosure is consistent with the authorized purpose for which the information was first obtained.

(h) The department shall prescribe regulations to carry out the purposes of this section. These regulations may contain such definitions and may provide for such safeguards and procedures as in the judgment of the department are necessary or proper to effectuate the purposes of this section, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

(i) Nothing contained in this subchapter shall prevent a qualified professional from disclosing the current physical and mental condition of a mentally retarded person to his or her parent, guardian, relatives, or friends.

SUBCHAPTER L. RESPONSIBILITY AND COOPERATION

Responsibility

Sec. 58. (a) The responsibility of the department under this Act shall be to make all reasonable efforts consistent with available resources:

(1) to assure that all mentally retarded persons identified and needing mental retardation services in the state are given quality care, treatment, education, training, and rehabilitation appropriate to their individual needs for as long as mental retardation services are needed, but shall not include those services or programs which have been explicitly delegated by law to other governmental entities;

(2) to initiate, carry out, and evaluate procedures to guarantee to mentally retarded persons the rights enumerated in this Act;

(3) to carry out all provisions of this Act, including planning, initiating, coordinating, promoting, and evaluating all programs developed. The responsibilities placed on the department by this Act shall be in addition to all other responsibilities and duties given by law to the department; and

(4) to provide either directly or by cooperation, negotiation, or contract with other agencies and those persons and groups enumerated in Section 2.13, Texas Mental Health and Mental Retardation Act (Articles 5547-201 to 5547-204, Vernon's Texas Civil Statutes), a continuum of services to mentally retarded persons. These services shall include but not be limited to treatment and care, education and training including sheltered work-

shop programs, counseling and guidance, and development of residential and other facilities to enable mentally retarded persons to live and be habilitated in the community. These facilities shall include but not be limited to group homes, foster homes, halfway houses, and day-care facilities for mentally retarded persons to which the department has assigned mentally retarded persons. The department shall exercise periodic and continuing supervision over the quality of services.

(5) to provide either directly or by contract with other agencies a continuum of services to those mentally retarded children, juveniles, or adults committed into its custody by the juvenile courts and/or the criminal courts.

(b) The department is hereby delegated the authority to carry out its responsibilities set forth in this Act.

(c) The responsibilities enumerated in this section shall be in addition to any other responsibilities placed on the department by Articles 2 and 3 of the Texas Mental Health and Mental Retardation Act, as amended (Articles 5547-201 to 5547-204, Vernon's Texas Civil Statutes).

Cooperation

Sec. 59. Other agencies given legislative authority for providing all persons education, support, related services, rehabilitation, and other services shall cooperate with the department in carrying out its responsibilities under this Act. This does not require other departments and agencies to serve the department in activities inconsistent with their functions, with the authority of their offices, or with the laws of this state governing their activities.

SUBCHAPTER M. RULES AND REGULATIONS

Rules and Regulations

Sec. 60. The department shall promulgate written rules and regulations to ensure the implementation of the provisions of this Act.

SUBCHAPTER N. FEES, SUPPORT AND MAINTENANCE

Support and Maintenance of Residents

Sec. 61. (a) The parents of a mentally retarded person under 18 years of age who is a resident in a residential care facility operated by the department shall pay, if able to do so, the portions of the cost of support and maintenance of the mentally retarded person as may be applicable under the following formula:

If the amount shown as "Net Taxable Income" of the parents as reported on their latest current financial statement or on their latest Federal Income Tax return at the election of the parent or guardian is:

Less than \$ 4,000	The Monthly payment per child shall not exceed:
4,000-4,999	\$ 5
5,000-5,999	10
6,000-6,999	20
7,000-7,999	30
8,000-8,999	40
9,000-9,999	50
10,000-10,999	60
11,000-11,999	70
12,000-12,999	80
13,000-13,999	90
14,000-14,999	100
15,000-15,999	110
16,000-16,999	120
17,000-17,999	130
18,000-18,999	140
19,000-19,999	150
20,000-up	160
	170

No payment under the above schedule shall exceed actual cost to the state per resident, and if the payment required under this schedule is more than actual cost, then the amount paid shall be the actual cost.

(b) Parents of a mentally retarded person who is 18 years of age or older shall not be required to pay for his support and maintenance as a resident in a residential care facility operated by the department, but the mentally retarded person and his estate shall be liable for his support and maintenance regardless of his age, except as provided in Subsection (g) of this section.

(c) The unpaid portion of charges for support and maintenance due before the effective date of this Act, under agreements made before the effective date of this Act, shall remain as obligations of parents under previous law, but such preexisting agreements for payment of support and maintenance shall be in force after the effective date of this Act only to the extent of parental responsibility set forth in the foregoing formula.

(d) Unpaid charges for support and maintenance accruing after the effective date of this Act due by parents for the support and maintenance of mentally retarded persons who are minors and residents in residential care facilities operated by the department shall be a claim in favor of the state for such support and maintenance, and shall constitute a lien against the parents' property and estate, but shall not constitute a lien against any other estate or property of the mentally retarded person.

(e) With respect to a mentally retarded person who is a resident in a residential care facility operated by the department, the cost of his support and maintenance may be determined under rules and regulations adopted by the department provided that total charges from all sources for support and maintenance shall not exceed the actual cost of such support and maintenance, and the costs determined under such rules and regulations shall constitute a claim by the state against the entire estate or any property of the mentally retarded person including but not limited to any share he may have by gift, descent, or devise in his parents' estates or any other person's estate, except as provided in Subsection (g) of this section.

(f) Nothing in this section shall alter or amend the liability and responsibility of any parent under orders of a court or otherwise liable for child support payments under the provisions of the Family Code.

(g) For the purposes of this subchapter no portion of the corpus or income of a trust or trusts, with an aggregate principle amount not to exceed \$50,000, of which a mentally retarded person is a beneficiary shall be considered to be the property of such mentally retarded person or his estate, and no portion of the corpus or income of such trust shall be liable for the support and maintenance of such mentally retarded person regardless of his age.

Fees for Services

Sec. 62. The department shall charge reasonable fees to cover costs for services provided to nonindigent persons. It shall provide services free of charge to indigent persons.

SUBCHAPTER O. PENALTIES AND REMEDIES

Criminal Penalties

Sec. 63. (a) A person who intentionally or knowingly causes, conspires with, or assists another to cause the unlawful continued detention in, or unlawful admission or commitment of any individual to, a facility as specified in this Act with intention to do harm to that individual is guilty of a Class B misdemeanor.

(b) The district attorneys and county attorneys within their respective jurisdictions shall prosecute violations of this section.

Civil Penalties

Sec. 64. (a) A person who willfully and wrongfully violates the rights guaranteed in this Act of any mentally retarded person shall be liable to the person injured by the violation in an amount not less than \$100 nor more than \$5,000.

(b) A person who recklessly violates the rights guaranteed in this Act of any mentally retarded

person shall be liable to the person injured by the violation in an amount not less than \$100 nor more than \$1,000.

(c) A person who willfully and wrongfully releases confidential information or records of a mentally retarded person shall be liable to the person injured by the unlawful disclosure for the greater of the following amounts:

(1) \$1,000; or

(2) three times the amount of actual damages, if any.

(d) An action filed under this section may be brought by the person injured, by a parent if the person is a minor, by a guardian if such person has been adjudicated incompetent, or by a next friend in accordance with Rule 44 of the Texas Rules of Civil Procedure.

(e) An action filed under this section may be commenced in the district court of the county in which the defendant resides, or in a district court of Travis County.

(f) Nothing in this section shall be intended or construed as superseding or abrogating any remedies otherwise available by law.

Injunctive Relief

Sec. 65. (a) The attorney general and the district attorneys and county attorneys within their respective jurisdictions may bring an action in the name of the state against any person to enjoin violations of, and to enforce compliance with, the provisions of this Act and any rules of the department promulgated thereunder.

(b) In granting relief the court may issue a temporary restraining order, a temporary injunction, or a permanent injunction to restrain and prevent violations of, and to enforce compliance with, the provisions of this Act and any rules of the department promulgated thereunder.

(c) A person who violates the terms of an injunction under this section shall forfeit and pay to the state a civil penalty of not more than \$5,000 per violation, not to exceed \$20,000. In determining whether or not an injunction has been violated, the court shall take into consideration the maintenance of procedures reasonably adopted to ensure compliance with the injunction. For the purposes of this section, the district court issuing the injunction shall retain jurisdiction, and the cause shall be continued, and in these cases, the attorney general or the district or county attorney, acting in the name of the state, may petition for recovery of civil penalties under this section.

(d) Any civil penalty recovered under this section shall be paid to the State of Texas for use in mental retardation services.

(e) An action filed under this section may be commenced in the district court of the county in which the defendant resides or in a district court of Travis County.

(f) Nothing in this section shall be intended or construed as superseding or abrogating any remedies otherwise available by law.

Civil Actions against Department Employees: Indemnity

Sec. 66. (a) The attorney general shall provide an attorney or attorneys for the defense of an employee of the department in any civil action commenced against him under this Act by reason of a claim of alleged negligence or other act of the person while employed by the department. The state shall save harmless and indemnify the person from financial loss arising out of any claim, demand, suit, or judgment by reason of the negligence or other act by the person, provided that at the time that the claim arose or damages were sustained, the person was acting in the discharge of his duties and within the scope of his authorized duties, and that the claim or cause of action or damages sustained did not result from the willful and wrongful act or reckless conduct of the person. The state, however, shall not be subject to the obligations imposed by this section unless the person, within 10 days of the time he is served with any summons, complaint, process, notice, demand, or pleading, delivers the original or a copy thereof to the department.

(b) On the delivery, the attorney general may assume control of the representation of the person. The person shall cooperate fully with the attorney general in the defense of said claim, demand, or suit.

(c) This section shall not in any way impair, limit, or modify the rights and obligations under any policy of insurance.

(d) The benefits of this section shall enure only to the persons named herein and shall not enlarge or diminish the rights of any other party.

Liability

Sec. 67. Notwithstanding any other provision of this Act, an officer or employee of the department or a community center, acting reasonably within the scope of his employment and in good faith, shall be free from all civil or criminal liability under this Act.

SUBCHAPTER P. MISCELLANEOUS PROVISIONS

Effective Date

Sec. 68. This Act shall take effect on January 1, 1978.

Repealer

Sec. 69. Chapter 119, Acts of the 54th Legislature, Regular Session, 1955, as amended (Article 3871b, Vernon's Texas Civil Statutes), is repealed.

Saving Clause

Sec. 70. The repeal of any statute by this Act shall not affect or impair any act done, right existing or accrued, or conveyance made under the authority of the statute repealed; and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action concerning any such act, right, or conveyance. Proceedings begun before the effective date of this Act under prior provisions of the law relating to persons who would be deemed mentally retarded under this Act shall not be affected by provisions of this Act.

Severability Clause

Sec. 71. If any portion of this Act is declared invalid or unconstitutional, it is the intention of the legislature that the other portions shall remain in full force and effect, and to this end the provisions of this Act are declared to be severable.

[Acts 1977, 65th Leg., p. 772, ch. 294, §§ 1 to 71, eff. Jan. 1, 1978. Amended by Acts 1979, 66th Leg., p. 25, ch. 15, § 1, eff. Mar. 15, 1979; Acts 1979, 66th Leg., p. 669, ch. 296, § 1, eff. May 24, 1979; Acts 1979, 66th Leg., p. 791, ch. 352, § 1, eff. Aug. 27, 1979.]

Section 2 of Acts 1979, 66th Leg., p. 25, ch. 15, provided:

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

Section 2 of Acts 1979, 66th Leg., p. 669, ch. 296, provided:

"The reimbursement provision in Section 49(c), Mentally Retarded Persons Act of 1977, as added by this Act, applies to any hearing held on or after January 1, 1978."

IV. MISCELLANEOUS PROVISIONS

Article

5561h. Confidentiality of Mental Health Information of Individual.

5561i. Laredo State Center for Human Development.

Art. 5561c. Alcoholism

[See Compact Edition, Volume 4 for text of 1 to 3]

Texas Commission on Alcoholism

Sec. 4.

[See Compact Edition, Volume 5 for text of 4(a) to (d)]

(e) The Texas Commission on Alcoholism is subject to the Texas Sunset Act;¹ and unless continued in existence as provided; Act the commission is abolished, and this Act expires effective September 1, 1985.

¹ Article 5429k.

[See Compact Edition, Volume 4 for text of 5 to 8]

Admission and Certification of Alcoholics

Sec. 9.

[See Compact Edition, Volume 4 for text of 9(a) and (b)]

(c) Upon filing of a petition or application, the court shall set a day for the hearing, which hearing must be held not less than five (5) days and no more than fourteen (14) days from the filing of the petition. The alleged alcoholic shall be personally served with a copy of the petition or application and the order fixing the time of hearing of the same by the sheriff of the county in which he is found. The court may proceed to hear the cause at the stated time, with or without the presence of the alleged alcoholic and with or without an answer by him, provided such service is perfected at least three (3) days prior to the hearing and provided the alleged alcoholic is represented by an attorney if the right of legal counsel is not waived. If the alleged alcoholic is not represented by an attorney of his own choosing, the court shall appoint an attorney to represent him. The court shall inform relatives of the alleged alcoholic and other persons to appear at the hearing to give evidence in the cause. The judge may, in his discretion or upon request, require an alleged alcoholic to be examined by the county health officer, or by other physicians, as the court may direct, the results of which examination to be considered by the court at the hearing of the application for commitment. If in the county court in which a petition or application is filed, a Certificate of Medical Examination for Alcoholism is filed showing that the proposed patient has been examined within five (5) days of the filing of the Certificate and stating the opinion of the examining physician that the proposed patient is an alcoholic and because of his alcoholism is likely to cause injury to himself or others if not immediately restrained, the Judge may order any health or peace officer to take the proposed patient into protective custody and immediately transport him to a designated mental hospital or other suitable place and detain him pending order of the court; provided, however, that in no event shall the proposed patient be denied the hearing prescribed above to be held not less than five (5) days and no more than fourteen (14) days from the filing of the petition.

[See Compact Edition, Volume 4 for text of 9(d) to 11]

Commitment by Courts

Sec. 12. The judge of any court, including a municipal court, having jurisdiction of misdemeanor cases may, upon finding a person guilty of any violation of the law, which violation is a misdemeanor

or resulting from such person's chronic and habitual use of alcohol, remand such person over eighteen (18) years of age to the Commission, its authorized representative, or a treatment facility approved by the Commission for alcoholic detoxification or treatment purposes, for care and treatment for a period not to exceed ninety (90) days, in lieu of the imposition of a sentence or fine, if and when special facilities are available for treatment of such cases, and with notice from the Commission that such facility will receive such person as a patient. No person may be so committed who in the opinion of the judge has exhibited definite criminal tendencies, or is feeble-minded or psychotic. Appeals from such orders of the court may be taken in the same manner as provided for appeals from any other judgment of such court.

[See Compact Edition, Volume 5 for text of 13 to 20]

[Amended by Acts 1975, 64th Leg., p. 254, ch. 104, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1160, ch. 440, § 1, eff. June 15, 1977; Acts 1977, 65th Leg., p. 1847, ch. 735, § 2.111, eff. Aug. 29, 1977.]

Art. 5561cc. Regulation of Health Care Facilities Treating Alcoholics

Definitions

Sec. 1. In this Act:

(1) "Commission" means the Texas Commission on Alcoholism.

(2) "Alcoholic" means any person who chronically and habitually uses alcoholic beverages to the extent that he has lost the power of self-control with respect to the use of the beverage or while chronically and habitually under the influence of alcoholic beverages endangers public morals, health, safety, or welfare.

(3) "Alcoholism" means a condition of abnormal behavior or illness leading directly or indirectly to the chronic and habitual use of alcoholic beverages.

(4) "Person" includes any individual, partnership, corporation, association, or other public or private legal entity.

(5) "Health care facility" includes, regardless of ownership, a public or private hospital, institution, extended care facility, skilled nursing facility, intermediate care facility, home health agency, outpatient care facility, ambulatory health care facility, health center, alcoholism and drug treatment facility, health maintenance organization, and other specialized facilities where inpatient or outpatient health care services for observation, diagnosis, active treatment, or overnight care for patients with medical, mental or psychiatric, alcoholic, chronic, or rehabilitative conditions are provided.

ed requiring daily direct supervision by a physician or a practitioner of the healing arts, but does not include the office of those physicians or practitioners singly or in groups in the conduct of their profession.

Licensing a Facility

Sec. 2. A person who operates a health care facility that treats alcoholics may obtain a license issued under this Act.

License Application

Sec. 3. An applicant for a license to operate a health care facility to treat alcoholics must:

- (1) file a written application on a form prescribed by the commission together with a license fee of \$25; and
- (2) Cooperate with the inspection of the health care facility.

Issuing a License

Sec. 4. The commission shall issue a license to a person who has:

- (1) complied with the license application requirements in Section 3 of this Act; and
- (2) received approval of the facility after an on-site inspection.

Renewal of Unexpired License

Sec. 5. (a) A license issued under this Act expires one year from the date of issue.

- (b) A renewal license shall be issued on receiving a completed application form prescribed by the commission and payment of a \$25 renewal fee prior to the expiration date of the license.
- (c) The commission may require an inspection before renewing a license.

Inspections

Sec. 6. The commission or its authorized representative may enter upon the premises at reasonable times to make an inspection necessary to license or renew a license for a facility.

Rules, Regulations, and Standards

Sec. 7. (a) The commission shall prescribe forms necessary to perform its duties and adopt rules, regulations, and standards for the following:

- (1) the construction of the facility, including plumbing, heating, lighting, ventilation, and other housing conditions which insure the health, safety, and comfort of residents;
- (2) the sanitary conditions of the facility and the surrounding area, including water supply, sewage disposal, food handling, and general hygiene;

(3) the equipment needed for adequate care and treatment;

(4) the diet required by the needs of residents, based on good nutritional practice and on recommendations made by physicians attending the residents; and

(5) the qualifications of all staff and personnel, including management and nursing personnel, having responsibility for any part of the care given to residents.

(b) The commission may adopt additional regulations for facilities concerning the treatment and care of alcoholics.

(c) The rules, regulations, and standards authorized by this Act apply to licensed facilities and to facilities for which a licensed application has been made.

Denial or Revocation of License

Sec. 8. (a) The commission may deny, revoke, or refuse to renew a license if the applicant or holder of the license fails to comply with the provisions of this Act or with the rules, regulations, and standards of the commission adopted under this Act.

(b) A person who is denied a license or whose license is revoked or not renewed is entitled to a hearing on the question of the issuance of the license and is entitled to notice of the date, time, and place of the hearing not later than 21 days before the date of the hearing. A request for a hearing must be made during the 30-day period following the date on which the applicant or the holder of a license received notice that the license was denied or that it was to be revoked or refused renewal.

(c) Except as provided in Subsection (e) of this section, revocation of a license or an order refusing to renew a license does not take effect until the expiration of 30 days following the date on which the holder of the license received notice of the revocation or order of refusal to renew the license.

(d) If after a hearing the license is denied, revoked, or not renewed, the commission shall send to the applicant or holder of the license a copy of their findings and grounds for decision.

(e) The commission may revoke a license to be immediately effective in a situation where health or safety requires action. The commission must immediately notify the holder and provide an opportunity for a hearing within 14 days after the action takes effect.

(f) The Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) applies to all hearings authorized by this Act.

Injunctions

Sec. 9. (a) The commission may petition a district court to restrain a person who falsely represents a health care facility as licensed under this Act. A suit for injunctive relief must be brought in Travis County.

(b) On application for injunctive relief and a finding that a person is falsely representing a health care facility as licensed under this Act, the district court shall grant the injunctive relief the facts may warrant.

(c) At the request of the commission, the attorney general shall institute and conduct the suit authorized in Subsection (a) of this section in the name of the State of Texas.

Disposition of Funds

Sec. 10. All fees collected under this Act shall be deposited with the state treasury to the credit of the commission, and said license fees are hereby appropriated to the commission for its use in the administration and enforcement of this Act.

Personnel

Sec. 11. The commission shall carry out the licensing provided by this Act without employing additional personnel or requiring additional funds for the fiscal years ending August 31, 1978, and August 31, 1979.

[Acts 1977, 65th Leg., p. 1383, ch. 553, §§ 1, 3 to 11, eff. Sept. 1, 1977; § 2, eff. Sept. 1, 1978.]

Section 12 of the 1977 Act provided: "This Act takes effect September 1, 1977, except for Section 2, which takes effect September 1, 1978."

Art. 5561f. Interstate Compact on Mental Health

[See Compact Edition, Volume 4 for text of 1 and 2]

Sec. 2a. The office of Interstate Compact on Mental Health Administrator for Texas is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the office is abolished, and this Act expires effective September 1, 1985.

¹ Article 5429k.

[See Compact Edition, Volume 4 for text of 3 to 6]

[Amended by Acts 1977, 65th Leg., p. 1847, ch. 735, § 2.107, eff. Aug. 29, 1977.]

Art. 5561h. Confidentiality of Mental Health Information of Individual**Definitions of this Act**

Sec. 1. (a) "Professional" means any person authorized to practice medicine in any state or nation, or any person licensed or certified by the State of Texas in the diagnosis, evaluation, or treatment of any mental or emotional condition or disorder, or reasonably believed by the patient/client so to be.

(b) "Patient/Client" means any person who consults, or is interviewed by, a professional for purposes of diagnosis, evaluation, or treatment of any mental or emotional condition or disorder, including alcoholism and other drug addiction.

Confidentiality of Information

Sec. 2. (a) Communication between a patient/client and a professional is confidential and shall not be disclosed except as provided in Section 4 of this Act.

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient/client which are created or maintained by a professional are confidential and shall not be disclosed except as provided in Section 4 of this Act. Nothing in this section shall prohibit the disclosure of information necessary in the collection of fees for mental or emotional health services, as provided by Subsection (b)(5) of Section 4 of this Act.

(c) Any person who receives information from confidential communications or records as defined by Section 2, other than the persons listed in Subsection (b)(4) of Section 4 who are acting on the patient's client's behalf, shall not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

(d) The prohibitions of this Act continue to apply to confidential communications or records concerning any patient/client irrespective of when the patient/client received services of a professional.

Privilege of Confidentiality

Sec. 3. (a) The privilege of confidentiality may be claimed by the patient/client or by other persons listed in Subsection (b)(4) of Section 4 who are acting on the patient's/client's behalf.

(b) The professional may claim the privilege of confidentiality but only on behalf of the patient/client. The authority to do so is presumed in the absence of evidence to the contrary.

Exceptions to the Privilege of Confidentiality

Sec. 4. (a) Exceptions to the privilege in court proceedings exist:

(1) when the proceedings are brought by the patient/client against a professional, including but not limited to malpractice proceedings, and in any criminal or license revocation proceedings in which the patient/client is a complaining witness and in which disclosure is relevant to the claim or defense of a professional;

(2) when the patient/client waives his right in writing to the privilege of confidentiality of any information, or when other persons listed in Subsection (b)(4) of Section 4 who are acting on the

patient's/client's behalf submit a written waiver to the confidentiality privilege;

(3) when the purpose of the proceeding is to substantiate and collect on a claim for mental or emotional health services rendered to the patient/client; or

(4) when the judge finds that the patient/client after having been previously informed that communications would not be privileged, has made communications to a professional in the course of a court-ordered examination relating to the patient's/client's mental or emotional condition or disorder, providing that such communications shall not be privileged only with respect to issues involving the patient's/client's mental or emotional health. On granting of the order, the court, in determining the extent to which any disclosure of all or any part of any communication is necessary, shall impose appropriate safeguards against unauthorized disclosure.

(b) Exceptions to the privilege of confidentiality, in other than court proceedings, allowing disclosure of confidential information by a professional, exist only to the following:

(1) to governmental agencies where such disclosures are required or authorized by law;

(2) to medical or law enforcement personnel where the professional determines that there is a probability of imminent physical injury by the patient/client to himself or to others, or where there is a probability of immediate mental or emotional injury to the patient/client;

(3) to qualified personnel for the purpose of management audits, financial audits, program evaluations, or research, but such personnel may not identify, directly or indirectly, a patient/client in any report of such research, audit, or evaluation, or otherwise disclose identities in any manner;

(4) to any person bearing the written consent of the patient/client, or a parent if the patient/client is a minor, or a guardian if the patient/client has been adjudicated incompetent to manage his personal affairs, or to the patient's/client's personal representative if the patient/client is deceased;

(5) to individuals, corporations, or governmental agencies involved in the payment or collection of fees for mental or emotional health services performed by a professional as defined in Section 1 of this Act; or

(6) to other professionals and personnel under the direction of the professional who are participating in the diagnosis, evaluation, or treatment of the patient/client.

Legal Remedies

Sec. 5. A person aggrieved by a violation of this Act may petition the district court of the county in which the person resides, or in the case of a nonresident of the state, the district court of Travis County, for appropriate injunctive relief, and the petition takes precedence over all civil matters on the docket of the court except those matters to which equal precedence on the docket is granted by law. A person aggrieved by a violation of this Act may prove a cause of action for civil damages.

Severability Clause

Sec. 6. If any portion of this Act is declared invalid or unconstitutional, it is the intention of the legislature that the other portions shall remain in full force and effect, and to this end the provisions of this Act are declared to be severable.

[Acts 1979, 66th Leg., p. 512, ch. 239, §§ 1 to 6, eff. Aug. 27, 1979.]

Art. 5561i. Laredo State Center for Human Development

Sec. 1. There is hereby established the Laredo State Center for Human Development as a facility of the Texas Department of Mental Health and Mental Retardation for the purpose of providing mental retardation and mental health services to the people of this state. All powers, duties, functions and obligations of the Rio Grande State Center for Mental Health and Mental Retardation outreach facility located in Laredo, Webb County, Texas, together with all of its property, records, and personnel, are transferred to the Laredo State Center for Human Development. The State Center shall admit persons and shall provide for their care and maintenance under the same laws, rules, and regulations as govern the admission and care of mentally retarded and mentally ill persons provided for in the general laws of the State of Texas.

Sec. 2. Within the limits of legislative appropriations, the Texas Board of Mental Health and Mental Retardation may acquire land by purchase or gift in the Webb County, Texas, area, and may build suitable permanent buildings to provide mental retardation and mental health services. The board shall take title to any land acquired for the State Center in the name of the State of Texas for the use and benefit of the State Center; provided, however, that the Attorney General of Texas shall first approve title to the land. Plans and specifications for suitable permanent buildings may be prepared and contracts for the construction of such buildings may be awarded when the land and necessary funds are available, under procedures prescribed by the board, and the board shall have the power and authority to do and perform all things necessary for carrying out the purposes of this Act.

Sec. 3. Each section of this Act will take effect on the first day that money becomes available for its implementation pursuant to legislative appropriation.

Sec. 4. If any provision of this Act or the application thereof to any person or circumstances is held

invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

[Acts 1979, 66th Leg., p. 1141, ch. 547, §§ 1 to 4, eff. Aug. 27, 1979.]

TITLE 93

MARKETS AND WAREHOUSES

CHAPTER TWO. WAREHOUSES AND WAREHOUSEMEN

Art. 5577b. Grain Warehouse Act

[See Compact Edition, Volume 5 for text of 1]

Definitions

Sec. 2. For the purpose of this Act:

[See Compact Edition, Volume 5 for text of 2(a) to (c)]

(d) "Public grain warehouse," hereinafter referred to as warehouse, means any enterprise operating a building, bin, or similar structure used for receiving, storage, shipment or handling of grain for hire, or for purchase and sale of grain, or of grain on which payment is deferred. Providing, however, that nothing herein shall bring within the definition of public grain warehouse, any person, firm, or corporation whose entire business is manufacturing of or sale at retail of manufactured grain. A business involved in grain manufacturing or the retail sale of manufactured grain is not exempt from licensing if it satisfies the definition of a "public grain warehouse." Further, providing that any person, firm, or corporation which receives grain, with the intent of ultimately using such grain for planting seeds or for feeding livestock on the premises where it is received, shall not be within the definition of a public grain warehouse in this Act, unless such person, firm, or corporation, in writing, requests of the Commissioner of Agriculture to be licensed as a public grain warehouse.

[See Compact Edition, Volume 5 for text of 2(e) to (j)]

(k) "Receipted grain" is grain that is stored in a licensed public grain warehouse and for which a Texas Grain Warehouse Receipt has been issued and has not been cancelled.

(l) "Open storage grain" is grain that is received for storage by a licensed public grain warehouse on which no negotiable grain warehouse receipt is outstanding and which is not owned by the warehouse in which it is stored.

(m) "Company owned grain" is grain that has either been paid for and is wholly owned by the licensed warehouse or grain on which the licensed warehouse has a written contract to purchase from the owner under which ownership of the grain has been conveyed to the warehouse.

[See Compact Edition, Volume 5 for text of 3 to 6]

Bond Requisites

Sec. 7.

[See Compact Edition, Volume 5 for text of 7(a)]

(b) Such bond shall: (1) be in such form and contain such terms and conditions as the commissioner shall prescribe; (2) be conditioned upon the faithful performance of all obligations of a licensed warehouseman as to receipted grain and open storage grain under the terms of this Act and regulations hereunder from the effective date of the bond until the license is revoked or the bond is cancelled as provided in this Act, whichever occurs first; and (3) be further conditioned upon the faithful performance from the effective date of the bond and thereafter, whether or not said warehouse remains licensed under this Act, of such obligations as a warehouseman under contract with depositors of grain in the warehouse as exists on the effective date of the bond or are thereafter assumed prior to the time the license of the warehouseman is revoked or the bond is cancelled as provided herein, whichever occurs first; and (4) in an amount of bond to be that the net worth of the company shall be the equivalent of 20\$ per bushel of the storage capacity, and the bond shall be not less than 20\$ per bushel on the first million bushels; 15\$ per bushel on the second million bushels; 10\$ per bushel on all capacity above two million bushels, the bond not to be less than \$15,000.00 nor more than \$500,000.00. In the event the net worth of the company is less than 20\$ per bushel based on storage capacity, then a deficiency bond shall be established for the difference in addition to the above mentioned bond and without regard to the maximum amount. Continuance certificates or renewal certificates shall be acceptable for reissuance of warehouse license.

(c) The applicant may give a single bond meeting the requirements of this Act and all licensed warehouses operating by him shall be deemed as one warehouse for the purpose of this bond, except that each licensed facility must be covered by a bond in the amount of at least \$15,000.00.

[See Compact Edition, Volume 5 for text of 7(d) to 14]

Duty of Warehouseman to Receive: Issuance of Tickets and Receipts

Sec. 15. (a) Every licensed warehouseman shall, upon receiving grain, issue to the person from whom

the grain was received, a serially numbered ticket in a form approved by the commissioner. Such tickets shall be nonnegotiable. No two nonnegotiable tickets bearing the same number may be issued by the same warehouse during any one calendar year.

(b) Upon application of the depositor, the warehouseman shall issue to the depositor a Texas Grain Warehouse Receipt in a form prescribed by the commissioner and in conformity with Chapter 7, Texas Business & Commerce Code. Warehouse receipts issued under this chapter shall be subject to all the provisions of Chapter 7, Texas Business & Commerce Code.¹ Texas Grain Warehouse Receipts are negotiable documents of title.

[See Compact Edition, Volume 5 for text of 15(c)]

¹ Business and Commerce Code, § 7.101 et seq.

[See Compact Edition, Volume 5 for text of 16 to 19]

Records

Sec. 20.

[See Compact Edition, Volume 5 for text of 20(a) to (c)]

(d) The warehouseman shall keep in numerical order his copies of the tickets issued by him.

(e) A licensed grain warehouse facility shall report to the commissioner, on forms furnished by him, the following information on nonnegotiable scale weight tickets used:

- (1) the number of tickets printed;
- (2) the serial numbers of the above tickets; and
- (3) the printer of the scale weight tickets.

[See Compact Edition, Volume 5 for text of 21 to 24]

Penalties

Sec. 25. (a) Unless otherwise provided in this Act, every person who shall violate any of the provisions of this Act shall be guilty of a Class B misdemeanor.

(b) Any person who shall transact any public warehouse business without first procuring a license as herein provided, or who shall continue to transact any such business after such license has been revoked or suspended except as provided in Section 15, shall be guilty of a felony of the third degree for each day such business is carried on.

(c) Every person who issues or aids in issuing a receipt or ticket knowing that the grain for which such receipt or ticket is issued has not been actually received at the licensed warehouse, every person who issues or aids in issuing a duplicate, or additional negotiable receipt for grain knowing that a former negotiable receipt for the same grain or any part thereof is outstanding and uncanceled, except

in case of a lost, stolen, or destroyed receipt, as provided in Section 20, and every person who shall fraudulently and without proper authority represent, forge, alter, counterfeit or simulate any license, ticket, or receipt provided for in this Act, shall be guilty of a felony of the second degree.

(d) Except in case of sale or other disposition of the grain in lawful enforcement of the warehouseman's lien or on warehouseman's lawful termination of storage, shipping or handling agreements, or except as permitted by regulations of the commissioner when necessary to effectuate the purpose of this Act:

(1) Every person who delivers any grain out of the warehouse for which a license has been issued, knowing that a negotiable receipt, the negotiation of which would transfer the right of possession of such grain is outstanding and uncanceled, without obtaining the possession of such receipt at or before the time of such delivery shall be guilty of a felony of the second degree.

(2) Any person who delivers any commodity out of warehouse for which a license has been issued, knowing that a nonnegotiable receipt or ticket is outstanding and uncanceled, without the prior approval of the person lawfully entitled to delivery under such nonnegotiable receipt or ticket and without such delivery being shown on the appropriate records of the warehouseman, shall be guilty of a felony of the second degree.

(e) Every person who fraudulently issues or aids in fraudulently issuing a receipt or ticket knowing that it contains any false statement shall be guilty of a felony of the second degree.

(f) Every person who deposits grain to which he has not title, or upon which there is a lien or mortgage, and who takes for such grain a negotiable receipt which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage, and every person who changes any receipt or ticket subsequent to issuance except for notations by the warehouseman or partial delivery, shall be guilty of a felony of the second degree.

(g) Every person who, with the intent to deprive the owner of the grain, obtains or exercises control over grain stored in a licensed grain warehouse without the owner's effective consent, or who obtains from another grain stolen from a licensed grain warehouse or exercises control over that grain stolen by another knowing it was stolen, shall be guilty of a felony of the second degree.

(h) Venue for prosecutions under this Act is in the county in which the alleged offense occurred.

[See Compact Edition, Volume 5 for text of 26 to 29]

[Amended by Acts 1977, 65th Leg., p. 177, ch. 87, §§ 1 to 6, eff. June 1, 1977.]

CHAPTER SEVEN. WEIGHTS AND MEASURES

Art. 5728. Fees; Failure or Refusal to Pay; Repairs; Testing Services; Penalty

(a) The Commissioner of Agriculture shall collect fees for testing all weights, scales, beams and any kind of instruments or mechanical devices for weighing or measuring whenever he is required to make such tests under the provisions of this Chapter. The fee for testing gasoline, kerosene and diesel fuel pumps not to exceed Two Dollars (\$2) for each pump tested; the test certificate or seal shall be attached to each gasoline, kerosene and diesel fuel pump; fee for testing scales up to nine hundred and ninety-nine (999) pounds not to exceed Two Dollars (\$2) for each scale tested; fee for testing scales one thousand (1,000) pounds to four thousand nine hundred and ninety-nine (4,999) pounds not to exceed Five Dollars (\$5) for each scale tested; fee for testing scales four thousand nine hundred and ninety-nine (4,999) pounds and over not to exceed Twenty Dollars (\$20) for each scale tested. The fee for testing butane and propane metering devices not to exceed Twenty Dollars (\$20) for each metering device tested. The fee for testing other metering devices with a delivery capacity of less than fifty (50) gallons per minute is Two Dollars (\$2) for each metering device tested; the fee for testing those with a delivery capacity of fifty (50) gallons or more per minute but less than one hundred (100) gallons per minute is Five Dollars (\$5) for each metering device tested; and the fee for testing those with a delivery capacity of one hundred (100) or more gallons per minute is Ten Dollars (\$10) for each metering device tested. The fee for testing measuring devices located on raw milk storage tanks situated on farms up to four hundred (400) gallons not to exceed Ten Dollars (\$10) for each tank tested; fee for testing measuring devices located on raw milk storage tanks situated on farms four hundred and one (401) gallons to six hundred (600) gallons not to exceed Fifteen Dollars (\$15) for each tank tested; fee for testing measuring devices located on raw milk storage tanks situated on farms six hundred and one (601) gallons and over not to exceed Twenty Dollars (\$20) for each tank tested.

(b) The fees in this subsection shall be charged for testing done by the metrology laboratory of the office of the Commissioner of Agriculture. The fee for tolerance testing weights of less than one thousand (1,000) pounds is One Dollar (\$1) for each weight tested. The fee for tolerance testing weights of one thousand (1,000) pounds or more but less than two thousand five hundred (2,500) pounds is Two Dollars and Fifty Cents (\$2.50). The fee for tolerance testing weights of two thousand five hundred (2,500) pounds or more but less than five thousand (5,000) pounds is Five Dollars (\$5). The fee for

tolerance testing weights of five thousand (5,000) pounds and above is Ten Dollars (\$10) for each weight tested. The fee for tolerance testing a measure with a capacity of five (5) gallons or less is One Dollar (\$1). The fee for tolerance testing a measure with a capacity greater than five (5) gallons is One Dollar (\$1) plus Ten Cents (\$.10) for each gallon over five (5) gallons. A fee of Fifteen Dollars (\$15) per hour shall be charged for all precision testing performed by the laboratory, prorated each quarter hour.

(c) The fees charged under this article shall be collected by the Commissioner of Agriculture, his deputies and agents not to exceed once annually, except where additional tests are requested by the owner of the measuring, metering, or weighing device or of accessories to the device in which event there shall be paid to the Commissioner, his deputies and agents a fee equal to the annual fee for each additional test. The proceeds of such fees shall be paid into the State Treasury by the Commissioner of Agriculture. Provided, however, that no city which maintains a Weights and Measures Department for checking all weights and checking devices shall be precluded by this Act from operating such a Weights and Measures Department.

[Amended by Acts 1975, 64th Leg., p. 1866, ch. 586, § 1, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 515, ch. 240, § 1, eff. Aug. 27, 1979.]

CHAPTER EIGHT. MARKETING ASSOCIATIONS

Art. 5749. Election of Officers

The directors shall elect from their number a president or chairman and one or more vice-presidents or vice-chairmen. They shall also elect a secretary and treasurer, who need not be a director, and they may combine the two latter offices and designate the combined office as secretary-treasurer. The treasurer may be a bank or any depository, and as such shall not be considered as an officer but as a function of the board of directors. In such case the secretary shall perform the usual accounting duties of the treasurer, excepting that the funds shall be deposited only as authorized by the board of directors.

[Amended by Acts 1975, 64th Leg., p. 374, ch. 165, § 1, eff. Sept. 1, 1975.]

Art. 5750. Stock—Membership Certificates

When a member of an association established without capital stock, has paid his membership fee in full, he shall receive a certificate of membership. No association shall issue stock to a member until it has been fully paid for. The promissory notes of the members may be accepted by the association as full or partial payment. The association shall hold the stock as security for the payment of the note, but

such retention as security shall not affect the members' right to vote. Except for debts lawfully contracted between him and the association, no member shall be liable for the debts of the association to an amount exceeding the sum remaining unpaid on his membership fee or his subscription to the capital stock, including any unpaid balance on any promissory notes given in payment thereof. No stockholder of a co-operative association shall own more than one-twentieth of the issued common stock of the association; and an association, in its by-laws, may limit the amount of common stock which one member may own to any amount less than one-twentieth of the issued common stock. No member or stockholder shall be entitled to more than one vote, unless the co-operative association is organized primarily for the production, cultivation, and care of citrus groves or for the processing and marketing of citrus products, has its principal office in a county having at least 500 acres of land planted in citrus groves, and includes among its members one or more associations or groups organized on a co-operative basis, in

which case the co-operative association may provide in its Articles of Incorporation or by-laws that a member association or group may have more than one vote. Any association organized with stock, under this law may issue preferred stock, with or without the right to vote. Such stock may be redeemable or retirable by the association on such terms and conditions as may be provided for by the Articles of Incorporation and printed on the face of the certificate. The by-laws shall prohibit the transfer of the common stock of the association to persons not engaged in the production of the agricultural products handled by the association, and such restrictions must be printed upon every certificate of stock subject thereto. The association may at any time except when the debts of the association exceed fifty per cent of the assets thereof, buy in or purchase its common stock at book value thereof as conclusively determined by the board of directors and pay for it in cash within one year thereafter. [Amended by Acts 1979, 66th Leg., p. 1551, ch. 667, § 1, eff. June 13, 1979.]

TITLE 94

MILITIA—SOLDIERS, SAILORS AND MARINES

CHAPTER THREE. NATIONAL GUARD

Art. 5781. Adjutant General

Department

Sec. 1.

[See Compact Edition, Volume 5 for text of 1(a) and (b)]

(c) The Adjutant General's Department is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the Department is abolished, and this Article expires effective September 1, 1981.

[See Compact Edition, Volume 5 for text of 2 to 15]

¹ Article 5429k.

[Amended by Acts 1977, 65th Leg., p. 1840, ch. 735, § 2.055, eff. Aug. 29, 1977.]

Art. 5787. Veterans County Service Office

[See Compact Edition, Volume 5 for text of 1 and 2]

Veterans Affairs Commission

Sec. 3.

[See Compact Edition, Volume 3 for text of 3(a) and (b)]

(b-1) The Veterans Affairs Commission of the State of Texas is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished effective September 1, 1981.

[See Compact Edition, Volume 3 for text of 3(c) to (1)]

[Amended by Acts 1977, 65th Leg., p. 1839, ch. 735, § 2.051, eff. Aug. 29, 1977.]

¹ Article 5429k.

Art. 5788. Texas Code of Military Justice

SUBCHAPTER I. GENERAL PROVISIONS

Definitions

Sec. 1. In this Code:

(1) "State Judge Advocate General" means the Judge Advocate General of the State Military Forces, commissioned therein, and responsible for supervising the administration of military justice

in the state military forces, and performing such other legal duties as may be required by the Adjutant General.

(2) "State military forces" means the National Guard of this state, as defined in Section 101(3), (4) and (6) of Title 32, United States Code, and any other militia or military forces organized under the laws of the state.

(3) "Commanding Officer" includes commissioned officers and warrant officers, as applicable.

(4) "Officer" means commissioned or warrant officer.

(5) "Superior Commissioned Officer" means a commissioned officer superior in rank or command.

(6) "Officer candidate" means a cadet of the state officer candidate school.

(7) "Enlisted member" means a person in an enlisted grade.

(8) "Military" refers to any or all of the state military forces.

(9) "Accuser" means a person who signs and swears to charges, any person who directs that charges nominally be signed and sworn to by another, and any other person who has an interest other than an official interest in the prosecution of the accused.

(10) "Military Judge" means an official of a court-martial detailed in accordance with Section 26 of this Code.

(11) "Convening authority" includes, in addition to the person who convened the court, a commissioned officer commanding for the time being, or a successor in command.

(12) "Legal officer" means any commissioned officer of the state military forces designated to perform legal duties for a command.

(13) "Grade" means a step or degree, in a graduated scale of office or military rank, that is established and designated as a grade by law or regulation.

(14) "Rank" means the order of precedence among members of the state military forces.

(15) "Active state duty" means all duty authorized under the Constitution and laws of the State of Texas and all training authorized under Title 32, United States Code.

(16) "Judge Advocate" means any commissioned officer who is certified by the State Judge Advocate General.

(17) "Military Court" means a court-martial, a court of inquiry, a military commission, or a provost court.

(18) "May" is used in a permissive sense.

(19) "Shall" is used in an imperative sense.

(20) "He," where used, means, and shall be interpreted to include, both the masculine and feminine gender.

(21) "Code" means this Act.

Persons Subject to This Code

Sec. 2. This Code applies to all members of the state military forces who are not in federal service.

Jurisdiction to Try Certain Personnel

Sec. 3. (a) Each person discharged from the state military forces who is later charged with having fraudulently obtained his discharge is, subject to Section 43 of this Code, subject to trial by court-martial on that charge and is, after apprehension, subject to this Code while in custody of the military for that trial. Upon conviction of that charge he is subject to trial by court-martial for all offenses under this Code committed before the fraudulent discharge.

(b) No person who has deserted from the state military forces may be relieved from amenability to the jurisdiction of this Code by virtue of a separation from any later period of service.

Sec. 4. Reserved.

Territorial Applicability of the Code

Sec. 5. (a) This Code applies in all places. It also applies to all persons otherwise subject to this Code while they are serving outside the state, and while they are going to and returning from such service outside the state, in the same manner and to the same extent as if they were serving inside the state.

(b) Courts-martial and courts of inquiry may be convened and held in units of the state military forces while those units are serving outside the state, with the same jurisdiction and power as to persons subject to this Code as if the proceedings were held inside the state, and offenses committed outside the state may be tried and punished either inside or outside the state.

Judge Advocates and Legal Officers

Sec. 6. (a) The Adjutant General shall appoint an officer of the state military forces as State Judge Advocate General. To be eligible for appointment, an officer must be a member of the bar of a Federal

Court and of the highest court of the State of Texas for at least 5 years.

(b) The Adjutant General shall appoint judge advocates and legal officers upon recommendation of the State Judge Advocate General. To be eligible for appointment, judge advocates or legal officers must be officers of the state military forces and members of the bar of a Federal Court and of the highest court of the State of Texas.

(c) The State Judge Advocate General or his assistants shall make frequent inspections in the field in supervision of the administration of military justice.

(d) Convening authorities shall at all times communicate directly with their staff judge advocates or legal officers in matters relating to the administration of military justice; and the staff judge advocates or legal officers of any command are entitled to communicate directly with the staff judge advocates or legal officers of a superior or subordinate command, or with the State Judge Advocate General.

(e) No person who has acted as member, military judge trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, or investigating officer, or who has been a witness for either the prosecution or defense in any case may later act as staff judge advocate or legal officer to any reviewing authority upon the same case.

SUBCHAPTER II. APPREHENSION AND RESTRAINT

Apprehension

Sec. 7. (a) Apprehension is the taking of a person into custody.

(b) Any person authorized by this Code, or by regulations issued under it, to apprehend persons subject to this Code, any marshal of a court-martial appointed pursuant to the provisions of this Code, and any peace officer having authority to apprehend offenders under the laws of the United States or of a state, may do so upon reasonable belief that an offense has been committed and that the person apprehended committed it.

(c) Commissioned officers, warrant officers, and noncommissioned officers have authority to quell quarrels, frays, and disorders among persons subject to this Code and to apprehend persons subject to this Code who take part therein.

Apprehension of Deserters

Sec. 8. Any civil officer or peace officer having authority to apprehend offenders under the laws of the United States or of a state, territory, commonwealth, or possession, or the District of Columbia, may summarily apprehend a deserter from the state

military forces and deliver him into the custody of the state military forces.

Imposition of Restraint

Sec. 9. (a) Arrest is the restraint of a person by an order, not imposed as a punishment for an offense, directing him to remain within certain specified limits. Confinement is the physical restraint of a person.

(b) An enlisted member may be ordered into arrest or confinement by any commissioned officer by an order, oral or written, delivered in person or through other persons subject to this Code or through any person authorized by this Code to apprehend persons. A commanding officer may authorize warrant officers or noncommissioned officers to order enlisted members of his company or subject to his authority into arrest or confinement.

(c) A commissioned officer or warrant officer may be ordered apprehended or into arrest or confinement only by a commanding officer to whose authority he is subject, by an order, oral or written, delivered in person or by another commissioned officer. The authority to order such persons apprehended or into arrest or confinement may not be delegated.

(d) No person may be ordered apprehended or into arrest or confinement except for probable cause.

(e) This Section does not limit the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until proper authority may be notified.

Restraint of Persons Charged With Offenses

Sec. 10. Any person subject to this Code charged with an offense under this Code shall be ordered into arrest or confinement, as circumstances may require; but when charged with only an offense normally tried by a summary court-martial, such person shall not ordinarily be placed in confinement. When any person subject to this Code is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform him of the specific wrong of which he is accused and to try him or to dismiss the charges and release him. Persons confined other than in a guardhouse, whether before, during, or after trial by a military court, shall be confined in civil jails.

Reports and Receiving of Prisoners

Sec. 11. (a) No provost marshal, commander of a guard, master at arms, warden, keeper, or officer of a city or county jail or any other jail, designated under Section 10 of this Code, may refuse to receive or keep any prisoner committed to his charge, when the committing person furnishes a statement, signed by him, of the offense charged against the prisoner.

(b) Every commander of a guard, master at arms, warden, keeper, or officer of a city or county jail or of any other jail, designated under Section 10 of this Code, to whose charge a prisoner is committed shall, within 24 hours after that commitment or as soon as he is relieved from guard, report to the commanding officer of the prisoner the name of the prisoner, the offense charged against him, and the name of the person who ordered or authorized the commitment.

Sec. 12. Reserved.

Punishment Prohibited Before Trial

Sec. 13. Subject to Section 57 of this Code, no person, while being held for trial or the result of trial, may be subjected to punishment or penalty other than arrest or confinement upon the charges pending against him, nor shall the arrest or confinement imposed upon him be any more rigorous than the circumstances require to insure his presence, but he may be subjected to minor punishment during that period for infractions of discipline.

Delivery of Offenders to Civil Authorities

Sec. 14. (a) Under such regulations as may be prescribed under this Code a person subject to this Code who is on active state duty who is accused of an offense against civil authority may be delivered, upon request, to the civil authority for trial.

(b) When delivery under this Section is made to any civil authority of a person undergoing sentence of a court-martial, the delivery, if followed by conviction in a civil tribunal, interrupts the execution of the sentence of the court-martial, and the offender, after having answered to the civil authorities for his offense, shall, upon the request of competent military authority, be returned to military custody for the completion of his sentence.

SUBCHAPTER III. NON-JUDICIAL PUNISHMENT

Commanding Officer's Non-judicial Punishment

Sec. 15. (a) Under such regulations as the Governor may prescribe, limitations may be placed on the powers granted by this Section with respect to the kind and amount of punishment authorized, the categories of commanding officers and warrant officers exercising command authorized to exercise those powers, the applicability of this Section to an accused who demands trial by court-martial and the kinds of courts-martial to which the case may be referred upon such a demand. However, except in the case of a member attached to or embarked in a vessel, punishment may not be imposed upon any member of the state military forces under this Section if the member has, before the imposition of such punishment, demanded trial by court-martial in lieu of such punishment. Under similar regulations,

rules may be prescribed with respect to the suspension of punishments authorized hereunder. If authorized by regulations of the Governor, the Governor or an officer of general rank in command may delegate his powers under this Section to a principal assistant. If disciplinary punishment other than admonition or reprimand is to be imposed, the accused shall be afforded the opportunity to be represented by defense counsel having the qualifications prescribed under Section 27(b), if available. Otherwise, the accused shall be afforded the opportunity to be represented by any available commissioned officer of his choice. The accused may also employ civilian counsel of his own choosing at his own expense. In all proceedings, the accused is allowed 3 duty days, or longer on written justification, to reply to the notification of intent to impose punishment under this Section.

(b) Subject to subsection (a) of this Section, any commanding officer may, in addition to or in lieu of admonition or reprimand, impose one or more of the following disciplinary punishments for minor offenses without the intervention of a court-martial:

(1) upon officers of his command;

(A) restriction to certain specified limits with or without suspension from duty, for not more than 30 days;

(B) if imposed by the Governor, or an officer of general rank in command;

(i) arrest in quarters for not more than 30 days;

(ii) forfeiture of not more than one-half of 1 month's pay per month for 2 months or a fine of not more than \$75;

(iii) restriction to certain specified limits, with or without suspension from duty, for not more than 60 days;

(iv) detention of not more than one-half of one month's pay per month for 3 months;

(2) upon other personnel of his command;

(A) if imposed upon a person attached to or embarked in a vessel, confinement for not more than 3 days;

(B) correctional custody for not more than 7 days;

(C) forfeiture of not more than 7 days pay or a fine of not more than \$10;

(D) reduction to the next inferior pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction;

(E) extra duties including fatigue or other duties, for not more than 30 days, which need not be consecutive, and for not more than 2 hours per day, holidays included;

(F) restriction to certain specified limits, with or without suspension from duty for not more than 14 days;

(G) detention of not more than 14 days pay;

(H) if imposed by an officer of the grade of major or above;

(i) the punishment authorized under subsection (b)(2)(A) of this Section;

(ii) correctional custody for not more than 30 days;

(iii) forfeiture of not more than one-half of 1 month's pay per month for 2 months or a fine of not more than \$75;

(iv) reduction to the lowest or any intermediate pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction, but an enlisted member in a pay grade above E-4 may not be reduced more than 2 pay grades;

(v) extra duties, including fatigue or other duties, for not more than 45 days which need not be consecutive and for not more than 2 hours per day, holidays included;

(vi) restriction to certain specified limits with or without suspension from duty, for not more than 60 days;

(vii) detention of not more than one-half of 1 months pay per month for 3 months. Detention of pay shall be for a stated period of not more than 1 year but if the offender's term of service expires earlier, the detention shall terminate upon that expiration. No 2 or more of the punishments of arrest in quarters, correctional custody, extra duties, and restriction may be combined to run consecutively in the maximum amount imposable for each. Whenever any of those punishments are combined to run consecutively, there must be an apportionment. In addition, fine or forfeiture of pay may not be combined with detention of pay without an apportionment. For the purposes of this subsection "correctional custody" is the physical restraint of a person during duty or non-duty hours and may include extra duties, fatigue duties, or hard labor. If practicable, correctional custody will not be served in immediate association with persons awaiting trial or held in confinement pursuant to trial by courts-martial.

(c) An officer in charge may impose upon enlisted members assigned to the unit of which he is in charge such of the punishments authorized under subsection (b)(2)(A)-(G) of this Section as the Governor may specifically prescribe by regulation.

(d) The officer who imposes the punishment authorized in subsection (b) or his successor in command, may, at any time, suspend probationally any

part or amount of the unexecuted punishment imposed and may suspend probationally a reduction in grade or fine or forfeiture imposed under subsection (b), whether or not executed. In addition, he may, at any time, remit or mitigate any part or amount of the unexecuted punishment imposed and may set aside in whole or in part the punishment, whether executed or unexecuted; and restore all rights, privileges, and property affected. He may also mitigate reduction in grade to fine or forfeiture or detention of pay.

When mitigating:

(1) arrest in quarters to restriction, or

(2) extra duties to restriction, the mitigated punishment shall not be for a greater period than the punishment mitigated. When mitigating forfeiture of pay to detention of pay, the amount of the detention shall not be greater than the amount of the forfeiture. When mitigating reduction in grade to fine, forfeiture or detention of pay, the amount of the fine, forfeiture or detention shall not be greater than the amount that could have been imposed initially under this Section by the officer who imposed the punishment mitigated.

(e) A person punished under this Section who considers his punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority. The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The superior authority may exercise the same powers with respect to the punishment imposed as may be exercised under subsection (d) of this Section by the officer who imposed the punishment. Before acting on an appeal from a punishment of:

- (1) arrest in quarters for more than 7 days;
- (2) correctional custody for more than 7 days;
- (3) forfeiture of more than 7 days pay;
- (4) reduction of 1 or more pay grades from the fourth or a higher pay grade;
- (5) extra duties for more than 14 days;
- (6) restriction of more than 14 days pay;
- (7) detention of more than 14 days pay; the authority who is to act on the appeal shall refer the case to a judge advocate or legal officer of the state military forces for consideration and advice, and may so refer the case upon appeal from any punishment imposed under subsection (b).

(f) The imposition and enforcement of disciplinary punishment under this Section for any act or omission is not a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission, and not properly punishable under this Section, but the fact that a disciplinary punishment has been enforced may be shown by the accused

upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

(g) The Governor may, by regulation, prescribe the form of records to be kept of proceedings under this Section and may also prescribe that certain categories of those proceedings shall be in writing.

SUBCHAPTER IV. COURTS-MARTIAL

Courts-Martial Classified

Sec. 16. The three kinds of courts-martial in each of the state military forces are:

(1) general court-martial, consisting of:

(A) a military judge and not less than 5 members; or

(B) only a military judge, if before the court is assembled the accused, knowing the identity of the military judge and after consultation with defense counsel, requests in writing a court composed only of a military judge and the military judge approves;

(2) special court-martial, consisting of:

(A) not less than 3 members; or

(B) a military judge and not less than 3 members; or

(C) only a military judge, if one has been detailed to the court, and the accused under the same conditions as those prescribed in clause (1)(B) so requests; and

(3) Summary court-martial, consisting of 1 officer, who shall be a military judge or an attorney licensed to practice law in this state.

Jurisdiction of Courts-Martial in General

Sec. 17. Each force of the state military forces has court-martial jurisdiction over all persons subject to this Code. The exercise of jurisdiction by one force over personnel of another force shall be in accordance with regulations prescribed by the Governor.

Jurisdiction of General Courts-Martial

Sec. 18. (a) Subject to Section 17 of this Code, general courts-martial have jurisdiction to try persons subject to this Code for any offense made punishable by this Code and may, under such limitations as the Governor may prescribe, adjudge any of the following punishments:

- (1) A fine of not more than \$200 or confinement for not more than 200 days;
- (2) Forfeiture of pay and allowances;
- (3) A reprimand;
- (4) Dismissal or dishonorable discharge;
- (5) Reduction of a noncommissioned officer to the ranks; or

(6) Any combination of these punishments.

(b) A dismissal or dishonorable discharge may not be adjudged unless a complete record of the proceedings and testimony has been made, counsel having the qualifications prescribed under Section 27(b) of this Code was detailed to represent the accused, and a military judge was detailed to the trial.

Jurisdiction of Special Courts-Martial

Sec. 19. (a) Subject to Section 17 of this Code, special courts-martial have jurisdiction to try persons subject to this Code, except commissioned officers, for any offense for which they may be punished under this Code. A special court-martial has the same powers of punishment as a general court-martial, except that a fine or confinement imposed by a special court-martial may not be more than \$100 fine or confinement of not more than 100 days for a single offense.

(b) A dismissal or dishonorable discharge may not be adjudged unless a complete record of the proceedings and testimony has been made, counsel having the qualifications prescribed under Section 27(b) of this title was detailed to represent the accused, and a military judge was detailed to the trial, except in any case in which a military judge could not be detailed to the trial because of physical conditions or military exigencies. In any such case in which a military judge was not detailed to the trial, the convening authority shall make a detailed written statement, to be appended to the record, stating the reason or reasons a military judge could not be detailed.

Jurisdiction of Summary Courts-Martial

Sec. 20. (a) Subject to Section 17 of this Code, summary courts-martial have jurisdiction to try persons subject to this Code, except officers, for any offense made punishable by this Code.

(b) No person with respect to whom summary courts-martial have jurisdiction may be brought to trial before a summary court-martial if he objects thereto. If objection to trial by summary court-martial is made by an accused, trial may be ordered by special or general court-martial, as may be appropriate.

(c) A summary court-martial may sentence to a fine of not more than \$25 or confinement for not more than 25 days for a single offense, to forfeiture of pay and allowances, and reduction of a noncommissioned officer to the ranks.

Sec. 20A. Reserved.

Jurisdiction of Courts-Martial not Exclusive

Sec. 21. The provisions of this chapter conferring jurisdiction upon courts-martial do not deprive military commissions, provost courts, or other military

tribunals of concurrent jurisdiction with respect to offenders or offenses that by statute or by the law of war may be tried by military commissions, provost courts, or other military tribunals.

SUBCHAPTER V. COMPOSITION OF COURTS-MARTIAL

Who May Convene General Courts-Martial

Sec. 22. In the militia or state military forces not in federal service general courts-martial may be convened by:

(a) the Governor of the State of Texas; or

(b) the Adjutant General or any other General Officer under such regulations as the Governor may promulgate.

Who May Convene Special Courts-Martial

Sec. 23. In the state military forces not in federal service, the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where troops are on duty, or of a division, brigade, regiment, wing, group, detached battalion, separate squadron, or other detached command, may convene special courts-martial. Special courts-martial may also be convened by superior authority. When any such officer is an accuser, the court may be convened by superior competent authority if considered advisable by him.

Who May Convene Summary Courts-Martial

Sec. 24. (a) In the state military forces not in federal service, the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where troops are on duty, or of a regiment, wing, group, detached battalion, detached squadron, detached company, or other detachment, may convene a summary court-martial.

Who May Serve on Courts-Martial

Sec. 25. (a) Any state commissioned officer in a duty status is eligible to serve on all courts-martial for the trial of any person who may lawfully be brought before such courts for trial.

(b) Any warrant officer in a state duty status is eligible to serve on general and special courts-martial for the trial of any person, other than a commissioned officer, who may lawfully be brought before such courts for trial.

(c)(1) Any enlisted member of the state military forces in a state duty status who is not a member of the same unit as the accused is eligible to serve on general and special courts-martial for the trial of any enlisted member of the state military forces who may lawfully be brought before such courts for trial but he shall serve as a member of a court only if, before the conclusion of a session called by the military judge under Section 39(a) of this Code prior

to trial or, in the absence of such a session, before the court is assembled for the trial of the accused, the accused personally has requested in writing that enlisted members serve on it. After such a request, the accused may not be tried by a general or special court-martial the membership of which does not include enlisted members in a number comprising at least one-third of the total membership of the court, unless eligible members cannot be obtained on account of physical conditions or military exigencies. If such members cannot be obtained, the court may be convened and the trial held without them, but the convening authority shall make a detailed written statement, to be appended to the record, stating why they could not be obtained.

(2) In this Section, the word "unit" means any regularly organized body of the state military forces.

(d)(1) When it can be avoided, no person subject to this Code may be tried by a court-martial, any member of which is junior to him in rank or grade.

(2) When convening a court-martial, the convening authority shall detail as members thereof such members of the state military forces as, in his opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member of the state military forces is eligible to serve as a member of a general or special court-martial when he is the accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case.

Military Judge of a Court-Martial

Sec. 26. (a) The authority convening a general court-martial shall, and, subject to regulations issued by the Governor, the authority convening a special or summary court-martial may detail a military judge thereto. A military judge shall preside over open sessions of the court-martial to which he has been detailed.

(b) A military judge shall be a commissioned officer of the state military forces who is a member of the bar of a Federal court and a member of the bar of the highest court of this state and who is certified to be qualified for duty as a military judge by the State Judge Advocate General of the state military forces.

(c) The military judge of a general court-martial shall be designated by the State Judge Advocate General, or his designee, for detail by the convening authority, and, unless the court-martial was convened by the Governor or the Adjutant General, neither the convening authority nor any member of his staff shall prepare or review any report concerning the effectiveness, fitness, or efficiency of the military judge so detailed, which relates to his performance of duty as a military judge.

(d) No person is eligible to act as military judge in a case if he is the accuser or a witness for the prosecution or has acted as investigating officer or a counsel in the same case.

(e) The military judge of a court-martial may not consult with the members of the court except in the presence of the accused, trial counsel, and defense counsel, nor may he vote with the members of the court.

(f) A military judge detailed to preside over a court-martial hereunder shall not be subject to any report concerning the effectiveness, fitness, or efficiency of that military judge so detailed, which relates to his performance of duty as a military judge, by such convening authority, nor any member of his staff.

(g) All trial counsel, defense counsel, military judges, legal officers, summary court officers, and any other person certified by the State Judge Advocate General to perform legal functions under this Code, shall be used interchangeably, as needed, among all of the state military forces.

Detail of Trial Counsel and Defense Counsel

Sec. 27. (a) For each general, special, and summary court-martial the authority convening the court shall detail trial counsel and defense counsel and such assistants as he considers appropriate. No person who has acted as investigating officer, military judge, or court member in any case may act later as trial counsel, assistant trial counsel, or, unless expressly requested by the accused, as defense counsel, or assistant defense counsel in the same case. No person who has acted for the prosecution may act later in the same case for the defense, nor may any person who has acted for the defense act later in the same case for the prosecution.

(b) Trial counsel or defense counsel detailed for a general court-martial:

(1) Must be a graduate of an accredited law school and a member of the bar of a Federal court or of the highest court of a state; and

(2) Must be certified as competent to perform such duties by the State Judge Advocate General.

(c) In the case of a special or summary court-martial:

(1) The accused shall be afforded the opportunity to be represented at the trial by counsel having the qualifications prescribed under Section 27(b) of this Code unless counsel having such qualifications cannot be obtained on account of physical conditions or military exigencies. If counsel having such qualifications cannot be obtained, the court may be convened and the trial held but the convening authority shall make a detailed written statement, to be appended to the record, stating

why counsel with such qualifications could not be obtained;

(2) If the trial counsel is qualified to act as counsel before a general court-martial, the defense counsel detailed by the convening authority must be a person similarly qualified; and

(3) If the trial counsel is a judge advocate, or a member of the bar of a Federal court or the highest court of a state, the defense counsel detailed by the convening authority must be one of the foregoing.

Detail or Employment of Reporters and Interpreters

Sec. 28. Under such regulations as the Governor may prescribe, the convening authority of a general or special court-martial, military commission, court of inquiry, or a military tribunal shall detail or employ qualified court reporters who shall record the proceedings of and testimony taken before that court, commission, or tribunal. Under like regulations the convening authority may detail or employ interpreters who shall interpret for the court, commission, or tribunal.

Absent and Additional Members

Sec. 29. (a) No member of a general or special court-martial may be absent or excused after the court has been assembled for the trial of the accused except for physical disability or as the result of a challenge or by order of the convening authority for good cause.

(b) Whenever a general court-martial, other than a general court-martial composed of a military judge only, is reduced below 5 members the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than 5 members. The trial may proceed with the new members present after the recorded evidence previously introduced has been read to the court in the presence of the military judge, the accused, and counsel for both sides.

(c) Whenever a special court-martial, other than a special court-martial composed of a military judge only, is reduced below 3 members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than 3 members. The trial shall proceed with the new members present as if no evidence had previously been introduced at the trial, unless a verbatim record of the evidence previously introduced before the members of the court or a stipulation thereof is read to the court in the presence of the military judge, if any, the accused, and counsel for both sides.

(d) If the military judge of a court-martial composed of a military judge only is unable to proceed with the trial because of physical disability, as a result of a challenge, or for other good cause, the trial shall proceed, subject to any applicable condi-

tions of Section 16(1)(B) or (2)(C) of this Code, after the detail of a new military judge as if no evidence had previously been introduced, unless a verbatim record of the evidence previously introduced or stipulation thereof is read in court in the presence of the new military judge, the accused, and counsel for both sides.

SUBCHAPTER VI. PRE-TRIAL PROCEDURE

Charges and Specifications

Sec. 30. (a) Charges and specifications shall be signed by a person subject to this Code under oath before a commissioned officer of the state military force authorized to administer oaths and shall state:

(1) That the signer has personal knowledge of, or has investigated, the matters set forth therein; and

(2) That they are true in fact to the best of his knowledge and belief.

(b) Upon the preferring of charges, the proper authority shall take immediate steps to determine what disposition should be made thereof in the interest of justice and discipline, and the person accused shall be informed of the charges against him as soon as practicable.

Compulsory Self-Incrimination Prohibited

Sec. 31. (a) No person subject to this Code may compel any person to incriminate himself or to answer any question the answer to which may tend to incriminate him.

(b) No person subject to this Code may interrogate, or request any statement from an accused or a person suspected of an offense without first informing him of the nature of the accusation and advising him that he does not have to make any statement regarding the offense of which he is accused or suspected and that any statement made by him may be used as evidence against him in a trial by court-martial.

(c) No person subject to this Code may compel any person to make a statement or produce evidence before any military tribunal if the statement or evidence is not material to the issue and may tend to degrade him.

(d) No statement obtained from any person in violation of this Section, or through the use of coercion, unlawful influence, or unlawful inducement may be received in evidence against him in a trial by court-martial.

Investigation

Sec. 32. (a) No charge or specification may be referred to a general court-martial for trial until a thorough and impartial investigation of all the matters set forth therein has been made. This investigation shall include inquiry as to the truth of the

matter set forth in the charges, consideration of the form of charges, and a recommendation as to the disposition which should be made of the case in the interest of justice and discipline.

(b) The accused shall be advised of the charges against him and of his right to be represented at that investigation by counsel. Upon his own request, he shall be represented by civilian counsel if provided by him, or military counsel of his own selection if such counsel is reasonably available, or by counsel detailed by the officer exercising general court-martial jurisdiction over the command. At that investigation full opportunity shall be given to the accused to cross-examine witnesses against him if they are available and to present anything he may desire in his own behalf, either in defense or mitigation, and the investigating officer shall examine available witnesses requested by the accused. If the charges are forwarded after the investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides and a copy thereof shall be given to the accused.

(c) If an investigation of the subject matter of an offense has been conducted before the accused is charged with the offense, and if the accused was present at the investigation and afforded the opportunities for representation, cross-examination, and presentation prescribed in subsection (b) of this Section, no further investigation of that charge is necessary under this Section unless it is demanded by the accused after he is informed of the charge. A demand for further investigation entitles the accused to recall witnesses for further cross-examination and to offer any new evidence in his own behalf.

(d) The requirements of this Section are binding on all persons administering this Code but failure to follow them does not constitute jurisdictional error.

Forwarding of Charges

Sec. 33. When a person is held for trial by general court-martial the commanding officer shall, within 8 days after the accused is ordered into arrest or confinement, if practicable, forward the charges, together with the investigation and allied papers, to the officer exercising general court-martial jurisdiction. If that is not practicable, he shall report in writing to that officer the reasons for delay.

Advice of Staff Judge Advocate and Reference for Trial

Sec. 34. (a) Before directing the trial of any charge by general court-martial, the convening authority shall refer it to his staff judge advocate or legal officer for consideration and advice. The convening authority may not refer a charge to a general court-martial for trial unless he has found that the charge alleges an offense under this Code and is warranted by evidence indicated in the report of investigation.

(b) If the charges or specifications are not formally correct or do not conform to the substance of the evidence contained in the report of the investigating officer, formal corrections, and such changes in the charges and specifications as are needed to make them conform to the evidence may be made.

Service of Charges

Sec. 35. The trial counsel to whom court-martial charges are referred for trial shall cause to be served upon the accused a copy of the charges upon which trial is to be had. In time of peace no person may, against his objections, be brought to trial, or be required to participate by himself or counsel in a session called by the military judge under Section 39(a) of this Code in a general court-martial case within a period of 5 days after the service of charges upon him, or in a special court-martial case within a period of 3 days after the service of charges upon him.

SUBCHAPTER VII. TRIAL PROCEDURE

Governor May Prescribe Rules

Sec. 36. The procedure, including modes of proof, in cases before military courts and other military tribunals may be prescribed by the Governor by regulations, which shall, so far as he considers practicable, apply the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the courts of the State of Texas, but which may not be contrary to or inconsistent with this Code.

Unlawfully Influencing Action of Court

Sec. 37. (a) No authority convening a general, special or summary court-martial nor any other commanding officer, or officer serving on the staff thereof, may censure, reprimand, or admonish the court or any member, military judge, or counsel thereof, with respect to the findings or sentence adjudged by the court, or with respect to any other exercise of its or his functions in the conduct of the proceeding. No person subject to this Code may attempt to coerce or, by any unauthorized means, influence the action of the court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case, or the action of any convening, approving, or reviewing authority with respect to his judicial acts. The foregoing provisions of the subsection shall not apply with respect to (1) general instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of court-martial, or (2) to statements and instructions given in open court by the military judge, president of a special court-martial, or counsel.

(b) In the preparation of an effectiveness, fitness, or efficiency report, or any other report or document used in whole or in part for the purpose of determining whether a member of the state military forces is qualified to be advanced in grade, or in determining the assignment or transfer of a member of the state military forces or in determining whether a member of the state military forces should be retained on duty, no person subject to this Code may, in preparing any such report (1) consider or evaluate the performance of duty of any such member as a member of a court-martial, or (2) give a less favorable rating or evaluation of any member of the state military forces because of the zeal with which such member, as counsel, represented any accused before a court-martial.

Duties of Trial Counsel and Defense Counsel

Sec. 38. (a) The trial counsel of a general or special court-martial shall prosecute in the name of the State of Texas, and shall, under the direction of the court, prepare the record of the proceedings.

(b) The accused has the right to be represented in his defense before a general, special or summary court-martial by civilian counsel if provided by him, or by military counsel of his own selection if reasonably available, or by the defense counsel detailed under Section 27 of this Code. Should the accused have counsel of his own selection, the defense counsel, and assistant defense counsel, if any, who were detailed, shall, if the accused so desires, act as his associate counsel; otherwise they shall be excused by the military judge or by the president of a court-martial without a military judge.

(c) In every court-martial proceeding, the defense counsel may, in the event of conviction, forward for attachment to the record of proceedings, a brief of such matters he feels should be considered in behalf of the accused on review, including any objection to the contents of the record which he considers appropriate.

(d) An assistant trial counsel of a general court-martial may, under the direction of the trial counsel or when he is qualified to be a trial counsel as required by Section 27 of this Code, perform any duty imposed by law, regulation, or the custom of the service upon the trial counsel of the court. An assistant trial counsel of a special court-martial may perform any duty of the trial counsel.

(e) An assistant defense counsel of a general or special court-martial may, under the direction of the defense counsel or when he is qualified to be the defense counsel as required by Section 27 of this Code, perform any duty imposed by law, regulation, or the custom of the service upon counsel for the accused.

Sessions

Sec. 39. (a) At any time after the service of charges which have been referred for trial to a court-martial composed of a military judge and members, the military judge may, subject to Section 35 of this Code, call the court into session without the presence of the members for the purpose of:

(1) Hearing and determining motions raising defenses or objections which are capable of determination without trial of the issues raised by a plea of not guilty;

(2) Hearing and ruling upon any matter which may be ruled upon by the military judge under this chapter, whether or not the matter is appropriate for later consideration or decision by the members of the court;

(3) If permitted by regulations of the Governor, holding the arraignment and receiving the pleas of the accused; and

(4) Performing any other procedural function which may be performed by the military judge under this chapter or under rules prescribed pursuant to Section 36 of this Code and which does not require the presence of the members of the court. These proceedings shall be conducted in the presence of the accused, the defense counsel, and the trial counsel and shall be made a part of the record.

(b) When the members of a court-martial deliberate or vote, only the members may be present. All other proceedings, including any other consultation of the members of the court with counsel or the military judge, shall be made a part of the record and shall be in the presence of the accused, the defense counsel, the trial counsel, and in cases in which a military judge has been detailed to the court, the military judge.

Continuances

Sec. 40. The military judge or a court-martial without a military judge may, for reasonable cause, grant a continuance to any party for such time, and as often, as may appear to be just.

Challenges

Sec. 41. (a) The military judge and members of a general or special court-martial may be challenged by the accused or the trial counsel for cause stated to the court. The military judge, or, if none, the court shall determine the relevancy and validity of challenges for cause, and may not receive a challenge to more than 1 person at a time. Challenges by trial counsel shall ordinarily be presented and decided before those by the accused are offered.

(b) Each accused and the trial counsel are entitled to 1 peremptory challenge, but the military judge may not be challenged except for cause.

Oaths

Sec. 42. Before performing their respective duties, military judges, members of general and special courts-martial, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, reporters, and interpreters shall take an oath to perform their duties faithfully. The oath or affirmation shall be taken in the presence of the accused, and shall read as follows:

(a) Court members:

"You, _____, do swear (or affirm) that you will faithfully perform all the duties incumbent upon you as a member of this court; that you will faithfully and impartially try, according to the evidence, your conscience, and the laws and regulations provided for trials by courts-martial, the case of (the) (each) accused now before this court; and that if any doubt should arise not explained by the laws and regulations, then according to the best of your understanding and the customs of the service in like cases; that you will not divulge the findings and sentence in any case until they shall have been duly announced by the court; and that you will not disclose or discover the vote or opinion of any particular member of the court upon a challenge or upon the findings or sentence unless required to do so before a court of justice in due course of law. So help you God."

(b) Military judge:

"You, _____, do swear (or affirm) that you will faithfully and impartially perform, according to your conscience and the laws and regulations provided for trials by courts-martial, all the duties incumbent upon you as military judge of this court; that if any doubt should arise not explained by the laws and regulations, then according to the best of your understanding and the customs of the service in like cases; and that you will not divulge the findings or sentence in any case until they shall have been duly announced by the court. So help you God."

(c) Trial counsel and assistant trial counsel:

"You, _____ (and) _____, do swear (or affirm) that you will faithfully perform the duties of trial counsel and will not divulge the findings or sentence of the court to any but the proper authority until they shall be duly disclosed. So help you God."

(d) Defense counsel and assistant defense counsel:

"You, _____ (and) _____, do swear (or affirm) that you will faithfully perform the duties of defense (and individual) counsel and will not divulge the findings or sentence of the

court to any but the proper authority until they shall be duly disclosed. So help you God."

(e) Court of inquiry:

The recorder of a court of inquiry shall administer to the members the following oath: "You shall well and truly examine and inquire, according to the evidence, into the matter now before you without partiality, favor, affection, prejudice or hope of reward. So help you God." After which the president of the court shall administer to the recorder the following oath: "You do swear that you will according to your best abilities, accurately and impartially record the proceedings of the court and the evidence to be given in the case in hearing. So help you God."

(f) Witnesses:

All persons who give evidence before a court-martial or court of inquiry shall be examined on oath administered by the presiding officer in the following form: "You swear (or affirm) that the evidence you shall give in the case now in hearing shall be the truth, the whole truth, and nothing but the truth. So help you God."

(g) Reporter or interpreter:

"You swear (or affirm) that you will faithfully perform the duties of reporter (or interpreter) to this court. So help you God."

Statute of Limitations

Sec. 43. (a) A person charged with desertion or absence without leave in time of war, or with aiding the enemy or with mutiny may be tried and punished at any time without limitation.

(b) Except as otherwise provided in this Section, a person charged with desertion in time of peace or with the offenses punishable under Sections 115, 116 and 117 of this Code is not liable to be tried by court-martial if the offense was committed more than 3 years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command.

(c) Except as otherwise provided in this Section, a person charged with any offense is not liable to be tried by court-martial or punished under Section 15 of this Code if the offense was committed more than 2 years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command, or before the imposition of punishment under Section 15 of this Code.

(d) Periods in which the accused was absent from territory in which the state has the authority to apprehend him, or in the custody of civil authorities, or in the hands of the enemy, shall be excluded in computing the period of limitation prescribed in this Section.

Former Jeopardy

Sec. 44. (a) No person may be tried a second time in any military court of the State of Texas for the same offense.

(b) No proceedings in which an accused has been found guilty by a court-martial upon any charge or specification is a trial in the sense of this Section until the finding of guilty has become final after review of the case has been fully completed.

(c) A proceeding which, after the introduction of evidence but before a finding, is dismissed or terminated by the convening authority or on motion of the prosecution for failure of available evidence or witnesses without any fault of the accused is a trial in the sense of this Section.

Pleas of the Accused

Sec. 45. (a) If an accused after arraignment makes an irregular pleading, or after a plea of guilty sets up matter inconsistent with the plea, or if it appears that he has entered the plea of guilty imprudently or through lack of understanding of its meaning and effect, or if he fails or refuses to plead, a plea of not guilty shall be entered in the record, and the court shall proceed as though he had pleaded not guilty.

(b) With respect to any charge or specification to which a plea of guilty has been made by the accused and accepted by the military judge, or by a court-martial without a military judge, a finding of guilty of the charge or specification may, if permitted by regulations of the Governor, be entered immediately without vote. This finding shall constitute the finding of the court unless the plea of guilty is withdrawn prior to the announcement of the sentence, in which event the proceedings shall continue as though the accused had pleaded not guilty.

Opportunity to Obtain Witnesses and Other Evidence

Sec. 46. (a) The trial counsel, the defense counsel, accused, and the court-martial shall have equal opportunity to obtain witnesses and other evidence. Each shall have the right of compulsory process for obtaining witnesses.

(b) The presiding officer of a court-martial may:

(1) Issue a warrant for the arrest of any accused person who having been served with a warrant and a copy of the charges, disobeys a written order by the convening authority to appear before the court;

(2) Issue subpoenas duces tecum and other subpoenas;

(3) Enforce by attachment the attendance of witnesses and the production of books and papers; and

(4) Sentence for refusal to be sworn or to answer, as provided in actions before civil courts of the state.

(c) Process issued in court-martial cases to compel witnesses to appear and testify and to compel the production of other evidence shall run to any part of the state and shall be executed by civil officers or peace officers as described by the laws of the state.

Refusal to Appear or Testify

Sec. 47. (a) Any person not subject to this Code who:

(1) Has been duly subpoenaed to appear as a witness or to produce books and records before a military court or before any military or civil officer or peace officer designated to take a deposition to be read in evidence before a court;

(2) Has been duly paid or tendered the fees and mileage of a witness at the rates allowed to witnesses under Section 145 of this Code. These fees are to be paid by the Adjutant General's Department as hereinafter provided; and

(3) Wilfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or to produce any evidence which that person may have been legally subpoenaed to produce; is guilty of an offense against the state and may be punished by fine not to exceed \$1,000 or confinement not to exceed 60 days in jail, or by both fine and confinement, and such witness shall be prosecuted in the appropriate county court.

(b) The appropriate prosecuting official for the state in any county court having jurisdiction where the military proceeding was convened shall, upon submission of a complaint to him by the presiding officer of a military court, commission, court of inquiry, or board, file an information against and prosecute any person violating this Section.

Contempts

Sec. 48. A military court may punish for contempt any person who uses any menacing word, sign, or gesture in its presence, or who disturbs its proceedings by any riot or disorder. Punishment may not exceed confinement for 30 days or a fine of \$100, or both.

Depositions

Sec. 49. (a) At any time after charges have been signed, as provided in Section 30 of this Code, any party may take oral or written depositions unless the military judge, a court-martial without a military judge hearing the case, or, if the case is not being heard, an authority competent to convene a court-martial for the trial of those charges forbids it for good cause. If a deposition is to be taken before charges are referred for trial, such an authority may designate commissioned officers to represent the

prosecution and the defense and may authorize those officers to take the deposition of any witness.

(b) The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition.

(c) Depositions may be taken before and authenticated by any military or civil officer authorized by laws of the state or by the laws of the place where the deposition is taken to administer oaths.

(d) Any duly authenticated deposition taken upon reasonable notice to the other parties, so far as otherwise admissible under the rules of evidence, may be read in evidence before any military court or commission, or in any proceeding before a court of inquiry or military board, if it appears:

(1) That the witness resides or is beyond the state in which the court-martial or court of inquiry is ordered to sit, or beyond the distance of 100 miles from the place of trial or hearing;

(2) That the witness by reason of death, age or sickness, bodily infirmity, imprisonment, military necessity, non-amenability to process, or other reasonable cause, is unable or refuses to appear and testify in person at the place of trial or hearing; or

(3) That the present whereabouts of the witness is unknown.

Admissibility of Records of Courts of Inquiry

Sec. 50. (a) In any case not extending to the dismissal of a commissioned officer, the sworn testimony, contained in the duly authenticated record of proceedings of a court of inquiry, of a person whose oral testimony cannot be obtained, may, if otherwise admissible under the rules of evidence, be read in evidence by any party before a court-martial if the accused was a party before the court of inquiry and if the same issue was involved or if the accused consents to the introduction of such evidence.

(b) Such testimony may be read in evidence only by the defense in cases extending to the dismissal of a commissioned officer.

(c) Such testimony may also be read in evidence before a court of inquiry or a military board.

(d) In all courts of inquiry both enlisted men and officers shall have the right to counsel and the right to cross examination of all witnesses.

Voting and Rulings

Sec. 51. (a) Voting by members of a general or special court-martial on the findings, on the sentence, and by members of a court-martial without a military judge upon questions of challenge, shall be by secret written ballot. The junior member of the court shall count the votes. The count shall be

checked by the president, who shall forthwith announce the result of the ballot to the members of the court.

(b) The military judge and, except for questions of challenge, the president of a court-martial without a military judge shall rule upon all questions of law and all interlocutory questions arising during the proceedings. Any such ruling made by the military judge upon any question of law or any interlocutory question other than the factual issue of mental responsibility of the accused, or by the president of a court-martial without a military judge upon any question of law other than a motion for a finding of not guilty, is final and constitutes the ruling of the court. However, the military judge or the president of a court-martial without a military judge may change his ruling at any time during the trial. Unless the ruling is final, if any member objects thereto, the court shall be cleared and closed and the question decided by a voice vote as provided in Section 52 of this Code beginning with the junior in rank.

(c) Before a vote is taken on the findings, the military judge or the president of a court-martial without a military judge shall, in the presence of the accused and counsel, instruct the members of the court as to the elements of the offense and charge them:

(1) That the accused must be presumed to be innocent until his guilt is established by legal and competent evidence beyond reasonable doubt;

(2) That in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and he must be acquitted;

(3) That, if there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no reasonable doubt; and

(4) That the burden of proof of establishing the guilt of the accused beyond reasonable doubt is upon the state.

(d) Subsections (a), (b), and (c) of this Section do not apply to a court-martial composed of a military judge only. The military judge of such a court-martial shall determine all questions of law and fact arising during the proceedings and, if the accused is convicted, adjudge an appropriate sentence. The military judge of such a court-martial shall make a general finding and shall in addition on request find the facts specially. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact appear therein.

Number of Votes Required

Sec. 52. (a) No person may be convicted of an offense, except by the concurrence of two-thirds of the members present at the time the vote is taken.

(b) All sentences shall be determined by the concurrence of two-thirds of the members present at the time the vote is taken.

(c) All other questions to be decided by the members of a general or special court-martial shall be determined by a majority vote. A tie vote on a challenge disqualifies the member challenged, but a determination to reconsider a finding of guilty or to reconsider a sentence, with a view toward decreasing it, may be made by any lesser vote which indicates that the reconsideration is not opposed by the number of votes required for that finding or sentence. A tie vote on a motion for a finding of not guilty or on a motion relating to the question of the accused's sanity is a determination against the accused. A tie vote on any other question is a determination in favor of the accused.

Court to Announce Action

Sec. 53. A court-martial shall announce its findings and sentence to the parties as soon as determined.

Record of Trial

Sec. 54. (a) Each general court-martial shall keep a separate record of the proceedings of the trial of each case brought before it and the record shall be authenticated by the signature of the military judge. If the record cannot be authenticated by the military judge by reason of his death, disability, or absence, it shall be authenticated by the signature of the trial counsel or by that of a member if the trial counsel is unable to authenticate it by reason of his death, disability, or absence. In a court-martial consisting of only a military judge, the record shall be authenticated by the court reporter under the same conditions that would impose such a duty on a member under this subsection. If the proceedings have resulted in an acquittal of all charges and specifications or, if not affecting a general or flag officer, in a sentence not including discharge and not in excess of that which may otherwise be adjudged by a special court-martial, the record shall contain such matters as may be prescribed by regulations of the Governor.

(b) Each special and summary court-martial shall keep a separate record of the proceedings in each case, and the record shall contain the matter and shall be authenticated in the manner required by such regulations as the Governor may prescribe.

(c) A copy of the record of the proceedings of each general and special court-martial shall be given to the accused as soon as it is authenticated.

SUBCHAPTER VIII. SENTENCES

Cruel and Unusual Punishments Prohibited

Sec. 55. Punishment by flogging, or by branding, marking or tattooing on the body, or any other cruel

or unusual punishment, may not be adjudged by any court-martial or inflicted upon any person subject to this Code. The use of irons, single or double, except for the purpose of safe custody, is prohibited.

Maximum Limits

Sec. 56. The punishment which a court-martial may direct for an offense may not exceed the limits prescribed by this Code nor limits prescribed by the Governor of the State of Texas.

Effective Date of Sentences

Sec. 57. (a) Whenever a sentence of a court-martial as lawfully adjudged and approved includes a forfeiture of pay or allowances in addition to confinement not suspended or deferred, the forfeiture may apply to pay or allowances becoming due on or after the date the sentence is approved by the convening authority. No forfeiture may extend to any pay or allowances accrued before that date.

(b) Any period of confinement included in a sentence of a court-martial begins to run from the date the sentence is adjudged by the court-martial, but periods during which the sentence to confinement is suspended or deferred shall be excluded in computing the service of the term of confinement.

(c) On application by an accused who is under sentence to confinement that has not been ordered executed, the convening authority or, if the accused is no longer under his jurisdiction, the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned, may in his sole discretion defer service of the sentence to confinement. The deferment shall terminate when the sentence is ordered executed. The deferment may be rescinded at any time by the officer who granted it or, if the accused is no longer under his jurisdiction, by the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned.

(d) In the militia or state military forces not in federal service, no sentence of dismissal or dishonorable discharge may be executed until it is approved by the Governor.

(e) All other sentences of courts-martial are effective on the date ordered executed.

Execution of Confinement

Sec. 58. (a) A sentence of confinement adjudged by a military court, whether or not the sentence includes discharge or dismissal, and whether or not the discharge or dismissal has been executed, may be carried into execution by confinement in any place of confinement under the control of any of the forces of the state military forces or in any jail, penitentiary, or prison designated for that purpose. Persons so confined in a jail, penitentiary, or prison are subject to the same discipline and treatment as

persons confined or committed to the jail, penitentiary, or prison by the courts of the state or of any political subdivision thereof.

(b) The omission of the words "hard labor" from any sentence or punishment of a court-martial adjudging confinement does not deprive the authority executing that sentence or punishment of the power to require hard labor as a part of the punishment.

(c) The keepers, officers, and wardens of city or county jails and other jails, penitentiaries, or prisons designated by the Governor, or by such person as he may authorize to act under Section 10 of this Code, shall receive persons ordered into confinement before trial and persons committed to confinement by a military court and shall confine them according to law. No such keeper, officer, or warden may require payment of any fee or charge for so receiving or confining a person.

SUBCHAPTER IX. REVIEW OF COURTS-MARTIAL

Error of Law; Lesser Included Offense

Sec. 59. (a) A finding or sentence of a court-martial may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

(b) Any reviewing authority with the power to approve or affirm a finding of guilty may approve or affirm, instead, so much of the finding as includes a lesser included offense.

Initial Action on the Record

Sec. 60. After trial by court-martial the record shall be forwarded to the convening authority, and action thereon may be taken by the person who convened the court, a commissioned officer commanding for the time being, a successor in command, or any officer exercising general court-martial jurisdiction.

Same General Court-Martial Records

Sec. 61. The convening authority shall refer the record of each general court-martial to his judge advocate who shall submit his written opinion thereon to the convening authority. If the final action of the court has resulted in an acquittal of all charges and specifications, the opinion shall be limited to questions of jurisdiction.

Reconsideration and Revision

Sec. 62. (a) If a specification before a court-martial has been dismissed on motion and the ruling does not amount to a finding of not guilty, the convening authority may return the record to the court for reconsideration of the ruling and any further appropriate action.

(b) Where there is an apparent error or omission in the record or where the record shows improper or inconsistent action by a court-martial with respect to a finding or sentence which can be rectified without material prejudice to the substantial rights of the accused, the convening authority may return the record to the court for appropriate action. In no case, however, may the record be returned:

(1) For reconsideration of a finding of not guilty, or a ruling which amounts to a finding of not guilty;

(2) For consideration of a finding of not guilty of any charge, unless the record shows a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of some Section of this Code; or

(3) For increasing the severity of the sentence unless the sentence prescribed for the offense is mandatory.

Rehearings

Sec. 63. (a) If the convening authority disapproves the finding and sentence of a court-martial he may, except where there is lack of sufficient evidence in the record to support the findings, order a rehearing. In such a case he shall state the reasons for disapproval. If he disapproves the findings and sentence and does not order a rehearing, he shall dismiss the charges.

(b) Each rehearing shall take place before a court-martial composed of members not members of the court-martial which first heard the case. Upon a rehearing the accused may not be tried for any offense of which he was found not guilty by the first court-martial, and no sentence in excess of or more severe than the original sentence may be imposed, unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings, or unless the sentence prescribed for the offense is mandatory.

Approval by the Convening Authority

Sec. 64. In acting on the findings and sentence of a court-martial, the convening authority may approve only such findings of guilty, and the sentence or such part or amount of the sentence, as he finds correct in law and fact and as he in his discretion determines should be approved. Unless he indicates otherwise, approval of the sentence is approval of the findings and sentence.

Disposition of Records After Review by Convening Authority

Sec. 65. (a) If the convening authority is the Governor, his action on the review of any record of trial is final.

(b) In all other cases not covered by subsection (a) of this Section, if the sentence of a special court-

martial as approved by the convening authority includes a dishonorable discharge, whether or not suspended, the entire record shall be sent to the appropriate judge advocate or legal officer of the state military forces concerned to be reviewed in the same manner as a record of trial by general court-martial. The record and the opinion of the judge advocate or legal officer shall then be sent to the State Judge Advocate General for review.

(c) All other special and summary court-martial records shall be sent to the judge advocate or legal officer of the appropriate force of the state military forces and shall be acted upon, transmitted, and disposed of as may be prescribed by regulations prescribed by the Governor.

(d) The State Judge Advocate General shall review the record of trial in each case sent to him for review as provided under subsection (b) of this Section. If the final action of the court-martial has resulted in an acquittal of all charges and specifications, the opinion of the State Judge Advocate General is limited to questions of jurisdiction.

(e) The State Judge Advocate General shall take final action in any case reviewable by him.

Review by State Judge Advocate General

Sec. 66. (a) In a case reviewable by the State Judge Advocate General under this Section, the State Judge Advocate General may act only with respect to the findings and sentence as approved by the convening authority. He may affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as he finds correct in law and fact and determines, on the basis of the entire record, should be approved. In considering the record, he may weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses. If the State Judge Advocate General sets aside the findings and sentence, he may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If he sets aside the findings and sentence and does not order a rehearing, he shall order that the charges be dismissed.

(b) In a case reviewable by the State Judge Advocate General under this or the preceding Section, he shall instruct the convening authority to act in accordance with his decision on the review. If he has ordered a rehearing but the convening authority finds a rehearing impracticable, he may dismiss the charges.

Review by Texas Court of Military Appeals

Sec. 67. (a)(1) There is hereby established a Texas Court of Military Appeals, located for administrative purposes only in the Adjutant General's Department, State of Texas. The court shall consist of 5

judges appointed by the Adjutant General of Texas upon the advice and recommendation of the State Judge Advocate General for a term of 6 years. Initial appointments to this court will be: 1 judge for a 2-year term, 2 judges for a 4-year term, and 2 judges for a 6-year term. The term of office of all successor judges shall be for a 6-year period of time, but any judge appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of his predecessor. The Adjutant General of Texas, upon the advice and recommendation of the State Judge Advocate General, shall appoint the chief judge of this court. A person is eligible for appointment to this court who:

(A) is a member of the bar of the highest court of this state;

(B) is a member of a Federal bar;

(C) is a graduate of an accredited school of law;

(D) is a commissioned officer of the state military forces, active or retired, or a retired commissioned officer in the reserves of the armed forces of the United States of America;

(E) has been engaged in the active practice of law for at least 5 years;

(F) has at least 5 years experience as a staff judge advocate, judge advocate, or legal officer with the state military forces. The requirements in (E) and (F) of this Section may be satisfied by equivalent experience or practice in the armed forces of the United States.

(2) The court may promulgate its own rules of procedure, provided, however, that a majority shall constitute a quorum and the concurrence of 3 judges shall be necessary to a decision of the court.

(3) Judges of the Texas Court of Military Appeals may be removed by the Adjutant General of Texas, upon notice and hearing for neglect of duty or malfeasance in office, or for mental or physical disability.

(4) If a judge of the Texas Court of Military Appeals is temporarily unable to perform his duties the Adjutant General upon the advice and recommendation of the State Judge Advocate General may designate a military judge, as defined in this Code, to fill the office for the period of disability.

(5) The judges of the Texas Court of Military Appeals, while actually sitting in review of a matter placed under their jurisdiction by this Code, and while travelling to and from such session, shall be paid compensation equal to that compensation as prescribed for the Judges of the Texas Courts of Civil Appeals, as per the then current appropriation bill for the State of Texas, together with the actual cost of their meals and lodging and actual travel expense or the amount set by the then current appropriation bill if private transportation is utilized.

(b) The Texas Court of Military Appeals shall have appellate jurisdiction, upon petition of an accused, to hear and review the record in:

(1) All general and special court-martial cases; and

(2) All other cases where a judge of this court has made a determination that there may be a constitutional issue involved.

(c) The accused has 60 calendar days, from the time of receipt of actual notice of the final action on his case, under this Code to petition the Texas Court of Military Appeals for review. The court shall act upon such a petition within 60 calendar days of the receipt thereof. In the event the court fails or refuses to grant such petition for review the final action of the convening authority will be deemed to have been approved; notwithstanding any other provision of this Code, upon the court granting a hearing of an appeal, the court may grant a stay or defer service of the sentence of confinement or any other punishment under this Code until the court's final decision upon the case.

(d) In a case reviewable under subsection (b)(1) of this Section the Texas Court of Military Appeals may act only with respect to the findings and sentence as finally approved and ordered executed by the convening authority. In a case reviewable under subsection (b)(2) of this Section this court need take action only with respect to issues specified in the grant of review. This court shall take action only with respect to matters of law, and the action of this court is final.

(e) If the Texas Court of Military Appeals sets aside the findings and sentence, it may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If it sets aside the findings and sentence and does not order a rehearing, it shall order that the charges be dismissed. After the Texas Court of Military Appeals has acted on the case, the record shall be returned to the State Judge Advocate General who shall notify the convening authority of the court's decision. If further action is required the State Judge Advocate General shall instruct the convening authority to take action in accordance with that decision. If the court has ordered a rehearing, but the convening authority finds a rehearing impracticable, he may dismiss the charges.

Sec. 68. Reserved.

Sec. 69. Reserved.

Appellate Counsel

Sec. 70. The trial counsel and defense counsel of a court-martial shall serve in the capacity of appellate counsel upon an appeal authorized under this

Code. The accused has the additional right to be represented by civilian counsel at his own expense. Should the defense or trial counsel become unable to perform their duties because of illness or other disability, the convening authority will appoint a qualified trial or defense counsel to continue the proceedings.

Sec. 71. Reserved.

Vacation of Suspension

Sec. 72. (a) Before the vacation of the suspension of a special court-martial sentence which as approved includes a dismissal or dishonorable discharge, or of any general court-martial sentence, the officer having special court-martial jurisdiction over the probationer shall hold a hearing on the alleged violation of probation. The probationer shall be represented at the hearing by military counsel if he so desires.

(b) The record of the hearing and the recommendation of the officer having special court-martial jurisdiction shall be sent for action to the Governor in cases involving a general court-martial sentence and to the commanding officer of the force of the state military forces of which the probationer is a member in all other cases covered by subsection (a) of this Section. If the Governor or commanding officer vacates the suspension, any unexecuted part of the sentence except a dismissal shall be executed.

(c) The suspension of any other sentence may be vacated by any authority competent to convene, for the command in which the accused is serving or assigned, a court of the kind that imposed the sentence.

Petition for a New Trial

Sec. 73. At any time within 2 years after approval by the convening authority of a court-martial sentence, the accused may petition the State Judge Advocate General for a new trial on ground of newly discovered evidence or fraud on the court-martial. If the accused's case is pending before the Texas Court of Military Appeals when this petition is filed, the appeal will not proceed until the State Judge Advocate General has made a decision on the request. If the petition is granted, the appeal will be dismissed. If the petition is denied, the Court of Military Appeals will continue its proceedings on the case.

Remission or Suspension

Sec. 74. (a) A convening authority may remit or suspend any part or amount of the unexecuted part of any sentence, including all uncollected forfeitures.

(b) The Governor may, for good cause, substitute an administrative form of discharge for a discharge or dismissal executed in accordance with the sentence of a court-martial.

Restoration

Sec. 75. (a) Under such regulations as the Governor may prescribe, all rights, privileges, and property affected by an executed part of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge shall be restored unless a new trial or rehearing is ordered and such executed part is included in a sentence imposed upon a new trial or hearing.

(b) If a previously executed sentence of dishonorable discharge is not imposed on a new trial, the Governor shall substitute therefor a form of discharge authorized for administrative issuance unless the accused is to serve out the remainder of his enlistment.

(c) If a previously executed sentence of dismissal is not imposed on a new trial, the Governor shall substitute therefor a form of discharge authorized for administrative issue, and the commissioned officer dismissed by that sentence may be reappointed by the Governor alone to such commissioned grade and with such rank as in the opinion of the Governor that former officer would have attained had he not been dismissed. The reappointment of such former officer may be made if a position vacancy is available under applicable tables of organization. All the time between the dismissal and reappointment shall be considered as service for all purposes.

Finality of Proceedings, Findings, and Sentences

Sec. 76. The appellate review of records of trial provided by this Code, the proceedings, findings, and sentences of courts-martial as reviewed and approved, as required by this Code, and all dismissals and discharges carried into execution under sentences by courts-martial following review and approval as required by this Code, are final and conclusive. Orders publishing the proceedings of the courts-martial and all action taken pursuant to those proceedings are binding upon all departments, courts, agencies, and officers of the state, subject only to action upon a petition for a new trial as provided in Section 73 of this Code.

SUBCHAPTER X. PUNITIVE ARTICLES**Persons to be Tried or Punished**

Sec. 76A. No person may be tried or punished for any offense provided for in Sections 77-134 of this Code, unless it was committed while he was in a duty status or during a period of time in which he was under lawful orders to be in a duty status.

Principals

Sec. 77. Any person subject to this Code who:

(1) Commits an offense punishable by this Code, or aids, abets, counsels, commands or procures its commission; or

(2) Causes an act to be done which if directly performed by him would be punishable by this Code;

is a principal.

Accessory After the Fact

Sec. 78. Any person subject to this Code, who knowing that an offense punishable by this Code has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment shall be punished as a court-martial may direct.

Conviction of Lesser Included Offense

Sec. 79. An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein.

Attempts

Sec. 80. (a) An act, done with specific intent to commit an offense under this Code, amounting to more than mere preparation and tending, even though failing, to effect its commission, is an attempt to commit that offense.

(b) Any person subject to this Code who attempts to commit any offense punishable by this Code shall be punished as a court-martial may direct, unless otherwise specifically prescribed.

(c) Any person subject to this Code may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated.

Conspiracy

Sec. 81. Any person subject to this Code who conspires with any other person to commit an offense under this Code, shall if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court-martial may direct.

Solicitation

Sec. 82. (a) Any person subject to this Code who solicits or advises another or others to desert in violation of Section 85 of this Code or mutiny in violation of Section 94 of this Code, shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed or attempted, he shall be punished as a court-martial may direct.

(b) Any person subject to this Code who solicits or advises another or others to commit an act of misbehavior before the enemy in violation of Section 99 of this Code or sedition in violation of Section 94 of this Code shall, if the offense solicited or advised is committed, be punished with the punishment provided

ed for the commission of the offense, but, if the offense solicited or advised is not committed, he shall be punished as a court-martial may direct.

Fraudulent Enlistment, Appointment, or Separation

Sec. 83. Any person who:

(1) Procures his own enlistment or appointment in the state military forces by knowingly false representation or deliberate concealment as to his qualifications for that enlistment or appointment and receives pay or allowances thereunder; or

(2) Procures his own separation from the state military forces by knowingly false representation or deliberate concealment as to his eligibility for that separation;

shall be punished as a court-martial may direct.

Unlawful Enlistment, Appointment, or Separation

Sec. 84. Any person subject to this Code who effects an enlistment or appointment in or a separation from the state military forces of any person who is known to him to be ineligible for that enlistment, appointment, or separation because it is prohibited by law, regulation, or order shall be punished as a court-martial may direct.

Desertion

Sec. 85. (a) Any member of the state military forces who:

(1) Without authority goes or remains absent from his unit, organization, or place of duty with intent to remain away therefrom permanently;

(2) Quits his unit, organization, or place of duty with intent to avoid hazardous duty or to shirk important service; or

(3) Without being regularly separated from one of the state military forces enlists or accepts an appointment in the same or another one of the state military forces, or in one of the armed forces of the United States, without fully disclosing the fact that he has not been regularly separated; is guilty of desertion.

(b) Any commissioned officer of the state military forces who, after tender of his resignation and before notice of its acceptance, quits his post or proper duties without leave and with intent to remain away therefrom permanently is guilty of desertion.

(c) Any person found guilty of desertion or attempt to desert shall be punished as a court-martial may direct.

Absence Without Leave

Sec. 86. Any person subject to this Code, who without authority:

(1) Fails to go to his appointed place of duty at the time prescribed;

(2) Goes from that place; or

(3) Absents himself or remains absent from his unit, organization, or place of duty at which he is required to be at the time prescribed;

shall be punished as a court-martial may direct.

Missing Movement

Sec. 87. Any person subject to this Code who through neglect or design misses the movement of a ship, aircraft, or unit with which he is required in the course of duty to move shall be punished as a court-martial may direct.

Contempt Towards Governor

Sec. 88. Any person subject to this Code who uses contemptuous words against the Governor of Texas, shall be punished as a court-martial may direct.

Disrespect Toward Superior Commissioned Officer

Sec. 89. Any person subject to this Code who behaves with disrespect toward his superior commissioned officer shall be punished as a court-martial may direct.

Assaulting or Wilfully Disobeying Superior Commissioned Officer

Sec. 90. Any person subject to this Code who:

(1) Strikes his superior commissioned officer or draws or lifts up any weapon or offers any violence against him while in the execution of his office; or

(2) Wilfully disobeys a lawful command of his commissioned officer;

shall be punished as a court-martial may direct.

Insubordinate Conduct Toward Warrant Officer or Noncommissioned Officer

Sec. 91. Any warrant officer or enlisted member who:

(1) Strikes or assaults a warrant officer or noncommissioned officer while that officer is in the execution of his office;

(2) Wilfully disobeys the lawful order of a warrant officer or noncommissioned officer; or

(3) Treats with contempt or is disrespectful in language or deportment toward a warrant officer or noncommissioned officer while that officer is in the execution of his office;

shall be punished as a court-martial may direct.

Failure to Obey Order or Regulation

Sec. 92. Any person subject to this Code who:

(1) Violates or fails to obey any lawful general order or regulation;

(2) Having knowledge of any other lawful order issued by a member of the state military forces which it is his duty to obey, fails to obey the order; or

(3) Is derelict in the performance of his duties; shall be punished as a court-martial may direct.

Cruelty and Maltreatment

Sec. 93. Any person subject to this Code who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his order shall be punished as a court-martial may direct.

Mutiny or Sedition

Sec. 94. (a) Any person subject to this Code who:

(1) With intent to usurp or override lawful military authority refuses, in concert with any other person, to obey orders or otherwise do his duty or creates any violence or disturbance is guilty of mutiny;

(2) With intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person, revolt, violence, or other disturbance against that authority is guilty of sedition;

(3) Fails to do his utmost to prevent and suppress a mutiny or sedition being committed in his presence, or fails to take all reasonable means to inform his superior commissioned officer or commanding officer of a mutiny or sedition which he knows or has reason to believe is taking place,

is guilty of a failure to suppress or report a mutiny or sedition.

(b) A person who is found guilty of attempted mutiny or sedition, mutiny, sedition, or failure to suppress or report a mutiny or sedition shall be punished as a court-martial may direct.

Resistance, Breach of Arrest, and Escape

Sec. 95. Any person subject to this Code who resists apprehension or breaks arrest or who escapes from physical restraint lawfully imposed shall be punished as a court-martial may direct.

Releasing Prisoner Without Proper Authority

Sec. 96. Any person subject to this Code who, without proper authority, releases any prisoner committed to his charge, or who through neglect or design suffers any such prisoner to escape, shall be punished as a court-martial may direct, whether or not the prisoner was committed in strict compliance with law.

Unlawful Detention of Another

Sec. 97. Any person subject to this Code who, except as provided by law or regulation, apprehends, arrests, or confines any person shall be punished as a court-martial may direct.

Noncompliance With Procedural Rules

Sec. 98. Any person subject to this Code who:

(1) Is responsible for unnecessary delay in the disposition of any case of a person accused of an offense under this Code; or

(2) Knowingly and intentionally fails to enforce or comply with any provision of this Code regulating the proceedings before, during, or after trial of an accused;

shall be punished as a court-martial may direct.

Misbehavior Before the Enemy

Sec. 99. Any person subject to this Code who before or in the presence of the enemy:

(1) Runs away;

(2) Shamefully abandons, surrenders, or delivers up any command, unit, place, or military property which it is his duty to defend;

(3) Through disobedience, neglect, or intentional misconduct endangers the safety of any such command, unit, place, or military property;

(4) Casts away his arms or ammunition;

(5) Is guilty of cowardly conduct;

(6) Quits his place of duty to plunder or pillage;

(7) Causes false alarms in the command, unit, or place under control of the armed forces of the United States or the state military forces of Texas, or any other state;

(8) Wilfully fails to do his utmost to encounter, engage, capture or destroy enemy troops, combatants, vessels, aircraft, or any other thing, which it is his duty to so encounter, engage, capture, or destroy; or

(9) Does not afford all practicable relief, and assistance to any troops, combatants, vessels, or aircraft of the armed forces belonging to the United States or their allies, to this state, or to any other state, when engaged in battle;

shall be punished as a court-martial may direct.

Subordinate Compelling Surrender

Sec. 100. Any person subject to this Code who compels or attempts to compel the commander of any of the state military forces of Texas, the United States, or of any other state, to give it up to an enemy or to abandon it, or who strikes the colors or flag to an enemy without proper authority, shall be punished as a court-martial may direct.

Improper Use of Countersign

Sec. 101. Any person subject to this Code who in time of war discloses the parole or countersign to any person not entitled to receive it, or who gives to another who is entitled to receive and use the parole or countersign a different parole or countersign from that which, to his knowledge, he was authoriz-

ed and required to give, shall be punished as a court-martial may direct.

Forcing a Safeguard

Sec. 102. Any person subject to this Code who forces a safeguard shall be punished as a court-martial may direct.

Captured or Abandoned Property

Sec. 103. (a) All persons subject to this Code shall secure all public property taken from the enemy for the service of the State of Texas or the United States, and shall give notice and turn over to the proper authority without delay all captured or abandoned property in their possession, custody, or control.

(b) Any person subject to this Code who:

(1) Fails to carry out the duties prescribed in subsection (a);

(2) Buys, sells, trades, or in any way deals in or disposes of captured or abandoned property, whereby he receives or expects any profit, benefit, or advantage to himself or another directly or indirectly connected with himself; or

(3) Engages in looting or pillaging; shall be punished as a court-martial may direct.

Aiding the Enemy

Sec. 104. Any person subject to this Code who:

(1) Aids, or attempts to aid, the enemy with arms, ammunition, supplies, money or other things; or

(2) Without proper authority, knowingly harbors or protects or gives intelligence to, or communicates or corresponds with or holds any intercourse with the enemy, either directly or indirectly;

shall be punished as a court-martial may direct.

Misconduct of a Prisoner

Sec. 105. Any person subject to this Code who, while in the hands of the enemy in time of war:

(1) For the purpose of securing favorable treatment by his captors acts without proper authority in a manner contrary to law, custom, or regulation, to the detriment of others of whatever nationality held by the enemy as civilian or military prisoners; or

(2) While in a position of authority over such persons maltreats them without justifiable cause; shall be punished as a court-martial may direct.

Sec. 106. Reserved.

False Official Statements

Sec. 107. Any person subject to this Code who, with intent to deceive, signs any false record, return,

regulation, order, or other official document, knowing it to be false, or makes any other false official statement knowing it to be false, shall be punished as a court-martial may direct.

Military Property—Loss, Damage, Destruction, or Wrongful Disposition

Sec. 108. Any person subject to this Code who, without proper authority:

(1) Sells or otherwise disposes of;

(2) Wilfully or through neglect damages, destroys, or loses; or

(3) Wilfully or through neglect suffers to be damaged, destroyed, sold, or wrongfully disposed of any military property of the United States or of the State of Texas;

shall be punished as a court-martial may direct.

Property Other Than Military Property—Waste, Spoilage or Destruction

Sec. 109. Any person subject to this Code who, while in a duty status, wilfully or recklessly wastes, spoils, or otherwise wilfully and wrongfully destroys or damages any property other than military property of the United States or of this state shall be punished as a court-martial may direct.

Improper Hazarding of Vessel

Sec. 110. (a) Any person subject to this Code who wilfully and wrongfully hazards or suffers to be hazarded any vessel of the armed forces of the United States or of the state military forces shall be punished as a court-martial may direct.

(b) Any person subject to this Code who negligently hazards or suffers to be hazarded any vessel of the armed forces of the United States or of the state military forces shall be punished as a court-martial may direct.

Driving While Intoxicated or Driving While Under the Influence of a Narcotic Drug

Sec. 111. Any person subject to this Code who operates any vehicle while under the influence of intoxicating liquor or a narcotic drug, or in a reckless or wanton manner, shall be punished as a court-martial may direct.

Drunk on Duty—Sleeping on Post—Leaving Post Before Relief

Sec. 112. Any person subject to this Code who is found under influence of intoxicating liquor or narcotic drugs while on duty or sleeping upon his post, or who leaves his post before he is regularly relieved, shall be punished as a court-martial may direct.

Sec. 113. Reserved.

Sec. 114. Reserved.

Malingering

Sec. 115. Any person subject to this Code who for the purpose of avoiding work, duty or service in the state military forces:

- (1) Feigns illness, physical disablement, mental lapse, or derangement; or
 - (2) Intentionally inflicts self-injury;
- shall be punished as a court-martial may direct.

Riot or Breach of Peace

Sec. 116. Any person subject to this Code who causes or participates in any riot or breach of the peace shall be punished as a court-martial may direct.

Provoking Speeches or Gestures

Sec. 117. Any person subject to this Code who uses provoking or reproachful words or gestures towards any other person subject to this Code shall be punished as a court-martial may direct.

Sec. 118. Reserved.

Sec. 119. Reserved.

Sec. 120. Reserved.

Larceny and Wrongful Appropriation

Sec. 121. (a) Any person subject to this Code who wrongfully takes, obtains, or withholds, by any means, from the possession of the owner or of any other person any money, personal property, or article of value of any kind;

(1) With intent permanently to deprive or defraud another person of the use and benefit of property, or to appropriate it to his own use or the use of any person other than the owner, steals that property is guilty of larceny; or

(2) With intent temporarily to deprive or defraud another person of the use and benefit of property or to appropriate it to his own use or the use of any other person other than the owner, is guilty of wrongful appropriation.

(b) Any person found guilty of larceny or wrongful appropriation shall be punished as a court-martial may direct.

Sec. 122. Reserved.

Forgery

Sec. 123. Any person subject to this Code who, with intent to defraud:

(1) Falsely makes or alters any signature to, or any part of, any writing which would, if genuine, apparently impose a legal liability on another or change his legal right or liability to his prejudice; or

(2) Utters, offers, issues, or transfers such a writing, known by him to be so made or altered;

is guilty of forgery and shall be punished as a court-martial may direct.

Sec. 124. Reserved.

Sec. 125. Reserved.

Sec. 126. Reserved.

Extortion

Sec. 127. Any person subject to this Code who communicates threats to another person with the intention thereby to obtain anything of value or any acquittance, advantage, or immunity is guilty of extortion and shall be punished as a court-martial may direct.

Assault

Sec. 128. Any person subject to this Code who attempts or offers with unlawful force or violence to do bodily harm to another person, whether or not the attempt or offer is consummated, is guilty of assault and shall be punished as a court-martial may direct.

Sec. 129. Reserved.

Sec. 130. Reserved.

Perjury

Sec. 131. Any person subject to this Code who in a judicial proceeding or in a court of justice conducted under this Code wilfully and corruptly gives, upon a lawful oath or in any form allowed by law to be substituted for an oath, any false testimony material to the issue or matter of inquiry is guilty of perjury and shall be punished as a court-martial may direct.

Frauds Against the Government

Sec. 132. Any person subject to this Code:

(1) Who, knowing it to be false or fraudulent:

(A) Makes any claim against the United States, the State of Texas, or any officer thereof; or

(B) Presents to any person in the civil or military service thereof, for approval or payment any claim against the United States, the State of Texas, or any officer thereof;

(2) Who, for the purpose of obtaining the approval, allowance, or payment of any claim against the United States, the State of Texas, or any officer thereof:

(A) Makes or uses any writing or other paper knowing it to contain any false or fraudulent statements; or

(B) Makes any oath to any fact or to any writing or other paper knowing the oath to be false; or

(C) Forges or counterfeits any signature upon any writing or other paper, or uses any such

signature knowing it to be forged or counterfeited;

(3) Who, having charge, possession, custody, or control of any money or other property of the United States or the State of Texas, furnished or intended for the armed forces of the United States or the state military forces, knowingly delivers to any person having authority to receive it, any amount thereof less than that for which he receives a certificate or receipt; or

(4) Who, being authorized to make or deliver any paper certifying the receipt of any property of the United States or the State of Texas, furnished or intended for the armed forces of the United States or the state military forces, makes or delivers to any person such writing without having full knowledge of the truth of the statements there contained and with intent to defraud the United States or the State of Texas;

shall, upon conviction, be punished as a court-martial may direct.

Conduct Unbecoming an Officer and a Gentleman

Sec. 133. Any commissioned officer or officer candidate who is convicted of conduct unbecoming an officer and a gentleman shall be punished as a court-martial may direct.

General Article

Sec. 134. Though not specifically mentioned in this Code, all disorders and neglects to the prejudice of good order and discipline in the state military forces and/or all conduct of a nature to bring discredit upon the state military forces, of which persons subject to this Code may be guilty, shall be taken cognizance of by a general, special or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of the court.

SUBCHAPTER XI. MISCELLANEOUS PROVISIONS

Courts of Inquiry

Sec. 135. (a) Courts of inquiry to investigate any matter may be convened by the Governor or by any other person designated by the Governor for that purpose, or any person authorized to convene a general court-martial by this Code, whether or not the persons involved have requested such an inquiry.

(b) A court of inquiry consists of 3 or more commissioned officers. For each court of inquiry the convening authority shall also appoint counsel for the court.

(c) Any person subject to this Code whose conduct is subject to inquiry shall be designated as a party. Any person subject to this Code or employed in the division of military affairs, who has a direct interest

in the subject of inquiry has the right to be designated as a party upon request to the court. Any person designated as a party shall be given due notice and has the right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence.

(d) Members of a court of inquiry may be challenged by a party, but only for cause stated to the court.

(e) The members, counsel, the reporter, and interpreters of courts of inquiry shall take an oath or affirmation to faithfully perform their duties.

(f) Witnesses may be summoned to appear and testify and be examined before courts of inquiry, as provided for courts-martial.

(g) Courts of inquiry shall make findings of fact but may not express opinions or make recommendations unless required to do so by the convening authority.

(h) Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signatures of the president and counsel for the court and forwarded to the convening authority. If the record cannot be authenticated by the president, it shall be signed by a member in lieu of the president. If the record cannot be authenticated by the counsel for the court, it shall be signed by a member in lieu of the counsel.

Authority to Administer Oaths

Sec. 136. (a) The following persons on state active duty may administer oaths for the purpose of military administration including military justice, and they have the general powers of a notary public in the performance of all notarial acts to be executed by members of the state military forces, wherever they may be:

(1) The State Judge Advocate General, and all judge advocates;

(2) All law specialists and military judges;

(3) All summary courts-martial;

(4) All adjutants, assistant adjutants, acting adjutants, and personnel adjutants;

(5) All administrative officers, assistant administrative officers, and acting administrative officers;

(6) all staff judge advocates and legal officers, and acting or assistant staff judge advocates and legal officers; and

(7) All other persons designated by regulations of the state military forces or by statute.

(b) The following persons on state active duty may administer oaths necessary in the performance of their duties:

(1) The president, military judge, trial counsel, and assistant trial counsel for all general and special courts-martial;

(2) The president, counsel for the court, and recorder of any court of inquiry;

(3) All officers designated to take a deposition;

(4) All persons detailed to conduct an investigation;

(5) All recruiting officers; and

(6) All other persons designated by regulations of the state military forces or by statute.

(c) No fee may be paid to or received by any person for the performance of any notarial act herein authorized.

(d) The signature without seal of any such person acting as notary, together with the title of his office, is prima facie evidence of his authority.

Sections to be Explained

Sec. 137. Sections 2, 3, 7-15, 25, 27, 31, 37, 38, 55, 76A-134, and 137-139 of this Code shall be carefully explained to every enlisted member at the time of his enlistment or transfer or induction into, or at the time of his order to duty in or with any of the state military forces or within 30 days thereafter. They shall also be explained annually to each unit of the state military forces. A complete text of this Code and of the regulations prescribed by the Governor thereunder shall be made available to any member of the state military forces, upon his request, for his personal examination.

Complaints of Wrongs

Sec. 138. (a) Any member of the state military forces who believes himself wronged by his commanding officer, and who, upon due application to that commanding officer, is refused redress, may complain to any superior commissioned officer, who shall forward the complaint to the next highest commander who shall examine into the complaint and take proper measures for redressing the wrong complained of; and he shall, as soon as possible, send to the Adjutant General a true statement of that complaint with the proceedings had thereon.

(b) When an action or proceeding of any nature shall be commenced in any court, other than a military court, by any person against any member of the state military forces for any act done, or caused, ordered or directed to be done in the line of duty, as determined by a finding of fact made by a court of inquiry under Section 135 of this Code, while such member was on active state duty, all expenses of representation in such action or proceeding, including fees of witnesses, depositions, court costs, and all costs for transcripts of records or other documents that might be needed during trial or appeal shall be paid as provided in this Code. When any action or proceeding of any type is brought, as described in this subsection, the Adjutant General, upon the written request of the member involved, shall designate

the State Judge Advocate General, a judge advocate or a legal officer of the state military forces to represent such member. Judge advocates or legal officers performing duty under this subsection will be called to state active duty by order of the Governor. If the military legal services, noted above, are not available, then the Adjutant General, after consultation with the State Judge Advocate General and member involved, shall contract with a competent private attorney to conduct such representation.

Redress of Injuries to Property

Sec. 139. (a) Whenever complaint is made to any commanding officer that wilful damage has been done to the property of any person or that his property has been wrongfully taken by members of the state military forces, he may subject to such regulations as the Governor may prescribe, convene a board to investigate the complaint. The board shall consist of from 1 to 3 commissioned officers, and for the purpose of that investigation, it has power to summon witnesses and examine them upon oath or affirmation, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by the board is subject to the approval of the commanding officer, and in the amount approved by him shall be charged against the pay of the offenders. The order of the commanding officer directing charges herein authorized is conclusive, except as provided in subsection (c), on any disbursing officer for the payment by him to the injured parties of the damages so assessed and approved.

(b) If the offenders cannot be ascertained, but the organization or detachment to which they belong is known, charges totaling the amount of damages assessed and approved may be paid to the injured parties from the military funds of the units of the state military forces to which the offenders belonged.

(c) Any person subject to this Code who is accused of causing wilful damage to property has the right to be represented by counsel, to summon witnesses in his behalf, and to cross-examine those appearing against him. The counsel mentioned herein will be military counsel, provided by the commanding officer instituting this inquiry. The accused may also employ civilian counsel of his own choosing at his own expense. He has the right of appeal to the next higher commander.

Immunity for Action of Military Courts

Sec. 139A. No accused may bring an action or proceeding against the convening authority or a member of a military court, board convened under this Code or military regulations, or officer or person acting under its authority or reviewing its proceed-

ings because of the approval, imposition, or execution of any sentence or the imposition or collection of a fine or penalty, or the execution of any process or mandate of a military court, board convened under this Code, or military regulation.

Delegation of Authority By the Governor

Sec. 140. The Governor may delegate any authority vested in him under this Code, and may provide for the subdelegation of any such authority, except the power given him by Section 57(d) of this Code.

Execution of Process and Sentence

Sec. 141. (a) In the state military forces not in federal service, the processes and sentences of its courts-martial shall be executed by the civil officers prescribed by the laws of the state.

(b) When the sentence of a court-martial, as approved and ordered executed, adjudges confinement, and the convening authority, has approved the same in whole or in part, the reviewing authority, or the commanding officer for the time being, as the case may be, shall issue a warrant of commitment to the sheriff of the county in which such court-martial was held or where the offense was committed, directing such sheriff to take the body of the person so sentenced and confine him in the county jail of such county for the period named in such sentence, as approved, or until he may be directed to release him by proper authority.

Process of Military Courts

Sec. 142. (a) Military courts may issue any process or mandate necessary to carry into effect their powers. Such a court may issue subpoenas and subpoenas duces tecum and enforce by attachment attendance of witnesses and production of books and records, when it is sitting within the state and the witnesses, books and records sought are also so located.

(b) Process and mandates may be issued by summary courts-martial, provost courts, or the president of other military courts and may be directed to and may be executed by the marshals of the military court or any peace officer and shall be in such form as may be prescribed by regulations issued under this Code.

(c) All officers to whom process or mandates may be so directed shall execute them and make return of their acts thereunder according to the requirements of those documents. Except as otherwise specifically provided in this Code, no such officer may demand or require payment of any fee or charge for receiving, executing, or returning such a process or mandate or for any service in connection therewith.

(d) The president of any court-martial, and any summary court officer, shall have authority to issue, under his hand, in the name of the State of Texas, directed to any sheriff or constable, whose duty it shall be to serve or execute the same in the same manner in which like process is served or executed when issued by a magistrate, all necessary process, subpoenas, attachments, warrants, or arrest and warrant of commitment.

Payment of Fines, Costs, and Disposition Thereof

Sec. 143. (a) All fines and forfeitures imposed by general court-martial, shall be paid to the officer ordering such court, and/or to the officer commanding for the time being and by said officer, within 5 days from the receipt thereof, paid to the Adjutant General, who shall disburse the same as he may see fit for military purposes.

(b) All fines and forfeitures imposed by a special or summary courts-martial shall be paid to the officer ordering the court, or the officer commanding for the time being, and by such officer, within 5 days from the receipt thereof, placed to the credit of the military unit fund of the unit of which the person fined was a member when the fine was imposed.

(c) When the sentence of a court-martial adjudges a fine against any person, and such fine has not been fully paid within 10 days after the confirmation thereof, the convening authority shall issue a warrant of commitment directed to the sheriff of the county in which the court-martial was held or where the offense was committed, directing him to take the body of the person so convicted and confine him in the county jail for 1 day for any fine not exceeding \$1 and 1 additional day for every dollar above that sum.

Presumption of Jurisdiction

Sec. 144. The jurisdiction of the military courts and boards established by this Code shall be presumed and the burden of proof rests on any person seeking to oust those courts or boards of jurisdiction in any action or proceeding.

Witnesses Expenses

Sec. 145. (a) Persons in the employ of this state, but not belonging to the military forces thereof, when traveling upon summons as witnesses before military courts, are entitled to transportation from their place of residence to the place where the court is in session and return. If no transportation be furnished they are entitled to reimbursement of the cost of travel actually performed by the shortest usually traveled route. They are also entitled to reimbursement of the actual cost of meals and rooms at a rate not to exceed \$25 per day for each actually and unavoidably consumed in travel, or in attendance upon the court under the order or summons. No allowance will be made to them when attendance

upon court does not require them to leave their place of residence.

(b) A person not in the employ of this state and not belonging to the active military forces thereof, who has been duly summoned to appear as a witness before a military court, will receive \$50 per day for each day actually in attendance upon the court, and 12 cents a mile for going from his place of residence to the place of trial or hearing, and 12 cents a mile for returning. Civilian witnesses will be paid by the Adjutant General's Department.

(c) The charges for return journeys of witnesses will be made upon the basis of the actual charges allowed for travel to the court, and the entire account thus completed will be paid upon discharge from attendance without waiting for completion of return travel.

(d) No fees shall be allowed to a person as witness fees, unless such person has been subpoenaed, attached, or recognized as a witness in the case.

Arrest, Bonds, Laws Applicable

Sec. 146. (a) When charges against any person in the military service of this state are made or referred to a convening authority authorized to convene a court-martial for the trial of such person, and a convening authority, believing that such charges can be sustained, and has reason to believe that the person so charged will not appear for trial, or intends to flee from justice, a convening authority may issue a warrant of arrest to the sheriff or any constable of the county in which the person charged resides, or wherein he is supposed to be, commanding the sheriff or constable to take the body of the person so charged and confine him in jail until such time as his case may be finally disposed of; and the sheriff or constable, on the order of the convening authority, shall bring the person so charged before the court-martial for trial, or turn him over to whomever the order may direct; the convening authority issuing the warrant of arrest, shall indorse thereon the amount of bail to be required; and it shall be a violation of duty on the part of any sheriff or constable to permit a person so committed to remain out of jail, except that he may, when such person desires it, permit him to give bail in the sum indorsed on the warrant, conditioned for his appearance, from time to time, before such court-martial as he may be ordered for trial, and until his case is finally disposed of, or until such time as he may surrender to the sheriff or constable as directed by the convening authority of the court-martial before which he may be ordered for trial.

(b) Upon the failure of any person, who has been admitted to bail conditioned for his appearance for trial before a court-martial, or upon failure of any person admitted to bail to appear as a witness in any

case before a court-martial, as conditioned in the bail bond of any such person, the court-martial shall certify the fact of such failure to so appear to the convening authority, or to the officer commanding for the time being, as the case may be; and such officer shall cause a judge advocate, district or county attorney to file suit in Travis County therefor.

(c) The rules laid down in the Code of Criminal Procedure of this state relating to the giving of bail, the amount of bail, the number of sureties, the persons who may be sureties, the property exempt from liability, the responsibility of parties to the same and all other rules of a general nature not inconsistent with this law are applicable to bail taken as provided in this Code.

(d) A warrant of arrest issued by a convening authority to order a court-martial, and all subpoenas and other process issued by courts-martial and courts of inquiry shall extend to every part of the state.

(e) When any lawful process, issued by the proper officer of any court-martial, comes to the hands of any sheriff or constable, he shall perform the usual duties of such officer and perform all acts and duties by this Code imposed or authorized to be performed by any sheriff or constable. Failure of any sheriff or constable to perform the duties required by this Code shall be a misdemeanor offense punishable by a fine of not more than \$1,000 and by confinement of not less than 6 months and not more than 12 months in jail.

Expenses of Administration

Sec. 147. The Adjutant General shall have authority to pay all expenses incurred in the administration of state military justice, including the expenses of courts-martial and expenses incurred under Sections 67, 138, and 145 of this Code, from any funds appropriated to the Adjutant General's Department.

Short Title

Sec. 148. This Article may be cited as the "Texas Code of Military Justice."

[Amended by Acts 1975, 64th Leg., p. 687, ch. 287, § 1, eff. May 22, 1975.]

Art. 5789. Awards, Decorations and Medals

[See Compact Edition, Volume 5 for text of 1 to 6]

Rules and Regulations Pertaining to Awards, Decorations, Medals and Ribbons

Sec. 7. The Adjutant General is hereby authorized to promulgate rules and regulations pertaining to the following awards, decorations, medals and ribbons:

(a) Texas Faithful Service Medal. It shall be awarded to any member of the state military forces who has completed 5 years of honorable

service therein, during which period he has shown fidelity to duty, efficient service and great loyalty to this state.

(b) Federal Service Medal. It shall be awarded to any person inducted into federal service from the state military forces, between June 15, 1940, and January 1, 1946; and after June 1, 1950; provided, that such federal service was for a period in excess of 9 months with the Armed Forces of the United States.

(c) Texas Medal of Merit. It may be presented to any member of the state military forces who distinguishes himself through outstanding service, or extraordinary achievement, in behalf of the state, or the United States.

(d) Texas Outstanding Service Medal. It may be presented to any member of the state military forces whose performance has been such as to merit recognition for service performed in a superior and clearly outstanding manner.

(e) Texas State Guard Service Medal. It shall be awarded to any member of the state military forces who has completed three consecutive years of honorable service in the Texas State Guard

since September 1, 1970, during which period he has shown fidelity to duty, efficient service, and great loyalty to this state.

[Amended by Acts 1975, 64th Leg., p. 595, ch. 244, § 1, eff. May 20, 1975; Acts 1975, 64th Leg., p. 687, ch. 287, § 2, eff. May 22, 1975.]

CHAPTER FOUR A. TEXAS NAVY

Art. 5891.1. Texas Navy, Incorporated

[See Compact Edition, Volume 5 for text of 1 and 2]

Application of Sunset Act

Sec. 2a. The Texas Navy, Incorporated, is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the Texas Navy, Incorporated, is abolished, and this Act expires effective September 1, 1979.

¹ Article 5429k.

[See Compact Edition, Volume 5 for text of 3 to 5]

[Amended by Acts 1977, 65th Leg., p. 1832, ch. 735, § 2.004, eff. Aug. 29, 1977.]

TITLE 95

MINES AND MINING

3. INTERSTATE MINING COMPACT

Article

- 5920-1. Repealed.
5920-1a. Application of Sunset Act.
5920-2. Repealed.
5920-3. Repealed.
5920-4. Repealed.

4. SURFACE MINING

- 5920-10. Repealed.
5920-11. Surface Coal Mining and Reclamation Act.

3. INTERSTATE MINING COMPACT

Art. 5920-1. Repealed by Acts 1977, 65th Leg., p. 2690, ch. 871, art. 1, § 2(a)(5), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Natural Resources Code.

The repealed article, constituting the Interstate Mining Compact, was derived from Acts 1975, 64th Leg., p. 324, ch. 136, § 1.

Art. 5920-1a. Application of Sunset Act

The office of Interstate Mining Compact Commissioner for Texas is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the office is abolished, and this Act expires effective September 1, 1983.

[Added by Acts 1977, 65th Leg., p. 1841, ch. 735, § 2.063, eff. Aug. 29, 1977.]

¹ Article 5429k.

Arts. 5920-2 to 5920-4. Repealed by Acts 1977, 65th Leg., p. 2690, ch. 871, art. 1, § 2(a)(5), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

The repealed articles, establishing the Mining Council, were derived from Acts 1975, 64th Leg., p. 329, ch. 136, §§ 2 to 4.

4. SURFACE MINING

Art. 5920-10. Repealed by Acts 1977, 65th Leg., p. 2690, ch. 871, art. 1, § 2(a)(5), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Natural Resources Code.

The repealed article, the Surface Mining and Reclamation Act, was derived from Acts 1975, 64th Leg., p. 2110, ch. 690.

Without reference to repeal of this article, it was amended by Acts 1977, 65th Leg., p. 1320, ch. 524, §§ 1 to 8.

Sections 1 and 7 of the 1977 Act were subsequently repealed by identical provisions of Acts 1979, 66th Leg., p. 308, ch. 141, § 43, and Acts 1979, 66th Leg., p. 854, ch. 379, § 7, which Acts made conforming amendments to the Natural Resources Code.

Sections 2 to 6 and 8 of the 1977 Act were incorporated into the Natural Resources Code by Acts 1979, 66th Leg., p. 1989, ch. 784.

Art. 5920-11. Surface Coal Mining and Reclamation Act

Short Title

Sec. 1. This Act may be cited as the Texas Surface Coal Mining and Reclamation Act.

Findings and Declaration of Policy

Sec. 2. The legislature finds and declares that:

(1) The Congress of the United States has enacted the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977), which provides for the establishment of a nationwide program to regulate surface coal mining and reclamation and which vests exclusive authority in the Department of the Interior over the regulation of surface coal mining and reclamation within the United States.

(2) Section 101 of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977), contains the finding by Congress that because of the diversity in terrain, climate, biologic, chemical, and other physical conditions in areas subject to mining operations, the primary governmental responsibility for developing, authorizing, issuing, and enforcing regulations for surface mining and reclamation operations subject to that Act should rest with the states.

(3) Section 503 of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977), provides that each state may assume and retain exclusive jurisdiction over the regulation of surface coal mining and reclamation operations within that state by obtaining approval of a state program of regulation which demonstrates that the state has the capability of carrying out the provisions and meeting the purposes of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977).

(4) Section 503 of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977), further provides that a state wishing to assume exclusive jurisdiction over the regulation of surface coal mining and reclamation operations within the state must have a state law that provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977).

(5) The State of Texas wishes to assume exclusive jurisdiction over the regulation of surface coal

mining and reclamation operations within the state pursuant to the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977). It is therefore declared to be the purpose of this Act:

(A) to prevent the adverse effects to society and the environment resulting from unregulated surface coal mining operations as defined in this Act;

(B) to assure that the rights of surface landowners and other persons with a legal interest in the land or appurtenances to the land are protected from unregulated surface coal mining operations;

(C) to assure that surface coal mining operations are conducted in a manner that will prevent unreasonable degradation of land and water resources;

(D) to assure that reclamation of all land on which surface coal mining takes place is accomplished as contemporaneously as practicable with the surface coal mining, recognizing that the extraction of coal by responsible mining operations is an essential and beneficial economic activity;

(E) to assure that the coal supply essential to the state's energy requirements and to its economic and social well-being is provided, and to strike a balance between protection of the environment and agricultural productivity and the state's need for coal as an essential source of energy; and

(F) to promote the reclamation of mined areas left without adequate reclamation prior to the enactment of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977), and that continue, in their unreclaimed condition, to substantially degrade the quality of the environment, to prevent or damage the beneficial use of land or water resources, or to endanger the health or safety of the public.

Definitions

Sec. 3. In this Act:

(1) "Alluvial valley floors" means the unconsolidated stream-laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities but does not include upland areas that are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation, and windblown deposits.

(2) "Applicant" means any person or other legal entity seeking a permit from the commission to conduct surface coal mining activities or underground mining activities pursuant to this Act.

(3) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated and water impoundments may be permitted if the commission determines that they are in compliance with Section 23(b)(8) of this Act.

(4) "Coal" means all forms of coal including lignite.

(5) "Coal exploration operation" means the substantial disturbance of the surface or subsurface for the purpose of or related to determining the location, quantity, or quality of a coal deposit.

(6) "Commission" means, the Railroad Commission of Texas.

(7) "Eligible land and water," particularly as it relates to Section 7 of this Act, means all land that was mined for coal or was affected by that mining, waste banks, coal processing, or other coal mining processing, and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under state or federal law.

(8) "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirement of this Act in a surface coal mining and reclamation operation, which condition, practice, or violation could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose himself to the danger during the time necessary for abatement.

(9) "Operator" means any person engaged in coal mining who removes or intends to remove more than 250 tons of coal from the earth by coal mining within 12 consecutive calendar months in any one location.

(10) "Other minerals" means clay, stone, sand, gravel, metalliferous and nonmetalliferous ores, and any other solid material or substances of commercial value excavated in solid form from natural deposits on or in the earth, exclusive of coal, and those minerals that occur naturally in liquid or gaseous form.

(11) "Permit" means a permit to conduct surface coal mining and reclamation operations issued by the commission.

(12) "Permit area" means the area of land indicated on the approved map submitted by the operator with his or her application, which area of land shall be covered by the operator's bond as required by Section 25 of this Act and shall be readily identifiable by appropriate markers on the site.

(13) "Permittee" means a person holding a permit to conduct surface coal mining and reclamation operations or underground mining activities pursuant to this Act.

(14) "Person" means an individual, partnership, society, joint-stock company, firm, company, corporation, business organization, governmental agency, or any organization or association of citizens.

(15) "Prime farmland" has the same meaning as that previously prescribed by the secretary on the basis of such factors as moisture availability, temperature regime, chemical balance, permeability, without regard to annual mean soil temperatures, surface layer composition, susceptibility to flooding, and erosion characteristics, and that historically has been used for intensive agricultural purposes, and as published in the Federal Register. Land will not be considered for purposes of this Act as having historically been used for the production of cultivated crops on the basis of use as woodland or rangeland, or where the only cultivation has been disking to establish or help maintain Bermuda Grass used as forage or where the only cultivation is disking to plant oats or rye for quick cover, not as a grain crop but to be used as forage. The slope of the land can be a factor in determining whether a given soil is outside the purview of prime farmland and the commission may thus make a negative determination based upon soil type and slope.

(16) "Surface coal mining and reclamation operations" means surface mining operations and all activities necessary and incident to the reclamation of those operations after August 3, 1977.

(17) "Surface coal mining operations" means:

(A) activities conducted on the surface of any land in connection with a surface coal mine or subject to the requirements of Section 28 of this Act incident to an underground coal mine. These activities include excavation for the purpose of obtaining coal including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the use of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal at or near the mine site; provided, however, that such activities do not include the extraction of coal incidental to the extraction of other minerals where the coal does not exceed

16-2/3 percentum of the total tonnage of coal and other minerals removed annually for purposes of commercial use or sale or coal explorations subject to this Act; and

(B) the areas on which such activities occur or where such activities disturb the natural land surface, and such areas shall also include any adjacent land the use of which is incidental to any such activities, all land affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas on which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities.

(18) "Unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of any violation of his or her permit or any requirement of this Act due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of his or her permit or this Act due to indifference, lack of diligence, or lack of reasonable care.

(19) "Secretary" means the Secretary of Agriculture of the United States.

Jurisdiction

Sec. 4. The commission has exclusive jurisdiction over all surface coal mining and reclamation operations in the State of Texas.

General Authority of Commission

Sec. 5. To accomplish the purposes of this Act, the commission shall have the authority:

(1) to adopt, amend, and enforce rules pertaining to surface coal mining and reclamation operations consistent with the general intent and purposes of this Act;

(2) to issue permits pursuant to the provisions of this Act;

(3) to conduct hearings pursuant to the provisions of this Act and the Administrative Procedure and Texas Register Act, as amended;¹

(4) to issue orders requiring an operator to take actions that are necessary to comply with this Act and with rules adopted under this Act;

(5) to issue orders modifying previous orders;

(6) to issue a final order revoking the permit of an operator who has failed to comply with an order of the commission to take action required by this Act or rules adopted under this Act;

(7) to order the immediate cessation of an ongoing surface mining operation or part of an ongoing surface mining operation if the commission finds that the operation or part of the operation creates an imminent danger to the health or safety of the public, or is causing or can reasonably be expected to cause significant imminent harm to land, air, or water resources, and to take other action or make changes in a permit that are reasonably necessary to avoid or alleviate these conditions;

(8) to hire employees, adopt standards for employment of these persons, and hire and authorize the hiring of outside contractors to assist in carrying out the requirements of this Act;

(9) to enter on and inspect, in person or by its agents, a surface mining operation that is subject to the provisions of this Act to assure compliance with the terms of this Act;

(10) to conduct, encourage, request, and participate in studies, surveys, investigations, research, experiments, training, and demonstrations by contract, grant, or otherwise;

(11) to prepare and require permittees to prepare reports;

(12) to accept, receive, and administer grants, gifts, loans, or other funds made available from any source for the purposes of this Act;

(13) to take those steps necessary that the state may participate to the fullest extent practicable in the abandoned land program provided in Title IV of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977);

(14) to take those actions necessary to establish exclusive jurisdiction over surface coal mining and reclamation in Texas under the provisions of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977), including, in the event the federal administrative agency disapproves Texas' program as submitted, making recommendations for remedial legislation to clarify, alter, or amend the program to meet the terms of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977);

(15) to enter into contracts with state boards and agencies that have pertinent expertise to obtain the professional and technical services necessary to carry out the provisions of this Act;

(16) to establish a process, in order to avoid duplication, for coordinating the review and issuance of permits for surface coal mining and reclamation operations with any other federal or state permit process applicable to the proposed operations;

(17) to enter into cooperative agreements with the Secretary of the United States Department of the Interior for the regulation of surface coal

mining operations on federal land in accordance with the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977); and

(18) to perform any other duties and acts required by and provided for in this Act.

¹ Article 6252-13a.

Rulemaking and Permitting

Sec. 6. (a) The commission shall promulgate rules pertaining to surface coal mining and reclamation operations that are required by this Act.

(b) The process of making and amending rules and issuing permits shall be pursuant to the Administrative Procedure and Texas Register Act, as amended.

(c) A rule or an amendment to a rule adopted or a permit issued by the commission may differ in its terms and provisions as to particular conditions, types of coal being extracted, particular areas of the state, or any other conditions that appear relevant and necessary so long as the action taken is consistent with attainment of the general intent and purposes of this Act.

Abandoned Mine Reclamation—Fund Participation

Sec. 7. The commission is authorized to take all action necessary to insure Texas' participation to the fullest extent practicable in the Abandoned Mines Reclamation Fund established by the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977), and to function as the state's agency for such participation. Pursuant to the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977), the commission shall by rule establish priorities that meet the terms of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977), for the expenditure of those funds, designate the land and water eligible for reclamation or abatement expenditures, submit reclamation plans, annual projects, and applications to the appropriate authorities pursuant to the terms of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977), and administer all money received for abandoned mine reclamation or related purposes.

Abandoned Mine Reclamation—Acquisition

Sec. 8. (a) If the commission makes a finding of fact that:

(1) land or water resources have been adversely affected by past coal mining practices; and

(2) the adverse effects are at a stage where, in the public interest, action to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices should be taken; and

(3) the owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices are not known, or readily available; or

(4) the owners will not give permission for the state or any political subdivision to enter on the property to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices;

then, on giving notice by mail to the owners, if known, or if not known by posting notice on the premises and advertising once in a newspaper of general circulation in the county in which the land lies, the commission is entitled to enter on the property adversely affected by the past coal mining practices and any other property necessary to have access to the property to do all things necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects. The money expended for that work and the benefits accruing to those premises entered on shall be chargeable against the land and shall mitigate or offset any claim in or any action brought by any owner of any interest in the premises for damages by virtue of such entry; provided, this provision is not intended to create new rights of action or eliminate existing immunities.

(b) The commission is entitled to enter on any property for the purposes of conducting studies or exploratory work to determine the existence of adverse effects of past coal mining practices and to determine the feasibility of restoration, reclamation, abatement, control, or prevention of those adverse effects.

(c) The state may acquire any land, where it is to the public interest, by purchase, donation, or condemnation, that is adversely affected by past coal mining practices if the commission determines that acquisition of the land is necessary to successful reclamation and that:

(1) the acquired land, after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices, will serve recreation and historic purposes, conservation and reclamation purposes, or provide open space benefits; and

(2) permanent facilities such as a treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices; or

(3) acquisition of coal refuse disposal sites and all coal refuse on those sites will serve the purposes of this section or that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal mining practices.

(d) Title to all land acquired pursuant to this section shall be in the name of the state. The price paid for land acquired under this section shall reflect the market value of the land as adversely affected by past coal mining practices.

(e) Where land acquired pursuant to this section is deemed to be suitable for industrial, commercial, residential, or recreational development, the state may sell the land by public sale under a system of competitive bidding, at not less than fair market value and under such rules as are promulgated to insure that the land is put to proper use consistent with local plans, if any, as determined by the commission and where federal funds are involved in the acquisition of the land to be sold, the land may be sold only when authorized by the Secretary of the United States Department of the Interior. The commission, after appropriate public notice, shall hold a public hearing in the county or counties of the state in which land acquired pursuant to this section is located, if requested by any person. The hearings shall be held at a time that shall afford local citizens and governments the maximum opportunity to participate in the decision concerning the use or disposition of the land after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.

Abandoned Mine Reclamation—Liens

Sec. 9. (a) Within six months after the completion of projects to restore, reclaim, abate, control, or prevent the adverse effects of past mining practices on privately owned land, the commission shall itemize the money so expended and may file a statement of the money spent with the clerk of the county in which the land lies, together with a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control, or prevention, of adverse effects of past mining practices if the money so expended will result in a significant increase in property value. The statement shall constitute a lien on the land second only to the lien of property taxes, not to exceed the amount determined by either of two appraisals to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past mining practices. No lien shall be filed against the property of any person, in accordance with this subsection, who owned the surface prior to May 2, 1977, and who neither consented to nor participated in nor exercised control over the mining operation that necessitated the reclamation performed hereunder.

(b) Any affected landowner may petition the commission within 60 days of the filing of the lien for a hearing concerning the amount of the lien. That hearing and any appeal will be conducted under the Administrative Procedure and Texas Register Act, as amended.

Abandoned Mine Reclamation—Emergency Powers

Sec. 10. (a) The commission is authorized to spend money from the state abandoned mine reclamation fund for the purposes of this section.

mation fund for the emergency restoration, reclamation, abatement, control, or prevention of adverse effects of coal mining practices on eligible land, if the commission makes a finding that:

(1) an emergency exists constituting a danger to the public health, safety, or general welfare; and

(2) no other person or agency will act expeditiously to restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices.

(b) The commission may enter on any land where an emergency exists and any other land necessary to have access to that land to restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices and to do all things necessary or expedient to protect the public health, safety, or general welfare. This entry shall be construed as an exercise of the police power and shall not be construed as an act of condemnation of property nor of trespass. The money expended for this work and the benefits accruing to the premises entered on shall be chargeable against the land and shall mitigate or offset any claim in or any action brought by any owner of any interest in the premises for any damages by virtue of the entry; provided, however, that this provision is not intended to create new rights of action or eliminate existing immunities.

Permits

Sec. 11. (a) No person shall conduct a surface coal mining operation in this state without having first received a permit for that operation from the commission, pursuant to either this Act or its predecessor, Chapter 131, Natural Resources Code.

(b) Not later than two months following approval by the federal government of the Texas program under the terms of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977), regardless of litigation contesting that approval or implementation, all operators of surface coal mines, in expectation of operating those mines after the expiration of eight months from the approval, shall file an application for a permit with the commission. The application shall cover all land to be mined after the expiration of eight months from the approval of the program. The commission will process those applications and grant or deny a permit within eight months after the date of approval of the program, unless specifically enjoined by a court of competent jurisdiction.

(c) In the event of disapproval of the Texas program by the federal government and prior to promulgation of a federal program or a federal land program for Texas, existing surface coal mining operations may continue. Permits that lapse during the period may continue in full force and effect until promulgation of a federal program or a federal land program.

(d) All permits issued pursuant to Chapter 131, Natural Resources Code, shall remain in full force and effect and their provisions enforceable by the commission until such time as a permit is issued pursuant to the provisions of this Act.

Term

Sec. 12. (a) Permits issued shall be for a term not to exceed five years, except that if the applicant demonstrates that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment, or the opening of the operation, and if the application is full and complete for the specified longer term, the commission may grant a permit for that longer term. A successor in interest to a permittee who applies for a new permit within 30 days of succeeding to that interest and who is able to obtain the same bond coverage as the original permittee may continue the surface coal mining and reclamation plan of the original permittee until the successor's application is granted or denied.

(b) A permit shall terminate if the permittee has not commenced the surface coal mining operation covered by the permit within three years after commencement of the period for which the permit is issued. However, the commission may grant reasonable extensions of time on a showing that the extensions are necessary, by reason of litigation, precluding the commencement or threatening substantial economic loss to the permittee, or by reason of conditions beyond the control and without the fault or negligence of the permittee. With respect to coal to be mined for use in a synthetic fuel facility or specific major electric generating facility, the permittee shall be deemed to have commenced surface mining operations at the time the construction of the facility is initiated.

Renewal

Sec. 13. (a) Any permit issued pursuant to this Act shall carry with it the right of successive renewal on expiration with respect to areas within the boundaries of the existing permit. The permittee may apply for renewal and the renewal shall be issued, provided that on application for renewal the burden shall be on the opponents of renewal, subsequent to fulfillment of the public notice requirements of Section 20 of this Act, unless it is established and written findings by the commission are made that:

(1) the terms and conditions of the existing permit are not being satisfactorily met;

(2) the present surface coal mining and reclamation operation is not in compliance with the environmental protection standards of this Act;

(3) the renewal requested substantially jeopardizes the operator's continuing responsibility on existing permit areas;

(4) the operator has not provided evidence that the performance bond in effect for the operation will continue in full force and effect for any renewal requested in the application as well as any additional bond the commission might require pursuant to Section 25 of this Act; or

(5) any additional revised or updated information required by the commission has not been provided.

(b) Prior to the renewal of any permit the commission shall provide notice to the appropriate public authorities.

(c) If an application for renewal of an existing permit includes a proposal to extend the mining operation beyond the boundaries authorized in the permit, the portion of the application that addresses new land areas shall be subject to the full standards applicable to a new application under this Act; however, if the surface coal mining operations authorized by the existing permit are not subject to the standards contained in Section 21(b)(5)(A) and (B) of this Act, then the portion of the application for renewal that addresses any new land areas previously identified in the reclamation plan submitted pursuant to Section 15 of this Act shall not be subject to those standards.

(d) Any permit renewal shall be for a term not to exceed the period of the original permit established by this Act. Application for permit renewal shall be made at least 120 days prior to the expiration of the existing permit.

Contents of Permit Application

Sec. 14. (a) The permit application shall be submitted in a manner satisfactory to the commission and shall contain:

(1) the names and addresses of the applicant, every owner of record of the property to be mined, the holders of record of any leasehold interest in the property, any purchaser of record of the property under a real estate contract, the operator if he is a person different from the applicant, and if any of these are business entities other than a single proprietor, the names and addresses of the principals, officers, and resident agent;

(2) the names and addresses of the owners of record of the property adjoining the permit area;

(3) a statement of any current or previous surface coal mining permits held by the applicant including permit identification, and any pending application;

(4) information concerning ownership and management of the applicant or operator required by the commission in its rules;

(5) a statement of whether the applicant or any subsidiary, affiliate, or other person controlled by or under common control with the applicant has

ever held a federal or state mining permit which in the five-year period prior to the date of submission of the application has been suspended or revoked or whether that person has had a mining bond or similar security deposited in lieu of bond forfeited and, if so, a brief explanation of the facts involved;

(6) a copy of an advertisement to be published in a newspaper of general circulation in the locality of the proposed site at least once a week for four consecutive weeks, which advertisement shows the ownership and a description of the location and boundaries of the proposed site sufficiently so that the proposed operation is readily locatable, and a statement that the application is available for public inspection at the county courthouse of the county in which the property lies;

(7) a description of the type and method of coal mining operation that exists or is proposed, the engineering techniques proposed or used, and the equipment used or proposed to be used;

(8) the anticipated or actual starting and termination dates of each phase of the mining operation and number of acres of land to be affected;

(9) an accurate map or plan, to an appropriate scale, filed by the applicant with the commission clearly showing the land to be affected as of the date of the application, the area of land within the permit area on which the applicant has the legal right to enter and commence surface mining operations, and those documents on which the applicant bases his legal right to enter and commence surface mining operations on the area affected, and whether that right is the subject of pending court litigation, provided, that nothing in this Act shall be construed as vesting in the commission the jurisdiction to adjudicate property title disputes;

(10) the name of the watershed and location of the surface streams or tributaries into which surface and pit drainage will be discharged;

(11) a determination of the probable hydrologic consequences of the mining and reclamation operation, if any, both on and off the mine site, with respect to the hydrologic regime, quantity and quality of water in surface and ground water systems, including the dissolved and suspended solids under seasonal flow conditions, and sufficient data for the mine site and surrounding areas so that an assessment can be made by the commission of the probable cumulative impacts of all anticipated mining in the area on the hydrology of the area and particularly on water availability; provided, however, that this determination shall not be required until such time as hydrologic information on the general area prior to mining is made available from an appropriate state agency; provided further, that the permit shall not be approved until the information is available and is incorporated into the application;

(12) when requested by the commission, the published climatological factors that are peculiar to the locality of the land to be affected, including the average seasonal precipitation, the average direction and velocity of prevailing winds, and the seasonal temperature ranges;

(13) a statement of the result of test borings or core samplings from the permit area, including logs of the drill holes; the thickness of the coal seam found, and an analysis of the chemical properties of the coal; the sulfur content of any coal seam; a chemical analysis of any potentially acid or toxic forming sections of the overburden; and a chemical analysis of the stratum lying immediately underneath the coal to be mined; and the provisions of this paragraph may be waived by the commission with respect to any particular application by a written determination that the information is unnecessary;

(14) for land in the permit application that a reconnaissance inspection suggests may be prime farmland, a soil survey made or obtained according to standards established by the United States Secretary of Agriculture in order to confirm the exact location of that prime farmland, if any;

(15) a reclamation plan that meets the requirements of this Act;

(16) information pertaining to coal seams, test borings, core samplings, or soil samples as required by this section shall be made available to any person with an interest which is or may be adversely affected; provided, that information which pertains only to the analysis of the chemical and physical properties of the coal, excepting information regarding such mineral or elemental content which is potentially toxic in the environment, shall be kept confidential and not made a matter of public record;

(17) such other data and maps as the commission may require by rule.

(b) Information submitted to the commission concerning mineral deposits, test borings, core samplings, or trade secrets or commercial or financial information relating to the competitive rights of the applicant and specifically identified as confidential by the applicant, if not essential for public review as determined by the commission, shall not be disclosed by any member, agent, or employee of the commission.

Reclamation Plan Requirements

Sec. 15. Each reclamation plan submitted as part of a permit application shall include, in the degree of detail necessary to demonstrate that reclamation required by this Act can be accomplished, a statement of:

(1) identification of land subject to the surface coal mining operation over the estimated life of that operation and the size, sequence, and timing of any subareas for which it is anticipated that individual permits for surface coal mining will be sought;

(2) the condition of the land to be covered by the permit prior to any mining, including:

(A) the uses existing at the time of the application, and if the land has a history of previous mining, the uses that preceded any mining;

(B) the capability of the land prior to any mining to support a variety of uses giving consideration to soil and foundation characteristics, topography, and vegetative cover, and if applicable, a soil survey prepared pursuant to Section 14(a)(14) of this Act; and

(C) the productivity of the land prior to mining, including appropriate classification as prime farmland, and if classified as prime farmland, the average yield of food, fiber, forage, or wood products from the land obtained under high levels of management;

(3) the use that is proposed to be made of the land following reclamation, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses and the relationship of those uses to existing land uses, and the comments of state and local governments or agencies of state or local government which would have to approve or authorize the proposed use of the land following reclamation;

(4) a detailed description of how the proposed postmining land use is to be achieved and the necessary support activities that may be needed to achieve that use;

(5) the engineering techniques proposed to be used in mining and reclamation and a description of the major equipment, a plan for the control of surface water drainage and of water accumulation, a plan, where appropriate, for backfilling, soil stabilization and compacting, grading, and appropriate revegetation, a plan for soil reconstruction, replacement, and stabilization, pursuant to the performance standards in Section 23(b)(7) of this Act for food, forage, and forest land identified in that section, and an estimate of the cost per acre of the reclamation, including a statement as to how the permittee plans to comply with each of the requirements set out in Section 23 of this Act;

(6) the consideration that has been given to maximize the utilization and conservation of the solid fuel resource being recovered so that re-affecting the land in the future can be minimized;

(7) an estimated timetable for the accomplishment of each major step in the reclamation plan;

(8) the consideration that has been given to making the surface mining and reclamation operations consistent with surface owner plans and applicable land use plans and programs;

(9) the steps to be taken to comply with applicable air and water quality laws and regulations and any applicable health and safety standards;

(10) the consideration that has been given to developing the reclamation plan in a manner consistent with local, physical, environmental, and climatological conditions;

(11) the results of test borings that the applicant has made at the area to be covered by the permit, or other equivalent information and data in a form satisfactory to the commission, including the location of subsurface water, and an analysis of those chemical properties of the coal and overburden that can be expected to have an adverse effect on the environment;

(12) all land, interests in land, or options on those interests held by the applicant or pending bids on interests in land by the applicant, which land is contiguous to the area to be covered by the permit;

(13) a detailed description of the measures to be taken during the mining and reclamation process to assure the protection of:

(A) the quality of surface and ground water systems, both on- and off-site, from adverse effects of the mining and reclamation process;

(B) the rights of present users to such water; and

(C) the quantity of surface and ground water systems, both on- and off-site, from adverse effects of the mining and reclamation process or to provide alternative sources of water where the protection of quantity cannot be assured;

(14) information submitted to the commission, pursuant to this section, concerning mineral deposits, test borings, core samplings, or trade secrets or commercial or financial information relating to the competitive rights of the applicant and specifically identified as confidential by the applicant, if not essential for public review as determined by the commission, shall not be disclosed by any member, agent, or employee of the commission; provided, however, that information called for in other sections of this Act that must, by the terms of the other sections, be either on public file or available to persons with interests that may be affected, and information about the chemical and physical properties of the coal which relate to mineral or elemental contents that are potentially toxic in the environment, shall not be held to be confidential.

Blasting Plan

Sec. 16. Each applicant for a surface coal mining and reclamation permit shall submit to the commission as a part of its application a blasting plan which shall outline the procedures and standards by which the operator will meet the provisions of Section 23(b)(15).

Public Inspection of Application

Sec. 17. (a) Each applicant for a surface coal mining and reclamation permit shall file a copy of the application for public inspection with the county clerk of the county in which the mining is proposed to occur, except for that information in the application pertaining to the coal seam itself.

(b) Copies of any records, reports, inspection materials, or information obtained under this Act by the commission shall be made immediately available to the public at central and sufficient locations in the county, multicounty, and state area of mining so that they are conveniently available to residents in the areas of mining.

Fee

Sec. 18. (a) Each application for a surface mining permit shall be accompanied by an initial application fee as determined by the commission in accordance with a published fee schedule. The initial application fee shall be based as nearly as possible on the actual or anticipated cost of reviewing the application, but shall not exceed \$1,000.

(b) This fee shall be deposited in the state treasury and credited to a special account to the commission and may be spent for the administration and enforcement of this Act.

Small Mine Exemption

Sec. 19. If the commission finds that the probable total annual production at all locations of any surface coal mining operator will not exceed 100,000 tons, the determination of probable hydrologic consequences and statement of the results of test borings or core samplings called for in Section 14 of this Act shall, on the written request of the operator, be performed by a qualified public or private laboratory designated by the commission, and the cost of the preparation of the determination and statement shall be assumed by the commission.

Public Notice of Applications, Hearings, and Appeal

Sec. 20. (a) At the time of submission of any application for a surface coal mining and reclamation permit, or renewal of an existing permit, the applicant's advertisement of ownership, location, and boundaries of the land to be affected shall be placed in a local newspaper of general circulation in the locality of the proposed surface coal mining operation at least once a week for four consecutive weeks.

The commission shall notify various local governmental bodies, planning agencies and sewage and water treatment authorities in the locality, of the operator's intention to conduct a surface mining operation indicating the application's number and the county courthouse in which a copy of the proposed surface coal mining and reclamation plan may be inspected. These local bodies, agencies, authorities, or companies may submit written comments within a period established by the commission on the mining applications with respect to the effect of the proposed operation on the environment that is within their area of responsibility. The comments shall immediately be transmitted to the applicant by the commission and shall be made available to the public at the same location as is the mining application.

(b) Any person having an interest that is or may be adversely affected and any federal, state, or local governmental agency or authority are entitled to file written objections to the proposed initial or revised application for a permit for surface coal mining and reclamation operation with the commission within 30 days after the last publication of the notice required by Subsection (a) of this section. Those objections shall immediately be transmitted to the applicant by the commission and shall be made available to the public.

(c) Within 45 days after the last publication of the notice provided in Subsection (a) of this section, the applicant or any person with an interest which is or may be adversely affected may request a hearing on the application. The hearing shall be held within 30 days after the request is received by the commission.

(d) The commission shall publish notice of the date, time, and location of the public hearing in a local newspaper of general circulation in the locality of the proposed surface coal mining operations at least once a week for three consecutive weeks before the scheduled hearing date.

(e) Within the time frame provided by the Administrative Procedure and Texas Register Act, as amended, if the public hearing provided by this section occurs, or within 45 days of the last publication of notice of application, if no public hearing is held, the commission shall notify the applicant and any objectors whether the application has been approved or denied.

(f) All provisions of the Administrative Procedure and Texas Register Act, as amended, apply to each permit application, and notice, other than that provided for by this section, of hearings and appeals are governed by that statute.

Permit Approval or Denial

Sec. 21. (a) On the basis of a complete application for a surface coal mining and reclamation permit or a revision or renewal of a permit, as required by this Act, the commission shall grant, require

modification of, or deny the application for a permit and, within a reasonable time, as set by the commission, notify the applicant in writing. The applicant for a permit or revision of a permit shall have the burden of establishing that his or her application is in compliance with all the requirements of this Act. Within 10 days after the granting of a permit, the commission shall notify the county judge in the county in which the land to be affected is located that a permit has been issued and shall describe the location of the land.

(b) No application for a permit or revision of a permit shall be approved unless the commission finds, in writing, on the basis of the information set forth in the application or from information otherwise available that will be documented in the approval and made available to the applicant, that:

(1) the application is accurate and complete and that it complies with all the requirements of this Act;

(2) the applicant has demonstrated that reclamation as required by this Act can be accomplished under the reclamation plan contained in the application;

(3) an assessment of the probable cumulative impact of all anticipated surface coal mining in the area on the hydrologic balance has been made by the commission, and the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area;

(4) the area proposed to be mined is not included within an area designated unsuitable for surface coal mining pursuant to this Act nor is it within an area under study for this designation in an administrative proceeding commenced pursuant to this Act, unless in the area as to which an administrative proceeding has commenced, the applicant demonstrates that, prior to January 1, 1977, he or she has made substantial legal and financial commitments in relation to the operation for which he or she is applying for a permit;

(5) the proposed surface coal mining operation, if located west of the 100th meridian west longitude, would:

(A) not interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally subirrigated, excluding undeveloped range land that is not significant to farming on the alluvial valley floors and land on which the commission finds that the farming that will be interrupted, discontinued, or precluded is of such small acreage as to have negligible impact on the farm's agricultural production; or

(B) not materially damage the quantity or quality of water in surface or underground water systems that supply these valley floors.

This subsection shall not affect those surface coal mining operations that in the year preceding the enactment of this Act produced coal in commercial quantities and were located within or adjacent to alluvial valley floors or had obtained specific permit approval by the commission to conduct surface coal mining operations within the alluvial valley floors;

(6) in cases where the ownership of the coal has been severed from the private surface estate, the applicant has submitted to the commission:

(A) the written consent of the surface owner to the extraction of coal by surface mining methods;

(B) a conveyance that expressly grants or reserves the right to extract the coal by surface mining methods; or

(C) if the conveyance does not expressly grant the right to extract coal by surface mining methods, the surface-subsurface legal relationship shall be determined in accordance with state law; provided, that nothing in this Act shall be construed to authorize the commission to adjudicate property rights disputes.

(c) The applicant shall file, with his or her application, a schedule listing any and all notices of violations of this Act and any law, rule, or regulation of the United States, or the State of Texas, or of any department or agency in the United States pertaining to air or water environmental protection incurred by the applicant in connection with any surface coal mining operation within the state during the three-year period prior to the date of application, and shall include in the schedule, the final resolution of notice of violation. If the schedule or other information available to the commission indicates that any surface coal mining operation owned or controlled by the applicant is currently in violation of this Act or other laws referred to in this subsection, the permit shall not be issued until the applicant submits proof that the violation has been corrected or is in the process of being corrected to the satisfaction of the commission, department, or agency that has jurisdiction over the violation or that the notice of violation is being contested by the applicant, and no permit shall be issued to any applicant after a finding by the commission, after opportunity for hearing, that the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of wilful violations of this Act of such nature and duration with such resulting irreparable damage to the environment as to indicate an intent not to comply with this Act.

(d) In addition to finding the application in compliance with Subsection (b) of this section, if the area proposed to be mined contains prime farmland, the commission shall, after consultation with the

secretary, and pursuant to regulations issued pursuant to the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977), by the Secretary of the U.S. Department of Interior with the concurrence of the secretary, grant a permit to mine on prime farmland, if the commission finds in writing that the operator has the technological capability to restore the mined area, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management, and also finds that the applicant can meet the soil reconstruction standards of the Act. Except for compliance with Subsection (b) of this section, the requirements of this paragraph shall apply to all permits issued after August 3, 1977. Nothing in this subsection shall apply to any permit issued prior to August 3, 1977, or to any revisions or renewals of a permit, or to any existing surface mining operations for which a permit was issued prior to that date.

Revision and Transfer of Permits

Sec. 22. (a) During the term of a permit, the permittee may submit an application for a revision of the permit, together with a revised reclamation plan, to the commission. An application for a revision of a permit shall not be approved unless the commission finds that reclamation as required by this Act can be accomplished under the revised reclamation plan. The revision shall be approved or disapproved within 90 days. The commission shall establish guidelines for determination of the scale or extent of a revision request for which all permit application information requirements and procedures, including notice and hearings, shall apply; however, any revisions that propose significant alterations in the reclamation plan shall, at a minimum, be subject to notice and hearing requirements. Any extensions of the area covered by the permit except incidental boundary revisions must be made by application for another permit.

(b) No transfer, assignment, or sale of the rights granted under any permit issued pursuant to this Act shall be made without the written approval of the commission.

(c) The commission shall, within a time limit prescribed by rule, review outstanding permits and may require reasonable revision or modification of the permit provisions during the terms of the permit. Any revision or modification shall be based on a written finding and subject to the provisions of notice and hearing contained in the Administrative Procedure and Texas Register Act, as amended.

Performance Standards

Sec. 23. (a) A permit issued under this Act to conduct surface coal mining operations shall require that the operations meet all applicable performance standards of this Act.

(b) Performance standards applicable to all surface coal mining and reclamation operations that are not exempt or excluded shall require the operator to:

(1) conduct surface coal mining operations so as to maximize the utilization and conservation of the solid fuel resource being recovered so that re-affecting the land in the future through surface coal mining can be minimized;

(2) restore the land affected to a condition capable of supporting the uses that it was capable of supporting prior to any mining, or higher or better uses of which there is reasonable likelihood, so long as the use or uses do not present any actual or probable hazard to public health or safety or pose any actual or probable threat of water diminution or pollution, and the permit applicants' declared proposed land use following reclamation is not deemed to be impractical or unreasonable, inconsistent with applicable land use policies and plans, involves unreasonable delay in implementation, or is violative of federal, state or local law;

(3) except as provided in Subsection (c) of this section, with respect to all surface coal mining operations, backfill, compact, where advisable to insure stability or to prevent leaching of toxic materials, and grade in order to restore the approximate original contour of the land with all highwalls, spoil piles, and depressions eliminated, unless small depressions are needed in order to retain moisture to assist revegetation or as otherwise authorized pursuant to this Act; provided, however, that in surface coal mining that is carried out at the same location over a substantial period of time where the operation transects the coal deposit, and the thickness of the coal deposits relative to the volume of the overburden is large and where the operator demonstrates that the overburden and other spoil and waste materials at a particular point in the permit area or otherwise available from the entire permit area is insufficient, giving due consideration to volumetric expansion to restore the approximate original contour, the operator, at a minimum, shall backfill, grade, and compact, where advisable, using all available overburden and other spoil and waste materials to attain the lowest practicable grade but not more than the angle of repose, to provide adequate drainage and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region; and provided further, that in surface coal mining, where the volume of overburden is large relative to the thickness of the coal deposit and where the operator demonstrates that due to volumetric expansion the amount of overburden and other spoil and waste materials removed in the course of the mining operation is more than sufficient to restore the approximate

original contour, the operator shall, after restoring the approximate contour, backfill, grade, and compact, where advisable, the excess overburden and other spoil and waste materials to attain the lowest grade but not more than the angle of repose, and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region and that the overburden or spoil shall be shaped and graded in such a way as to prevent slides, erosion, and water pollution and is revegetated in accordance with the requirements of this Act;

(4) stabilize and protect all surface areas, including spoil piles affected by the surface coal mining and reclamation operation, to effectively control erosion and attendant air and water pollution;

(5) remove the topsoil from the land in a separate layer, replace it on the backfill area, or if not utilized immediately, segregate it in a separate pile from other spoil and when the topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, maintain a successful cover by quick growing plant or other means thereafter so that the topsoil is preserved from wind and water erosion, remains free of any contamination by other acid or toxic material, and is in a usable condition for sustaining vegetation when restored during reclamation, except if topsoil is of insufficient quantity or of poor quality for sustaining vegetation requirements, or if other strata can be shown to be more suitable for vegetation requirements, then the operator shall remove, segregate, and preserve in a like manner the other strata that are best able to support vegetation;

(6) restore the topsoil or the best available subsoil which is best able to support vegetation;

(7) for all prime farmland to be mined and reclaimed, specifications for soil removal, storage, replacement, and reconstruction shall be established by the secretary, and the operator shall, as a minimum, be required to:

(A) segregate the A horizon of the natural soil, except where it can be shown that other available soil materials will create a final soil having a greater productive capacity, and if not utilized immediately, stockpile this material separately from other spoil, and provide needed protection from wind and water erosion or contamination by other acid or toxic materials;

(B) segregate the B horizon of the natural soil, or underlying C horizons or other strata, or a combination of those horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon, in sufficient quanti-

ties to create in the regraded final soil a root zone of comparable depth and quality to that which existed in the natural soil, and if not utilized immediately, stockpile this material separately from other spoil, and provide needed protection from wind and water erosion or contamination by other acid or toxic material, and the commission may authorize the permittee to:

(i) remove all soil and overburden in one step;

(ii) store all the soil and overburden in one stockpile; and

(iii) commence reclamation by replacing and grading the stockpile material, all without regard to soil horizons, on proper documentation supporting the use of this mining technique to obtain equivalent or higher yields as on surrounding nonmined soil of the same type;

(C) replace and regrade the root zone material described in Subsection (b)(7)(B) of this section with proper compaction and uniform depth over the regraded spoil material; and

(D) redistribute and grade in a uniform manner the surface soil horizon described in Subsection (b)(7)(A) of this section;

(8) create, if authorized in the approved mining and reclamation plan and permit, permanent impoundments of water on mining sites as part of reclamation activities only when it is adequately demonstrated that:

(A) the size of the impoundment is adequate for its intended purposes;

(B) the impoundment dam construction will be designed so as to achieve necessary stability with an adequate margin of safety compatible with that of structures constructed under the Watershed Protection and Flood Prevention Act, 16 U.S.C. 1006 (1954);

(C) the quality of impounded water will be suitable on a permanent basis for its intended use and that discharges from the impoundment will not degrade the water quality below water quality standards established pursuant to applicable federal and state law in the receiving stream;

(D) the level of water will be reasonably stable;

(E) final grading will provide adequate safety and access for proposed water users; and

(F) the water impoundments will not result in the diminution of the quality or quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses;

(9) conduct any augering operation associated with surface mining in a manner to maximize recoverability of coal reserves remaining after the operation and reclamation are complete, and seal all auger holes with an impervious and noncombustible material in order to prevent drainage except where the commission determines that the resulting impoundment of water in the auger holes may create a hazard to the environment or the public health or safety; provided, that the commission may prohibit augering if necessary to maximize the utilization, recoverability, or conservation of the solid fuel resources or to protect against adverse water quality impacts;

(10) minimize the disturbances to the prevailing hydrologic balance at the mine site in associated offsite areas and to the quality and quantity of water in surface and ground water systems both during and after surface coal mining operations and during reclamation by:

(A) avoiding acid or other toxic mine drainage by such measures as, but not limited to:

(i) preventing or removing water from contact with toxic-producing deposits;

(ii) treating drainage to reduce toxic content that adversely affects downstream water on being released to water courses; or

(iii) casing, sealing, or otherwise managing boreholes, shafts, and wells and keeping acid or other toxic drainage from entering surface water and ground water;

(B)(i) conducting surface coal mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area, but in no event shall contributions be in excess of requirements set by applicable state or federal law;

(ii) constructing any siltation structures pursuant to Subsection (b)(10)(B)(i) of this section prior to commencement of surface coal mining operations, these structures to be certified by a qualified registered engineer to be constructed as designed and as approved in the reclamation plan;

(C) cleaning out and removing temporary or large settling ponds or other siltation structures from drainways after disturbed areas are revegetated and stabilized, and depositing the silt and debris at a site and in a manner approved by the commission;

(D) restoring recharge capacity of the mined area to approximate premining conditions;

(E) avoiding channel deepening or enlargement in operations requiring the discharge of water from mines;

(F) preserving throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors in the arid and semiarid areas of the country; and

(G) other actions as the commission may prescribe;

(11) with respect to surface disposal of mine wastes, tailings, coal processing wastes, and other wastes in areas other than the mine working or excavations, stabilize all waste piles in designated areas through construction in compacted layers including the use of incombustible and impervious materials, if necessary, and assure the final contour of the waste pile will be compatible with natural surroundings and that the site can and will be stabilized and revegetated according to the provisions of this Act;

(12) refrain from surface coal mining within 500 feet from active and abandoned underground mines in order to prevent breakthroughs and to protect health or safety of miners; provided, that the commission shall permit an operator to mine near, through, or partially through an abandoned underground mine or closer to an active underground mine if the nature, timing, and sequencing of the approximate coincidence of specific surface mine activities with specific underground mine activities are jointly approved by the regulatory authorities concerned with surface mine regulation and the health and safety of underground miners, and the operations will result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public;

(13) design, locate, construct, operate, maintain, enlarge, modify, and remove or abandon, in accordance with the standards and criteria developed pursuant to commission rule, all existing and new coal mine waste piles, consisting of mine wastes, tailings, coal processing wastes, or other liquid and solid wastes, and used either temporarily or permanently as dams or embankments;

(14) insure that all debris, acid-forming materials, toxic materials, or materials constituting a fire hazard are treated or buried and compacted or otherwise disposed of in a manner designed to prevent contamination of surface water or ground water and that contingency plans are developed to prevent sustained combustion;

(15) insure that explosives are used only in accordance with existing state and federal law and the regulations promulgated by the commission, which shall include provisions to:

(A) provide adequate advance written notice to local governments and residents who might be affected by the use of the explosives, by publication of the planned blasting schedule in a newspaper of general circulation in the locality

and by mailing a copy of the proposed blasting schedule to every resident living within one-half mile of the proposed blasting site and by providing daily notice to resident/occupiers in the areas prior to any blasting;

(B) maintain for a period of at least three years and make available for public inspection on request, a log detailing the location of the blasts, the pattern and depth of the drill holes, the amount of explosives used per hole, and the order and length of delay in the blasts;

(C) limit the type of explosives and detonating equipment, the size, the timing, and frequency of blasts based upon the physical conditions of the site so as to prevent injury to persons, damage to public and private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of ground or surface water outside the permit area;

(D) require that all blasting operations be conducted by trained and competent persons as certified by the commission;

(E) provide that on the request of a resident or owner of a man-made dwelling or structure within one-half mile of any portion of the permitted area, the applicant or permittee shall conduct a preblasting survey of the structures and submit the survey to the commission and a copy to the resident or owner making the request, the area of the survey shall be decided by the commission;

(16) insure that all reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable with the surface coal mining operations; provided, however, that if the applicant proposes to combine surface mining operations with underground mining operations to assure maximum practical recovery of the coal resources, the commission may grant a variance for specific areas within the reclamation plan from the requirement that reclamation efforts proceed as contemporaneously as practicable to permit underground mining operations prior to reclamation:

(A) if the commission finds in writing that:

(i) the applicant has presented, as part of the permit application, specific, feasible plans for the proposed underground mining operations;

(ii) the proposed underground mining operations are necessary or desirable to assure maximum practical recovery of the coal resource and will avoid multiple disturbance of the surface;

(iii) the applicant has satisfactorily demonstrated that the plan for the underground mining operations conforms to requirements

for underground mining in the jurisdiction and that permits necessary for the underground mining operations have been issued by the appropriate authority;

(iv) the areas proposed for the variance have been shown by the applicant to be necessary for implementing the proposed underground mining operations;

(v) no substantial adverse environmental damage, either on-site or off-site, will result from the delay in completion of reclamation as required by this Act;

(vi) provisions for the offsite storage of spoil will comply with Subsection (b)(22) of this section;

(B) if the commission has promulgated specific regulations to govern the granting of the variances in accordance with the provisions of this subsection, and has imposed the additional requirements it deems necessary;

(C) if variances granted under the provisions of this subsection are to be reviewed by the commission not more than three years from the date of issuance of the permit; and

(D) if liability under the bond filed by the applicant with the commission pursuant to Section 25(b) of this Act is for the duration of the underground mining operations and until the requirements of Sections 23(b) and 26 of this Act have been fully complied with;

(17) insure that the construction, maintenance, and postmining conditions of access roads into and across the site of operations will control or prevent erosion and siltation, pollution of water, damage to fish or wildlife or their habitat, or public or private property;

(18) refrain from the construction of roads or other access ways up a stream bed or drainage channel or in such proximity to the channel as to seriously alter the normal flow of water;

(19) establish on the regraded areas, and all other land affected, a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area of land to be affected and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area, except, that introduced species may be used in the revegetation process where desirable and necessary to achieve the approved postmining land use plan;

(20) assume the responsibility for successful revegetation, as required by Subsection (b)(19) of this section, for a period of five full years after the last year of augmented seeding, fertilizing, irrigation, or other work in order to assure compliance with Subsection (b)(19) of this section, except in those areas or regions of the state where the

annual average precipitation is 26 inches or less, then the operator's assumption of responsibility and liability will extend for a period of 10 full years after the last year of augmented seeding, fertilizing, irrigation, or other work; provided, that if the commission approves a long-term intensive agricultural postmining land use, the applicable 5- or 10-year period of responsibility for revegetation shall commence at the date of initial planting for the long-term intensive agricultural postmining land use; provided further, that if the commission issues a written finding approving a long-term intensive, agricultural, postmining land use as part of the mining and reclamation plan, the commission may grant exception to the provisions of Subsection (b)(19) of this section;

(21) protect off-site areas from slides or damage occurring during the surface coal mining and reclamation operations, and not deposit spoil material or locate any part of the operations or waste accumulations outside the permit area;

(22) place all excess spoil material resulting from coal surface mining and reclamation activities in such a manner that:

(A) spoil is transported and placed in a controlled manner in position for concurrent compaction and in such a way to assure mass stability and to prevent mass movement;

(B) the areas of disposal are within the bonded permit areas and all organic matter shall be removed immediately prior to spoil placement;

(C) appropriate surface and internal drainage systems and diversion ditches are used so as to prevent spoil erosion and movement;

(D) the disposal area does not contain springs, natural water courses, or wet weather seeps unless lateral drains are constructed from the wet areas to the main underdrains in such a manner that filtration of the water into the spoil pile will be prevented;

(E) if placed on a slope, the spoil is placed on the most moderate slope, among those on which, in the judgment of the commission, the spoil could be placed in compliance with all the requirements of this Act, and shall be placed, where possible, on or above a natural terrace, bench, or berm, if the placement provides additional stability and prevents mass movement;

(F) where the toe of the spoil rests on a downslope, a rock toe buttress of sufficient size to prevent mass movement is constructed;

(G) the final configuration is compatible with the natural drainage pattern and surroundings and suitable for intended uses;

(H) design of the spoil disposal area is certified by a qualified registered professional engineer in conformance with professional standards; and

(I) all other provisions of this Act are met;

(23) meet other criteria necessary to achieve reclamation in accordance with the purposes of this Act, taking into consideration the physical, climatological, and other characteristics of the site;

(24) to the extent possible, using the best technology currently available, minimize disturbance and adverse impacts of the operation on fish, wildlife, and related environmental values, and achieve enhancement of those resources where practicable; and

(25) provide for an undisturbed natural barrier beginning at the elevation of the lowest coal seam to be mined and extending from the outslope for the distance the commission determines shall be retained in place as a barrier to slides and erosion.

(c)(1) The commission, by rule, shall include procedures pursuant to which it may permit surface mining operations for the purposes set forth in Subdivision (3) of this subsection.

(2) If an applicant meets the requirements of Subdivisions (3) and (4) of this subsection, a permit, without regard to the requirement to restore to approximate original contour set forth in Subsection (b)(3) or (d)(2) and (3) of this section, may be granted for the surface mining of coal where the mining operation will remove an entire coal seam or seams running through the upper fraction of a mountain, ridge, or hill, except as provided in Subsection (c)(4)(A) of this section, by removing all of the overburden and creating a level plateau or a gently rolling contour with no highwalls remaining, and capable of supporting postmining uses in accord with the requirements of this subsection.

(3) In cases where an industrial, commercial, agricultural, residential, or public facility, including recreational facilities, use is proposed for the postmining use of affected land, the commission may grant a permit for a surface mining operation of the nature described in Subsection (c)(2) of this section where:

(A) after consultation with the appropriate land use planning agencies, if any, the proposed postmining land use is deemed to constitute an equal or better economic or public use of the affected land, as compared with premining use;

(B) the applicant presents specific plans for the proposed postmining land use and appropriate assurances that the use will be:

- (i) compatible with adjacent land uses;
- (ii) obtainable according to data regarding expected need and market;
- (iii) assured of investment in necessary public facilities;

(iv) supported by commitments from public agencies, where appropriate;

(v) practicable with respect to private financial capability for completion of the proposed use;

(vi) planned pursuant to a schedule attached to the reclamation plan so as to integrate the mining operation and reclamation with the postmining land use; and

(vii) designed by a registered engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site;

(C) the proposed use would be consistent with adjacent land uses and existing state and local land use plans and programs;

(D) the commission provides the county in which the land is located and any state or federal agency which the commission, in its discretion, determines to have an interest in the proposed use, an opportunity of not more than 60 days to review and comment on the proposed use; and

(E) all other requirements of this Act are met.

(4) In granting any permit pursuant to this subsection, the commission shall require that:

(A) the toe of the lowest coal seam and the overburden associated with it are retained in place as a barrier to slides and erosion;

(B) the reclaimed area is stable;

(C) the resulting plateau or rolling contour drains inward from the outslopes except at specified points;

(D) no damage will be done to natural watercourses;

(E) spoil will be placed on the mountaintop bench as is necessary to achieve the planned postmining land use; provided, that all excess spoil material not retained on the mountaintop shall be placed in accordance with the provisions of Subsection (b)(22) of this section;

(F) insure stability of the spoil retained on the mountaintop and meet the other requirements of this Act.

(5) The commission shall promulgate specific rules to govern the granting of permits in accord with the provisions of this subsection and may impose additional requirements it deems to be necessary.

(6) All permits granted under this subsection shall be reviewed not more than three years from the date of issuance of the permit, unless the applicant affirmatively demonstrates that the proposed development is proceeding in accordance

with the terms of the approved schedule and reclamation plan.

(d) The following performance standards shall be applicable to steep slope surface coal mining and shall be in addition to those general performance standards required by this section; provided, however, that the provisions of this subsection shall not apply to those situations in which an operator is mining on flat or gently rolling terrain, on which an occasional steep slope is encountered through which the mining operations are to proceed, leaving a plain or predominantly flat area or where an operator is in compliance with provisions of Subsection (c) of this section:

(1) the operator shall insure that when performing surface coal mining on steep slopes, no debris, abandoned or disabled equipment, spoil material, or waste mineral matter be placed on the downslope below the bench or mining cut; provided, that spoil material in excess of that required for the reconstruction of the approximate original contour under the provisions of Subsection (b)(3) or (d)(2) of this section shall be permanently stored pursuant to Subsection (b)(22) of this section;

(2) complete backfilling with spoil material shall be required to cover completely the highwall and return the site to the appropriate original contour, which material will maintain stability following mining and reclamation;

(3) the operator may not disturb land above the top of the highwall unless the commission finds that the disturbances will facilitate compliance with the environmental protection standards of this section; provided, however, that the land disturbed above the highwall shall be limited to that amount necessary to facilitate the compliance;

(4) for the purposes of this subsection, the term "steep slope" is any slope above 20 degrees or such lesser slope as may be determined by the commission after consideration of soil, climate, or other characteristics of a region or state.

(e)(1) The commission, by rule, shall include procedures pursuant to which it may permit variances for the purposes set forth in Subdivision (3) of this subsection, provided that the watershed control of the area is improved; and further provided complete backfilling with spoil material shall be required to cover completely the highwall, which material will maintain stability following mining and reclamation.

(2) Where an applicant meets the requirements of Subdivisions (3) and (4) of this subsection, a variance from the requirement to restore to approximate original contour set forth in Subsection (d)(2) of this section may be granted for the surface mining of coal where the owner of the surface knowingly

requests in writing, as a part of the permit application, that the variance be granted so as to render the land, after reclamation, suitable for an industrial, commercial, residential, or public use, including recreational facilities, in accord with the further provisions of Subdivisions (3) and (4) of this subsection;¹

(3) After consultation with the appropriate land use planning agencies, if any, if the potential use of the affected land:

(A) is deemed to constitute an equal or better economic or public use;

(B) is designed and certified by a qualified registered professional engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site; and

(C) is approved by the appropriate state environmental agencies, the watershed of the affected land is deemed to be improved;¹

(4) In granting a variance pursuant to this subsection, the commission shall require that only those amounts of spoil will be placed off the mine bench as is necessary to achieve the planned postmining land use, insure stability of the spoil retained on the bench, meet all other requirements of this Act, and all spoil placement off the mine bench must comply with Subsection (b)(22) of this section.

(5) The commission shall promulgate specific rules to govern the granting of variances in accord with the provisions of this subsection, and may impose any additional requirements it deems to be necessary.

(6) All exceptions granted under the provisions of this subsection shall be reviewed not more than three years from the date of issuance of the permit, unless the permittee affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the reclamation plan.

¹ Punctuation so in enrolled bill.

Public Liability Insurance

Sec. 24. Each applicant for a permit shall submit to the commission, as part of each permit application, a certificate satisfactory to the commission that the applicant has a public liability insurance policy in force for the surface coal mining and reclamation operation for which the permit is sought, or evidence satisfactory to the commission that the applicant should be allowed to be self-insured. The policy shall provide for personal injury and property damage protection in an amount adequate to compensate any persons damaged as a result of the surface coal mining and reclamation operations including the use of explosives, and entitled to compensation under state law. The policy shall be maintained in full force and effect during the terms of the permit or any renewal, including all reclamation operations.

Performance Bond

Sec. 25. (a) After a surface coal mining and reclamation permit application has been approved but before the permit is issued, the applicant shall file with the commission, on a form prescribed and furnished by the commission, a bond for performance payable to the State of Texas and conditioned on faithful performance of all requirements of this Act and the permit. The bond shall cover that area of land within the permit area on which the applicant will initiate and conduct surface coal mining and reclamation operations within the initial term of the permit. As succeeding increments of surface coal mining and reclamation operations are initiated and conducted within the permit area the permittee shall provide an additional bond or bonds to cover those increments. The amount of the bond required for each bonded area shall reflect the probable difficulty of the reclamation giving consideration to such factors as topography, geology of the site, hydrology, and revegetation potential, and shall be determined by the commission. The amount of the bond shall be sufficient to assure the completion of the reclamation plan if the work had to be performed by the commission in the event of forfeiture, and in no case shall the bond for the entire area under one permit be less than \$10,000.

(b) Liability under the bond shall be for the duration of the surface coal mining and reclamation operation and for a period coincident with applicant's responsibility for revegetation. The bond shall be executed by the applicant and a corporate surety licensed to do business in Texas except that the applicant may elect to deposit cash, negotiable bonds of the United States government or the state, or negotiable certificates of deposit of any bank organized or transacting business in the United States, as security for the performance of his or her obligations under the bond. The cash deposit or market value of the securities shall be equal to or greater than the amount of the bond required for the bonded area.

(c) The commission may accept the bond of the applicant without separate surety when the applicant demonstrates to the satisfaction of the commission the existence of a suitable and continuous operation sufficient for authorization to self-insure or bond such amount, or in lieu of the establishment of a bonding program as set forth in this section, the commission may approve an alternative system that will achieve the objectives and purposes of the bonding program pursuant to this section.

(d) The amount of the bond or deposit required and the terms of each acceptance of the applicant's bond shall be adjusted by the commission from time to time as affected land acreages are increased or decreased or where the cost of future reclamation changes.

Release of Bonds or Deposits

Sec. 26. (a) The permittee may file a request with the commission for the release of all or part of a performance bond or deposit. Within 30 days after any application for bond or deposit release has been filed with the commission, the permittee shall submit a copy of an advertisement placed at least once a week for four consecutive weeks in a newspaper of general circulation in the locality of the surface coal mining operation. The advertisement shall be considered part of any bond release application and shall contain a notification of the precise location of the land affected, the number of acres, the permit and the date approved, the amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed, and a description of the results achieved as they relate to the permittee's reclamation plan. In addition, as part of any bond release application, the applicant shall submit copies of letters which he or she has sent to adjoining property owners, local governmental bodies, planning agencies, and sewage and water treatment authorities in the locality, as the commission may direct, notifying them of his intention to seek release from the bond.

(b) On receipt of the notification and request, the commission shall within 30 days conduct an inspection and evaluation of the reclamation work involved. The evaluation shall consider, among other things, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuance of future occurrence of the pollution, and the estimated cost of abating the pollution. The commission shall notify the permittee, in writing, of its decision to release or not to release all or part of the performance bond or deposit within 60 days from the filing of the request, if no public hearing is held, and if there has been a public hearing, within 30 days after the hearing.

(c) The commission may release the bond or deposit in whole or in part if it is satisfied the reclamation covered by the bond or deposit or portion of the reclamation has been accomplished as required by this Act according to the following schedule:

(1) if the permittee completes the backfilling, regrading, and drainage control of a bonded area in accordance with the reclamation plan, the release of 60 percent of the bond or collateral for the applicable permit area;

(2) after revegetation has been established on the regraded mined lands in accordance with the reclamation plan; when determining the amount of bond to be released after successful revegetation has been established, the commission shall retain the amount of the bond for the revegetated area that is sufficient for a third party to establish

revegetation and for the period specified for permittee responsibility in Section 23(b)(20) of this Act. No part of the bond or deposit shall be released under this paragraph so long as the land to which the release would be applicable is contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements by Section 23(b)(10) of this Act or until soil productivity for prime farmland has returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to Section 14(a)(14) of this Act; where a silt dam is to be retained as a permanent impoundment pursuant to Section 23(b)(8) of this Act, the portion of bond may be released under this subdivision so long as provisions for sound future maintenance have been made with the commission;

(3) when the permittee has successfully completed all surface coal mining and reclamation activities, the release of the remaining portion of the bond, but not before the expiration of the period specified for permittee responsibility in Section 23(b)(20) of this Act; however, no bond shall be fully released until all reclamation requirements of this Act are fully met.

(d) If the commission disapproves the application for release of the bond or a portion of the bond, it shall notify the permittee, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure said release and allowing opportunity for a public hearing.

(e) When an application for total or partial bond release is filed with the commission, it shall notify the county judge of any county in which the surface coal mining operation is located by certified mail at least 30 days prior to the release of all or a portion of the bond.

(f) Any person with a valid legal interest that might be adversely affected by release of the bond or the responsible officer or head of any federal, state, or local governmental agency that has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation, or is authorized to develop and enforce environmental standards with respect to the operations, is entitled to file written objections to the proposed release from bond with the commission within 30 days after the last publication of the notice. If written objections are filed and a hearing requested, the commission shall inform all the interested parties of the time and place of the hearing and hold the hearing in the locality of the surface coal mining operation or at the state capital at the option of the objector, within 30 days of the request for such hearing. The date, time, and location of such public hearings shall be advertised by the com-

mission in a newspaper of general circulation in the locality for two consecutive weeks and the public hearing and any appeal shall be conducted pursuant to the provisions of the Administrative Procedure and Texas Register Act, as amended.

Coal Exploration Permits

Sec. 27. (a) Coal exploration operations that substantially disturb the natural land surface shall be conducted in accordance with rules issued by the commission. The rules shall include, at a minimum, the requirement that prior to conducting the exploration, a person must file with the commission notice of intent to explore and the notice shall include a description of the exploration area and the period of proposed exploration, and provisions for reclamation in accordance with the performance standards in Section 23 of this Act of all lands disturbed in exploration, including excavations, roads, drill holes, and the removal of necessary facilities and equipment.

(b) Information submitted to the commission pursuant to this section as confidential concerning trade secrets or privileged commercial or financial information that relates to the competitive rights of the person intending to explore the described area shall not be available for public examination.

(c) Any person who conducts any coal exploration operations that substantially disturb the natural land surface in violation of this section or the rules issued pursuant to this section shall be subject to the provisions of Section 30 of this Act.

(d) No operator shall remove more than 250 tons of coal pursuant to an exploration permit without the specific written approval of the commission.

Surface Effects of Underground Mining

Sec. 28. The commission shall adopt rules applicable to the surface effects of underground mining that are consistent with the requirements of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977), and regulations adopted pursuant to that statute by the Secretary of Interior of the United States. The provisions of this Act, including but not limited to those provisions relating to a permit application, a reclamation plan, a performance bond, and administrative or judicial review, also apply to the regulation of the surface effects of underground mining operations as established in Section 516 of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977).

Inspection and Monitoring

Sec. 29. (a) The commission shall require such monitoring and reporting, shall have made such inspections of any surface coal mining and reclamation operations, shall require the maintenance of such signs and markers, and shall take other actions as

are necessary to administer, enforce, and evaluate the administration of this Act and to meet the state program requirements of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977), and for such purposes, the commission or authorized representative shall, without advance notice and on presentation of appropriate credentials, have a right of entry to any surface coal mining and reclamation operation or any premises in which any records required to be maintained are located, and may at reasonable times, without delay, have access to and copy any records and inspect any monitoring equipment and method of operation required under this Act or the rules issued pursuant to this Act.

(b) Each inspector, on detection of each violation of any requirement of this Act, shall forthwith inform the operator in writing, and shall report in writing the violation to the commission.

(c) For those surface coal mining and reclamation operations that remove or disturb strata that serve as aquifers which significantly insure the hydrologic balance of water use either on or off the mining site, the commission shall specify:

(1) monitoring sites to record the quantity and quality of surface drainage above and below the minesite as well as in the potential zone of influence;

(2) monitoring sites to record level, amount, and samples of ground water and aquifers potentially affected by the mining and also directly below the lowermost, deepest, coal seam to be mined;

(3) records of well logs and boreholes data to be maintained; and

(4) monitoring sites to record precipitation.

(d) The commission shall issue rules that provide for informing the operator of violations detected by an inspector and for making public all inspection and monitoring reports and other records and reports required to be kept pursuant to this Act and the rules issued pursuant to this Act.

(e) The inspections by the commission shall:

(1) occur on an irregular basis averaging not less than one partial inspection per month and one complete inspection per calendar quarter for the surface coal mining and reclamation operation covered by each permit;

(2) occur without prior notice to the permittee or his agents or employees except for necessary on-site meetings with the permittee; and

(3) include the filing of inspection reports adequate to enforce the requirements of and to carry out the terms and purposes of this Act.

(f) No employee of the commission performing any function or duty under this Act shall have a direct or indirect financial interest in any underground or surface coal mining operation. Whoever

knowingly violates the provisions of this subsection shall, on conviction, be punished by a fine of not more than \$2,500, or by imprisonment of not more than one year, or by both.

Penalties

Sec. 30. (a) Any permittee or person who violates any permit condition or any provision of this Act may be assessed a civil penalty by the commission. If the violation leads to the issuance of a cessation order, a civil penalty must be assessed. The penalty shall not exceed \$5,000 for each violation. Each day a violation continues may be deemed a separate violation for purposes of penalty assessments. In determining the amount of the penalty, consideration shall be given to the permittee's history of previous violations at the particular surface coal mining operation, the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public, whether the permittee or person was negligent, and the demonstrated good faith of the permittee or person charged in attempting to achieve rapid compliance after notification of the violation.

(b) A civil penalty shall be assessed only after the person charged with a violation described under Subsection (a) of this section has been given an opportunity for a public hearing. Where the public hearing has been held, the commission shall make findings of fact, and it shall issue a written decision as to the occurrence of the violation and the amount of the penalty that is warranted, incorporating, when appropriate, an order requiring that the penalty be paid. When appropriate the commission shall consolidate the hearings with other proceedings under Section 32 of this Act. Any hearing under this section shall be of record and shall be subject to the Administrative Procedure and Texas Register Act, as amended. Where the person charged with the violation fails to avail himself or herself of the opportunity for a public hearing, a civil penalty shall be assessed by the commission after it has determined that a violation did occur, and the amount of the penalty which is warranted. The commission shall then issue an order requiring that the penalty be paid.

(c) On the issuance of a notice or order charging that a violation of the Act has occurred, the commission shall inform the permittee and any other person charged within 30 days of the proposed amount of the penalty. The person charged with the penalty shall then have 30 days to pay the proposed penalty in full or, if the person wishes to contest either the amount of the penalty or the fact of the violation, forward the proposed amount to the commission for placement in an escrow account. If through administrative or judicial review of the proposed penalty it is determined that no violation occurred or that the

amount of the penalty should be reduced, the commission shall, within 30 days, remit the appropriate amount to the person, with interest at the prevailing United States Department of the Treasury rate. Failure to forward the money to the commission within 30 days shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.

(d) Civil penalties owed under this Act may be recovered in a civil action brought by the attorney general at the request of the commission.

(e) Any person who wilfully and knowingly violates a condition of a permit issued pursuant to this Act or fails or refuses to comply with any order issued under this Act, or any order incorporated in a final decision issued by the commission under this Act, except an order incorporated in a decision issued under Subsection (b) of this section, shall, on conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than one year, or by both.

(f) Any permittee or person who fails to correct a violation for which a citation has been issued under Section 32(a) of this Act within the period permitted for its correction, which period shall not end until the entry of a final order by the commission, in the case of any review proceedings initiated by the permittee in which the commission orders, after an expedited hearing, the suspension of the abatement requirements of the citation after determining that the permittee will suffer irreparable loss or damage from the application of those requirements, or until the entry of an order of the court, in the case of any review proceedings initiated by the permittee in which the court orders the suspension of an abatement requirement of the citation, shall be assessed a civil penalty of not less than \$750 for each day during which the failure or violation continues.

(g) Whenever a corporate permittee or person violates a condition of a permit issued pursuant to a state program under Section 32 of this Act or fails or refuses to comply with any order issued under Section 32 of this Act, or any order incorporated in a final decision issued by the commission under this Act, except an order incorporated in a decision issued under Subsection (b) of this section, any director, officer, or agent of the corporation who wilfully and knowingly authorized, ordered, or carried out the violation, failure, or refusal shall be subject to the same civil penalties, fines, and imprisonment that may be imposed on a person under Subsections (a) and (e) of this section.

(h) Whoever knowingly makes any false statement, representation, or certification, or knowingly fails to make any statement, representation, or certification in any application, record, report, or other document filed or required to be maintained pursuant to a state program or this Act or any order of

decision issued by the commission under this Act, shall, on conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than one year, or by both.

Citizen Suits

Sec. 31. (a) Except as provided in Subsection (b) of this section, any person having an interest that is or may be adversely affected may commence a civil action on his or her own behalf to compel compliance with this Act against:

(1) the commission to the extent permitted by the Eleventh Amendment to the United States Constitution where there is alleged a failure of the commission to perform any act or duty under this Act that is not discretionary with the commission;

(2) any state governmental instrumentality or agency to the extent permitted by the Eleventh Amendment to the United States Constitution that is alleged to be in violation of the provisions of this Act or of any rule, regulation, order, or permit issued pursuant to this Act, or against any other person who is alleged to be in violation of any rule, regulation, order, or permit issued pursuant to this Act.

(b) No action may be commenced under Subsection (a)(1) of this section prior to 60 days after the plaintiff has given notice in writing of the action to the commission, in the manner as the commission shall by rule prescribe, except that the action may be brought immediately after the notification in the case where the violation or order complained of constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.

(c) No action may be commenced under Subsection (a)(2) of this section:

(A) prior to 60 days after the plaintiff has given notice in writing of the violation to the commission and to any alleged violator; or

(B) if the state of Texas has commenced and is diligently prosecuting a civil action in a court of the United States or this state to require compliance with the provisions of this Act, or any rule, regulation, order, or permit issued pursuant to this Act.

(d)(1) Any action respecting a violation of this Act or the regulations under this Act may be brought only in the judicial district in which the surface coal mining operation complained of is located.

(2) In the action under this section, the commission, if not a party, may intervene as a matter of right.

(e) The court, in issuing any final order in any action brought pursuant to Subsection (a) of this section, may award costs of litigation, including attorney and expert witness fees, to any party, when-

ever the court determines the award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Texas Rules of Civil Procedure.

(f) Nothing in this section shall restrict any right that any person or class of persons may have under any statute or common law to seek enforcement of any of the provisions of this Act and the regulations adopted under this Act, or to seek any other relief, including relief against the commission.

(g) Any person who is injured in his person or property through the violation by any permittee of any rule, regulation, order, or permit issued pursuant to this Act may bring an action for damages, including reasonable attorney and expert witness fees, only in the judicial district in which the surface coal mining operation complained of is located. Nothing in this subsection shall affect the rights established by or limits imposed under workers' compensation laws of this state.

Enforcement

Sec. 32. (a) On the basis of any inspection, if the commission or its authorized representative or agent determines that a condition exists or practices exist or that a person or permittee is in violation of a requirement of this Act or a permit condition required by this Act and that this condition, practice, or violation also creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause significant imminent environmental harm to land, air, or water resources, the commission or its authorized representative shall immediately order a cessation of surface coal mining operations or the portion thereof relevant to the condition, practice, or violation. The cessation order shall remain in effect until the commission or its authorized representative determines that the condition, practice, or violation has been abated, or until modified, vacated, or terminated by the commission or its authorized representative pursuant to Subsection (d) of this section. If the commission finds that the ordered cessation of surface coal mining and reclamation operations, or any portion of those operations, will not completely abate the imminent danger to health or safety of the public or the significant imminent environmental harm to land, air, or water resources, the commission shall, in addition to the cessation order, impose affirmative obligations on the operator requiring him or her to take whatever steps the commission deems necessary to abate the imminent danger or the significant environmental harm.

(b) On the basis of an inspection, if the commission or its authorized representative or agent determines that a permittee is in violation of a requirement of this chapter or a permit condition required

by this Act, but the violation does not create an imminent danger to the health or safety of the public or is not causing or reasonably expected to cause significant imminent environmental harm to land, air, or water resources, the commission or its authorized representative shall issue a notice to the permittee setting a reasonable time not to exceed 90 days for the abatement of the violation. If, on expiration of the period of time as originally set or subsequently extended, for good cause shown, and on written finding of the commission or its authorized representative, the commission or its authorized representative finds that the violation has not been abated, it shall order a cessation of surface mining operations or the portion relevant to the violation. The cessation order shall remain in effect until the commission determines that the violation has been abated or until modified, vacated, or terminated by the commission under Subsection (e) of this section.

(c)(1) A permittee issued notice or order by the commission pursuant to the provisions of Subsections (a) and (b) of this section or any person having an interest which is or may be adversely affected by the notice or order or by any modification, vacation, or termination of the notice or order, may apply to the commission for review of the notice or order within 30 days of receipt thereof or within 30 days of its modification, vacation, or termination. On receipt of the application, the commission shall have an investigation made as it deems appropriate. The investigation shall provide an opportunity for a public hearing, at the request of the applicant or the person having an interest which is or may be adversely affected, to enable the applicant or the person to present information relating to the issuance and continuance of the notice or order or the modification, vacation, or termination of the notice or order. The filing of an application for review under this subsection shall not operate as a stay of any order or notice. The permittee and other interested persons shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any hearing shall be of record and shall be subject to the Administrative Procedure and Texas Register Act.

(2) On receiving the report of the investigation, the commission shall make findings of fact, and shall issue a written decision, incorporating in the decision an order vacating, affirming, modifying, or terminating the notice or order or the modification, vacation, or termination of the notice or order complained of and incorporate its findings therein. Where the application for review concerns an order for cessation of surface coal mining and reclamation operations issued pursuant to the provisions of Subsection (a) or (b) of this section, the commission shall issue the written decision within 30 days of the receipt of the application for review, unless temporary relief has been granted by the commission under Subdivision (3) of this subsection.

(3) Pending completion of the investigation and hearing required by this section, the applicant may file with the commission a written request that the commission grant temporary relief from any notice or order issued under this section, together with a detailed statement giving reasons for granting the relief. The commission shall issue an order or decision granting or denying the relief expeditiously; provided, that where the applicant requests relief from an order for cessation of coal mining and reclamation operations issued under Subdivision (1) or (2) of this subsection, the order or decision on the request shall be issued within five days of its receipt. The commission may grant the relief, under conditions it may prescribe, if:

(A) a hearing has been held in the locality of the permit area on the request for temporary relief in which all parties were given an opportunity to be heard;

(B) the applicant shows that there is substantial likelihood that the findings of the commission will be favorable to him; and

(C) the relief will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources.

(4) Following the issuance of an order to show cause as to why a permit should not be suspended or revoked under this section, the commission shall hold a public hearing after giving written notice of the time, place, and date of the hearing. The hearing shall be of record and shall be subject to the Administrative Procedure and Texas Register Act. If the commission revokes the permit, the permittee shall immediately cease surface coal mining operations on the permit area and shall complete reclamation within a period specified by the commission, or the commission shall declare as forfeited the performance bonds for the operation.

(5) Whenever an order is issued under this section, or as a result of any administrative proceeding under this Act, at the request of any person, a sum equal to the aggregate amount of all costs and expenses, including attorney fees, as determined by the commission to have been reasonably incurred by the person for or in connection with his participation in the proceedings, including any judicial review of agency actions, may be assessed against either party as the court, resulting from judicial review or the commission resulting from administrative proceedings, deems proper.

(d) On the basis of an inspection, if the commission has reason to believe that a pattern of violations of any requirements of this Act or any permit conditions required by this Act exists or has existed, and if the commission or its authorized representative also finds that these violations are caused by the unwarranted failure of the permittee to comply with

requirements of this Act or any permit conditions, or that the violations are wilfully caused by the permittee, the commission shall issue an order to the permittee forthwith to show cause as to why the permit should not be suspended or revoked. The order shall set a time and place for a public hearing, if requested, to be held in accordance with the notice and procedural requirements of the Administrative Procedure and Texas Register Act, as amended. On failure of a permittee to show cause why the permit should not be suspended or revoked, the commission shall promptly suspend or revoke the permit.

(e) Notices and orders issued pursuant to this section shall set forth with reasonable specificity the nature of the violation and the remedial action required, the period of time established for abatement, and a reasonable description of the portion of the surface coal mining and reclamation operation to which the notice or order applies. Each notice or order issued under this section shall be given promptly to the permittee or his agent by the commission or its authorized representatives. Any notice or order issued pursuant to this section may be modified, vacated, or terminated by the commission or its authorized representative. Any notice or order issued pursuant to this section that requires cessation of mining by the operator shall expire within 30 days of actual notice to the operator unless a public hearing is held at the site or within a reasonable proximity to the site so that any viewings of the site can be conducted during the course of the public hearing.

(f) The commission may request the attorney general to institute a civil action for relief, including a permanent or temporary injunction, restraining order, or other appropriate order, if the permittee:

(1) violates or fails or refuses to comply with an order or decision issued by the commission under this Act;

(2) interferes with, hinders, or delays the commission or its authorized representative in carrying out the provisions of this section;

(3) refuses to admit an authorized representative to the mine;

(4) refuses to permit inspection of the mine by an authorized representative;

(5) refuses to furnish information or a report requested by the commission under the commission's rules; or

(6) refuses to permit access to and copying of records the commission determines reasonably necessary to carry out this Act.

The action shall be brought in a district court in Travis County or in the county in which the greater portion of the surface mining and reclamation operation is located.

The court has jurisdiction to provide the relief that is appropriate, and relief granted by the court to enforce Subdivision (1) of this subsection shall continue in effect until the completion or final termination of all proceedings for review of the order under this section unless before that time the district court granting the relief sets the order aside or modifies it.

Areas Unsuitable for Surface Coal Mining

Sec. 33. (a) The commission shall develop a process for designating areas unsuitable for surface coal mining that includes:

(1) surface coal mining land review;

(2) developing a data base and an inventory system which will permit proper evaluation of the capacity of different land areas of the state to support and permit reclamation of surface coal mining operations;

(3) developing, by rule, a method or methods for implementing land use planning decisions concerning surface coal mining operations; and

(4) developing, by rule, proper notice, provisions, and opportunities for public participation, including a public hearing, prior to making any designation or redesignation pursuant to this section.

(b) On petition pursuant to Subsection (c) of this section, the commission shall designate an area as unsuitable for all or certain types of surface coal mining operations if the commission determines that reclamation pursuant to the requirements of this Act is not technologically and economically feasible. On petition pursuant to Subsection (c) of this section, a surface area may be designated unsuitable for certain types of surface coal mining operations if those operations will:

(1) be incompatible with existing state or local land use plans or programs;

(2) affect fragile or historic land in which the operations could result in significant damage to important historic, cultural, scientific, and esthetic values and natural systems;

(3) affect renewable resource lands in which the operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products, the land to include aquifers and aquifer recharge areas; or

(4) affect natural hazard land in which the operations could substantially endanger life and property, the land to include areas subject to frequent flooding and areas of unstable geology.

Determinations of the unsuitability of land for surface coal mining, as provided by this section, shall be integrated as closely as possible with present and future land use planning and regulation processes at

the federal, state, and local levels. The requirements of this section shall not apply to land on which surface coal mining operations were being conducted on August 3, 1977, or under a permit issued pursuant to this Act, or where substantial legal and financial commitments in the operation or proposed operation were in existence prior to January 4, 1977.

(c) Any person having an interest that is or may be adversely affected shall have the right to petition the commission to have an area designated as unsuitable for surface coal mining operations, prior to the filing of an application, or to have such a designation terminated. The petition shall contain allegations of facts with supporting evidence that would tend to establish the allegations. Within 10 months after receipt of the petition the commission shall hold a public hearing under the Administrative Procedure and Texas Register Act, as amended, in the locality of the affected area. After a person having an interest that is or may be adversely affected has filed a petition and before the hearing, as required by this subsection, any person may intervene by filing allegations of facts with supporting evidence that would tend to establish the allegations. In the event that all the petitioners stipulate agreement prior to the requested hearing and withdraw their request, the hearing need not be held.

(d) Prior to designating any land areas as unsuitable for surface coal mining operations, the commission shall prepare a detailed statement on the potential coal resources of the area, the demand for coal resources, and the impact of the designation on the environment, the economy, and the supply of coal.

(e) After the enactment of this Act and subject to valid existing rights, no surface coal mining operations except those that existed on August 3, 1977, shall be permitted:

(1) that will adversely affect any publicly owned park or place included in the National Register of Historic Sites unless approved jointly by the commission and the federal, state, or local agency with jurisdiction over the park or the historic site;

(2) within 100 feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join the right-of-way lines and except that the commission may permit these roads to be relocated or the area affected to lie within 100 feet of the public road, if, after public notice and opportunity for public hearing in the locality, a written finding is made that the interests of the public and the landowners affected by the relocation will be protected; or

(3) within 300 feet of any occupied dwelling, unless waived by the owner of the dwelling, or within 300 feet of any public building, school, church, community, or institutional building, public park, or within 100 feet of a cemetery.

Mining by Governmental Agencies; Mining on Government Land

Sec. 34. (a) The commission may enter into cooperative agreements with the federal government pursuant to the provisions of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977).

(b) Any agency, unit, or instrumentality of federal, state, or local government, including any publicly owned utility or publicly owned corporation of federal, state, or local government, that proposes to engage in surface coal mining operations that are subject to the requirements of this Act shall comply with all provisions of this Act.

Exemptions

Sec. 35. The provisions of this Act shall not apply to any of the following activities:

(1) the extraction of coal by a landowner for his or her own noncommercial use from land owned or leased by him or her; provided that this does not exempt the noncommercial production of coal, when produced by in situ distillation or retorting, leaching, or other chemical or physical process or preparation;

(2) the extraction of coal for commercial purposes where the surface mining operation affects two acres or less;

(3) the extraction of coal as an incidental part of federal, state or local government-financed highway or other construction under rules established by the commission; and

(4) the extraction of coal incidental to the extraction of other minerals where the coal does not exceed 16-2/3 percentum of the total tonnage of coal and other minerals removed annually for purposes of commercial use or sale or coal explorations subject to this Act.

Experimental Practices

Sec. 36. In order to encourage advances in mining and reclamation practices and to allow postmin-

ing land use for industrial, commercial, residential, or public use, including recreational facilities, the commission may, with approval by the secretary, authorize departures in individual cases on an experimental basis from the environmental protection performance standards of this Act. These departures may be authorized if the experimental practices are potentially more or at least as environmentally protective, during and after mining operations, as those required by this Act, the mining operations approved for particular land-use or other purposes are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practices, and the experimental practices do not reduce the protection afforded public health and safety below that provided by promulgated standards.

Water Rights and Replacement

Sec. 37. (a) Nothing in this Act shall be construed as affecting in any way the right of any person to enforce or protect, under applicable law, his or her interest in water resources affected by a surface coal mining operation.

(b) The operator of a surface coal mining operation shall replace the water supply of an owner of interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source where the supply has been affected by contamination, diminution, or interruption proximately resulting from the surface coal mine operation.

Certification of Blasters

Sec. 38. The commission shall promulgate rules requiring the training, examination, and certification of persons engaging in or directly responsible for blasting or use of explosives in surface coal mining operations.

[Acts 1979, 66th Leg., p. 267, ch. 141, §§ 1 to 38, eff. May 9, 1979.]

TITLE 96B

GIFTS TO MINORS

Art. 5923-101. Texas Uniform Gifts to Minors Act

Definitions

Sec. 1.

[See Compact Edition, Volume 5 for text of 1(a)]

(b) A "bank" is a state bank, a national bank, a state building and loan association, a federal savings and loan association, a federal credit union, or an insured credit union chartered and supervised under the laws of this State.

[See Compact Edition, Volume 5 for text of 1(c) and (d)]

(e) "The custodial property" includes:

(1) all securities, money, life or endowment insurance policies, annuity contracts, real property, and tangible personal property under the supervision of the same custodian for the same minor as a consequence of a gift or gifts made to the minor in a manner prescribed in this Act;

(2) the income from the custodial property; and

(3) the proceeds, immediate and remote, from the sale, exchange, conversion, investment, reinvestment or other disposition of such securities, money, income, life or endowment insurance policies, annuity contracts, real property, and tangible personal property.

[See Compact Edition, Volume 5 for text of 1(f) to (k)]

(l) A "security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, collateral trust certificate, transferable share, voting trust certificate, investment contract, or any certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation in, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing. The term does not include a security of which the donor is the issuer. A security is in "registered form" when it specifies a person entitled to it or to the rights it evidences and its transfer may be registered upon books maintained for that purpose by or on behalf of the issuer.

[See Compact Edition, Volume 5 for text of 1(m)]

(n) A "trust company" is a bank or trust company authorized to exercise trust powers in this State.

[See Compact Edition, Volume 5 for text of o]

Manner of Making Gift

Sec. 2. (a) An adult person may, during his lifetime or by will, make a gift of a security or money, a life or endowment insurance policy, an annuity contract, real property, or tangible personal property to a person who is a minor on the date of the gift:

(1) if the subject of the gift is a security in registered form, by registering it in the name of the donor, another adult person or a trust company, followed, in substance, by the words: "as custodian for (name of minor) under the Texas Uniform Gifts to Minors Act";

(2) if the subject of the gift is a security not in registered form, by delivering it to an adult person other than the donor or a trust company, accompanied by a statement of gift in the following form, in substance, signed by the donor and the person designated as custodian:

"GIFT UNDER THE TEXAS UNIFORM GIFTS TO MINORS ACT

I, (name of donor), hereby deliver to (name of custodian) as custodian for (name of minor) under the Texas Uniform Gifts to Minors Act, the following security(ies): (insert an appropriate description of the security or securities delivered sufficient to identify it or them)

(signature of donor)

(name of custodian) hereby acknowledges receipt of the above described security(ies) as custodian for the above minor under the Texas Uniform Gifts to Minors Act.

Dated: _____

(signature of custodian)

(3) if the subject of the gift is money, by paying or delivering it to a broker or a bank for credit to an account in the name of the donor, another adult person or a bank with trust powers, followed, in substance, by the words: "as custodian for (name of minor) under the Texas Uniform Gifts to Minors Act."

(4) if the subject of the gift is a life or endowment insurance policy or an annuity contract, such policy or contract shall be assigned to the custodian in his own name, followed, in substance, by the words: "as custodian for (name of minor) under the Texas Uniform Gifts to Minors Act." Such policy or contract shall be delivered to the person who has been designated as custodian thereof.

(5) if the subject of the gift is an interest in real estate, by executing and delivering in the appropriate manner a deed, assignment, or similar conveyance of the interest to the custodian in his own name, followed, in substance, by the words: "as custodian for (name of minor) under the Texas Uniform Gifts to Minors Act."

(6) if the subject of the gift is an interest in tangible personal property, by causing the ownership of the property to be transferred by any appropriate written document to the custodian in his own name, followed, in substance, by the words: "as custodian for (name of minor) under the Texas Uniform Gifts to Minors Act."

(7) if the gift is by will or transfer in trust, by giving the subject of the gift to an adult or a trust company, followed, in substance, by the words: "as custodian for (name of minor) under the Texas Uniform Gifts to Minors Act"; if the testator fails to designate the custodian or if the designated custodian dies or is unable or unwilling to serve, the personal representative or trustee shall designate the custodian from among those eligible to become successor custodian under this Act and shall make distribution by transferring the subject of the gift to the custodian in the form and manner provided in this subsection; the receipt of the custodian constitutes a sufficient release and discharge for the gift; if the gift is distributable by a personal representative by will, the personal representative may elect the procedures under this Act for making the gift.

[See Compact Edition, Volume 5 for text of 2(b) and (c)]

Effect of Gift

Sec. 3. (a) A gift made in a manner prescribed in this Act is irrevocable and conveys to the minor indefeasibly vested legal title to the security or money, life or endowment insurance policies, annuity contracts, real property, or tangible personal property given, but no guardian of the minor has any right, power, duty or authority with respect to the custodial property except as provided in this Act.

(b) By making a gift in a manner prescribed in this Act, the donor incorporates in his gift, trust, or will all the provisions of this Act and grants to the custodian, and to any issuer, transfer agent, bank, broker or third person dealing with a person desig-

nated as custodian, the respective powers, rights and immunities provided in this Act.

Duties and Powers of Custodian

Sec. 4.

[See Compact Edition, Volume 5 for text of 4(a) to (e)]

(f) The custodian may sell, exchange, convert or otherwise dispose of custodial property in the manner, at the time or times, for the price or prices and upon the terms he deems advisable, provided that a custodian may not acquire as custodial property any property other than securities, money, life or endowment insurance policies, annuity contracts, or real property; provided that a trust company in its capacity as custodian may acquire as custodial property interests in one or more common trust funds established and maintained by the trust company pursuant to Section 1 of the Uniform Common Trust Fund Act, as amended (Article 7425b-48, Vernon's Texas Civil Statutes). He may vote in person or by general or limited proxy a security, policy or contract, which is custodial property. He may consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution or liquidation of an issuer of a security which is custodial property, and to the sale, lease, pledge or mortgage of any property by or to such an issuer, and to any other action by such an issuer. On dissolution or liquidation of an issuer of a security which is custodial property, the custodian may receive the minor's share of any property resulting from such dissolution or liquidation and retain and manage it as custodial property except that he cannot sell or exchange it for property not authorized to be acquired as custodial property. He may execute and deliver any and all instruments in writing which he deems advisable to carry out any of his powers as custodian. With respect to any interest in real estate, he may perform the same acts that any unmarried adult may perform, including all powers granted to a trustee under Section 25, Texas Trust Act, as amended (Article 7425b-25, Vernon's Texas Civil Statutes).

[See Compact Edition, Volume 5 for text of 4(g) to 6]

Resignation, Death or Removal of Custodian; Bond; Appointment of Successor Custodian

Sec. 7.

[See Compact Edition, Volume 5 for text of 7(a)]

(b) A successor custodian may be appointed by one of the following procedures:

(1) a custodian, other than the donor, may resign and designate his successor by executing an instrument of resignation designating the successor custodian before a subscribing witness other

than the successor and delivering it to the minor and the successor custodian;

(2) in the absence of an effective designation of a successor custodian by the custodian, the donor may designate an adult member of the minor's family, a guardian of the minor, or a trust company as a successor custodian by executing and dating an instrument of designation before a subscribing witness other than the successor;

(3) in the absence of an effective designation of a successor custodian by either the custodian or the donor, the guardian of the minor shall become successor custodian; in the absence of a guardian, the minor, if he has attained the age of fourteen (14) years, may designate a successor custodian in the manner prescribed for the designation of a successor custodian;

(4) if the minor has not attained the age of fourteen (14) years, and in the absence of an effective designation of a successor custodian by the custodian, donor, or guardian, a parent of the minor may appoint a successor custodian;

(5) if the minor has not attained the age of fourteen (14) years and has no guardian or parent, and no effective designation of a successor custodian has been made by the custodian or the donor, then an adult member of the minor's family may

petition the court for the designation of a successor custodian.

[See Compact Edition, Volume 5 for text of 7(c)]

(d) The designation of a successor custodian as provided in Subsection (b) of this section takes effect as to each item of the custodial property when the custodian resigns, dies, or becomes legally incapacitated and the custodian or his legal representative:

(1) causes each security in registered form, life or endowment insurance policy, annuity contract, or interest in real property to be registered in the name of or conveyed to the successor custodian, followed, in substance, by the words: "as custodian for (name of minor) under the Texas Uniform Gifts to Minors Act"; and

(2) delivers or causes to be delivered to the successor custodian any other item of the custodial property, together with the instrument of designation of the successor custodian or any additional instruments required for the transfer to the successor custodian.

[See Compact Edition, Volume 5 for text of 7(e) to 10]

[Amended by Acts 1975, 64th Leg., p. 1858, ch. 582, §§ 1 to 5, eff. June 19, 1975; Acts 1977, 65th Leg., p. 627, ch. 232, §§ 1, 2, eff. Aug. 29, 1977.]

TITLE 97

NAME

CHAPTER ONE. ASSUMED NAME [REPEALED]

Business and Commerce Code, the Assumed Business or Professional Name Act.

Arts. 5924 to 5927b. Repealed by Acts 1977, 65th Leg., p. 1101, ch. 403, § 2, eff. Aug. 29, 1977.

Disposition Table

Showing where the provisions of repealed arts. 5924 to 5927b can be found in Chapter 36 of the

Former Article	New Section	Former Article	New Section
5924	36.10	5926	36.15
5924.1	36.10	5927	—
5924(a)	36.13	5927a	—
5925	36.12	5927b	36.26
5925a	36.12		

TITLE 97A

NATIONAL GUARD ARMORY BOARD

Article

5931-1a. Application of Sunset Act.

Art. 5931-1a. Application of Sunset Act

The Texas National Guard Armory Board is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the Board is abolished, and this Title expires effective September 1, 1981.

[Added by Acts 1977, 65th Leg., p. 1839, ch. 735, § 2.054, eff. Aug. 29, 1977.]

¹ Article 5429k.

Art. 5931-12. Refunding Bonds

(a) The board is authorized to issue refunding bonds for the purpose of refunding any outstanding bonds or other evidences of indebtedness, and interest on same, authorized by this article or otherwise which the board lawfully may have issued.

(b) Within the discretion of the board, the refunding bonds may be issued in exchange or substitution for outstanding bonds or other evidences of indebtedness or may be sold and the proceeds used for the purpose of paying or redeeming outstanding bonds or other evidences of indebtedness. If such refunding bonds are sold they may be sold in an amount sufficient to provide for the payment of the principal of, the interest on, and premium, if any, of the bonds or other evidences of indebtedness being refunded and to provide an amount or amounts to be deposited into a reserve fund or funds as may be

provided in the resolution or resolutions authorizing such refunding bonds and in an amount or amounts necessary to pay expenses incurred in the issuance, sale, and delivery of such refunding bonds.

(c) Until such time or times as the bond proceeds are needed for the purposes set forth in Subsection (b) of this section, such bond proceeds may be invested in direct obligations of the United States of America and the income therefrom may be used or pledged as provided in the resolution or resolutions authorizing the bonds.

(d) In addition to the refunding authority herein provided, the board shall be able to refund its outstanding bonds or other evidences of indebtedness in accordance with provisions of applicable general law.

[Amended by Acts 1979, 66th Leg., p. 1534, ch. 660, § 1, eff. June 13, 1979.]

Sections 2 and 3 of the 1979 amendatory act provided:

"Sec. 2. This Act shall be cumulative of all other law on the subject, but this Act shall be wholly sufficient authority within itself for the issuance of bonds and for the performance of the other acts and procedures authorized hereby, without reference to any other law or any restrictions or limitations contained therein, except as herein specifically provided; and when any bonds are being issued under this Act, then to the extent of any conflict or inconsistency between any provisions of this Act and any provision of any other law, the provisions of this Act shall prevail and control; provided, however, that the board shall have the right to use the provisions of any other laws, not in conflict with the provisions hereof, to the extent convenient or necessary to carry out any power or authority, express or implied, granted by this Act.

"Sec. 3. In case any one or more of the sections, provisions, clauses, or words of this Act or the application thereof to any situation or circumstance shall for any reason be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect any other sections, provisions, clauses, or words of this Act or the application thereof to any other situation or circumstance, and it is intended that this Act shall be severable and shall be construed and applied as if any such invalid or unconstitutional section, provision, clause, or word had not been included herein."

TITLE 99

NOTARIES PUBLIC

Article

5960a. Rubber Stamp for Seal.

Art. 5949. Notary Public

Appointment; Number and Terms; Jurisdiction

1. The Secretary of State of the State of Texas shall appoint a convenient number of Notaries Public in this state. Such appointments may be made at any time, and the term of each appointment shall end four years after the date of qualification of each individual Notary Public, unless sooner revoked by the Secretary of State. The jurisdiction of each Notary Public appointed after the effective date of this Act shall be coextensive with the boundaries of the state, irrespective of the county in which he is appointed.

Eligibility

2. To be eligible for appointment as a Notary Public, a person shall be a resident citizen of the United States and of this state and at least eighteen (18) years of age. Nothing herein shall invalidate any commission as Notary Public which has been issued and is outstanding at the time this Act becomes effective.

Procedure for Appointment; Contents; Duties of Secretary of State

3. (a) Any person desiring appointment as a Notary Public shall make application to the Secretary of State on forms prescribed by the Secretary of State, which includes his name as it will be used in acting as such Notary Public, his post-office address, his county of residence, his business address, the name of the county in which his business is located, his social security number, a statement that he has never been convicted of a crime involving moral turpitude, and shall satisfy the Secretary of State that he is at least eighteen (18) years of age and otherwise qualified by law for the appointment which is sought; provided that if the person is a qualified Notary Public before January 1, 1980, in another county, his commission in that county shall be surrendered to the Secretary of State at the time application for the appointment is made. The Secretary of State shall act upon all such names submitted at the earliest practicable time and notify each applicant whether the appointment has been made.

(b) Upon receiving notice from the Secretary of State of such appointment, the applicant shall, with-

in twenty (20) days from the date of appointment, qualify as hereinafter provided. The appointment of any person failing to qualify within the time allowed shall be void, and if any such person desires thereafter to qualify, his name shall be resubmitted in the same manner as hereinabove provided.

Fees

4. At the time of such qualification the applicant shall forward to the Secretary of State a fee in the amount of Four (\$4.00) Dollars for approving and filing the bond of such Notary Public, together with the fee allowed by law to the Secretary of State for issuing a commission to such Notary Public.

Issuance of Commission; Non-Attorney Notice; Literal Translation; Rejection of Application; Appeal

5. (a) Immediately after the qualification of any Notary Public, and the receipt of the fees due the Secretary of State, the Secretary of State shall cause a commission to be issued to such Notary Public, which commission shall be effective as of the date of qualification. Nothing herein shall prevent any qualified Notary Public from performing the duties of his office from and after his qualification and before the receipt of his commission.

(b) Every Notary Public who is not an attorney who advertises the services of a Notary Public in a language other than English, whether by radio, television, signs, pamphlets, stationery, or other written communication, shall post or otherwise include with the advertisement a notice that the person is not an attorney. The notice shall be in English and in the other language in letters of a conspicuous size. If the advertisement is by radio or television, the statement may be modified, but must include substantially the same message. The notice shall include the fees that a Notary Public may charge and the following statement:

"I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN TEXAS AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE."

(c) Literal translation of the phrase "Notary Public" into Spanish is prohibited. In this subsection, "literal translation" of a word or phrase from one language to another means the translation of a word or phrase without regard to the true meaning of the word or phrase in the language which is being translated.

(d) The failure to comply with Subsection (b) or (c) of this section constitutes a deceptive trade practice in addition to any other law of the State of Texas and is actionable under Chapter 17 of the Business & Commerce Code.

(e) The Secretary of State may, for good cause, reject any application, or revoke the commission of any Notary Public, but such action shall be taken subject to the right of notice, hearing and adjudication, and the right of appeal therefrom. Such appeal shall be made to the District Court of Travis County, Texas, but upon such appeal the Secretary of State shall have the burden of proof and such trial shall be conducted de novo.

(f) "Good cause" shall include final conviction for a crime involving moral turpitude, any false statement knowingly made in an application, the failure to comply with Subsection (b) or (c) of this section, and final conviction for the violation of any law concerning the regulation of the conduct of Notaries Public in this state, or any other state.

Reappointment; Change of Address; Vacation of Office

6. (a) Any qualified Notary Public whose term is expiring may make an application for appointment in the same manner as provided in Subsection (a) of Section 3 of this Article. The Secretary of State shall notify all Notaries Public whose terms are expiring at least ninety (90) days prior to expiration.

(b) Upon receiving notice of appointment made by the Secretary of State for another term of office, the applicant must qualify not later than the expiration date of the term for which he is serving, which qualifying shall become effective on the expiration date of his term and shall not be effective prior thereto. The appointment for another term of office of any person who fails to qualify on or before the expiration date of the term he is serving shall be void, and if the person later desires to qualify, his name must be resubmitted in the same manner as provided in Section 3 of this Article.

(c) Each Notary Public shall notify the Secretary of State of any change of his address within ten (10) days after the change.

(d) If a Notary Public removes his residence from this state, his office is automatically vacated. If a Notary Public who qualified before January 1, 1980, removes his residence or his principal place of business or employment to another county in this state, so that he maintains neither his residence nor his principal place of business or employment in the county in which he was appointed, his office is automatically vacated, and if he desires to continue to act as a Notary Public, he must surrender his commission to the Secretary of State and make application for appointment in the same manner as for an initial appointment.

Bond

7. Any person appointed a Notary Public shall, before entering upon his official duties, execute a bond in the sum of Two Thousand Five Hundred (\$2,500.00) Dollars with a solvent surety company authorized to do business in this State, as surety, such bond to be approved by the Secretary of State, payable to the Governor, and conditioned for the faithful performance of the duties of his office; and shall also take and subscribe his name and social security number to the official oath of office which shall be endorsed on said bond with the certificate of the official administering the same. The State Board of Insurance may at its discretion approve rates for a four-year notary bond issued subsequent to the effective date of this Act equivalent to twice the rate set previously for two-year notary bonds. Said bond shall be deposited in the office of the Secretary of State and shall not be void on the first recovery, and may be sued on in the name of the party injured from time to time until the whole amount thereof has been recovered. Any such person shall be deemed to be qualified when he has taken the official oath of office, furnished the bond and paid the fees herein provided for, all within the time allowed therefor.

8. Repealed by Acts 1979, 66th Leg., p. 2216, ch. 840, § 5, eff. Jan. 1, 1980.

Public Records; Inspection

9. All matters pertaining to the appointment and qualification of Notaries Public shall be public records in the office of the Secretary of State after any such Notary Public has qualified, and shall be open to inspection of any interested person at such reasonable times and in such manner as will not interfere with the affairs of office of the custodian of such records; but the Secretary of State is not required to furnish lists of the names of persons appointed before their qualification or lists of unreasonable numbers of qualified Notaries Public.

[See Compact Edition, Volume 5 for text of 10]

[Amended by Acts 1975, 64th Leg., p. 1024, ch. 392, § 1, eff. June 19, 1975; Acts 1977, 65th Leg., p. 373, ch. 185, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 776, ch. 342, § 1, eff. June 6, 1979; Acts 1979, 66th Leg., p. 2213, ch. 840, §§ 1 and 5, eff. Jan. 1, 1980.]

Section 2 of the 1977 amendatory act amended art. 5958; § 3 amended art. 5960; § 4 thereof provided:

"This Act shall become effective on August 29, 1977."

Sections 6 and 7 of Acts 1979, 66th Leg., p. 2216, ch. 840, provided:

"Sec. 6. Each person who was appointed a notary public before January 1, 1980, continues to serve the remainder of the term for which the person was appointed and may use the seal provided by law before that date.

"Sec. 7. This Act takes effect only if the constitutional amendment proposed by H.J.R. No. 108, 66th Legislature, Regular Session, 1979, is adopted. If the amendment is adopted, this Act takes effect January 1, 1980."

H.J.R. No. 108 was approved by the voters at an election held on November 6, 1979.

Art. 5954. Authority of Notary; Printing or Stamping of Name Under Signature

Notaries Public shall have the same authority to take acknowledgments or proofs of written instruments, protest instruments permitted by law to be protested, administer oaths, and take depositions, as is now or may hereafter be conferred by law upon County Clerks, and provided that all Notaries Public shall print or stamp their names and the expiration dates of their commissions under their signatures on all such written instruments, protest instruments, oaths, or depositions; provided further that failure to so print or stamp their names and expiration dates of their commissions under their signatures shall not invalidate such acknowledgment.

[Amended by Acts 1975, 64th Leg., p. 1024, ch. 392, § 2, eff. June 19, 1975.]

Art. 5958. Office to Become Vacant

Whenever an ex officio notary public shall remove permanently from his precinct, his office shall thereupon be deemed vacant.

[Amended by Acts 1977, 65th Leg., p. 375, ch. 185, § 2, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 2216, ch. 840, § 2, eff. Jan. 1, 1980.]

For provision as to effective date of 1979 amendment to this article, see note under art. 5949.

Art. 5960. Seal

Each notary public shall provide a seal of office, whereon shall be engraved in the center a star of five points, and the words, "Notary Public, State of Texas," around the margin and he shall authenticate all his official acts therewith. The use of a seal with the name of a county, when used by a qualified notary public, will not invalidate the acknowledgment.

[Amended by Acts 1977, 65th Leg., p. 376, ch. 185, § 3, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 2216, ch. 840, § 3, eff. Jan. 1, 1980.]

For provision as to effective date of 1979 amendment to this article, see note under art. 5949.

Art. 5960a. Rubber Stamp for Seal

A seal fashioned as a rubber stamp engraved with the star and the words provided by law may be used as the official seal of office of a notary public. A notary public shall use an indelible ink pad for transferring the impression of this type of seal on an instrument of writing to authenticate his or her official act.

[Added by Acts 1979, 66th Leg., p. 2216, ch. 840, § 4, eff. Jan. 1, 1980.]

For provision as to effective date of the 1979 Act adding this article, see note under art. 5949.

TITLE 100

OFFICERS—REMOVAL OF

Art. 5963. Trial by Senate

(a) All persons against whom articles of impeachment are preferred by the House of Representatives shall be tried by the Senate sitting as a court of impeachment in the manner provided by Article XV of the Constitution of Texas.

(b) If the Senate is in session, at a regular or called session of the Legislature when articles of impeachment are preferred by the House, it shall receive the articles when presented and, on a day and time to be set by the Senate, shall resolve into a court of impeachment to consider the articles. The Senate may continue in session as a court of impeachment beyond any date of expiration of the session for legislative purposes or may adjourn as a court of impeachment to a day and time set by the Senate.

(c) If the Senate is not in session at a regular or called session of the Legislature when articles of impeachment are preferred by the House, the House shall cause a certified copy of the articles of impeachment to be delivered, by personal messenger or registered or certified mail, to the Governor, the Lieutenant Governor, and each member of the Senate. A record of the deliveries and a copy thereof shall be delivered to the Lieutenant Governor and the President Pro Tempore of the Senate. Thereupon the Senate shall be convened for the purpose of considering such articles of impeachment in the following manner:

1. By proclamation of the Governor; or if the Governor fails to issue such proclamation within ten days after the day the articles of impeachment are preferred by the House, then

2. By proclamation of the Lieutenant Governor; or if the Lieutenant Governor fails to issue such proclamation within fifteen days from the day the articles of impeachment are preferred by the House, then

3. By proclamation of the President Pro Tempore of the Senate; or, if the President Pro Tempore of the Senate fails to issue such proclamation within twenty days from the day the articles of impeachment are preferred by the House, then

4. By proclamation in writing signed by a majority of the members of the Senate.

(d) The proclamation convening the Senate shall be in writing, shall state the purposes for which the Senate is to be convened and shall fix the date for

the convening thereof, which may not be later than twenty days from the issuance of the proclamation. The proclamation shall be published in at least three daily newspapers of general circulation, and a copy of the proclamation shall be sent by registered or certified mail to each member of the Senate and the Lieutenant Governor. On the day set for the convening of the Senate, the Senate shall convene, shall receive the articles of impeachment when presented, and shall resolve into a court of impeachment for purposes of considering the articles of impeachment.

(e) Once the Senate resolves into a court of impeachment, it shall adopt rules of procedure and shall proceed to consider the articles of impeachment. It may from time to time recess or adjourn to a day and time to be set by the Senate. The Senate may designate the day and time of reconvening in relation to the occurrence of one or more events specified in the motion and may make the reconvening contingent on the occurrence of those events. At all times the Senate is scheduled to be in session as a court of impeachment it is the duty of each member of the Senate to be in attendance. The Senate may compel the attendance of any absent Senator. Two-thirds of the members of the Senate constitute a quorum, but a smaller number may adjourn from day to day and compel the attendance of absent members.

(f) The Senate shall have and exercise the power to send for persons, papers, records, books, and other documents, to compel the giving of testimony, to punish for contempt to the same extent as the district courts, and to meet in closed sessions for purposes of deliberation, and all other powers necessary to carry out its duties under Article XV of the Texas Constitution. The Senate may employ such aid and assistance as it deems necessary to enforce, execute, and carry into effect the lawful orders, mandates, writs, process, and precepts of the Senate sitting as a court of impeachment and may empower its officers, committees, or agents to exercise such powers as the Senate may prescribe.

(g) When convened as a court of impeachment, the members of the Senate and the Lieutenant Governor shall receive the same mileage and per diem as is provided for members of the Legislature; the same with all expenses incident to the impeachment trial shall be paid from appropriations made for the contingent expenses of the Legislature or for the mileage and per diem of members. However, if the

Senate is not in session as a court of impeachment for more than four consecutive days as a result of recess or adjournment, the members of the Senate and the Lieutenant Governor are not entitled to the per diem for those days.

[Amended by Acts 1977, 65th Leg., p. 84, ch. 41, § 1, eff. Aug. 29, 1977.]

Art. 5966a. State Commission on Judicial Conduct

"Commission", "Master", and "Judge"

Sec. 1. As used in this chapter, "commission" means the State Commission on Judicial Conduct provided for in Section 1-a of Article V of the Constitution, "master" means a special master appointed by the Supreme Court pursuant to said Section 1-a, and, unless the context otherwise requires, "judge" means a justice or judge who is the subject of an investigation or proceeding under said Section 1-a. All constitutional and statutory references to the State Judicial Qualifications Commission shall be construed to mean the State Commission on Judicial Conduct.

Application of Sunset Act

Sec. 1A. The State Judicial Qualifications Commission is subject to the Texas Sunset Act,¹ but it is not abolished under that Act. The commission shall be reviewed under the Texas Sunset Act during the period in which state agencies abolished effective September 1 of 1987 and of every 12th year after 1987 are reviewed.

¹ Article 5429k.

[See Compact Edition, Volume 5 for text of 2 and 3]

Cooperation With and Assistance and Information to Commission

Sec. 4. State and local public bodies and departments, officers and employees thereof, and officials and attaches of the courts of this state shall cooperate with and give reasonable assistance and information to the commission and any authorized representative thereof, or to a master, in connection with any investigations or proceedings within the jurisdiction of the commission, or a master, including contempt proceedings by a master.

[See Compact Edition, Volume 5 for text of 5 to 6A]

Willful or Persistent Conduct Inconsistent with Performance of Duties

Sec. 6B. A judge engages in willful or persistent conduct, which is clearly inconsistent with the proper performance of his said duties if he willfully, persistently, and without justifiable cause fails to execute the business of his court in a timely manner, considering the quantity and complexity of that business. This section shall not be construed as contain-

ing an exclusive definition of that which constitutes a judge's willful or persistent conduct that is clearly inconsistent with the performance of his duties.

[See Compact Edition, Volume 5 for text of 7]

Petition for Order Compelling Person to Attend or Testify or Produce Writings or Things: Service of Order to Appear Before Court: Order to Appear Before Commission or Master: Contempt

Sec. 8. If any person other than the judge refuses to attend or testify or produce any writings or things required by any such subpoena, the commission or the master may petition any district court for an order, or the master may issue an order, compelling such person to attend and testify or produce the writings or things required by the subpoena before the commission or the master. The court or the master shall order such person to appear before it at a specified time and place and then and there show cause why he has not attended or testified or produced the writings or things as required. A copy of the order shall be served upon him. If it appears to the court or the master that the subpoena was regularly issued, the court or the master shall order such person to appear before the commission or the master at the time and place fixed in the order and testify or produce the required writings or things. Upon failure to obey the order, such person shall be dealt with as for contempt of court.

Depositions: Petition for Order Requiring Person to Appear and Testify Before Designated Officer: Subpoena

Sec. 9. In any pending investigation or formal proceeding, the commission or the master may order the deposition of a person residing within or without the State to be taken in such form and subject to such limitations as may be prescribed in the order. If the judge and counsel for the commission do not stipulate as to the manner of taking the deposition, either the judge or counsel may file in any district court a petition entitled "In the Matter of Proceeding of State Commission on Judicial Conduct No. — (state number)," and stating generally, without identifying the judge, the nature of the pending matter, the name and residence of the person whose testimony is desired, and, directions, if any, of the commission or master, asking that an order be made requiring such person to appear and testify before a designated officer. Upon the filing of the petition, the court may make an order requiring such person to appear and testify. A subpoena for such deposition shall be issued by the clerk and the deposition shall be taken and returned, in the manner prescribed by law for depositions in civil actions. If the deposition is that of a person residing or present within this state, the petition shall be filed in the district court of the county in which such person resides or is present, otherwise in the district court of any county in which the commission maintains an office. Upon the failure to obey such subpoena or any order issued in connection therewith, such a person shall be dealt with as for contempt of court.

Fees and Mileage of Witnesses

Sec. 10. Each witness, other than an officer or employee of the state or a political subdivision or an officer or employee of a court of this state, shall receive for his attendance the same mileage and per diem as is allowed witnesses before any grand jury in the state. The amounts shall be paid by the commission from funds appropriated for the use of the commission.

[See Compact Edition, Volume 5 for text of 11]

Compensation of Active or Retired Judge or Justice as Master

Sec. 12. Any active district judge or justice of the court of civil appeals appointed to act as master under said Section 1-a shall, in addition to and cumulative of all other compensation and expenses authorized by law, receive, while in the performance of their duties as master, a per diem of \$25 for each day, or fraction thereof, spent in the performance of their duties as such master. Any retired judge or justice of a district court, a court of civil appeals, the Court of Criminal Appeals, or the Supreme Court appointed to act as such master shall receive while in the performance of their duties as such master a per diem of \$25 for each day or fraction thereof spent in the performance of their duties as master and in addition an amount representing the difference between all of the retirement benefits of such judge or justice as a retired judge or justice and the salary and compensation received from the state by active judges or justices of the district courts, courts of civil appeals, the Court of Criminal Appeals, or the Supreme Court as the case might be. Such retire-

ment allowances shall continue to be paid by and from the same source as in the instance of a retired judge who had not been assigned duties. Payments of the additional amounts provided for by this section shall be upon certificates of approval by the commission.

[See Compact Edition, Volume 5 for text of 13]

Immunity

Sec. 14. Any person other than the judge who refuses to testify, give testimony or produce documents or things in any proceeding or deposition in connection with any proceeding before the commission or a master upon the ground that his testifying, his testimony or the production of such document or thing may tend to incriminate him, may nevertheless be required to testify and to produce such document or thing, but when so required under the provisions of Section 8 hereof over his proper claim of privilege against self-incrimination or his right not to testify, such person shall not be subject to indictment or prosecution for any transaction, matter or thing concerning which he truthfully testified or produced evidence, documentary or otherwise. A master has the same powers as a district judge in matters of contempt and granting immunity.

[See Compact Edition, Volume 5 for text of 15 and 16]

[Amended by Acts 1975, 64th Leg., p. 1380, ch. 529, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1118, ch. 416, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1850, ch. 735, § 2.132, eff. Aug. 29, 1977.]

TITLE 102

OIL AND GAS

GENERAL PROVISIONS

Repeal

This Title 102, with certain enumerated exceptions, was repealed by art. 1, § 2(a)(2) of Acts 1977, 65th Leg., p. 2689, ch. 871, enacting the Natural Resources Code, effective September 1, 1977.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Arts. 6004 to 6006. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(2), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Arts. 6008 to 6008c. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(2), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Prior to repeal, art. 6008 was amended by Acts 1977, 65th Leg., p. 1822, ch. 731, § 1.

Without reference to repeal of art. 6008-1, Acts 1977, 65th Leg., p. 1840, ch. 735, § 2.062, added § 5a thereto to read:

"The office of Interstate Oil Compact Commissioner for Texas is subject to the Texas Sunset Act [art. 5429k]; and unless continued in existence as provided by that Act the office is abolished, and this Act expires effective September 1, 1983."

Art. 6010. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(2), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Natural Resources Code.

Arts. 6012 to 6016. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(2), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Arts. 6018 to 6029a. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(2), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Prior to repeal, arts. 6018 and 6019 were amended by Acts 1977, 65th Leg., pp. 189, 191, ch. 95, §§ 1 and 2.

Prior to repeal, art. 6020a was amended by Acts 1975, 64th Leg., p. 2216, ch. 705, §§ 9 and 10.

Prior to repeal, arts. 6022 and 6023 were amended by Acts 1977, 65th Leg., pp. 191, 192, ch. 95, §§ 3 and 4.

Arts. 6030 to 6032. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(2), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Art. 6032a. Collection and Report of Tax

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Arts. 6032b to 6032c-1. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(2), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Art. 6032d. Repealed by Acts 1977, 65th Leg., p. 2690, ch. 871, art. 1, § 2(a)(5), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Natural Resources Code.

Arts. 6032e to 6036a. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(2), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Art. 6036c. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(2), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Natural Resources Code.

Arts. 6038 to 6049g. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(2), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

NATURAL GAS

Art. 6050. Classification

The term "gas utility" and "public utility" or "utility," as used in this subdivision, means and includes persons, companies and private corporations, their lessees, trustees, and receivers, owning, managing, operating, leasing or controlling within this State any wells, pipe lines, plant, property, equipment, facility, franchise, license, or permit for either one or more of the following kinds of business:

1. Producing or obtaining, transporting, conveying, distributing or delivering natural gas: (a) for public use or service for compensation; (b) for sale to municipalities or persons or companies, in those cases referred to in paragraph 3 hereof, engaged in distributing or selling natural gas to the public; (c) for sale or delivery of natural gas to any person or firm or corporation operating under franchise or a contract with any municipality or other legal subdivision of this State; or, (d) for sale or delivery of natural gas to the public for domestic or other use.

2. Owning or operating or managing a pipe line for the transportation or carriage of natural gas, whether for public hire or not, if any part of the right of way for said line has been acquired, or may hereafter be acquired by the exercise of the right of eminent domain.

3. Producing or purchasing natural gas and transporting or causing the same to be transported by pipe lines to or near the limits of any municipality in which said gas is received and distributed or sold to the public by another public utility or by said municipality, in all cases where such business is in fact the only or practically exclusive agency of supply of natural gas to such utility or municipality, is hereby declared to be virtual monopoly and a business and calling affected with a public interest, and the said business and property employed therein within this State shall be subject to the provisions of this law and to the jurisdiction and regulation of the Commission as a gas utility.

Every such gas utility is hereby declared to be affected with a public interest and subject to the jurisdiction, control and regulation of the Commission as provided herein.

4. Provided, however, that the act or acts of transporting, delivering, selling or otherwise making available natural gas for fuel, either directly or indirectly, to the owners of irrigation wells or the sale, transportation or delivery of natural gas for any other direct use in agricultural activities shall not be construed within the terms of this law as constituting any person, association, corporation, trustee, receiver or partnership as a "gas

utility," "public utility," or "utility" as hereinabove defined so as to make such person, association, corporation, trustee, receiver or partnership subject to the jurisdiction, control and regulation of the Commission as a gas utility.

4a. The natural gas made available under the provisions of this Act shall be used exclusively for pumping water for farm and other agricultural purposes in order for the person, firm, association, or corporation furnishing such natural gas to be exempt from the provisions of said Article 6050 of the Revised Civil Statutes of Texas of 1925. The provisions of this Act shall be considered only as cumulative of other laws and shall not have the effect of repealing or amending any substantive or statutory law except as herein specifically provided.

[Amended by Acts 1979, 66th Leg., p. 473, ch. 216, § 1, eff. May 17, 1979.]

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6051. May Enjoin Gas Pipe Line**Saved from Repeal**

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6052. Utility Office**Saved from Repeal**

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6053. Regulation of Utilities

[See Compact Edition, Volume 5 for text of 1]

Submetering in Mobile Home Parks

Sec. 1a. Notwithstanding any law to the contrary, the commission shall promulgate rules, regulations, and standards under which any owner, operator, or manager of a mobile home park may purchase natural gas through a master meter for delivery from such master meter to mobile home units within the mobile home park through individual submeters at each mobile home unit. Such rules and regulations shall require (a) that the owner, operator, or manager of a mobile home park shall not deliver natural gas for sale or resale for profit and (b) that the mobile home park shall maintain adequate records in connection with such submetering and shall make the records available for inspection by the

mobile home resident during reasonable business hours.

[See Compact Edition, Volume 5 for text of 2 to 19]

[Amended by Acts 1979, 66th Leg., p. 774, ch. 340, § 1, eff. June 6, 1979.]

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6053-1. Transportation of Gas and Gas Pipeline Facilities; Safety Standards

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6054. Orders, etc., Reviewed

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6055. To Refund Excess Charges

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6056. Operator's Reports

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6057. Discrimination

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6057a. Discrimination

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6057b. Penalty for Violation of Law

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6058. Appeal From City Control

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6059. Appeal From Orders

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6060. Utility Tax

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6061. Report to Governor

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6062. Penalties

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6063. Receiver

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6064. Duties of Pipe Line Expert

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6065. Employees of Commission**Saved from Repeal**

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6066. Expenditures**Saved from Repeal**

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6066a. Regulation of Transportation of Oil or Oil Products Thereof**Saved from Repeal**

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Arts. 6066b to 6066d. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(2), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Prior to repeal, art. 6066d was amended by Acts 1977, 65th Leg., p. 1333, ch. 531, § 1.

Art. 6066e. Repealed by Acts 1979, 66th Leg., p. 2007, ch. 785, § 9, eff. June 13, 1979

The repealed article, derived from Acts 1977, 65th Leg., p. 971, ch. 366, related to underground natural gas storage and conservation.

See, now, Natural Resources Code, § 91.171 et seq.

Art. 6066f. Natural Gas Supplies for Agricultural Purposes

Except to the extent that natural gas supplies are required to maintain natural gas service to residential users or hospitals and similar uses vital to public health and safety, no person, firm, corporation, partnership, association, or cooperative which sells natural gas for irrigation and also sells and distributes natural gas within the limits of any municipality or delivers gas to the boundary of any municipality for resale in the municipality shall curtail the supply of natural gas for agricultural purposes, including but not limited to irrigation pumping and crop drying. [Acts 1977, 65th Leg., p. 2133, ch. 851, § 1, eff. Aug. 29, 1977.]

TITLE 103

PARKS

1. STATE PARKS BOARD

Article
6067d. Repealed.

Repeal

Enumerated articles of this Title 103 were repealed by § 2(a)(4) of Acts 1975, 64th Leg., p. 1804, ch. 545, enacting the Parks and Wildlife Code, effective September 1, 1975.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Parks and Wildlife Code.

Arts. 6067 to 6070b. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4), eff. Sept. 1, 1975

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing these articles, enacts the Parks and Wildlife Code.

Prior to repeal, §§ 1 and 4 of art. 6067b were amended by Acts 1975, 64th Leg., p. 927, ch. 345, §§ 1 and 2.

Repealed art. 6067d, authorizing issuance of a State Parklands Passport to persons 65 years of age or over, was derived from Acts 1975, 64th Leg., p. 55, ch. 31.

Art. 6070c. Omitted

Acts 1931, 42nd Leg., p. 917, H.C.R. # 43, classified as art. 6070c, setting aside Goose Island for use as a State Park, has been omitted from West's Texas Statutes.

Arts. 6070d, 6070d-1. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4), eff. Sept. 1, 1975

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing these articles, enacts the Parks and Wildlife Code.

Arts. 6070g, 6070h. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4), eff. Sept. 1, 1975

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing these articles, enacts the Parks and Wildlife Code.

Prior to repeal, § 8 of art. 6070h was amended by Acts 1975, 64th Leg., p. 1129, ch. 428, § 1.

Art. 6071a to 6071c. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4), eff. Sept. 1, 1975

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing these articles, enacts the Parks and Wildlife Code.

Arts. 6077a-1 to 6077h-2. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4), eff. Sept. 1, 1975

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing these articles, enacts the Parks and Wildlife Code.

Arts. 6077j to 6077l. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4), eff. Sept. 1, 1975

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing these articles, enacts the Parks and Wildlife Code.

Arts. 6077m-1 to 6077n-1. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4), eff. Sept. 1, 1975

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing these articles, enacts the Parks and Wildlife Code.

Arts. 6077p to 6077u. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4), eff. Sept. 1, 1975

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing these articles, enacts the Parks and Wildlife Code.

5. COUNTY PARKS

Art. 6078. Repealed by Acts 1977, 65th Leg., p. 2034, ch. 812, § 1, eff. June 16, 1977

Art. 6079b. Repealed by Acts 1977, 65th Leg., p. 2034, ch. 812, § 1, eff. June 16, 1977

Art. 6079e. Counties of 5,000 or More

Applicability of Law

Sec. 1. The provisions of this Act shall apply to any county in this State having a population of five thousand (5,000) or more according to the last preceding Federal Census.

[See Compact Edition, Volume 5 for text of 2 to 20]

[Amended by Acts 1975, 64th Leg., p. 1883, ch. 596, § 1, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1070, ch. 500, § 1, eff. Aug. 27, 1979.]

7. RECREATIONAL AREAS, FACILITIES AND HISTORICAL SITES

Arts. 6081r to 6081s-1. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4), eff. Sept. 1, 1975

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing these articles, enacts the Parks and Wildlife Code.

Art. 6081t. Joint Establishment and Operation of Recreational Facilities

[See Compact Edition, Volume 5 for text of 1 and 2]

Sec. 2a. In connection with any facilities which may be provided, maintained, constructed, and oper-

ated pursuant to the provisions of this Act, the governmental units involved, operating within two or more adjacent counties, acting jointly and, if deemed by them advisable, under the supervision and management of any other duly established operating board or agency, may exercise such powers and functions and accomplish such purposes as are herein set forth or as are provided for in Articles 1269j-4.1 and 1180b of the Revised Civil Statutes of

Texas including those with relation to the issuance of bonds. If acting jointly such governmental units may, by joint concurrent ordinances or resolutions, provide for the issuance of bonds and such other arrangements as deemed by them appropriate under their agreement.

[Amended by Acts 1975, 64th Leg., p. 1987, ch. 660, § 1, eff. June 19, 1975.]

TITLE 105

PARTNERSHIPS AND JOINT STOCK COMPANIES

CHAPTER ONE. PARTNERSHIPS

LIMITED PARTNERSHIPS

Art. 6132a. Uniform Limited Partnership Act

[See Compact Edition, Volume 5 for text of 1 and 2]

Persons Who May be General or Limited Partners

Sec. 2A. (a) In this section, "person" includes without limitation:

- (1) A corporation;
- (2) A general or limited partnership;
- (3) A trustee or trust;
- (4) An executor, administrator, or estate; and
- (5) A natural person.

(b) Any person may be a general or limited partner unless the person lacks capacity apart from this Act.

[See Compact Edition, Volume 5 for text of 3 to 7]

Liability of Limited Partner

Sec. 8. (a) A limited partner shall not become liable as a general partner unless, in addition to the exercise of his rights and powers as a limited partner, he takes part in the control of the business, and then only to a person who transacts business with the partnership reasonably believing that the limited partner is a general partner.

(b) A limited partner does not take part in the control of the business by virtue of possessing or exercising a power to:

- (1) Consult with and advise the general partners as to the conduct of the business.
- (2) Act as a surety, guarantor, or endorser for obligations of the partnership or to provide collateral for its borrowing.
- (3) Act as a contractor, agent, or employee of the partnership or of a general partner.
- (4) Act as an officer, director, or shareholder of a corporate general partner.
- (5) Approve, individually or by a majority of the limited partners (by number, financial interest, or as otherwise provided in the certificate), material matters that are stated in the certificate, such as:

(A) Dissolution and winding up of the partnership.

(B) Amendment of the partnership certificate or agreement.

(C) Sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the partnership other than in the ordinary course of business.

(D) Incurrence, renewal, or refinancing of a debt by the partnership other than in the ordinary course of business.

(c) The statement of the powers set forth in Subsection (b) of this section is not exclusive and does not indicate that any other power possessed or exercised by a limited partner is sufficient to cause the limited partner to be considered to take part in the control of the business within the meaning of Subsection (a) of this section.

(d) This section does not create rights of limited partners. Those rights may be created only by the certificate, partnership agreement, or other sections of this Act.

[See Compact Edition, Volume 5 for text of 9]

General Partners—Rights, Powers, Restrictions and Liabilities

Sec. 10.

[See Compact Edition, Volume 5 for text of 10(a)]

(b) This section does not prevent:

(1) The dissolution and winding up of the partnership:

(i) As provided in the certificate; or

(ii) Upon approval by any majority of the limited partners (by number, financial interest, or otherwise) as provided in the certificate;

(2) The sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all the assets of the partnership:

(i) In the ordinary course of the partnership business; or

(ii) If not in the ordinary course of the partnership business, upon approval by any majority of the limited partners (by number, financial interest, or otherwise) as provided in the certificate; or

(3) The amendment of the partnership agreement or certificate upon approval by any majority of the limited partners (by number, financial interest, or otherwise) as provided in the certificate.

[See Compact Edition, Volume 5 for text of 11 to 31]

Qualification of Foreign Limited Partnerships

Sec. 32. (a) Definition. "Foreign limited partnership" in this Act means a partnership formed under the limited partnership laws of any territory, possession, commonwealth, or state of the United States other than this state, having as members one or more general partners and one or more limited partners.

(b) Qualification. A foreign limited partnership may qualify to transact business in Texas by

(1) filing with the Secretary of State a copy of its certificate of limited partnership (or equivalent document) and all amendments thereto, with an original certification by the proper filing officer of the jurisdiction of its formation;

(2) filing with the Secretary of State a qualification statement containing:

(A) the name of the limited partnership, the jurisdiction of its formation, and the address of its principal place of business;

(B) the name and address of at least one of its general partners, who gives consent under Paragraph (C);

(C) a consent by the limited partnership and the named general partner(s) to be served with process in Texas through their registered agent in any proceeding for the enforcement of an obligation of the limited partnership;

(D) the address of the limited partnership's registered office in Texas;

(E) the name of the registered agent (either an individual or a corporation having as one of its purposes acting as a registered agent) for the limited partnership and for the named general partner(s) in Texas at such address; and

(F) the signature of the limited partnership and of the named general partner(s);

(3) paying a filing fee of one-half of one percent of the total contributions (including agreed additional contributions) of the limited partners stated in the copy of the certificate of limited partnership so filed, but not less than \$100 nor more than \$2500.

(c) Effect of Qualification. On qualifying under Section 32(b) of this Act, a foreign limited partnership shall enjoy the same rights and privileges, and shall be subject to the same duties, restrictions, and liabilities, as a limited partnership formed under this Act, but its internal affairs and the liabilities of its limited partners shall be governed by the laws of the jurisdiction of its formation.

(d) Amendments of Certificate. A qualified foreign limited partnership must amend its filings in

Texas to reflect changes in its certificate of limited partnership (or equivalent document) by filing with the Secretary of State within a reasonable time after such changes have been effected a copy of the amendment with an original certification by the proper filing officer of the jurisdiction of its formation, and paying the following fees:

(1) for filing an amendment which does not provide for new, increased, or additional contributions, \$100 and

(2) for filing an amendment which provides for new, increased, or additional contributions, one-half of one percent of the new, increased, or additional contributions, but not less than \$100 nor more than \$2500.

(e) Change of Registered Office or Agent or Named General Partner(s). (1) A qualified foreign limited partnership and the general partner(s) named in its qualification statement may change the registered office or the registered agent, or both, by filing with the Secretary of State a statement (signed by the partnership and the general partner(s) named in its qualification statement) designating the new office address or agent, and paying a fee of \$10;

(2) A qualified foreign limited partnership may change the general partner(s) named in its qualification statement by filing with the Secretary of State a statement (signed by the partnership and by the general partner(s) who will thereafter be the named partner(s)) designating the named general partner(s) and containing his or their consent to be served with process in Texas through the limited partnership's registered agent in any proceeding for the enforcement of an obligation of the limited partnership, and paying a fee of \$10.

(f) Termination of Qualification. A qualified foreign limited partnership may terminate its qualification by filing with the Secretary of State a statement that it terminates its qualification, and paying a fee of \$25.

(g) Signatures on Filings. Except as otherwise provided, any statement filed under this Section 32 shall be signed by one of the general partners of the limited partnership or another person authorized to act on behalf of the limited partnership.

(h) Effect of Failure to File Amendments or Changes. Until changed by filing under Section 32(d), (e), or (f), a prior filing remains in effect.

(i) Forms. The Secretary of State shall have authority to promulgate and distribute forms for use under this Section 32.

(j) Service of Process. (1) The registered agent designated under Section 32(b) of this Act by a foreign limited partnership and a general partner(s) named in its qualification statement shall be an agent of the foreign limited partnership and such

general partner(s) upon whom any process, notice, or demand required or permitted by law to be served upon the foreign limited partnership and/or such general partner(s) may be served.

(2) Nothing herein shall limit or affect the right to serve any process, notice, or demand under Chapter 43, Acts of the 56th Legislature, Regular Session, 1959 (Articles 2031b and 2033, Vernon's Texas Civil Statutes), or in any other manner now or hereafter permitted by law.

(k) No Inference from this Section. This section shall not give rise to an inference as to the law governing:

(1) a foreign limited partnership before the effective date of this section, or

(2) a foreign limited partnership after the effective date of this section, which does not qualify hereunder.

Powers of Attorney

Sec. 33. A certificate of limited partnership or any other document required or permitted by this Act may be signed and sworn to by a limited partner in person or through an attorney in fact, who may, but need not, be a member of the limited partnership. A general partner who is a corporation may act as an attorney in fact for purposes of this Act. [Amended by Acts 1977, 65th Leg., p. 1107, ch. 408, § 1, eff. June 15, 1977; Acts 1979, 66th Leg., p. 1781, ch. 723, §§ 1 to 4, eff. Aug. 27, 1979.]

PARTNERSHIPS

Art. 6132b. Texas Uniform Partnership Act

[See Compact Edition, Volume 5 for text of 1 to 5]

PART II. NATURE OF A PARTNERSHIP

[See Compact Edition, Volume 5 for text of 6]

Persons Who May be Partners

Sec. 6-A.

(1) In this section, "person" includes without limitation:

- (a) A corporation;
- (b) A general or limited partnership;
- (c) A trustee or trust;
- (d) An executor, administrator, or estate; and
- (e) A natural person.

(2) Any person may be a partner unless the person lacks capacity apart from this Act.

[See Compact Edition, Volume 5 for text of 7 to 46]

[Amended by Acts 1979, 66th Leg., p. 1782, ch. 723, § 5, eff. Aug. 27, 1979.]

TITLE 106

PATRIOTISM AND THE FLAG

Article

6143d. State Plays.

6145-11. Texas 1986 Sesquicentennial Commission.

6145-12. Inauguration of Governor and Lieutenant Governor.

Art. 6142a. Clarifying Description of Texas Flag

[See Compact Edition, Volume 5 for text of 1 to 5]

Rules Governing the Use of the Texas Flag

Sec. 6. When the Texas Flag is displayed out-of-doors, it should be on either a flagpole or a staff, and the staff should be at least two and one-half times as long as the Flag. The Flag is always attached at the spearhead end of the staff, and the heading must be made of material strong enough to protect the Colors.

The Texas Flag should not be displayed outdoors earlier than sunrise nor later than sunset. However, when a patriotic effect is desired, the Texas Flag may be displayed 24 hours a day if properly illuminated during the hours of darkness, or under the same circumstances as the Flag of the United States of America may be displayed.

The Texas Flag should not be displayed on days when the weather is inclement, unless a weather-proof flag is displayed.

The Texas Flag should be displayed on all State Memorial Days and on special occasions of historical significance.

Every school in Texas should fly the Texas Flag on all regular school days. This courtesy is due to the Lone Star Flag of Texas.

The Texas Flag should always be hoisted briskly, and furled slowly with appropriate ceremonies.

The Texas Flag should not be fastened in such a manner that it can be torn easily.

When the Texas Flag is flown from a flagpole or staff, the white stripe should always be at the top of the Flag, except in cases of distress, and the red stripe should be directly underneath the white.

The Texas Flag should be on the marching left when it is carried in a procession in which the Flag of the United States of America is unfurled.

The Texas Flag should be on the left of the Flag of the United States of America, and its staff should be behind the staff of the Flag of the United States

of America when the two are displayed against a wall from crossed staffs.

When the Texas Flag is flown on a flagpole adjacent to the flagpole on which the Flag of the United States of America is flown, it should be unfurled after the Flag of the United States of America, and it should be displayed at the left of the Flag of the United States of America.

When the Texas Flag and the Flag of the United States of America are displayed at the same time, they should be flown on separate flagpoles of equal length, and the Flags should be approximately the same size. However, when it is necessary for the Texas Flag and the Flag of the United States of America to be flown from the same halyard, the Texas Flag must be beneath the Flag of the United States of America.

When the Texas Flag is flown from a window-sill, balcony, or front of a building, and flat against the wall, it should be on a staff, and the blue field should be at the observer's left.

When the Texas Flag and the Flag of the United States of America are displayed on a speaker's platform at the same time, the Texas Flag should be on the left side of the speaker, while the Flag of the United States of America is on the right side of the speaker.

The Texas Flag should never be used to cover a platform or speaker's desk, nor to drape over the front of a speaker's platform.

When the Texas Flag is displayed flat on the wall of a platform, it should be above the speaker, and the blue field must always be at the Flag's right.

When the Texas Flag is displayed on a motor car, the staff should be fastened firmly to the chassis of the car, or clamped firmly to the right fender, unless the Flag of the United States of America is flown on the right fender, in which case the Texas Flag should be so displayed on the left fender.

When the Texas Flag is displayed on a float in a parade, it should always be attached securely to a staff.

The Texas Flag should not be allowed to touch the ground or the floor, nor to trail in water.

The Texas Flag should not be draped over the hood, top, sides, or back of any vehicle, or of a railroad train, boat, or aircraft.

The Texas Flag should not be used as a covering for a ceiling.

The Texas Flag should not be used as any portion of a costume or athletic uniform.

The Texas Flag should not be embroidered upon cushions or handkerchiefs, nor printed on paper napkins or boxes.

The Texas Flag must not be treated disrespectfully by having printing or lettering of any kind placed upon it.

The Texas Flag should not be used in any form of advertising, and, under no circumstances, may advertisements of any kind be attached to the flagpole or staff.

It is disrespectful to the Texas Flag to use it for purposes of decoration, either as a covering for automobiles or floats in a parade, or for draping speakers' platforms or stands, or for any other similar purpose of decoration. For such purposes of decoration the colors of the Flag may be used in bunting or other cloth.

The Texas Flag should, whenever practicable, not be carried flat or horizontally, but always aloft and free, as it is carried in a parade.

The Texas Flag is flown at half-mast by first raising it to the top of the flagpole, and then slowly lowering it to a position one-half of the distance down the flagpole, and there leaving it during the time it is to be displayed. In taking the Flag down, it should first be raised to the top of the flagpole, and then slowly lowered with appropriate ceremony.

The Texas Flag should not be displayed, used, nor stored in such a manner that it can be easily soiled or otherwise damaged.

When the Texas Flag is in such condition of repair that it is no longer a suitable Emblem for displaying, it should be totally destroyed, preferably by burning, and that privately; or this should be done by some other method in keeping with the spirit of respect and reverence which all Texans owe the Emblem which represents the Lone Star State of Texas. [Amended by Acts 1977, 65th Leg., p. 728, ch. 272, § 1, eff. Aug. 29, 1977.]

Art. 6143d. State Plays

Sec. 1. The legislature finds that:

(1) the historic battles of San Jacinto, Goliad, and the Alamo that led to the independence of Texas are portrayed faithfully and artistically at Galveston Island State Park in the play, *The Lone Star*;

(2) the lives of early settlers of the Panhandle of Texas are portrayed colorfully and creatively each year at the Palo Duro Canyon State Park in the play, *Texas*;

(3) the relationship between early settlers of East Texas, especially General Sam Houston and the Alabama-Coushatta Indians, is portrayed historically and excitingly at the Alabama-Coushatta Indian Reservation in the play, *Beyond the Sundown*; and

(4) the founding of Fort Griffin and the lives of the settlers of Shackelford County and Albany, Texas, during the 1870s and 1880s are depicted during the last two weeks in June annually in Shackelford County in the play, *Fandangle*.

Sec. 2. *The Lone Star* presented in Galveston Island State Park, *Texas* presented in the Palo Duro Canyon State Park, *Beyond the Sundown* presented at the Alabama-Coushatta Indian Reservation, and *Fandangle* presented in Shackelford County are designated official plays of the State of Texas.

[Acts 1979, 66th Leg., p. 711, ch. 310, §§ 1, 2, eff. Aug. 27, 1979.]

Art. 6144f. Texas Tourist Development Agency

Texas Tourist Development Board

Sec. 1.

[See Compact Edition, Volume 5 for text of 1(a) to (e)]

(f) The Texas Tourist Development Agency is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the agency is abolished, and this Act expires effective September 1, 1989.

¹ Article 5429k.

[See Compact Edition, Volume 5 for text of 2 to 4]

[Amended by Acts 1977, 65th Leg., p. 1855, ch. 735, § 2.165, eff. Aug. 29, 1977.]

Art. 6144g. Commission on the Arts and Humanities

Creation and Establishment of Commission; Membership

Sec. 1. The Texas Commission on the Arts is established. The Commission shall consist of eighteen (18) members representing all fields of the arts, to be appointed by the Governor with the advice and consent of the Senate from among private individuals who are widely known for their professional competence and experience in connection with the arts.

Application of Sunset Act

Sec. 1a. The Texas Commission on the Arts is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1983.

¹ Article 5429k.

Name Change

Sec. 1b. (a) The name of the Texas Commission on the Arts and Humanities, formerly the Texas Fine Arts Commission, is changed to the Texas Commission on the Arts.

(b) A reference in a statute to the Texas Commission on the Arts and Humanities or the Texas Fine Arts Commission means the Texas Commission on the Arts.

[See Compact Edition, Volume 5 for text of 2]

Duties and Responsibilities

Sec. 3. The duties and responsibilities of the Commission shall be:

a. To foster the development of a receptive climate for the arts that will culturally enrich and benefit the citizens of Texas in their daily lives, to make Texas visits and vacations all the more appealing to the world and to attract to Texas residency additional outstanding creators in the fields of the arts through appropriate programs of publicity and education, and to direct other activities such as the sponsorship of lectures and exhibitions and central compilation and dissemination of information on the progress of the arts in Texas.

b. To act as an advisor to the State Board of Control, Texas Historical Commission, Texas State Library, Texas Tourist Development Agency, State Department of Highways and Public Transportation and other state agencies to provide a concentrated state effort in encouraging and developing an appreciation for the arts in Texas.

c. To act in an advisory capacity relative to the creation, acquisition, construction, erection or remodeling by the state of any work of art.

d. To act in an advisory capacity, when requested by the Governor, relative to the artistic character of buildings constructed, erected or remodeled by the state.

Powers

Sec. 4. The Commission shall have power:

a. To elect from its members a chairman and other such officers as may be desirable; provided that the first chairman of the Commission shall be named by the Governor and shall call the first meeting of the Commission and serve as such until his successor shall be elected by the Commission.

b. To hold such meetings, at such places within the State of Texas and at such times as the Commission may designate.

c. To conduct research, investigations, and inquiries as may be necessary so as to inform the Commission of the development of the arts in Texas.

d. To appoint committees from its membership and prescribe their duties.

e. To appoint consultants to the Commission.

f. To make rules and regulations for its government and that of its officers and committees; and to prescribe the duties of its officers, consultants, and employees.

g. To employ a director and other such clerical employees as it may deem necessary within the limits of funds made available for such purposes.

Donations; Appropriations; Audit of Funds

Sec. 5. The Commission may accept on behalf of Texas such donations of money, property, art objects and historical relics as in its discretion shall best further the orderly development of the artistic resources of Texas. Appropriations may be made by the Legislature to the Commission to carry out the purposes of this Act. All funds shall be subject to audit by the State Auditor.

[See Compact Edition, Volume 5 for text of 6 and 7]

Abolition of Board of Mansion Supervisors

Sec. 8. The Board of Mansion Supervisors is hereby abolished and all powers, duties and authority heretofore vested in the Board of Mansion Supervisors are hereby transferred to the Texas Commission on the Arts provided for herein. The terms of office of the present members of the Board of Mansion Supervisors are hereby terminated.

[Amended by Acts 1977, 65th Leg., p. 1843, ch. 735, § 2.080, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 380, ch. 173, § 1, eff. May 15, 1979.]

Art. 6145. Texas Historical Commission

[See Compact Edition, Volume 5 for text of 1 and 1a]

Application of Sunset Act

Sec. 1b. The Texas Historical Commission is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1983.

¹ Article 5429k.

[See Compact Edition, Volume 5 for text of 2 to 11]

State Historical Marker Program; Register; Review; Approval; Designation as Official State Markers; Damage

Sec. 12.

[See Compact Edition, Volume 5 for text of 12(1)]

(2) No person may damage the historical or architectural integrity of any structure which has been designated by the Commission as a Recorded Texas Historic Landmark, without first giving 60 days'

notice to the Texas Historical Commission. After receipt of notice, the Commission may waive the waiting period or, if the Commission determines that a longer period will enhance chances for preservation, it may require an additional waiting period of not more than 30 days. Upon the expiration of the time limits imposed by this section, the person may proceed, but must proceed within 180 days of the expiration of the time the notice was given or the notice shall be deemed to have expired.

(3) Nothing in this Act shall give the Commission the authority to review or determine the placement or location of any object within or on a Recorded Texas Historic Landmark which placement or location results in no substantial structural damage or change.

[See Compact Edition, Volume 5 for text of 13 to 16]

Grants to Museums Honoring Fire Fighters

Sec. 16A. The Commission may make grants of funds given or appropriated to it for that purpose to museums honoring fire fighters and their work. This authorization shall extend to August 31, 1983.

[See Compact Edition, Volume 5 for text of 17 to 23]

Penalty for Violation of Act

Sec. 24. A person who violates this Act is subject to a civil penalty of not less than \$50 nor more than \$1,000 for each day of violation.

Filing Suit; Venue

Sec. 25. The attorney general or any resident of this state may file suit in the district court to restrain and enjoin any violation or threatened violation of this Act, to recover on behalf of the state a civil penalty provided in this Act, or for both injunctive relief and a civil penalty. Venue of a suit filed as provided in this section is in either Travis County or the county in which the activity sought to be restrained or penalized is alleged to have occurred, be occurring, or be about to occur.

Costs of Litigation

Sec. 26. In issuing a final order in an action brought as provided in Section 25 of this Act, the court may award costs of litigation, including reasonable attorney's and expert witness' fees.

[Amended by Acts 1975, 64th Leg., p. 1023, ch. 391, §§ 1, 2, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1759, ch. 707, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1843, ch. 735, § 2.083, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1044, ch. 474, § 1, eff. June 7, 1979.]

Art. 6145.1. County Historical Commission

(a) The Commissioners Court of each county may appoint a County Historical Commission to consist of at least seven residents of the county for the pur-

pose of initiating and conducting such programs as may be suggested by the Commissioners Court and the Texas Historical Commission for the preservation of the historical heritage of the county. The members of the commission shall be appointed during the month of January of odd-numbered years and shall serve for a term of two years. Should the Commissioners Court fail to appoint a commission by April 1 of each odd-numbered year, the Texas Historical Commission may appoint such commission upon 30 days written notice to the Commissioners Court of its intention to do so.

(b) Each County Historical Commission shall meet at least once each year at its county seat and may meet as often as each commission may determine under rules and regulations adopted by it for its own regulation. Each commission shall make an annual report of its activities and recommendations simultaneously to its Commissioners Court and to the Texas Historical Commission before the end of each calendar year and may make as many other reports and recommendations as it sees fit.

(c) Each commission shall institute and carry out a continuing survey of the county to determine the existence of historical buildings and other historical sites, private collections of historical memorabilia, or other historical features within the county, and shall report the data collected to the Commissioners Court and the Texas Historical Commission.

(d) The Commissioners Court may pay the necessary expenses of the commission and may authorize a car allowance and pay the necessary traveling expenses of the chairman and members of the commission.

(e) The commission shall make recommendations to the Commissioners Court and the Texas Historical Commission concerning the acquisition of property, real or personal, which is of historical significance.

(f) The commission may operate and manage any museum which may be owned or leased by the county, and may acquire artifacts and other museum paraphernalia in the name of the museum or the commission, and may supervise any employees hired by the Commissioners Court to operate the museum.

(g) In addition to the powers already conferred on it by law, the Commissioners Court of each county of this state may appropriate funds from the general fund of the county for the purpose of:

(1) erecting historical markers, monuments, and medallions;

(2) purchasing objects and collections of objects of any kind which are historically significant to the county; and

(3) preparing, publishing, and disseminating, by sale or otherwise, a history of the county.

[Amended by Acts 1975, 64th Leg., p. 114, ch. 52, § 1, eff. April 18, 1975.]

Section 2 of the 1975 amendatory act provided:
 "County historical survey committees in existence on the effective date of this amendatory Act become county historical commissions as if the members were appointed under Chapter 152, Acts of the 58th Legislature, 1963, as amended by this Act (Article 6145.1, Vernon's Texas Civil Statutes). If the terms of any members expire before January, 1977, the commissioners court shall appoint successors to serve until new appointments are made in January, 1977. Members may be appointed to succeed themselves."

Art. 6145-1. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4), eff. Sept. 1, 1975

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing this article, enacts the Parks and Wildlife Code.

Art. 6145-2. Battleship "Texas" as a Permanent Memorial; Commission of Control; Maintenance and Operation

[See Compact Edition, Volume 5 for text of 1]

Commission Created; Membership; Terms

Sec. 2. There is hereby created a Commission of Control for the Battleship "Texas" to be known as the Battleship Texas Commission and which will hereinafter, in this Act, be referred to as merely the Commission, to be composed of nine (9) members appointed by the Governor of the State of Texas from the personnel comprising the following organizations, in the number stated:

General Public—Members at large	2 Members
Sons of the Republic of Texas	1 Member
Daughters of the Republic of Texas	1 Member
Texas State Historical Association	1 Member
Texas Navy League	1 Member
Disabled Veterans (D.A.V.)	1 Member
American Legion	1 Member
Veterans of Foreign Wars of the U.S.	1 Member

The members of the Commission hold office for staggered terms of six (6) years with the terms of three (3) members expiring every two (2) years. Each member holds office until his successor is appointed and has qualified. The terms expire on May 1 of odd-numbered years. All appointees of the Governor shall be confirmed by a two-thirds (2/3) vote of the Senate of the State of Texas present.

Application of Sunset Act

Sec. 2a. The Battleship Texas Commission is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1979.

¹ Article 5429k.

[See Compact Edition, Volume 5 for text of 3 to 5]

Secretary; Meetings; Seal; Repairs; Revenues; Bonds

Sec. 6. The Commission shall select one of its members as Chairman, and shall select a Secretary

who may or may not be a member. The Commission shall meet on the first Thursday of each month and at such other times as the Chairman deems necessary, by giving the other members notice in writing thereof. The Commission shall procure and adopt a seal bearing the words "State of Texas Battleship Texas Commission" encircled by the oak and olive branches.

The Commission shall have the duty of maintaining and keeping in proper repair the Battleship Texas located in San Jacinto State Park, and shall exact fees or charges from persons for the admission to and inspection of said vessel. Said Commission shall have the power to let concession contracts to the highest bidders for the sale of wares or merchandise to visitors in connection with admission to and inspection of said vessel, and such fees and charges and concession revenues shall be used to pay the operation, repair, and maintenance expenses of said vessel. Said Commission shall also have the power and authority to issue negotiable revenue bonds in the name of "State of Texas Battleship Texas Commission" for the purpose of repairing or improving said vessel or for the construction of protective improvements, including the construction of a bulkhead or bulkheads to prevent erosion around the slip wherein said vessel is berthed or located. Said bonds shall be secured by and payable solely from the net revenues derived by the hereinabove mentioned fees and charges and concession contracts. The Commission is hereby given complete discretion in fixing the form, conditions, and details of such bonds, and in entering into covenants relating to the use of the net revenues in connection with said bonds. Said bonds shall not in any manner constitute an indebtedness of the State of Texas or of said Commission, but shall be payable solely from the net revenues as above specified, and each of said bonds shall have words to this effect printed on the face thereof. Any interest or principal falling due during the period of the construction of repairs or improvements or protective work and all costs incident to the issuance and sale of the bonds may be paid from the bond proceeds. Said bonds shall mature serially over a period of years not to exceed forty (40), bear interest at a rate not to exceed three (3%) per cent per annum, be signed by the Chairman of the Commission and countersigned by the Secretary; provided that the interest coupons may bear the facsimile signatures of such officers. Said bonds shall be sold for not less than their par value plus accrued interest. Said bonds shall be submitted to the Attorney General for examination, and upon approval, shall be registered by the Comptroller of Public Accounts. After such approval and registration and delivery to the purchaser or purchasers, said bonds shall be incontestable. Such bonds and the interest thereon shall be exempt from taxation by the State of Texas

or by any municipal corporation, county or political subdivision, or taxing district of the State. While said bonds or any of them are outstanding, the Commission shall fix said fees and charges for admission and inspection and the payments under the concession contracts in an amount as will be ample to produce sufficient net revenues (the revenues remaining from the gross revenues after the payment of all proper expenses of operation and maintenance) to pay all requirements of such bonds and to create, establish, and maintain such reserves as may be specified in the proceedings authorizing the issuance of such bonds. The Commission shall have the power and duty to revise the fees and charges so that the net revenues will at all times be sufficient for the purpose described above. Any bonds issued under this Act may be refunded at the same or a lower rate of interest upon the cancellation by the Comptroller of the bonds being refunded at the time of registration of the refunding bonds, the said refunding bonds to be issued under the terms and conditions of this Act relating to the original bonds.

No net revenues derived from admission or inspection fees and charges or from concession contracts shall be paid into the General Revenue Fund when there are outstanding revenue bonds payable from said net revenues; provided that if there are no such outstanding revenue bonds, then on August 31st of each year while there are no such outstanding bonds, the Commission shall cause to be paid into the State Treasury of the State of Texas for the benefit of the General Revenue Fund all net revenues then on hand in excess of Three Hundred Thousand Dollars (\$300,000).

Books of Account and Records

Sec. 7. The Commission shall maintain books of account and records concerning all revenue derived from the sale of admissions to the public and all expenses incurred in maintaining and operating the Battleship as a public memorial.

[See Compact Edition, Volume 5 for text of 8 and 9]

Sec. 10. Repealed by Acts 1977, 65th Leg., p. 812, ch. 302, § 4, eff. May 30, 1977.

[See Compact Edition, Volume 5 for text of 11 and 12]

Compensation

Sec. 13. No member of the Commission or of the Operating Board shall receive any salary for the performance of his duties under this Act.

[See Compact Edition, Volume 5 for text of 14]
[Amended by Acts 1977, 65th Leg., p. 810, ch. 302, §§ 1 to 5, eff. May 30, 1977; Acts 1977, 65th Leg., p. 1833, ch. 735, § 2.006, eff. Aug. 29, 1977.]

Art. 6145-3. Texas Stonewall Jackson Memorial Board; Memorial Fund; Scholarships

[See Compact Edition, Volume 5 for text of 1]

Sec. 1a. The Texas Stonewall Jackson Memorial Board is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1979.

[See Compact Edition, Volume 5 for text of 2]

[Amended by Acts 1977, 65th Leg., p. 1832, ch. 735, § 2.003, eff. Aug. 29, 1977.]

¹ Article 5429k.

Art. 6145-7. Repealed by Acts 1977, 65th Leg., p. 2690, ch. 871, art. 1, § 2(a)(4), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Natural Resources Code.

Without reference to repeal of this article, Acts 1977, 65th Leg., p. 1844, ch. 735, § 2.086, added § 1a thereto reading:

"The Texas Conservation Foundation is subject to the Texas Sunset Act [art. 5429k]; and unless continued as provided by that Act the foundation is abolished, and this Act expires effective September 1, 1985."

Art. 6145-9. Repealed by Acts 1977, 65th Leg., p. 2690, ch. 871, art. 1, § 2(a)(4), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Natural Resources Code.

Without reference to repeal of this article, Acts 1977, 65th Leg., p. 1843, ch. 735, § 2.079, added § 3a thereto reading:

"The Antiquities Committee is subject to the Texas Sunset Act [art. 5429k]; and unless continued in existence as provided by that Act the committee is abolished effective September 1, 1983."

Art. 6145-10. Repealed by Acts 1977, 65th Leg., p. 2690, ch. 871, art. 1, § 2(a)(4), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Natural Resources Code.

Without reference to repeal of this article, Acts 1977, 65th Leg., p. 1843, ch. 735, § 2.081, added § 1a thereto reading:

"The Texas Historical Resources Development Council is subject to the Texas Sunset Act [art. 5429k]; and unless continued in existence as provided by that Act the council is abolished, and this Act expires effective September 1, 1983."

Art. 6145-11. Texas 1986 Sesquicentennial Commission

Text of article effective until September 1, 1987

Commission

Sec. 1. The Texas 1986 Sesquicentennial Commission is established.

Membership

Sec. 2. (a) The commission is composed of nine members appointed by the governor with the advice and consent of the senate, three members appointed by the speaker of the house of representatives, three members appointed by the lieutenant governor, and nine ex officio members. Each member is a voting member. The duties performed by each state officer

or employee appointed to the commission or serving ex officio are additional duties of the person's other office or employment.

(b) The members appointed by the governor must be representative of the general public to insure minority representation. The members appointed by the speaker must be, at the time of their appointments, members of the house of representatives. The members appointed by the lieutenant governor must be, at the time of their appointments, members of the senate. The ex officio members are the executive heads of the Texas Tourist Development Agency, Texas Historical Commission, Texas Commission on the Arts and Humanities, Texas Film Commission, Texas State Library and Historical Commission, Texas State Historical Association, the director of the division of the State Department of Highways and Public Transportation that disseminates travel information about the state, the director of the Institute of Texan Cultures, and the executive vice-president/general manager of the State Fair of Texas.

(c) A member appointed by the speaker or the lieutenant governor vacates his or her position on the commission if he or she ceases to be a member of the house from which he or she is appointed.

(d) A vacant position on the commission is filled for the unexpired portion of the term in the same manner by which the position was originally filled.

(e) An ex officio member may designate a representative to serve in the member's absence. A designated representative must be an officer or employee of the member's agency or organization. The designated representative has all the powers and duties of the ex officio member.

Terms

Sec. 3. (a) Appointed members hold office for staggered terms of six years with the terms of three of the governor's appointees, one of the speaker's appointees, and one of the lieutenant governor's appointees expiring on January 31 of each odd-numbered year.

(b) In making the initial appointments, the governor shall designate three appointees for terms expiring on January 31, 1981, three for terms expiring on January 31, 1983, and three for terms expiring on January 31, 1985. In making initial appointments, the speaker shall designate one appointee for a term expiring on January 31, 1981, one for a term expiring on January 31, 1983, and one for a term expiring on January 31, 1985. In making initial appointments, the lieutenant governor shall designate one appointee for a term expiring on January 31, 1981, one for a term expiring on January 31, 1983, and one for a term expiring on January 31, 1985.

Officers; Meetings; Quorum

Sec. 4. (a) The chairman of the commission is appointed by the governor from its members. The chairman serves in that capacity at the will of the governor. If the chairman is absent from a meeting or is disabled, the members of the commission present at the meeting shall elect a temporary chairman by majority vote.

(b) The commission shall meet at least quarterly each year. The commission may meet at other times at the call of the chairman or as provided by commission rule.

(c) Thirteen members of the commission constitute a quorum.

Expenses

Sec. 5. (a) A member is entitled to reimbursement for actual and necessary expenses incurred in performing his or her functions as a member of the commission. An ex officio member's designated representative is entitled to reimbursement in the same manner as the ex officio member for whom the representative serves.

(b) A member appointed by the speaker or the lieutenant governor is to be reimbursed from the appropriate fund of the member's house of the legislature. The executive vice-president/general manager of the State Fair of Texas, the executive head of the Texas State Historical Association, and members appointed by the governor are to be reimbursed from the commission's funds. Other ex officio members are to be reimbursed from the funds of the state agency or institution from which the member serves.

Executive Director; Staff

Sec. 6. (a) The commission may employ an executive director who is the executive head of the commission and performs its administrative functions.

(b) The executive director may employ staff members necessary to administer the functions of the commission.

Duties

Sec. 7. The commission shall:

(1) encourage individuals, private organizations, and local governmental bodies to organize activities celebrating the state's sesquicentennial;

(2) help individuals, private organizations, and local governmental bodies that organize sesquicentennial activities to coordinate the activities;

(3) gather and disseminate information to the general public about sesquicentennial activities conducted in the state;

(4) develop standards for sesquicentennial activities organized by individuals, private organizations, and local governmental bodies and sanction activities that comply with the standards;

(5) invite national and international dignitaries to attend sesquicentennial activities conducted in the state;

(6) encourage persons living outside the state to attend sesquicentennial activities conducted in the state;

(7) develop a logo to be used by the commission and permit other persons to use the logo if the commission considers the use appropriate; and

(8) sanction products, such as a commemorative calendar or flag, commemorating the state's sesquicentennial.

Report

Sec. 8. Before September 1, 1987, the commission shall file a report with the governor and the legislature containing information about the effects of the sesquicentennial activities conducted in the state on the state's economy.

Donations; Grants

Sec. 9. The commission may accept, on behalf of the state, donations or grants from any source to be used by the commission to perform its functions.

Rules

Sec. 10. The commission may adopt rules necessary for it to perform its functions.

Abolition and Expiration

Sec. 11. The commission is abolished and this Act expires effective September 1, 1987.

[Acts 1979, 66th Leg., p. 154, ch. 84, §§ 1 to 11, eff. Aug. 27, 1979.]

Art. 6145-12. Inauguration of Governor and Lieutenant Governor

Appointment of Inaugural Committee

Sec. 1. (a) Not later than the 10th day after the date of each November general election for governor and lieutenant governor, the secretary of state shall issue a proclamation stating who in the secretary of state's opinion based on the best information then available are the governor-elect and lieutenant governor-elect. The secretary of state shall promptly cause certified copies of the proclamation to be delivered to the individuals named in the proclamation.

(b) As soon as possible after receiving notice of the proclamation, the individuals designated in the proclamation as governor-elect and lieutenant governor-elect shall each file with the secretary of state a signed instrument. The governor-elect shall designate in that instrument one individual to serve as

chairman of the inaugural committee and one individual to serve as a cochairman of the committee. The lieutenant governor shall also designate one individual to serve as a cochairman of the committee. The governor- and lieutenant governor-elect may appoint such other members to the inaugural committee as they deem necessary. They shall make their additional appointments, if any, by written instrument filed with the secretary of state. An individual who holds a position of profit under this state or the United States is ineligible for appointment to the committee.

(c) If after issuing a proclamation under this section the secretary of state becomes aware of information that indicates that the previous designation of governor-elect or lieutenant governor-elect was incorrect, the secretary of state shall issue a corrected proclamation and cause certified copies of it to be delivered to the previous designee, the new designee, and each member of the inaugural committee appointed by the previous designee. Issuance of a corrected proclamation terminates the membership on the inaugural committee of appointees of the previous designee but does not affect any action taken by the committee before the proclamation was issued. As soon as possible after the new designee receives notice of his or her designation as governor- or lieutenant governor-elect, he or she shall make the appointments to which he or she is entitled under this section.

(d) A vacancy on the committee is filled by appointment by the original appointing authority according to the procedure applicable to original appointments.

(e) Designation of an individual as governor- or lieutenant governor-elect under this section has no legal effect except for purposes of this Act.

Organization, Powers, and Duties of Committee

Sec. 2. (a) As soon as possible after the members of the committee have been appointed, they shall convene at a time and place designated by the individual appointed chairman, take the constitutional oath of office, and hold an organizational meeting.

(b) The committee may hold subsequent meetings at times it determines or on the call of the chairman. The chairman presides at meetings. If the chairman is absent, one of the cochairmen presides.

(c) The committee may adopt rules to govern its proceedings.

(d) Members of the committee serve without compensation but may be reimbursed for actual and necessary expenses they incur in the performance of their duties as provided by legislative appropriation.

(e) The committee shall make such arrangements as are necessary for conducting ceremonies and events to observe the inauguration of the governor

and lieutenant governor. The committee may employ staff or engage the services of consultants to assist in its work.

(f) The committee may request the cooperation of agencies and officials of state and local government. The agencies and officials shall cooperate with the committee to the extent possible.

Inaugural Fund

Sec. 3. (a) The Inaugural Fund is created in the State Treasury. Money in the Inaugural Fund may be appropriated only for expenditures authorized by this Act.

(b) The State Treasurer shall credit to the Inaugural Fund a pro rata share of the interest received from the deposit of state funds as if the Inaugural Fund were a constitutional fund.

Inaugural Contributions

Sec. 4. (a) An individual, association, corporation, or other legal entity may contribute funds, services, or other things of value to defray the expenses of or otherwise provide for an inauguration. Such a contribution is not a political contribution for purposes of state law regulating political contributions or prohibiting such contributions by corporations or labor organizations.

(b) A contribution of funds to defray the expenses of an inauguration may be made to the inaugural committee or to the secretary of state. If the secretary of state receives a contribution while the inaugural committee is in existence, the secretary of state shall deliver the contribution to the committee. If the secretary of state receives a contribution at any other time, the secretary of state shall transmit the contribution to the State Treasurer, and the treasurer shall deposit the contribution in the State Treasury to the credit of the Inaugural Fund.

(c) When the secretary of state receives a contribution, the secretary of state shall execute duplicate copies of a receipt that shows the name and mailing address of the contributor, the amount of the contribution, the date of the contribution, and that the contribution was received to defray inaugural expenses. If the secretary of state issues a receipt, the secretary of state shall give one copy to the contributor and retain the other.

(d) The secretary of state shall keep all receipts on file in the office of the secretary of state for at least four years. The secretary of state shall maintain an index of those receipts that are on file, arranged alphabetically by contributor, showing the date of the contribution, name and mailing address of the contributor, and amount of each contribution. The index and receipts are public information.

Expenditures

Sec. 5. (a) Subject to any conditions attached to a particular appropriation, money appropriated from the Inaugural Fund may be expended for the following purposes:

- (1) printing;
- (2) the employment of staff;
- (3) the lease of office space and payment of utility expenses;
- (4) professional and consultant fees;
- (5) postage, telephone, and telegraph expenses;
- (6) payment of expenses incurred by committee members; and
- (7) any other public purpose reasonably related to conducting inaugural ceremonies and related events, including expenses of raising funds.

(b) Contributions received by the committee and not deposited in the State Treasury may be expended for any purpose that the committee considers appropriate.

(c) Each voucher for an expenditure from the Inaugural Fund must be approved in writing by the chairman.

(d) The State Purchasing Act of 1957 (Article 664-3, Vernon's Texas Civil Statutes) does not apply to the inaugural committee.

Competitive Bidding

Sec. 6. The committee may not make a contract covered by the competitive bidding requirements of Article XVI, Section 21, of the Texas Constitution, unless before awarding the contract the committee obtains at least three bids. The committee shall award the contract to the lowest bidder who in the opinion of the committee is most responsible and is best able to fulfill the terms of the contract. The committee may reject all bids if none of them in the opinion of the committee is responsible and is able to fulfill the terms of the contract at a reasonable price.

Records of Expenditures

Sec. 7. The committee in addition to maintaining records required by law with regard to the expenditure of appropriated funds shall maintain a record of each expenditure of funds other than appropriated funds. The record must contain the following information about each expenditure:

- (1) the name and address of the entity to whom the expenditure was paid;
- (2) the amount of the expenditure;
- (3) the date of the expenditure; and
- (4) the purpose of the expenditure.

Final Report; Dissolution of Committee

Sec. 8. (a) As soon after the inauguration as the committee determines that it has completed its work and has satisfied its financial obligations but not later than June 30 of the year in which the inauguration is held, the committee shall file with the secretary of state a final report verified by a certified public accountant that shows:

(1) the total amount of contributions received by the committee, including contributions paid to the secretary of state during the committee's existence and paid by the secretary of state to the committee;

(2) the total amount of expenditures made by the committee from nonappropriated funds; and

(3) the total amount of nonappropriated funds remaining in the committee's possession.

(b) On the date on which the committee files its final report with the secretary of state, the committee shall transmit to the State Treasurer all nonappropriated unexpended funds it possesses. The treasurer shall deposit the funds in the State Treasury to the credit of the Inaugural Fund.

(c) When the secretary of state determines that the committee has complied with Subsections (a) and (b) of this section, the secretary of state shall issue a proclamation to that effect. The committee is dissolved on the day after the date that the proclamation is issued.

(d) The final report of the committee is public information.

Claims Filed After Dissolution

Sec. 9. If after dissolution of the committee an individual or other entity files with the secretary of

state a verified claim for an amount alleged to be due to the claimant under a contract made by the committee pursuant to this Act before its dissolution, the secretary of state shall submit a copy of the claim to the governor, lieutenant governor, and attorney general. If each of those officers files with the secretary of state a signed statement finding that the claim is valid, the secretary of state shall forward the original claim and the statements of those officers to the comptroller of public accounts. If funds for the payment of expenses of the type covered by the claim have been appropriated and are available and if there is no legal reason for refusing payment, the comptroller shall cause the claim to be paid. Appropriations for the payment of claims under this section must be from the Inaugural Fund.

Additional State Funding

Sec. 10. In addition to making appropriations from the Inaugural Fund as authorized by this Act, the legislature may appropriate other funds for any purpose for which money in the Inaugural Fund may be appropriated.

Previous Contributions

Sec. 11. If on the effective date of this Act an inaugural committee or other entity that was formed to solicit and expend funds for an inauguration held before the effective date of this Act has in its possession a portion of the funds it received for that purpose, it may contribute those funds to the secretary of state for deposit in the Inaugural Fund pursuant to this Act.

[Acts 1979, 66th Leg., p. 1702, ch. 702, §§ 1 to 11, eff. Aug. 27, 1979.]

TITLE 108

PENITENTIARIES

1. DEPARTMENT OF CORRECTIONS

Article

6166b-1. Application of Sunset Act.

2. REGULATIONS AND DISCIPLINE

6181-1. Inmate Classification and Good Conduct Time.

6184n. Temporary Furloughs for Inmate's Illness or Family Critical Illness or Funerals.

6203aa-1. Lease of Lands.

6203c-2. Construction of Medical Facilities at University of Texas Medical Branch at Galveston.

1. DEPARTMENT OF CORRECTIONS

Art. 6166b-1. Application of Sunset Act

The Texas Board of Corrections is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished effective September 1, 1987.

[Added by Acts 1977, 65th Leg., p. 1850, ch. 735, § 2.130, eff. Aug. 29, 1977.]

¹ Article 5429k.

Art. 6166j. Director's Authority

The Texas Department of Corrections shall employ a director, who shall possess qualifications and training which suit him to manage the affairs of a modern correctional institution, and it shall be his duty to carry out the policies of the Texas Department of Corrections. The Department shall manage and control the correctional system through the manager selected by it. In addition to his salary, the director shall be furnished with a dwelling house by the State and all necessary traveling expenses when traveling on business for the correctional system. The Department shall delegate to such manager authority to manage the affairs of the correctional system, subject to its control and supervision. The duty of the director shall extend to the employment and discharge, with the approval of the Department, of such persons as may be necessary for the efficient conduct of the correctional system. The director, with the consent of the Texas Department of Corrections, shall have power to prescribe reasonable rules and regulations governing the humane treatment, training, education, rehabilitation and discipline of prisoners, and to make provision for the separation and classification of prisoners according to sex, age, health, corrigibility, and character of offense upon which the conviction of the prisoner was secured. Neither the Department of Corrections nor the director may discriminate against a

prisoner on the basis of sex, race, color, creed, or national origin.

[Amended by Acts 1975, 64th Leg., p. 2356, ch. 725, § 1, eff. Sept. 1, 1975.]

Art. 6166m-1. Funds for Discharged Convicts

From and after the effective date of this Act, the State Treasurer of the State of Texas, shall set aside funds not less than One Hundred Thousand Dollars (\$100,000) in amount received by him from the Director of Corrections to be kept on deposit in a bank or banks in Huntsville, Texas, as determined by the Director and secured by bonds and/or other securities approved by the Attorney General of the State of Texas. The funds shall be used by the Texas Department of Corrections for the prompt payment in cash to all discharged, pardoned, or paroled convicts.

[Amended by Acts 1975, 64th Leg., p. 277, ch. 119, § 1, eff. Sept. 1, 1975.]

Art. 6166u. Repealed by Acts 1975, 64th Leg., p. 2356, ch. 725, § 3, eff. Sept. 1, 1975

Art. 6166v. Repealed by Acts 1977, 65th Leg., p. 933, ch. 347, § 6, eff. Aug. 29, 1977

See, now, art. 6181-1.

Art. 6166x-3. Work Furloughs

Employment of Prisoners Outside the State Prison System

Sec. 1. The Texas Department of Corrections is hereby authorized to grant work furlough privileges, under the "Work Furlough Plan," as hereinafter provided, which may include programs and procedures for inmates to contribute restitution or reparation to victims of the prisoner's crime, as established by the judgment of the court that sentenced the prisoner to his term of imprisonment, to any inmate of the state prison system serving a term of imprisonment, under such rules, regulations, and conditions as the department of corrections may prescribe.

Texas Work Furlough Program Advisory Board

Sec. 1A. (a) The Texas Work Furlough Program Advisory Board is hereby created. Its main office is in Huntsville, Texas, at the location of the office of the director of the Texas Department of Corrections.

(b) The board is composed of nine members appointed by the governor with the advice and consent of the senate. Except for the initial appointees, the

members of the board hold office for terms of six years, with the terms of three members expiring on January 31 of each odd-numbered year. In making the initial appointments, the governor shall designate three for terms expiring January 31, 1979, three for terms expiring January 31, 1981, and three for terms expiring January 31, 1983. The governor shall make the appointments in such a manner that the term of one member representing a recognized labor union, as required by Subsection (d) of this section, expires every two years.

(c) To be qualified for appointment as a member of the board, a person must be a citizen of the United States and a resident of Texas.

(d) Not less than three members of the board shall be representatives of recognized labor unions. The balance of the board membership shall be broadly representative of the noncorrectional general public and should include representatives of such groups as, for example, employer groups, local bar associations, citizen organizations, educators, social work professionals, and various entities in the criminal justice system, such as law enforcement agencies and probation and parole departments.

(e) Members of the board qualify by taking the constitutional oath of office before an officer authorized to administer oaths in this state. When a board member presents his oath of office and the certificate of his appointment to the secretary of state, the secretary of state shall issue a commission to him. The commission from the secretary of state is evidence of authority to act as a member of the board.

(f) The board shall formally elect a chairman and a secretary-treasurer from its members. The board may adopt rules necessary for the orderly conduct of its business.

(g) Five members of the board shall constitute a quorum for the transaction of business and may act for the board. The board shall prepare and preserve minutes and other records of its proceedings and actions.

(h) Members of the board do not receive a salary for their services but each member is entitled to \$25 for each day spent in attending meetings of the board, including time spent in travel to and from the meetings, not to exceed \$500 a year. Members of the board are also entitled to be reimbursed for travel and other necessary expenses incurred while performing their official duties if the expenses are evidenced by voucher approved by the chairman or the secretary-treasurer of the board.

(i) It shall be the functions of the board to advise the department of corrections in its administration of the Work Furlough Program and to provide a forum for the hearing and resolution of grievances against the program. In the fulfillment of its grievance resolution functions, the board shall have im-

mediate access to all records maintained by the department in its administration of the Work Furlough Program and may request further pertinent information from the department not found in those records.

(j) The board shall prepare an annual report to be filed not later than 60 days following the close of each fiscal year with the governor, the lieutenant governor, members of the legislature, and the legislative budget board showing the activities of the board, together with such recommendations regarding the Work Furlough Program as deemed advisable.

[See Compact Edition, Volume 3 for text of 2 and 3]

Securing Employment

Sec. 4. The director of the department of corrections shall endeavor to secure employment for unemployed eligible prisoners under this Act, subject to the following:

(1) such employment must be at a wage at least as high as the prevailing wage for similar work in the area or community where the work is performed and in accordance with the prevailing working conditions in such area;

(2) such employment shall not result in the displacement of employed workers or be in occupations, skills, crafts, or trades in which there is a surplus of available and qualified workers in the locality, the existence of such surplus to be determined by the Texas Employment Commission;

(3) prisoners eligible for work furlough privileges shall not be employed as strikebreakers or in impairing any existing contracts;

(4) exploitation of eligible prisoners, in any form, is prohibited either as it might affect the community or the inmate or the department of corrections;

(5) in the event a work furlough employer desires to reduce its labor force, it must release its work furlough inmate employees prior to releasing any of its free employees;

(6) not more than 10 percent of a work furlough employer's labor force shall be composed of work furlough inmates unless prior special emergency approval for temporarily exceeding that percentage be secured from the Texas Work Furlough Program Advisory Board;

(7) in the event a work furlough employer provides its employees with paid vacation leave which, due to their incarceration, work furlough inmates are unable to enjoy, said employer must either hold accrued vacation time for the inmate to take after discharge from the department of corrections or, at the election of the inmate, the employer must pay the inmate regular wages for the accrued vacation time;

(8) in the event a National Labor Relations Board certification or decertification election is to be conducted at any premises of a work furlough employer, no prisoners employed by the employer under this Act shall be permitted to participate in the election.

[See Compact Edition, Volume 5 for text of 5]

Disbursement of Wages or Salaries

Sec. 6. Every prisoner gainfully employed under work furlough privileges is liable for the cost of his keep in the prison or quarters as may be fixed by the department of corrections. Such payments shall be deposited to the general operating expenses of the department of corrections. After deduction of such amounts the director of the department of corrections shall disburse the wages or salaries of employed prisoners for the following purposes and in the order stated:

- (1) necessary travel expense to and from work and other incidental expenses of the prisoner;
- (2) support of the prisoner's dependents, if any;
- (3) restitution or reparation to the victim of the prisoner's crime for which he is serving a term of imprisonment, the total amount of such restitution or reparation as may be established by the court and entered in the judgment of the court that sentenced the prisoner to his term of imprisonment;
- (4) the balance, if any, to the prisoner upon his discharge.

[See Compact Edition, Volume 5 for text of 7 and 8]

Rights of Prisoners

Sec. 9. Nothing in this Act is intended to restore, in whole or in part, the civil rights of any prisoner. However, prisoners compensated under this Act shall come within the provisions of the Workmen's Compensation Act, as amended, and shall be entitled to benefits thereunder on behalf of themselves as well as any other persons.

[See Compact Edition, Volume 5 for text of 10 and 11]

[Amended by Acts 1977, 65th Leg., p. 674, ch. 255, § 1, eff. May 25, 1977; Acts 1977, 65th Leg., p. 850, ch. 319, §§ 1 to 3, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 933, ch. 347, § 5, eff. Aug. 29, 1977.]

Art. 6166z1. Discharge

(a) When a convict is entitled to a discharge from the State penitentiary, or is released therefrom on parole, mandatory supervision, or conditional pardon, the Director of the Department of Corrections or his Executive Assistant shall prepare and deliver to him a written discharge or release, as the case may be, dated and signed by him with seal annexed, giving

convict's name, the name of the offense or offenses for which he was convicted, the term of sentence imposed and the date thereof, the county in which he was sentenced, the amount of commutation received, if any, the trade he has learned, if any, his proficiency in same, and such description of the convict as may be practicable. He shall be furnished, if needed, suitable civilian clothes, and all money held to his credit by any official of the Texas Department of Corrections shall be delivered to him.

(b) The amount of money which a convict is entitled to receive from the State of Texas when he is discharged from the State penitentiary or released from the State penitentiary on parole, mandatory supervision, or conditional pardon shall be \$200.

(c) To defray the expenses of transportation or other costs related to burial occasioned by the death of an inmate who dies while serving a sentence in the Texas Department of Corrections, the Director of the Department of Corrections may expend a sum not to exceed the amount that a convict is entitled to receive from the State when he is discharged or released from the penitentiary.

[Amended by Acts 1975, 64th Leg., p. 2401, ch. 735, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 933, ch. 347, § 4, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 108, ch. 68, § 1, eff. April 19, 1979.]

2. REGULATIONS AND DISCIPLINE

Art. 6181-1. Inmate Classification and Good Conduct Time

Sec. 1. For the purpose of this Article:

- (1) "Department" means the Texas Department of Corrections.
- (2) "Director" means the Director of the Texas Department of Corrections.

(3) "Inmate" means a person confined by order of a court in the Texas Department of Corrections, whether he is actually confined in the institution or is under the supervision or custody of the Board of Pardons and Paroles.

(4) "Term" means the maximum term of confinement in the Texas Department of Corrections stated in the sentence of the convicting court. When two or more sentences are to be served consecutively and not concurrently, the aggregate of the several terms shall be considered the term for purposes of this Article. When two or more sentences are to run concurrently, the term with the longest maximum confinement will be considered the term for the purposes of this Article.

Sec. 2. The department shall classify all inmates as soon as practicable upon their arrival at the department and shall reclassify inmates as circumstances may warrant. All inmates shall be classified according to their conduct, obedience, industry, and

prior criminal history. The director shall maintain a record on each inmate showing all classifications and reclassifications with dates and reasons therefor.

Sec. 3. (a) Inmates shall accrue good conduct time based upon their classification as follows:

(1) 20 days for each 30 days actually served while the inmate is classified as a Class I inmate;

(2) 10 days for each 30 days actually served while the inmate is classified as a Class II inmate; and

(3) 10 additional days for each 30 days actually served if the inmate is a trusty.

(b) No good conduct time shall accrue during any period the inmate is classified as a Class III inmate or is on parole or under mandatory supervision.

Sec. 4. Good conduct time applies only to eligibility for parole or mandatory supervision as provided in Section 15, Article 42.12, Code of Criminal Procedure, 1965, as amended, and shall not otherwise affect the inmate's term. Good conduct time is a privilege and not a right. Consequently, if during the actual term of imprisonment in the department, an inmate commits an offense or violates a rule of the department, all or any part of his accrued good conduct time may be forfeited by the director. The director may, however, in his discretion, restore good conduct time forfeited under such circumstances subject to rules and policies to be promulgated by the department. Upon revocation of parole or mandatory supervision, the inmate loses all good conduct time previously accrued, but upon return to the department may accrue new good conduct time for subsequent time served in the department.

Sec. 5. If the release of an inmate falls upon a Saturday, Sunday, or legal holiday, the inmate may, at the discretion of the director, be released on the preceding workday.

[Added by Acts 1977, 65th Leg., p. 932, ch. 347, § 3, eff. Aug. 29, 1977.]

Art. 6184d. Repealed by Acts 1977, 65th Leg., p. 1910, ch. 761, § 1, eff. Aug. 29, 1977

Art. 6184l. Repealed by Acts 1977, 65th Leg., p. 933, ch. 347, § 6, eff. Aug. 29, 1977

See, now, art. 6181-1.

Art. 6184m. Alcoholic Beverages, Controlled Substances or Dangerous Drugs; Furnishing to Prisoners; Punishment

[See Compact Edition, Volume 3 for text of 1]

Sec. 2. As used this Act, "alcoholic beverage" shall have the meaning defined in the Alcoholic Beverage Code, as heretofore or hereafter amended; "controlled substance" means any substance defined as a controlled substance by the Texas Controlled

Substances Act; and "dangerous drug" means any substance defined as a dangerous drug by Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476-14, Vernon's Texas Civil Statutes).

[See Compact Edition, Volume 5 for text of 3 and 4]

[Amended by Acts 1977, 65th Leg., p. 558, ch. 194, § 6, eff. Sept. 1, 1977.]

Art. 6184n. Temporary Furloughs for Inmate's Illness or Family Critical Illness or Funerals

Medical Furloughs

Sec. 1. The Texas Department of Corrections may grant a medical furlough to any inmate serving a term of imprisonment in the department for the purpose of obtaining medical treatment, diagnosis, or medical study, and under such security conditions as the department may deem necessary and proper.

Furloughs to Attend Funerals or Visit Critically Ill Relatives, or for Other Reasons

Sec. 2. (a) The Texas Department of Corrections may grant temporary furloughs of not more than five days to inmates who are considered acceptable security risks by the department to attend funerals, to visit critically ill relatives, or for any other reason that the department determines is appropriate.

(b) The department may extend a temporary furlough granted under this section for up to 10 days when the circumstances justify a longer furlough, but in no event may the department grant more than two such furloughs during a calendar year period without the authority of the Board of Pardons and Paroles and of the governor, as in the case of emergency reprieves.

Rules

Sec. 3. The department shall promulgate rules in the same manner as other rules for the governing and operation of the department are promulgated to govern the administration and conditions of temporary furloughs.

Notice to Board of Pardons and Paroles

Sec. 4. The department shall notify the Board of Pardons and Paroles of a furlough granted under this article and of an inmate's return to the department of corrections following a furlough.

Custody of Furloughed Inmate; Escape

Sec. 5. An inmate granted a furlough under this article or an emergency reprieve by the Board of Pardons and Paroles and the governor, whether under physical guard or otherwise, shall remain in the custody of the Texas Department of Corrections and be considered a prisoner of the department for all

purposes. In the event an inmate of the department granted a furlough under this article or an emergency reprieve by the board and the governor does not return to the department at the time specified for his return, he shall be considered an escapee from the department and subject to punishment under Section 38.07, Penal Code.

Cost of Transportation of Furloughed Inmate

Sec. 6. The cost of transportation of an inmate while the inmate is on a temporary furlough may not be paid from state funds unless the inmate is under physical guard during the furlough.

[Added by Acts 1977, 65th Leg., p. 38, ch. 22, § 2, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 1185, ch. 576, §§ 1, 2, eff. Sept. 1, 1979.]

Art. 6203aa. Permits for Geological Surveys

(a) The Board for Lease of Texas Prison Lands heretofore created, composed of the Commissioner of the General Land Office, the Attorney General and the Chairman of the Texas Board of Corrections, is hereby authorized to determine the consideration, terms, and conditions for granting permits for geological surveys or investigations on Prison Lands, which said Board has heretofore been authorized to lease for oil and gas. The Board shall establish a schedule of rates and set such consideration, terms, and conditions for the permits as said Board may deem to be in the best interest of the State of Texas, and which will encourage the development of said lands for oil and gas, and from time to time may make changes in the consideration, terms, or conditions that the Board determines are in the best interest of the state. The surveys shall be made in such way as to not unreasonably interfere with the operation of said Prison System.

(b) The Chairman of the Texas Board of Corrections may approve a request and grant a permit for a geological survey or investigation on Prison Lands that complies with the consideration, terms, and conditions fixed by the Board for Lease of Texas Prison Lands.

[Amended by Acts 1979, 66th Leg., p. 26, ch. 16, § 1, eff. Aug. 27, 1979.]

Art. 6203aa-1. Lease of Lands

Right to Lease

Sec. 1. The Texas Board of Corrections may lease state-owned land under its management and control at its fair market lease value for an initial period not to exceed 20 years and under such other terms and conditions as the board deems best for the interest of the Texas Department of Corrections. No member of the Texas Board of Corrections or person related to a member within the second degree by affinity or within the third degree by consanguinity may own an interest in the entity leasing the property.

Disposition of Proceeds

Sec. 2. The proceeds of a lease, less expenses, shall be deposited in the State Treasury to the credit of the Texas Department of Corrections special mineral fund and shall be used exclusively for the benefit of the Texas Department of Corrections as specified by legislative appropriation.

Notification to Taxing Units

Sec. 3. The Texas Board of Corrections shall notify the taxing units authorized to impose ad valorem taxes that property has been leased by sending a copy of the lease by first-class mail, return receipt requested, to each taxing unit in which the leased property is located. The lessee shall be liable for all ad valorem taxes imposed on the leased property. [Acts 1979, 66th Leg., p. 23, ch. 13, §§ 1 to 3, eff. Aug. 27, 1979.]

Art. 6203c. Improvement of Department of Corrections

[See Compact Edition, Volume 5 for text of 1]

Powers of Board of Corrections

Sec. 2. To accomplish the purposes enumerated herein the Texas Prison Board¹ is authorized and directed as follows:

[See Compact Edition, Volume 5 for text of 2A to D]

E. The Department of Corrections is further directed to renovate, remodel and repair the present improvements on the Goree Farm, and to make such additions thereto as may be necessary to provide adequate housing facilities for all female inmates of the correctional system, and to supply industrial employment for such of the female inmates as may be used profitably in such employment. Adequate hospital facilities shall be provided on this farm for all female prisoners.

[See Compact Edition, Volume 5 for text of 2F to 9]

[Amended by Acts 1975, 64th Leg., p. 2356, ch. 725, § 2, eff. Sept. 1, 1975.]

¹ Changed to Texas Board of Corrections. See art. 6166a-1.

Art. 6203c-2. Construction of Medical Facilities at University of Texas Medical Branch at Galveston

Sec. 1. The Texas Board of Corrections is authorized to construct a medical facility and necessary related facilities on the campus of the University of Texas Medical Branch at Galveston, subject to the prior written approval of the site, plans, and specifications for such facility and an interagency operating agreement by the Texas Department of Corrections and the Board of Regents of The University of Texas System.

Sec. 2. So long as such medical facility is used for patients of the Texas Department of Corrections, the facility will be utilized as a teaching hospital limited to such patients who shall at all times be teaching patients. The Board of Regents of The University of Texas System shall maintain and operate such facility (except for security measures) and shall otherwise provide professional staff services necessary for the care of patients in such facility at the same level of care as provided for patients in other facilities of the University of Texas Medical Branch at Galveston from funds appropriated for those purposes. In the event the facility is no longer used for patients of the Texas Department of Corrections, such facility shall revert to the medical

branch for its use and shall be operated under the exclusive management and control of the Board of Regents of The University of Texas System.

Sec. 3. The interagency operating agreement referred to in Section 1 of this Act shall provide for the Board of Regents of The University of Texas System to construct such facility on behalf of the Texas Department of Corrections with funds appropriated to the department for such purpose and in conformity with the rules of the Board of Regents of The University of Texas System relative to new construction.

[Acts 1977, 65th Leg., p. 1315, ch. 520, §§ 1 to 3, eff. Aug. 29, 1977.]

TITLE 109

PENSIONS

1. STATE AND COUNTY PENSIONS

Article

- 6228a.1. Benefits Payable to Appointive Officers and Employee Members of Employees Retirement System.
- 6228a-6. Administration of Social Security Programs by Employees Retirement System.
- 6228f-1. Commissioned Law Enforcement and Custodial Officer Supplemental Retirement Benefit Act.
- 6228j. Retirement, Disability and Death Benefit Systems for Appointive County Employees.
- 6228k. Fractional Service Retirement Benefits.
- 6228l. Audits, Reports, and Actuarial Studies of Certain Retirement Systems.
- 6228m. Pension Review Board.
- 6228n. Administration of Public Retirement Systems.

2. CITY PENSIONS

- 6243e.1. Firemen's Relief and Retirement Fund in Cities of 250,000 to 320,000.
- 6243e.2. Firemen's Relief and Retirement Fund in Cities of Not Less Than 1,200,000.
- 6243e.3. Volunteer Fire Fighters' Relief and Retirement Fund.
- 6243k. Retirement, Disability and Death Benefit Systems for Appointive City or Town Employees.
- 6243l. Separate Retirement System for Police Department Employees in Cities of 250,000 or More.

1. STATE AND COUNTY PENSIONS

Art. 6204. Repealed by Acts 1979, 66th Leg., p. 2113, ch. 817, § 14(b)(1), eff. Aug. 27, 1979

Art. 6228a. Retirement System for State Employees

[See Compact Edition, Volume 5 for text of 1 and 2]

Membership

Sec. 3. A. 1. Nothing in this subsection shall be construed to impair a right to benefits arising from creditable service established on or before December 31, 1977.

2. On and after January 1, 1978, there shall be two classes of membership in the Employees Retirement System of Texas:

- a. elective state official
- b. appointive officer or employee.

3. On and after January 1, 1978, the membership of the system in the elective state official class shall be all statewide elected officials, members of the State Legislature, and district attorneys receiving salaries paid by the state General Revenue Fund who choose to become members. A member with

service as an elective state official may, prior to leaving state employment or state office and upon payment of all applicable contributions, fees, and interest applicable from the fiscal year in which creditable service was performed, receive creditable service for any calendar year in which the member was eligible to take the oath of office, or in which he served, as an elective state official. It is expressly provided that such payment shall be in a lump sum and that in no case may a member receive credit for more than 12 months creditable service for any calendar or fiscal year. The elective state official class shall not include any other elective official of a district, county, or municipality, nor of the court system of the State of Texas.

4. On and after January 1, 1978, the membership of the system in the appointive officer or employee class shall include appointive officers and employees of any department, commission, institution, or agency of the State of Texas with the following exceptions:

a. persons who are employed in a position covered by the Teachers' Retirement System of Texas or the Judicial Retirement System.

b. persons who are independent contractors or employees of independent contractors performing work for the State of Texas.

5. Membership is terminated by death, retirement, or withdrawal of contributions.

6. A person who is age 65 or older and who is not a member of the Employees Retirement System and who is hired as a temporary employee may not be a member of the system for the first six months of employment. Membership shall begin on the first day of the seventh calendar month in which the person is employed. Contributions based on the service as a temporary employee may not be paid to the system until the person is a member of the system and elects to establish credit for the service as provided by Subsection F, Section 4 of this Act.

In this subdivision, a "temporary employee" is a person who has a position only until another person can be hired or only for the duration of a specific project scheduled to end less than six months after the date of hiring or only until a specific date less than six months after the date of hiring or only until a volume of work estimated to be completed in less than six months after the date of hiring is completed.

B. 1. Nothing in this subsection shall be construed to impair a right to benefits arising from creditable service established on or before December 31, 1977.

2. On and after January 1, 1978, service creditable as elective state official service shall be limited to service as a member of that class as defined in this Act including active duty military service creditable under this Act but not to exceed the amount of active duty military service actually performed. Any member may establish in, or have transferred to, his appointive officer or employee account any credit for elective state official service if the contributions required to establish that service were of an amount equal to or exceeding the contributions required of an appointive officer or employee at the same rate of pay.

3. On and after January 1, 1978, service creditable as appointive officer or employee service shall be limited to credit for service actually performed as an appointive officer or employee of the State of Texas to be granted in accordance with the rules of the board of trustees at the time the service is performed, such active duty military service as is creditable under the terms of this Act, and service transferred to the Employees Retirement System of Texas under the terms of Chapter 75, Acts of the 54th Legislature, 1955, as amended (Article 6228a-2, Vernon's Texas Civil Statutes), to be granted in accordance with the rules of the board of trustees at the time the service is transferred. Provided, however, that any member of an administrative board of a statutory state department, agency, or commission as defined in Section 4H.2. of this Act may, on or before December 31, 1977, become a contributing member of the Employees Retirement System of Texas, and only persons who establish retirement credit for board service during December, 1977, may continue to establish credit for subsequent, continuous board service in the manner prescribed by that section and purchase his previous service in accordance with the terms of this Act. Only those members who, on or before December 31, 1977, held a position named in Section 5B.5. of this Act may retire under the terms of that section.

4. Any person who becomes an elective state official by reason of election or appointment shall within six months from the month in which he takes the oath of office execute an election to become a member of the retirement system or not to become a member of the retirement system. This election shall be filed with the state board of trustees on a form provided by the board. Following election to become a member, contributions shall be due and payable for the month in which he took the oath of office and each month of creditable service thereafter.

5. Any retirement credit established after December 31, 1977, for active duty military service may not be included in calculating service retirement benefits or nonoccupational disability retirement benefits unless the member has sufficient creditable service exclusive of military service credit to be eligible for a service retirement at age 60.

[See Compact Edition, Volume 5 for text of 3C]

D. If a contributing member enters active military duty for which he is later eligible to establish creditable service, such creditable service shall, upon payment of applicable contributions, fees, and interest, be added to other creditable service in the class of membership in which he last performed State service prior to his entry into such military service.

Membership is terminated by death, retirement, or withdrawal of accumulated contributions.

[See Compact Edition, Volume 5 for text of 3E]

Creditable Service

Sec. 4.

[See Compact Edition, Volume 5 for text of 4A to H]

I. Prior to December 31, 1977, a member of the system with established creditable service as an officer or employee, exclusive of military credit, for no less than 12 of the 60 months immediately preceding the date of this amendment, may establish service performed as a National Guard Technician with the Texas Adjutant General's Department if such service was performed prior to January 1, 1969, and is not otherwise creditable in any state or federal retirement system. Service shall be established for retirement purposes upon payment in a lump sum of all applicable contributions, interest, and fees. All such amounts, and state matching funds therefor, shall be calculated in the manner and amounts provided in this Act for service not previously established.

[See Compact Edition, Volume 5 for text of 4J]

Benefits

Sec. 5. A. Service Retirement Benefits for Appointive State Officers or Employees.

[See Compact Edition, Volume 5 for text of 5A1]

2. Any member as an appointive officer or employee who has completed at least ten (10) years of service creditable for retirement eligibility may leave State employment and retain the eligibility to receive a service retirement annuity after attaining the age of sixty (60) years, unless membership is terminated by a withdrawal of accumulated contributions.

Text of subdivision 3 effective until September 1, 1980

3. Any member may withdraw from service prior to the attainment of the age of sixty (60) years who shall have completed at least thirty (30) years of creditable service as an employee or appointive officer, or twelve (12) years of creditable service as an elective official and shall become entitled to a service retirement upon attaining the age of fifty-five (55) without actuarial reduction because of age. Any person previously retired with thirty (30) years or more of creditable service, as an employee or appointive officer, or twelve (12) years or more of creditable service as an elective official and who at the time of retirement was at least fifty-five (55) years, but less than sixty (60) years of age, and whose service annuity was actuarially reduced, may, on and after the effective date of this Act, apply in writing for recomputation of his annuity so as to restore the reduction previously imposed, such restoration to be effective only with respect to annuity payments due for the month of September, 1973, and thereafter. Any member with thirty (30) years or more of creditable service, as an employee or appointive officer, or twelve (12) years or more of creditable service as an elective official may withdraw from service prior to the attainment of the age of fifty-five (55) years and shall become entitled to a service retirement allowance provided such member has attained the age of fifty (50) and provided further that his retirement allowance shall be actuarially reduced from age fifty-five (55) to the earlier retirement age. Employee and appointive officer members may withdraw from service prior to the attainment of the age of sixty (60) years who shall have completed at least twenty-five (25) years of creditable service and shall become entitled to a service retirement allowance provided that such member has attained the age of fifty-five (55) and provided further that his retirement allowance shall be actuarially reduced from age sixty (60) to the earlier retirement age. It is further provided that a member who has completed twenty (20) or more years of creditable service as a commissioned peace officer engaged in criminal law enforcement activities of the Department of Public Safety, Parks and Wildlife Department, Alcoholic Beverage Commission, or as a custodial officer of the State Board of Corrections of the State of Texas, may withdraw from service prior to the attainment of the age of fifty-five (55) years and shall become entitled to a service retirement allowance provided such member has attained the age of fifty (50) and provided further that his retirement allowance shall be actuarially reduced from age fifty-five (55) to the earlier retirement age.

Text of subdivision 3 effective September 1, 1980

3. Any member may withdraw from service prior to the attainment of the age of sixty (60) years who shall have completed at least thirty (30) years of creditable service as an employee or appointive officer, or twelve (12) years of creditable service as an elective official and shall become entitled to a service retirement upon attaining the age of fifty-five (55) without actuarial reduction because of age. Any member with thirty (30) years or more of creditable service, as an employee or appointive officer, or twelve (12) years or more of creditable service as an elective official may withdraw from service prior to the attainment of the age of fifty-five (55) years and shall become entitled to a service retirement allowance provided such member has attained the age of fifty (50) and provided further that his retirement allowance shall be actuarially reduced from age fifty-five (55) to the earlier retirement age. Employee and appointive officer members may withdraw from service prior to the attainment of the age of sixty (60) years who shall have completed at least twenty-five (25) years of creditable service and shall become entitled to a service retirement allowance provided that such member has attained the age of fifty-five (55) and provided further that his retirement allowance shall be actuarially reduced from age sixty (60) to the earlier retirement age. [See Compact Edition, Volume 5 for text of 5A4]

B. Allowance for Service Retirement.

[See Compact Edition, Volume 5 for text of 5B1 to 3].

4. Re-employment of Retired Appointive Officers or Employees. Any retired appointive officer or employee may return to state employment as an appointive officer or employee, on a temporary basis, provided, however, that such reemployment shall not be for a longer period than six (6) months within any one (1) year. Any retired appointive officer or employee reemployed by the state on a part-time or consulting basis may work without loss of benefits under the Employees Retirement System. It is provided that in the event a retired state appointive officer or employee resumes temporary employment with a state department, commission, institution or agency, he shall notify the Retirement System in writing prior to resuming actual employment, and the head of any state department, commission, institution or agency of the state shall notify the Retirement System in writing before employment of a retired state appointive officer or employee and furnish the Retirement System the name of said retired appointive officer or employee and the dates of employment. After a reemployed, retired appointive officer or employee has worked six (6) months

in any one (1) year, retirement benefit payments that would otherwise have been paid to said member shall be suspended and shall be resumed when said member leaves said employment. For the purposes of the six (6) months per year limitation on reemployment, employment for any part of a month shall constitute a full month. It is provided further, that if the retired member had elected to receive an annuity in a guaranteed payment for a certain number of years or months after retirement, that the time so spent in state employment over six (6) months within any one (1) year by such retired member after the initial or original retirement shall not count as time within said certain number of years or months. Any retired member temporarily employed in a class of service from which he has retired shall not contribute to the Retirement System during such reemployment, and the Retirement Plan in effect at the time of his original retirement shall remain unchanged.

[See Compact Edition, Volume 5 for text of 5B5 to 5D4]

E. Return of Accumulated Contributions.

1. Any member of the System, after termination of employment with the State, may, on application filed with the Employees Retirement System or with the department or agency by which he was last employed, withdraw his accumulated contributions. Withdrawal may not be made, however, if the member is employed again by the State within the calendar month following the month in which employment is terminated, and withdrawal may be made only if the application is filed prior to any subsequent employment by the State. The withdrawal of accumulated contributions cancels all accumulated creditable service for purposes of retirement or any other benefit under this Act.

[See Compact Edition, Volume 5 for text of 5E2 and 3]

4. (a) After the close of each fiscal year, the Employees Retirement System shall review the active accounts of members who are, according to its records, fifty-eight (58) years of age or older and who have not contributed to the System during that year.

(b) The System shall send by certified mail to each member described in Paragraph (a) of this subdivision, a statement of the member's account and legal rights with respect to it, including a statement of any possible retirement annuity that may become payable. If at the end of sixty (60) days from the date of mailing, the System has not received a written response from the member or, if the member has died, from a designated beneficiary or other lawful claimant, the account is

inactive, and the State Board of Trustees shall cause to be published in a newspaper of general circulation in the State a notice that money is being held in the name of the member. The notice must include the name of the member and his last known mailing address. In the absence of a written response from the member or a lawful claimant, the State Board of Trustees shall cause a second notice including the same information to be published in a newspaper of general circulation in the State five (5) years after publication of the first notice. If no legal claim to the money is made within two (2) years after publication of the second notice, the money in the member's account is forfeited to the State and shall be transferred to the State Accumulation Fund. All forfeitures must be recorded in the minutes of the records of the State Board of Trustees.

[See Compact Edition, Volume 5 for text of 5E5]

6. If any contributing member in a retirement program administered by the board of trustees with less than 20 years of creditable service dies after becoming eligible for a service retirement from service established in one or more retirement programs administered by the board of trustees by meeting the requirements of creditable service and attained age, an annuity may be paid to the member's surviving spouse or minor children. The surviving spouse may select an option plan in the same manner as the member could have if he had retired on the last day of the month of his death. If there is no surviving spouse, the guardian of the deceased member's surviving minor children may select an option plan for the benefit of the minor children. If there is no surviving spouse or minor children, no annuity may be paid pursuant to this subdivision.

7. (A) A person whose total creditable service in programs for retirement administered by the board of trustees equals or exceeds 20 years of creditable service may file an optional death benefit plan which shall apply to all creditable service the person has established in all retirement programs administered by the board.

(B) The optional death benefit plan filed by any member of a retirement program administered by the board of trustees based upon service in such program shall also apply to creditable service established by the member in other retirement programs administered by the board. If a member is eligible to file death benefit plans under more than one of the retirement programs administered by the board, all shall be effective. The last death benefit plan selection filed by the member shall govern payments based upon other creditable service established by the member in another retirement program administered by the board for which the

amount of service is insufficient for selection of an optional death benefit plan.

(C) If a member who is eligible to file a death benefit plan pursuant to this subdivision fails to do so or if the death benefit plan filed by such a member cannot be effective, the surviving spouse may choose an option plan in the same manner as if the member had completed it. If there is no surviving spouse, the personal representative of the estate may choose a plan for the benefit of the decedent's heirs or devisees.

Benefit Increases: Continuance of Annuities and Death Benefit Plans

Sec. 5-1. Notwithstanding any other provisions of Chapter 352, Acts of the 50th Legislature, 1947, as amended (Article 6228a, Vernon's Texas Civil Statutes), the provisions of this section shall apply to annuities payable to retired employees or appointed officers or their survivors on and after September 1, 1977. Nothing in this section shall be construed to reduce any preexisting annuity. Service retirement standard annuities payable for appointive officers and employees by virtue of retirements or deaths occurring on and after August 31, 1977, shall be computed on the basis of the average monthly compensation of the member for the thirty-six (36) highest months of compensation during the last sixty (60) months of creditable service times one and one-half per cent (1½%) of such average for each of the first ten (10) years of creditable service plus two per cent (2%) of such average for each subsequent year of creditable service, but the service retirement standard annuity may not be less than Seventy-five Dollars (\$75.00) per month and may not exceed eighty per cent (80%) of the average compensation so calculated. Service retirement standard annuities for elective state officials payable by virtue of retirement or death of any person retired or who retires as an elective state official or who at the time of death was eligible to select a death benefit annuity as an elective state official shall on and after September 1, 1975, be calculated upon the basis of two per cent (2%) of the State salary paid to district judges on that date or as adjusted thereafter times years of creditable service as an elective state official, but no service retirement standard annuity so calculated may exceed sixty per cent (60%) of such judicial salary. A disability retirement annuity for appointive officers and employees retiring on disability on and after February 25, 1975, shall be calculated on the basis of one and seven-tenths per cent (1.7%) per year of creditable service, but in no event will the disability retirement annuity be greater than seventy per cent (70%) of compensation as calculated under Section 5 of this Act, nor less than the greater of (a) thirty-five per cent (35%) of such compensation or (b) One Hundred Ten Dollars (\$110.00) per month. Any death benefit annuity plan selected by a member shall remain in effect

during such time as such person may be receiving disability retirement benefits; and upon death of the person receiving such benefits, the designated beneficiary shall receive monthly annuities in accordance with the plan selected. Notwithstanding any other provisions of this Act, the State of Texas shall pay from the State Accumulation Fund an additional lump sum death benefit in the amount of Five Thousand Dollars (\$5,000) upon satisfactory proof of the death, occurring on or after September 1, 1975, of any officer or employee retired as an annuitant under the provisions of the Retirement Acts administered by the Board of Trustees of the Employees Retirement System. Such benefit shall be paid to such persons as may be designated by the retired member in a signed and witnessed writing. If the retired member makes no such written designation, the benefit shall be paid to the executor or administrator of his estate, or, if there is no executor or administrator of the estate, then payment shall be under the laws of descent and distribution. Upon certification by the Employees Retirement System the Comptroller of Public Accounts shall transfer each month from the General Revenue Fund to the State Accumulation Fund the estimated amount required for the payment of such death benefits. The Board of Trustees shall certify to the Comptroller of Public Accounts and to the State Treasurer at the close of each fiscal year the amount required for that year. With respect to retirements on and after September 1, 1975, the calculation of reduced annuities provided in Subsection B of Section 5 of this Act shall be made without regard to the sex of annuitant or nominee involved.

Group Insurance Premiums

Sec. 5-2. On and after September 1, 1975, the appropriated amount available for Group Insurance premiums for retired annuitants under the jurisdiction of the Board of Trustees of the Employees Retirement System of Texas shall be applied to Group Health Insurance premiums for such annuitants.

Benefit Increases for Retirement or Death Before August 31, 1976

Sec. 5-3. Monthly benefits, payable to appointive officers or employees who retired on or before August 31, 1976; or their survivors, or to survivors of deceased appointive officer or employee members whose death occurred on or before August 31, 1976, shall be increased effective with the June, 1977, benefit payment. Such increases shall be computed as follows:

(a) Each year of creditable service up to 30 years multiplied by the sum of:

- (1) 75 cents, plus
- (2) two cents for the fiscal year in which the retirement or death occurred plus two cents for each fiscal year thereafter through August 31, 1976, but not to exceed 50 cents.

(b) For each year of creditable service in excess of 30 years, there shall be an additional increase per month equal to one-half the amount provided for each year of service in Subsection (a).

(c) The reduction factors applied at the time of retirement to each member's retirement benefits for early age retirement and for retirement under the option selected by that member shall also be applied to the increases provided in this section.

Administration

Sec. 6. A. State Board of Trustees.

[See Compact Edition, Volume 5 for text of 1]

1a. The State Board of Trustees of the Employees Retirement System of Texas is subject to the Texas Sunset Act,¹ but it is not abolished under that Act. The board shall be reviewed under the Texas Sunset Act during the period in which state agencies abolished effective September 1 of 1989 and of every 12th year after 1989 are reviewed.

[See Compact Edition, Volume 3 for text of 6A2 to D]

¹ Article 5429k.

Management of Funds

Sec. 7. A. All money from whatever source coming into the Fund and all other securities, money, and assets of the Employees Retirement System of Texas shall be administered by said Board and said Board shall be the trustees thereof. The Treasurer of the State of Texas shall be custodian of said money and securities. Said Board is hereby authorized and empowered to acquire, hold, manage, purchase, sell, assign, trade, transfer, and dispose of any securities, evidences of debt, and other investments in which said securities, money, and assets have been or may hereafter be invested by said Board. Said Board is hereby authorized and empowered to invest and reinvest any of said money, securities, and assets, as well as the proceeds of any of such investments, in bonds, notes, or other evidences of indebtedness which are guaranteed as to principal and interest by the United States or any agency of the United States, or by the State of Texas, or by any county, city, school district, municipal corporation, or other political subdivision of the State of Texas, both general and special obligations; or in home office facilities to be used in administering the Employees Retirement System including land, equipment, and office building; or in such corporation bonds, notes, other evidences of indebtedness, and corporation stocks, including common and preferred stocks, of any corporation created or existing under the laws of the United States or of any of the states of the United States, as said Board may deem to be proper investments; provided that in making each and all of such investments said Board shall exercise the judgment and care under the circumstances then

prevailing which men of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income therefrom as well as probable safety of their capital; and further provided, that a sufficient sum shall be kept on hand to meet payments as they become due each year under such retirement plan, as may now or hereafter be provided by law. Unless investments authorized herein are hereafter further restricted by an Act of the Legislature, no more than one per cent (1%) of the book value of the total assets of the Employees Retirement System shall be invested in the stock of any one (1) corporation, nor shall more than five per cent (5%) of the voting stock of any one (1) corporation be owned; and provided further, that stocks eligible for purchase shall be restricted to stocks of companies incorporated within the United States which have paid cash dividends for ten (10) consecutive years or longer immediately prior to the date of purchase and which, except for bank stocks and insurance stocks, are listed upon an exchange registered with the Securities and Exchange Commission or its successor; and provided further, that not less than twenty-five per cent (25%) at any one time of the book value of investments of said Fund shall be invested in Government and Municipal Securities as enumerated above.

B. The State Board of Trustees, on August 31, 1975, and thereafter on the last day of each fiscal year, shall transfer from the Interest Fund to the Employees Saving Fund interest computed at the rate of five per cent (5%) on the mean balances of the amounts for the fiscal year standing to the credit of all members. In addition, the Board shall, as required during the year, transfer interest from the Interest Fund to the Employees Saving Fund in amounts equal to the interest credited during the year to members whose accounts are closed by death, retirement, or withdrawal of contributions.

The State Board of Trustees, on August 31, 1975, and thereafter on the last day of each fiscal year, shall transfer from the Interest Fund to the Retirement Annuity Reserve Fund an amount equal to five per cent (5%) of the mean amount in the Retirement Annuity Reserve Fund for the fiscal year then ending.

The State Board of Trustees shall transfer from the Interest Fund to the Expense Fund such amounts as are determined from time to time to be necessary for the payment of expenses of the Employees Retirement System in excess of amounts otherwise available.

The State Board of Trustees, on August 31, 1975, and thereafter on the last day of each fiscal year, after making other transfers as provided in this

subsection, shall transfer all remaining interest in the Interest Fund to the State Accumulation Fund.

[See Compact Edition, Volume 5 for text of 7C to 7F]

Method of Financing

Sec. 8. A. Notwithstanding any other provisions of Chapter 352, Acts of the 50th Legislature, 1947, as amended (Article 6228a, Vernon's Texas Civil Statutes), the provisions of this subsection shall apply on and after September 1, 1977, with respect to the amounts to be paid by members and by the State. The terms "State Contributions," "State Matching," and "State Matching Contributions" as used in this Act shall mean State money paid to the System at the rate of eight per cent (8%) of the aggregate compensation paid contributing members. The amount contributed by the State of Texas to the Retirement System during any one (1) year shall be at least eight per cent (8%) of the aggregate compensation of all members and shall be paid in monthly installments. For creditable service not previously established, the State shall contribute funds in an amount which shall bear the same ratio to the members contribution required to establish such service as the State's contribution bears to the contributions required of contributing employee members at the time such service is established. Effective September 1, 1975, the amount contributed by each member of the Retirement System shall be six per cent (6%) of the annual compensation paid to each member, except that members of the Texas Legislature shall contribute eight per cent (8%) of such compensation. Notwithstanding any other provisions of Chapter 352, Acts of the 50th Legislature, 1947, as amended (Article 6228a, Vernon's Texas Civil Statutes), a member's contribution on or after September 1, 1975, for any previous service to be credited as elective state official service shall be the greater of (a) eight per cent (8%) of the salary being paid to members of the Legislature at the time the service is established or (b) six per cent (6%) of the State salary currently applicable to the position previously occupied plus in either case, applicable fees and interest charges. It is provided further, that all contributions made by the State shall be from and charged to the respective funds appropriated, allocated, and provided to pay the salary or compensation of the member for whose benefit the contribution is made. All of the assets of the Retirement System shall be credited according to the purpose for which they are held to one (1) of five (5) funds; namely, the Employees Saving Fund, the State Accumulation Fund, the Retirement Annuity Reserve Fund, the Interest Fund, and the Expense Fund.

1. The Employees Saving Fund.

The Employees Saving Fund shall be a fund in which shall be accumulated six per cent (6%) contri-

butions from the compensation of members, including interest earnings. Contributions to and payments from the Employees Saving Fund shall be made as follows:

(a) Beginning on the effective date of this Act, each department of the State shall cause to be deducted from the salary of each member on each and every payroll period, six per cent (6%) of his earnable compensation. In determining the amount earnable by a member in a payroll period, the State Board of Trustees may consider the rate of annual compensation payable to such member on the first day of the payroll period as continuing throughout such payroll period, and it may omit deductions from compensation for any period less than one-half ($\frac{1}{2}$) of a full payroll period if an employee was not a member on the first day of the payroll period, and to facilitate the making of deductions, it may modify the deductions required of any member by such an amount as shall not exceed one-tenth ($\frac{1}{10}$) of one per cent (1%) of the annual compensation upon the basis of which such deduction is to be made.

(b) The deductions provided for herein shall be made notwithstanding that the minimum compensation provided for by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deductions made and provided for herein and shall receipt for his full salary or compensation, and payment of salary or compensation less said deduction, shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such person during the period covered by such payment, except as to the benefits provided under this Act. The department head of the State shall certify to the State Board of Trustees on each and every payroll, or in such other manner as said Board may prescribe, the amounts to be deducted; and each of said amounts shall be deducted, and when deducted shall be paid into said Employees Saving Fund, and shall be credited to the individual account of the member from whose compensation said deduction was made.

(c) After August 31, 1974, interest computed at the rate of five (5%) per cent per year on amounts credited to the accounts of individual members is earned monthly, to be credited on August 31, 1975, and thereafter on the last day of each fiscal year. However, after the last day of the month in which this Act takes effect, interest shall be credited to accounts closed by death or withdrawal of contributions through the last day of the month preceding the calendar month in which death occurs or in which the withdrawal request is validated by the Employees Retirement System, and interest shall be credited to accounts closed by retirement through the date of retirement. Interest shall be

computed on the mean balance standing to the credit of the member for the fiscal year, or for the applicable portion of the fiscal year in case of death, retirement, or withdrawal of contributions.

(d) Upon the retirement of a member, his accumulated contributions shall be transferred from the Employees Saving Fund to the Retirement Annuity Reserve Fund.

2. State Accumulation Fund.

The State Accumulation Fund shall be the fund in which shall be accumulated all contributions made to the Employees Retirement System by the State of Texas. Contributions to and payments from this fund shall be made as follows:

(a) The State of Texas shall pay each year in monthly installments into the State Accumulation Fund the amount of State contributions required by this subsection. The State Board of Trustees shall certify annually to the Comptroller of Public Accounts and to the State Treasurer the amount so ascertained, and such an amount shall be paid each year in monthly installments in the manner hereinafter provided into the State Accumulation Fund by the Comptroller from the funds appropriated as contributions to the Employees Retirement System by the State of Texas.

(b) Upon the retirement of a member, an amount equal to the difference between the total reserve at present worth reserve value of the retirement annuity of the member and the amount standing to the credit of the individual account of the member who retires shall be transferred from the State Accumulation Fund into the Retirement Annuity Reserve Fund as a part of the reserve requirements for the annuity to be paid to the retired member.

3. Retirement Annuity Reserve Fund.

The Retirement Annuity Reserve Fund shall be the fund in which shall be held all reserves granted and in force except as hereinafter provided, and from which shall be paid all annuities payable as provided in this Act. This fund shall be made up of the transfers as follows:

(a) At the time of service or disability retirement the accumulated contributions of a retiring member shall be transferred from the Employees Saving Fund to the Retirement Annuity Reserve Fund as a partial reserve for the annuity purchased by his contributions.

(b) An amount equal to the difference between the total reserve at present worth reserve value of the retirement annuity of the member and the amount standing to the credit of the individual account of the member who retires shall be transferred from the State Accumulation Fund into the Retirement Annuity Reserve Fund as a part of the

reserve requirements for the annuity to be paid to the retired member.

(c) Transfers and payments from the Retirement Annuity Reserve Fund shall be made as provided in Section 5, Subsection C, Paragraph 6, upon the death, restoration to active service or removal from the disability list of a beneficiary retired on account of disability.

4. Interest Fund.

The Interest Fund is hereby created to facilitate the crediting of interest to the various other funds. All income, interest, and dividends derived from the deposits and investments authorized by this Act shall be paid into the Interest Fund.

5. Expense Fund.

The Expense Fund shall be the fund from which the expenses of administration and maintenance of the Retirement System shall be paid. Transfers to and payments from this fund shall be made as follows:

(a) The Executive Secretary shall prepare annually an itemized budget showing the amount required to defray the expenses for the ensuing fiscal year and shall submit the report to the State Board of Trustees for its review and adoption.

(b) Each member shall pay with the first payment to the Employees Saving Fund each year and each year thereafter he is a member of the System, and in addition thereto, a sum of Two Dollars (\$2), which amount shall be credited to the Expense Fund, said payments for the Expense Fund shall be made to the State Board of Trustees in the same way as payments to the Employees Saving Fund shall be made, as provided for in this Act; provided, however, that if said payment for the Expense Fund of any member is not made with said first payment of said member, the State Board of Trustees may deduct the amount of the payment for the Expense Fund from said first payment of said member.

(c) If the amount estimated to be required to meet the expenses of the State Board of Trustees is in excess of Two Dollars (\$2) per member contributor for the year, the State Board of Trustees as evidenced by a resolution by the Board recorded in its minutes shall transfer to the Expense Fund from the Interest Fund an amount necessary to cover the expenses as estimated for the year.

(d) With respect to any fiscal year for which the Legislature, on behalf of each contributing member of the Employees Retirement System, appropriates for deposit in the Expense Fund a membership fee equal to or exceeding Two Dollars (\$2) for each such member, the fees required in Paragraph (b) above shall be waived.

6. Benefit Increase Reserve Fund.

The Benefit Increase Reserve Fund shall be the fund in which shall be held all reserves for increases in preexisting annuities for appointive officer and employee members and their survivors authorized by the legislature after April 30, 1977.

(a) The Benefit Increase Reserve Fund shall consist of:

(1) Money appropriated to pay increases in preexisting annuities authorized by the legislature for appointive officer and employee members and their survivors after January 31, 1977.

(2) Interest transferred from the Interest Fund in an amount calculated at a rate set by the board of trustees after consulting with the actuary as representing a reasonable recognition of earnings from the investments of assets accrued to the Benefit Increase Reserve Fund.

(b) Upon certification by the Employees Retirement System of Texas, the comptroller of public accounts shall transfer each month from the Benefit Increase Reserve Fund to the Retirement Annuity Reserve Fund the estimated amount required for the payment of increases in preexisting annuities authorized by the legislature for appointive officer and employee members and their survivors after April 30, 1977.

[See Compact Edition, Volume 5 for text of 8B and 8C]

D. If federal regulations prohibit an agency's use of funds provided under the Comprehensive Employment and Training Act of 1973, Public Law 93-203,¹ as state contributions, other funds available to the agency shall be used to provide state contributions to the Employees Retirement System of Texas for the affected employees.

¹ 29 U.S.C.A. § 801 et seq.

Exemption from Execution; Group Insurance; Confidentiality of Records; Lump Sum for Accumulated Leave; Benefit Assignment to Secure Loan Establishing Creditable Service; Filing of Records

Sec. 9. All retirement annuity payments, member's contributions, optional benefit payments, and any and all rights accrued or accruing to any person under the provisions of this Act, as well as the moneys in various funds created by this Act, shall be and the same are hereby exempt from any State, County, or Local tax, levy and sale, garnishment, attachment, or any other process whatsoever, and shall be unassigned except as specifically provided in this Act.

[See Compact Edition, Volume 5 for text of 9A and 9B]

C. It is expressly provided that records, in the custody of the System, of all individual members and beneficiaries under Retirement Acts administered by the System are to be considered in the manner of personnel records and such records are hereby

deemed to be confidential information under the provisions of Chapter 424, Acts of the 63rd Legislature, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes). Any member who retires under the provisions of this Act is entitled to be paid in a lump sum from funds of the department from which the member retires for any accumulated leave for which he may be paid. The amount paid shall be computed in the same manner as if the employee had taken leave at the rate of compensation being paid the employee at the time of retirement and is payable on the date of retirement.

D. A member of the Employees Retirement System of Texas who is retiring, who waived membership under terms of Chapter 352, Acts of the 50th Legislature, 1947, as amended, who has been an employee of the State of Texas for not less than 60 of the 120 months immediately preceding the date of this amendment, and who has not withdrawn his contributions, may assign his retirement benefits to secure a loan made for the sole purpose of establishing creditable service. Upon payment of required contributions, interest, and fees for all membership service on and after September 1, 1947, the member may be granted credit for prior service.

E. 1. The retirement system is authorized to photograph, microphotograph, or film all records in its possession, and whenever the retirement system shall have photographed, microphotographed, or filmed such records and whenever such photographs, microphotographs, or films have been placed in conveniently accessible files and provisions made for preserving, examining, and using the same, the retirement system may cause the original record from which the photographs, microphotographs, or films have been made to be disposed of or destroyed.

2. Photographs or microphotographs or films of any record photographed, microphotographed, or filmed as herein provided shall have the same force and effect as the originals thereof would have had and shall be deemed to be an original record for all purposes, including introduction in evidence in all courts or administrative agencies. Duly certified or authenticated copies of such photographs or microphotographs or films shall be admitted in evidence equally with the original photographs or microphotographs or films.

3. The executive director or a duly authorized representative is authorized to certify to the authenticity of any photograph, microphotograph, or film herein authorized and shall make such charges therefor as may be authorized by law. Such certified records shall be furnished to any person who is authorized by law.

[See Compact Edition, Volume 5 for text of 10 to 13]

Re-enactment of Existing Laws

Sec. 14. All general laws authorizing, establishing, or governing retirement systems and optional retirement programs for public employees and officers in effect on April 21, 1975, are hereby re-enacted subject only to amendments adopted by the Legislature effective on and after April 22, 1975.

Impairment of Creditable Service and Benefit Rights

Sec. 15. It is expressly provided that creditable service and benefit rights established by or accrued to state officers and employees pursuant to Chapter 352, Acts of the 50th Legislature, Regular Session, 1947, as amended (Article 6228a, Vernon's Texas Civil Statutes), may not thereafter be diminished or impaired.

[Amended by Acts 1975, 64th Leg., p. 10, ch. 8, § 1, eff. Feb. 25, 1975; Acts 1975, 64th Leg., p. 551, ch. 218, §§ 1 to 14, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 745, ch. 279, §§ 1 to 3, eff. Sept. 1, 1977; Acts 1977, 65th Leg., p. 967, ch. 364, §§ 1 to 3, 5, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 976, ch. 367, §§ 1 to 3, eff. Sept. 1, 1977; Acts 1977, 65th Leg., p. 1856, ch. 735, § 2.175, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 533, ch. 249, § 10, eff. Sept. 1, 1980; Acts 1979, 66th Leg., p. 786, ch. 348, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1106, ch. 522, § 1, eff. June 11, 1979; Acts 1979, 66th Leg., p. 1441, ch. 633, §§ 1, 2, eff. June 13, 1979; Acts 1979, 66th Leg., p. 1539, ch. 662, § 1, eff. Sept. 1, 1979; Acts 1979, 66th Leg., p. 1835, ch. 747, § 1, eff. June 13, 1979.]

Sections 1 to 3 of Acts 1977, 65th Leg., ch. 279, amended §§ 3, subsec. B; 4, subsec. I; and 9, subsec. D of this article; §§ 4 and 5 thereof provided:

"Sec. 4. This Act shall become effective September 1, 1977.

"Sec. 5. All provisions of law in conflict with the provisions of this Act are hereby repealed to the extent of such conflict."

Section 1 of Acts 1977, 65th Leg., p. 967, ch. 364, added § 5-3; § 2 thereof amended § 8, subsec. A, par. 3; § 3 added par. 6 to § 8, subsec. A; and § 4 provided:

"Sec. 4. In addition to the amounts provided elsewhere, there is hereby authorized an appropriation to the Employees Retirement System of Texas of the sum of \$19,489,267 to fund the increases in benefits provided by Section 1 of this Act. Such increases are conditioned to be effective, and shall be effective, only upon the appropriation and payment of said sum. There is hereby appropriated from the General Revenue Fund to the Employees Retirement System of Texas \$19,489,267 in addition to all other appropriations. The Comptroller of Public Accounts of Texas, on adoption of this Act, shall transfer this amount to the Employees Retirement System of Texas for deposit in the Benefit Increase Reserve Fund."

Art. 6228a.1. Benefits Payable to Appointive Officers and Employee Members of Employees Retirement System

Monthly annuities for appointive officer and employee members of the Employees Retirement System of Texas who retired before September 1, 1976, or their survivors, and to the survivors of deceased appointive officer and employee members whose deaths occurred before September 1, 1976, are increased, beginning with the September 1, 1979, payments, by 12 percent. Monthly annuities for appointive officer and employee members of the Employees Retirement System of Texas who retired on or after September 1, 1976, but before September 1, 1978, or their survivors, and to the survivors of deceased

appointive officer and employee members whose deaths occurred on or after September 1, 1976, but before September 1, 1978, are increased, beginning with the September 1, 1979, payments, by eight percent.

[Added by Acts 1979, 66th Leg., p. 2181, ch. 831, §§ 1, 2, eff. Aug. 27, 1979.]

Section 2 of the 1979 Act provided:

"There is authorized an appropriation in the General Appropriations Bill to the Employees Retirement System of Texas in the sum of \$39,200,000 to fund the increases in annuities provided by Section 1 of this Act. The increases take effect only on the appropriation and payment of that sum. On the effective date of the General Appropriations Bill, the comptroller of public accounts shall transfer the appropriated sum to the Employees Retirement System of Texas for deposit in the benefit increase reserve fund of the system. Should an amount less than the amount required to fund the increases provided by this Act be appropriated, the General Appropriations Bill may specify rates of increases other than those provided by this Act. If the rates of increases are not specified in the General Appropriations Bill, the board of trustees shall adjust the rates of increases accordingly to rates which the actual amount appropriated will fund."

Art. 6228a-1. Repealed by Acts 1979, 66th Leg., p. 2112, § 14(a)(1), eff. Aug. 27, 1979

Art. 6228a-2. Teachers' Retirement System and State Employees Retirement System; Prior Service Credits and Certificates

[See Compact Edition, Volume 5 for text of 1.01 to 5.03]

Waiver of Five Consecutive Years Requirement

Sec. 6.01. Effective September 1, 1979, the requirements in Chapter 75, Acts of the 54th Legislature, Regular Session, 1955, as amended (Article 6228a-2, Vernon's Texas Civil Statutes), of establishment of five consecutive years' service in order to transfer or establish creditable service may be waived at the request of the member.

[Amended by Acts 1979, 66th Leg., p. 577, ch. 267, § 1, eff. Aug. 27, 1979.]

Repeal

This article is repealed by Acts 1979, 66th Leg., p. 577, ch. 267, § 2, effective September 1, 1980.

Art. 6228a-3. Repealed by Acts 1979, 66th Leg., p. 2112, ch. 817, § 14(a)(2), eff. Aug. 27, 1979

Art. 6228a-6. Administration of Social Security Programs by Employees Retirement System

Sec. 1. [Amends arts. 695g, §§ 1(d), 2, 5; 695h, §§ 1(d), 2; Education Code, § 17.91.]

Transfer of Administration from Department of Public Welfare; Contracts and Agreements to Remain in Force and Effect; Succession to Rights, Powers, Duties, etc.

Sec. 2. The operation and administration of the programs providing federal social security coverage for: (1) employees of counties, municipalities, and other political subdivisions of the State of Texas (Chapter 500, Acts of the 52nd Legislature, 1951, as amended (Article 695g, Vernon's Texas Civil Statutes)); (2) state employees (Chapter 467, Acts of the

54th Legislature, 1955, as amended (Article 695h, Vernon's Texas Civil Statutes)); and (3) employees of County Board of School Trustees and County School Superintendents (Section 17.91, Texas Education Code) shall be and are hereby transferred effective September 1, 1975, from the State Department of Public Welfare to the Employees Retirement System of Texas. All contracts and agreements in existence on the effective date of the transfer between the State Department of Public Welfare and the United States government or any and all local political subdivisions of the State of Texas or any other governmental entity shall remain in full force and effect and, upon validation by the Employees Retirement System of Texas, shall become effective contracts or agreements between the Employees Retirement System of Texas and such United States government or any agency thereof or any political subdivisions or other governmental entity of the State of Texas.

The Employees Retirement System of Texas shall succeed to and be vested with all the rights, powers, duties, personnel, property records, trust funds, and appropriations now held by the State Department of Public Welfare for the operation and administration of the social security programs.

Employees: Transfer, Appointment, Duties, Qualifications and Compensation

Sec. 3. All personnel employed in the Social Security Division of the State Department of Public Welfare are transferred to the Employees Retirement System of Texas. The system shall appoint all employees and shall prescribe their duties and qualifications for employment. The salaries and compensations of all employees shall be fixed by the Employees Retirement System of Texas commensurate with prevailing rates for similar state positions.

Transfer of Personal Property and Equipment

Sec. 4. All personal property and equipment purchased out of the Social Security Administration Account now in use by the Social Security Division of the State Department of Public Welfare for the operation and administration of the program are hereby transferred to the Employees Retirement System of Texas.

Transfer of Trust Funds

Sec. 5. All trust funds created for social security purposes and specifically those known as the Social Security Fund Account identified in the state comptroller's records as Fund No. 913 and the Social Security Administration Account identified in the state comptroller's records as Fund No. 929 are hereby transferred to the Employees Retirement System of Texas.

Negotiation For and Acquisition of Lands, Buildings and Facilities

Sec. 6. The Employees Retirement System of Texas is hereby authorized to negotiate for and to acquire from the United States government or any agency thereof or from any source whatever by gift, purchase, or leasehold for and on behalf of the State of Texas for use in the state service and in the operation and administration of the federal social security program as it now exists, or as it may hereafter be amended, any lands, buildings, and facilities within the State of Texas and any personal property and equipment wherever located and to take title thereto for and in the name of the State of Texas.

Use of Trust Funds

Sec. 7. Employees retirement system trust funds shall not be used in any manner or at any time for the administration of the social security trust funds or programs provided for herein.

Effective Date

Sec. 8. This Act shall become effective September 1, 1975.

Repeal of Conflicting Laws; Saving Provisions

Sec. 9. All laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict only. It is expressly provided, however, that Chapter 500, Acts of the 52nd Legislature, 1951, as amended (Article 695g, Vernon's Texas Civil Statutes), Chapter 467, Acts of the 54th Legislature, 1955, as amended (Article 695h, Vernon's Texas Civil Statutes), and Section 17.91, Texas Education Code, shall continue in full force and effect except wherein they conflict with this Act and, more particularly, those portions of those articles placing the operation and administration of the federal social security program under the State Department of Public Welfare, and wherever any power, duty, function, or responsibility is placed upon the executive director (commissioner) of public welfare, it shall be vested in the Employees Retirement System of Texas. [Acts 1975, 64th Leg., p. 965, ch. 366, eff. Sept. 1, 1975.]

Art. 6228b. Retirement of Justices, Judges and Commissioners of Appellate and District Courts

[See Compact Edition, Volume 5 for text of 1]

Qualifications for Retirement; Death Benefit Plan Selection; Retirement Pay; Reduced Annuity Plans; Retirement Age

Sec. 2. (a) Any judge in this state may, at his option, retire from regular active service after attaining the age of sixty-five (65) years and after serving on one or more of the courts of this state at least ten (10) years continuously or otherwise, provided that his last service prior to retirement shall be continuous for a period of not less than one year.

Any person who has served on one or more of the courts of this state at least twelve (12) years, continuously or otherwise, regardless of whether he is serving on a court at such time, shall after attaining the age of sixty-five (65) years, be qualified for retirement pay under this Act. Any person retiring in accordance with this Act after the effective date of this amendment shall, during the remainder of such person's lifetime receive from the State of Texas monthly a base retirement payment equal to fifty percent (50%) of the salary being received by a judge of a court of the same classification last served by such person as judge. An additional ten percent (10%) of the applicable salary shall be added to the base retirement payments to the following judges: (1) those eligible for retirement under any provisions of this Act as amended who retire at or before age seventy (70); and (2) those who are not eligible by length of service to retirement benefits at age 70 but who retire immediately upon becoming eligible. However, the additional ten percent (10%) benefit shall not be paid to any judge who has been out of office for a period of longer than one (1) year at the time he applies for retirement benefits under this Act, except that any provisions in any statute to the contrary notwithstanding, a judge who on the effective date of this amendment has retired at or before age seventy (70) and who is now serving as the presiding judge of an administrative judicial district is entitled to the additional ten percent (10%) provided in this section. Any judge drawing retirement at the effective date of this Act shall receive the same retirement pay as judges of the same classification who have retired on the current pay scale; that said judge shall be entitled to any raises based upon increases in current salary.

(a-1). Prior to retirement, any contributing member with ten (10) or more years creditable service, and any noncontributing member with twelve (12) or more years creditable service, may select a Death Benefit Plan and designate a nominee to receive a reduced monthly annuity either for life, or for a ten (10) year guaranteed period, to become effective and payable, in lieu of the refund of the member's contributions, to such nominee beginning the day following the death of such member. If the qualified member dies without having made such Death Benefit Plan Selection, the surviving spouse may choose the plan in the same manner as if the member had completed the selection. If there is no surviving spouse, the personal representative of the estate of the deceased member may choose the option plan for the benefit of the decedent's heirs or devisees. Application for such plan shall be on forms prescribed by the State Board of Trustees. The reduced benefits shall be computed in the same manner as for a member's service retirement as provided elsewhere in this Act. The ages of the

member and the nominee at the date of the member's death shall be used in determining the reduced annuity. The plan selected shall become null and void upon the effective date of the member's retirement, provided, however, that any member with seven (7) or more years of creditable service who is required to retire on disability, as provided elsewhere in this Act, shall be eligible to select a reduced annuity in the same manner as that provided for members retiring on a service retirement.

[See Compact Edition, Volume 5 for text of 2(b) to (e)]

Credit for Service in Armed Forces

Sec. 2A. Any contributing member of the Judicial Retirement System who has completed eight (8) or more years of service creditable under the Judicial Retirement Act (Article 6228b, Vernon's Texas Civil Statutes) and who is not receiving nor eligible to receive a federal military retirement based upon twenty (20) or more years of federal military active duty service or the equivalent thereof may receive creditable service for not more than ¹ forty-eight (48) months of federal military active duty service performed during time of armed conflict by paying to the Judicial Retirement System for deposit in the General Revenue Fund an amount equal to 6 percent of his current monthly salary for each month of such military service established.

¹ So in enrolled bill; probably should read "than".

[See Compact Edition, Volume 5 for text of 2B and 3]

Judges of Abolished Courts; Continuity of Service

Sec. 4. Any person who was, or but for the abolishment of such Court before the expiration of his term of office would have been, serving as a Judge of a Court of this State at the time the Retirement Amendment, House Joint Resolution No. 39, was adopted November 2, 1948, and who had served on one (1) or more of the Courts of this State at least ten (10) years, continuously or otherwise, and had attained the age of sixty-five (65) years at the time of the adoption of the Retirement Amendment, shall be deemed to come within the provisions of this law and be entitled to receive retirement pay under the same terms and limitations provided in Section 2 of this Act, regardless of whether he is now serving on a Court of this State. Any person who has served on one (1) or more Courts of this State as defined herein for twenty (20) years or more at any time, continuously or otherwise, provided that his last service prior to the date of retirement shall have been continuous for a period of not less than ten (10) years, shall likewise be entitled to retirement pay under the provisions of this Act.

Contributions and Appropriations

Sec. 5. From and after the effective date of this amendment, every Judge of this State, to assist in carrying out the provisions of this Act, shall contribute the same percentage of his annual salary paid to him by the State which is contributed by each member of the Employees Retirement System of Texas.¹ One-twelfth ($\frac{1}{12}$) of such amount shall be deducted by the State Comptroller each month from the salary of such Judge and the balance only paid him by the Comptroller. The amount deducted shall remain in the State General Fund and be subject to appropriation by the State Legislature as other moneys in said fund. The Legislature shall appropriate such sums of money as may be necessary to carry out this Act.

¹ See art. 6228a.

[See Compact Edition, Volume 5 for text of 6 and 6A]

Ineligibility to Practice Law; Continuance as Judicial Officer; Assignments and Compensation

Sec. 7. During the time judges who have retired under the provisions of the Act are receiving retirement pay they shall not be allowed to appear and plead as attorneys at law in any court in this State. Any person who has retired under the provisions of this Judicial Retirement Act may elect in writing addressed to the Chief Justice of the Supreme Court within ninety (90) days after such retirement to continue as a judicial officer, in which instance they shall, with their own consent to each assignment, be subject to assignment by the Chief Justice of the Supreme Court to sit in any court of this State of the same dignity, or lesser, as that from which they retired, and if in a District Court, under the same rules as provided by the present Administrative Judicial Act, and while so assigned, shall have all the powers of judges thereof. Any district judge or appellate judge who has retired under the provisions of this Judicial Retirement Act and has elected to continue as a judicial officer may sit as a Commissioner of the Court of Criminal Appeals, if designated and appointed by the Presiding Judge of the Court of Criminal Appeals, with his own consent to each designation and appointment. While assigned to said court, or serving as a Commissioner to the Court of Criminal Appeals, such judges shall be paid a retirement allowance equal to the salary of judges of said court, in lieu of the retirement allowance otherwise provided in this Act. No person who has heretofore retired under the provisions of this Judicial Retirement Act shall be considered to have been a judicial officer of this State after such retirement, unless such person has accepted an assignment by the Chief Justice to sit in a court of this State.

Retired Judges as Judicial Officers

Sec. 7A. (a) Any person who has retired under the provisions of this Judicial Retirement Act and who within ninety (90) days after such retirement accepts an assignment by the Chief Justice of the

Supreme Court or by a Presiding Judge of an Administrative Judicial District shall continue as a judicial officer, in which instance he shall, with his own consent to each assignment, be subject to assignment by the Chief Justice of the Supreme Court or by a Presiding Judge of any Administrative Judicial District to sit in any court of this state of the same dignity, or lesser, as that from which he retired, and if in a District Court, under the same rules as provided by the present Administrative Judicial Act, and while so assigned, shall have all the powers of a judge thereof. While assigned to said court, such person shall be paid a retirement allowance equal to the salary of the judge of said court, in lieu of the retirement allowance otherwise provided in this Act.

[See Compact Edition, Volume 5 for text of 7A(b) to 8a]

Payments and Rights; Exemption From Tax, Etc.

Sec. 8b. Retirement payments, annuities, refunded contributions, optional benefits, or any other right accrued or accruing to any person under the provisions of this Act are exempt from any state, county, or municipal tax, levy, sale, garnishment, attachment, or any other process, and shall be unassignable except as provided in this Act. The retirement allowance paid to any person retired under the provisions of this Act while such person is assigned to or serving on a court and which is in lieu of the retirement allowance otherwise provided in this Act, shall not be construed as a salary or remuneration for such assignment or service, but shall be construed as such person's retirement allowance only, notwithstanding any other provision of this Act or any other Act or statute to the contrary.

[See Compact Edition, Volume 5 for text of 9 and 10]

[Amended by Acts 1975, 64th Leg., p. 1367, ch. 522, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1825, ch. 561, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 330, ch. 160, § 1, eff. May 20, 1977; Acts 1977, 65th Leg., p. 1117, ch. 415, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1967, ch. 785, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 148, ch. 80, § 1, eff. Aug. 27, 1979.]

Art. 6228c-1. Repealed by Acts 1979, 66th Leg., p. 2112, ch. 817, § 14(a)(3), eff. Aug. 27, 1979

Art. 6228f. Payments of Assistance by State to Survivors of Law Enforcement Officers, etc., Killed in Performance of Duties

[See Compact Edition, Volume 5 for text of 1]

Definitions

Sec. 2. (a) As used in this Act:

[See Compact Edition, Volume 5 for text of 2(a)(1)]

(2) "Paid law enforcement officer" means a peace officer as defined in Article 2.12, Texas

Code of Criminal Procedure, 1965, and includes game wardens who are employees of the State of Texas paid on a full time basis for the enforcement of game laws and regulations, and campus security personnel commissioned as peace officers by authority granted under Section 51.203, Texas Education Code.

[See Compact Edition, Volume 5 for text of 2(a)(3) to 2(c)]

Assistance Payable

Sec. 3. In any case in which a paid law enforcement officer, capitol security commissioned officers, campus security personnel, a member of an organized police reserve or auxiliary unit, custodial personnel of the Texas Department of Corrections, supervisory personnel in a county jail controlled by an administrator instead of the sheriff, juvenile correctional employee of the Texas Youth Council, employee of the Rusk State Hospital for the Criminally Insane, paid fireman, and/or member of an organized volunteer fire department and/or park and recreational patrolmen and security officers suffers violent death in the course of his duty as such paid law enforcement officer, campus security personnel, member of an organized police reserve or auxiliary unit, custodial personnel of the Texas Department of Corrections, supervisory personnel in a county jail controlled by an administrator instead of the sheriff, juvenile correctional employee of the Texas Youth Council, employee of the Rusk State Hospital for the Criminally Insane, paid fireman, member of an organized volunteer fire department, or park and recreational patrolmen and security officers, the State of Texas shall pay to the surviving spouse of such paid law enforcement officer, campus security personnel, member of an organized police reserve or auxiliary unit, custodial personnel of the Texas Department of Corrections, supervisory personnel in a county jail controlled by an administrator instead of the sheriff, juvenile correctional employee of the Texas Youth Council, employee of the Rusk State Hospital for the Criminally Insane, paid fireman, or member of an organized volunteer fire department, or park and recreational patrolmen and security officers the sum of \$20,000 and in addition thereto, if such paid law enforcement officer, campus security personnel, member of an organized police reserve or auxiliary unit, custodial personnel of the Texas Department of Corrections, supervisory personnel in a county jail controlled by an administrator instead of the sheriff, juvenile correctional employee of the Texas Youth Council, employee of the Rusk State Hospital for the Criminally Insane, paid fireman, or member of an organized volunteer fire department, or park and recreational patrolmen and security officers shall be survived by a minor child or minor children, the State of Texas shall pay to the duly appointed or qualified guardian or other legal repre-

sentative of each minor child the following assistance:

If one minor child—\$200 per month

If two minor children—\$300 per month

Three or more minor children—\$400 per month.

Provided, that when any child entitled to benefits under this Act ceases to be a minor child as that term is defined herein, his entitlement to benefits shall terminate and any benefits payable under this Act on behalf of his minor brothers and sisters, if any, shall be adjusted to conform with the foregoing schedule if necessary.

[See Compact Edition, Volume 5 for text of 4 to 10]

[Amended by Acts 1975, 64th Leg., p. 480, ch. 204, § 2, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 810, ch. 215, § 1, eff. Sept. 1, 1975.]

Acts 1973, 64th Leg., p. 810, ch. 315, which by § 1 amended sec. 3 of this article, provided in § 2:

"The increase in the lump-sum payment from \$10,000 to \$20,000 does not apply to the payment of assistance for any death that occurred prior to the effective date of this amendatory Act. The increase in monthly payments to minor children applies to children receiving payments on the effective date of this Act as well as to children entitled to benefits after this Act takes effect."

Art. 6228f-1. Commissioned Law Enforcement and Custodial Officer Supplemental Retirement Benefit Act

Short Title

Sec. 1. This Act may be cited as the Commissioned Law Enforcement and Custodial Officer Supplemental Retirement Benefit Act.

Purpose

Sec. 2. The purpose of this Act is to provide supplemental retirement benefits for members of the Employees Retirement System of Texas who have completed 20 or more years of service or have become occupationally disabled while serving as commissioned law enforcement officers of the Department of Public Safety, the Texas Alcoholic Beverage Commission, or the Parks and Wildlife Department, or as custodial officers of the Texas Department of Corrections.

Definitions

Sec. 3. In this Act:

(1) "Law enforcement officer" means a member of the Employees Retirement System of Texas who has been commissioned as a law enforcement officer by the Department of Public Safety, the Texas Alcoholic Beverage Commission, the State Board of Control Capitol Area Security Force, or the Parks and Wildlife Department and who is recognized as a commissioned law enforcement officer by the Commission on Law Enforcement Officer Standards and Education.

(2) "Custodial officer" means a member of the Employees Retirement System of Texas who is

employed by the Texas Department of Corrections and whose normal duties with the department require the person to supervise and have direct contact with inmates of that institution.

(3) "Credited service" means service as a law enforcement officer or custodial officer for which retirement contributions have been made to and are being held by the Employees Retirement System of Texas, accruing as provided by rules of the State Board of Trustees of the Employees Retirement System of Texas or on a month-to-month basis, whichever is greater. "Credited service" does not include service other than as a law enforcement or custodial officer.

(4) "Combined service retirement annuity" means the amount payable on retirement for service as a law enforcement or custodial officer under Chapter 352, Acts of the 50th Legislature, 1947, as amended (Article 6228a, Vernon's Texas Civil Statutes), plus any supplemental annuity payable under this Act.

Supplemental Retirement Benefits

Text of section effective September 1, 1980

Sec. 4. (a) A person who has 20 years of credited service or more as a law enforcement officer or custodial officer is entitled to retire regardless of age and receive supplemental service retirement benefits as provided by this Act. A person who retires under this Act retires simultaneously under Chapter 352, Acts of the 50th Legislature, 1947, as amended (Article 6228a, Vernon's Texas Civil Statutes), although the person must meet any applicable age requirements in that Act before being entitled to receive a service retirement annuity under that Act. In addition to the benefits provided in this Act, a retiring law enforcement or custodial officer is entitled to receive the rights and benefits of retirement available under the Employees Retirement System of Texas except as otherwise provided by this Act. Service retirement annuity payments from the fund created by this Act shall be derived by application of the following table, except that the amount so derived shall be reduced by the amount, if any, to which the retiree is entitled under Chapter 352, Acts of the 50th Legislature, 1947, as amended (Article 6228a, Vernon's Texas Civil Statutes), for service as a law enforcement officer or custodial officer:

Years of Credited Law Enforcement or Custodial Officer Service	Combined Service Retirement Annuity as a Percentage of Final Average Compensation
at least 20 but less than 21	50 percent
at least 21 but less than 22	52 percent
at least 22 but less than 23	54 percent
at least 23 but less than 24	56 percent
at least 24 but less than 25	58 percent

Years of Credited Law Enforcement or Custodial Officer Service	Combined Service Retirement Annuity as a Percentage of Final Average Compensation
at least 25 but less than 26	60 percent
at least 26 but less than 27	62 percent
at least 27 but less than 28	64 percent
at least 28 but less than 29	66 percent
at least 29 but less than 30	68 percent
at least 30 but less than 31	70 percent
at least 31 but less than 32	71 percent
at least 32 but less than 33	72 percent
at least 33 but less than 34	73 percent
at least 34 but less than 35	74 percent
at least 35 but less than 36	75 percent
at least 36 but less than 37	76 percent
at least 37 but less than 38	77 percent
at least 38 but less than 39	78 percent
at least 39 but less than 40	79 percent
40 or more	80 percent

(b) The combined service retirement annuities included in the table in Subsection (a) of this section as percentages of final average compensation are based on retirement at or above the age of 55. The combined service retirement annuity of a law enforcement or custodial officer who retires before attaining the age of 55 shall be actuarially reduced from age 55 to the earlier retirement age. A law enforcement or custodial officer's combined service retirement annuity shall be computed on the final average, determined in the manner provided by Chapter 352, Acts of the 50th Legislature, 1947, as amended (Article 6228a, Vernon's Texas Civil Statutes), of the person's base salary and longevity pay, excluding overtime compensation, as a law enforcement or custodial officer. Any eligible member may, in lieu of the standard combined service retirement annuity computed as provided in this section, elect to receive the actuarial equivalent as a reduced annuity under any of the service retirement options available under the Employees Retirement System of Texas. The same option applies to all components of any available annuity.

(c) Occupational disability retirement benefits for law enforcement and custodial officers shall be granted, except as provided by this subsection, under the same terms and conditions and at the same time as occupational disability retirement benefits are granted under Chapter 352, Acts of the 50th Legislature, 1947, as amended (Article 6228a, Vernon's Texas Civil Statutes). An occupational disability retirement annuity is based on the officer's salary at the time of the disabling injury or disease. The level of benefits shall be computed on the percentages provided by this Act for service retirement benefits, but may not be reduced by reason of age. A minimum of 50 percent of salary is payable, regardless of the amount of credited service of the occupationally disabled member.

(d) The provisions of this subsection govern the recomputation of certain annuities payable on or after September 1, 1980, by virtue of deaths, service retirements, or occupational disability retirements occurring before that date. The recomputations apply only to a person, or his surviving annuitant, who at the time of service retirement or death prior to service retirement had completed 20 or more years of credited service as a law enforcement or custodial officer or who became occupationally disabled while serving as a law enforcement or custodial officer. Each recomputation shall be made by applying the provisions of Subsections (a), (b), and (c) of this section as if they had been in effect at the time of service retirement, death prior to retirement, or occupational disability retirement of the eligible law enforcement or custodial officer. The amount payable out of the Law Enforcement and Custodial Officer Supplemental Retirement Fund is the amount, if any, by which the recomputed amount exceeds the amount payable under Chapter 352, Acts of the 50th Legislature, 1947, as amended (Article 6228a, Vernon's Texas Civil Statutes).

Law Enforcement and Custodial Officer Supplemental Retirement Fund

Sec. 5. (a) There is created with the State Treasurer, to provide the necessary funding for administration and payment of the benefits provided by this Act, a fund to be known as the Law Enforcement and Custodial Officer Supplemental Retirement Fund. The State Treasurer is the custodian of all money and securities held in the name of the fund.

(b) Payments to the fund shall be made from funds collected as part of the motor vehicle inspection fee. Seventy-five cents of the amount collected from the motor vehicle inspection fee on each vehicle required to be inspected as set out in Subsection (c) of Section 141 of the Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes), shall be transferred monthly by the Department of Public Safety to the Law Enforcement and Custodial Officer Supplemental Retirement Fund.

(c) The legislature may make appropriations to the fund as needed to fund benefits authorized by law.

Reports

Sec. 6. Within 60 days after the effective date of this Act, the Department of Public Safety, the Texas Alcoholic Beverage Commission, the Parks and Wildlife Department, and the Texas Department of Corrections shall certify to the Employees Retirement System of Texas the names of law enforcement officers and, as appropriate, custodial officers employed, and the number of years of service each employee has performed as a law enforcement or custodial officer. Thereafter, at the end of each

state fiscal year each department and commission named in this section shall certify the names of its employees and amount of service each employee performed as a law enforcement officer or custodial officer as defined in this Act during the fiscal year just ending.

Administration

Sec. 7. (a) This Act shall be administered by the State Board of Trustees of the Employees Retirement System of Texas. The board shall adopt all necessary rules for the administration of this Act. All payments from the fund created by this Act shall be made, without further appropriation, by the State Treasurer on warrants drawn by the comptroller of public accounts, supported only on vouchers signed by the executive director and the chairman of the State Board of Trustees of the Employees Retirement System of Texas or their authorized representatives. A duly attested copy of a resolution of the board of trustees designating authorized representatives shall be filed with the comptroller as the authority for issuing the warrants.

(b) The State Board of Trustees of the Employees Retirement System of Texas shall be the trustees of the fund provided under this Act. The board may authorize the executive director of the Employees Retirement System of Texas to purchase, sell, hold, manage, assign, and exchange any security, evidence of debt, or other investment in which money and assets of the fund may be invested. The money in the fund in excess of the amount of cash required for current operations shall be invested and reinvested for the benefit of the fund by the executive director as authorized by the board in the following securities:

(1) interest-bearing bonds of the United States or of any authority or agency of the United States or any securities guaranteed as to the payment of principal and interest by the United States or by any authority or agency of the United States;

(2) corporate bonds or debentures of any company incorporated in the United States which is rated "A" or better by a nationally recognized bond rating service acceptable to the board of trustees; and

(3) short-term securities approved by the board of trustees.

(c) The board of trustees shall designate an actuary who must be thoroughly qualified to act as the technical advisor of the board on matters regarding the operation of the fund created by this Act. The actuary shall perform such other duties as are prescribed by the board.

(d) Annually, the actuary shall make a valuation of the assets and liabilities of the fund created by this Act based on tables and rates adopted by the board of trustees.

(e) At least once in each five-year period after September 1, 1980, the actuary shall make, under the direction of the board of trustees, an actuarial investigation into the mortality, service, and compensation experience of the members and beneficiaries under this Act and shall make a valuation of the assets and liabilities of the Law Enforcement and Custodial Officer Supplemental Retirement Fund, and taking into account the result of the investigation and valuation, the board of trustees shall adopt such mortality, service, and other tables as are considered necessary for carrying out the purposes of this Act.

(f) Payment for services required of the actuary, as approved by the board of trustees, shall be paid from the Law Enforcement and Custodial Officer Supplemental Retirement Fund.

(g) On or before the first day of November next preceding each regular session of the legislature, the board of trustees shall certify to the Legislative Budget Board and the budget division of the governor's office an estimate of the amount of appropriated funds required to carry out the purposes of this Act for the ensuing biennium. The estimate shall be determined on the basis of actuarial valuations of the amount of appropriated funds required, in addition to other funds accruing to the Law Enforcement and Custodial Officer Supplemental Retirement Fund, to adequately fund all benefits provided under this Act, including the funding of liabilities accrued by virtue of service performed prior to the effective date of this Act within a period not to exceed 36 years after the effective date of this Act. This amount shall be included in the state budget that the governor submits to the legislature.

(h) In addition to providing funds necessary for funding benefits to be provided and liabilities incurred under the provisions of this Act, the legislature shall appropriate to the Employees Retirement System of Texas funds necessary for the administration of this Act. The board of trustees shall furnish the Legislative Budget Board and the governor's office as a separate item an estimate of reimbursement due the Employees Retirement System of Texas for administering the provisions of this Act for the ensuing biennium.

Restrictions on Use of Funds

Sec. 8. (a) None of the money appropriated to pay benefits under this Act may be diverted or used to pay any benefits other than those provided by this Act.

(b) This Act does not limit or reduce any benefit otherwise payable at or above the age of 55 under Chapter 352, Acts of the 50th Legislature, 1947, as amended (Article 6228a, Vernon's Texas Civil Statutes).

Protection Against Conversion of Funds and Fraud

Sec. 9. (a) A person who knowingly or intentionally confiscates, misappropriates, or converts money provided under this Act is guilty of a felony and on conviction is punishable by confinement in the Texas Department of Corrections for not less than one nor more than five years.

(b) A person who knowingly or intentionally makes any false statement or falsifies or permits to be falsified any record or records required under the provisions of this Act in any attempt to defraud or to increase benefits for any person is guilty of a felony and on conviction is punishable by confinement in the Texas Department of Corrections for not less than one nor more than five years.

(c) If any change or error in the records results in any person receiving more or less supplemental retirement benefits than the person would have been entitled to receive under the provisions of this Act had the records been correct, the State Board of Trustees of the Employees Retirement System of Texas shall correct the error and so far as practicable shall adjust the payment so that the actuarial equivalent of the benefit to which the person was actually entitled shall be paid.

Secs. 10, 11. [Amends art. 6228a, § 5, subsec. A, subd. 3; amends art. 6701d, § 141(c)]

Effective Date

Sec. 12. This Act takes effect September 1, 1979, except Sections 4 and 10, which take effect September 1, 1980.

Nonseverability

Sec. 13. If Subsection (b) of Section 5 of this Act is held to be invalid by a court of competent jurisdiction and the decision becomes final, this entire Act becomes void.

[Acts 1979, 66th Leg., p. 528, ch. 249, §§ 1 to 3, 5 to 9, 12, 13, eff. Sept. 1, 1979; § 4, eff. Sept. 1, 1980.]

Art. 6228g. Texas County and District Retirement System

[See Compact Edition, Volume 5 for text of 1]

Definitions

Sec. 2. Unless a different meaning is plainly indicated by their context, the following words and phrases as hereafter used in this Act shall have the following meanings:

[See Compact Edition, Volume 5 for text of 2.1 and 2.2]

3. The term "subdivision" means and includes: the several counties of this State; all other political subdivisions of this State now existing or hereafter established, which consists of all of the geo-

graphical area of a county, or of all or parts of more than one county; the several political subdivisions of each county of this State which have the power of taxation; and all counties and cities operating a city-county hospital under the provisions of Chapter 383, Acts of the 48th Legislature, Regular Session, 1943, as amended.¹ The term also includes, for the purpose of providing similar coverage for its own employees, the Texas County and District Retirement System. The term also includes, for the purpose of providing similar coverage for its employees, the Texas Association of Counties. But the term "subdivision" excludes all incorporated cities and towns, and all school districts and junior college districts established under the laws of this State.

¹ Article 4494i.

[See Compact Edition, Volume 5 for text of 2.4 and 2.5]

6. "Employee" means any person who is certified by a subdivision as being regularly engaged in the performance of the duties of an elective or appointive office, or of any position of employment with the subdivision, which office or position normally requires actual performance of duty during not less than nine hundred (900) hours a year, and as receiving compensation from the subdivision for the performance of such duties, or an employee of a judicial district probation department participating in the system under a contract as provided in Section 10(g), Article 42.12, Code of Criminal Procedure, 1965, as amended. Upon the terms and conditions set out in Section 11A, the term "employee" includes any person not otherwise an employee as that term is defined in this subdivision, who is regularly engaged in the performance of the duties of an elective or appointive State or district office, who receives compensation, in addition to that received from the State of Texas, from the county or counties in which he serves, and whose participation in the system has been approved by the respective subdivision to the extent of any additional compensation received from the participating subdivisions. A person employed by a district probation department shall be deemed to be an "employee" of a participating county pursuant to that county's contract with the judicial district as authorized and provided in Article 42.12, Code of Criminal Procedure, 1965, as amended. The term "employee" does not include any person as to any period of service for which he would be eligible to be included in or entitled to receive credit in the Teacher Retirement System of Texas, the Employees Retirement System of Texas, the Texas Municipal Retirement System, or any other pension fund or retirement system supported wholly or partly at public expense, except that nothing in this Act shall be construed as precluding simultaneous coverage of persons un-

der the Federal Old Age and Survivors Insurance System or any successor thereto, or the Judicial Retirement System of Texas, and this System, by reason of the same service.

[See Compact Edition, Volume 5 for text of 2.7 to 2.15]

16. "Average prior service earnings" shall mean the average monthly earnings received by an employee for service rendered to a participating subdivision during the thirty-six (36) months immediately preceding the effective date of participation of such subdivision in the System, or if there be less than thirty-six (36) months of such service, the average shall be computed for the number of months of such service within such thirty-six (36) months period; provided, however, that in calculating the average prior service earnings of any member as employee of a subdivision having a participation date prior to January 1, 1978, actual earnings in any month shall be excluded to the extent that they exceed the lower of the following rates of earnings:

(a) the annual earnings prescribed by the governing body at the time of its determination to participate in the System as the maximum current service earnings for current service deposits and contributions; or

(b) annual earnings in excess of Twelve Thousand Dollars (\$12,000.00) per annum.

[See Compact Edition, Volume 5 for text of 2.17 to 2.19]

20. "Basic Annuity" means that portion of a member's retirement benefit that is attributable to the sum of the member's accumulated deposits and the member's Accumulated Current Service Credit.

21. "Supplemental Annuity" means that portion of a member's retirement benefit that is attributable to the sum of the member's Accumulated Allocated Prior Service Credit and his Accumulated Multiple Matching Credit. The Supplemental Annuity shall also include any increase in monthly benefit payments to annuitants granted by the participating subdivision on or after January 1, 1978.

[See Compact Edition, Volume 5 for text of 2.22 to 2.25]

26. "Actuarial Equivalent" shall mean a benefit of equal present value when computed upon the basis of such annuity or mortality tables as shall be adopted by the Board, and upon the assumption of regular interest.

27. "Current Interest" shall mean interest at a rate per centum per annum ascertained each year by dividing (1) the amount in the Interest Fund on December 31 of such year before the transfer of interest to other funds, less an amount equal to

regular interest on the sum of the mean amount in the Current Service Annuity Reserve Fund during such year and the amount in the Subdivision Accumulation Fund at the beginning of such year by (2) an amount equal to the amount in the Endowment Fund at the beginning of such year and plus the sum of the accumulated deposits in the Employees Saving Fund at the beginning of such year to the credit of all members included in the membership of the System on December 31 of such year before any transfers for retirements effective December 31 of such year are made, it being provided that the above division shall be carried to only three (3) decimal places and shall never be taken as greater than the rate of regular interest.

28. "Regular Interest" as to all periods of time elapsing prior to January 1, 1977, means interest at the rate of three per centum (3%) per annum compounded annually, and as to all periods of time elapsing from and after January 1, 1977, means interest at the rate of four per centum (4%) per annum compounded annually; provided, however, that this provision shall not alter or require recalculation of the amount of any annuity on which a monthly benefit payment was made prior to July 1, 1977.

29. "Beneficiary" means any person nominated by the member (by a written designation filed with the Board) to receive in case of the member's death a benefit payable after the death of the member under the provisions of this Act.

[See Compact Edition, Volume 5 for text of 2.30]

Participation

Sec. 3. 1. Participation of Subdivisions.

(a) Each subdivision electing to participate in this System shall be included within and subject to the provisions of this System. Election to participate shall be by vote of the governing body of the subdivision in accordance with the usual procedure prescribed for other official actions of the subdivision. In addition to other rights allowed by this Act to employees of a subdivision beginning participation in the System, any subdivision whose effective date of participation is later than August 31, 1979, (i) must grant to its employees who become members of the System the right of "deferred service retirement" as defined below in Subsections 11(d)(5) and 11(d)(7) of Section VI and upon the conditions therein stated, and (ii) must grant the right of continued membership and vesting of the right to retire to members who satisfy the requirements and conditions stated in Subsection 11(d)(8) of Section VI. The governing body of any subdivision so electing shall notify the Board of such action within ten (10) days thereafter. Participation of any subdivision shall begin as of the first day of any month designated by the governing body and approved by the Board.

[See Compact Edition, Volume 5 for text of 3.1(b) to (d)]

2. Participation of Employees.

The membership of the System shall be composed as follows:

[See Compact Edition, Volume 5 for text of 3.2(a) and (b)]

(c) Any person, not a member of this System, who has been an employee of a participating subdivision prior to the effective date of participation of such subdivision but who is not an employee of such participating subdivision on the effective date of participation of such subdivision, shall, if he again becomes an employee of such subdivision after the effective date of its participation become a member of the System upon the date he again becomes an employee, provided he is then under the age of sixty (60) or as to persons sixty (60) years or over, if such re-employment is within five (5) years after the effective date of the subdivision's participation, provided the extent of his prior service to such subdivision is equal to or in excess of the period by which his then attained age exceeds the age of sixty (60) years; and otherwise such person shall not be eligible to become a member of this System.

(d) Any person who has been a member of this System and whose membership has terminated by withdrawal, shall, if he again becomes an employee of a participating subdivision, become a member of the System upon the first day of the month following the date such person again becomes an employee if he is then under the age of sixty (60) years, but any such person who is then sixty (60) years or over shall not be eligible to become a member of the System.

(e) Membership in the System shall cease and terminate if:

(1) A member is absent from service for sixty (60) consecutive months prior to accumulating sufficient creditable service to entitle the member (under Subsection 11(d)(8) of Section 6 or Subsection 4 of Section 7) to a vested right to retirement, or prior to accumulating at least four (4) years of creditable service with one or more participating subdivisions that have adopted twelve-year vesting pursuant to Subsection 11(d)(8) of Section 6; and provided, however, that during the time the United States is at war, and for a period of twelve (12) months thereafter, time spent by a member of the System (1) on active duty in the Armed Forces of the United States and their auxiliaries and/or in the Armed Forces Reserve of the United States and their auxiliaries and/or in the service of the American Red Cross as a result of having volunteered or having been drafted and/or conscript-

ed thereinto; or (2) in war work as a direct result of having been drafted or conscripted by governmental action into said war work, shall not be construed as absent from service insofar as the provisions of this Act are concerned but shall count toward membership service. "War" means declared or undeclared war or any conflict between the Armed Forces of the United States and any foreign armed forces.

(2) A member's service in a participating subdivision is discontinued and the member withdraws his accumulated deposits, or

(3) A member dies, or

(4) A member becomes an annuitant.

(f) Any person who was no more than 61 years old when he became an elected official of a participating subdivision shall become a member of the system, provided that such person and the participating subdivision have made or do make contributions determined by the director to be sufficient to maintain the fiscal and actuarial integrity of the system. Such person may be allowed current service credits for service prior to the effective date of this Act which he would have earned had he not been ineligible for membership at the time he became an employee of the subdivision solely because of his age.

Revenue

Sec. 4. 1. Member deposits.

[See Compact Edition, Volume 5 for text of 4.1(a) and (b)]

(c) The governing body of any subdivision having a participation date prior to January 1, 1978 by appropriate order or resolution, certified to the Board, may provide that earnings of the several employees of the subdivision in excess of the sum of Three Thousand Six Hundred Dollars (\$3,600) in any year, or earnings in excess of any other greater multiple of One Thousand Two Hundred Dollars (\$1,200) per year, shall be excluded in calculating the deposits and contributions to be made by reason of current service of its employee-members; and the amounts required to be paid in each month by the members as deposits shall not exceed deposits calculated on the basis of one-twelfth ($\frac{1}{12}$ th) of the maximum annual earnings to be considered for retirement purposes as specified by such order or resolution. In like manner, the governing body may increase the amount of earnings on which such deposits and contributions shall be made.

[See Compact Edition, Volume 5 for text of 4.1(d) to (h)]

2. Subdivision Contributions.

(a) Each participating subdivision shall make benefit contributions to the System each month equal to the amount paid to the System by all of its employ-

ees for the same payroll period. All such benefit contributions shall be credited to the subdivision's account in the Subdivision Accumulation Fund.

(b) Each participating subdivision shall make payment of the expense contribution to the System each month of the same amount as the contributions made to the Expense Fund by all of its employees for the same payroll periods.

(c) On or before the fifteenth day of each month, each participating subdivision shall remit or cause to be paid to the System at its office the amounts of the benefit contributions and expense contributions due for the preceding month as herein provided.

(d) Unless otherwise provided for and paid by a subdivision all contributions of the subdivision shall be paid out of the fund from which earnings are paid to the members or out of the General Fund of the subdivision.

Method of Financing

Sec. 5.

1. Funds of the System:

All the assets of the System shall be credited according to the purpose for which they are held to one (1) of six (6) funds, namely, the Employees Saving Fund, the Subdivision Accumulation Fund, the Current Service Annuity Reserve Fund, the Interest Fund, the Endowment Fund and the Expense Fund.

2. The Employees Saving Fund:

The Employees Saving Fund shall be a Fund in which shall be accumulated the deposits from the compensation of members plus current interest earnings. Contributions to and payments from the Employees Saving Fund shall be made as follows:

(a) Each participating subdivision shall cause to be deducted from the salary of each member, on each and every payroll of such employer for each and every payroll period, a sum of money equal to seven per centum (7%), six per centum (6%), five per centum (5%), or four per centum (4%) of his current-service earnings, as fixed by the governing body of the participating subdivision. In determining the amount earnable by a member in a payroll period, the Board may consider the rate of annual compensation payable to such member on the first day of the payroll period as continuing throughout such payroll period, and it may omit deductions from earnings for any period less than a full payroll period, if the employee was not a member on the first day of the payroll period, and to facilitate the making of deductions, it may modify the deduction required of any member for any payroll period by the amount of twenty-five cents (25¢) or less.

(b) The deductions provided for herein shall be made notwithstanding that the minimum compen-

sation provided for by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deductions made and provided for herein and shall receipt for his salary or compensation and payment of salary or compensation, less said deduction, shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such person during the period covered by such payment, except as to the benefits provided under this Act. The employer shall certify to the Board on each and every payroll, or in such other manner as said Board may prescribe, the amounts to be deducted; and each of said amounts shall be deducted, and when deducted shall be paid into said Employees Saving Fund, and shall be credited to the individual account of the member from whose compensation said deduction was made.

(c) During the time that the United States is at war (as hereinabove defined) and for twelve (12) months thereafter, a member of the System (1) in the Armed Forces of the United States or their auxiliaries or in the Armed Forces Reserve of the United States and their auxiliaries or in the service of the American Red Cross, as a result of having volunteered or having been drafted or conscripted thereinto, or (2) in war work as a result of having been drafted or conscripted by governmental action into said war work, shall be permitted to deposit each year to the System a sum not to exceed the amount deposited by him to said System during the last year that he was employed as an employee under the provisions of this Act. The sum so deposited by such member and received by the System shall be deposited by said System in the Employees Saving Fund to the credit of the member's individual account and shall be treated in the same manner as funds deposited by the member while he was last employed as under the provisions of this Act. The subdivision by which such person was last employed shall make concurrent benefit contributions matching those so made by such member.

(d) Current interest on member's deposit shall be credited annually as of the thirty-first day of December and shall be allowed on the amount of the accumulated deposits standing to the credit of the member at the beginning of the year and shall not be allowed for parts of a year.

(e) Should a member cease to be an employee of a participating subdivision except by death or retirement under the provisions of this Act, upon the filing of formal application therefor, such member's accumulated deposits shall be paid to him and his account in the Employees Saving Fund closed.

Following the automatic termination of membership in the System for those members who have been absent from service in all participating subdivisions more than sixty (60) consecutive months, the Employees Saving Fund account of such members shall cease to draw interest.

(f) Should a member die before retirement the amount of his accumulated deposits shall be paid as provided in Section VII of this Act.

(g) Upon the retirement of a member his accumulated deposits shall be transferred from the Employees Saving Fund to the Current Service Annuity Reserve Fund.

3. Subdivision Accumulation Fund:

The Subdivision Accumulation Fund shall be the Fund in which shall be accumulated all benefit contributions made to the Texas County and District Retirement System by the participating subdivisions and from which transfers and payments shall be made as below provided.

(a) The balances standing to the credit of each participating subdivision in its accumulation accounts in the System on December 31, 1977, after all other closing entries for such year have been made shall be credited to such subdivision's account in the Subdivision Accumulation Fund effective January 1, 1978. All benefit contributions thereafter payable by participating subdivisions shall be paid into the Subdivision Accumulation Fund and shall be credited to the accounts of the respective participating subdivisions in such Fund.

(b) Upon the retirement of a member, an amount equal to that proportion of his accumulated deposits in the Employees Saving Fund which the participating subdivision agreed on its participation date to provide as reserves for the Basic Annuity of the member shall be transferred from the Subdivision Accumulation Fund into the Current Service Annuity Reserve Fund. If the accumulated deposits of such retiring members have accumulated from deposits made while an employee of a single participating subdivision, such subdivision's account in the Subdivision Accumulation Fund shall be reduced by the amount so transferred. If such accumulated deposits arose from service in more than one participating subdivision, the accounts of the involved participating subdivisions in the Subdivision Accumulation Fund shall be reduced by the respective amounts chargeable to such participating subdivisions.

(c) All payments under prior service annuities heretofore granted and in force and all payments under Supplemental Annuities arising from credits granted by a participating subdivision shall be paid from this Fund and charged to such participating subdivision's account in this Fund subject

to the following: The Board shall have the power to reduce proportionately all payments under such annuities at any time and for such period of time as is necessary so that the payments under such annuities in any year shall not exceed the amounts available in such participating subdivision's account in the Subdivision Accumulation Fund.

(d) In the event that a county which has provided for participation of county hospital employees separately from the participation of other county employees shall cease to operate a county hospital, the commissioners court may by order direct that the separate Subdivision Accumulation Fund accounts maintained by the county with the System be consolidated, and all obligations of the county arising under this Act out of service performed by employees of the county shall thereafter be charges against the consolidated Subdivision Accumulation Fund account. The System shall, following adoption of such order, consolidate the accounts of the county as directed.

(e) If any participating subdivision has no employees who are currently members of the System and has no present or potential liabilities resulting from the participation of former employees, then in such event any amount standing to the credit of such subdivision in the Subdivision Accumulation Fund shall upon its application be repaid to such subdivision, and its participation in the System shall cease. If any such subdivision has been merged or consolidated with a city or other agency which is not eligible to participate in the System and no longer exists as a separate entity and if under the applicable law or merger agreement the successor agency is entitled to the assets of the merged or consolidated subdivision, then the amount standing to the credit of such subdivision shall upon application be paid to the successor agency.

4. Current Service Annuity Reserve Fund:

The Current Service Annuity Reserve Fund shall be the Fund in which shall be held all reserves for current service annuities heretofore granted and in force and for all Basic Annuities hereafter granted, and from which shall be paid all such annuities and all benefits in lieu of such annuities, payable as provided in this Act. This Fund shall be made up of transfers as follows:

(a) At the time of service or disability retirement, the accumulated deposits of a retiring member shall be transferred from the Employees Saving Fund to the Current Service Annuity Reserve Fund as reserves for the Basic Annuity purchased by said member's deposits.

(b) An amount equal to that proportion of the accumulated deposits of each retiring member which the participating subdivision agreed on its

participation date to provide at retirement, shall be transferred, upon such member's retirement, from the Subdivision Accumulation Fund as additional Basic Annuity reserves.

Transfers and payments from the Current Service Annuity Reserve Fund shall be made as provided in Section VII of this Act, upon the death, restoration to active service or removal from the disability list, of an annuitant retired on account of disability.

5. Interest Fund:

The Interest Fund is hereby created to facilitate the crediting of interest to the various other Funds. All income, interest and dividends derived from the deposits and investments authorized by this Act shall be paid into the Interest Fund. Once each year on the thirty-first day of December, interest shall be allowed and transferred to the other Funds respectively. After interest-bearing funds have been duly credited with interest for the year in the manner provided by this Act, the Board annually shall transfer all excess earnings from the Interest Fund to one or another of the several special accounts of the Endowment Fund as in its judgment the needs and condition of the System may require.

6. Endowment Fund:

The Endowment Fund shall be a Fund in which shall be accumulated gifts, awards, funds and assets accruing to the System which are not specifically required by other Funds established by this Act. The Endowment Fund shall consist of the following special accounts: the general reserves account; the distributive benefits account; the perpetual endowment account; and such other special accounts as the Board by resolution may establish.

(a) There shall be credited to the general reserves account all current interest allocable to the Endowment Fund, and there shall be transferred from the Interest Fund to said account such portion of the excess earnings, as in the judgment of the Board may be necessary: (1) to provide adequate reserves against insufficient future earnings on investments to allow regular interest on Funds entitled thereto under the provisions of this Act; (2) to provide adequate reserves against special and general contingency requirements of other funds of the System; and (3) to provide such amount, if available, as is required for the administrative expenses of the System in the ensuing year. The requirements of this account shall constitute a first charge against excess interest earnings standing to the credit of the Interest Fund at the end of any year. If in the judgment of the Board, the amount to the credit of the general reserves account is in excess of that needed to provide adequate reserves against insufficient earnings on investments, and special and general contingency requirements, then so much of any

excess as remains as is required to pay administrative expenses for the ensuing year may be transferred to the Expense Fund.

(b) After the requirements of the general reserves account of this Fund have been satisfied, the Board may transfer any balance of excess earnings remaining in the Interest Fund at the end of a calendar year to a special account in the Endowment Fund to be denominated the "distributive benefits account." If in the judgment of the Board the amount to the credit of the distributive benefit account at the end of the year is sufficient to warrant such action, the Board may by resolution:

(1) authorize the distribution and payment of all or part of said amount as a distributive benefit to the persons who were annuitants of the System on the last day of said calendar year in the ratio that the monthly benefit of each such annuitant bears to the total of all annuity payments made by the System for the final month of such year.

(2) authorize the distribution and application of all or part of said amount as supplemental interest earned by, and to be paid and credited to the respective individual accounts of members in the Employees Saving Fund, and to the respective accounts of participating subdivisions in the Subdivision Accumulation Fund, in proportion to the current interest allowed on individual accounts of members in the Employees Saving Fund and the regular interest allowed on accounts of participating subdivisions in the Subdivision Accumulation Fund. The supplemental interest shall be allowed on the Employees Saving Fund in the same manner that current interest is allowed on said Fund; and supplemental interest shall be allowed on the Subdivision Accumulation Fund in the same manner that regular interest is allowed on said Fund.

(c) The perpetual endowment account shall be the account in which there shall be deposited and kept such funds, gifts and awards as the grantors thereof may designate as a perpetual endowment for the System.

7. Expense Fund:

The Expense Fund shall be the Fund from which the expenses of administration and maintenance of the System shall be paid.

(a) The Director shall prepare annually an itemized budget showing the amount required to defray the expenses for the ensuing fiscal year and shall submit the report to the Board for its review, amendment and adoption.

(b) The amount estimated to be required to meet the expenses of the System shall be paid from the general reserves account of the Endow-

ment Fund to the extent available. The Board, as evidenced by a resolution of the Board recorded in its minutes, may transfer to the Expense Fund the amount required to cover the expenses as estimated for the year.

(c) If the amount estimated to be required to meet said expenses of the System is in excess of the amount in the general reserves account of the Endowment Fund which is available for administrative expenses, the Board, by a resolution recorded in its minutes, shall assess the estimated additional amount against and collect the same from the participating subdivisions and from members as Expense Fund contributions.

Creditable Service

Sec. 6.

[See Compact Edition, Volume 5 for text of 6.1 to 6.4]

5. Creditable service at retirement on which the retirement allowance of a member shall be based shall consist of the current service rendered by him for which he has contributions credited to his account in the Employees Saving Fund, and also, if he has a prior service certificate which is in full force and effect, the length of the service credited on his prior service certificate.

Any participating subdivision by order of its governing body may allow those persons who are members at the date of said order and who have terminated a previous membership in the System by withdrawal of then-accumulated deposits and who at date of such order have or thereafter accumulate at least twenty-four (24) consecutive months of creditable service with such subdivision since reestablishment of membership, to redeposit with the System in a single sum the accumulated deposits made as an employee of such subdivision, plus a withdrawal charge of five percent (5%) per annum from date of withdrawal to date of redeposit, and to provide that such member shall thereupon be entitled to restoration of all creditable service deriving from service performed by such member for such subdivision, which the member had at date of termination of the earlier membership.

Any such eligible member who makes the required deposits and pays the withdrawal charges above provided shall thereupon be entitled to restoration of all creditable service derived from service with such participating subdivision, which the member had at date of such previous membership; and the amount redeposited shall be placed in the member's individual account in the Employees Saving Fund of the System, but the five percent (5%) per annum withdrawal charge shall be deposited in the Subdivision Accumulation Fund to the credit of the participating subdivision assuming the other obligations arising

from granting of credit for such former service. In such event the consenting subdivision's account in the Subdivision Accumulation Fund shall be charged with the necessary reserves to fund any credits restored to the member. No such restoration of credits shall be undertaken by any participating subdivision unless it shall first be determined by the actuary that the granting of such credits by the participating subdivision would not impair the ability of the subdivision to meet all present and prospective liabilities of the subdivision's account in the Subdivision Accumulation Fund, and would not impair the ability of the subdivision to provide for payment of Basic Annuities or Supplemental Annuities.

[See Compact Edition, Volume 5 for text of 6.6]

7. "Allocated Prior Service Credit" shall mean that percentage of the calculated "Maximum Prior Service Credit" of a member which is granted by the subdivision to the member, such percentage to be the same for all of the members of the subdivision and to be such that the total "Allocated Prior Service Credits" granted by the subdivision will not exceed in the aggregate an amount for which the prospective benefit contributions of such subdivision will be adequate:

(a) to fund, within twenty-five (25) years from such subdivision's participation date, all obligations that are charges against its account in the Subdivision Accumulation Fund; and

(b) to provide the amount required according to this Act to be paid during such period under Supplemental Annuities arising from credits granted by such participating subdivision, and to provide such amounts as will be required to provide Basic Annuities in accordance with Paragraph b of Subsection 4 of Section V.

[See Compact Edition, Volume 5 for text of 6.8]

9. (a) "Current Service Credit" as used herein means an amount equivalent to a percentage (determined as hereinafter provided) of the deposits made to the System by a member during a given calendar year. Such percentage of deposits shall be the percentage agreed to by the subdivision on its participation date. For subdivisions participating on or after January 1, 1978, such percentage shall be 100%.

(b) "Accumulated Current Service Credit" shall mean the "current service credit" allowed a member for a given calendar year, accumulated at interest (as provided in this subsection) from the end of such year until the effective date of such member's retirement. Interest shall be allowed for each respective year of the accumulation period at the rate of interest allowed by the System on members' deposits for such year, but interest shall not be allowed for part of a year.

10. (a) "Multiple Matching Credit" shall mean an amount equivalent to a percentage (determined as hereinafter provided) of the deposits made to the System by a member during a given calendar year. Such percentage shall be 0% until some greater percentage is elected by the member's participating subdivision in accordance with the provisions of Subsection 11 of Section VI. The Multiple Matching Credit of a member shall include the excess, if any, of his Current Service Credit in force on January 1, 1978, over his Current Service Credit as defined in Paragraph (a) of Subsection 9 of this Section VI.

(b) "Accumulated Multiple Matching Credit" shall mean the Multiple Matching Credit allowed a member for a given calendar year, accumulated at interest (as provided in this subsection) from the end of such year until the effective date of such member's retirement. Interest shall be allowed for each respective year of the accumulation period at the rate of interest allowed by the System on members' deposits for such year, but interest shall not be allowed for part of a year.

11. (a) A participating subdivision may increase benefits theretofore granted, or credits upon which future retirements will be allowed, or may adopt any additional coverage allowed by this Act, in the time and manner, and subject to the conditions set out in this section.

(b) A participating subdivision may provide for increase in such benefits or credits or may adopt additional coverage only after an actuarial valuation (as prescribed by Section 8, Section 4(e)) has been made as of December 31 valuation date which is co-terminal with, or subsequent to, completion of three or more years of participation from and after the later of the following dates, viz:

(1) the original date of participation by the subdivision involved; or

(2) the effective date of the latest preceding increase in benefits, or extension of coverage, allowed by such subdivision under this section.

(c) Any extension of coverage, or increase in benefits, may be made effective only on January 1 of a calendar year, and after the lapse of twelve months from the actuarial valuation date above mentioned.

(d) The increases in credits or benefits and additional coverages which may be adopted and allowed by the subdivision (conditioned that it may provide for funding the same as hereinbelow provided) are one or more of the following:

(1) Increase in Multiple Matching Credits theretofore allowed and to be allowed thereafter with such increase to be a multiple of 10% of member deposits, provided that all Multiple Matching Credits theretofore allowed shall be further increased, if necessary, so that all Multiple Matching Credits are provided on the basis of the same percentage of member deposits;

(2) Increase in monthly benefit payments attributable to benefits payable from the Current Service Annuity Reserve Fund;

(3) Increase in Allocated Prior Service Credits theretofore granted and in effect;

(4) Increase in monthly benefit payments attributable to benefits payable from the Subdivision Accumulation Fund;

(5) Granting the right of deferred service retirement, as hereinbelow defined, to any of its employees who has accumulated twenty (20) or more years of Creditable Service with such subdivision and other participating subdivisions which have adopted twenty-year deferred service eligibility.

The terms "right of deferred service retirement" as used above means the right to remain in service and to file a written selection with the Retirement Board of an optional allowance and designated nominee (as provided in Subsection 3 of Section 7), and in the event the member thereafter dies before retirement he shall be considered to have retired under the optional benefit selected effective as of the last day of the calendar month next preceding the month in which death occurs. In event any person eligible for deferred service retirement shall die without having a written selection of optional allowance and designated beneficiary on file with said Board, and if the member leaves a lawful spouse surviving, then the surviving spouse of such member may select the optional benefit in the same manner as if the member had made the selection; but if the member leaves no lawful spouse surviving, then at the election of the executor or administrator of the estate of the member, the member shall be considered to have retired under an Option 4A benefit effective at the end of the month preceding the death of the member, or such deceased member shall be considered as having been an active member at death, and the estate of the member shall be entitled to receive the accumulated contributions of the member.

(6) Granting prior service credit for any periods of active service (not in excess of 36 months total), in the armed forces of the United States performed during the time the United States was involved in organized conflict with foreign forces, whether in a formal state of war or police action, to any person who was an employee of such subdivision immediately prior to the beginning of such service in the armed forces, who entered such service without intervening employment and who returned to the employment of the participating subdivision within one hundred eighty (180) days following his discharge from or release from active duty with the armed forces.

(7) Granting the right of deferred service retirement, as that term is defined in Paragraph (5) above, to any of its employees who shall have attained the age of sixty (60) years and has accumulated twelve (12) or more years of creditable service with such subdivision and other participating subdivisions which have adopted twelve-year deferred service eligibility, provided, however, that no participating subdivision shall be eligible to grant the benefits described in this Paragraph (7) unless such subdivision has previously granted or is currently granting the twenty-year deferred service benefits as described in Paragraph (5) above.

(8) Granting to any of its employees who has accumulated at least twelve (12) years of creditable service with such subdivision and other participating subdivisions which have adopted twelve-year vesting, the right, if he withdraws from service prior to attainment of age sixty (60), to remain a member and to retire at age sixty (60), or at any date subsequent thereto, conditioned that the member is still living at date of retirement and conditioned that he has not withdrawn his accumulated contributions.

(9) Granting to any person who is or was a member of the military service during the time the United States was or is involved in organized conflict with foreign forces, whether in a state of war or a police action involving conflict with foreign forces, or for reason of crisis within this country, and within a period of twelve (12) months after the end of the conflict, and who has been or is relieved from active military service under conditions other than dishonorable, and who at any time thereafter becomes a member of the Texas County and District Retirement System, either as an elective or appointive officer or an employee, the right to apply for and receive credit for retirement service under this Act, upon the following conditions having been met: (A) If such elective official or appointive official or employee has been employed by a participating subdivision or subdivisions for ten (10) years and has ten (10) years' retirement credit as an employee, he shall be allowed Current Service Credit and Multiple Matching Credit for each month of his active military service, but not to exceed three (3) years. (B) If such elective official or appointive official or employee has been employed by a participating subdivision or subdivisions for fifteen (15) years, and has fifteen (15) years' retirement credit as an employee, he shall be allowed Current Service Credit and Multiple Matching Credit for each month of his active military service, but not to exceed five (5) years. (C) Notwithstanding any other provisions herein no person otherwise eligible for credit for military service herein shall be eligible to receive such credit if such person shall

be receiving or hereafter receives any military retirement provided by any federal law or regulation or federal retirement act, for at least twenty (20) years' active duty. No person shall be granted credit for any such service that is simultaneously credited by the Texas County and District Retirement System or by any other retirement system or program established under or governed by the laws of this State. All applications for credit for military service under this Act must be made within one year after the effective date of granting by the subdivision of such credit for military service, or within one year of the date the person making such application first is eligible for said credit, whichever is later. Any person applying for credit authorized by this provision shall pay to the Texas County and District Retirement System a sum equal to the number of months in actual service for which credit or additional credit is sought times his average per month deposit, not to exceed Fifteen Dollars (\$15) per month, made with the retirement system during the first twelve (12) months as an employee after becoming a member of the retirement system. Such contributions made for military retirement credit shall be deposited in the member's individual account in the Employees Saving Fund. Benefit contributions shall be made by the subdivision in an amount equal to the amount deposited by the member, and shall be deposited to its account in the Subdivision Accumulation Fund. The Board of Trustees of the Texas County and District Retirement System shall determine and by order define the period or periods which shall be recognized as organized conflict or crisis within the contemplation of this Act; and thereupon shall allow credit for every full month of such period or periods.

(e) No increase in monthly benefit payments attributable to benefits payable from the Current Service Annuity Reserve Fund or from the Subdivision Accumulation Fund, Allocated Prior Service Credits, Current Service Credits, or Multiple Matching Credits theretofore allowed shall be permitted which would produce greater benefits for such completed service than would be provided for Current Service Credits and Multiple Matching Credits allowable for comparable current and future service.

(f) No such proposed increase in benefits or credits, or proposed extension of coverage shall be permitted if the result thereof (on the basis of calculations made by the actuary and approved by the Board) would impair the ability of the subdivision to fund within twenty-five (25) years from date of the December 31 valuation referred to in 11(b) above all obligations that are charges against its account in the Subdivision Accumulation Fund.

(g) No such increase in benefits or credits or proposed extension of coverage shall be permitted unless it is determined and certified by the actuary that the particular December 31 valuation date referred to in 11(b) above, all obligations of the subdivision then existing before any such increase, would be amortized on or before the 20th anniversary of said particular December 31 valuation date.

(h) No such increase in benefits or credits, or proposed extension of coverage shall be effective unless and until the proposal is approved by the Board as conforming to all of the requirements above.

[See Compact Edition, Volume 5 for text of 6.12]

13. Each subdivision having active members and annuitants who have had benefit credits calculated on a basis other than the member's full earnings may elect, effective January 1, 1978, or at the beginning of any subsequent calendar year, to have all such benefit credits of members not retired, and future payments of retirement benefits in force on the date of election recalculated on a full earnings basis, subject to the following conditions:

(a) Each member in the electing subdivision shall have his Maximum Prior Service Credit (or Maximum Special Prior Service Credit, if applicable) recalculated as the sum of:

(1) an amount determined in accordance with the provisions of Subsection 6 of Section VI (or Subsection 9(e) of Section X, if applicable) provided that such member's average prior service earnings for the purpose of such recalculation shall be as defined in Subsection 16 of Section II, except that actual earnings in excess of limits imposed by Subsections 16(a) and (b) of Section II shall not be excluded in determining such member's average prior service earnings; and

(2) an amount determined as two times the excess of (i) over (ii), discounted at regular interest from the date one year prior to the date of election to the subdivision's participation date, where (i) is the amount of accumulated deposits the member would have had one year prior to the date of election if in each calendar year since his date of membership in the System he had contributed on the basis of the deposit rate applicable at that time and his total earnings at that time, and (ii) is his actual accumulated deposits one year prior to the date of election.

(b) Each annuitant in the electing subdivision will have future payments of his monthly retirement benefit recalculated as the amount the annuitant would have been receiving as a monthly benefit on the date of election if at date of the member's retirement the monthly benefit had been calculated in accordance with the formula set out in the above Paragraph (a) of this subsection, except that the

accumulated deposits used in the calculation shall be determined as of the member's retirement date.

(c) Each subdivision electing this option must also elect for its members to make deposits after the date of election on a full earnings basis.

(d) No such recalculation of benefit credits shall be permitted if it is determined by the actuary that such recalculation would impair the ability of the subdivision to fund all obligations that are charges against its account in the Subdivision Accumulation Fund within the twenty-five (25) year period specified in Subsection 11(g) above.

Benefits

Sec. 7.

1. Composition of Retirement Benefits.

Each retirement benefit shall be composed of a Basic Annuity as defined in Subsection 20 of Section II and a Supplemental Annuity as defined in Subsection 21 of Section II. The Basic Annuity shall be payable from the Current Service Annuity Reserve Fund, and the Supplemental Annuity shall be payable from the Subdivision Accumulation Fund. All Supplemental Annuities shall be subject to reduction by the Board under the circumstances provided in Section V of this Act.

2. Service Retirement Eligibility.

(a) Any member, after one (1) year from the effective date of his membership, shall be eligible for service retirement who (1) shall have attained the age of sixty (60) years and shall have completed at least twelve (12) years of creditable service, or (2) shall have completed thirty (30) years of creditable service.

(b) Application for service retirement shall be made to the Board setting forth the date the member desires his retirement to become effective provided: (1) such application shall be executed and filed at least thirty (30) and not more than ninety (90) days prior to the date on which such retirement is to become effective; (2) the effective date specified in the application shall be the last day of a calendar month, and shall not be a date preceding the termination of the member's employment with an employing subdivision.

(c) With the provision that no retirement shall be effective within one (1) year after the effective date of his membership, each member shall be retired from employment by all subdivisions on the last day of the calendar year in which the age of seventy (70) is attained, or upon the last day of the calendar year in which he completes twelve (12) years of creditable service, whichever shall last occur; provided, however, that in exceptional cases and for substantial cause such retirement may be deferred by mutual consent of the member

and the employing subdivision from year to year for a period of not to exceed one (1) year at any time.

(d) Any member who has accepted service retirement shall be ineligible and disqualified to resume or continue service in any participating subdivision.

3. (a) Standard Service Retirement Benefit.

A member who retires upon the basis of service eligibility shall be entitled to receive a "standard service retirement benefit" which shall be the actuarial equivalent of the sum of a member's accumulated deposits, Accumulated Current Service Credit, Accumulated Allocated Prior Service Credit, and Accumulated Multiple Matching Credit.

The standard service retirement benefit shall be payable during the life of the member, but with the provision that upon the member's death an amount equal to the excess, if any, of the member's accumulated deposits at time of retirement over the sum of the "standard service retirement benefit" payments received by the member shall be paid to the member's estate unless he has directed such amount to be paid otherwise. Such excess shall be paid from the Current Service Annuity Reserve Fund and the Subdivision Accumulation Fund in the proportion that parts of the member's standard service retirement benefit that were payable from the respective funds bear to the whole benefit determined as of the effective date of retirement.

(b) Optional Service Retirement Benefits.

In lieu of the "standard service retirement benefit" allowable under Subsection 3(a) above, and provided that the member shall make such election and nomination within thirty (30) days after the date fixed for retirement, any member retiring for service may elect to receive the actuarial equivalent of his standard service retirement benefit as an optional service retirement benefit payable to the member during his lifetime, but with the provision that:

Option 1. Upon his death, the optional service retirement benefit shall be continued throughout the life of, and paid to, such person as the member shall nominate by written designation duly acknowledged and filed with the Board within the time above provided; or

Option 2. Upon his death, one-half of the optional service retirement benefit shall be continued throughout the life of, and paid to, such person as the member shall nominate by written designation duly acknowledged and filed with the Board within the time above provided; or

Option 3. In the event of his death before sixty (60) monthly payments have been made of the optional service retirement benefit, the payments shall be continued to such person as the

member nominates by written designation (or if no such designated beneficiary survives the member, to the member's estate) until the remainder of the sixty (60) monthly payments have been made; or

Option 4A. In the event of his death before one hundred twenty (120) payments have been made of his optional service retirement benefit, the payments shall be continued to such person as the member nominates by written designation (or if no such designated beneficiary survives the member, to the member's estate) until the remainder of the one hundred twenty (120) monthly payments have been made; or

Option 5. Some other benefit or benefits may be paid either to the member or to such person or persons as he may nominate, provided the same shall be approved by the Board, and provided such other benefit or benefits, shall be certified by the actuary to be the actuarial equivalent of the standard service retirement benefit to which the member is entitled at the effective date of his retirement.

Any member retiring for service who dies within thirty (30) days after the effective date of his retirement and who has not made an election to receive an optional service retirement benefit as herein provided shall be considered to have elected Option 4A above or, at the election of his beneficiary, such deceased member shall be considered as having been an active member at death and the beneficiary may thereby elect to receive the accumulated contributions of the deceased member.

4. Vesting. Deferred Service Retirement.

Any member who shall have accumulated at least twenty (20) years of creditable service may withdraw from service prior to the attainment of the age sixty (60) and shall become entitled to retirement with a Service Retirement Allowance upon his attainment of the age of sixty (60) years, or at his option at any date subsequent to his attainment of said age provided that such member is then living and has not withdrawn his contributions and provided that such retirement may not be effective prior to one year after the effective date of his membership and will be effective only as of the last day of a calendar month and will be effective not less than thirty (30) days or more than (90) days subsequent to the execution and filing with the Retirement Board of written application therefor.

Any member who has accumulated thirty (30) or more years of creditable service shall have the right, until the effective date of his retirement, to remain in service and to file a written selection with the Retirement Board, in such form as the Retirement Board may prescribe, of an optional allowance and designated nominee, as provided for in subsection

3(b) of this Section, and in the event such member thereafter dies before retirement he shall be considered to have retired effective as of the last day of the calendar month next preceding the month in which death occurs or as of the end of one year after the effective date of his membership whichever date shall occur last; and any such member who has filed such selection of optional allowance and designated nominee, may at his option from time to time, prior to retirement or death, file an amended written selection of optional allowance and designated nominee. If any such member who has accumulated thirty (30) or more years of creditable service dies before retirement without having a written selection of optional allowance and designated nominee on file with the Retirement Board, and if the member leaves a lawful spouse surviving, then the surviving spouse of such member may select the optional benefit in the same manner as if the member had made the selection; but if the member leaves no lawful spouse surviving, then at the election of the executor or administrator of the estate of the member, the member shall be considered to have retired under an Option 4A benefit effective at the end of the month preceding the death of the member, or such deceased member shall be considered as having been an active member at death, and the estate of the member shall be entitled to receive the accumulated contributions of the member.

5. Disability Retirement Eligibility:

With the provision that no retirement shall be effective within one (1) year after the effective date of membership, upon the application of a member or of his employer or his legal representative acting in his behalf, any member with less than twelve (12) years of creditable service may be retired by the Board, not less than thirty (30) and not more than ninety (90) days next following the date of filing of such application, on a disability retirement allowance, provided that the Medical Board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity is the direct result of injuries sustained subsequent to the effective date of membership by external and violent means as a direct and proximate result of the performance of his duties, that such incapacity is likely to be permanent and that such member should be retired.

With the provision that no retirement shall be effective within one (1) year after the effective date of membership, upon the application of a member or of his employer or his legal representative acting in his behalf, any member with twelve (12) years or more of creditable service, who is not eligible for service retirement, may be retired by the Board, not less than thirty (30) and not more than ninety (90) days next following the date of filing of such appli-

cation on a disability retirement allowance, provided that the Medical Board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity is likely to be permanent and that such member should be retired.

6. Standard Disability Retirement Benefits:

Upon retirement for disability a member shall receive a disability retirement benefit which shall be the actuarial equivalent of the sum of the member's accumulated deposits, Accumulated Current Service Credit, Accumulated Allocated Prior Service Credit and Accumulated Multiple Matching Credit.

7. Requirements and Conditions Applicable to Disability Benefits:

Once each year during the first five (5) years following retirement of a member on a disability retirement benefit, and once in every three-year period thereafter, the Board may, and upon his application shall, require any disability annuitant who has not yet attained the age of sixty (60) years to undergo a medical examination, such examination to be made at the place of residence of said annuitant or any other place mutually agreed upon, by a physician or physicians designated by the Board. Should any disability annuitant who has not yet attained the age of sixty (60) years refuse to submit to at least one (1) medical examination in any such periods by a physician or physicians designated by the Board, his allowance shall be discontinued until his withdrawal of such refusal, and should his refusal continue for one (1) year, all his rights in and to his allowance shall be revoked by the Board.

(a) Should the Medical Board report and certify to the Board that such disability annuitant is no longer physically or mentally incapacitated for the performance of duty, or that such disability annuitant is engaged in or is able to engage in a gainful occupation, and should the Board by a majority vote concur in such report, then his allowance shall be discontinued.

(b) Should a disability annuitant under the age of sixty (60) years be restored to active service in a participating subdivision, his retirement allowance shall cease, he shall again become a member of the System, and any reserves on his Basic Annuity at that time in the Current Service Annuity Reserve Fund shall be transferred to the Employees Saving Fund and to the Subdivision Accumulation Fund, respectively, in proportion to the original sum transferred to the Current Service Annuity Reserve Fund at retirement. Upon restoration to membership, any Prior Service Certificate on the basis of which his service was computed at the time of his retirement shall be restored to full force and effect, and in addition, upon his subsequent retirement, he shall be

credited with all his membership service. Should a disability annuitant die or be removed from the disability list for any cause other than restoration to active service, an amount equal to the amount by which such annuitant's accumulated deposits at the time of disability retirement exceed the sum of the Basic Annuity and Supplemental Annuity payments received by such annuitant under his disability allowance, if any such excess exists, shall be paid from the Current Service Annuity Reserve Fund and the Subdivision Accumulation Fund, in the proportion that parts of the disabled annuitant's disability retirement benefit that were payable from the respective funds bear to the whole benefit determined as of the effective date of retirement. Such payment shall be made to such annuitant if living; otherwise, such amount shall be paid to his estate unless he has directed such amount to be paid otherwise.

8. Return of Deposits Upon Other Terminations:

Should a member cease to be an employee of a participating subdivision except by death or retirement under the provisions of this Act, he shall, upon application, be paid in full the amount of the accumulated deposits standing to the credit of his individual account in the Employees Saving Fund. In the event of death of a member before retirement, and in the event no deferred retirement benefit is payable by reason of such death, the amount of his accumulated deposits standing to the credit of his individual account in the Employees Saving Fund (together with interest on the mean amount of his accumulated contributions from the beginning of the year in which death occurs to the end of the month preceding the month in which death occurs at the annual rate of interest credited by the System on member accounts during the preceding year) shall be paid to his estate unless he has directed the account to be paid otherwise. Seven (7) years after cessation of service, if no previous demand has been made, any accumulated deposits of a contributor shall be returned to him or to his estate. If the contributor or the administrator of his estate cannot then be found, his accumulated deposits shall be escheated to the Retirement System, and shall be credited to the perpetual endowment account of the Endowment Fund.

9. Valuation Basis Adjustment in Current Service Annuities.

The Board of Trustees is authorized to increase the monthly benefits payable after July 1, 1977, on each current service annuity on which a monthly benefit payment was made on June 30, 1977. The monthly benefits payable may be increased by the percentage by which (a) exceeds (b), where (a) is the Current Service Annuity Reserve Fund balance as of July 1, 1977, plus regular interest on the mean

balance of such fund from January 1, 1977, to July 1, 1977, and (b) is the System's current service annuity reserve calculated on the basis of four percent (4%) interest and such mortality and other tables adopted by the Board as may become effective on July 1, 1977.

10. Valuation Basis Adjustment in Prior Service Annuities.

The Board of Trustees is authorized to increase the monthly benefits payable after July 1, 1977, on each prior service annuity on which a monthly benefit payment was made on June 30, 1977. The monthly benefit payable may be increased for annuitants in each participating subdivision by the percentage by which (a) exceeds (b), where (a) is the subdivision's prior service reserve calculated on the basis of three percent (3%) interest and such mortality and other tables adopted by the Board as are in effect on June 30, 1977, and where (b) is the subdivision's prior service annuity reserve calculated on the basis of four percent (4%) interest and such mortality and other tables adopted by the Board as may become effective July 1, 1977. It is further provided that no increase in monthly benefits payable on prior service annuities for annuitants of a particular subdivision shall be made in an amount which (according to calculations made by the actuary on the basis of four percent (4%) interest and such mortality and other tables as are adopted by the Board) would result in a probable future depletion of the subdivision's account in the Subdivision Prior Service Accumulation Fund with the resulting need to reduce prior service annuities payable to retired members.

Administration

Sec. 8.

[See Compact Edition, Volume 5 for text of 8.1]

1a. The Board of Trustees of the Texas County and District Retirement System is subject to the Texas Sunset Act,¹ but it is not abolished under that Act. The board shall be reviewed under the Texas Sunset Act during the period in which state agencies abolished effective September 1 of 1989 and of every 12th year after 1989 are reviewed.

2. The Board shall have, in addition to all other powers and duties arising out of this Act not otherwise specifically reserved or delegated to others, the following specific powers and duties and is hereby authorized and directed to:

(a) Hold regular meetings in March, June, September and December of each year, and such special meetings at such other times as may be called by the Director upon written notice to the trustees. Five (5) days notice of each special meeting shall be given to each trustee, unless such notice is waived. All meetings of the Board shall

be open to the public and shall be held in the offices of the Board or in any other place specifically designated in the notice of any meeting.

(b) Consider and pass on all applications for annuities and benefits, authorize the granting of all annuities and benefits and suspend any payment or payments, all in accordance with the provisions of this Act.

(c) Certify the current rate of interest as approved in writing by the actuary and notify all participating subdivisions thereof.

(d) Obtain such information from any member or from any participating subdivision as shall be necessary for the proper operation of the System.

(e) Establish an office in the Capital City or in one of the participating subdivisions. All books and records of the System shall be kept in such office.

(f) Appoint a Director for the purpose of managing this System, investing the Funds and carrying out the administrative duties of the System. The Board shall also appoint an actuary for the purpose of carrying out all the necessary actuarial requirements of the System; appoint an attorney; appoint a Medical Board; and employ such additional actuarial, clerical, legal, medical and other assistants as shall be required for the efficient administration of the System; and determine and fix the compensation to be paid.

(g) Have the accounts of the System audited at least annually by a Certified Public Accountant.

(h) Submit an annual statement to the governing body of each subdivision and to any member, upon request, as soon after the end of each calendar year as possible. Such statement shall include at least the following: a balance sheet showing the financial and actuarial condition of the System as of the end of the calendar year; a statement of receipts and disbursements during each year; a statement showing changes in the asset, liability, reserve and surplus accounts during the year; and such additional statistics as are deemed necessary for a proper interpretation of the condition of the System.

(i) The Board annually on December 31 shall allow regular interest on the mean amount in the Current Service Annuity Reserve Fund for the year then ending and shall allow regular interest on the amount in the Subdivision Accumulation Fund at the beginning of such year and shall allow current interest as defined in Section II of this Act on the amount in the Endowment Fund at the beginning of such year and on an amount in the Employees Saving Fund equal to the sum of the accumulated deposits standing to the credit at the beginning of such year of all members included in the membership of the System on December 31 of

such year, before any transfers for retirement effective December 31 of such year are made. The amounts so allowed shall be due and payable to said funds and shall be credited thereto by the Board on December 31 of each year from the moneys of the System held in the Interest Fund, provided that current interest shall not be at a rate greater than regular interest and that any excess earnings over such amount required shall be paid to one or another of the several accounts of the Endowment Fund as provided in Section V of this Act.

(j) Accept any gift, grant or bequest of any money or securities for the purposes designated by the grantor, if such purposes are specified as providing an endowment or retirement benefits to some or all of the participating employees or annuitants of this System, or if no such purposes are designated, for deposit to the credit of the Endowment Fund.

(k) Determine the limitations on the amounts of cash to be invested in order to maintain such cash balances as may be deemed advisable to meet payments of benefits and expenses, and invest the remaining available cash in securities in accordance with Subsection (7) of this Section.

(l) Keep in convenient form such data as shall be necessary for all required calculations and valuations as required by the actuary and keep a permanent record of all the proceedings of the Board.

(m) The Board shall have power to incur indebtedness and to borrow money upon the faith and credit of the System for the purpose of paying and providing for the payment of the expenses incident to the operation of the System, and to renew, extend or refund such indebtedness heretofore incurred or hereafter incurred, and for such purposes to issue and sell the negotiable promissory notes or negotiable bonds of the System, maturing within twenty (20) years from date of issuance, and bearing interest at a rate not to exceed six percent (6%) per annum; and such notes or bonds shall be a charge against and shall be payable from the Expense Fund of the System, hereinabove provided for, but shall expressly provide that the same shall never be held or considered to be an obligation of the State of Texas; but the total indebtedness against the Expense Fund of the System shall never exceed at any one time the sum of One Hundred Thousand Dollars (\$100,000).

(n) Establish such rules and regulations not inconsistent with the provisions of the Act and generally carry on such other reasonable activities as are deemed necessary or desirable for the efficient administration of the System.

¹ Article 5429k.

[See Compact Edition, Volume 5 for text of 8.3 to 9]

[See Compact Edition, Volume 5 for text of 8.9]

Merger of Existing County Systems

Sec. 10.

[See Compact Edition, Volume 5 for text of 10.1 to 10.4]

5. All persons who conform to the definition of "employee" as set out in Subsection 6 of Section II, but who were not eligible for membership in the local system as established, and are not members of the local system at the date of merger, shall become members of the state system under the merger agreement, unless such person executes a waiver of membership in the time and manner prescribed below: provided, however, that no employee who is sixty (60) years of age or more at date of merger shall be eligible for membership unless his service to such subdivision prior to the date of merger is equal to or is in excess of the period by which his then attained age exceeds the age of sixty (60) years.

Any person who becomes a member of the state system as of the date of merger under this Subsection 5 shall not be allowed any credit for service prior thereto except upon the following conditions:

If, for all months during which such person performed service as an employee (as defined in subsection 6, Section II, above) of the subdivision between the time the local system was established and the date of merger, such person shall pay to the state system (within 90 days after date of merger) a sum equal to the deposits which a member of the local system drawing the same compensation during the same period was required to make to the local system, and if the subdivision pursuant to the merger agreement contributes to the state system within the 90-day period an equal amount, then in such event:

(a) the sum so deposited by such member with the state system shall be deposited by it to the credit of such member's individual account in the Employees Saving Fund and shall be treated in the same manner as provided in subsection 9(a) below as to transfer upon merger of individual deposits of members of the local system;

(b) the sum so deposited by the subdivision shall be received and deposited in the subdivision's account in the Subdivision Accumulation Fund in the manner provided in subsection 9(c) below; and

(c) such member shall thereupon receive credit for all service to the subdivision antedating the effective date of merger.

Any person not a member of the local system, but who would become a member of the state system

under the terms of this subsection may elect not to become a member if within thirty (30) days after the effective date of the merger agreement, he shall execute and file with the Director of the state system a written waiver of membership in such form as the Board may prescribe. Any such person who files such a waiver of membership may apply for membership in the state system as of the first day of any month thereafter, if the person would then be eligible for membership in the system as a beginning employee of the subdivision, and such person may thereupon become a member of the system but without credit for any service antedating date of membership.

[See Compact Edition, Volume 5 for text of 10.6 to 10.8]

9. Upon merger, the total assets of the local system shall be transferred to the state system, valued as provided in Subsection 8 above, and such assets shall be credited as follows:

(a) An amount equal to the sum of the accumulated deposits of the individual members of the local system will be credited to the Employees Saving Fund of the state system. The state system will establish individual accounts for all such members and will credit to such individual accounts the respective accumulated deposits of the individual members as of the effective date of merger. No current service credits shall accrue in this System to the members of the local system on account of the accumulated deposits so transferred and credited upon merger.

(b) An amount equal to the required annuity reserve, based on such annuity tables as shall be adopted by the Board with regular interest, for current service annuities in effect in the local system as of the date of merger shall be credited to the Current Service Annuity Reserve Fund of this System and such current service annuities shall thereafter be obligations of and paid from the Current Service Annuity Reserve Fund of this System.

(c) The remaining assets of the local system will be credited to the subdivision's account in the Subdivision Accumulation Fund of the state system for the partial funding of the obligations assigned to such account in accordance with this Act.

(d) Each member transferred under the merger, and each person who becomes a member at the date of merger and qualifies for creditable service antedating merger as provided by Subsection 5 above, will be given an "allocated special prior service credit" determined as provided in paragraphs (e) and (f) following.

(e) "Maximum Special Prior Service Credit," as used in this Section shall mean an amount equiva-

lent to the accumulation at interest of a series of monthly payments for the number of months of all creditable service allowed to the member pursuant to the merger agreement for service to the date of merger, each such monthly payment being equal to twice the subdivision's initial deposit rate multiplied by the member's "average local system earnings," with such accumulation then being reduced by an amount equal to the individual member's accumulated deposits transferred on merger or paid in by the member in accordance with Subsection 5 of this Section. Such accumulation shall be at regular interest and on the basis that interest is allowed at the end of each twelve (12) months period and is allowed on the accumulation at the beginning of each such twelve (12) months period and is not allowed for parts of a year.

"Average local system earnings" as used in this subsection means the average monthly earnings received by an employee for service rendered to the local system subdivision during the thirty-six (36) months immediately preceding the effective date of merger of such subdivision's local system into the System, or if there be less than thirty-six (36) months of such service, the average shall be computed for the number of months of such service within such thirty-six (36) months period, or if there be no such service during said thirty-six (36) months, the average shall be computed for the number of months of service rendered to the local system subdivision during the twenty-four (24) months immediately preceding said thirty-six (36) months; provided however, that in calculating the "average local system earnings" of any employee, actual earnings in any month shall be excluded to the extent that they exceed the lower of the following rates of earnings: (i) the annual earnings prescribed by the governing body at the time of merger as the maximum current service earnings for current service deposits and contributions; or (ii) annual earnings in excess of Twelve Thousand Dollars (\$12,000.00) per annum.

(f) "Allocated Special Prior Service Credit" as used in this section and in merger agreements thereunder shall mean that percentage of the calculated "Maximum Special Prior Service Credit" of a member which is granted by the subdivision to the member, such percentage, except as hereinafter provided in this paragraph, to be the same for all of the members of the subdivision and to be such that the total "Allocated Special Prior Service Credits" granted by the subdivision will not exceed in the aggregate an amount for which the assets credited to the Subdivision Accumulation Fund on merger and the prospective benefit contributions of such subdivision will be adequate:

(i) to fund, within twenty-five (25) years from such subdivision's participation date, all

obligations that are charges against its account in the Subdivision Accumulation Fund; and

(ii) an amount for which the prospective benefit contributions of such subdivision will be adequate to provide the amount required according to this Act to be paid during such period under Supplemental Annuities arising from credits granted by such participating subdivision, and to provide such amounts as will be required to provide Basic Annuities in accordance with paragraph (b) of Subsection 4 of Section V.

[See Compact Edition, Volume 5 for text of 10.10 and 10.11]

12. From and after date of merger, the rights and obligations of the employing subdivision and of persons who as its employees or pursuant to the merger agreement become members of the state system shall be governed by the provisions of Sections I through IX of this Act, except as modified by the terms of the merger agreement and by the provisions of this Section; and provided, as to local systems which have been merged into the state system prior to December 31, 1977, that the balances standing to the credit of the participating subdivision in its accumulation accounts in the System on December 31, 1977, after all other closing entries for such year have been made, shall be credited to such subdivision's account in the Subdivision Accumulation Fund effective January 1, 1978.

[See Compact Edition, Volume 5 for text of 11]

Optional Coverage of Employees Receiving Supplemental Compensation From Participating Counties

Sec. 11A.

[See Compact Edition, Volume 5 for text of 11A.1]

2. All persons who on the effective date specified in the order are within the class designated to be included in the System by the order of the governing body of any participating subdivision under this section, shall become members of the System at the effective date specified in the order unless the person executes a waiver of membership in the time and manner prescribed below. Any person thereafter employed for the first time by the subdivision in any covered employment shall become a member of the System at the date of his employment if he is at that date less than sixty (60) years of age.

[See Compact Edition, Volume 5 for text of 11A.3 to 11A.5]

6. Any person who becomes a member of the System by virtue of this section as an employee of a county which prior to its participation in this System operated and maintained a "local system" (as defined in Section 10) that was merged into this System pursuant to Section 10 shall not be allowed

credit for service rendered the subdivision prior to the effective date of the merger, except upon the following conditions:

(a) The member and the subdivision make the deposits in the amounts and within the time prescribed by Subsection 4, above, to entitle the member to current service credit as provided in Subsection 4; and

(b) For all months during which the person performed service as an employee (as defined in Subsection 6, Section 2) of the subdivision between the time the local system was established and the date of merger, the person shall pay to the State system (within ninety (90) days after the effective date specified in the order of the governing body adopted under this section) a sum equal to the deposits which a member of the local system drawing the same compensation during the same period was required to make to the local system, and the subdivision shall contribute to the State system within said ninety (90) day period an equal amount to match the members' deposits.

In the event the deposits required under this subsection are made within the time specified, the sum so deposited by the member with the State system shall be deposited by it to the credit of the member's individual account in the Employees Saving Fund and shall be treated in the same manner as provided in Subsection 9(a) of Section 10, as to the transfer upon merger of individual deposits of members of the local system; the sum so deposited by the subdivision shall be received and deposited in the subdivision's account in the Subdivision Accumulation Fund in the manner provided in Subsection 9(c) of Section 10; and the member shall receive credit for all service to the subdivision antedating the effective date of merger, and will be given an "Allocated Special Prior Service Credit" determined in the same manner and on the same percentages of Maximum Special Prior Service Credit as was used in determining the Allocated Special Prior Service Credit of employees of the county who became members of the State system at the effective date of merger.

Miscellaneous

Sec. 12.

[See Compact Edition, Volume 5 for text of 12.1 and 12.2]

3. All annuities and other benefits payable under the provisions of this Act and all accumulated deposits of members in this System shall be exempt from all state, county or municipal taxes, shall be unassignable and shall not be subject to execution, garnishment or attachment.

[See Compact Edition, Volume 5 for text of 12.4 to 13]

[Amended by Acts 1975, 64th Leg., p. 586, ch. 239, § 1, eff. May 20, 1975; Acts 1975, 64th Leg., p. 1013, ch. 384, § 1, eff. June 19, 1975; Acts 1975, 64th Leg., p. 1921, ch. 623, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1856, ch. 735, § 2.176, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1920, ch. 770, §§ 1 to 17, eff. Jan. 1, 1978; Acts 1977, 65th Leg., p. 1942, ch. 771, §§ 1 to 6, eff. June 16, 1977; Acts 1979, 66th Leg., p. 1338, ch. 605, § 3, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1458, ch. 640, §§ 1 to 8, eff. June 13, 1979; Acts 1979, 66th Leg., p. 1659, ch. 693, § 1, eff. June 13, 1979.]

Sections 18 and 19 of Acts 1977, 65th Leg., p. 1941, ch. 770, provided: "Sec. 18. This Act shall take effect and be in force on and after January 1, 1978.

"Sec. 19. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

Section 7 of Acts 1977, 65th Leg., p. 1945, ch. 771, and § 9 of Acts 1979, 66th Leg., p. 1645, ch. 640, provided:

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

Art. 6228i. Repealed by Acts 1977, 65th Leg., p. 1410, ch. 570, § 9, eff. Jan. 1, 1978

The repealed article, relating to proportionate service retirement, disability and death benefits, was derived from Acts 1973, 63rd Leg., p. 1587, ch. 573, as amended by Acts 1975, 64th Leg., p. 221, ch. 81, § 1.

See, now, art. 6228k.

Art. 6228j. Retirement, Disability and Death Benefit Systems for Appointive County Employees

(a) A county may create a retirement, disability, and death benefit system for its appointive officers and employees if a majority of the qualified voters of the county voting on the proposition approve the creation at an election called for that purpose and advertised in at least one newspaper of general circulation in the county once a week for four consecutive weeks before the election is held. Each member of a system shall contribute to the system an amount determined by the county, but not more than five percent of the member's annual compensation paid by the county. The county shall contribute for each member an equal amount.

(b) The assets of a county system, after a sufficient portion is set aside each year to pay benefits as they accrue, shall be invested in bonds issued or guaranteed by the United States, this state, or counties or cities of this state.

[Acts 1975, 64th Leg., p. 1127, ch. 426, § 1, eff. Sept. 1, 1975.]

Section 2 of the 1975 Act was classified as art. 6243k; §§ 3 and 4 thereof provided:

"Sec. 3. Retirement, disability, and death benefit systems or programs created under the authority of Article III, Section 51-e, or Article XVI, Section 62, Subsection (b), of the Texas Constitution, or under the general powers of home-rule cities, remain in effect, subject to power granted by law to alter or abolish the systems.

"Sec. 4. This Act takes effect on adoption by the qualified voters of this state of S.J.R. No. 3, 64th Legislature, Regular Session Iso adopted at election held on April 22, 1975."

Art. 6228k. Fractional Service Retirement Benefits

Definitions

Sec. 1. In this Act:

(1) "Statewide retirement system" means

- (A) the Teacher Retirement System of Texas,
- (B) the Employees Retirement System of Texas,
- (C) the Judicial Retirement System of Texas,
- (D) the Texas Municipal Retirement System, and
- (E) the Texas County and District Retirement System.

(2) "Creditable service" means service earned or allowed in satisfaction of length-of-service requirements prescribed for eligibility for service retirement by the act governing the system in which such service is credited.

(3) "Combined creditable service" means the total of the person's creditable service in only those statewide retirement systems for which the length-of-service requirements for service retirement would be satisfied by such total creditable service at the person's attained age. Service which, due to length-of-service requirements in the system in which it was earned, does not qualify as combined creditable service in that system shall be excluded in determining combined creditable service in other statewide retirement systems. Creditable service earned with or allowed by more than one statewide retirement system for the same period of time shall be counted only once in determining the amount of a person's combined creditable service. Creditable service earned with or allowed by a subdivision or municipality electing not to participate in the program established by this Act may not be considered in determining combined creditable service.

Membership

Sec. 2. Membership in a statewide retirement system does not terminate for absence from employment covered by that system during a period for which the member is allowed creditable service in an employment covered by another statewide retirement system. For the purpose of membership terminations only, absence from employment for those whose membership in a statewide retirement system is continued by this section shall be calculated from the last date of employment covered by any statewide retirement system. A member may continue membership in a particular system after he or she is absent from service with all systems if, according to the laws governing that system, he or she would be eligible to continue membership, assuming his or her creditable service maintained in all statewide retirement systems had all been earned with that system. In this section "employment covered by another statewide retirement system" does not include em-

ployment by a subdivision or municipality which is not participating.

Fractional Benefits

Sec. 3. (a) Combined creditable service applies only to determine eligibility for service retirement, and not to determine eligibility for disability retirement, death benefits, or any other eligibility requirements, except eligibility for service retirement, prescribed by the laws governing any statewide retirement system. A person having service in a statewide retirement system may use his or her combined creditable service only to satisfy the length-of-service requirements of that system for service retirement.

(b) Any person who has membership in two or more statewide retirement systems shall have his or her eligibility for service retirement benefits from any of the systems determined by the laws governing that system but, for the purpose of determining whether the member satisfies length-of-service requirements defining eligibility for but not amount of benefits, as if his or her combined creditable service were all creditable service with that system.

(c) The amount of the benefit payable by any statewide retirement system shall be computed according to and in the manner prescribed by the laws governing that system and based solely on the member's credits in that system and on service credits earned with or allowed by that system.

(d) A person receiving service retirement or lifetime disability benefits from one or more statewide retirement systems may rely on the provisions of this Act to qualify for subsequent service retirement under any other statewide retirement system in which he or she has rendered creditable service, either if he or she was not eligible to retire under the latter system at the time of any previous service retirement or qualification for lifetime disability benefits from a statewide retirement system or if his or her previous retirement did not rely on combined creditable service.

(e) Retirement annuity minimums which do not vary in amount directly with the amount of creditable service of a member, postretirement fixed lump-sum death benefits, and survivor benefits payable to beneficiaries of retirees of the Teacher Retirement System of Texas, when paid to or on behalf of a person who has relied on this section to qualify for benefits from at least one statewide retirement system, shall be calculated as a percentage of the normal benefit payable had the member retired only in that system. The percentage applied shall be equal to the amount of creditable service actually granted for employment covered by that system divided by the amount of creditable service in that system which would have been required for the member to have been granted a service retirement

without benefit of this Act, such percentage not to exceed 100 percent.

(f) The beneficiary of a person receiving service retirement benefits from more than one statewide retirement system which also provides death benefits for its retirees is entitled to such death benefits from each system calculated as provided in Subsection (e) of this section if the retiree has relied on this section to qualify for benefits from at least one of the systems.

Election of Participation

Sec. 4. (a) Each participating subdivision of the Texas County and District Retirement System and each participating municipality in the Texas Municipal Retirement System as of January 1, 1978, may elect whether to participate in the program of fractional benefits established in this Act. The election shall be made by vote of the governing body of the particular subdivision or municipality in the same manner as other such actions of the governing body and shall be effective on February 1, 1978. Notice of an election made as provided in this section must be received by the board of trustees of the Texas County and District Retirement System or the Texas Municipal Retirement System, as appropriate, before February 1, 1978. Failure to notify the system board of trustees of an election prior to February 1, 1978, waives the right of election and the participating subdivision or municipality failing to notify automatically becomes a participant in the program on February 1, 1978.

(b) A subdivision or municipality electing not to participate in the program established in this Act may subsequently elect to participate. The effective date of participation by a subdivision or municipality is the first day of the month after the date of receipt by the appropriate board of trustees of notice of an election.

(c) Each subdivision or municipality electing to begin participation in either system after January 31, 1978, simultaneously becomes a participant in the program established in this Act by virtue of the election.

(d) Participation in the program established in this Act applies to all employees and former employees of the participating subdivision or municipality who are included in the membership of the retirement system as provided by law on or after the effective date of participation by the participating subdivision or municipality in the program established in this Act.

Special Provisions

Sec. 5. (a) Any member who, on or before December 31, 1977, has met the length-of-service requirements under the terms of laws in effect on that date governing the Employees Retirement System of

Texas, the Teacher Retirement System of Texas, and the Judicial Retirement System of Texas may retire from the service used in satisfaction of those requirements on meeting the age requirements in effect on December 31, 1977.

(b) The Board of Trustees of the Employees Retirement System of Texas may, by rule or regulation:

(1) consider the classes of service under the terms of Chapter 352, Acts of the 50th Legislature, Regular Session, 1947, as amended (Article 6228a, Vernon's Texas Civil Statutes), as if they were classes in separate systems under the terms of this Act;

(2) permit a member who retires with 10 or more years' service credit in the Employees Retirement System of Texas, exclusive of military service credit, to receive retirement benefits as an elective state official for such percentage of his eligible military service as is derived by dividing the number of months actually served as an elective state official by 96 months, but not more than 100 percent;

(3) permit persons who are retiring exclusively from programs administered by the board to use the shortest vesting period required for any class of service in which the member has retirement credit in such programs.

Administration

Sec. 6. Each board of trustees of a statewide retirement system may adopt such rules as are necessary to implement the provisions of this Act. Each system shall determine the eligibility of its members for benefits, including whether sufficient combined creditable service exists to qualify the member for benefits under this Act, and the amount and duration of benefits payable by that system under this Act pursuant to the respective laws governing each system. Each statewide retirement system shall cooperate with the other statewide retirement systems in the implementation of this Act. The Employees Retirement System of Texas, not later than December 15th of each even-numbered year, shall report to the governor and the Legislative Budget Board on the current and long-range fiscal and actuarial effects of this Act on that system and shall include in its biennial budget estimates a reasonable amount for reimbursement of expenses incurred by it in the performance of duties required of the system by this Act.

Confidentiality of Records

Sec. 7. Records of all individual members and beneficiaries in the custody of statewide retirement systems are personnel records and are deemed to be confidential information under the provisions of Chapter 424, Acts of the 63rd Legislature, Regular

Session, 1973, as amended (Article 6252-17a, Vernon's Texas Civil Statutes), except that information in the records may be transferred between statewide retirement systems to the extent necessary to administer the Act.

Statutory Construction

Sec. 8. The provisions of this Act which conflict with any other statutory provisions governing each statewide retirement system shall be considered as exceptions which shall prevail over such laws only as explicitly provided in this Act and shall be construed strictly as against those statutory provisions. It is the legislative intent of this Act to implement the authority granted the legislature in Article XVI, Section 67, of the Texas Constitution, to provide a system of fractional benefits to qualified members of more than one statewide retirement system. It is contrary to the legislative intent of this Act for any person or class of persons to receive by virtue of this service in more than one statewide retirement system a proportionately greater benefit from a particular statewide retirement system than persons who have rendered faithful career service under that statewide retirement system only. The provisions of this Act do not in any respect repeal the provisions of Chapter 75, Acts of the 54th Legislature, 1955, as amended (Article 6228a-2, Vernon's Texas Civil Statutes).

Repealer

Sec. 9. Chapter 573, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6228i, Vernon's Texas Civil Statutes), is repealed.

Effective Date

Sec. 10. This Act takes effect January 1, 1978. [Acts 1977, 65th Leg., p. 1407, ch. 570, §§ 1 to 10, eff. Jan. 1, 1978.]

Art. 6228I. Audits, Reports, and Actuarial Studies of Certain Retirement Systems

Sec. 1. In this Act, "public retirement system" means a continuing, organized program of service retirement, disability retirement, or death benefits for officers or employees of the state or a political subdivision. The term does not include, however, the Employees Retirement System of Texas, the Teacher Retirement System of Texas, the Judicial Retirement System of Texas, the Texas Municipal Retirement System, the Texas County and District Retirement System, an optional retirement program for officers or employees of institutions of higher education, a retirement program for which the only funding agency is a life insurance company, a program providing only workmen's compensation benefits, or a program administered by the federal government.

Sec. 2. The governing body of a public retirement system shall employ an actuary, as a full- or part-time employee or as a consultant, to make a valuation of the assets and liabilities of the system on the basis of assumptions and methods that are reasonable in the aggregate, taking into account the experience of the plan and reasonable expectations, and which, in combination, offer the actuary's best estimate of anticipated experience under the plan. The first valuation shall be done within a one-year period beginning January 1, 1978, and subsequent valuations shall be done not less frequently than once every three years. Based on this valuation, the actuary shall make recommendations to insure the actuarial soundness of the system. The actuary employed by the system must be a fellow of the Society of Actuaries, a member of the American Academy of Actuaries or an enrolled actuary under the federal Employee Retirement Income Security Act of 1974.¹

Sec. 3. The governing body of a public retirement system shall have the accounts of the system audited at least annually by a certified public accountant.

Sec. 4. The governing body of a public retirement system shall publish an annual report showing the financial condition of the system as of the last day of the 12-month period covered in the report, and including a statement of receipts and disbursements during the 12-month period, a statement showing changes in various accounts within the system during the 12-month period, and a statement showing any investments of the system existing on the last day of the 12-month period. This annual report shall also show the actuarial condition of the system based on the most recent actuarial valuation of the system.

Sec. 4A. If the governing body of a public retirement system fails or refuses to comply with a requirement of this Act, a person residing in the political subdivision in which the members of the governing body are officers may file a motion, petition, or other appropriate pleading in a district court having jurisdiction in a county in which the political subdivision is located in whole or in part, for a writ of mandamus to compel the governing body to comply with the requirements of this Act. If the prevailing party is other than the governing body of a public retirement system, the court may award reasonable attorney's fees and costs of suit.

[Acts 1977, 65th Leg., p. 1456, ch. 594, §§ 1 to 4, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 2113, ch. 817, § 16, eff. Aug. 27, 1979.]

¹ Generally, 29 U.S.C.A. § 1001 et seq.

Art. 6228m. Pension Review Board

Definitions

Sec. 1. In this Act:

(1) "Board" means the State Pension Review Board.

(2) "Public retirement system" means a continuing, organized program of service retirement, disability retirement, or death benefits for officers or employees of the state or a political subdivision, and includes the optional retirement program established by Chapter 51, Texas Education Code, as amended, but does not include a program, other than the optional retirement program, for which benefits are administered by a life insurance company, a program providing only workers' compensation benefits, or a program administered by the federal government.

Board

Sec. 2. The State Pension Review Board is established.

Membership and Terms

Sec. 3. (a) The board is composed of nine members. Seven shall be appointed by the governor with the advice and consent of the senate.

(b) Three persons appointed to the board must have experience in the fields of securities investment, pension administration, or pension law but may not be active or retired members of a public retirement system. Another person appointed to the board must have experience in the field of actuarial science. Another person appointed must have experience in the field of governmental finance. Another person appointed must be an active member of a public retirement system. Another person appointed must be receiving retirement benefits from a public retirement system. One person must be a member of the house of representatives and shall be appointed by the speaker of the house. Another person must be a member of the senate and shall be appointed by the lieutenant governor. The qualifications provided by this subsection are required only at the time of appointment to the board.

(c) Members of the board hold office for staggered terms of six years, with the terms of three members expiring on January 31 of each odd-numbered year.

Officers and Meetings

Sec. 4. (a) The board shall select its presiding officers and adopt rules for the conduct of its business.

(b) The board shall meet at least three times each year and may meet at other times at the call of the presiding officer or as provided by board rule. Five members constitute a quorum.

Finances and Staff

Sec. 5. (a) A member of the board serves without compensation but is entitled to reimbursement by the state for actual and necessary expenses incurred in performing the functions of the board.

(b) The legislature may appropriate funds from the General Revenue Fund to the board for the payment of staff salaries and operating expenses of the board.

(c) The board may employ an executive director who is the executive head of the board and performs its administrative duties. The executive director may employ staff members necessary for administering the functions of the board and may set staff salaries, within the limits of appropriated funds and subject to the approval of the board.

(d) The board may request and use staff assistance, equipment, and office space from the Employees Retirement System of Texas.

Application of Sunset Act

Sec. 6. The board is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes). Unless the board is continued in existence as provided by that Act, the board is abolished effective September 1, 1991.

Powers and Duties

Sec. 7. (a) The board shall:

(1) conduct a continuing review of public retirement systems, compiling and comparing information about benefits, creditable service, financing, and administration of systems;

(2) conduct intensive studies of potential or existing problems that threaten the actuarial soundness of or inhibit an equitable distribution of benefits in one or more public retirement systems;

(3) provide information and technical assistance on pension planning to public retirement systems on request;

(4) recommend policies, practices, and legislation to public retirement systems and appropriate governmental entities; and

(5) present to the legislature and the governor, in November of each even-numbered year, a public report explaining the work and findings of the board during the preceding two-year period and including drafts or recommendations of any legislation relating to public retirement systems that the board finds advisable.

(b) In performing its functions under this Act, the board may inspect the books, records, or accounts of a public retirement system during business hours of the system. The board, if reasonably necessary in the course of performing a function under this Act, may subpoena witnesses or books, records, or other documents. The presiding officer of the board shall

issue, in the name of the board, only such subpoenas as a majority of the board may direct.

(c) A peace officer shall serve a subpoena issued by the board. If the person to whom a subpoena is directed fails to comply, the board may bring suit to enforce the subpoena in a district court of the county in which the witness resides or in the county in which the books, records, or other documents are located. If the district court determines that good cause exists for issuance of the subpoena, the court shall order compliance. The district court may modify the requirements of a subpoena that the court determines are unreasonable. Failure to obey the order of the district court is punishable as contempt. The attorney general shall represent the board in a suit to enforce a subpoena.

Actuarial Analysis of Legislation

Sec. 8. (a) When a bill or resolution that proposes to change benefits or participation in benefits of a public retirement system or that proposes to change a fund liability of a public retirement system is filed for introduction in either house of the legislature, the office in which the bill or resolution is filed shall send a copy of the bill or resolution to the board. The copy sent to the board must be accompanied by an actuarial analysis prepared by an actuary who is a fellow of the Society of Actuaries, a member of the American Academy of Actuaries, or an enrolled actuary under the federal Employees Retirement Income Security Act of 1974.¹

(b) The board may have a second actuary either review the actuarial analysis accompanying the bill or resolution or prepare a separate actuarial analysis. An actuary who reviews or prepares an analysis for the board under this subsection must have at least five years of experience as an actuary working with one or more public retirement systems and must be a fellow of the Society of Actuaries, a member of the American Academy of Actuaries, or an enrolled actuary under the federal Employees Retirement Income Security Act of 1974.

(c) An actuarial analysis must show the economic effect of the bill or resolution on the public retirement system, including a projection of the annual cost to the system of implementing the legislation for at least 10 years. If the bill or resolution applies to more than one public retirement system, the cost estimates in the analysis may be limited to each affected state-financed public retirement system and each affected public retirement system in a city having a population of 200,000 or more, according to the most recent federal census. An actuarial analysis shall state the actuarial assumptions and methods of computation used in the analysis and shall state whether or not the bill or resolution, if enacted, will make the affected public retirement system actuarially unsound using an advanced funding actuarial

cost method or, in the case of a system already actuarially unsound, using an advanced funding actuarial cost method, more unsound.

(d) An actuarial analysis required by this section must be attached to the bill or resolution for which it is required before a committee hearing on the bill or resolution may be conducted. The actuarial analysis shall remain with the bill or resolution throughout the legislative process including the process of submission to the governor.

(e) A bill or resolution for which an actuarial analysis is required by this section is exempt from the requirement of a fiscal note as provided by Chapter 284, Acts of the 63rd Legislature, Regular Session, 1973 (Article 5429c-1, Vernon's Texas Civil Statutes).

¹ Generally, 29 U.S.C.A. § 1001 et seq.

Filing of Documents With Board

Sec. 9. The governing body of a public retirement system that is required by Chapter 594, Acts of the 65th Legislature, Regular Session, 1977 (Article 6228l, Vernon's Texas Civil Statutes), to publish an annual financial report and conduct a triennial actuarial analysis shall file with the board a copy of each financial report and each actuarial report.

Initial Appointments

Sec. 10. In making the initial appointments to the board, the governor shall appoint three persons to terms expiring January 31, 1981, three persons to terms expiring January 31, 1983, and three persons to terms expiring January 31, 1985.

[Acts 1979, 66th Leg., p. 1894, ch. 766, §§ 1 to 10, eff. Sept. 1, 1979.]

Art. 6228n. Administration of Public Retirement Systems

Definitions

Sec. 1. In this Act:

(1) "Public retirement system" means a continuing, organized program of service retirement, disability retirement, or death benefits for officers or employees of the state or a political subdivision, other than a program for which the only funding agency is a life insurance company, a program providing only workers' compensation benefits, a program administered by the federal government, or the Judicial Retirement System of Texas.

(2) "Governing body of a public retirement system" means the board of trustees, pension board, or other public retirement system governing body that has the fiduciary responsibility for assets of the system and has the duties of overseeing the investment and expenditure of funds of the system and the administration of benefits of the system.

Actuarial Report

Sec. 2. (a) An actuary commissioned by a governmental entity to make an actuarial study that is required by law for a public retirement system shall include in the study a complete definition of each actuarial term used in the study and, either in the study or in a separate report made available as a public record, an enumeration and explanation of each actuarial assumption used in the valuation made for the study.

(b) The governmental entity that commissioned the study shall include the information required by this section in the actuarial report it publishes for the public retirement system.

Assets

Sec. 3. The governing body of a public retirement system shall hold or cause to be held in trust the assets appropriated or dedicated to the system, for the benefit of the members and retirees of the system and their survivors.

Actuarial Analysis of Legislation

Sec. 4. A bill or resolution that proposes to change the amount or number of benefits or change participation in benefits of a public retirement system or that proposes to change the liability of a public retirement system may not be reported from a legislative committee of either house for consideration by the full membership of a house unless the bill or resolution is accompanied by an actuarial analysis.

Requirements of Actuarial Analysis

Sec. 5. (a) An actuarial analysis required by this Act must show the economic effect of the bill or resolution on the public retirement system, including a projection of the annual cost to the system of implementing the legislation for at least 10 years. If a bill or resolution proposes to change benefits, change benefit participation, or provide liability assumption for more than one public retirement system, the actuarial analysis shall project costs for each affected state-financed public retirement system and for each affected public retirement system in a city having a population of 200,000 or more, according to the most recent federal census. An actuarial analysis shall state the actuarial assumptions and methods of computation used in the analysis and shall state whether or not the bill or resolution, if enacted, will make the affected public retirement system actuarially unsound using an advanced funding actuarial cost method or, in the case of a system already actuarially unsound, using an advanced funding actuarial cost method, more unsound.

(b) An actuarial analysis required by this Act must be prepared by an actuary who is a fellow of the Society of Actuaries, a member of the American

Academy of Actuaries, or an enrolled actuary under the federal Employees Retirement Income Security Act of 1974.¹

(c) The cost of an actuarial analysis that is required by this Act and that is prepared for a public retirement system not financed by the state may not be assumed by the state, except that a sponsor of the bill or resolution for which the analysis is prepared may pay the cost of preparation out of funds available for the sponsor's personal or office expenses.

¹ Generally, 29 U.S.C.A. § 1001 et seq.

Exemption

Sec. 6. Sections 4 and 5 of this Act do not apply to legislation that proposes to have an economic effect on a public retirement system only by providing new or increased administrative duties.

Contract for Professional Investment Management

Sec. 7. (a) The governing body of a public retirement system may contract for professional investment management services for the system with one or more organizations, which may include a bank if it has a trust department, that are in the business of managing investments and that meet qualifications provided by Section 9(e) of this Act for investment managers.

(b) In a contract made under this section, the governing body shall specify any policies, requirements, or restrictions, including criteria for determining the quality of investments, that the governing body considers prudent for investments made on behalf of the system by the investment manager.

(c) The cost of professional investment management services under a contract made as provided by this section may be paid in whole or in part by a political subdivision of which members of the retirement system are officers or employees. Any cost not paid directly by a political subdivision shall be paid from funds of the public retirement system.

Agreement for Investment Custody Account

Sec. 8. (a) If the governing body of a public retirement system contracts for professional investment management services, it also shall enter into an investment custody account agreement designating a state or national bank as custodian for all assets allocated to or generated under the contract.

(b) Under a custody account agreement, the governing body of a public retirement system shall require the designated bank to perform the duties and assume the responsibilities for funds under the contract for which the custody account agreement is established that are performed and assumed, in the absence of a contract, by the custodian of system funds.

(c) The cost of bank services under a custody account agreement may be paid in whole or in part

by a political subdivision of which members of the retirement system are officers or employees. Any cost not paid directly by a political subdivision shall be paid from funds of the public retirement system.

Fiduciary Responsibility Regarding Investment of Surplus

Sec. 9. (a) When, in the opinion of the governing body of a public retirement system, a surplus of funds exists in accounts of the retirement system over the amount needed to make payments as they become due within the next year, the governing body shall deposit the surplus, or as much of the surplus as the governing body considers prudent, in a reserve fund.

(b) In making and supervising investments, the governing body of a public retirement system shall discharge its duties with respect to a plan solely in the interest of the participants and beneficiaries:

(1) for the exclusive purposes of:

(A) providing benefits to participants and their beneficiaries; and

(B) defraying reasonable expenses of administering the plan;

(2) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(3) by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(4) in accordance with the documents and instruments governing the plan insofar as the documents and instruments are consistent with the provisions of this Act.

(c) The governing body of a public retirement system is charged with the management and administration of the funds of the system. In its management and administration of the funds, the governing body may directly manage investments of the fund, and it has the authority to exercise discretion in determining the procedure that it deems most efficient and beneficial for the reserve fund in carrying out its responsibilities. The governing body may choose and contract for professional investment management services. In choosing and contracting for professional investment management services, the governing body must do so prudently and in the interest of the participants and beneficiaries and also must act in this manner in continuing the use of an investment manager. Any contract that the governing body makes with an investment manager shall set forth policies and guidelines of the governing body with reference to standard rating services and specific criteria for determining the quality of investments.

(d) If an investment manager has been appointed under Section 9(c) of this Act, no trustee is liable for the acts or omissions of the investment manager nor is obligated to invest or otherwise manage any asset of the plan that is subject to the management of the investment manager.

(e) An investment manager appointed under this Act shall acknowledge in writing his or her fiduciary responsibilities to the fund that he or she is appointed to manage. To be eligible for appointment under this Act, an investment manager must be:

(1) registered under the federal Investment Advisors Act of 1940;¹

(2) a bank as defined by that Act; or

(3) an insurance company qualified to perform investment services under the laws of more than one state.

¹ 15 U.S.C.A. § 80b-1 et seq.

Evaluation of Investment Services

Sec. 10. (a) The governing body of a public retirement system, in exercising its control of the system, may at any time and shall at frequent intervals monitor the investments made by any investment manager for the system. The governing body may contract for professional evaluation services to fulfill this requirement.

(b) The cost of professional evaluation services performed under a contract made as provided by this section may be paid in whole or in part by a political subdivision of which members of the retirement system are officers or employees. Any cost not directly paid by a political subdivision shall be paid from funds of the public retirement system.

Custody and Use of Funds

Sec. 11. (a) An investment manager other than a bank having a contract with a public retirement system under Section 7 of this Act may not be a custodian of any assets of the reserve fund of the system.

(b) When demands of the public retirement system require, the governing body shall withdraw from a custodian of system funds money for use in paying benefits to members and other beneficiaries of the retirement system and for other uses authorized by this Act and approved by the governing body.

Exemptions

Sec. 12. The Employees Retirement System of Texas, the Teacher Retirement System of Texas, the Texas Municipal Retirement System, and the Texas County and District Retirement System are exempt from Sections 7, 8, 9, 10, and 11 of this Act.

Remedy

Sec. 13. (a) Except as provided by Subsection (b) of this section, if the governing body of a public retirement system fails or refuses to comply with a requirement of this Act that applies to it, a person residing in the political subdivision in which the members of the governing body are officers may file a motion, petition, or other appropriate pleading in a district court having jurisdiction in a county in which the political subdivision is located in whole or in part, for a writ of mandamus to compel the governing body to comply with the applicable requirement.

(b) If the governing body of the Employees Retirement System of Texas, the Teacher Retirement System of Texas, the Texas Municipal Retirement System, or the Texas County and District Retirement System fails or refuses to comply with a requirement of this Act that applies to it, any resident of the state may file a pleading in a district court in Travis County for a writ of mandamus to compel the governing body to comply with the applicable requirement.

(c) If the prevailing party is other than the governing body of a public retirement system, the court may award reasonable attorney's fees and costs of suit.

[Acts 1979, 66th Leg., p. 2108, ch. 817, §§ 1 to 3, 13, eff. Aug. 27, 1979, §§ 4 to 12, eff. Sept. 1, 1979.]

2. CITY PENSIONS

Arts. 6229 to 6235. Repealed by Acts 1979, 66th Leg., p. 2113, ch. 817, § 14(b)(2) to (8), eff. Aug. 27, 1979

Art. 6235a-1. Repealed by Acts 1979, 66th Leg., p. 2112, ch. 817, § 14(a)(4), eff. Aug. 27, 1979

Arts. 6236 to 6243. Repealed by Acts 1979, 66th Leg., p. 2113, ch. 817, § 14(b)(9) to (16), eff. Aug. 27, 1979

Art. 6243a. Firemen's, Policemen's and Fire Alarm Operators' Pension System; Cities and Towns of 432,000 or More Having Fully or Partially Paid Departments

Board of Trustees

Sec. 1. In all incorporated cities and towns which operate a separate Firemen, Policemen and Fire Alarm Operators Pension System containing four hundred thirty-two thousand (432,000) or more inhabitants, according to the last preceding Federal Census, having a fully or partially paid Fire and Police Department, there shall be and there is hereby created a Board to consist of seven (7) members, as follows: three (3) Aldermen, Councilmen or Com-

missioners, each to serve on this Board for the term of office to which they were elected; and two (2) active firemen who shall be selected by the majority vote of the members of the Fire Department, which two (2) members shall be appointed by the governing body of the said city, one (1) for a term of two (2) years and the other for a term of four (4) years; and two (2) active policemen to be selected by the majority vote of the members of the Police Department, which two (2) members are also to be appointed by the governing body of the said city, one (1) for a term of two (2) years and the other for a term of four (4) years; all said members from the Fire and Police Department shall be elected by the contributors to the fund, as herein provided, and shall serve until their successors are elected and qualified, and their departmental successors shall be appointed to serve for a term of four (4) years. The said appointees and their successors shall constitute the Board of Trustees of the Firemen, Policemen and Fire Alarm Operators Pension Fund, to provide for the disbursement of same, and to designate the beneficiaries thereof. The Board shall be known as the Board of Firemen, Policemen and Fire Alarm Operators Pension Fund Trustees of _____, Texas. A Board, as herein provided, shall be selected upon the enactment of this Act and shall hold its office until the next general election in such city for municipal officers, at which time a permanent Board shall be selected, as herein provided. The said Board shall organize by choosing one (1) member as Chairman, and by appointing a Secretary, which Board shall have charge of and administer said fund and shall order payments therefrom in pursuance of the provisions of this Act. It shall report annually to the governing body of such town or city, the condition of the said fund, and the receipts and disbursements on account of same, with a complete list of the beneficiaries of said fund, and the amounts paid them. The Board shall have the power and authority, by a majority vote, to reduce the percentages stipulated in any section or subsection of this Act which deals with disabilities or with awards granted to beneficiaries. The reduction shall be based upon the degrees of disability and circumstances surrounding the case. The Board shall have the complete authority and power to administer all of the provisions of this Act and any implied powers under this Act.

[See Compact Edition, Volume 5 for text of 1A and 1B]

Administrator of Fund; Professional Investment Management Services

Sec. 1C. (a) The Board of Trustees shall have the authority to appoint an administrator to keep records, make computations and perform various other related duties necessary for the operation of the Firemen, Policemen, and Fire Alarm Operators' Pension Fund, but except for clerical assistance, he

shall not have any duties relating to investment of the Reserve Retirement Fund, as provided in Section 15 hereof. Compensation for such an administrator shall be determined by the city and paid out of the general funds of the city.

(b) A person appointed administrator of the Fund shall not, by virtue of that appointment, become Secretary of the Board, but the Board may also appoint him as its Secretary, in which event he shall serve in that capacity with no additional compensation.

(c) If the Board appoints an administrator for the Fund, he shall perform in his office the functions of the City Secretary as they are specified in any other Sections hereof, and the City Secretary shall be relieved of such functions, except that the City Secretary shall continue to attest all certificates and documents issued under the seal of the city.

(d) In the administration of the Reserve Retirement Fund pursuant to Section 15, if the Board of Trustees determines that assistance provided by advisory service alone, as authorized under Section 1A above, will not enable the Board to make investments of such funds as efficiently and beneficially as could be done with the service of professional investment management, the Board may contract for such service with one or more organizations in such business, including a bank maintaining a trust department, any such investment manager to have the qualifications required by law and also the approval of the Board; provided the Board does not delegate its ultimate responsibility for investing the Reserve Retirement Fund. In any such contract, the Board, in the exercise of its discretion with respect to investments, shall specify policies and guidelines with which the investment manager must comply in respect to each investment arranged by such manager.

(e) The cost of any investment management services contracted for by the Board of Trustees may be paid in whole or in part by the city. If the city does not make provision for payment of such cost, either in whole or in part, then the amount required to make payment in full shall be paid from the Firemen, Policemen, and Fire Alarm Operators' Pension Fund.

[See Compact Edition, Volume 5 for text of 2 to 4]

Custody of Fund

Sec. 5. The Treasurer of said city or town shall be Ex-officio Treasurer of said Fund. All money for said Fund shall be paid over to and received by the Treasurer for the use of said Fund, and the duties thus imposed upon such Treasurer shall be additional duties for which he shall be liable under his oath and bond as such city or town Treasurer, but he shall receive no compensation therefor. The principal duties hereby imposed on the Treasurer are that he

receive and promptly deposit income, including periodic contributions to the Fund, and make transfers of sums in conformity with the system adopted by the Board to make funds available for investment, paying annuities, making refunds, and other authorized payments.

Investment Custody Account Agreements

Sec. 5A. (a) If the Board contracts for investment management service, as authorized by Section 1C(d) above, it may, with respect to every such contract, also enter into an investment custody account agreement, designating a bank as custodian for all the assets allocated to the Reserve Retirement Fund for a particular investment manager.

(b) Under a custody account agreement, the Board shall require the designated bank to perform the duties and assume the responsibilities of custodian in relation to the investment contract to which the custody account agreement is established.

(c) The authority of the Board to make a custody account agreement is supplementary to its authority to make an investment management contract to which it relates. Allocation of assets to a custody account shall be coordinated by the Treasurer and the bank designated as custodian for such assets.

(d) The cost of any custody account agreement entered into by the Board of Trustees may be paid in whole or in part by the city. If the city does not make provision for payment of such cost, either in whole or in part, then the amount required to make payment in full shall be paid from the Firemen, Policemen, and Fire Alarm Operators' Pension Fund.

[See Compact Edition, Volume 5 for text of 6 to 13]

Share of Cost to be Paid Out of Public Treasury

Sec. 14. The financial share of the cost of the pension system to be paid out of the public Treasury shall be as follows:

(a) Funds contributed by the city as its share of the amount required for the payment of benefits due members under the pension system and for no other purpose. Such contributions shall be annually appropriated by the City Council and periodically paid on the basis of a percentage of the total wages and salaries of the members of the Police and Fire Departments who are under the pension system. The amount of this percentage and any change in it can be determined only by the Legislature or by a majority vote of the voters of the city.

(b) Funds appropriated by the City Council to carry out various other provisions of the Act that authorize expenditures in connection with the administration of the Act.

(c) The percentage of contributions from the city shall be according to the following:

(1) effective October 1, 1979, twenty (20%) percent;

(2) effective October 1, 1980, twenty-one (21%) percent;

(3) effective October 1, 1981, twenty-two (22%) percent;

(4) effective October 1, 1982, twenty-three (23%) percent;

(5) effective October 1, 1983, twenty-four (24%) percent;

(6) effective October 1, 1984, twenty-five (25%) percent until amended by the Legislature or by a majority vote of the voters of the city provided that the percentage of contributions by the city shall not be less than twenty (20%) percent nor more than twenty-five (25%) percent. If an election is held and the proposal is approved by the members of the fund after October 1, 1979, the percentage of the increase in contributions for the members and the city shall not be effective until October 1 of the following year. The increase in the percentage of contributions shall then begin at the first step.

(d) The obligation of the city to contribute funds under this section shall be conditioned upon the approval by the majority of the members of the fund at an election to be held within two years of the enactment of this Act of an increase in the percentage of member contributions according to the following:

(1) effective October 1, 1979, ten (10%) percent;

(2) effective October 1, 1980, ten and one-half (10.5%) percent;

(3) effective October 1, 1981, eleven (11%) percent;

(4) effective October 1, 1982, eleven and one-half (11.5%) percent;

(5) effective October 1, 1983, twelve (12%) percent;

(6) effective October 1, 1984, twelve and one-half (12.5%) percent until amended by the Legislature or a majority of the members of the fund provided that the percentage of member contributions shall not be less than ten (10%) percent nor more than twelve and one-half (12.5%) percent. If the election to be held and the proposal to be approved by the members of the fund as provided in Subsection (d) of Section 14 of this Act shall be held subsequent to October 1, 1979, the increase in percentage of member contributions shall begin at the first step in accordance with the provisions of Subsection (d) of Section 14 of this Act effective the next October 1 after the election. If, at any time subsequent to the approval of the percentages of member contri-

bution as set forth herein by a majority of the members of the fund, the members of the fund elect to revoke an increase in the percentage of member contributions as provided under this section, the city shall not be obligated to increase the percentage of its contributions as heretofore set forth in this section and the percentage of contributions by the city shall be at a rate not less than two times the percentage of the members' contributions.

Investment of Surplus

Sec. 15. (a) Whenever, in the opinion of said Board, there is on hand in said Pension Fund a surplus over and above a reasonably safe amount to take care of current demands upon said Fund, such surplus, or so much thereof as in the judgment of said Board is deemed proper, shall be put into a Reserve Fund for investment for the sole benefit of said Pension Fund.

(b) In making investments and supervising investments, members of the Board of Trustees shall exercise the judgment and care under the circumstances then prevailing, which men of ordinary prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to probable income therefrom as well as the probable safety of their capital.

(c) The Board of Trustees has the ultimate responsibility for the investment of funds, which the Board may exercise directly by purchasing or selling securities or other investments, but it shall have the authority to exercise discretion in determining the procedure that it deems most efficient and beneficial for the Reserve Retirement Fund in carrying out such responsibility. The Board may contract for professional advisory service pursuant to Section 1A(a) and also may contract for professional investment management service pursuant to Section 1C(d). Any contract that the Board may make with an investment manager shall set forth policies and guidelines of the Board with references to standard rating services and specific criteria for determining the quality of investments.

(d) The Board, in exercising its control, may at any time, and shall at frequent intervals, monitor the investments made by any investment manager, and shall enforce full compliance with the requirements of the Board.

(e) No investment manager other than a bank that has a contract with the Board to provide assistance in making investments shall be the custodian of any of the securities or other assets of the Reserve Retirement Fund. Pursuant to Section 5A(a), the Board may designate a bank to serve as custodian to perform the customary duty of safekeeping as well as duties incident to the execution of transactions. When the demands of the Pension Fund require, the

Board shall withdraw from the custodian money for use in paying benefits to members of the Pension System and for such other uses as are authorized by this Act and approved by a majority of the Board.

(f) The regulations set forth in this Section for the investment of surplus funds shall apply to the original Pension System specifically established in this Act, as well as to any amended plan established pursuant to Section 11A hereof by Section 11B or related provision of law.

[See Compact Edition, Volume 5 for text of 16 and 17]

[Amended by Acts 1975, 64th Leg., p. 789, ch. 304, §§ 1 to 5, eff. May 27, 1975; Acts 1979, 66th Leg., p. 767, ch. 334, §§ 1, 2, eff. June 6, 1979.]

Section 6 of the 1975 amendatory act provided:

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

**Art. 6243b. Firemen and Policemen Pension Fund
in Cities of 310,000 to 330,000**

Board of Trustees

Sec. 1. (a) In all incorporated cities and towns containing more than three hundred ten thousand (310,000) inhabitants and less than three hundred thirty thousand (330,000) inhabitants, according to the last preceding Federal Census, having a fully or partially paid fire department, the mayor, two (2) citizens of said city or town to be designated by the mayor, the chief of police, the chief of the fire department and their successors, three (3) policemen other than the chief or assistant chief, to be elected by members of the policemen's pension fund, three (3) firemen other than the chief or assistant chief, to be elected by members of the firemen's pension fund, composing eleven (11) members, seven (7) of which shall be a quorum, shall constitute a board of trustees of the Firemen, Policemen and Fire Alarm Operators Pension Fund, to provide for the disbursement of the same and to designate the beneficiaries thereof. The three policemen and the three firemen named above shall be elected to a term of four (4) years. The term for a citizen designated by the mayor is four (4) years. The board shall be known as the Board of Firemen, Policemen, and Fire Alarm Operators Pension Fund, Trustees of _____, Texas. Said board shall organize by choosing one member as Chairman and by appointing a secretary. Such board shall have charge of and administer said fund and shall order payments therefrom in pursuance of the provisions of this law. It shall report annually to the governing body of such city or town the condition of the said fund and the receipts and disbursements on account of the same with a complete list of beneficiaries of said fund and the amounts paid them.

(b) Of the first two (2) citizens designated by the mayor to serve on the board of trustees after the effective date of this subsection, one shall serve a four-year term and the other a two-year term. Thereafter all terms shall be for four (4) years. Of the first six (6) firemen and policemen elected after the effective date of this subsection, three (3) of the firemen and policemen shall serve four-year terms and three (3) of the firemen and policemen shall serve two-year terms. The first four-year terms shall not be served by all three members elected from the firemen's fund nor by all three members elected from the policemen's fund. This determination shall be made by lot under the supervision of the board. Thereafter all elected terms shall be for four (4) years.

(c) The board of trustees shall provide by rule for election of its elected members by secret ballot.

Definitions

Sec. 1A. In this Act:

(1) "Board of Trustees" or "Board" means the Board of Trustees of the Firemen, Policemen and Fire Alarm Operators Pension Fund.

(2) "Member" means a duly appointed and enrolled policeman, fireman, or fire alarm operator of a city covered by this Act who is a contributing member of the pension fund.

(3) "Pension Fund" or "Fund" means the Firemen, Policemen and Fire Alarm Operators Pension Fund.

(4) "Salary" means base pay plus longevity pay received by a member from the city for personal services rendered as a policeman, fireman, or fire alarm operator excluding all other forms of compensation.

(5) "Wages" means salary, longevity, and overtime pay received by a member from the city for personal services rendered as a policeman, fireman, or fire alarm operator excluding all other compensation.

Participation in Fund; Wage Deductions

Sec. 2. Each member fireman, policeman and fire alarm operator in the employment of such city or town, must participate in said fund, except in times of national emergency those persons as are employed during that time shall not be required to participate in the fund, and said city or town shall be authorized to deduct a sum of not less than one per cent (1%) nor in excess of six per cent (6%) of his wages from each month to form a part of the fund known as the Firemen, Policemen and Fire Alarm Operators Pension Fund, except that the city or town shall deduct a sum less than one per cent (1%) or more than six per cent (6%) of the member's wages each month to form a part of the Firemen, Policemen and Fire Alarm Operators Pension Fund

if the board of trustees of that fund increases or decreases the percentage of wages to be contributed to the fund under the provisions of Section 10A of this Act. The amount to be deducted from the wages of those named above who must participate in the fund is to be determined by the board of trustees as provided for in Section 1 of this Act within the minimum and maximum deductions herein provided or as otherwise provided under the provisions of Section 10A of this Act.

Payments to Fund

Sec. 3. There shall be deducted for such fund from the wages of each fireman, policeman and fire alarm operator a sum to be determined by the board of trustees under the provisions of Section 2 or 10A of this Act. Any donations made to such fund and rewards received by any member of either of said funds, and all funds received from any source for such fund shall be deposited in like manner to the credit of such fund.

[See Compact Edition, Volume 5 for text of 4 and 5]

Membership in Pension Fund; Eligibility

Sec. 6. (a) Any person who has been duly appointed and enrolled as a policeman, fireman, or fire alarm operator of any city covered by this Act shall automatically become a member of the pension fund of such city upon expiration of ninety (90) days from date such city comes within the provisions of this Act, provided such person at the time of such appointment was not less than eighteen (18) years of age and not more than twenty-nine (29) years of age. In all instances where a person is already a member of and contributor to such pension fund, he shall retain and be entitled to all rights and privileges due him by virtue of having been such a member and contributor.

(b) Any person not a member of the pension fund when this Act becomes effective, who thereafter is duly appointed and enrolled as a fireman, policeman, or fire alarm operator of such city shall automatically become a member of the pension system as a condition of his employment provided such person at the time of such appointment was not less than eighteen (18) years of age and not more than twenty-nine (29) years of age.

Retirement Pensions

Sec. 7. Whenever any member of said departments who shall have contributed a portion of his wages, as provided herein, shall have served twenty-five (25) years or more in either of said departments and shall have attained the age of fifty (50) years, he shall be entitled to be retired from said service upon application, and shall be entitled to be paid from said fund a monthly pension of one-half (1/2) of

the salary received by him at the time of his retirement subject to change under the provisions of Section 10A of this Act.

Disability Pensions

Sec. 8. Whenever any member of the fire department, police department or fire alarm operators' department of any such city or town, and who is a contributor to said fund as provided, shall become so permanently disabled through injury received, or disease contracted, in the line of duty, as to incapacitate him for the performance of duty, or shall for any cause, through no fault of his own, become so permanently disabled as to incapacitate him for the performance of duty, and shall make written application therefor approved by a majority of the board, he shall be retired from service and be entitled to receive from said fund one-half of the monthly salary received by him as a member of either of said departments, at the time he became so disabled, to be paid in regular monthly installments subject to change under the provisions of Section 10A of this Act.

Death Benefits, Widows, etc.

Sec. 9. In the case of the death before or after retirement of any member of the fire department, police department, or fire alarm operators' department of any city or town resulting from disease contracted or injury received while in the line of duty or from any other cause through no fault of his own and who at the time of his death or retirement was a contributor to said Fund, leaving a widow and no children, the widow shall be entitled to receive monthly from said Fund an amount not exceeding one-third of such monthly salary received by such member immediately preceding his retirement, and, if not retired before death, one-third of such monthly salary received by such member immediately preceding his death; and, if at the time of the death of such contributor, under the circumstances and conditions hereinabove set forth, such contributor leaves a child or children under sixteen (16) years of age and the wife of such contributor is dead or divorced from such contributor, the child or children under sixteen (16) years of age shall be entitled to receive monthly from said Fund an amount not exceeding one-third of such monthly salary received by such member immediately preceding his retirement, and, if not retired before death, one-third of such monthly salary received by such member immediately preceding his death, said sum so paid to be equally divided among said children under sixteen (16) years of age, if more than one; and if at the time of the death of such contributor, under the conditions hereinabove set forth, such contributor leaves a widow and a child or children under sixteen (16) years of age, the widow shall be entitled to receive monthly from said Fund (for the joint benefit of herself and such child

or children) an amount not exceeding one-half of the monthly salary received by such member immediately preceding his retirement, and if not retired before death, one-half of such monthly salary received by such member immediately preceding his death, said payments to be made until such child or all of said children, if more than one, as the case may be, shall reach sixteen (16) years of age, and after said child or all of said children, as the case may be, have reached the age of sixteen (16) years, then the widow shall be entitled to receive monthly from said Fund (for her benefit) an amount not exceeding one-third of the monthly salary received by such member immediately preceding his retirement, and if not retired before death, one-third of such monthly salary received by such member immediately preceding his death. In no case shall the amount paid to any one family exceed monthly the amount of one-half of the monthly salary earned by the deceased immediately prior to the time of his retirement, or, if not retired, prior to the time of his death. On the remarriage of any widow, such pension paid to her for her benefit shall cease and in the event that there are child or children under sixteen (16) years of age at the time of said remarriage, one-third of the monthly salary received by such member immediately preceding his retirement, and if not retired before death, immediately preceding his death, shall be paid monthly to the widow for the sole benefit of the child or children under the age of sixteen (16) years; provided, however, that the Pension Board, if it finds that said payments to the widow are not being used for the benefit of said child or children, may order said monthly benefits paid to said child or children instead of to said widow who has remarried. Where there is more than one child of such contributor, the benefits herein provided for shall be equally divided among the children, and upon the marriage or death of any child receiving such pension, or upon any child receiving such pension reaching sixteen (16) years of age, such pension payment for the benefit of said child shall cease, and if there remains a child or children under sixteen (16) years of age, the share of the said child so married or dead or reaching sixteen (16) years of age, shall be paid for the benefit of the remaining child or children under sixteen (16) years of age. In the event that a contributor leaves a widow and child or children under sixteen (16) years of age who are not the children of said widow, the Pension Board may, in its discretion, either pay monthly to the widow for the benefit of herself and said child or children, an amount not exceeding one-half of the monthly salary received by such member immediately preceding his retirement, or immediately preceding his death, if not retired before death, as hereinabove provided, or said Board may order one-fourth of said monthly salary received by such member paid to the widow and one-

fourth of said monthly salary paid to said child or children. No widow or child of any such member resulting from any marriage contracted subsequent to the date of retirement of said member shall be entitled to a pension under this law; provided, however, that the provisions of this Section shall not be construed so as to change any pension now being paid any pensioner under the provisions of Chapter 101, of the General and Special Laws of the Forty-third Legislature, First Called Session, and as amended by Chapter 346 of the General and Special Laws of the Regular Session of the Forty-fourth Legislature. The provisions of this section are subject to change under the provisions of Section 10A of this Act.

Death Benefits, Father, etc.

Sec. 10. If any member of the fire department, police department, or fire alarm operators' department dies from injuries received or disease contracted while in the line of duty, or from any cause through no fault of his own, who was a contributor to said fund and entitled to participate in said fund himself, leaves no wife or child, but who shall leave surviving him a dependent father, mother, brother, or sister, wholly dependent upon said person for support, such dependent father, mother, sister and brother shall be entitled to receive in the aggregate one-half of the salary earned by said deceased immediately prior to his death, to be equally divided between those who are wholly dependent on said deceased, so long as they are wholly dependent. The board shall have authority to determine the facts as to the dependency of said parties and each of them, as to how long the same exists, and may at any time upon the request of any contributor to such fund, reopen any award made to any of said parties and discontinue such pension as to all or any of them as it may deem proper, and the findings of said board in regard to such matter and as to all pensions granted under this law shall be final upon all parties seeking a pension as a dependent of said deceased, or otherwise, until such award of the trustees shall have been set aside or revoked. The provisions of this section are subject to change under the provisions of Section 10A of this Act.

Modification of Benefits, Membership Qualifications, Eligibility Requirements and Contributions; Conditions

Sec. 10A. (a) Notwithstanding anything to the contrary in other parts of this Act, the Board of Trustees of the Firemen, Policemen, and Fire Alarm Operators Pension Fund may, by majority vote of the whole board, make from time to time one or more of the following changes, or modifications:

(1) modify or change prospectively or retroactively in any manner whatsoever any of the benefits provided by this Act, except that any retroactive change or modification shall only increase pensions or benefits;

(2) modify or change prospectively in any manner whatsoever any of the membership qualifications;

(3) modify or change prospectively or retroactively in any manner whatsoever any of the eligibility requirements for pensions or benefits;

(4) increase or decrease prospectively the percentage of wages less than the one per cent (1%) minimum or above the six per cent (6%) maximum provided in Section 2 of this Act to be contributed to the fund; or

(5) provide prospectively for refunds, in whole or in part, and with or without interest, of contributions made to the fund by employees who leave the city service before qualifying for a pension.

(b) None of the changes made under Subsection (a) of this section may be made unless all of the following conditions are sequentially complied with:

(1) the change must be approved by a qualified actuary selected by a four-fifths vote of the Board; the actuary, if an individual, must be a Fellow of the Society of Actuaries or a Fellow of the Conference of Actuaries in Public Practice or a Member of the American Academy of Actuaries; the findings upon which the properly selected and qualified actuary's approval are based are not subject to judicial review;

(2) the change must be approved by a majority of all persons then making contributions to the fund, voting by secret ballot at an election held after ten (10) days' notice given by posting at a prominent place in every fire station, every police station and substation, and in the city hall;

(3) whether the fund for the police and the fund for the firemen and fire alarm operators are operated as separate funds or as one fund, all changes shall be uniform for both departments and contributing members of both departments shall have the right to vote;

(4) the changes, except changes made under the provisions of Subdivision (1), Subsection (a), of this section, shall apply only to active member employees who are members of the departments at the time the change becomes effective and those who enter the departments thereafter; and

(5) the changes shall not deprive any person, without his written consent, of any right to receive a pension or benefits which have already become vested and matured.

[See Compact Edition, Volume 5 for text of 11 to 16]

Validation of Proceedings for Separation of Pension Funds

Sec. 17. All Acts and proceedings had and done by the governing body and Board of Trustees of the Pension Fund of any such city or town, subject to the above provisions, in creating, establishing, main-

taining, and administering separate Pension Funds for Firemen, including Fire Alarm Operators and Policemen, are hereby legalized, approved, and validated, as well as the division by said governing body and Board of Trustees of any public funds voted by the voters of said city or town for the Firemen, Policemen, and Fire Alarm Operators' Pension Fund between said two (2) Funds, and said governing body and Board of Trustees shall continue the separate maintenance and administration of said Funds in the manner hereinabove provided. This section and Section 16 of this Act provide only for the separation of pension funds into policeman and fireman divisions and grant the governing body no power or authority granted to the Board of Trustees under any provision of this Act, and the Board of Trustees shall have exclusive charge of administration and maintenance of the fund.

[See Compact Edition, Volume 5 for text of 18]
[Amended by Acts 1975, 64th Leg., p. 1372, ch. 526, §§ 1, 2, eff. Sept. 1, 1975.]

Art. 6243e. Fireman's Relief and Retirement Fund

[See Compact Edition, Volume 5 for text of 1 to 3]

Sec. 3A. Repealed by Acts 1975, 64th Leg., p. 1148, ch. 432, § 31, eff. June 19, 1975.

[See Compact Edition, Volume 5 for text of 3B to 6A]

Secs. 6B, 6B-1. Repealed by Acts 1975, 64th Leg., p. 1148, ch. 432, § 31, eff. June 19, 1975.

Secs. 6C to 6C-2. Repealed by Acts 1975, 64th Leg., p. 412, ch. 183, § 23, eff. May 13, 1975.

[See Compact Edition, Volume 5 for text of 6D to 7A]

Secs. 7B, 7C. Repealed by Acts 1975, 64th Leg., p. 1148, ch. 432, § 31, eff. June 19, 1975.

Sec. 7D. Repealed by Acts 1975, 64th Leg., p. 412, ch. 183, § 23, eff. May 13, 1975.

[See Compact Edition, Volume 5 for text of 7E to 10C]

Sec. 10D. Repealed by Acts 1975, 64th Leg., p. 412, ch. 183, § 23, eff. May 13, 1975.

Sec. 10E. Repealed by Acts 1975, 64th Leg., p. 1148, ch. 432, § 31, eff. June 19, 1975.

[See Compact Edition, Volume 5 for text of 11 and 12]

Sec. 12A. Repealed by Acts 1975, 64th Leg., p. 1148, ch. 432, § 31, eff. June 19, 1975.

Sec. 12B. Repealed by Acts 1975, 64th Leg., p. 412, ch. 183, § 23, eff. May 13, 1975.

[See Compact Edition, Volume 5 for text of 13 to 18]

Sec. 18A. Repealed by Acts 1975, 64th Leg., p. 1148, ch. 432, § 31, eff. June 19, 1975.

[See Compact Edition, Volume 5 for text of 19]

Application of Sunset Act

Sec. 19A. The office of Firemen's Pension Commissioner is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the office is abolished, and this Act expires September 1, 1987.

¹ Article 5429k.

[See Compact Edition, Volume 5 for text of 20 to 23A]

Sec. 23A-1. Repealed by Acts 1975, 64th Leg., p. 1148, ch. 432, § 31, eff. June 19, 1975.

[See Compact Edition, Volume 5 for text of 23B]

Sec. 23C. Repealed by Acts 1975, 64th Leg., p. 1148, ch. 432, § 31, eff. June 19, 1975.

[See Compact Edition, Volume 5 for text of 23D and 23E]

Secs. 23F, 23G. Repealed by Acts 1975, 64th Leg., p. 1148, ch. 432, § 31, eff. June 19, 1975.

[See Compact Edition, Volume 5 for text of 24 to 28]

[Amended by Acts 1975, 64th Leg., p. 412, ch. 183, § 23, eff. May 13, 1975; Acts 1975, 64th Leg., p. 1148, ch. 432, § 31, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1851, ch. 735, § 2.137, eff. Aug. 29, 1977.]

Art. 6243e.1. Firemen's Relief and Retirement Fund in Cities of 250,000 to 320,000

Definitions

Sec. 1. In this Act:

(1) "Board" or "board of trustees" means the board of firemen's relief and retirement fund trustees.

(2) "Fireman" means an active member of a regularly organized fire department of an incorporated city.

(3) "Fund" or "pension fund" means the firemen's relief and retirement fund.

Creation of Fund; Board of Firemen's Relief and Retirement Fund Trustees

Sec. 2. A firemen's relief and retirement fund is created in all incorporated cities having a population of not less than 250,000 nor more than 320,000, according to the last preceding federal census, and having a fully paid fire department. The mayor of the city, the city treasurer, or if no treasurer, then the city secretary, city clerk, or other person or

officer as by law, charter provision, or ordinance, performs the duty of city treasurer, and three members of the regularly organized active fire department, to be selected by vote of the members of the fire department in the manner provided in this Act, shall be and are constituted the "Board of Firemen's Relief and Retirement Fund Trustees" to receive, handle and control, manage, and disburse the fund for the respective city or town. The board shall have the power and authority to hear and determine all applications for retirement, claims for disability, either partial or total, and to designate the beneficiaries or persons entitled to participate as provided by this Act. The board shall be known as the "Board of Firemen's Relief and Retirement Fund Trustees of _____, Texas." The mayor shall be the chairman and the city treasurer shall be the secretary-treasurer of the board of trustees respectively. The fire department of any city that comes within the provisions of this Act shall elect by ballot three of its members, one to serve for one year, one to serve for two years, and one to serve for three years, or until their successors may be elected as provided in this Act, as members of the board of trustees and shall immediately certify the election to the governing body of the city. Annually thereafter, on the first Monday in the month of January after the effective date of this Act, the fire department shall elect by ballot and certify, one member of such board of trustees for a three-year term. The board of trustees shall elect annually from among their number a vice-chairman who shall act as chairman in the absence or disability of the mayor-chairman. The board of trustees shall hold regular monthly meetings at a time and place as it may by resolution designate and may hold special meetings on call of the chairman as he may deem necessary; shall keep accurate minutes of its meetings and records of its proceedings; shall keep separate from all other city funds all money for the use and benefit of the firemen's relief and retirement fund; shall keep a record of all claims, receipts, and disbursements in a book or books to be furnished by the city for the purpose; shall make disbursements from the fund only on regular voucher signed by the treasurer and countersigned by the chairman and at least one other member of the board of trustees. The city treasurer, as the treasurer of the board of trustees, shall be the custodian of the firemen's relief and retirement fund for the city under penalty of his official bond and oath of office. No member of the board of trustees may receive compensation for service on the board of trustees. The board of firemen's relief and retirement fund trustees of each such city or town in this state shall annually and not later than the 31st day of January of each year after this Act takes effect, make and file with the city treasurer a detailed and itemized report of all receipts and disbursements with respect to the fund,

together with a statement of their administration, and shall make and file other reports and statements or furnish further information as from time to time may be required or requested by the city treasurer.

The board of trustees shall have the power and authority to compel witnesses to attend and testify before it with respect to all matters connected with the operation of this Act in the same manner as is or may be provided for the taking of testimony before notaries public, and its chairman shall have the power and authority to administer oaths to witnesses. A majority of all members shall constitute a quorum to transact business, and any order of the board of trustees shall be made by vote to be recorded in the minutes of its proceedings. If a vacancy occurs in the membership of the board of trustees by reason of the death, resignation, removal, or disability of an incumbent, the vacancy shall be filled in the manner provided in this Act for the selection of the member to be so succeeded.

Eligibility; Amount and Time of Payment of Benefits

Sec. 3. (a) Any person who has been duly appointed and enrolled and who has attained the age of 55 years or served actively for a period of 35 years, regardless of age, that service having been performed in any rank, as a fully paid fireman, in one or more regularly organized fire departments in any city in this state covered by the provisions of this Act may retire from that service or department and on retirement is entitled to receive from the firemen's relief and retirement fund of that city a monthly pension equal to the sum of three-fourths of one percent of his average monthly salary multiplied by his service, if any, prior to 1941, plus two percent of his average monthly salary multiplied by his service after 1940.

(b) The factor of two percent may be increased in increments of one-tenth of one percent, provided that:

(1) the increase is first approved by an actuary; and

(2) the increase applies only to active full-time firemen in the department at the time of the increase and those who enter the department after the increase is effective.

(c) The average salary means the monthly average of the fireman's salary for the highest three calendar years during his period of service, excluding overtime pay and any temporary pay in higher classification.

(d) Any person who continues to serve actively beyond the date he would normally retire shall continue to make contributions to the fund and accrue pension credits to the date of actual retirement.

(e) Benefits shall be payable on the first day of each month commencing with the month following the date as of which the member retired.

Cost of Living Adjustment

Sec. 4. Any fireman and beneficiaries of a fireman who retires or has retired or who received benefits under Section 3, 6, or 11 of this Act, shall be entitled to an annual cost of living adjustment of his pension allowance and their benefits based on the Consumer Price Index for Urban Wage Earners and Clerical Workers as determined by the United States Department of Labor. The adjustment must first be approved by a majority of the members of the board of firemen's relief and retirement fund trustees of the city and an actuary. The adjusted pension allowance and adjusted benefits shall never be less than the amount granted the fireman or his beneficiaries on the date of his retirement or death without regard to changes in the consumer price index. The adjusted pension allowance or adjusted benefits may be increased by an amount to be determined by a majority of the board of firemen's relief and retirement fund trustees of the city and an actuary.

Eligibility After 10 Years of Service

Sec. 5. (a) Any fireman who has served in the fire department of the city for a period of at least 10 years and who has contributed to the firemen's relief and retirement fund of the city for a period of at least 10 years, shall be entitled to receive a pension allowance at the age of 55 years, provided that the following conditions are met:

(1) on termination of employment, the fireman shall leave his contributions in the fund, and shall not be required to make any further contributions to the fund;

(2) the pension allowance shall be based on the monthly average of the fireman's salary for the highest three calendar years during the fireman's service excluding overtime pay and any temporary pay in higher classifications; and

(3) the pension allowance shall be calculated by the formula, as set out in Section 3 of this Act, in effect at the time the fireman terminated his employment.

(b) In the event the fireman dies before the age of 55, or in the event the fireman dies after retirement under the provisions of this section, the fireman's surviving spouse shall receive 75 percent of the fireman's pension allowance provided for under this section.

(c) Any fireman qualifying for a pension allowance under Subsection (a) of this section may, on or after termination of his employment, elect to withdraw his contributions from the fund, thereby forfeiting any rights he may have had in the fund.

(d) The provisions of this section shall not become operable until a majority of the members of the board of firemen's relief and retirement fund trustees of the city and an actuary so approve.

Total and Permanent Disability

Sec. 6. (a) If a person, serving as an active fireman duly enrolled in a regularly active fire department becomes totally and permanently disabled, the board of trustees shall, on his request, or without his request if it shall deem proper and for the good of the department, retire the person from active service and order that he be paid from the firemen's relief and retirement fund of the city a monthly amount equal to his accrued unreduced pension as determined under Subsection (a), Section 3 of this Act. If a person becomes totally and permanently disabled while in or as a consequence of the performance of his duty, the amount to be paid shall not be less than \$200 and if a person becomes disabled from any other cause, the amount to be paid shall not be less than \$200.

(b) When the disability of a person who has been granted a pension under Subsection (a) of this section ceases, the pension shall be discontinued and the person shall be restored to active service at not less than the same salary he received at the time of his retirement for disability.

(c) The provisions of this section shall apply even though the fireman was disabled while gainfully employed by someone other than the respective fire department for which he was employed.

(d) No person may receive retirement benefits under this section for any period of time during which that person received his full salary or compensation including payment received while on sick leave.

Transferred Firemen

Sec. 7. (a) This section applies to all cities having an organized, fully paid fire department covered by a firemen's relief and retirement fund.

(b) A fireman who transfers from the fire department of one city to that of a city covered by this section and desires to participate in the fund of that city shall:

(1) be less than 30 years old;

(2) pass a physical examination taken at his expense and performed by a physician selected by the board;

(3) pay into the fund of that city an amount equal to the total contribution he would have made had he been employed by that city instead of the city from which he transferred, plus four percent interest.

(c) The city to which the fireman has transferred shall pay an amount equal to the amount it would have paid had the fireman been employed by that city instead of the city from which he transferred, plus four percent interest.

(d) No fireman may participate in the fund of the city to which he has transferred until he has complied with the provisions of this section.

**Disability Retirement or Payment; Certificates of Disability;
Election of Section Under Which Payments Made**

Sec. 8. No person may be retired either for total or temporary disability, except as provided in this Act, nor receive any allowance from the fund, unless and until there shall have been filed with the board of trustees, certificates of his disability or eligibility signed and sworn to by the person or by the city physician, if there be one, or if none, then by any physician selected by the board of trustees. The board of trustees, in its discretion, may require other or additional evidence of disability before ordering retirement or payment.

If any fireman or one or more beneficiaries of a fireman shall be or become entitled to receive payments from a fund under the provisions of more than one section of this Act, the fireman or beneficiaries shall be entitled to and shall be required to elect one section under which such payments shall be computed and paid.

Required Contributions

Sec. 9. Each fireman who is a member of a fully paid fire department which has a firemen's relief and retirement fund and who was participating in the firemen's relief and retirement fund of his city on July 22, 1957, shall be required to make the contributions to the fund provided by this Act, and those firemen shall be entitled to participate in the benefits provided by this Act.

**Contributions; Membership; Creditable Service; Investment
of Surplus Funds**

Sec. 10. (a) The city shall contribute and appropriate each month to the fund an amount equal to 11.85 percent of the monthly payroll, excluding overtime pay and any temporary pay in higher classification of the fire department of the city, and each full-time fireman shall pay into the pension fund 11.85 percent of his monthly salary, excluding overtime pay and any temporary pay in higher classification. The governing body of the city may authorize the city to make an additional contribution to its firemen's relief and retirement fund in whatever amount the governing body of the city may fix. The firemen, by a majority vote in favor of an increase in contributions above the 11.85 percent, shall increase each member's contribution above 11.85 percent in whatever amount the pension board recommends.

(b) Money deducted from salaries or compensation as provided by this section and the payments and contributions provided by this section shall become and form a part of the firemen's relief and retirement fund of the city in which the contributing firemen serve.

(c) Any person who enters service as a fireman in any city that has a firemen's relief and retirement fund to which he is eligible for membership shall become a member of the fund as a condition of his appointment, and shall, by acceptance of the appointment, agree to make the contributions required by this Act of members of the fund and is eligible to participate in the benefits of membership in the fund as provided in this Act. However, no person is eligible to membership in the fund who has reached his 30th birthday at the time he enters service as a fireman, and any person who enters service as a fireman may be denied or excused from membership in the fund if the board of trustees of the fund determines that he is not of sound health. The applicant shall pay the cost of any physical examination required by the board of trustees for this purpose.

(d) Each person who is an active member of a firemen's relief and retirement fund previously organized and existing under the laws of this state at the effective date of this amendment shall continue as a member of the fund, and he shall retain and be allowed credit for all service to which he was entitled in the fund of which he was a member immediately prior to the effective date of this amendment.

(e) The severance benefit of a fireman who subsequently terminates his employment before he is eligible for retirement shall be an amount equal to the sum total of his monthly contributions made while a participating member of the firemen's relief and retirement fund. If the member's employment is terminated by death before retirement and he leaves no surviving beneficiary entitled to pension benefits, his estate shall receive his contributions without interest.

(f) These provisions apply to all active full-time members of the fire department and to those persons who shall become members of the fire department at any time in the future.

(g) When, in the opinion of the board of trustees, there is on hand in the firemen's relief and retirement fund of any city under this Act a surplus over and above a reasonable and safe amount to take care of the current demands on the fund, the surplus, or so much of it as in the judgment of the board is deemed safe, may be invested in federal, state, county, or municipal bonds, and in shares or share accounts of savings and loan associations, where the shares or share accounts are insured under and by virtue of the Federal Savings and Loan Insurance Corporation, and in the securities in which the state

Permanent School Fund of Texas or the Permanent University Fund of The University of Texas may be invested under present laws, and may also invest in notes and other evidence of debt secured by mortgages insured or guaranteed by the Federal Housing Administration under the provisions of the National Housing Act, and the interest or dividends shall be deposited into the fund and become a part of it.

(h) The mayor shall appoint an investment advisory committee consisting of not less than three nor more than five qualified persons to be selected from the personnel of the banks of the city. The appointees shall be experienced in the handling of securities and investment matters and shall serve for a two-year term. The purpose of this committee shall be to advise and make recommendations on investment procedure and policy, and to review the investments made by the board. From these reviews and observations, the committee shall make an annual report to the board of trustees of the city within 90 days after the end of each calendar year.

Survivor's Benefits

Sec. 11. (a) If a fireman dies before retirement, the fireman's surviving spouse shall be entitled to receive a monthly pension, the amount of which shall be 75 percent of the member's accrued unreduced pension as determined under Section 3 of this Act. The monthly pension payable to the spouse of a member who dies while in or as a consequence of the performance of duty shall be not less than \$100, and the monthly pension payable to the surviving spouse of a member who dies while not in the performance of duty shall be not less than \$100.

(b) Each child of a deceased member under the age of 18 is entitled to receive as a monthly pension \$50 if there is a surviving spouse entitled to a pension, or \$100 if not. The benefits paid to the minor children are in addition to the minimums provided for the surviving spouse, or any accrued amount that the surviving spouse may be entitled to.

(c) On the death of a retired member, the surviving spouse, provided the spouse married the member prior to the member's retirement, is entitled to receive as a monthly pension, 75 percent of the pension being paid to the member. Each child of such deceased retired member under the age of 18 is entitled to receive as a monthly pension \$50 if there is a surviving spouse entitled to a pension, or \$100 if not.

(d) If a deceased member or retired member leaves no surviving spouse or children eligible to receive a benefit hereunder but is survived by a dependent parent, or parents, such dependent parent, or one of the surviving parents designated by the board of trustees, is entitled to receive as a monthly pension, the amount otherwise payable to the surviving spouse.

(e) If a deceased member leaves no surviving spouse, children, or dependent parent eligible to receive a benefit as provided in this section, the member's total contributions, less any amount previously paid to the member, shall be paid to the member's estate.

(f) Payments to a child shall be made whether or not a spouse survives and shall continue after the death of a surviving spouse, but shall cease on the earliest of such child's death, marriage, or attainment of age 18. Payment to a surviving spouse or parent shall cease upon the earlier of such person's death or marriage. After all payments cease, any excess of the member's total contributions at date of death over any disability and death benefits shall be paid to the member's estate.

(g) The provisions of this section shall apply even though the death was caused while the member was gainfully employed by someone other than the respective fire department for which he was employed.

(h) Benefits provided in this section shall be payable on the first day of each month commencing with the month following the one in which the member's death occurs.

(i) The board of trustees shall determine all questions of dependency, and their determination shall be final and conclusive on all parties. All unmarried, legitimate, and legally adopted children under age 18, in the absence of a determination to the contrary, are considered dependent.

(j) On a majority vote of the board of trustees, benefits to minor children may be increased to an amount not to exceed the maximum approved by an actuary.

(k) On a majority vote of the board of trustees, benefits to a surviving spouse may be increased to an amount not to exceed the maximum approved by an actuary.

Exemption From Execution, Attachment, Garnishment, etc.; Transfers or Assignments Void

Sec. 12. No portion of a firemen's relief and retirement fund may, either before or after its order of disbursement by the board of trustees to a retired or disabled fireman or the surviving spouse, the guardian of any minor child or children, or the dependent parent of any deceased, retired, or disabled fireman, be ever held, seized, taken, subjected to, or detained, or levied on by virtue of any execution, attachment, garnishment, injunction, or other writ, order, or decree, or any process, or proceedings whatsoever issued out of or by any court of this state for the payment or satisfaction, in whole or in part, of any debt, damage, claim, demand, or judgment against such fireman or the fireman's surviving spouse, the guardian of the fireman's minor child or children, the fireman's dependent father or mother, nor shall said fund or any claim thereto be

directly or indirectly assigned or transferred, and any attempt to transfer or assign the same shall be void. The fund shall be sacredly held, kept, and disbursed for the purposes provided by this Act and for no other purpose whatever.

Integration With Benefits Under Federal Social Security Act

Sec. 13. No firemen's relief and retirement fund for fully paid firemen may ever be integrated with benefits payable under the federal Social Security Act,¹ and benefits which might be available to a fireman under the federal Social Security Act may never be taken into account in a city where firemen are eligible to enroll for or receive retirement benefits under the Social Security Act when determining the amount of benefits which a fireman may receive from a firemen's relief and retirement fund for fully paid firemen.

¹ 42 U.S.C.A. § 301 et seq.

Medical Examinations for Disabled Firemen

Sec. 14. The board of trustees, in its discretion, at any time may cause any person retired for disability under the provisions of this Act to appear and undergo a medical examination by the city physician or any other physician appointed or selected by the board of trustees for that purpose, and the result of the examination and report by the physician shall be considered by the board of trustees in determining whether the relief in the case shall be continued, increased (if less than the maximum provided herein), decreased, or discontinued. Should any person receiving relief under the provisions of this Act, after due notice from the board of trustees to appear and be reexamined, unless excused by the board, fail to appear or refuse to submit to reexamination, the board of trustees is authorized, in its discretion, to reduce or entirely discontinue relief.

Conviction of Felony; Payments to Spouse; Children or Parents

Sec. 15. Whenever any person who shall have been granted an allowance provided in this Act shall have been convicted of a felony, then the board of trustees shall order the allowance so granted or allowed the person discontinued, and in lieu thereof, order paid to his or her spouse, or dependent child, children, or dependent parent, the amount provided to be paid the dependent or dependents in case of the death of the person so originally granted or entitled to allowance.

Creditable Service

Sec. 16. In computing the time or period for retirement for length of service as provided in this Act, less than one year out of service or any time served in the armed forces of the nation during war or national emergency shall be construed as continuous service, but if out more than one year and less than five years, credit shall be given for prior service, but deduction made for the length of time out

of service. If out of service more than five years, no previous service shall be counted, provided however, that if a fireman is out of service over five years through no fault of his own and subsequently returns to the department, this period of time shall not be counted against him insofar as his retirement time is concerned. He shall not be entitled to any disability benefits on account of any sickness or injury received before the statement was filed.

City Attorney; Representation of Board of Trustees

Sec. 17. The city attorney, without additional compensation, shall appear for and represent the board of trustees of that city in all cases of appeal by any claimant from the order or decision of the board of trustees.

Investment of Assets; Employment of Professional Counselors

Sec. 18. The board of trustees of a fully paid fire department may engage and employ professional investment counselors to advise and assist the board in the investment of the assets of the fund. The investment counseling service must be provided by a nationally known organization whose business functions include rendering continuous investment advisory service to public pension and retirement funds. The city may pay the entire cost of this counseling service; if not paid by the city, the cost may be paid from the assets of the fund.

Employment of Actuaries

Sec. 19. The board of trustees of a firemen's relief and retirement fund coming under the provisions of this Act may employ an actuary no more than once every three years and pay his compensation out of the pension fund.

Civil Actions for Money Wrongfully Paid Out or Obtained

Sec. 20. The board of trustees of any city created and constituted under the provisions of this Act shall have the power and authority to recover by civil action from any offending party or from his bondsmen, if any, any money paid out or obtained from said fund through fraud, misrepresentation, defalcation, theft, embezzlement, or misapplication and may institute, conduct, and maintain the action in the name of the board of trustees for the use and benefit of the fund.

Audits; Employment of Certified Public Accountants

Sec. 21. The board of trustees of a fully paid fire department may engage and employ a certified public accountant or firm of certified public accountants to perform an audit of the firemen's relief and retirement fund at such times and intervals as it may deem necessary. The city may pay the entire cost of such audits; if not paid by the city, the cost may be paid from the assets of the fund.

Insufficient Funds; Prorated Reduction in Benefits

Sec. 22. If, for any reason, the fund or funds made available for any purpose covered by this Act shall be insufficient to pay in full any allowance or disability benefits, then all granted allowances, or disability benefits shall be proratably reduced for the time the deficiency exists.

[Acts 1975, 64th Leg., p. 412, ch. 183, eff. May 13, 1975. Amended by Acts 1979, 66th Leg., p. 525, ch. 248, §§ 1 to 5, eff. Aug. 27, 1979.]

Art. 6243e.2. Firemen's Relief and Retirement Fund in Cities of Not Less Than 1,200,000

Definitions

Sec. 1. In this Act:

(1) "Board" or "board of trustees" means the board of firemen's relief and retirement fund trustees.

(2) "Fireman" means an active member of a regularly organized fire department of an incorporated city.

(3) "Fund" or "pension fund" means the firemen's relief and retirement fund.

Fund Created; Membership

Sec. 2. (a) A firemen's relief and retirement fund is created in all incorporated cities having a population of not less than 1,200,000 according to the last preceding federal census, and having a fully paid fire department. The board of trustees shall consist of the following persons: the mayor or his duly appointed and authorized representative; the city treasurer, or if no city treasurer then the city secretary, city clerk, or other person or officer who by law, charter provisions, or ordinance performs the duty of city treasurer; five members of the regularly organized active fire department of the city to be selected by vote of the members of the fire department; and two resident citizens of the city to be selected as provided in this section. The board of firemen's relief and retirement fund trustees shall receive, handle and control, manage, and disburse the fund for the respective city. The board shall have the power and authority to hear and determine all applications for retirement, claims for disability, either partial or total, and to designate the beneficiaries or persons entitled to participate as provided by this Act. The board shall be known as the "Board of Firemen's Relief and Retirement Fund Trustees of _____, Texas." The board of trustees shall annually elect from among their number a chairman, a vice-chairman, and a secretary. The fire department of any city that comes within the provisions of this Act shall elect by ballot five of its members, two to serve for one year, two to serve for two years, and one to serve for three years, or until their successors may be elected as provided in

this Act, as members of the board of trustees and shall immediately certify the election to the governing body of the city. Annually thereafter, on the first Monday in the month of January after the effective date of this Act, the members shall elect by ballot and certify those members to the board of trustees for a three-year term. The board of trustees shall hold regular monthly meetings at a time and place as it may by resolution designate and may hold special meetings on call of the chairman as he may deem necessary, shall keep accurate minutes of its meetings and records of its proceedings, shall keep separate from all other city funds all money for the use and benefit of the firemen's relief and retirement fund, shall keep a record of all claims, receipts, and disbursements in a book or books to be furnished by the city for the purpose, and shall make disbursements from the fund only on regular voucher signed by the treasurer and countersigned by the chairman and at least one other member of the board of trustees. The city treasurer, as the treasurer of the board of trustees, shall be the custodian of the firemen's relief and retirement fund for the city under penalty of his official bond and oath of office. No member of the board of trustees may receive compensation for service on the board of trustees. The board of firemen's relief and retirement fund trustees of each city in this state shall annually and not later than the 31st day of January of each year after this Act takes effect make and file with the city treasurer a detailed and itemized report of all receipts and disbursements with respect to the fund, together with a statement of their administration, and shall make and file other reports and statements or furnish further information as from time to time may be required or requested by the city treasurer.

(b) The board of trustees may compel witnesses to attend and testify before it with respect to all matters connected with the operation of this Act in the same manner as is or may be provided for the taking of testimony before notaries public, and its chairman shall have the power and authority to administer oaths to witnesses. A majority of all members shall constitute a quorum to transact business, and any order of the board of trustees shall be made by vote to be recorded in the minutes of its proceedings. If a vacancy occurs in the membership of the board of trustees by reason of the death, resignation, removal, or disability of any incumbent, the vacancy shall be filled in the manner provided in this Act for the selection of the member to be so succeeded.

(c) Three of the members so elected shall be elected from the suppression division of said fire department. One member so elected from the suppression division shall have the rank of private or chauffeur, and the position on the board to which that member is elected shall be designated as Position I. One

member so elected from the suppression division shall have the rank of captain, and the position on the board to which that member is elected shall be designated as Position II. One member so elected from the suppression division shall have the rank of battalion chief, district chief, deputy chief, or assistant chief, and the position on the board to which that member is elected shall be designated as Position III.

(d) One of the members so elected shall be elected from among those fire department members who devote full time to prevention and investigation of fire or who are permanently assigned in the record division or fire chief's office and who are not members of the suppression division, and the position on the board to which that member is elected shall be designated as Position IV.

(e) One of the members so elected shall be elected from the fire alarm operators division or the fire department repair division, and the position on the board to which that member is elected shall be designated as Position V.

(f) Two legally qualified taxpaying voters of the city, residents of the city for the preceding three years, are to be chosen by the elected members of the pension board, being neither employees nor officers of the city. One of these appointed members shall be appointed for a term of one year and one of these appointed members shall be appointed for a term of two years. Annually thereafter on the third Monday of January, the elected members of the pension board are to fill one of the appointed positions of the pension board for a period of two years. The appointed members of the pension board are to take the same oath of office required of elected members. A vacancy occurring by death, resignation, or removal of a member chosen by the elected members of the pension board shall be filled by the elected members of the board. A member who is selected to fill a vacancy shall hold office for the unexpired term of the appointed member who vacated his position. These two appointed positions of the pension board are to be filled by the elected members of the pension board on the third Monday in January following the effective date of this Act.

(g) Each member of the board of trustees shall, within 10 days after his election, take an oath of office that he will diligently and honestly administer the affairs of the firemen's relief and retirement fund and that he will not knowingly violate or willingly permit to be violated any provision of this Act.

(h) Members of a board of trustees of a firemen's relief and retirement fund coming under this Act shall continue to serve in their respective duties and terms.

(i) The secretary of the board of trustees shall, within seven days after each meeting of the board,

forward true copies of the minutes of such meeting to each fire station and to each division of the fire department.

Appropriations

Sec. 3. This fund shall continue to receive annually any money appropriated by the legislature which the fund received in prior years.

Pension and Additional Pension Allowances; Service Retirement; Elections; Contributions; Certificate of Service; Limits; Annual Adjustments

Sec. 4. (a) Any person who has been duly appointed and enrolled and who has attained the age of 50 years, and who has served actively for a period of 20 years or more and has participated in a fund in a city which is within the provisions of this Act, shall be entitled to be retired from the service or department and shall be entitled to be paid from the firemen's relief and retirement fund of that city or town, a monthly pension equal to 50 percent of his average salary for the highest 36 months of his service. Any fireman shall be entitled to be paid in addition to the benefits provided for in this subsection an additional pension allowance of one percent of his average monthly salary for the highest 36 months during his participation for each year of service after the date on which such fireman shall be entitled to be retired.

(b) A fireman who has 20 years of service and participation in a fund under this section may, if he so elects, be retired from the department and receive a monthly pension allowance of 35 percent of his average monthly salary for the highest 36 months during his participation. If the fireman shall participate in the fund for a period in excess of 20 years he shall, in addition to the monthly pension allowance of 35 percent be paid an additional monthly pension allowance equal to three percent of his average monthly salary for each year of service in excess of 20 years until the fireman completes 25 years of service thereby providing a monthly pension allowance equal to 50 percent of the fireman's average monthly salary for the highest 36 months during his participation. If the fireman remains in the active service for a period in excess of 25 years, he shall receive, in addition to the pension allowances provided for in Subsection (b) of this section, an additional monthly pension allowance equal to one percent of his average salary for each year of participation in excess of 25 years.

(c) The maximum pension allowance to be received by any fireman under this section or Section 6 or 7 of this Act shall not exceed 60 percent of the fireman's average monthly salary for the highest 36 months during his participation.

(d) Any eligible and qualified fireman who has completed 20 years of service or more and of participation in a fund in a city to which this section is

applicable, before reaching the age of 50 years, may apply to the board of trustees for, and the board shall issue, a certificate showing the completion of service and showing and certifying that the fireman, when reaching the age of 50 years, is entitled to the retirement and other applicable benefits of this Act. When any fireman is issued a certificate he is, when reaching retirement age, entitled to all the applicable benefits of this Act, even though he is not engaged in active service as a fireman after the issuance of the certificate. However, the fireman shall continue to pay his pension contribution monthly or in advance until the fireman reaches retirement age. Any fireman who does not make his pension contribution monthly or in advance shall automatically forfeit any retirement or other benefits he or his beneficiaries may have been entitled to under this Act.

(e) All firemen entering a fire department coming within the provisions of this section after the effective date of this Act shall retire under the benefit provisions of Subsection (b) of this section unless the retirement is for disability.

(f) All firemen who retire under the provisions of this section or Section 6 or 7 of this Act shall have their retirement allowances adjusted annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers as determined by the United States Department of Labor. The adjusted pension allowance shall never be less than the amount granted the member on the date of his retirement without regard to changes in the consumer price index. The adjusted pension allowance shall never be more than the amount granted the member on the date of his retirement increased by three percent annually notwithstanding a greater increase in the consumer price index.

Pension Allowance at Age of 50; Calculation

Sec. 5. Any fireman who has served in such fire department for a period of at least 10 years and for a period of less than 20 years shall be entitled to a pension allowance at age 50 years. The pension allowance shall be calculated as follows:

(a) The monthly pension allowance shall be equal to the sum of one and seven-tenths percent of his average monthly salary multiplied by the number of years of service of the fireman.

(b) The average monthly salary shall be for the highest 36 months of service of the fireman.

(c) In the event the fireman dies:

(1) before he has reached the age of 50 years, his widow or other beneficiaries shall be eligible for a pension allowance on the date the deceased fireman would have been 50 years of age.

(2) after he reached 50 years of age, his widow or other beneficiaries shall be eligible for a pen-

sion allowance. The pension allowances shall be granted by the provisions of this section.

Disability Retirement; Amount of Pension; Service Retirement Election

Sec. 6. (a) Whenever a fireman becomes physically or mentally disabled while in or as a consequence of the performance of his duty or becomes physically or mentally disabled from any cause whatsoever after he has participated in a fund for a period of 20 years or more, the board of trustees shall, on his request, or without a request, if they determine that the fireman is not capable of performing the usual and customary duties of his classification or position, retire the fireman on a monthly disability allowance of an amount equal to 50 percent of his average monthly salary for the highest 36 months during his service, or so much thereof as he may have served.

(b) If the fireman is eligible to be retired under the provisions of Section 4 of this Act, he may elect to have his monthly pension allowance calculated under that section.

Death or Disability From Any Cause Other Than Performance of Duty; Monthly Pension Allowance to Fireman or Beneficiary; Computation; Service Retirement Election; Annual Adjustment

Sec. 7. (a) Whenever a fireman dies or becomes disabled from any cause other than a disability acquired in the performance of his duty as a fireman, a monthly pension allowance shall be paid to the fireman or his beneficiaries.

(b) The monthly pension allowance shall be computed as follows:

(1) If the fireman becomes disabled, he shall be paid a monthly pension allowance equal to 25 percent of the average monthly salary of the fireman, plus two and one-half percent of the average monthly salary for each full year of service and of participation in a fund except that the monthly pension allowance shall not exceed 50 percent of the average monthly salary. The average monthly salary shall be based on the monthly average of the fireman's salary for the highest 36 months during his service, or so much as he may have served preceding the date of the retirement.

(2) If the fireman was eligible to be retired under the provisions of Section 4 of this Act, he or his beneficiaries may elect to have their monthly pension allowance calculated under that section.

(3) If a fireman dies and leaves surviving him both a widow who married the fireman prior to his retirement, and a child or children of the fireman under the age of 18 years, the board of trustees shall order paid to the widow of the fireman a monthly pension allowance equal to one-half of the amount the fireman would have been entitled to receive, if disabled, under the provisions of

Subdivision (1) of this subsection, and in addition the board of trustees shall order paid to the widow or other person having the care and custody of the child or children under the age of 18 years a monthly pension allowance for the use and benefit of the child or children equal to the amount provided for the widow. If the fireman leaves no child under the age of 18 years surviving him or if at any time after the death of the fireman no child is entitled to allowance, then the monthly pension allowance to be paid the widow shall be equal to the full amount the fireman would have been entitled to receive, if disabled, under Subdivision (1) of this subsection, except that the allowance to a widow, if no child is entitled to allowance, shall not exceed one-half of the maximum base salary for the position of pipeman at the time of the death of the fireman.

(4) If the fireman dies and if his widow dies after being entitled to her allowance, or in the event that there is no widow to receive an allowance, the amount of the monthly pension allowance to be paid, for use and benefit of the child or children under the age of 18 years, to the person having the care and custody of the child or children shall be computed as follows: an amount equal to one-half of the amount the fireman would have been entitled to receive, if disabled, under the provisions of Subdivision (1) of this subsection shall be paid for each of the fireman's children under the age of 18 years, except that the total monthly pension allowance provided for children shall not exceed the amount to which the fireman would have been entitled under Subdivision (1) of this subsection, nor shall the allowance for the children exceed one-half of the maximum base salary provided for the position of pipeman at the time of the death of the fireman.

(5) If the fireman dies and only if no widow or child is entitled to an allowance under the provisions of this section, a monthly pension allowance equal to one-half of the amount the fireman would have been entitled to receive, if disabled, under Subdivision (1) of this subsection shall be paid to each parent of the deceased fireman on proof to the board of trustees that the parent was dependent on the fireman immediately prior to the death of the fireman, except that the total monthly pension allowance provided for parents shall not exceed one-half of the maximum base salary provided for the position of pipeman at the time of the death of the fireman.

(c) Allowance or benefits payable under the provisions of this section for any minor child shall cease when that child becomes 18 years of age or marries. If a fireman who is covered by a provision of this Act dies and leaves a child who is totally disabled as a result of a physical or mental illness, injury, or

retardation, that child is entitled to receive any pension allowance to which he is entitled under this Act and is further entitled to continue receiving the allowance so long as he remains totally disabled. If the child is not entitled to a pension allowance under this Act solely because he is over the maximum age at the time of the death of his parent and the child is totally disabled as a result of a physical or mental illness, injury, or retardation, the child is entitled to receive as an allowance that to which he would have been entitled had he been under the maximum age at the time of the death of his parent.

(d) The provisions of this section are not applicable to a fireman or his beneficiaries if the fireman's death or disability results from suicide or attempted suicide before the fireman has completed two years of service with the fire department for which he was employed.

(e) The wife of a deceased fireman who had served actively for a period of 20 years or more in a regularly active fire department shall, insofar as the provisions of this section are concerned, be considered the fireman's widow as long as she is not married, notwithstanding that she may have married and divorced or married after the fireman died and she became a widow. A widow covered under this section shall be limited to the pension allowance of the deceased member of this fund, to whom she was last married.

(f) The monthly pension allowance of beneficiaries of a deceased fireman who retired after the effective date of this Act shall have their monthly pension allowances provided for under this section or Section 11 adjusted annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers as determined by the United States Department of Labor. The adjusted pension allowance shall never be less than the amount granted the beneficiaries on the death of the member without regard to changes in the consumer price index. The adjusted pension allowance shall never be more than the amount granted the beneficiaries on the death of the member increased by three percent annually notwithstanding a greater increase in the consumer price index.

Certificates of Disability

Sec. 8. (a) No person may be retired either for total or temporary disability, except as provided in this Act, nor receive any allowance from the fund, unless and until there has been filed with the board of trustees certificates of his disability or eligibility signed and sworn to by that person and his physician or by any physician selected by the board of trustees. The board of trustees, in its discretion, may require other or additional evidence of disability before ordering retirement or payment.

(b) Any fireman or beneficiary who is entitled to receive a pension allowance under any provision of this Act is entitled to receive the allowance from and after the date on which the fireman ceases to carry out his regular duties as a fireman, notwithstanding the fact that the fireman may remain on the payroll of his fire department or receive sick leave, vacation, or other pay after the termination of his regular duties as a fireman, except that in the event of a delay resulting from the requirements of Subsection (a) of this section, the fireman or beneficiary shall, when the allowance is approved by the board, be paid the full amount of the allowance which has accrued since the termination of the fireman's regular duties as a fireman.

(c) If any fireman or one or more beneficiaries of a fireman shall be or becomes entitled to receive payments from a fund under the provisions of more than one section of this Act, the fireman or beneficiaries shall be entitled to and shall be required to elect one section under which the payments shall be computed and paid.

Contributions of Members

Sec. 9. Each fireman who is a member of a fully paid fire department which has a firemen's relief and retirement fund, and who was participating in the firemen's relief and retirement fund of his city on July 22, 1957, shall be required to make the contributions to the fund provided by this Act, and each fireman shall be entitled to participate in the benefits provided by this Act.

Monthly Salary Deductions; Contributions and Appropriations; Membership; Service Credit; Termination

Sec. 10. (a) The governing body of the city shall deduct monthly a sum equal to nine percent from the salary or compensation of each fireman participating in the fund.

(b) The city shall contribute and appropriate monthly to the fund an amount equal to twice the total sum paid to the fund by salary deductions of the members, and each city shall contribute and appropriate monthly to the fund, for each person who holds a 20-year pension certificate and who is not engaged in active service as a fireman and who has not retired, an amount equal to twice the total sum paid into the fund by the member. Contributions and appropriations shall be made to the fund at the same time the city makes its contributions for the participating members of the fund.

(c) Money deducted from salaries or compensation as provided by this section and the payments and contributions provided by this section shall become and form a part of the firemen's relief and retirement fund of the city in which the contributing fireman serves.

(d) Each person who becomes a fireman in any city which has a firemen's relief and retirement fund in which he is eligible for membership, shall become a member of the fund as a condition of his appointment, and shall by acceptance of the position agree to make and shall make contributions required under this Act of members of the fund, and shall participate in the benefits of membership in the fund as provided in this Act, except that no person shall be eligible to membership in the fund who is more than 30 years of age at the time he first enters service as a fireman. Any person who enters service as a fireman may be denied or excused from membership in the fund if the board of trustees of the fund determines that the person is not of sound health. The applicant shall pay the cost of any physical examination required in that instance by the board of trustees.

(e) Each person who is an active member of the firemen's relief and retirement fund previously organized and existing under the laws of this state at the effective date of this Act shall continue as a member of the fund, and he shall retain and be allowed credit for all service to which he was entitled in the fund of which he was a member immediately prior to the effective date of this Act.

(f) If any member's employment by the city, as an employee of the fire department, is terminated for any reason other than those qualifying the employee for a pension, neither the employee nor his beneficiary or estate shall receive any amount paid by him into the pension fund or any interest his contributions may have accrued.

Allowance to Beneficiaries of Deceased Members

Sec. 11. (a) If a member of a fire department who has been retired on allowances because of length of service or disability dies from any cause whatsoever, or if while in service any member dies from any cause growing out of or in consequence of the performance of his duty and the member is participating in a fund, or dies from any cause whatsoever after he has become entitled to an allowance or pension certificate, and if the fireman leaves surviving a widow, a child or children under the age of 18 years, or a dependent parent or parents, the board of trustees shall order paid a monthly pension allowance which shall be based on the amount which the fireman would have been entitled to receive had he continued to live and be retired on allowance at the date of his death. The allowance or allowances shall be paid as follows:

(1) If the member dies and leaves surviving him both a widow who married the member prior to his retirement and a child or children of the member under the age of 18 years, the board of trustees shall order paid to the widow of the member a monthly pension allowance equal to one-half of

the amount the member would have been entitled to receive, and in addition the board of trustees shall order paid to the widow or other person having the care and custody of the child or children under the age of 18 years a monthly pension allowance, for the use and benefit of the child or children, equal to the amount provided for the widow. If the member leaves no child under the age of 18 years surviving him or if at any time after the death of the member no child is entitled to allowance, the monthly pension allowance to be paid the widow shall equal the full amount the member would have been entitled to receive, except that the allowance to a widow, if no child is entitled to allowance, shall not exceed one-half of the maximum base salary provided for the position of pipeman at the time of the death of the member.

(2) If the member dies and if his widow dies after being entitled to her allowance, or in the event there is no widow to receive an allowance, the amount of the monthly pension allowance to be paid, for the use and benefit of the child or children under the age of 18 years, to the person having the care and custody of the child or children shall be computed as follows: an amount equal to one-half of the amount that member would have been entitled to receive shall be paid for each of the member's children under the age of 18 years, except that the total monthly pension allowance provided for children shall not exceed the amount which the member would have been entitled to receive, nor shall such allowance for the children exceed one-half of the maximum base salary provided for the position of pipeman at the time of the death of the member.

(3) If the member dies and only if no widow or child is entitled to an allowance under the provisions of this section, a monthly pension allowance equal to one-half of the amount that member would have been entitled to receive shall be paid to each parent of the deceased member on proof of the board of trustees that the parent was dependent on the member immediately prior to the death of the member, except that the total monthly pension allowance provided for parents shall not exceed one-half of the maximum base salary provided for the position of pipeman at the time of the death of the member.

(b) Allowance or benefits payable under the provisions of this section for any minor child shall cease when the child becomes 18 years of age or marries, except that if a fireman who is covered by a provision of this Act dies and leaves a child who is totally disabled as a result of a physical or mental illness, injury, or retardation, that child is entitled to receive any pension allowance to which he is entitled under this Act and is further entitled to continue receiving

the allowance so long as he or she remains totally disabled. If the child is not entitled to a pension allowance under this Act solely because he or she is over the maximum age at the time of the death of his or her parent and the child is totally disabled as a result of a physical or mental illness, injury, or retardation, the child is entitled to receive as an allowance that to which he or she would have been entitled had he or she been under the maximum age at the time of the death of his parent.

(c) The wife of a deceased fireman who has been retired on disability allowances because of length of service or has been retired for disability after having served actively for a period of 20 years or more shall, insofar as the provisions of this section are concerned, be considered the fireman's widow as long as she is not married, notwithstanding that she may have married and divorced or married and became a widow after such fireman died. A widow covered under this section shall be limited to the pension allowance of the deceased member to whom she was last married.

Exemption of Benefits from Judicial Process

Sec. 12. No portion of the firemen's relief and retirement fund shall, either before or after its order of disbursement by the board of trustees to retired or disabled fireman or the widow, the guardian of any minor child or children, or the dependent parent of any deceased, retired, or disabled fireman, be ever held, seized, taken, subjected to, or detained, or levied on by virtue of any execution, attachment, garnishment, injunction, or other writ, order, or decree, or any process or proceedings whatsoever issued out of, or by, any court for the payment or satisfaction in whole or in part of any debt, damage, claim, demand, or judgment against a fireman or his widow, the guardian of his minor child or children, or his dependent father or mother, nor shall the fund or any claim be directly or indirectly assigned or transferred, and any attempt to transfer or assign the same shall be void. The fund shall be sacredly held, kept, and disbursed for the purposes provided by this Act and for no other purpose.

Integration of Fund with Social Security Benefits

Sec. 13. No benefit or pension allowance shall ever be integrated with benefits payable under the federal Social Security Act, and benefits which might be available to a fireman under the federal Social Security Act may never be taken into account in a city where firemen are eligible to enroll for or receive retirement benefits under the Social Security Act when determining the amount of benefits which a fireman may receive under the provisions of this Act.

Certificate to Fireman Eligible For the Retirement or Disability Allowance; Continuance in Service

Sec. 14. Any fireman possessing the qualifications and being eligible for voluntary retirement who elects to continue in the service of the fire department may apply to the board of trustees for a certificate, and if found to possess the qualifications and be eligible for retirement as provided in this Act, the board of trustees shall issue to the fireman a certificate showing him to be entitled to retirement or disability allowance, and on his death the certificate is prima facie proof that his widow or dependents are entitled to their respective allowances without further proof except as to her or their relationship.

Medical Examination of Persons Retiring for Disability

Sec. 15. The board of trustees, in its discretion, at any time may cause any person retired for disability under the provisions of this Act to appear and undergo a medical examination by any physician appointed or selected by the board of trustees for the purpose, and the result of the examination and report by the physician shall be considered by the board of trustees in determining whether the relief in the case shall be continued, increased (if less than the maximum provided), decreased, or discontinued. Should any person receiving relief under the provisions of this Act, after due notice from the board of trustees to appear and be reexamined, unless excused by the board, fail to appear or refuse to submit to reexamination, the board of trustees may in its discretion reduce or entirely discontinue relief.

Recall for Duty in Emergency

Sec. 16. Any retired fireman may be recalled to duty in case of great conflagration and shall perform such duty as the chief of the fire department may direct, but shall have no claim against a city for payment for duty so performed.

Appeal to District Court

Sec. 17. Any person possessing the qualifications required for retirement for length of service or disability or having claim for temporary disability, or any of his beneficiaries, who deems himself aggrieved by the decision or order of the board of trustees, whether because of rejection or the amount allowed, may appeal from the decision or order of the board of a district court in the county where the board is located by giving written notice of the intention to appeal. The notice shall contain a statement of the intention to appeal, together with a brief statement of the grounds and reasons why the party feels aggrieved. The notice shall be served personally on the chairman or secretary or treasurer of the board within 20 days after the date of the order or decision. After service of the notice, the party appealing shall file with the district court a copy of the notice of intention to appeal, together

with the affidavit of the party making service showing how, when, and on whom the notice was served. Within 30 days after service of the notice of intention to appeal upon the board, the secretary or treasurer of the board shall make up and file with the district court a transcript of all papers and proceedings in the case before the board and when the copy of the notice of intention to appeal and the transcript has been filed with the court, the appeal shall be deemed perfected and the court shall docket the appeal, assign the appeal a number, fix a date for hearing the appeal, and notify both the appellant and the board of the date fixed for the hearing. At any time before rendering its decision on the appeal, the court may require further or additional proof or information, either documentary or under oath. On rendition of a decision on the appeal, the court shall give to each party to the appeal a copy of the decision and shall direct the board as to the disposition of the case. The final decision or order of the district court is appealable in the same manner as are civil cases generally.

Employment of Certified Public Accountants; Audit

Sec. 18. The board of trustees may engage and employ a certified public accountant or firm of certified public accountants to perform an audit of the firemen's relief and retirement fund at times and intervals as it may deem necessary. The city may pay the entire cost of the audits; if not paid by the city, the cost may be paid from the assets of the fund.

Computation of Length of Service

Sec. 19. In computing the time or period for retirement for length of service, less than one year out of service or any time served in the armed forces of the nation during war or national emergency shall be construed as continuous service, but if out more than one year and less than five years, credit shall be given for prior service but deduction made for the length of time out of service. If out of service more than five years, no previous service shall be counted, except that if a fireman is out of service over five years through no fault of his own and subsequently returns to the department, this period of time shall not be counted against him insofar as his retirement time is concerned.

City Attorney to Represent Board of Trustees in Appeals

Sec. 20. The city attorney, without additional compensation, shall appear for and represent the board of trustees of the fund in that city in all legal matters of litigation.

Investment of Surplus

Sec. 21. (a) Whenever, in the opinion of the board of trustees, there is on hand in the firemen's relief and retirement fund a surplus over and above a reasonably safe amount to take care of current

demands upon the fund, the surplus, or so much of the fund as in the judgment of the board is deemed proper, may be invested in bonds or other interest bearing obligations and securities of the United States, the State of Texas, or any county, city, or other political subdivision of the State of Texas; in shares or share accounts of savings and loan associations, where the shares or share accounts are insured under and by virtue of the Federal Savings and Loan Insurance Corporation; in first lien real estate mortgage securities issued by the Federal Housing Administration under the National Housing Act of the United States, as amended from time to time; and in such corporation bonds, preferred stocks, and common stocks as the board may deem to be proper investments for the fund.

(b) In making each and all investments, the board shall exercise the judgment and care under the circumstances then prevailing which men of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.

(c) Not more than four percent of the fund shall be invested in corporate securities issued by any one corporation, nor shall more than five percent of the voting stock of any one corporation be owned.

(d) Stocks eligible for purchase shall be restricted to stocks of companies incorporated within the United States which have paid dividends for five consecutive years or longer immediately prior to the date of purchase and which, except for bank stocks and insurance stocks, are listed on an exchange registered with the Securities and Exchange Commission or its successors.

Employment of Counseling Service

Sec. 22. The board of trustees may engage and employ professional investment counselors to advise and assist the board in the investment of the assets of the fund. The investment counseling service must be provided by a nationally known organization whose business functions include rendering continuous investment advisory service to public pension and retirement funds. The city may pay the entire cost of this counseling service; if not paid by the city the cost may be paid from the assets of the fund.

Employment of Actuary

Sec. 23. The board of trustees may employ an actuary no more than once every three years and pay his compensation out of the pension fund.

Action for Recovery of Benefits Wrongfully Obtained

Sec. 24. The board of trustees may recover by civil action from any offending party or from his

bondsmen, if any, any money paid out or obtained from the fund through fraud, misrepresentation, defalcation, theft, embezzlement, or misapplication and may institute, conduct, and maintain the action in the name of the board of trustees for the use and benefit of the fund.

Pro Rata Reduction of Benefits on Deficiency

Sec. 25. If for any reason the fund or funds made available for any purpose covered by this Act shall be insufficient to pay in full any allowance or disability benefits, all granted allowances or disability benefits shall be proratably reduced for such time as the deficiency exists.

Termination of Active Service; Allowances and Benefits

Sec. 26. After a fireman terminates his active service, the amounts of all allowances and benefits which the fireman or his beneficiaries may thereafter become entitled to receive from a firemen's relief and retirement fund shall be computed on the basis of the schedule of allowances and benefits in effect for the firemen's relief and retirement fund at the time of the termination of the fireman's active service.

Employment of Attorney

Sec. 27. The board of trustees of the firemen's relief and retirement fund may employ an attorney to render a legal opinion or to represent the trustees in any litigation involving matters coming under this Act.

Employment of Physician

Sec. 28. The board of trustees of the firemen's relief and retirement fund may employ a physician or physicians to examine firemen prior to their becoming a member of the fund or to examine a fireman applying for a disability pension allowance.

Increase of Monthly Allowance

Sec. 29. The monthly pension benefit or allowance provided by any section of this Act may be increased if:

(1) the increase is first approved by a qualified actuary selected by the board of trustees of the firemen's relief and retirement fund; the qualified actuary shall if an individual, be a Fellow of the Society of Actuaries or a Fellow of the Conference of Actuaries in Public Practice or a Member of the American Academy of Actuaries;

(2) a majority of the participating members of the pension fund vote for the increase by a secret ballot;

(3) increase applies only to active firemen in the department at the time of the change of the increase and those who enter the department thereafter; and

(4) the increase does not deprive a member, without his written consent, of a right to receive benefits which have already become fully vested and matured in a member.

Cities With Full Paid Fire Department; Transfer of Firemen

Sec. 30. (a) A fireman who transfers from the fire department of one city to that of a city covered by this Act and desires to participate in the fund of that city shall:

(1) be less than 35 years old;

(2) pass a physical examination taken at his expense and performed by a physician selected by the board; and

(3) pay into the fund of that city an amount equal to the total contribution he would have made had he been employed by that city instead of the city from which he transferred, plus six percent interest.

(b) The city to which the fireman has transferred shall pay an amount equal to the amount it would have paid had the fireman been employed by that city instead of the city from which he transferred, plus six percent interest.

(c) No fireman may participate in the fund of the city to which he has transferred until he has complied with the provisions of this Act.

Repealer

Sec. 31. Sections 3A, 6B, 6B-1, 7B, 7C, 10E, 12A, 18A, 23A-1, 23C, 23F, and 23G, Chapter 125, Acts of the 45th Legislature, Regular Session, 1937, as amended (Article 6243e, Vernon's Texas Civil Statutes), are repealed.

[Acts 1975, 64th Leg., p. 1135, ch. 432, eff. June 19, 1975.]

Art. 6243e.3. Volunteer Fire Fighters' Relief and Retirement Fund

Definitions

Sec. 1. In this Act:

(1) "Qualified service" means fire-fighting service rendered without monetary remuneration while a member in good standing of a fire-fighting unit that has no fewer than 10 active members, and a minimum of two drills each month, each drill two hours long, and each active member present at 60 percent of the drills and 25 percent of the fires, or fire-fighting service rendered without monetary remuneration while a member of a fire-fighting unit which includes paid fire fighters. Absence caused by military duty does not affect qualified service.

(2) "Retirement age" means age 55.

(3) "Dependent" means dependent as defined by the U. S. Internal Revenue Code, Subtitle A, Chapter 1B, Part V, Section 152, and any subsequent amendments.¹

(4) "Solvent" means sufficient assets on hand to meet all current benefits due.

(5) "Qualified actuary" means a fellow of the Society of Actuaries or a member of the American Academy of Actuaries, or both, who has at least five years of experience with public retirement systems.

(6) "Actuarially sound pension system" means a system in which the amount of contributions is sufficient to cover the normal cost and 40-year amortization of the unfunded prior-service cost (such normal cost and prior-service cost to be determined by a qualified actuary and based on assumptions adopted by the state board of trustees and approved by the actuary in regard to future contribution levels, mortality, retirement age, turnover, and morbidity) where:

(A) the normal cost is the annual cost of the members' benefits assigned to the years after date of entry;

(B) the unfunded prior-service cost is equal to the prior-service cost reduced by the assets; and

(C) the prior-service cost determined as of the date of the actuarial valuation is equal to:

(i) the present value of future benefits on behalf of all individuals receiving benefits;

(ii) the present value of future benefits on behalf of all individuals who have terminated their service with vested benefits to commence at a future date; and

(iii) the present value of future benefits accrued to the date of valuation on behalf of all individuals in active service.

(7) "Fund" means the Fire Fighters' Relief and Retirement Fund created by this Act.

(8) "Pension system" means the system of contributions and benefits created by this Act.

(9) "Member fire fighter" means a fire fighter who participates in the pension system under this Act.

(10) "Member fire department" means a fire department that participates in the pension system under this Act.

(11) "Current pension plan" means a pension plan in which a fire department is participating when it elects to join the pension system created by this Act.

(12) "Commissioner" means the Firemen's Pension Commissioner authorized by Section 19, Chapter 125, Acts of the 45th Legislature, Regular Session, 1937 (Article 6243e, Vernon's Texas Civil Statutes).

(13) "Governing body" means the governing body of any political subdivision of the state within which a rural fire prevention district created pursuant to the provisions of Chapter 57, Acts of the 55th Legislature, Regular Session, 1957 (Article 2351a-6, Vernon's Texas Civil Statutes), is situated or the governing body of any city or town within which a fire

department subject to the provisions of this Act is situated.

¹ 26 U.S.C.A. § 152.

Fire Fighters' Relief and Retirement Fund

Sec. 2. (a) A Fire Fighters' Relief and Retirement Fund is created.

(b) Participation in the fund is optional. Any governing body may, not later than 60 days after the effective date of this Act and in accordance with the usual procedures prescribed for other official actions of the governing body, elect to exempt itself from the requirements of this Act. Any action to provide for an exemption from the requirements of this Act may be rescinded by the governing body at any time.

(c) Every governing body shall contribute for each fire fighter at least \$12 for each month of qualified service beginning on the date the fire fighter enters the pension system. Contributions must be paid at least every six months. If the member fire department is situated in more than one political subdivision, the governing bodies of such political subdivisions shall contribute equally towards a total of at least \$12 for each fire fighter for each month of qualified service.

(d) The state shall contribute the sum necessary to make the fund actuarially sound each year. The state's contribution may not exceed the amount of one-third of the total of all contributions by governing bodies in one year. If the state contributes one-third of the total contributions of the governing bodies in one year, the fund shall be presumed actuarially sound.

(e) The commissioner may receive contributions to the fund from any source.

(f) Any contribution made and any benefits provided pursuant to this Act shall not be considered compensation, and member fire fighters shall not be deemed to be in the paid service of any governing body.

Retirement Benefits

Sec. 3. (a) A member fire fighter shall receive a retirement annuity payable in monthly installments on reaching retirement age, subject to the vesting provisions in Section 6 of this Act.

(b) The monthly retirement annuity is equal to three times the governing body's average monthly contribution over the member fire fighter's term of qualified service under this Act.

(c) For each year of additional qualified service in excess of 15 years, a member fire fighter is entitled to receive an additional seven percent of his monthly pension compounded annually. A fire fighter may receive a proportional credit for days or months of qualified service that make up less than a year.

Disability Benefits

Sec. 4. (a) A member fire fighter must elect between retirement or disability benefits if eligible for both.

(b) A member fire fighter who is totally disabled and cannot perform duties as a member of the fire department shall receive a weekly disability allowance throughout the term of such disability.

(c) The standard monthly disability allowance is three times the governing body's monthly contribution at the date of the fire fighter's disability.

(d) A member fire fighter whose disability results from performing duties as a fire fighter is guaranteed a disability benefit of at least \$250 a month.

Death Benefits

Sec. 5. (a) The beneficiary of a deceased member fire fighter shall receive a lump-sum benefit that is the greater of:

(1) the sum contributed to the fund on the decedent's behalf; or

(2) the sum which would have been contributed on the decedent's behalf from whatever source at the end of 15 years of qualified service.

(b) The beneficiary of a member whose death results from performing duties as a fire fighter is guaranteed a lump-sum benefit of at least \$5,000.

(c) In addition to the lump-sum death benefit, the spouse and dependents shall receive in equal shares a survivor's benefit equal to two-thirds of the disability benefit the decedent would have received at date of death. As long as both spouse and one or more dependents survive, an additional one-third of the disability benefit the decedent would have received at date of death shall be paid to the dependents in equal shares.

(d) If a member fire fighter dies after retirement, the surviving spouse shall receive two-thirds of the monthly pension the decedent was receiving at the time of death.

(e) The spouse is eligible to receive benefits as long as the spouse is unmarried.

(f) Lump-sum death benefits are subject to the laws of descent and distribution if the decedent has not provided for testamentary disposition.

(g) When a fire fighter names more than one beneficiary for the lump-sum death benefit, the benefit shall be divided equally among the named beneficiaries unless the fire fighter designates a proportional division. If the fire fighter designates a proportional division, each beneficiary shall receive the proportion of the lump-sum benefit designated by the fire fighter.

Vesting of Benefits

Sec. 6. (a) No right to retirement benefits vests until five years of qualified service are completed.

(b) Vested retirement benefits are nonforfeitable.

(c) Full retirement benefits vest at the following rates:

- (1) 25 percent after the first five years of qualified service;
- (2) five percent a year for the next five years of qualified service; and
- (3) 10 percent a year for the 11th through the 15th years of qualified service.

Member Claim and Appeal Procedure

Sec. 7. (a) Claims for benefits are filed with the local board of trustees.

(b) On receiving a claim for benefits, the local board of trustees shall hold a hearing to decide the claim. A written copy of the decision must be sent to the claimant and the commissioner.

(c) A claimant may appeal the decision of the local board by filing notice of the appeal with the local board and the commissioner within 20 days after receiving notice of the local board's decision.

(d) The local board shall file a transcript of the local board hearing with the commissioner within 30 days after receiving notice of appeal.

(e) The commissioner shall, within 30 days after receiving a notice of appeal, set a date for a hearing and notify the claimant and the local board.

(f) A written copy of the commissioner's decision must be sent to the claimant and the local board.

(g) A claimant may appeal the commissioner's decision to the state board of trustees. The appeal must be filed within 20 days after receiving notice of the commissioner's decision.

(h) The state board of trustees shall, within 30 days after receiving notice of appeal, set a date for a hearing and notify the claimant, the local board, and the commissioner.

(i) The claimant, the local board, and the commissioner may present any written or oral evidence necessary for deciding a claim.

(j) The local board, the state board, and the commissioner may administer oaths, receive evidence, issue subpoenas to compel the attendance of witnesses and the production of papers and documents related to the hearing, and make findings of fact and decisions in administering this Act.

(k) The attorney general shall represent the commissioner in all proceedings under this Act which require representation.

(l) The local board may be represented by the city attorney or, where appropriate, the county attorney or counsel it may choose to employ.

(m) The Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) applies to all hearings authorized by this Act.

Certification of Physical Fitness

Sec. 8. A fire fighter entering service in a member fire department after the effective date of this Act must be certified as physically fit by the local board of trustees prior to admission to the pension system.

Transfer of Accrued Benefits

Sec. 9. A member fire fighter who terminates service and later resumes service with the same fire department or transfers to another member department may transfer all accrued benefits to the new or resumed service.

Entering the Pension System; Required Election

Sec. 10. (a) An election must be held within the local fire department to merge its current pension plan with the pension system.

(b) The election must be held within 14 days after:

- (1) a petition calling for an election and signed by 50 percent of the active fire fighters in the department is filed at the local department; and
- (2) the disclosure required by Section 16 of this Act is made to the fire fighters in the local department.

(c) If the current pension plan of the fire department is not solvent, the election to enter the pension system in this Act must be decided by a majority of the votes cast by qualified fire fighters in the department.

(d) If the current pension plan of the fire department is solvent, the election to enter the pension system in this Act must be decided by at least 60 percent of all votes cast.

(e) In the election required in this section, a fire fighter's vote must be multiplied by the number of years of participation in the current pension plan.

Merger of the Current Pension Plan with the Pension System

Sec. 11. (a) When a fire department under a current pension plan elects to participate in the pension system in this Act, the current pension plan is merged with the pension system.

(b) The costs of the current pension plan shall be determined on an actuarially sound basis using the attained-age normal method and actuarial assumptions described in Subdivision 6 of Section 1 of this Act. The costs must be certified by a qualified actuary as of the effective date of merger or within three years preceding the date of merger.

(c) On the date of merger, all assets and liabilities of the current pension plan are transferred to the pension system and become an allocated part of the system. The assets may be merged with the pension system assets for investment purposes, but a separate account must be maintained for the funds allocated to each plan that has merged with the system.

(d) Following merger, a member's retirement benefits in the pension system are determined by either the future-service method or the buy-back method. The options are available only to fire fighters participating in the current pension plan.

(e)(1) In the future-service method, the qualified service required to earn retirement benefits in the pension system begins as of the date of merger. For determining a person's retirement benefits in the pension system, a fire fighter may choose the formula for benefits used in the current pension plan or the formula for benefits as outlined in this Act. Any retirement benefits accrued prior to the date of merger will also be paid on retirement according to the formula for benefits under the current pension plan.

(2) In the buy-back method in determining the fire fighters' retirement benefits in the pension system, a fire fighter may choose the formula for benefits used in the current pension plan or the formula for benefits as outlined in this Act. The fire fighter who has less than 15 years of service remaining before retirement as of the date of merger may count time served under the current pension plan before the date of merger as qualified service. The time period necessary to make 15 years of service before retirement may be used.

(f) A fire fighter who terminates service prior to the date of merger of his fire department's current pension plan with the pension system is entitled to receive at retirement age the retirement benefits vested under the pension plan in effect during his service. The pension system pays his benefits.

(g) Any benefits being paid by the current pension plan at the date of merger will be paid by the pension system following merger.

(h) On merger of a current pension plan with the pension system, the sponsors of the current pension plan are obligated to make contributions to the pension system in this Act to fund the unfunded prior-service cost. The unfunded prior-service cost is determined as of the date of merger using the attained-age normal method and the actuarial assumptions in the definition of "actuarially sound pension system." The period of funding these contributions shall not exceed 40 years measured from the date of merger.

(i) An election for the local board of trustees must be held within 30 days of entering the pension system. The names of the elected trustees are filed with the commissioner.

Withdrawing from the Pension System

Sec. 12. (a) A current pension plan that merges with the pension system may withdraw from the pension system within five years after the date of merger on a majority vote of the fire fighters in the department voting in the same manner as provided in Section 10 of this Act.

(b) On withdrawal from the pension system, the allocated assets and liabilities as apportioned by an actuary retained by the pension system must be transferred to the plan chosen to replace the pension system.

(c) If a fire fighter terminates service before retirement, vested retirement benefits must be paid to the fire fighter at retirement age. There is no penalty for nonconsecutive years of service.

Benefits Received from Other Plans or Insurance

Sec. 13. The rights to benefits under this pension system are not defeated by benefits or payments received by other plans or insurance.

Investment and Management of the Fund

Sec. 14. (a) If the commissioner's annual report shows a surplus in the fund over the amount necessary to pay benefits due for a reasonable period of time not to exceed five years, the commissioner and trustees shall invest the surplus.

(b) The surplus may be invested in:

(1) bonds or other interest-bearing obligations and securities issued by governmental entities;

(2) shares or share accounts of savings and loan associations insured by the Federal Savings and Loan Insurance Corporation;

(3) shares and share accounts of banks insured by the Federal Deposit Insurance Corporation;

(4) first lien real estate mortgage securities insured by the Federal Housing Administration under the National Housing Act, as amended;¹

(5) investments made by a life insurance company in order to effect a group annuity contract; or

(6) corporation bonds, preferred stocks, and common stocks.

(c) The state board of trustees shall employ a professional investment counselor, a legal reserve life insurance company licensed to do business in the State of Texas, or a bank with trust powers under the laws of the State of Texas. The investment counselor or bank employed by the board must be a nationally known organization whose business includes investment counseling for public pension and retirement funds. A life insurance company employed by the board must provide a group annuity contract that guarantees expenses and provides a formula for determining the amount of funds available for transfer at the end of a contract period. The contract may not include requirements that guaranteed life annuities be purchased.

(d) The cost of the investment counseling service may be paid from income earned by investments.

(e) No portion of the corpus or income of the fund may be used for purposes other than the benefit of member fire fighters and their beneficiaries.

¹ 12 U.S.C.A. § 1701 et seq.

Pension Plans Required to be Solvent

Sec. 15. (a) Every fire fighter in the state who serves without monetary remuneration must be a member of a solvent pension plan.

(b) After the effective date of this Act, an insolvent pension plan for fire fighters who serve without monetary remuneration must become actuarially sound within three years. An insolvent pension plan must demonstrate to the commissioner within six months after becoming insolvent that steps are being taken to become actuarially sound.

Disclosure of Pension Plan Information Required

Sec. 16. (a) The governing body shall disclose to each fire fighter who serves without monetary remuneration and who is eligible for participation in the pension system the information required by this section.

(b) The commissioner shall distribute to each fire department and each governing body the following information:

- (1) all benefits that are available in the pension system in this Act;
- (2) the contributions required by the pension system;
- (3) the expected return on the investment of a member fire fighter;
- (4) when benefits vest;
- (5) the transferability of benefits;
- (6) rights of withdrawing members;
- (7) procedures for filing claims and appeals;
- (8) tax consequences; and
- (9) changes in the law.

(c) The local fire department shall disclose to each fire fighter in the department and to each new fire fighter on his commissioning the information in Subsection (b) of this section.

(d) After a petition for an election as required in Section 10 of this Act has been filed and before the election occurs, the directors of a current pension plan must disclose to its members the information required in Subsection (b) of this section about the current pension plan.

Penalties

Sec. 17. (a) A governing body which does not disclose the information required in Section 16 of this Act or which does not meet the requirements of a solvent pension fund as required in Section 15 of this Act is subject to a civil penalty of not less than \$100 nor more than \$1,000 for each violation, plus reasonable attorney's fees.

(b) The attorney general shall bring suit in a court of appropriate jurisdiction to collect the civil penalties authorized by this Act.

Commissioner

Sec. 18. The duties of the commissioner under this Act shall be performed by the Firemen's Pension Commissioner appointed under the provisions of Chapter 125, Acts of the 45th Legislature, Regular Session, 1937, as amended (Article 6243e, Vernon's Texas Civil Statutes).

Commissioner's Duties

Sec. 19. (a) The commissioner may not administer any fire fighters' pension plan other than the pension system created by this Act and the system created by Chapter 125, Acts of the 45th Legislature, Regular Session, 1937, as amended (Article 6243e, Vernon's Texas Civil Statutes).

(b) The commissioner may hear appeals from decisions of local boards in other pension plans.

(c) The commissioner and the state board of trustees shall assemble and disseminate the information necessary for the disclosure requirements concerning the pension system as outlined in Section 16 of this Act.

(d) The commissioner is responsible for recovering any fraudulently acquired benefits. If it appears that fraud has occurred, the commissioner shall notify the local board and the claimant and hold a hearing. If after the hearing the commissioner decides that benefits have been or are being fraudulently acquired, he shall seek action in a court of appropriate jurisdiction.

(e) The commissioner shall collect the revenues from the local boards of trustees for the fund.

(f) The commissioner may request and administer additional state funds in an emergency.

(g) The commissioner shall require annual reports from the local boards of trustees.

(h) The commissioner may at any reasonable time examine the records and accounts of local boards of trustees.

(i) The commissioner may recommend to the state board of trustees rules to implement this Act.

(j) The commissioner shall keep a copy of all rules promulgated under this Act on file in the commissioner's office. A copy of the rules shall be placed with each local board of trustees and shall be made available for public inspection at any reasonable time.

(k) The commissioner shall prepare the necessary forms for use by local boards of trustees.

(l) The commissioner shall prepare an annual report on the activity and status of the fund. The report shall go to the governor, the lieutenant governor, and the speaker of the house.

(m) The commissioner shall oversee the distribution of all benefits. The commissioner shall make benefit payments to claimants after receiving a copy

of a local board of trustees' decision in favor of a claim and reviewing that decision.

(n) If the commissioner overrules a local board's decision, he shall immediately notify the local board and the claimant.

(o) The commissioner shall hear all appeals from local boards of trustees' decisions and issue written opinions in compliance with the procedures required by this Act.

(p) The commissioner shall keep a written transcript of all proceedings and hearings required by this Act.

State Board of Trustees

Sec. 20. (a) There is a state board of trustees composed of six members of the fund.

(b) The governor, with the advice and consent of two-thirds majority membership of the senate, shall appoint the trustees from a list of three to five nominees submitted by the State Firemen's and Fire Marshals' Association of Texas for each vacancy.

(c) The trustees shall serve six-year terms. The trustees appointed to serve on the first board of trustees shall draw by lot at the first board meeting to determine the length of term to be served. Two trustees shall serve a two-year term; two trustees shall serve a four-year term; and two trustees shall serve a six-year term. Thereafter each term shall be for six years.

(d) Five trustees constitute a quorum.

(e) A board decision or recommendation is made by a majority vote of trustees present. The vote must be recorded in the minutes of board meetings.

(f) The trustees shall serve without compensation. Trustees may be reimbursed for travel expenses to attend board meetings.

Duties of the State Board of Trustees

Sec. 21. (a) The board shall employ the certified public accountant, the actuary, and the investment advisors for the fund.

(b) The board shall establish rules and regulations necessary for the administration of the fund.

(c) The board shall hear appeals from the commissioner's decisions.

(d) The board may authorize a cost-of-living increase for any benefit provided in the pension system. If benefits are increased, the board may require an increase in the governing body's contributions to maintain the actuarial soundness of the fund.

(e) The board shall give notice and hold a hearing before authorizing a cost-of-living increase in benefits.

(f) Any cost-of-living increase in benefits is effective after approval by the legislature by concurrent resolution.

Local Board of Trustees

Sec. 22. (a) The local board of trustees is composed of the following:

(1) one representative selected by the governing body;

(2) five members of the local fire department chosen by a majority of fire fighters in qualified service; and

(3) two tax-paying voters who are chosen by the other members of the board.

(b) The local board shall elect a chairman from the members at the first meeting.

(c) Trustees serve two-year terms.

(d) On the first local board, the fire department representatives shall serve staggered terms. The fire department representatives shall draw by lot at the first board meeting to determine the length of term to be served. Three representatives shall serve two-year terms, and two representatives shall serve one-year terms. The first appointments of the tax-paying or citizen representatives shall be one appointed for a two-year term and one appointed for a one-year term. Thereafter, all appointments are for two-year terms.

(e) If a vacancy occurs on the board, it is filled for the remainder of the unexpired term by the procedure by which the position was originally filled.

(f) A majority of board members constitute a quorum.

(g) A board decision is made by majority vote of all members present. The vote must be recorded in the minutes of board meetings.

(h) No member of the local board may receive compensation for service as a trustee.

Duties of the Local Board of Trustees

Sec. 23. (a) The local board of trustees shall collect all governing body contributions at least semiannually and send the contributions to the commissioner.

(b) The local board shall hear and decide all claims for benefits according to the procedures in Section 7 of this Act.

(c) The board shall mail a copy of a decision on a claim to the parties involved and to the commissioner.

(d) The board shall keep complete records of all claims and proceedings.

(e) The local board shall require a fire fighter who is receiving temporary disability benefits to file a disability rating report from a physician every three months. The board may choose the physician. When the reports indicate a significant change of condition, the local board, after notice and a hearing, must enter an order to modify or terminate benefit

payments. The order is sent to the commissioner. If the board terminates benefits, the fire fighter is presumed able to resume fire-fighting duties.

Certification of the Fund

Sec. 24. The commissioner and state board of trustees shall certify the actuarial and financial soundness of the fund every two years. The state board shall employ a qualified actuary and a certified public accountant to assist in the required certification.

Act Not to Repeal Statutory Authority

Sec. 25. This Act does not repeal the statutory authority for any existing or current pension plan. This Act is intended to provide a pension system and death and disability benefits for fire fighters who serve without monetary remuneration. The provisions of this Act are not to be interpreted to affect fully paid fire fighters or their pension systems in any way.

[Acts 1977, 65th Leg., p. 710, ch. 269, §§ 1 to 25, eff. Aug. 29, 1977.]

Art. 6243f. Firemen and Policemen's Pension Fund in Cities of 500,000 to 750,000

[See Compact Edition, Volume 5 for text of 1]

Increase in Board Membership

Sec. 1A. Said board of trustees shall be increased in number from seven to nine by the addition of two retiree/beneficiary representatives, one each from the rolls of retirees, the widows, or the widowers of retirees of the fire department and police department, respectively. Such trustees shall have full voting and membership rights on said board. They shall each be elected by secret written ballot of the retirees, widows, or widowers of retirees of their respective departments, and the board, through its secretary, shall administer the required elections (with ballots to be mailed to out-of-town retirees and beneficiaries). Their terms of office shall each be four years, with one such trustee to be elected every two years.

The first election, however, shall be for both memberships and shall be conducted not later than 60 days after the effective date hereof. At such election the representative trustee for police department retirees and beneficiaries shall be elected for a term extending through May, 1983, and the representative trustee for fire department retirees and beneficiaries shall be elected for a term extending through May, 1981.

Only retirees and widows or widowers of members duly enrolled on the pension rolls shall be eligible for membership on the board.

[See Compact Edition, Volume 5 for text of 2]

Recall of Trustee

Sec. 3. The trustees elected to the board by the members of the fire and police departments may be recalled from such positions by a vote of the membership of their respective departments. Such recall election shall be held within 30 days after the board of trustees (the member in question not voting) certifies that a proper petition for a recall election on the trustee in question has been signed by at least 20 percent of the active members and contributors of the fund of such department. If a majority of the members of said department voting at such recall election shall vote to recall said trustee, his term of service shall end immediately upon the entry of an order by the board canvassing the results of such election and declaring the results thereof. The board shall, at the same time, call a special election to be held not less than 20 nor more than 30 days thereafter for the purpose of filling such vacancy for the unexpired term of said recalled trustee. The trustee recalled shall not be eligible to run in said special election but shall be eligible to run in all elections for trustee in said department thereafter. A recall petition must be filed with the board within 45 days after the first signature thereon has been obtained. Each signature shall be dated or be invalid.

Contributions to Fund, Deductions From Wages

Sec. 4. There shall be deducted for such fund from the wages of each fireman and policeman in the employment of such city a sum equal to eight percent of the total salary excluding overtime pay. Such city shall pay into said fund, and at the same time, an amount equal to double the sum total of all such deductions. Any donations made to said fund and all funds received from any source for such fund shall be deposited in like manner in such fund. The city's double matching amount referred to above shall be in lieu of all other payments heretofore required by law to be made by the city except as provided in Sections 26B(3) and 26C hereof. Department chiefs shall contribute on the basis of the salary of their permanent civil service rank plus their individual longevity pay and upon death or retirement their pensions shall be computed on the same basis.

[See Compact Edition, Volume 5 for text of 5 and 6]

Who May Share in Fund

Sec. 7.

[See Compact Edition, Volume 5 for text of 7(a) and (b)]

(c) Members of this Pension Fund who are called to active military service shall not be required to

make the monthly payments into the fund provided for in this Act as long as they are thus engaged in active military service, nor shall they lose any seniority rights or retirement benefits provided for in the Act by virtue of such military service, provided that after their reinstatement to an active status in either the fire or police department they must file a written statement of intent with the secretary of the Pension Fund within 90 days of their return to such active status to pay into the Pension Fund an amount equal to what they would have paid in if they had remained on active status in the department during the period of their absence in military service and make such payment in full within an amount of time after their return equal to the time they were absent, in each case, or forever lose all credit toward a retirement pension for the length of time such member was engaged in active military service. No disability resulting from either injury or disease contracted after the effective date of this Act while engaged in military service shall ever entitle a member of the fund to a disability pension. When payments are made into the fund by a member pursuant to this section, the city shall double match such payment.

[See Compact Edition, Volume 5 for text of 7(d)]

Retirement Pension

Sec. 8(a). Whenever any member of said departments shall have contributed a portion of his salary as provided by this Act, and shall have both contributed and served for a period of 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 or 30 years or more in either of said departments, the board shall, upon the application of any such member for retirement and a retirement pension, authorize a retirement pension to said applicant based on the average of the member's total salary excluding overtime pay for the highest five years of such member's pay at the rate of two percent thereof for each full year served as such contributing member but the highest pension paid shall not exceed 60 percent of such highest five years salary average as of the date of retirement. Provided, however, that any member of said departments qualifying for membership in the Pension Fund who is employed after the effective date of this Act must also have reached 50 years of age before being eligible for a retirement pension. No member shall ever receive any award from this fund for retirement until he has served at least 20 years in either or all of the departments and has also contributed the required amount of money for at least 20 years. In determining the number of years service in a department, the member shall be given full credit for such time, or periods of time, said member was actively engaged in the military service, but only strictly in accordance with the provisions of Section 7(c) of this Act. Disciplinary suspensions of 15 days, or less, shall not be subtracted

from a member's service time credit under this Act toward a retirement pension, provided that the member shall pay into the fund within 30 days after the termination date of each suspension a sum of money equal to the amount of money which would have been deducted from his salary during that period of suspension if it had not been for that suspension and upon such payment the city shall double match it.

(b). From and after January 1, 1959, whenever any member of said departments shall have served for a period of 30 years or more in either of said departments and shall have contributed a portion of his salary, as provided by this Act, for the same period of time, he shall be retired automatically from service upon attaining the age of 65 years and receive a pension based upon 60 percent of the average of his total salary excluding overtime pay for the highest five years of such member's pay computed to the date of his retirement. Failure of such employee to comply with this provision shall deprive the member, and his widow and children and dependent parents, of any and all pensions and benefits herein provided.

Provided, however, when a member in said departments attains the age of 65 years without having served for a period of 30 years in either of said departments and without having contributed a portion of his salary as provided by this Act for a period of 30 years, he may continue his service until his period of service and period of Pension Fund contributions shall cover 30 years.

[See Compact Edition, Volume 5 for text of 9]

Retirement When Disabled

Sec. 10. When any duly appointed and enrolled member of the fire department or police department of the city who is contributing to said fund, as herein provided, shall become so permanently disabled through injury or disease so as to incapacitate him from the performance of his duties, and shall make written application subject to medical examination for such injury or disease, he shall be retired from the service, if a member in good standing of said department at the time of retirement, and be entitled to receive from the said fund one-half of the average of his total salary excluding overtime pay based on his five highest paid years of service, or if he has served less than five years, a theoretical average based on all of his years of service extended back to a date five years before the date of retirement under this Act, using (for the extended period) the actual base pay of a private as of that period of time, in each case, in making the computation. In no case shall a disability claim for incapacity from fire or police duties be received or considered, nor an award made hereunder until disability therefrom has first been proved to be continuous and wholly inca-

pacitating for a period of not less than 30 days. The amount of one-half of the average total salary excluding overtime pay as set out above is the maximum amount of disability pension for total and permanent disability. Disability resulting from injury or disease incurred after the effective date of this Act while engaged in the active military service shall not entitle a member of this fund to a disability pension. However, total and permanent disability resulting from injury or disease incurred while a member is on suspension shall, if the suspended member makes up all deducted contributions lost by reason of the suspension within 30 days of the date that they would otherwise have been deducted from his pay, entitle a member of this fund to a disability pension, except in the case of an indefinite suspension. In the latter case action on an application for a disability pension shall await a final determination of any and all appeals. If the member is finally discharged he shall not be entitled to a disability pension and his application shall be dismissed. If the member is restored to duty, or given a suspension for a specific period of time, his application shall be heard and acted on in the same manner as any other application. These provisions shall not affect the right conferred by Section 9 of this Act. The city shall double match all contributions made into the fund by the member pursuant to this section.

Death Benefits to Widows and Children

Sec. 11. In case of the death before or after retirement of any member of the Fire and Police Pension Fund of such city, who at the time of his death or retirement was a contributor to the said fund, and a member in good standing of said fund, leaving a widow, child or children under the age of 17 years, or an unmarried child or unmarried children 17 years of age or over but under 19 years of age currently attending a public or private educational institution, the widow and such child or children shall be entitled to receive from the said fund an amount not to exceed one-half of the average total salary excluding overtime pay of the deceased member based on his five highest paid years of service, or a theoretical average based on all of his years of service extended back to a date five years before the date of his death, using (for the extended period) the actual base pay of a private as of that period in time, in each case, in making the computation; one-half of the widow's amount in the aggregate shall go to the eligible children and one-half for the widow. No child resulting from any marriage subsequent to the date of the retirement of said member shall be entitled to a pension under this Act. In case there are no children, the widow shall receive an amount not to exceed one-half of the average total salary excluding overtime pay of the deceased member computed as provided above if he has served less than five years. In case there is no

widow, the children shall receive one-fourth of the average total salary computed as provided above, except that if the board determines upon investigation that the eligible child or children is or are destitute then the board may increase the pension to an amount not exceeding two-fifths of that average total salary. The amount awarded hereunder to any child or children shall be paid by the board of trustees to the legal guardian of said child or children. In no instance shall the amount received by the widow, child or children exceed a pension allowance of one-half of the average total salary excluding overtime pay of the deceased member computed as provided above, and in the event of the death of a member who retired upon 20 years service and less than 25 years service in no instance shall the amount received by the widow and child or children or the widow alone, exceed a total of two-fifths of that average total salary computed as provided above. A child or children alone in such case shall receive only one-fifth of that average total salary as computed above. A child who is so mentally or physically retarded as to be incapable of its own support to any extent shall, if otherwise qualified, enjoy the rights of children under 17 years of age regardless of age. Provided, further, that any pension paid hereunder to any mentally or physically retarded child or children shall be reduced to the extent that any of same shall receive any state pension or aid. Provided, however, that in no other instance under this Act shall any child be entitled to any benefit after becoming 19 years of age. On the remarriage of the widow, either statutory or common law, or the marriage of any child granted such pension, the pension shall cease; provided, however, that if such remarried widow again becomes unmarried she shall then be entitled to 75 percent of her original pension as long as she remains unmarried. No widow shall ever be entitled to more than one pension from this fund. No widow whose status as such resulted from any marriage subsequent to the date of the retirement of said member shall be entitled to a pension under this Act. The pension rights of qualified widows, children, and dependent parents of deceased members or pensioners who retired or died before the effective date of the 1971 amendment hereto shall be computed on the basis of the base pay of a private in the department as of the date of such retirement or death. In the event of the death of a member who is under suspension at the time, including an indefinite suspension which has not yet become final, his widow and children shall enjoy the same rights as any other member hereunder. All widows, or other dependent beneficiaries under this Act, or guardians thereof, may be required by the board to file an affidavit annually as to their marital status, or that of their wards, or to give an affidavit to the board at other times when probable cause to suspect the possibility of remarriage exists. In the

event of the failure or refusal of such widow or other beneficiary or guardian to file such affidavit, or in the event they should file an incomplete, incorrect, or false affidavit, the board may suspend pension payments to such widow, other beneficiary, or guardian indefinitely, and until there has been full compliance with the requests and orders of the board. This provision shall not be construed to be a limitation on or in derogation of any other powers, specific or implied, of the board as set out in Sections 2, 10, 13, and 14 of the Act, or elsewhere herein.

[See Compact Edition, Volume 5 for text of 12]

Death Benefits to Dependent Father and/or Mother; Investigations

Sec. 13. If any member of the fire or police department dies before or after retirement, who was a contributor to said fund and a member in good standing thereof, and leaves no widow or child, but leaves surviving him a father and/or mother wholly dependent upon him for support, such dependent father and/or mother shall be entitled to receive one-third of the average total salary excluding overtime pay of the deceased member based on his five highest paid years of service, or a theoretical average based on all of his years of service extended back to a date five years before the date of death under this Act using (for the extended period) the actual base pay of a private as of such period in time, in each case, in making such computation, to be equally divided between said father and mother, so long as they are wholly dependent. When there is only one dependent, either father or mother, the board shall grant the surviving dependent one-fourth of that average total salary as computed above. The board shall have the authority to make a thorough investigation, determine the facts as to the dependency of the said parties, and each of them, as to how long the same exists and may at any time, upon the request of any beneficiary or any contributor to such fund, reopen any award made to any of said parties and discontinue such pension as to all or any of them as it may deem proper and the findings of any board in regard to any matters, as well as to all pensions granted under this Act, shall be final upon all parties seeking a pension until such award of the trustees shall have been set aside or revoked by a court of competent jurisdiction. The board shall have the power to make any such investigation into any pension application whatsoever or any pensioner's status on its own initiative. In the event of the death of a member who is under suspension at the time, including an indefinite suspension which has not yet become final, his dependent parents shall enjoy the same rights as any other member under this Act. If any member of the fire and police department in active service should die, leaving neither a widow, a child or children, under

17 years of age, a child under 19 years of age who is attending school, or a retarded child, or dependent father and mother, or one such, the estate of said deceased member of the fire or police department shall be entitled to a burial death benefit payment in the amount of \$2,000 from said fund. This benefit shall never be paid if the member of the fund dying is survived by one or more beneficiaries as defined hereunder.

[See Compact Edition, Volume 5 for text of 14]

Medical Examination; Reduction in Pension for Outside Income; Employment Commensurate with Abilities

Sec. 15.

[See Compact Edition, Volume 5 for text of 15(a)]

(b) The board shall require each member of the fund retiring on a disability pension after the effective date of this Act to provide the board annually on or before May 1 of each year thereafter with a true and complete copy of his income tax return for the previous year. If such pensioner is or has been receiving income from other employment or employments (to include self-employment) during each such preceding year the board may reduce such pension by the amount of \$1 per month for each \$2 of income earned by such pensioner from such employment during each month thereof, provided that such pension shall in no event be decreased below an amount based on two percent of his high five year salary average for each year of service in the department (less overtime pay).

(c) No disability pension shall be originally granted or if granted continued, if the chief of the member's department is able and willing to provide such member employment within such department commensurate with his physical and mental capabilities. Such determination shall be solely within the discretion of the department chief, reasonably exercised.

Public Funds

Sec. 16. Funds are hereby authorized to be paid out of the General Fund or the Special Fund of any such incorporated city. Nothing herein is to be construed as denying any city any right which it may have at any time to raise or procure money for the benefit of said pension fund, which might be in addition to the method or methods herein provided.

[See Compact Edition, Volume 5 for text of 17 to 26]

Cost of Living Increases or Decreases

Sec. 26A.

[See Compact Edition, Volume 5 for text of 26A(1)]

(2) The board shall annually, beginning in 1980, at or before its regular meeting in the month of March,

review the Cost of Living Indexes of the United States Bureau of Labor Statistics for the preceding calendar year. If such index should report an increase or decrease during such calendar year in the cost of living as much as three percent as compared with the Cost of Living Index at the close of the previous year the board shall enter its order increasing or decreasing all pension payments by three percent, or more (depending on the amount of increase or decrease) but only by full percentage points closest to the exact amount of such increase or decrease; provided, however, that any increased pension payments shall only be at the rate of 75 percent of the applicable cost of living percentage for each such year for those pensioners (and the beneficiaries of such pensioners) who were pensioned on and after August 30, 1971, and none other. Such increase or decrease shall be effective retroactively as of the month of January next preceding such March (or earlier) board meeting and shall continue in effect for at least one full year thereafter, and until there has been an additional increase or decrease of at least three percent compared to such base figure and until the board enters a further order as provided herein. The cost of living increase paid to any pensioner or beneficiary of a member or pensioner during the first full year after the effective date of any such retirement or beneficiary pension shall be prorated. It is further provided that no pension shall ever be decreased below the amount at which it was originally granted, except pursuant to the provisions of Sections 11 and 15 of this Act. That part of any pension hereunder which is attributable to cost of living increases granted under this subsection at any time may be decreased in accordance with decreases in the cost of living, as provided above.

[See Compact Edition, Volume 5 for text of 26A(3) to 26B(3)]

Cost of Living Increases

Sec. 26C. (a) All pensions granted before September 1, 1971, in the Fund created by this Act, are increased in the amount of Sixty Dollars (\$60) per month beginning with the first whole calendar month after the effective date of this Act, subject to the continuing right of the Board to change any percentage of disability as provided in Section 15 of this Act.

(b) The increase granted in Subsection (a) of this section shall be subject to the cost of living increases or decreases provided for in Subsection (2), Section 26A of this Act in the same way and to the same extent as the rest of the pensions.

(c) The cost of paying the increases provided for in this section shall be paid by the city out of general funds of the city.

[See Compact Edition, Volume 5 for text of 27]
[Amended by Acts 1975, 64th Leg., p. 101, ch. 43, § 1, eff. April 10, 1975; Acts 1975, 64th Leg., p. 597, ch. 246, § 1, eff. May 20, 1975; Acts 1979, 66th Leg., p. 1420, ch. 628, §§ 1 to 12, eff. Aug. 27, 1979.]

Art. 6243g. Municipal Pension System in Cities of 1,200,000 or More

Creation of Pension System

Sec. 1. There is hereby created a Municipal Pension System in all cities in this state having a population of one million two hundred thousand (1,200,000) or more according to the last preceding or any future Federal Census.

[See Compact Edition, Volume 5 for text of 2 to 4]

Pension Board

Sec. 5.

[See Compact Edition, Volume 5 for text of 5(a) to (i)]

(j) The Pension Board shall determine each member's credited service on the basis of the personnel and financial records of the city and the records of the Pension Board. The Board may permit any member to pay into the Pension Fund and thereby obtain credit for any service with the city for which credit would otherwise be allowable under this amended Act save only for the fact that no contributions were made by such member with respect to such service, or the fact that contributions, although made with respect thereto, were thereafter refunded to such member as a separation allowance and not subsequently repaid. The following provisions shall apply to such payments:

(1) For service during the period September 1, 1943, to May 29, 1967, the employee shall pay a sum computed at the rate of Twelve Dollars (\$12) a month, and the city shall pay into the Pension Fund one and one-half (1½) times the amount so paid by the employee.

(2) For service during the period May 29, 1967, to January 5, 1970, the employee shall pay a sum computed at the rate of three percent (3%) of his salary with the minimum payment being Twelve Dollars (\$12) a month, and the city shall pay into the Pension Fund one and one-half (1½) times the amount so paid by the employee.

(3) For service during the period January 5, 1970, to September 1, 1971, the employee shall pay a sum computed at the rate of three percent (3%) of his salary with the minimum payment being Twelve Dollars (\$12) a month, and the city shall pay into the Pension Fund an amount equal to eleven and one-quarter percent (11¼%) of such salary for the same period of time.

(4) For service during the period September 1, 1971, to January 1, 1976, the employee shall pay a sum computed at the rate of four percent (4%) of his salary, and the city shall pay into the Pension Fund an amount equal to thirteen and one-half percent (13½%) of such salary for the same period of time.

(5) For service on and after January 1, 1976, the employee shall pay a sum computed at the rate of four percent (4%) of his salary, and the city shall pay into the Pension Fund an amount equal to eighteen percent (18%) of such salary for the same period of time.

(6) In addition to the amounts to be paid by the employee as specified above, the employee shall also pay interest on the same amounts at the rate of six percent (6%) per annum from the time the contributions would have been deducted, if made, or the time contributions were refunded as a separation allowance, as the case may be, to the time of repayment of such contributions into the Pension Fund.

[See Compact Edition, Volume 5 for text of 6 and 7]

Contributions by City

Sec. 8. In addition to the payments provided for in the next preceding section, such city shall pay monthly into such Pension Fund, from its general fund or other available source, an amount equal to eighteen percent (18%) of the total of the monthly salaries paid to members for the same period of time, less an amount equal to the total amount of the employer's part of the payments made by the city for such period of time with respect to such members, to the federal government under the provisions of the Social Security Act and Federal Insurance Contributions Act, it being the intention hereof that the combined total of the payments made by such city, as an employer, with respect to such members, for social security and pension fund purposes shall at all times be eighteen percent (18%) of the total of all salaries paid to all such members.

Surplus: Investment

Sec. 10. (a) Whenever, in the opinion of the said Pension Board, there is on hand in said Pension Fund a surplus over and above a reasonably safe amount to take care of current demands upon such Funds, such surplus, or so much thereof as in the judgment of the said Pension Board is deemed proper, may be invested in the following:

(1) In bonds or other interest-bearing obligations and securities of the United States, the State of Texas, or any county, city or other political subdivision of the State of Texas;

(2) In first lien real estate mortgage securities insured by the Federal Housing Administration

under the National Housing Act of the United States, as amended from time to time;¹

(3) In such corporation bonds, preferred stocks and common stocks as the Pension Board may deem to be proper investments for said Funds, provided, however, that not more than fifty percent (50%) of said Funds shall be invested at any given time in corporate stocks, nor shall investments in securities issued by any one (1) corporation be more than five percent (5%) of this Fund, nor shall more than five percent (5%) of the voting stock of any one (1) corporation be owned; and provided further, that stocks eligible for purchase shall be restricted to stocks of companies incorporated within the United States which have paid dividends for ten (10) consecutive years or longer immediately prior to the date of purchase and which, except for bank stocks and insurance stocks, are listed upon an exchange registered with the Securities and Exchange Commission or its successors, except that two percent (2%) of the Fund may be invested in common stocks that do not have a ten (10) year dividend record; or

(4) In real property, divided or undivided, whether or not productive or unproductive of income, including, without limitation, investments of undivided interests in real property consisting of beneficial shares or interests in any commingled fund or any commingled trust which is established for the purpose of, and is primarily engaged in, investment in real property, such as, for example, a group or collective investment trust administered and controlled by a bank or trust company; provided that not more than ten percent (10%) of said Fund shall be invested at any given time in such real property.

(b) In making each and all such investments said Pension Board shall exercise the judgment and care under the circumstances then prevailing which men of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs not in regard to speculation but in regard to the permanent disposition of their funds, considering the safety of their capital. The said Board shall have authority to buy and sell any of its authorized investments.

¹ 12 U.S.C.A. § 1701 et seq.

Retirement on Pension

Sec. 11. (a) Any member of such Pension System who has attained fifty (50) years of age and completed twenty-five (25) or more years of credited service, and any member of such Pension System who has attained fifty-five (55) years of age and completed twenty (20) or more years of credited service, and any member of the Pension System who has attained sixty (60) years of age and completed ten (10) or more years of credited service shall be eligible for a pension.

(b) The amount of pension a month for each such member shall equal two percent (2%) of the member's average monthly salary multiplied by the total number of years of credited service of such member. For purposes of this Subsection, such average monthly salary shall be computed by adding together the thirty-six (36) highest monthly salaries paid to a member during his period of credited service and dividing the sum by thirty-six (36). Provided, however, that no member's pension shall be more than eighty percent (80%) of such average monthly salary; and no member's pension shall be less than Eight Dollars (\$8) a month for each year of credited service, or One Hundred Dollars (\$100) a month total pension, whichever is the greater amount.

(c) A member shall continue to accrue benefits in the Pension System as long as he remains an employee, regardless of his age. Any present employee who was prohibited by previous amendments from accruing any additional benefits upon reaching seventy (70) years of age and prevented from making further contributions into the Pension Fund shall be permitted to continue the accrual of credited service for the period from age seventy (70) until retirement by repaying in one lump sum Twelve Dollars (\$12) a month for each month of service with the city from the date that he reached seventy (70) years of age to the effective date of this amendment and making regular employee contributions thereafter. Any present employee who failed to become a member because he had passed sixty (60) years of age at the time his employment commenced shall now be permitted to become a member by repaying, in one lump sum, Twelve Dollars (\$12) a month for each month of service with the city to the effective date of this amendment and making regular employee contributions thereafter. Any elected official who becomes a member of the Pension System as permitted by this amended Act may receive credit for any service as an elected official that preceded the effective date of this amended Act by paying, in one lump sum, Twelve Dollars (\$12) a month for each month of such preceding service and making regular employee contributions for any service with the city after the effective date of this amended Act. The city shall also contribute one and one-half (1½) times the amount so paid into the Fund by such employees and officials.

(d) All members who retire under this section or under Section 12 on or after January 1, 1976, shall have their pensions adjusted annually upward or downward in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers as determined by the United States Department of Labor. The adjusted pension shall never be less than the basic pension which the retired member would otherwise be entitled to receive without regard to changes in the Consumer Price Index. The adjusted pension shall never be greater than the

amount of the retired member's basic pension plus cumulative increases of not to exceed two percent (2%) annually, notwithstanding a greater increase in the Consumer Price Index.

Disability Pensions

Sec. 12.

[See Compact Edition, Volume 5 for text of 12(a) to (c)]

(d) Any member receiving a pension on account of "ordinary" or "accidental disability" shall, each January 1, submit a sworn affidavit stating his earnings, if any, obtained from any gainful occupation. If the earnings together with the pension being received by any member exceed the monthly salary of such member at the time of his separation from service, the Pension Board shall have authority to reduce the amount of pension. Failure to submit an affidavit of earnings or a materially false affidavit shall be cause for suspension of the pension upon proper action by the Pension Board.

No member shall receive payment of a pension under Section 11 and this section at the same time. However, in the event a member already eligible for retirement under Section 11 should retire for disability under this section, and, thereafter, although his disability ceases to exist, he does not return to work for the city, he shall be entitled to continue to receive a pension under Section 11, calculated in accordance with the length of service and the schedule of benefits for Section 11 which would have been applicable at the time of his original retirement for disability.

When any member has been retired for ordinary or accidental disability, he shall be subject at all times to re-examination by the Pension Board and shall submit himself to such further examination as the Pension Board may require. If any member shall refuse to submit himself to any such examination, the Pension Board may, within its discretion, order said payments stopped. If a member who has been retired under the provisions of this Section should thereafter recover so that in the opinion of the Pension Board he is able to perform the usual and customary duties formerly handled by him for said city, and such member is reinstated or tendered reinstatement to the position he had at the time of his retirement, then the Pension Board shall order such pension payments stopped.

Monthly Allowance to Widows and Children

Sec. 13. If any member of the Pension System, as herein defined, shall die from any cause whatsoever after having completed ten (10) years of service with the city, or if, while in the service of the city, any member shall die from any cause growing out of or in consequence of the performance of his duty, or

shall die after he has been retired on pension because of length of service or disability and shall leave a surviving widow or widower, or a child or children under the age of eighteen (18) years, or both such widow or widower and child or children, said Board shall order paid monthly allowances as follows:

(a) To the widow or widower, so long as she or he remains a single person and provided she or he shall have married such member prior to her or his retirement, a sum equal to one-half ($\frac{1}{2}$) of the retirement benefits that the deceased member would have been entitled to had she or he been totally disabled at the time of her or his retirement or death, but the allowance payable to any such widow or widower shall not in any event be less than Fifty Dollars (\$50) a month.

(b) To the guardian of each child the sum of Sixteen Dollars (\$16) a month until such child reaches the age of eighteen (18) years.

(c) In the event the widow or widower dies after being entitled to her or his allowance as provided, or in the event there be no widow or widower to receive such allowance, the amount to be paid to the guardian of any child or children under the age of eighteen (18) years shall be increased to the sum of Thirty-Two Dollars (\$32) a month for each such child; provided, however, that the total allowance to be paid all beneficiaries or dependents, as herein provided, shall not exceed the monthly pension that would have been paid the pensioner had he continued to live and retire on pension at the date of his death. Allowances or benefits payable to any minor child shall cease when such child becomes eighteen (18) years of age or marries, provided that when there are only children to collect a pension as beneficiaries, if at the time the last child reaches eighteen (18) years of age, the amount the employee contributed has not been paid out in pensions, the balance shall be refunded to the children. By the term "guardian," as used herein, shall be meant the surviving widow or widower with whom the child or children reside, or any guardian appointed by law, or the person standing in "loco parentis" to such dependent minor child responsible for his or her care and upbringing.

[See Compact Edition, Volume 5 for text of 14 and 15]

Termination of Employment; Death; Reemployment

Sec. 16. When any member of such Pension System shall leave the employment of such city, either voluntarily or involuntarily, before becoming eligible for a retirement or disability pension, he shall thereupon cease to be a member of such Pension System, and shall have refunded to him all of the payments made by him into said Pension Fund by way of

salary deductions without interest, subject to the following provisos:

(a) If such member has completed twenty-five (25) or more years of service at the time of termination of employment but has not yet attained the age of fifty (50) years he may, by written notice to the Pension Board, make an irrevocable election to leave his contributions in the Pension Fund, in which event he shall, upon reaching the age of fifty (50) years, be entitled to a pension on the basis of the schedule of benefits for retiring members that was in effect at the time of his separation from the service.

(b) If such member has completed twenty (20) or more years of service at the time of termination of employment but has not yet attained the age of fifty-five (55) years he may, by written notice to the Pension Board, make an irrevocable election to leave his contributions in the Pension Fund, in which event he shall, upon reaching the age of fifty-five (55) years, be entitled to a pension on the basis of the schedule of benefits for retiring members that was in effect at the time of his separation from service.

(c) If such member has completed fifteen (15) or more years of service at the time of termination of employment but has not yet attained the age of sixty (60) years he may, by written notice to the Pension Board, make an irrevocable election to leave his contributions in the Pension Fund, in which event he shall, upon reaching the age of sixty (60) years, be entitled to a pension on the basis of the schedule of benefits for retiring members that was in effect at the time of his separation from service.

(d) If, while still employed by the city, whether eligible for a pension or not, a member dies, then, unless the provisions of Section 13 hereof are applicable, all of his rights in the Pension Fund shall be satisfied by the refund to his designated beneficiary, if any, or if none, to his estate, of all the payments theretofore made by him into the Pension Fund by way of employee's contributions, without interest.

(e) The provisions of Section 13 concerning payments to widows, widowers and children shall apply in the case of any former member who has made the election permitted by (a), (b) or (c), above, and who dies before reaching the age at which he would be entitled to a pension. If there be no surviving widow, widower or children, then all of such member's rights in the Pension Fund shall be satisfied by the refund to his designated beneficiary if any, or if none, to his estate, of all the payments theretofore made by him into the Pension Fund by way of employee's contributions, without interest.

(f) It is not the intention of this Amendatory Act to change the status of any former member of the Pension System whose services with the city were terminated under a previous Act. Refunds of contributions above provided for shall be paid such departing member, his beneficiary or estate in a lump sum, but if, in the opinion of the Pension Board, the funds on hand are too low to justify such lump sum payment, said payment shall be refunded on a monthly basis in such amounts as may be determined by the Pension Board.

(g) When a member has left the service of such city, as aforesaid, and has therefore ceased to be a member of such Pension System, if such person shall thereafter be reemployed by the city, he shall thereupon be reinstated as a member of such Pension System, provided he is in good physical and mental condition as evidenced by a written certificate by a duly licensed and practicing physician residing in said city, satisfactory to the Pension Board. Previous service of such member with such city shall not be counted toward his retirement pension unless such member returns to the service of the city within ten (10) years from his separation therefrom and also shall, within three (3) months after his reemployment by the city, repay in one lump sum to such Pension Fund all moneys withdrawn by him upon his separation from the service plus interest thereon at the rate of six percent (6%) a year from the date of such withdrawal. The three (3) months limitation above mentioned is subject, nevertheless, to the Board's authority as expressed in Section 5(j).

(h) If any member of the pension system, after having made the election permitted by (a), (b) or (c), above, at the time of separation from the service of the city, shall be reemployed by the city before becoming eligible to receive pension benefits, the following provisions shall apply to the computation of the pension due such member upon his subsequent retirement:

1. The portion of such member's pension attributable to his period of credited service accrued prior to his making the aforesaid election shall be calculated on the basis of the schedule of benefits for retiring members that was in effect at the time said election was made.

2. The portion of such member's pension attributable to his period of credited service accrued after his reemployment by the city shall be calculated on the basis of the schedule of benefits for retiring members that is in effect at the time of such subsequent retirement.

[See Compact Edition, Volume 5 for text of 17 to 21]

Employees on Retirement When Act Enacted

Sec. 22. Subject to the provisions of Section 17, any former employee of any city now on retirement by such city shall hereafter be paid at the same rate he is now receiving and it is not the intention of this Act to change the status of any member now on Pension by such city. Provided, however, that the minimum pension payable to retired employees shall be One Hundred Dollars (\$100) a month, and as to those surviving spouses of former employees, who receive pensions under Section 13 of this Act, the minimum pension shall be Fifty Dollars (\$50) a month, it being further provided that this provision shall not apply retroactively to any pension payments previously made to any of such persons.

[See Compact Edition, Volume 5 for text of 23 to 24]

[Amended by Acts 1975, 64th Leg., p. 93, ch. 41, §§ 1, 2, 4 to 9, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 93, ch. 41, § 3, eff. Jan. 1, 1976.]

Acts 1975, 64th Leg., p. 93, ch. 41, which by §§ 1 to 9 amended §§ 1, 5(j), 8, 10, 11, 12(d), 13, 16 and 22 of this article, provided in § 10: "If any provision, section, part, subsection, paragraph, clause or phrase of this Act be declared invalid or unconstitutional, the same shall not affect any other portion or provision hereof, and all other provisions shall remain valid and unaffected by such invalid portion, if any."

Art. 6243g-1. Pension System in Cities Over 900,000

[See Compact Edition, Volume 5 for text of 1]

Definitions

Sec. 2. The following words and phrases when used in this Act are defined as follows, to-wit:

(a) "Pension System" means the retirement, allowance, disability and pension system for employees of any police department coming within the provisions of this Act.

(b) "Member" means any and all employees in the police department provided for and becoming members thereof.

(c) "Pension Board" or "Board" means the Pension Board of the Pension System created under the Act for the purpose of administering the Pension System.

(d) "Service" means the services and work performed by a person employed in the police department, but does not include a period in which a member was suspended from duty without pay, on leave of absence without pay, or on separation from service.

(e) "Pension" means payment for life to the police department member out of the Pension Fund provided herein and becoming eligible for such payments.

(f) "Separation from Service" means cessation of work for the City in the police department, whether caused by death, discharge or resignation, or transfer to any other department of the city.

(g) The use of the masculine gender includes the feminine gender.

(h) "Dependent Parent" means a natural or adoptive parent who receives at least fifty percent (50%) of his support from the member.

[See Compact Edition, Volume 5 for text of 3]

Pension Board

Sec. 4.

[See Compact Edition, Volume 5 for text of 4(a)]

(b) The Pension Board shall be composed of seven (7) members as follows:

(1) The administrative head of the City, or his authorized representative.

(2) Three (3) employees of the police department having membership in the Pension System and elected by the members of such police department and system.

(3) Two (2) legally qualified taxpaying voters of such city, residents thereof for the preceding three (3) years, to be chosen by the elected members of the Pension Board, being neither employees nor officers of such city.

(4) The City Treasurer of the city, or the person discharging the duties of the City Treasurer.

The terms of office of the elected members of the Pension Board shall be three (3) years, provided, however, that at the first election after the effective date of this Act, one such elected member shall be elected to a term of one year, one such elected member shall be elected to a term of two (2) years, and one such elected member shall be elected to a term of three (3) years. Thereafter, at an annual election called by the Chief of Police, and held during the month of December, one member shall be elected to a three-year term. Whenever a vacancy occurs among the three (3) elected members of the Pension Board, the remaining elected members shall appoint a Pension Fund member to serve the balance of the calendar year until the next regularly scheduled election of Board members. At that time, the membership of the police department shall elect a Pension Fund member to serve for the remainder of the term.

The term of office of appointed members of the Board shall be two (2) years, such appointments shall be made by the elected members of the Board and shall commence when the appointed members are qualified, in January after the effective day of this Act.

The term of office of the Board members statutorily provided for, shall be and continue so long as such member holds the position defined in this Act for automatic members of such Board.

[See Compact Edition, Volume 5 for text of 4(c) to 5]

Contributions by Members

Sec. 6.

[See Compact Edition, Volume 5 for text of 6(a)]

(b) The maximum contribution which may be made to the fund by a member shall be limited to a contribution based on the salary of the second highest classification within the salary schedule of the police department. It is the intent of this section to limit both the contribution and retirement benefits of any member to the salary level of the second highest rank of the police department personnel classification schedule, provided that if the member has not held the same classified position for five (5) years prior to the date of retirement, the retirement pension shall be based on the average monthly base salary of the member for five (5) years preceding retirement.

Monthly Payment by City

Sec. 7. In addition to the payments in the next preceding Section, the city shall pay monthly into the Pension Fund, from the general or other appropriate fund of the city, an amount equal to seven and one-half percent (7½%) of the payroll of the police department. However, should the Police Pension Board deem it necessary for the welfare of the Pension System to increase the contribution of each member of the Police Pension System within the statutory limits of Section 6 of this Act, then the contribution made to the Police Pension System by the city may, with the approval of the City Council, be increased by not less than one and one-half (1½) times the percentage increase in contribution of the members. As an example: If contributing members are assessed at a six percent (6%) contribution rate, then the city may, by appropriate Council action, raise its contribution to not more than nine percent (9%) of the payroll of the police department. Effective on January 1, 1976, the city shall pay monthly into the Pension Fund, from the general or other appropriate fund of the city, an amount equal to two times the sum of the salary deductions paid into the pension fund by members of the pension system.

[See Compact Edition, Volume 5 for text of 8]

Investment of Surplus

Sec. 9. (a) Whenever in the opinion of the said Pension Board, there is on hand in said Pension Fund a surplus over and above a reasonably safe amount to take care of current demands upon such

funds, such surplus, or so much thereof as in the judgment of the said Pension Board is deemed proper, may be invested in bonds or other interest-bearing obligations and securities of the United States, the State of Texas, or any county, city or other political subdivision of the State of Texas, or in first lien real estate mortgage securities insured by the Federal Housing Administration under the National Housing Act of the United States, as amended from time to time,¹ and in such corporation bonds, corporate notes or other obligations, preferred stocks and common stocks as the Pension Board may deem to be proper investments for said funds. The funds may also be invested in a sum not to exceed ten percent (10%) with a Federal Credit Union restricted to employees of the city. In making each and all investments, such Pension Board shall exercise the judgment and care under the circumstances then prevailing which men of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income therefrom as well as the probable safety of their capital; provided, however, that not more than fifty percent (50%) of said funds shall be invested at any given time in corporate stocks, nor shall more than five percent (5%) of said funds be invested in securities issued by any one (1) corporation, nor more than five percent (5%) of the voting stock of any one (1) corporation be owned; and provided further, that stocks eligible for purchase shall be restricted to stocks of companies incorporated within the United States which have paid dividends for ten (10) consecutive years or longer immediately prior to the date of purchase, and which, except for bank stocks and insurance stocks, are listed upon an exchange registered with the Security and Exchange Commission or its successors.

(b) The mayor may appoint an Investment Review Committee, consisting of three (3) qualified persons to be selected from the Trust Departments of the banks of the cities to which this law applies. Such persons shall be experienced in securities and investment matters. The Investment Review Committee shall be appointed for a two year term. Such Committee shall (a) review the investments of the Fund to determine their suitability and desirability for the Funds; (b) review the investment procedures and policies pursued by the Board in the administration of the Fund; and (c) submit an annual report of its findings and recommendations to the Pension Board of the Police Officer's Pension System and the Mayor of the city within ninety (90) days after the end of each calendar year.

(c) The Pension Board may employ professional investment advisors to manage the investment of the Pension Fund. These professional services may

include investment counseling, evaluation of fund performance, investment research, and other comparable services.

(d) The selection of investment advisors may occur when, in the opinion of a majority of the Board members, the financial advice being received by the Board needs review. Selection of financial advisors must be made from firms that have made presentations to the Board. The Board shall advertise its intent to receive presentations from investment advisors in a newspaper of general circulation within the city not less than thirty (30) days before the date of the Board meeting at which the selection of an investment advisor will be considered. The Board may receive a written presentation instead of an appearance before the Board. Final selection of an investment advisor is determined by majority vote.

(e) A contract with an investment advisor may not be in effect for more than one (1) year and shall provide that the Board may withdraw from the contract at any time after giving notice thirty (30) days before termination. The contract may not contain a penalty for early termination. The costs of an investment advisory contract may be paid out of pension funds.

¹ 12 U.S.C.A. § 1701 et seq.

[See Compact Edition, Volume 5 for text of 10]

Retirement: Amount of Pension

Sec. 11. (a) A person who becomes a member of the Pension System on or after the effective date of this amendatory Act and who has been in the service of the city police department for the period of twenty (20) years may retire at the age of fifty (50) years and shall be entitled to a retirement pension of an amount equal to thirty percent (30%) of the base salary provided for the classified position in the police department held by the member, provided that if the member has not held the same classified position for five (5) years prior to the date of retirement, the retirement pension shall be based on the average monthly base salary of the member for five (5) years preceding retirement. Except as provided in Subsection (a-1) of this section, no retirement pension may be paid to a member who has not attained the age of fifty (50) years. Subject to the limitations provided in Subsection (b) of this section, the computation of retirement pension shall include any increase or decrease of the base salary or the average monthly base salary for the classified position or positions on which the member retired even though the increase or decrease occurs after retirement.

(a-1) A person who was a member of the pension system before the effective date of this amendatory Act, may retire regardless of age upon completion of twenty (20) years of service in the city police department and shall be entitled to a retirement pension of

an amount equal to thirty percent (30%) of the base salary provided for the classified position in the police department held by the member, provided that if the member has not held the same classified position for five (5) years prior to the date of retirement, the retirement pension shall be based on the average monthly base salary of the member for five (5) years preceding retirement. Subject to the limitations provided in Subsection (b) of this section, the computation of retirement pension shall include any increase or decrease of the base salary or the average monthly base salary for the classified position or positions on which the member retired even though the increase or decrease occurs after retirement.

(b) If a member of the Police Pension System is promoted or appointed to any classified position above the second highest in the police department personnel classification schedule, that member's contribution and retirement benefits will be computed on the base salary of the second highest classified position in the police department personnel classification schedule, provided that if the member has not held the same classified position for five (5) years prior to the date of retirement, the retirement pension shall be based on the average monthly base salary of the member for five (5) years preceding retirement. For the purposes of this Act, the position of the Chief of Police shall be considered the highest classified position in the personnel classification schedule in the police department.

(c) Any member of such Pension System who has been in the service of the city police department for a period of years in excess of twenty (20) years, and who retires from the service of the police department, shall, in addition to the thirty percent (30%) of his base salary be paid an additional sum equal to two percent (2%) of his base salary per month for each year of service in the police department in excess of twenty (20) years. For example, a member with twenty-five (25) years' service would be entitled to forty percent (40%); a member with thirty (30) years, fifty percent (50%); etc.

(d) It shall be compulsory for any member to retire from the service of the police department upon attaining the age of sixty-five (65) years. Failure of any member of the Pension System to comply with this provision shall deprive the member and his dependents of any of the benefits provided for herein. If at the time of retirement because of maximum age requirements, the member has completed less than twenty (20) years of service, his monthly retirement pension shall be prorated on the basis of one and one-half percent (1½%) of the base salary of the classified position of the member per month for each year of service completed. Subject to the limitations provided in Subsection (b) of this section, the computation of retirement pension shall include any increase or decrease of the base salary or the

average monthly base salary for the classified position or positions on which the member retired even though the increase or decrease occurs after retirement.

(e) Upon a member's completion of twenty (20) years of service in the police department and thereafter, when such member retires, whether such retirement be voluntary or involuntary, such monthly payment shall begin forthwith and continue for the remainder of the member's life. However, when such member has completed twenty (20) years' service in the police department and if the physicians of Pension Board agree that the member is physically fit to continue his active duties in the police department, they may so certify, and the member may continue in the service of the city police department until the member attains the age of sixty-five (65) years, at which time his retirement pension shall be computed as hereinbefore stated.

(f) No member shall be required to make any payments into the Pension Fund after the member has retired from the service of the police department.

[See Compact Edition, Volume 5 for text of 12]

Rights of Survivors

Sec. 13. (a) If any member of the police department who has been retired on allowance because of length of service or disability thereafter dies from any cause whatsoever after he has become entitled to an allowance or pension, or if while in service any member dies from any cause growing out of or in consequence of the performance of his duty, and leaves surviving a spouse to whom the member was married prior to his retirement, a child or children under the age of eighteen (18) years or a dependent parent, the Board shall order paid a monthly allowance as follows:

(a) to the spouse, so long as he or she remains a widow or widower, a sum equal to the allowance which was granted to the member upon service or disability pension based on his length of service in the police department;

(b) to the guardian of each child, the sum of twenty-five (\$25) Dollars a month until the child reaches the age of eighteen (18) years or marries;

(c) to the guardian of each child, only in case no spouse is entitled to an allowance, the sum the spouse would have received, to be divided equally among the unmarried children under eighteen (18) years;

(d) to the dependent parent, only in case no spouse or dependent child is entitled to an allowance, the sum the spouse would have received, to be paid to but one (1) parent and such parent to be determined by the Pension Board.

(b) If any member of the Pension System has not completed ten (10) years or more of service in the police department and is killed or dies from any cause growing out of or in consequence of any act which is clearly not in the actual performance of his official duty, his surviving spouse or dependent child or children shall be refunded any contributions which the member made to the Pension System.

[See Compact Edition, Volume 5 for text of 13(c) to 14]

Termination of Employment: Reemployment

Sec. 15. (a) When any member of the Pension System leaves the employment of the police department other than as provided for in Section 12 or Section 22, either voluntarily or involuntarily, before becoming eligible for a retirement or disability pension, he shall cease to be a member of the Pension System.

(b) Any member of the Pension System who has completed at least five (5) years but less than twenty (20) years of service and whose service with the police department ceases before becoming eligible for a retirement or disability pension is entitled to a refund of the total of the contributions which that member made to the Pension System. The refund does not include interest, and neither the city nor the member is entitled to a refund of the city's contributions made on the member's behalf.

(c) The Pension Board shall notify each member of the Pension System of the right to a refund as authorized by this section.

(d) A member must apply to the Pension Board for a refund before the last day of the ninth month after employment is terminated. The nine (9) month period is calculated by counting the month in which employment is terminated as the first month of the nine (9) month period. Failure to apply for the refund within the nine (9) month period constitutes a waiver of all rights to a refund.

(e) Heirs, executors, administrators, personal representatives, or assigns are not entitled to apply for and receive the refund authorized by this section except as provided by Section 13(b) of this Act.

(f) If such person is thereafter reemployed by the city police department, he shall thereupon be reinstated as a member of such Pension System provided he is in good physical and mental condition as evidenced by a written certificate executed under oath by a duly licensed and practicing physician or physicians in the city, satisfactory to the Pension Board. Prior service of such member with the city police department shall not be counted toward his retirement pension unless such member returns to the service within two (2) years from his separation therefrom and makes within six (6) months after his reemployment by the city in the police department

written application to the Pension Board for reinstatement in the Pension System.

(g) A person who is reemployed by the city police department within twenty-four (24) months from the date the person's employment is terminated is required to pay the Pension Fund an amount equal to any contributions previously refunded to the member under Subsection (b) of this section. The person may execute a promissory obligation to pay the Pension Fund within two (2) years of the date of reemployment the full amount of the contributions previously refunded to the member. A member who dies or retires before a promissory obligation executed by the member and payable to the Pension Fund is fully paid is not eligible, nor are the member's beneficiaries eligible, for any benefits from the Pension Fund until the promissory obligation is paid in full.

[See Compact Edition, Volume 5 for 16 and 17]

Sec. 18. Repealed by Acts 1979, 66th Leg., p. 314, ch. 144, § 7, eff. Aug. 27, 1979.

[See Compact Edition, Volume 5 for text of 19 and 20]

Actuary

Sec. 21.¹ Such Pension Board may employ an actuary and pay his compensation therefor out of the Pension Fund no more than once every three (3) years.

¹ Acts 1979, 66th Leg., p. 314, ch. 144, § 6, as enrolled, read "20".

[See Compact Edition, Volume 5 for text of 22 and 23]

Nonforfeiture of Funds

Sec. 23A. In the event that the pension fund is terminated or contributions to the pension fund are discontinued completely, there shall be no reversion of funds to the employer. The funds shall be used exclusively for police pensions, and the employees' rights to the benefits, to the extent funded, shall be nonforfeitable.

Former Employees on Retirement When Act Enacted

Sec. 24.

[See Compact Edition, Volume 5 for text of 24(a)]

(b) Any person who retired prior to January 1, 1974, and who held a position above the third highest classification in the police department salary schedule shall be entitled to a retirement pension of an amount equal to thirty percent (30%) of the base salary provided for the classified position in the police department held by the member, but if the member had not held the same classified position for five (5) years prior to the date of retirement, the retirement pension shall be based on the average monthly base salary of the member for five (5) years preceding retirement. In addition, he shall be paid

an additional sum equal to two percent (2%) of his base salary per month for each year of service in the police department in excess of twenty (20) years. The computation of retirement pension shall include any increase or decrease of the base salary or the average monthly base salary for the classified position or positions on which the member retired, even though the increase or decrease occurs after retirement.

(c) Repealed by Acts 1975, 64th Leg., p. 1882, ch. 594, § 6, eff. June 19, 1975.

[Amended by Acts 1975, 64th Leg., p. 1879, ch. 594, §§ 1 to 6, eff. June 19, 1975; Acts 1979, 66th Leg., p. 200, ch. 109, § 1, eff. Sept. 1, 1979; Acts 1979, 66th Leg., p. 311, ch. 144, §§ 1 to 7, eff. Aug. 27, 1979.]

Art. 6243h. Texas Municipal Retirement System

[See Compact Edition, Volume 5 for text of I]

Definitions

Sec. II. The following words and phrases as used herein, unless different meanings are plainly indicated by their context, shall have the following meanings, respectively:

[See Compact Edition, Volume 5 for text of II, 1 to 11]

12. "Earnings" means an amount equal to the sum of the payments made to an employee for performance of personal services as certified on a written payroll of the employing Department. The term earnings shall not include amounts specified to be excluded in determining earnings as provided in participation ordinances adopted by participating municipalities prior to January 1, 1976; but any such municipality may amend such prior ordinances to increase the amount of earnings on which contributions are to be made.

[See Compact Edition, Volume 5 for text of II, 13 to 20]

21. As used in provisions of this Act authorizing allowance or assumption of "regular interest", the term means as to all periods of time elapsing prior to January 1, 1970, the rate of two and one-half per centum (2½%) per annum compounded annually; as to all periods of time elapsing from and after January 1, 1970, and prior to January 1, 1977, the rate of three per centum (3%) per annum, compounded annually; and as to all periods of time elapsing from and after January 1, 1977, the rate of four per centum (4%) per annum, compounded annually; provided, however, that this provision shall not alter or require recalculation of the amount of any annuity on which a monthly benefit payment was made prior to July 1, 1977.

[See Compact Edition, Volume 5 for text of 22]

23. "Prior Service Annuity" means the annuity, actuarially determined, which can be provided from the "Accumulated Prior Service Credit", the "Accumulated Special Prior Service Credit", and from the "Accumulated Antecedent Service Credit", or from the Accumulated Updated Service Credit, if any, to which a member is entitled at time of his retirement.

24. "Current Interest" shall mean interest at a rate per annum ascertained each year as being the lesser of (1) the regular interest rate or (2) the amount in the Interest Fund on December 31st of such year after the transfer of all regular interest, divided by an amount equal to the amount in the Municipal Current Accumulation Fund at the beginning of such year plus the sum of the accumulated deposits in the Employees Saving Fund at the beginning of such year to the credit of all members included in the membership of the Retirement System on December 31st of such year before any transfers for retirements effective December 31st of such year are made.

[See Compact Edition, Volume 5 for text of II, 25 to 31]

Participation

Sec. III.

[See Compact Edition, Volume 5 for text of III, 1]

2. Participation of Employees

(a) All persons who are employees of a participating department on the effective date of the participation of such department shall become members of the Retirement System as of that date. This, however, shall not apply to any person who on the effective date hereof has a contract of employment with a municipality which would be violated by the requirement of participation as herein specified, unless such person elects to become a member, but each such person who shall have had deposits to this System deducted or who shall have been notified of the creation of this System shall be deemed to have elected to become a member unless such person files with the Board prior to the effective date of participation a written notice of election not to become a member. Any person so electing not to become a member shall forever thereafter be precluded from becoming a member of this System.

(b) Any person not a member of this System, who becomes an employee for the first time of a participating department of a municipality after the effective date of participation, of such department shall become a member of the System upon the date such person becomes an employee, provided he is then under the age of fifty-five (55) years

but any such person who is fifty-five (55) years or over on such date of employment shall not be eligible to become a member of this System.

(c) Any person, not a member of this System, who has been an employee of a participating municipality prior to the effective date of participation of such municipality but who is not an employee of such participating municipality on the effective date of participation of such municipality shall, if he again becomes an employee of a participating department of such municipality after the effective date of participation of such department, become a member of the System upon the date he again becomes an employee, provided he is then under the age of fifty-five (55) years or provided the extent of his prior service to such municipality is equal to or in excess of the period by which his then attained age exceeds the age of fifty-five (55) years, and otherwise such person shall not be eligible to become a member of this System.

(d) Any person who has been a member of this System and whose membership has terminated by withdrawal, shall, if he again becomes an employee of a participating department of a municipality, become a member of the System upon the date such person again becomes an employee if he is then under the age of fifty-five (55) years but any such person who is fifty-five (55) years or over on such date of re-employment shall not be eligible to become a member of the System.

(e) Membership in the Retirement System shall cease and terminate if:

(1) A member is absent from service in a participating department of a municipality more than sixty (60) consecutive months, or

(2) A member's service in a participating department of a municipality is discontinued and the member withdraws his accumulated deposits, or

(3) A member dies, or

(4) A member becomes an annuitant, provided, however, that during the time the United States is in a state of war and for a period of twelve (12) months thereafter, time spent by a member of the System (1) on active duty in the Armed Forces of the United States and their auxiliaries and/or in the Armed Forces Reserve of the United States and their auxiliaries and/or in the service of the American Red Cross as a result of having volunteered or having been drafted and/or conscripted thereinto; or (2) in war work as a direct result of having been drafted or conscripted by governmental action into said war work, shall not be construed as absent from service in so far as the provisions of this Act are concerned but shall count toward membership service.

(f) Any person who is an employee of a participating department on the effective date of this amendment, but who is not a member of the System because such person was more than fifty (50) years of age at time of last becoming an employee of a participating department, shall become a member of the System as a condition of employment on the first day of the calendar month following the effective date of this amendment unless such person was more than fifty-five (55) years of age on the first day of January, 1979. Within sixty (60) days after becoming a member, such person may elect to pay and may within such period make deposits to his individual account in the System for the number of months elapsing between January 1, 1979, and date of membership in the amounts such employee would have deposited if such membership had been effective from date of employment or January 1, 1979, whichever date is later; and the member shall thereunder be allowed current service credit for each month of service following January 1, 1979, for which such deposits are made and shall be treated thereafter as if he had been a member for each month for which such deposits are made. If the member fails to make such deposits within sixty (60) days after becoming a member, such member shall be allowed current service only from the date of membership.

Revenue

Sec. IV.

[See Compact Edition, Volume 5 for text of IV, 1(a) and (b)]

(c) Repealed by Acts 1975, 64th Leg., p. 382, ch. 171, § 2, eff. Sept. 1, 1975.

[See Compact Edition, Volume 5 for text of IV, 1(d) to 2(b)]

(c) Each participating municipality shall make payment of Prior Service Contributions to the Municipality Prior Service Accumulation Fund of the System each month of an amount equal to a per cent of the earnings during such month of the members of the System employed by such participating municipality which per cent shall be calculated annually by the actuary and approved by the Board as being the necessary and required per cent, on the basis of regular interest:

(i) to accumulate in such municipality's account in the Prior Service Accumulation Fund by or before the end of the twenty-fifth year of participation of such participating municipality or by or before the end of the twentieth year from date of allowance by such municipality of any special prior service credits or antecedent service credits pursuant to Sections XV or XVI hereof, or by the end of the twenty-fifth year from date of (a)

allowance of or increase in Updated Service Credits, or (b) increase in annuities pursuant to Sections XVII or XVIII hereof, whichever date is the later, a sum equal to the reserve required (according to calculations made by the actuary and approved by the Board, on the basis of mortality and other tables adopted by the Board) to meet in full all payments which may become due after the end of such period under existing and anticipated prior service annuities arising from prior service credits, special prior service credits, and antecedent service credits, or Updated Service Credits granted by such participating municipality; and

(ii) to provide the amount required according to this Act to be paid during such period under prior service annuities arising from prior service credits, special prior service credits, and antecedent service credits or Updated Service Credits granted by such participating municipality.

If the per cent of earnings calculated as above for Prior Service Contributions when added to the per cent of earnings calculated according to the preceding paragraph for normal contributions shall together exceed the maximum contributions prescribed in paragraph (a) of this subsection, then in such event, the per cent of earnings for Prior Service Contributions shall be reduced to a per cent which together with the percentage for normal contributions will equal the maximum contributions prescribed by paragraph (a) of this subsection.

[See Compact Edition, Volume 5 for text of IV, 2(d) to (f)]

Method of Financing

Sec. V. All of the assets of the System shall be credited according to the purpose for which they are held to one (1) of eight (8) funds, namely, the Employees Saving Fund, the Municipality Current Service Accumulation Fund, the Municipality Prior Service Accumulation Fund, the Current Service Annuity Reserve Fund, the Prior Service Annuity Reserve Fund, the Interest Fund, the Endowment Fund and the Expense Fund.

[See Compact Edition, Volume 5 for text of V, 1 and 2]

3. Municipality Prior Service Accumulation Fund:

The Municipality Prior Service Accumulation Fund shall be the Fund in which shall be accumulated all prior service contributions made to the Retirement System by the participating municipalities for the purpose of providing the amounts required for payment of prior service annuities; and from which prior service annuities shall be paid to the extent herein provided.

Contributions to and payments from this Fund shall be made as follows:

(a) All prior service contributions payable by participating municipalities shall be paid into the Municipality Prior Service Accumulation Fund and shall be credited to the accounts of the respective participating municipalities in such Fund.

(b) All payments under annuities arising from prior service credits, special prior service credits, and antecedent service credits, or updated service credits granted by a participating municipality, as well as increased payments authorized by the participating municipality under Section XVIII on or after January 1, 1978, shall be paid from this Fund and charged to such participating municipality's account in this Fund subject to the following: the Board shall have the power to reduce proportionately all payments under all such annuities and other benefits payable from said account, at any time and for such period of time as is necessary so that all such payments in any year shall not exceed the amounts available in such participating municipality's account in the Municipality Prior Service Accumulation Fund in such year.

(c) Whenever, at the end of any year, the amount accumulated in any municipality's account in the Municipality Prior Service Accumulation Fund shall equal or exceed the reserve required, as of the end of such year, according to calculations made by the actuary and approved by the Board on the basis of mortality and other tables adopted by the Board, to meet all future payments in full under prior service annuities, arising from prior service credits, special prior service credits, and antecedent service credits, or updated service credits granted by such participating municipality, then in effect or to become effective thereafter, then the payment of prior service contributions to the System by such participating municipality shall be discontinued.

Thereafter, should it be determined, according to calculations made by the actuary and approved by the Board on the basis of mortality and other tables adopted by the Board, that the amount to the credit of such participating municipality's account in the Municipality Prior Service Accumulation Fund at the end of any year is less than the reserve required as of the end of such year to meet all future payments in full under prior service annuities, then in effect or to become effective thereafter arising from prior service credits, special prior service credits, antecedent service credits, or updated service credits granted by such participating municipality, such municipality shall resume payment of Prior Service Contributions, subject to the limitations of Section IV of this Act.

[See Compact Edition, Volume 5 for text of V, 4]

5. Refunds to Certain Municipalities.

If any participating municipality has no employees who are currently members of the System, and has

no present or potential liabilities resulting from the participation of former employees, then in such event any amount standing to the credit of such municipality in the Prior Service Accumulation Fund and in the Municipality Current Service Accumulation Fund shall upon its application be repaid to such municipality, and its participation in the System shall cease.

[See Compact Edition, Volume 5 for text of V, 6 to 8]

Creditable Service

Sec. VI.

[See Compact Edition, Volume 5 for text of VI, 1 to 5]

6. (a) As to employees of municipalities beginning participation in the System prior to January 1, 1976, "Prior Service Credit" shall mean an amount equivalent to the accumulation at interest of a series of equal monthly payments of ten per cent (10%) of a member's "average prior service compensation" (not to exceed Three Hundred Dollars (\$300.00) per month) for the number of months of prior service certified to in such member's Prior Service Certificate. Such accumulation shall be at regular interest and on the basis that interest is allowed at the end of each twelve (12) months period and is allowed on the accumulation at the beginning of each such twelve (12) months period and is not to be allowed for parts of a year.

(b) As to employees of municipalities beginning participation in the System on and after January 1, 1976, "Prior Service Credit" shall mean such percentage (any multiple of ten percent (10%) but not exceeding one hundred percent (100%)) of the "Base Prior Service Credit" as may be specified in the participation ordinance adopted by the governing body, condition that it shall first have been determined, according to calculations made by the actuary and approved by the Board, that the municipality has the ability to fund within twenty-five (25) years from date of participation all prior service obligations proposed to be undertaken by the municipality. "Base Prior Service Credit" shall be determined as an amount equivalent to the accumulation at three percent (3%) interest of a series of monthly payments for the number of months of prior service certified to in such member's Prior Service Certificate. Each monthly payment will be equal to the member's "average prior service compensation" multiplied by the sum of (1) the member's deposit rate and (2) the member's deposit rate multiplied by the municipal current service matching ratio.

[See Compact Edition, Volume 5 for text of VI, 7]

8. Any member who has terminated a previous membership by withdrawal of then-accumulated de-

posits while absent from service, may if the municipality with which he is presently employed agrees to underwrite and assumes the obligations therefor and if the member has at least twenty-four (24) consecutive months of creditable service with his present employer since reestablishment of membership, deposit in the System in a lump-sum payment the amount withdrawn, plus a withdrawal charge of five percent (5%) of such amount per annum from the date of withdrawal to the date of redeposit, and shall thereupon be entitled to credit for all service to which he had been entitled at date of termination of the earlier membership, with like effect as if all such service had been performed as an employee of the consenting municipality. The amount so redeposited shall be placed in the member's individual account in the Employees Saving Fund of the System, but the five percent (5%) per annum charge shall be deposited to the Municipality Current Service Accumulation account of the municipality assuming the municipality obligations arising from granting of credit for such former service. Upon granting of such credits to the member, the consenting municipality's account in the Municipality Prior Service Accumulation Fund shall be charged with the necessary reserves to fund any such prior service credits so granted to the member, and its account in the Municipality Current Service Accumulation Fund shall be charged with the reserves required to provide for funding of any such current service credits so granted to the member. No such granting of credits shall be undertaken by any municipality unless it shall first be determined by the actuary that the granting of such credits by the participating municipality would not impair the ability of the municipality to meet all present and prospective liabilities of the municipality's account in the Municipality Prior Service Accumulation Fund and in the Municipality Current Service Accumulation Fund, and would not impair the ability of the municipality to provide for payment of prior service annuities or current service annuities.

Benefits

Sec. VII. 1. Service Retirement Eligibility;

[See Compact Edition, Volume 5 for text of VII, 1(a)]

(b) In any participating municipality which hereafter elects to participate in the System, and in those presently participating municipalities which by action of the governing body shall hereafter elect to provide the additional coverage allowed by this paragraph, any member of the System, after one year from the effective date of his membership, shall also be eligible for service retirement who shall have attained the age of fifty (50) years, and shall have completed at least twenty-five (25) years of creditable service in the municipality electing to provide

the coverage allowed by this paragraph, and in any such participating municipality as shall have elected to provide the additional coverage allowed by this paragraph, any member who is an employee of such participating municipality at the time of his completion of at least twenty (20) years of creditable service with cities that have granted such vesting who may withdraw from service shall continue to be a member despite the fact that his absence from service may exceed sixty (60) consecutive months, and shall become eligible for service retirement at attainment of a prescribed minimum service retirement age. If it is so elected by a presently participating municipality, and approved by the Board, the amount of additional current service reserves required on account of the increased coverages permitted by this subsection shall be transferred as the effective date of such increased coverages from the municipality's account in the Municipality Prior Service Accumulation Fund to its account in the Municipality Current Service Accumulation Fund. No such transfer shall be authorized, unless it shall be determined, according to calculations made by the actuary, that such transfer would not impair the ability of the municipality to meet all liabilities of the municipality's account in the Municipality Prior Service Accumulation Fund and would not impair the ability of the municipality to provide for payment of prior service annuities.

[See Compact Edition, Volume 5 for text of VII, 1(c)]

(d) Repealed by Acts 1979, 66th Leg., p. 444, ch. 202, § 2, eff. Aug. 27, 1979.

[See Compact Edition, Volume 5 for text of VII, 1(e)]

2. Standard Benefit on Service Retirement;

(a) A member who retires upon the basis of service eligibility shall be entitled to receive a "standard service retirement benefit" which shall be an allowance payable in equal monthly installments during the lifetime of the member, and in the event of his death before sixty (60) monthly payments of such benefit have been made, such payments shall continue to be paid to the member's beneficiary until the remainder of the sixty (60) monthly payments have been made. The "standard service retirement benefit" of a member shall consist of (1) a current service benefit which is the actuarial equivalent of his current service annuity reserve, and (2) a prior service benefit to which his Accumulated Prior Service Credit, Accumulated Special Prior Service Credit, and Accumulated Antecedent Service Credit, or to which his Accumulated Updated Service Credit, if any, entitles him under the provisions of this Act.

(b) The current service annuity reserve of the member shall be derived from:

(1) His accumulated deposits credited to his account in the Employees Saving Fund at the time of retirement; and

(2) An additional sum, from the Municipality Current Service Accumulation Fund, equal to the accumulated deposits provided by the member, or such greater sum as the participating municipality has undertaken to provide.

(c) The prior service annuity reserve shall be (i) the sum of his Accumulated Prior Service Credit, Accumulated Special Prior Service Credit, and Accumulated Antecedent Service Credit, or (ii) of his Accumulated Updated Service Credit, if any, at the time of retirement.

3. Optional Service Retirement Benefits;

(a) In lieu of the standard service retirement benefit allowable under the preceding subsection, and provided that he shall make such election and nomination within thirty (30) days after the date fixed for retirement, any member retiring for service may elect to receive the actuarial equivalent of his current service benefit in a current service annuity payable to the member during his lifetime, but with the provision that:

Option 1. Upon his death, the current service annuity shall be continued throughout the life of, and paid to, such person as the member shall nominate by written designation duly acknowledged and filed with the Board within the time above provided; or

Option 2. Upon his death, one-half of the current service annuity shall be continued throughout the life of, and paid to, such person as the member shall nominate by written designation duly acknowledged and filed with the Board within the time above provided; or

Option 3. In the event of his death before one hundred twenty (120) monthly payments have been made of his reduced current service annuity, the payments shall be continued to his beneficiary (or to his estate) until the remainder of the one hundred twenty (120) monthly payments have been made; or

Option 4A. In the event of his death before one hundred eighty (180) monthly payments have been made of his reduced current service annuity, the payments shall be continued to his beneficiary (or to his estate) until the remainder of the one hundred eighty (180) monthly payments have been made; or

Option 4B. A benefit payable in equal monthly installments only during the lifetime of the member; or

Option 5. Some other benefit or benefits may be paid either to the member, or to such person or persons as he may nominate, provided the same shall be approved by the Board, and provided such

other benefit or benefits, together with the current service annuity of the member, shall be certified by the actuary to be the equivalent in actuarial value of the current service annuity reserve to which the member is entitled at the date fixed for his retirement.

(b) Any member who makes an effective election to have his current service benefit paid in accordance with Option 1, Option 2, Option 3, Option 4A, Option 4B or Option 5, shall likewise receive his prior service benefit, if any, in an adjusted annuity payable upon the same conditions and to the same beneficiary as that selected for his current service benefit, but with the further proviso that all prior service benefits shall be subject to reduction by the Board under the circumstances provided for in Section V of this Act.

4. Deferred Service Retirement with Optional Selection;

Any member who has accumulated sufficient creditable service and who is otherwise qualified for service retirement shall have the right to apply for an optional benefit to be paid, upon the terms and with the effect hereinbelow provided, in the event the member dies prior to the effective date of the retirement of the member.

The member shall apply for such optional benefit in writing (on such forms as the Board may prescribe) and shall select one of the optional benefits authorized under Subsection 3, above, and designate the beneficiary of the optional benefit selected. After filing of the application and selection, the member may continue in the service of a participating municipality, and he may thereafter retire at the end of any month, by filing a written application for retirement with the Board at least thirty (30) days before the effective date of retirement; or, if such member shall die while in service or before the effective date of the member's retirement, the optional benefit selected under this subsection shall be effective as of the last day of the calendar month preceding the month of death and shall be calculated as if the member had retired as of that date and on the optional benefit selected. Any such member who has applied for such optional benefit may from time to time, prior to the effective date of retirement, file an amended application, changing his written selection of optional allowance and/or designated beneficiary. In the event a member who is eligible for service retirement shall die without having a written selection of optional allowance and designated beneficiary on file with said Board, and if the member leaves a lawful spouse surviving, then the surviving spouse of such member may select the optional benefit in the same manner as if the member had made the selection; but if the member leaves no lawful spouse surviving, then at the election of the executor or administrator of the estate of

the member, the member shall be considered to have retired under an Option 4A benefit effective at the end of the calendar month preceding that in which the death of the member occurs, or such deceased member shall be considered as having been an active member at death, and the estate of the member shall be entitled to receive the accumulated contributions of the member.

[See Compact Edition, Volume 5 for text of VII, 5]

6. Standard Disability Retirement Benefits;

Upon retirement for disability a member shall receive a disability retirement benefit consisting of (1) a current service annuity, which shall be the actuarial equivalent of his current service annuity reserve, and (2) a prior service annuity to which his Accumulated Prior Service Credit, Accumulated Special Prior Service Credit and Accumulated Antecedent Service Credit, or of his Accumulated Updated Service Credit, as applicable, entitles him under the provisions of this Act.

(a) His current service annuity reserve shall be derived from:

(1) His accumulated deposits credited to his account in the Employees Saving Fund at the time of retirement; and

(2) An additional sum from the Municipality Current Service Accumulation Fund equal to the accumulated deposits provided by the member, or such greater sum as the participating municipality has undertaken to provide.

(b) If at time of retirement, a member is entitled to and has in full force and effect any prior service credits, special prior service credits, antecedent service credits, or updated service credits, the prior service annuity shall be the actuarial equivalent of his Accumulated Prior Service Credit, Accumulated Special Prior Service Credit and Accumulated Antecedent Service Credit, or of his Accumulated Updated Service Credit, as applicable, at time of retirement. Upon the recommendation of the actuary, the Board shall have the power to reduce payments for prior service annuities as provided in Section V of this Act.

7. Requirements and Conditions Applicable to Disability Benefits;

Once each year during the first five (5) years following retirement of a member on a disability retirement allowance, and once in every three-year period thereafter, the Board may, and upon his application shall, require any disability annuitant who has not yet attained the age of sixty (60) years to undergo a medical examination, such examination to be made at the place of residence of said annuitant or any other place mutually agreed upon, by a physician or physicians designated by the Board.

Should any disability annuitant who has not yet attained the age of sixty (60) years refuse to submit to at least one (1) medical examination in any such periods by a physician or physicians designated by the Board, his allowance shall be discontinued until his withdrawal of such refusal, and should his refusal continue for one (1) year, all his rights in and to his allowance shall be revoked by the Board.

[See Compact Edition, Volume 5 for text of VII, 7(a)]

(b) Should a disability annuitant under the age of sixty (60) years be restored to active service in a participating department of a participating municipality, his retirement allowance shall cease, he shall again become a member of the System, and any reserves on his current service annuity at that time in the Current Service Annuity Reserve Fund shall be transferred to the Employees Saving Fund and to the Municipality Current Service Accumulation Fund, respectively, in proportion to the original sum transferred to the Current Service Annuity Reserve Fund. Upon restoration to membership, any Prior Service Credit, Special Prior Service Credit, Antecedent Service Credit, or Updated Service Credit, on the basis of which his service was computed at the time of his retirement shall be restored to full force and effect, and in addition, upon his subsequent retirement, he shall be credited with all his membership service. Should a disability annuitant die or be removed from the disability list for any cause other than restoration to active service, an amount equal to the amount by which such annuitant's accumulated deposits at the time of disability retirement exceed the current service annuity payments received by such annuitant under his disability allowance, if any such excess exists, shall be paid from the Current Service Annuity Reserve Fund to such annuitant if living; otherwise, such amount shall be paid to his estate unless he has directed such amount to be paid otherwise.

8. Return of Deposits Upon Other Terminations;

Should a member cease to be an employee of a participating department except by death or retirement under the provisions of this Act, he shall, upon application, be paid in full the amount of the accumulated deposits standing to the credit of his individual account in the Employees Saving Fund. In the event of death of a member before retirement, and prior to eligibility of the member to deferred retirement as hereinabove provided, the amount of his accumulated deposits standing to the credit of his individual account in the Employees Saving Fund (together with interest on the amount of his accumulated contributions at the beginning of the year in which death occurs, computed from the first day of such year to the first day of the month in which death occurs at the annual rate of interest credited by the System on member accounts during the pre-

ceding year) shall be paid to his estate unless he has directed the account to be paid otherwise. Seven (7) years after cessation of service, if no previous demand has been made, any accumulated deposits of a contributor shall be returned to him or to his estate. If the contributor or the administrator of his estate cannot then be found, his accumulated deposits shall be escheated to the Retirement System, and shall be credited to the permanent endowment account of the Endowment Fund.

9. Valuation Basis Adjustment in Current Service Annuities;

The Board of Trustees is authorized to increase the monthly benefits payable after July 1, 1977, on each current service annuity on which a monthly benefit payment was made on June 30, 1977. The monthly benefits payable may be increased by the percentage by which (a) exceeds (b), where (a) is the Current Service Annuity Reserve Fund balance as of July 1, 1977, plus regular interest on the mean balance of such Fund from January 1, 1977, to July 1, 1977, and (b) is the System's current service annuity reserve calculated on the basis of four percent (4%) interest and such mortality and other tables adopted by the Board to become effective on July 1, 1977.

10. Valuation Basis Adjustment in Prior Service Annuities;

The Board of Trustees is authorized to increase the monthly benefits payable after July 1, 1977, on each prior service annuity on which a monthly benefit payment was made on June 30, 1977. The monthly benefit payable may be increased for annuitants in each municipality by the percentage by which (a) exceeds (b), where (a) is the municipality's prior service annuity reserve calculated on the basis of three percent (3%) interest and such mortality and other tables adopted by the Board that are in effect on June 30, 1977, and where (b) is the municipality's prior service annuity reserve calculated on the basis of four percent (4%) interest and such mortality and other tables adopted by the Board to become effective July 1, 1977. It is further provided that no increase in monthly benefits payable on prior service annuities for annuitants of a particular municipality shall be made in an amount which (according to calculations made by the actuary on the basis of four percent (4%) interest and such mortality and other tables adopted by the Board) would result in a probable future depletion of the municipality's account in the Municipality Prior Service Accumulation Fund with the resulting need to reduce prior service annuities payable to retired members.

11. Reduction in Payments at Request of Annuitant;

At the written request of any person receiving payments of an annuity, the Director may cause the

monthly amount payable as such benefit to be reduced to such amount as the person entitled to such payment shall request, and on written request of the person entitled to such payment may thereafter increase the amount of the monthly payment during the remaining period for which the benefit is payable to an amount not exceeding the monthly amount originally payable under such annuity. Any amounts by which the monthly benefit is reduced at the annuitant's request shall be relinquished to the System, and no person shall have any claim to recover any amounts, the payment of which is foregone under the provisions hereof.

Administration

Sec. VIII.

[See Compact Edition, Volume 5 for Text of VIII, 1]

1a. The Board of Trustees of the Texas Municipal Retirement System is subject to the Texas Sunset Act,¹ but it is not abolished under that Act. The board shall be reviewed under the Texas Sunset Act during the period in which state agencies abolished effective September 1 of 1989 and of every 12th year after 1989 are reviewed.

¹ Article 5429k.

[See Compact Edition, Volume 5 for text of VIII, 2 to XIII, 6]

Optional Provision for Increased Current Service Annuities

Sec. XIV. Any participating municipality electing to do so may provide for an increased current service annuity reserve at retirement of employees of such municipality, upon the following terms and conditions:

[See Compact Edition, Volume 5 for text of XIV, 1 to 5]

6. The increased rate of contributions authorized hereunder shall only be made effective at the beginning of a calendar year. A municipality beginning participation in the System on or after January 1, 1976, however, may elect to begin participation on the basis of contributing at retirement one hundred fifty percent (150%) or two hundred percent (200%) of its member's accumulated deposits arising from service during each year such undertaking remains in effect.

7. A participating municipality may revert to current-service contributions on an equal-matching basis, or reduce from two hundred per centum (200%) matching to one hundred fifty per centum (150%) matching of deposits as to any service rendered by its members or after the 1st day of January of the ensuing calendar year after adoption of an ordinance terminating (as to such future service) contributions at the higher per-

centages allowed under this Section; provided such ordinance shall have been adopted prior to the 1st day of January of the ensuing calendar year.

Optional Provision for Antecedent Service Credits

Sec. XV. Any participating municipality electing to do so may provide for "special prior service credits" to be allowed as to employees of such municipality retiring subsequent to the effective date of the undertaking of the municipality to provide such increased credits, upon the following terms and conditions:

[See Compact Edition, Volume 5 for text of XV, (1) to (6)]

(7) No participating municipality may allow special prior service credits after January 1, 1976, but any such credits theretofore allowed shall remain in effect, unless supplanted by Updated Service Credits allowed by such municipality.

Optional Provision for Antecedent Service Credits

Sec. XVI. Subject to the terms and conditions hereinafter stated, any participating municipality electing to do so may undertake to grant antecedent service credit to those persons in its employment at the effective date of the municipality's election to provide such credit.

[See Compact Edition, Volume 5 for text of XVI, (1) to (8)]

(9) No participating municipality may allow Antecedent Service Credits after January 1, 1976, but any such credits theretofore allowed shall continue in effect unless supplanted by Updated Service Credits allowed by such municipality.

Optional Provision for Updated Service Credits

Sec. XVII. (1)(a) Under the conditions hereinbelow set forth, any municipality participating in this System prior to January 1, 1975, may provide for each of its members to be granted an "Updated Service Credit" as a substitute for and in lieu of all Prior Service Credits, Special Prior Service Credits and Antecedent Service Credits theretofore allowed such member by reason of service with such municipality, or as a substitute for previously granted Updated Service Credits.

(b) Any municipality beginning participation between January 1, 1975, and December 1, 1975, shall not be eligible to allow Updated Service Credits until it has been a participating municipality in the System for one or more calendar years. Any municipality beginning participation on or after January 1, 1976, shall not be eligible to allow Updated Service Credits until it has been a participating municipality in the System for four or more calendar years.

(2) The governing body by ordinance shall determine whether to grant Updated Service Credits to members by reason of employment with such municipality, and shall designate the effective date of election of such credits; provided that the date elected shall be the beginning of any calendar year subsequent to the effective date of this section and further provided that the System shall receive the ordinance prior to the effective date of election. Except for the first election to grant Updated Service Credits, the effective date of any such election by a participating municipality must be four or more years subsequent to the effective date of any previous election.

(3) Updated Service Credit shall mean such percentage (any multiple of ten percent (10%) but not exceeding one hundred percent (100%)) of the "Base Updated Service Credit" as the governing body may select; provided, however, that each member shall be entitled as a minimum to an Updated Service Credit that is equal to the total of the member's Accumulated Prior Service Credit, Accumulated Special Prior Service Credit and Accumulated Antecedent Service Credit, or his previously granted Accumulated Updated Service Credit, as of the study date. The study date on which updated service credits are calculated shall be one year prior to the effective date of election of such Updated Service Credits.

(4) "Base Updated Service Credit" shall be determined as the number 1.03 multiplied by the difference by which the amount calculated as provided in (a) below, exceeds the amount calculated as provided in (b) below, and where:

"(a)" is an amount equivalent to the accumulation at three percent (3%) interest of a series of monthly payments for the number of months of creditable service standing to the credit of the member for service to the study date. Each such monthly payment shall be equal to the member's average updated service compensation, as defined below, multiplied by the sum of (1) the member's deposit rate and (2) the member's deposit rate multiplied by the municipal current service matching ratio in effect at the effective date of election. "Average updated service compensation" means the monthly average compensation received by an employee member for the three (3) years immediately preceding the study date; but if there are less than three (3) years of such service, the average shall be computed for the number of months of such service within such thirty-six (36) month period. If an employee member has no service during the three (3) years immediately preceding the study date, then the average shall be computed for the three (3) years, or fraction thereof, of service rendered in the most recent period preceding the study date; and

"(b)" is an amount equal to the sum of: (1) the member's accumulated contributions on the study date subject to a 1 to 1 matching ratio multiplied by 2, and (2) the member's accumulated contributions on the study date subject to a 1.5 to 1 matching ratio multiplied by 2.5, and (3) the member's accumulated contributions on the study date subject to a 2 to 1 matching ratio multiplied by 3.

(5) Municipality liabilities attributable to Updated Service Credits shall be an obligation of the municipality to the Municipality Prior Service Accumulation Fund and shall be paid for by prior service contributions by the participating municipality as provided elsewhere in this statute. The actuary shall annually determine the municipality prior service contribution rate necessary to pay for these liabilities and other liabilities of the municipality to the Municipality Prior Service Accumulation Fund.

(6) No Updated Service Credit shall be permitted, and no provision therefor shall become effective, unless and until the proposal is approved by the Board as conforming to requirements of this Act. The Board shall adopt such rules as it deems necessary to insure that the System receives from the participating municipality such certified information as is required by the actuary in sufficient time to make the necessary studies prior to the effective date of election of Updated Service Credits. The Board shall not approve the allowance of Updated Service Credit by any participating municipality until it shall have been determined (according to calculations made by the Actuary and approved by the Board, on the basis of mortality and other tables adopted by the Board) that (a) all obligations of the Municipality Prior Service Accumulation Fund including those arising from the Updated Service Credits can be funded by the municipality within its maximum total contribution rate by the end of the twenty-fifth year from the latest effective date of election of allowance of Updated Service Credits, or from the latest effective date of increase in annuities to retired members and their beneficiaries, whichever period is longer; and (b) prior service annuities payable thereafter will not result in a probable future depletion of the Municipality's Prior Service Accumulation Fund with the resulting need to reduce prior service annuities payable to retired members.

(7) Accumulated Updated Service Credit shall mean Updated Service Credit accumulated at regular interest from the effective date of election of Updated Service Credits until the effective date of such member's retirement.

(8) Any participating municipality electing to provide Updated Service Credits must also elect on the same date to base member's monthly deposits on the member's total monthly earnings, if not previously so elected.

(9) Any municipality granting Updated Service Credits shall not be eligible to grant Special Prior Service Credits, as defined in Section XV, and Antecedent Service Credits, as defined in Section XVI, subsequent to their date of election of Updated Service Credits.

Optional Increases in Benefits to Persons Drawing Annuities

Sec. XVIII. (1) Subject to the limitations hereinbelow set out, any participating municipality may from time to time authorize and provide for increases in the current service annuities and prior service annuities being paid to retired employees and to beneficiaries of deceased employees of such municipality.

(2) The increased benefit shall be ten percent (10%), twenty percent (20%), thirty percent (30%), forty percent (40%), or fifty percent (50%) of the then benefit being paid to such retired member or beneficiary by reason of service performed by such member for the municipality undertaking to grant such increase; and the governing body of the municipality shall by ordinance determine the percentage of increase to be so allowed.

(3) All increases in monthly benefit payments on account of current service annuities and of prior service annuities hereafter authorized under this Section shall be obligations of the participating municipality's account in the Municipality Prior Service Accumulation Fund, and shall be subject to the limitations of Section V, providing that all benefit payments chargeable to the account of the participating municipality in the Prior Service Accumulation Fund in any year may not exceed the amounts available in said account in said year.

(4) The reserves required to fund increases allowed by such municipality in payments on account of current service annuities and of prior service annuities being paid to its retired employees and their beneficiaries, shall become a charge against and an additional obligation of the municipality's account in the Prior Service Accumulation Fund of the System; and such liabilities, together with all other liabilities chargeable to its account in the Municipality Prior Service Accumulation Fund, shall be paid for by contributions to said Fund as elsewhere provided in this statute. The actuary shall annually determine the municipality prior service contribution rate necessary to pay for the additional liabilities above, and all other liabilities of the municipality to the Municipality Prior Service Accumulation Fund, within a period of twenty-five (25) years from effective date of latest increases in annuities to retired members and beneficiaries, or from the latest effective date of allowance by the municipality of Updated Service Credits, whichever is later.

(5) The increases in benefits payable to retired employees and their beneficiaries may be made ef-

fective on the first day of the next ensuing calendar year; provided, that no additional increase in benefits shall be allowed by a participating municipality until four years have elapsed since the effective date of the latest increase in any such benefits; and provided further that any annuitant receiving a benefit which became effective after the participating municipality last adopted Updated Service Credits, shall be ineligible to receive any increase in payments on account of such annuity, unless the participating municipality shall simultaneously allow Updated Service Credits in substitution for those previously granted.

(6) No increases in benefits being paid to retired members and their beneficiaries shall be permitted, and no provision therefor shall become effective, unless and until the proposal is approved by the Board as conforming to requirements of this Act. The Board shall not approve the allowance by any participating municipality of increases in annuities to retired employees and their beneficiaries, until it shall have been determined (according to calculations made by the Actuary and approved by the Board, on the basis of mortality and other tables adopted by the Board) that (a) all obligations of the municipality in the Municipality Prior Service Accumulation Fund, including those arising from such increased benefits can be funded by the municipality within its maximum total contribution rate by the end of the twenty-fifth year from the effective date of election of such increased benefits or the granting of Updated Service Credits, whichever is later, and (b) prior service annuities payable thereafter will not result in a probable future depletion of the municipality's account in the Municipality Prior Service Accumulation Fund with the resulting need to reduce prior service annuities payable to retired members.

Optional Supplemental Death Benefits

Sec. XIX. 1. Establishment of Supplemental Death Benefits Fund.

(a) The Board of Trustees shall establish in addition to the several Funds listed in Section V, an additional and separate Fund to be known as the "Supplemental Death Benefits Fund" to provide for payment of supplemental death benefits upon the terms and conditions hereinafter stated.

(b) The Supplemental Death Benefits Fund and the coverage authorized under this section shall not become operative until a sufficient number of municipalities elect to participate in the Fund to cover into the Fund at least four thousand (4,000) members of the System. The Board shall determine the operative date and shall furnish to municipalities which have elected to participate in the Fund notice of the effective date of their participation in the Fund, which shall not precede the operative date of

the Fund. Municipalities electing to participate in the Fund after the operative date may begin participation on the first day of any calendar month following notification to the Board of its election to enter the Fund.

2. Participation in Fund by Municipalities.

(a) Any municipality which has one or more of its departments participating in this System on a full-salary basis may, by action of its governing body, elect to participate in the Supplemental Death Benefits Fund for the purpose of providing for its current employees who are members of the System an in-service death benefit described below, and, if the municipality shall further elect such additional coverage, providing the post-retirement death benefits described below for annuitants of the System who were employees of such municipality at time of retirement. If the municipality has less than ten (10) employees who are members of the System, the Board may require evidence satisfactory to the Board of the good health of such members prior to permitting such municipality to participate in the Fund.

(b) Any municipality may elect to discontinue participation in the Supplemental Death Benefits Fund and terminate the coverage herein provided for effective January 1 of any year by giving the System written notice of its intention to discontinue not later than October 31 preceding the date of termination. The Board of Trustees shall have the right to place such restrictions as it deems proper upon the right of that municipality to again participate in the Fund, if it has previously discontinued participation in the Fund.

3. In-service Death Benefits.

(a) Conditions and Amount of Payment. In the event of the death of a covered member while in service as an employee of a municipality participating in the Supplemental Death Benefits Fund or while such member is covered by Extended Supplemental Death Benefit protection as hereinafter provided, there will be paid from the Fund a cash benefit equal in amount to the current annual salary of the member. The current annual salary shall be the amount actually paid to such employee as compensation for services and on which contributions were made to the System during the period of twelve (12) calendar months preceding the month of death. If the employee has been employed for a lesser period, the current annual salary shall be determined by converting to an annual basis the compensation which was actually paid to the member and on which contributions were made to the System for the period of his actual employment. If the employee received no compensation for services during the period of twelve (12) calendar months preceding the month of death, the current annual salary shall be determined by converting to an annu-

al basis the compensation paid during the month of death. For the member who is covered by Extended Supplemental Death Benefit protection, the current annual salary shall be computed as described above and as if the member had died during the first month of such protection. The Board shall have the power to require such proof of amounts of compensation and periods of employment as it deems necessary.

(b) Period of coverage. A person employed by a participating municipality will be covered for in-service supplemental death benefits effective on the first day of the first month during which all of the following requirements are satisfied:

(i) the employing municipality is participating in the Supplemental Death Benefits Fund for coverage of all System members in its employment;

(ii) the employee is a member of the System; and

(iii) the employee-member is obligated to make a contribution to the System.

Coverage once established will continue in effect during each month thereafter in which all of the above requirements are satisfied as to the employee-member involved; coverage terminates (unless the member qualifies for extended supplemental death benefit protection) on the last day of any month in which the person involved fails to satisfy all of the above requirements. However, in no event will coverage continue beyond the date of termination of such coverage by the municipality or beyond the date of termination of membership in the System.

If a member makes deposits to the System during the same month as an employee of more than one municipality participating in the Fund, a death benefit will be payable only on the basis of the member's employment in such municipality for which he last worked.

(c) Extended Supplemental Death Benefit Protection. A member covered for in-service supplemental death benefits who fails in a succeeding month to earn compensation for service to a municipality participating in this Fund may be granted Extended Supplemental Death Benefit protection despite failure to make a contribution to the System, provided the member applies for such extended coverage and submits proof satisfactory to the Board:

(i) that as a result of illness or injury, the member is unable to engage in any gainful employment; and

(ii) that the member made to the System a required contribution as an employee of a municipality participating in the Supplemental Death Benefits Fund for the month preceding the first entire month for which the Board finds the member to have been unable to engage in any gainful employment.

The Extended Supplemental Death Benefit protection once approved by the Board shall continue for such member until the end of the month in which occurs the first of the following events:

- (i) the member returns to work as an employee of a participating municipality; or
- (ii) the Board finds that the member has become able to engage in gainful employment; or
- (iii) the person ceases to be a member of the System; or
- (iv) the member retires under the provisions of this Act.

The Board may require that satisfactory proof of continued inability to engage in gainful occupation be submitted once every twelve (12) months, and the Board may require the member to submit to examination by physicians designated by the Board as a condition to granting or continuation of such extended protection. Failure of a member to submit to an examination shall be sufficient grounds for finding that the member has become able to engage in gainful employment.

4. Post-Retirement Death Benefits.

In the event that the municipality for which an annuitant was last employed as a member of the System has elected to provide post-retirement supplemental death benefits and such annuitant shall die while such coverage under the Supplemental Death Benefits Fund is maintained in effect by such municipality, there shall be paid from the Fund a cash benefit in the amount of Two Thousand Five Hundred Dollars (\$2,500.00).

No benefit shall be payable by reason of death of an annuitant subsequent to the date of termination of such coverage by the municipality by which the annuitant was last employed as a member of the System.

5. Contributions Required of Municipalities Participating in Fund.

(a) Board to Adopt Tables and Rates. Based upon the recommendations of the actuary, the Board shall adopt, to become effective on the date that the Supplemental Death Benefits Fund and the coverage under this section become operative, such rates and tables as are considered necessary to determine the Supplemental Death Benefits contribution rates required of each municipality. As soon as is practical after the establishment of the Supplemental Death Benefits program and periodically thereafter as part of each general investigation of the mortality and service experience of the members and annuitants of the System, the actuary shall make such investigation of the mortality experience of the members and eligible annuitants participating in the Supplemental Death Benefits program as is deemed necessary and on the basis of such investigation shall

recommend for adoption by the Board such rates and tables as are considered necessary to determine Supplemental Death Benefits contribution rates.

The rates and tables recommended by the actuary and adopted by the Board may provide for the anticipated mortality experience of persons covered under the Fund, and for a contingency reserve.

(b) Contribution Rates for Supplemental Death Benefits. At the beginning of each municipality's participation in the Supplemental Death Benefits Fund, the actuary shall calculate the Supplemental Death Benefits contribution rate applicable to the municipality for the remainder of that calendar year and thereafter shall calculate the rate applicable for each succeeding calendar year for participation in the Fund. The rate of contribution shall be calculated on the basis of the rates and tables adopted by the Board and effective for the period for which such determination is made and shall be expressed as a percentage of earnings of members of the System employed by such municipality.

Each municipality participating in the Supplemental Death Benefits Fund shall make monthly contributions to the Fund in an amount determined by multiplying the Supplemental Death Benefits contribution rate applicable to such municipality (as calculated by the actuary and approved by the Board) by all earnings during the month of members of the System employed by such municipality.

Such contributions shall be in addition to and shall not be included within the limitations prescribed in other sections of this Act on the rate of contribution which may be made by the participating municipality for benefits under the System.

6. Operation of Supplemental Death Benefits Fund.

All Supplemental Death Benefits contributions required of and paid in by municipalities participating in the Supplemental Death Benefits Fund shall be credited to said Fund, and not to separate accounts of the municipalities participating therein. All Supplemental Death Benefits payable under the provisions of this section shall be paid from said Fund and shall be obligations only of said Fund, and not of other funds of the System.

If at any time the amount of benefit payments due from the Supplemental Death Benefits Fund exceeds the balance of such Fund, the Board may direct that funds be transferred from the Endowment Fund General Reserves Account (to the extent that such money is available) to the Supplemental Death Benefits Fund in such amounts as are necessary to cover the deficiency, and the Board may provide for adjustments in future contributions to the Supplemental Death Benefits Fund such as may be required to restore to the General Reserves

Account of the Endowment Fund the amounts theretofore transferred to the Supplemental Death Benefits Fund.

The Supplemental Death Benefits Fund shall be managed, controlled, and handled as are other funds of the System. Regular interest shall be allowed by the Board on December 31 in each year on the mean amount in the Fund during the year, and the sum so allowed shall be transferred to the Supplemental Death Benefits Fund from the Interest Fund at the time and in the manner in which interest is allowed to other interest-bearing funds of the System.

7. Discontinuance of Fund.

If the total number of members covered under the Fund becomes less than four thousand (4,000), the Board may order the Fund to be discontinued and all coverage terminated at the end of a calendar year as designated by the Board; provided that no such termination date shall be fixed that is less than six (6) months beyond the date of adoption of the order of termination.

8. Reinsurance of Certain Risks.

The Board is authorized, if in its judgment such action is necessary, to secure reinsurance from one or more stock insurance companies doing business in this state, to protect against adverse claim experience. Premiums for such reinsurance shall be paid from the Supplemental Death Benefits Fund.

9. Beneficiaries of Supplemental Death Benefits.

Unless the member shall otherwise direct on written forms adopted by the Board the Supplemental Death Benefit shall be paid:

(a) to such person as a covered member has designated as the beneficiary to whom his accumulated contributions shall be paid; or

(b) to such person as a covered annuitant has designated as the person to whom any remaining payments of the benefit are to be continued after death of the annuitant.

If no designated beneficiary survives the covered member or covered annuitant, as the case may be, the Supplemental Death Benefit shall be paid to his or her estate.

Optional Benefit Package

Sec. XX. 1. The governing body of any participating municipality which began participation on or after January 1, 1976, or which has adopted and allowed Updated Service Credits may adopt the following plan provisions for employees of all of its participating departments to be effective on the first day of any ensuing calendar month:

(a) Each person who becomes an employee of any participating department and who is not already a member of the System shall become a

member of the System as a condition of employment, provided such person is then under sixty (60) years of age;

(b) Any member, after one (1) year from the effective date of membership, shall be eligible for service retirement who has attained the age of fifty (50) years and has completed twenty-five (25) years of creditable service with the municipality electing the provisions of this section, who has attained the age of sixty (60) years and has completed at least ten (10) years of creditable service with participating municipalities which have adopted the plan provisions of this section or who has become eligible for service retirement under any other applicable provision of this Act;

(c) The membership of any member who has completed at least ten (10) years of creditable service with participating municipalities which have adopted the plan provisions of this section shall not terminate because of absence from service; and if the member does not withdraw his accumulated contributions, he shall become eligible for service retirement upon satisfaction of the applicable age and creditable service requirements; and

(d) Any person who is an employee of a participating department of the municipality at the effective date of the adoption by such municipality of the plan provisions of this section, but who at the date of his employment was under sixty (60) years of age but did not become a member because he was then above the maximum age then prescribed by law for initial membership in the System, shall become a member of the System at the effective date of the ordinance, unless he has already become a member because of Subsection 2(f) of Section III, and shall be allowed prior service credit for each month of creditable service performed for such municipality subsequent to the date such person was ineligible for membership and prior to the effective date of his membership. Such prior service credit shall be calculated using the same percentage of the base prior service credit as was most recently used in calculating Prior Service Credits or Updated Service Credits for current member employees.

2. Any municipality hereafter electing to participate in the System shall adopt the plan provisions of this section as a condition of participation.

3. The plan provisions of this section may not be adopted by a participating municipality until it shall have been determined (according to calculations made by the actuary of the System) on the basis of mortality and other tables adopted by the Board (a) that all obligations of the municipality to the Municipality Prior Service Accumulation Fund, including the additional obligations under this section, can be funded by the municipality within its maximum

contribution rate within a period of twenty-five (25) years from the effective date of the municipality's participation in the System, the latest increases in annuities to retired members and beneficiaries, or from the latest effective date of allowance by the municipality of Updated Service Credits, whichever is latest, and (b) that prior service annuities payable thereafter will not result in a probable depletion of the Municipality's Prior Service Accumulation Fund account with the resulting need to reduce prior service annuities payable to retired members.

[Amended by Acts 1975, 64th Leg., p. 382, ch. 171, §§ 1 to 16, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 118, ch. 58, §§ 1 to 9, eff. April 13, 1977; Acts 1977, 65th Leg., p. 1857, ch. 735, § 2.177, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 442, ch. 202, §§ 1 to 4, eff. Aug. 27, 1979.]

Section 17 of the 1975 amendatory act provided:

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

Section 10 of Acts 1977, 65th Leg., p. 128, ch. 58, and § 5 of the 1979 amendatory act provided:

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

Art. 6243h-1. Repealed by Acts 1979, 66th Leg., p. 2112, ch. 817, § 14(a)(5), eff. Aug. 27, 1979

Art. 6243j. Police Officers' Pension System in Cities of 50,000 to 400,000

Sec. 1. There is hereby created in this State a Police Officers' Pension System in all cities having a population of not less than fifty thousand (50,000) inhabitants, nor more than four hundred thousand (400,000) inhabitants, according to the last preceding or any future Federal Census; provided, however, that once such pension system becomes operative in any city, any right or privilege accruing to any member thereunder shall be a vested right and the same shall not be denied or abridged thereafter through any change in population of any such city taking such city out of the population bracket as herein prescribed, and said pension system shall continue to operate and function regardless of whether or not any future population exceeds or falls below said population bracket.

Definitions

Sec. 2. The following words and phrases when used in this Act are defined as follows, to wit:

[See Compact Edition, Volume 5 for text of 2(a)]

(b) "Member" means any and all employees in the Police Department who are engaged in law enforcement duties except janitors, car washers, cooks, and secretaries. Member may include reserve, special, or part-time officers as provided in Subsections (d), (e), and (f), Section 3 of this Act.

[See Compact Edition, Volume 5 for text of 2(c) to (i)]

Membership

Sec. 3.

[See Compact Edition, Volume 5 for text of 3(a) and (b)]

(c) Part-time, seasonal, or other temporary employees shall not become, nor be eligible as, members of the Pension System except as provided in Subsections (d), (e), and (f).

(d) A city that has adopted the Pension System in this Act may make reserve, special, or part-time officers eligible as members of the Pension System by vote of the city's governing body, or the city's governing body may call an election to submit the question to the qualified voters of the city.

(e) If a special election is called, the election must be advertised by publication in at least one newspaper of general circulation in the city once each week for four consecutive weeks. The question shall be submitted to the qualified voters as follows:

"FOR: Including reserve, special, or part-time officers in the Police Pension System."

"AGAINST: Including reserve, special, or part-time officers in the Police Pension System."

(f) A city that adopts the Pension System in this Act may include reserve, special, or part-time officers in the Pension System by vote of the city's governing body, by calling a special election as provided in Subsection (e) of this Section, or by joining the question of whether or not to include those officers on the ballot which submits the proposed Police Pension System to the city's qualified voters as provided in Section 25 of this Act.

[See Compact Edition, Volume 5 for text of 4 to 24]

Election; Adoption Without Election

Sec. 25. The city is authorized to call an election to determine if the city desires to adopt this Act after a petition has been presented to the governing body of the city, signed by five per cent (5%) of the qualified voters of the city who voted in the last municipal election. Such election must be advertised by publication in at least one (1) newspaper of general circulation in said city once each week for four (4) consecutive weeks. The question shall be submitted to the qualified voters of the city at a special election to be held for such purpose at which all ballots shall have printed thereon:

"FOR: The proposed Police Pension System."

"AGAINST: The proposed Police Pension System."

No other issues shall be joined with the proposition submitted at this election on the same ballot

except as provided in Subsection (f), Section 3 of this Act.

Nothing herein is to prevent the city governing body from adopting the proposed pension plan without an election.

[See Compact Edition, Volume 5 for text of 26]

[Amended by Acts 1977, 65th Leg., p. 1396, ch. 562, §§ 1 to 5, eff. Aug. 29, 1977.]

Art. 6243k. Retirement, Disability and Death Benefit Systems for Appointive City or Town Employees

An incorporated city or town may create a retirement, disability, and death benefit system for its appointive officers and employees if a majority of the qualified voters of the city or town voting on the proposition approve the creation at an election called for that purpose. Each member of the system shall contribute to the system an amount determined by the city or town, but not more than seven and one-half percent of his annual compensation paid by the city or town, and the city or town shall contribute for each member an equal amount. A member of a municipal system is eligible for disability benefits if he is disabled in the course of his employment with the city or town. A member is eligible for retirement benefits if he is 65 years old or older, or he is 60 years old but less than 65 years old and has been employed by the city or town for 25 years or more.

[Acts 1975, 64th Leg., p. 1127, ch. 426, § 2, eff. Sept. 1, 1975.]

Section 1 of the 1975 Act was classified as art. 6228j; §§ 3 and 4 thereof provided:

"Sec. 3. Retirement, disability, and death benefit systems or programs created under the authority of Article III, Section 51-e, or Article XVI, Section 62, Subsection (b), of the Texas Constitution, or under the general powers of home-rule cities, remain in effect, subject to power granted by law to alter or abolish the systems.

"Sec. 4. This Act takes effect on adoption by the qualified voters of this state of S.J.R.No.3, 64th Legislature, Regular Session (so adopted at election held on April 22, 1975)."

Art. 6243l. Separate Retirement System for Police Department Employees in Cities of 250,000 or More

Sec. 1. The governing body of any city with a population of 250,000 or more, according to the last preceding federal census, may establish by ordinance a separate retirement system for employees of the police department notwithstanding any charter provisions of the city to the contrary.

Sec. 2. This Act does not apply to a city governed by:

(1) Chapter 4, Acts of the 43rd Legislature, 1st Called Session, 1933, as amended (Article 6243a, Vernon's Texas Civil Statutes);

(2) Chapter 101, Acts of the 43rd Legislature, 1st Called Session, 1933, as amended (Article 6243b, Vernon's Texas Civil Statutes);

(3) Chapter 105, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6243f, Vernon's Texas Civil Statutes);

(4) Chapter 76, Acts of the 50th Legislature, 1947, as amended (Article 6243g-1, Vernon's Texas Civil Statutes); or

(5) Chapter 75, Acts of the 50th Legislature, 1947, as amended (Article 6243h, Vernon's Texas Civil Statutes).

[Acts 1979, 66th Leg., p. 537, ch. 253, §§ 1, 2, eff. May 24, 1979.]

TITLE 109A

PLUMBING

Art. 6243-101. Plumbing License Law of 1947

[See Compact Edition, Volume 5 for text of 1]

Definitions

Sec. 2.

[See Compact Edition, Volume 5 for text of 2(a) to (f)]

(g) "Water treatment" is a business which is conducted under contract and requires ability, experience, and skill in the analysis of water to determine how to treat influent and effluent water to alter or purify the water or to add or remove a mineral, chemical, or bacterial content or substance. The term includes the installation and service of fixed or portable water treatment equipment or a treatment apparatus, in the water treatment system of industrial, commercial, or residential structures. The term also includes the making of connections necessary to the installation of a water treatment system.

Acts Permitted Without a License

Sec. 3. The following acts, work and conduct shall be expressly permitted without license:

(a) Plumbing work done by a property owner in a building owned or occupied by him as his home;

(b) Plumbing work done outside the municipal limits of any organized city, town or village in this state, or within any such city, town or village of less than five thousand (5,000) inhabitants, unless required by ordinance in such city, town or village of less than five thousand (5,000) inhabitants;

(c) Plumbing work done by anyone who is regularly employed as or acting as a maintenance man or maintenance engineer, incidental to and in connection with the business in which he is employed or engaged, and who does not engage in the occupation of a plumber for the general public; construction, installation and maintenance work done upon the premises or equipment of a railroad by an employee thereof who does not engage in the occupation of a plumber for the general public; and plumbing work done by persons engaged by any public service company in the laying, maintenance and operation of its service mains or lines and the installation, alteration, adjustment, repair, removal and renovation of all types of appurtenances, equipment and appliances; appliance installation and service work done by anyone who is an appliance dealer or is employed by an

appliance dealer, and acting as an appliance installation man or appliance service man in connecting appliances to existing piping installations; water treatment installations, exchanges, services, or repairs. Provided, however, that all work and service herein named or referred to shall be subject to inspection and approval in accordance with the terms of all local valid city or municipal ordinances.

[See Compact Edition, Volume 5 for text of 4]

Application of Sunset Act

Sec. 4a. The Texas State Board of Plumbing Examiners is subject to the Texas Sunset Act¹; and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1981.

¹ Article 5429k.

[See Compact Edition, Volume 5 for text of 5 to 13]

Prohibition Against Practicing Without License

Sec. 14. After the expiration of one hundred twenty days from the effective date of this Act, no person, whether as a master plumber, employing plumber, journeyman plumber, or otherwise, shall engage in, work at, or conduct the business of plumbing in this state or serve as a plumbing inspector as herein defined, except as herein specifically exempted from the provisions of this Act, unless such person is the holder of a valid license as provided for by this Act; and after the expiration of one hundred twenty days from the effective date of this Act it shall be unlawful for any person to engage in, work at, or conduct the business of plumbing in this state or serve as a plumbing inspector as herein defined, except as herein specifically exempted from the provisions of this Act, unless such person is the holder of a valid license issued under the provisions of this Act and provided for hereby; and it shall be unlawful for any person, firm, or corporation to engage in or work at the business of installing plumbing and doing plumbing work except as specifically herein provided unless such installation of plumbing or plumbing work be under the supervision and control of a plumber licensed under this Act.

An offense under this Act is a Class C misdemeanor or as defined by the Texas Penal Code.¹

[See Compact Edition, Volume 5 for text of 15
to 17]

[Amended by Acts 1975, 64th Leg., p. 1914, ch. 617, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1083, ch. 397, §§ 1, 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1836, ch. 735, § 2.029, eff. Aug. 29, 1977.]

¹ See Penal Code, § 12.23.

Section 3 of Acts 1977, 65th Leg., p. 1084, ch. 397, provided:

"The Director of Health Resources or his designee shall certify persons as being qualified for the installation, exchange, servicing, and repair of residential water treatment facilities as defined by Subsection (g), Section 2, The Plumbing License Law of 1947, as amended (Article 6243-101, Vernon's Texas Civil Statutes). The director or his designee shall set standards of qualifications to insure the public health and to protect the public from unqualified persons engaging in activities relating to water treatment. Nothing in this section shall be construed to require that persons licensed pursuant to The Plumbing License Law of 1947, as amended (Article 6243-101, Vernon's Texas Civil Statutes), are subject to certification under this section."

TITLE 110A

PUBLIC OFFICES, OFFICERS AND EMPLOYEES

Article

- 6252-8b. Lump Sum Payment for Accrued Vacation Time to Separated State Employee.
- 6252-11b. Notices and Information of Certain State Job Opportunities.
- 6252-11c. Use of Private Consultants by State Agencies.
- 6252-13a. Administrative Procedure and Texas Register Act.
- 6252-13b. Administrative Code Act.
- 6252-18a. Interpreters for Deaf Persons in Proceedings Before Political Subdivisions.
- 6252-19b. Liability of Political Subdivision for Certain Acts or Omissions of Officers and Employees.
- 6252-20a. Repealed.
- 6252-20b. Hazardous Duty Pay for Certain Commissioned Law Enforcement Personnel.
- 6252-26. Payment by State of Actual Damages Adjudged in Actions Against Certain State Employees; Defense by Attorney General.
- 6252-26a. Medical Malpractice Coverage for University of Texas and Texas A&M University Systems.

Art. 6252-3b. Deferred Compensation Plans for Public Employees; Funding

Contracts Between Political Subdivisions and Public Employees; Insurance, Annuity, Mutual Fund, or other Investment Contracts

Sec. 1. The state or any county, city, town, or other political subdivision may, by contract, agree with any employee to defer, in whole or in part, any portion of that employee's compensation and may subsequently, with the consent of the employee, contract for, purchase, or otherwise procure a life insurance, annuity, mutual fund, or other investment contract for the purpose of funding a deferred compensation program for the employee, from any life underwriter duly licensed by this state who represents an insurance company licensed to contract business in this state, any state or national bank domiciled in this state whose deposits are insured by the Federal Deposit Insurance Corporation, any savings and loan association doing business in this state whose accounts are insured by the Federal Savings and Loan Insurance Corporation, or any credit union doing business in this state whose accounts are insured by the National Credit Union Administration or the Texas Share Guaranty Credit Union. The amounts which participating employees agree to defer are the only funds a seller of investment products may receive under this program.

[See Compact Edition, Volume 5 for text of 2 to 4]

Premium Payments

Sec. 5. Notwithstanding any other provision of law to the contrary, the state comptroller or the

appropriate officer of the county, city, town, or other political subdivision designated to administer the deferred compensation program is hereby authorized to make payment of premiums for the purchase of life insurance or annuity contracts or payment for the purchase of mutual fund or other investment contracts under the deferred compensation program. Such payment shall not be construed to be a prohibited use of the general assets of the state, county, city, town, or other political subdivision.

[See Compact Edition, Volume 5 for text of 6]

Limit on Financial Liability of Political Subdivision

Sec. 7. The financial liability of the state, county, city, town, or other political subdivision under a deferred compensation program shall be limited in each instance to the value at the time of disbursement to the employee of the particular life insurance, annuity, mutual fund, or other investment contract purchased for the purpose of funding a deferred compensation program for any employee.

[See Compact Edition, Volume 5 for text of 8]

[Amended by Acts 1977, 65th Leg., p. 1961, ch. 781, § 1, eff. May 13, 1977; Acts 1979, 66th Leg., p. 1543, ch. 665, § 1, eff. Aug. 27, 1979.]

Section 2 of the 1977 amendatory act provided for an effective date of September 1, 1977.

Art. 6252-4a. Military Service Employees; Restoration to Employment

Restoration to Employment Upon Discharge

Sec. 1. Any employee of the State of Texas or any political subdivision, state institution, county or municipality thereof, other than a temporary employee, an elected official, or one serving under an appointment which requires confirmation by the Senate, who leaves his position for the purpose of entering the Armed Forces of the United States, or enters State service as a member of the Texas National Guard or Texas State Guard or as a member of any of the reserve components of the Armed Forces of the United States shall, if discharged, separated or released from such active military service under honorable conditions within five years from the date of enlistment or call to active service, be restored to employment in the same department, office, commission or board of the State of Texas or any political subdivision, state institution, county or

municipality thereof, to the same position held at the time of induction, enlistment or order to active Federal or State military duty or service, or to a position of like seniority, status, and pay if still physically and mentally qualified to perform the duties of such position.

[See Compact Edition, Volume 5 for text of 2 to 6]

[Amended by Acts 1977, 65th Leg., p. 1444, ch. 588, § 1, eff. Aug. 29, 1977.]

Art. 6252-5a. Investment of Funds by Agencies and Boards

[See Compact Edition, Volume 5 for text of 1]

Sec. 2. When the securities mentioned specifically above or when such securities as are eligible under other laws or constitutional provisions are purchased from or through a member in good standing of the National Association of Securities Dealers, or from or through a national or state bank, the comptroller of public accounts and the state treasurer, or any disbursing officer of an agency authorized to invest its funds directly are authorized to pay for them upon receipt of an invoice from the seller of the securities showing that the securities have been purchased by the board or agency and that the amount to be paid therefor is just, due, and unpaid. Actual delivery of the securities to the state treasurer or to a bank or to an agency directly investing its funds as hereinafter permitted may be thereafter accomplished in accordance with normal and recognized practices within the securities and banking industries, including the book entry procedure of the Federal Reserve Bank.

Sec. 3. Any securities so purchased, at the direction of the state treasurer, or by an agency directly investing its funds, may be deposited with a bank or federal reserve bank or branch thereof designated by the state treasurer within or without the State of Texas, in trust, and such deposits shall be evidenced by trust receipts of the banks in which the securities are thus deposited.

[Amended by Acts 1979, 66th Leg., p. 310, ch. 143, §§ 1, 2, eff. Sept. 1, 1979.]

Arts. 6252-6, 6252-6a. Repealed by Acts 1979, 66th Leg., p. 1960, ch. 773, § 99.05, eff. Sept. 1, 1979

Prior to repeal, art. 6252-6 was amended by Acts 1977, 65th Leg., p. 1885, ch. 751, § 1. See, now, art. 601b, §§ 8.01 to 8.08 and 8.10.
 Prior to repeal, art. 6252-6a was amended by Acts 1977, 65th Leg., p. 1889, ch. 751, § 2. See, now, art. 601b, § 8.09.

Art. 6252-6b. Texas Surplus Property Agency

[See Compact Edition, Volume 5 for text of 1]

Application of Sunset Act

Sec. 1a. The Texas Surplus Property Agency is subject to the Texas Sunset Act¹; and unless contin-

ued in existence as provided by that Act the agency is abolished, and this Act expires effective September 1, 1987.

¹ Article 5429k.

[See Compact Edition, Volume 5 for text of 2 to 5]

[Amended by Acts 1977, 65th Leg., p. 1852, ch. 735, § 2.145, eff. Aug. 29, 1977.]

Art. 6252-8b. Lump Sum Payment for Accrued Vacation Time to Separated State Employee

A state employee who resigns, is dismissed, or separated from state employment shall be entitled to be paid in a lump sum for all vacation time duly accrued at the time of separation from state employment; provided the employee has had continuous employment with the state for six months.

[Acts 1975, 64th Leg., p. 766, ch. 298, § 1, eff. May 27, 1975.]

Art. 6252-9b. Standards of Conduct of State Officers and Employees

[See Compact Edition, Volume 5 for text of 1]

Definitions

Sec. 2. In this Act:

[See Compact Edition, Volume 5 for text of 2(1) to (4)]

(5)(A) "Appointed officer of a major state agency" means any of the following:

(i) a member of the Public Utility Commission of Texas;

(ii) a member of the Texas Industrial Commission;

(iii) a member of the Texas Aeronautics Commission;

(iv) a member of the Texas Air Control Board;

(v) a member of the Texas Alcoholic Beverage Commission;

(vi) a member of the Finance Commission of Texas;

(vii) a member of the State Building Commission;

(viii) a member of the State Board of Control;

(ix) a member of the Texas Board of Corrections;

(x) a member of the Board of Trustees of the Employees Retirement System of Texas;

(xi) a member of the State Highway Commission;

(xii) a member of the Industrial Accident Board;

(xiii) a member of the State Board of Insurance;

(xiv) a member of the Board of Pardons and Paroles;

(xv) a member of the Parks and Wildlife Commission;

(xvi) a member of the Public Safety Commission;

(xvii) the Secretary of State;

(xviii) a member of the State Securities Board;

(xix) a member of the Texas Vending Commission;

(xx) a member of the Texas Water Development Board;

(xxi) a member of the Texas Water Quality Board;

(xxii) a member of the Texas Water Rights Commission;

(xxiii) a member of the Coordinating Board, Texas College and University System;

(xxiv) a member of the Texas Employment Commission;

(xxv) a member of the State Banking Board;

(xxvi) a member of the board of trustees of the Teachers Retirement System of Texas;

(xxvii) a member of the Credit Union Commission; or

(xxviii) a member of the School Land Board.

[See Compact Edition, Volume 5 for text of 2(5)(B) to (14)]

Financial Statement to be Filed

Sec. 3.

[See Compact Edition, Volume 5 for text of 3(a) to (c)]

(d) Within 30 days after the first Monday in February, every person who is a candidate for an office as an elected officer shall file the financial statement. The secretary of state shall grant an extension for good cause shown of not more than 15 days, provided a request for the extension is received prior to the filing deadline for the financial statement. When the deadline under which a candidate files falls after the first Monday in February, such candidate shall file the statement within 30 days after that deadline, except that when the deadline falls within 35 days of the election in which the candidate is running, the candidate shall file the statement by the fifth day before that election. A person who is a candidate in a special election for an office as an elected officer shall file the financial statement five days prior to the special election. No extensions shall be granted to candidates filing in a primary or general election under a deadline which falls after the first Monday in February or to candidates involved in a special election.

[See Compact Edition, Volume 3 for text of 3(e) to 8]

Public Access to Statements

Sec. 9. (a) Financial statements and affidavits filed under this Act are public records. The secretary of state shall maintain the statements and affidavits in separate alphabetical files and in a manner that is accessible to the public during regular office hours. Each time a person, other than the secretary of state or an employee of the office of the secretary of state who is acting on official business, requests to see a file, the secretary of state shall place in the file a statement of the person's name, address, whom the person represents, and the date of the request. The secretary of state shall retain that statement in the file for two years after the date of the request.

[See Compact Edition, Volume 5 for text of 9(b) to 15]

[Amended by Acts 1975, 64th Leg., p. 2351, ch. 721, § 86, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1006, ch. 372, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1064, ch. 494, § 1, eff. Aug. 27, 1979.]

Art. 6252-9c. Registration and Reporting Requirements of Persons Engaged in Activities Designed to Influence Legislation

[See Compact Edition, Volume 4 for text of 1]

Definitions

Sec. 2. As used in this Act:

(1) "Person" means an individual, corporation, association, firm, partnership, committee, club, or other organization, or a group of persons who are voluntarily acting in concert.

(2) "Legislation" means a bill, resolution, amendment, nomination, or other matter pending in either house of the legislature; any other matter which is or may be the subject of action by either house, or any committee thereof, including the introduction, consideration, passage, defeat, approval, or veto of the matter; or any matter pending in or which may be the subject of action by a constitutional convention.

(3) "Legislative branch" means a member, member-elect, candidate for, or officer of the legislature or a legislative committee, or an employee of the legislature.

(4) "Executive branch" means an officer, officer-elect, candidate for, or employee of any state agency, department, or office in the executive branch of government.

(5) "Communicates directly with," "communicated directly with," "communicating directly with," "directly communicating with," and "direct

communication" mean contact in person or by telephone, telegraph, or letter.

(6) "Compensation" means money, service, facility, or thing of value or financial benefit which is received or to be received in return for or in connection with services rendered or to be rendered.

(7) "Expenditure" means a payment, distribution, loan, advance, reimbursement, deposit, or gift of money or any thing of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure.

(8) "Secretary" means the Secretary of State of the State of Texas.

(9) "Registrant" means a person required by Section 3 of this Act to register.

Persons Required to Register

Sec. 3. The following persons must register with the secretary as provided in Section 5 of this Act:

(a) a person who makes a total expenditure in excess of \$200 in a calendar quarter, not including his own travel, food, or lodging expenses, or his own membership dues, for communicating directly with one or more members of the legislative or executive branch to influence legislation; and

(b) A person who receives compensation or reimbursement from another to communicate directly with a member of the legislative or executive branch to influence legislation. This subsection requires the registration of a person, other than a member of the judicial, legislative, or executive branch, who, as a part of his regular employment, has communicated directly with a member of the legislative or executive branch to influence legislation on behalf of the person by whom he is compensated or reimbursed, whether or not any compensation in addition to the salary for that regular employment is received for the communication.

Exceptions

Sec. 4. The following persons are not required to register under the provisions of this Act:

(1) persons who own, publish, or are employed by a newspaper or other regularly published periodical, or a radio station, television station, wire service, or other bona fide news medium which in the ordinary course of business disseminates news, letters to the editors, editorial or other comment, or paid advertisements which directly or indirectly oppose or promote legislation, if such persons engage in no further or other activities and represent no other persons in connection with influencing legislation;

(2) persons whose only direct communication with a member of the legislative or executive branch to influence legislation is an appearance

before or testimony to one or more members of the legislative or executive branch in a hearing conducted by or on behalf of either the legislative or executive branch if such persons receive no special or extra compensation for their appearance other than actual expenses in attending the hearing;

(3) persons who encourage or solicit others to communicate directly with members of the legislative or executive branch to influence legislation; and

(4) persons whose only activity to influence legislation is compensating or reimbursing an individual registrant to act in their behalf to communicate directly with a member of the legislative or executive branch to influence legislation.

Registration

Sec. 5. (a) Every person required to register under this Act shall file a registration form with the secretary within five days after the first direct communication with a member of the legislative or executive branch requiring such person's registration.

(b) The registration shall be written, verified, and shall contain the following information:

(1) the registrant's full name and address;

(2) the registrant's normal business and business address;

(3) the full name and address of each person who paid a membership fee, dues or other assessment in excess of \$500 during the preceding calendar or fiscal year to the registrant or to the person by whom the registrant is reimbursed, retained, or employed regardless of whether it was paid solely to influence legislation;

(4) the full name and address of each person:

(A) by whom the registrant is reimbursed, retained, or employed to communicate directly with a member of the legislative or executive branch to influence legislation; and

(B) on whose behalf the registrant has communicated directly with a member of the legislative or executive branch to influence legislation; and

(5) a specific description of, or, if pending, the number assigned to the legislation about which the registrant has communicated directly with a member of the legislative or executive branch to influence legislation, including, if known, the bill numbers and, if known, whether the registrant supports or opposes each bill listed.

(c) If a registrant's activities are done on behalf of the members of a group other than a corporation, the registration form shall include a statement of the number of members of the group and a full

description of the methods by which the registrant develops and makes decisions about positions on policy.

Supplemental Registration and Activities Report

Sec. 6. (a) Every person registered under Section 5 of this Act shall file with the secretary a report concerning the activities set out in Subsection (b) of this section. The report must be filed:

(1) between the 1st and 10th day of each month subsequent to a month in which the legislature is in session covering the activities during the previous month; and

(2) between the 1st and 10th day of each month immediately subsequent to the last month in a calendar quarter when the legislature is not in session covering the activities during the previous quarter.

(b) The report shall be written, verified, and contain the following information:

(1) the total expenditures made by the registrant for directly communicating with a member of the legislative or executive branch to influence legislation, including expenditures made by others on behalf of the registrant for those direct communications if the expenditures were made with his express or implied consent or were ratified by him. The expenditures for directly communicating with a member of the legislative or executive branch to influence legislation shall be stated in the following categories:

(A) postage;

(B) telegraph;

(C) publication, printing, and reproduction;

(D) entertainment, including any transportation, dining, lodging, or admission expenses incurred in connection with such entertainment; and

(E) gifts or loans, other than contributions as defined by Article 14.01 of the Texas Election Code;

(2) a list of legislation, including, if pending, the number assigned to the legislation, about which the registrant, any person retained or employed by the registrant to appear on his behalf, or any other person appearing on his behalf, communicated directly with a member of the legislative or executive branch, including, if known, a statement of the registrant's position on such legislation.

(c) Each person who made expenditures on behalf of a registrant that are required to be reported by Subsection (b) of this section or who has other information required to be reported by the registrant under this Act shall provide a full, verified account of his expenditures to the registrant at least seven days before the registrant's report is due to be filed.

Termination Notice

Sec. 7. (a) A person who ceases to engage in activities requiring him to register under this Act shall file a written, verified statement with the secretary acknowledging the termination of activities. The notice is effective immediately.

(b) A person who files a notice of termination under this section must file the reports required under Section 6 of this Act for any reporting period during which he was registered under this Act.

[See Compact Edition, Volume 4 for text of 8]

Penalty

Sec. 9. (a) A person, as defined in this Act, who violates any provision of this Act other than Section 11 commits a Class A misdemeanor. A person, as defined in this Act, who violates Section 11 of this Act commits a felony of the third degree. Nothing in this Act relieves a person of criminal responsibility under the laws of this state relating to perjury.

(b) A person who receives compensation or reimbursement or makes an expenditure for engaging in direct communication to influence legislation and who fails to file any registration form or activities report which such person is required to file by this Act, in addition, shall pay to the state an amount equal to three times the compensation, reimbursement, or expenditure.

[See Compact Edition, Volume 4 for text of 10 to 17]

[Amended by Acts 1975, 64th Leg., p. 1811, ch. 550, §§ 1, 2, eff. Sept. 1, 1975.]

Art. 6252-11b. Notices and Information of Certain State Job Opportunities

Definitions

Sec. 1. In this Act:

(1) "State agency" means:

(A) any department, commission, board, office, or other agency that:

(i) is in the executive branch of state government;

(ii) has authority that is not limited to a geographical portion of the state; and

(iii) was created by the constitution or a statute of this state; or

(B) a university system or an institution of higher education as defined in Section 61.003, Texas Education Code, as amended, other than a public junior college.

(2) "Commission" means the Texas Employment Commission.

(3) "Equal employment office" means the Equal Employment Opportunity Office within the governor's office.

Submission of Job Information

Sec. 2. (a) When a job vacancy occurs or is filled in Travis County within a state agency, the agency shall complete and submit to the commission and to the equal employment office as soon as possible the appropriate information form prescribed by the commission regarding the job vacancy or placement.

(b) As soon as possible at the beginning of each month, a state agency which requires a person to comply with the Merit System Council's employment procedures before employing the person shall complete and submit to the commission and to the equal employment office the appropriate information form prescribed by the commission regarding the job vacancies in Travis County subject to the Merit System Council's employment procedures which were filled by the agency during the previous month.

Job Information Forms

Sec. 3. The commission shall prescribe forms for information from state agencies necessary for the commission to serve as a central processing agency for state agency job opportunities in Travis County in accordance with this Act.

Use of Job Information

Sec. 4. (a) The commission shall publicly list, in accordance with its procedures, for at least 10 working days, notices of job vacancies submitted to the commission by a state agency under Section 2(a) of this Act unless notified by the agency that the vacancy has been filled.

(b) The commission shall publicly post, in accordance with its procedures, for a month, the information submitted to the commission by a state agency under Section 2(b) of this Act. When a person expresses to the commission an interest in a job vacancy posted in accordance with this subsection for which the commission considers him qualified, the commission shall inform the person of appropriate Merit System Council employment procedures.

(c) When a person expresses to the commission an interest in a job vacancy listed in accordance with Subsection (a) of this section for which the commission considers him qualified and which may be filled only after the person has complied with the Merit System Council's employment procedures, the commission shall inform the person of those procedures.

Other Informational Efforts

Sec. 5. State agencies are encouraged to continue other current efforts to inform various outside applicant recruitment sources of job vacancies.

[Acts 1977, 65th Leg., p. 159, ch. 80, §§ 1 to 5, eff. April 25, 1977.]

Art. 6252-11c. Use of Private Consultants by State Agencies

Definitions

Sec. 1. In this Act:

(1) "Consulting service" means the human service of studying or advising an agency under an independent contract. The term includes routine work provided to an agency under an independent contract that is necessary to the functioning of the agency's programs. The term includes only services for which payment is made from funds:

(A) that are appropriated by the legislature;

(B) that are generated by statutory functions of the agency; or

(C) that are received by the state from the federal government and that are awarded to the state without requiring the state to request the funds through a grant program.

(2) "Private consultant" means an entity that performs consulting services.

(3) "State agency" means any state department, commission, board, office, institution, facility, or other agency, including a university system or an institution of higher education as defined in Section 61.003, Texas Education Code, as amended, other than a public junior college.

Exemption

Sec. 2. This Act does not apply to employment of registered professional engineers or registered architects for architectural or engineering studies or for the design or construction of state facilities, private legal counsel, investment counselors, actuaries, or physicians, dentists, or other medical or dental services providers, and it is not intended to discourage their use.

Use and Selection of Private Consultant

Sec. 3. (a) A state agency may use a private consultant only if:

(1) there is a substantial need for the consulting services; and

(2) the state agency cannot adequately perform the consulting services with its own personnel or through contract with another state agency.

(b) In selecting a private consultant, a state agency shall:

(1) base its choice on demonstrated competence, knowledge, and qualifications, and on the reasonableness of the proposed fee for the services; and

(2) when other considerations are equal, give a preference to a private consultant whose principal place of business is within the state or who will manage the consulting engagement wholly from one of its offices within the state.

Notice of Intent to Employ Consultant

Sec. 4. At least 30 days before contracting to use a private consultant whose total anticipated fee exceeds \$10,000, a state agency shall notify the Legislative Budget Board and the Governor's Budget and Planning Office of the agency's intent to use a private consultant and shall supply the Legislative Budget Board and the Governor's Budget and Planning Office with information demonstrating that the agency has complied with the policies of Section 3 of this Act.

Information Relating to Consultant Studies

Sec. 5. (a) After a state agency contracts to use a private consultant, the state agency shall, upon request, supply the Legislative Budget Board and the Governor's Budget and Planning Office with copies of all documents, films, recordings, or reports of intangible results of the consultant service that are developed by the private consultant.

(b) Copies of all documents, films, recordings, or reports of intangible results shall be filed with the Texas State Library and shall be retained by the library at least five years after receipt.

(c) As part of the biennial budgetary hearing process conducted by the Legislative Budget Board and the Governor's Budget and Planning Office, a state agency shall supply the Legislative Budget Board and the Governor's Budget and Planning Office with reports on what action was taken in response to the recommendations of any private consultant employed by the state agency.

Publication in Texas Register

Sec. 6. (a) If it is reasonably foreseeable that a proposed use of a private consultant may involve a contract with a value in excess of \$10,000, a state agency or a regional council of government created under Chapter 570, Acts of the 59th Legislature, Regular Session, 1965, as amended (Article 1011m, Vernon's Texas Civil Statutes), that proposes the use of a private consultant shall file, at least 40 days before contracting with a private consultant, the following information with the Secretary of State for publication in the Texas Register:

- (1) a notice of invitation for offers of consulting services;
- (2) the person who should be contacted by a private consultant who wants to make an offer;
- (3) the closing date for receipt of offers of consulting services; and
- (4) the procedure by which the agency or council of government will award the contract for consulting services.

(b) A state agency or regional council of government that complies with Subsection (a) of this section shall file within 10 days after contracting with

the private consultant the following information with the Secretary of State for publication in the Texas Register:

- (1) a description of the study that the private consultant is to conduct;
- (2) the name and business address of the private consultant;
- (3) the total value and the beginning and ending dates of the contract; and
- (4) the due dates of documents, films, recordings, or reports of intangible results that the private consultant is to present to the agency or council of government.

(c) The Texas State Library shall compile a list of documents, films, recordings, and reports of intangible results submitted to it under Section 5(b) of this Act and shall file the list in each quarter of the calendar year with the Secretary of State for publication in the Texas Register.

(d) If the consulting service desired by a state agency is a continuation of a service previously performed by a private consultant, the agency shall state this in the invitation for offers filed with the Secretary of State under Subsection (a) of this section. If the state agency intends to award the contract for the consulting services to the private consultant that previously performed the services unless a better offer is submitted, it shall state this in the invitation for offers.

Conflicts of Interest

Sec. 6A. An officer or employee of a state agency who has a financial interest in a firm or corporation that is a private consultant and that submits an offer to provide consulting services to the agency or who is related within the second degree by consanguinity or affinity to a person having the financial interest shall report the financial interest to the executive head of the state agency not later than the 10th day after the day on which the private consultant submits the consulting services offer.

Restriction on Former Employees of a State Agency

Sec. 6B. A person who offers to perform a consulting service for a state agency and who has been employed by the agency or by another state agency at any time during the two years preceding the making of the offer shall disclose in the offer the nature of the previous employment with the agency or the other state agency, the date of termination of the employment, and the annual rate of compensation for the employment at the time of its termination. A state agency that accepts the offer shall include in the information filed under Subsection (b) of Section 6 of this Act a statement about the previous employment and the nature of the employment.

Contract Void

Sec. 6C. (a) If a state agency contracts to use a private consultant without complying with the requirements of Section 6 of this Act or if a person contracts to perform a consulting service for a state agency without complying with the requirements of Section 6B of this Act, the contract is void.

(b) If a contract is void under this section, the comptroller or a state agency may not make any payments under the contract from any state or federal funds held in or outside the State Treasury.

Legislative Intent

Sec. 6D. (a) It is the intent of the legislature that this Act be interpreted in a manner that assures the greatest fair competition in the selection by state agencies and regional councils of government of private consultants under contracts covered by this Act and that assures that all potential providers of consulting services are afforded notice of the need for and opportunity to provide the services.

(b) This Act is not intended to discourage the use by state agencies or regional councils of government of private consultants if their use may reasonably be expected to result in a more efficient and less costly operation or project. This Act is not intended to prohibit the letting of a sole-source contract for consulting services if no proposal is received from a competent, knowledgeable, and qualified private consultant at a reasonable fee, after the procedures set forth in this Act have been followed.

[Acts 1977, 65th Leg., p. 1185, ch. 454, §§ 1 to 6, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 1957, ch. 773, §§ 98.01 to 98.04, eff. Sept. 1, 1979.]

Art. 6252-12a. Automatic Data Processing Systems

[See Compact Edition, Volume 5 for text of 1 to 5]

Central Clearinghouse for Computer Software

Sec. 5A. (a) The Systems Division shall maintain a central clearinghouse for software developed or acquired by state agencies.

(b) Each state agency shall file an inventory record with the Systems Division of the software developed or acquired by the agency. The Systems Division shall distribute to other state agencies information about the software covered by the inventory record.

[See Compact Edition, Volume 5 for text of 6 and 7]

[Amended by Acts 1977, 65th Leg., p. 951, ch. 359, § 1, eff. June 10, 1977.]

Art. 6252-13. Repealed by Acts 1975, 64th Leg., p. 136, ch. 61, § 22, eff. Jan. 1, 1976

See, now, art. 6252-13a.

Art. 6252-13a. Administrative Procedure and Texas Register Act

Purpose

Sec. 1. It is declared the public policy of this state to afford minimum standards of uniform practice and procedure for state agencies, to provide for public participation in the rulemaking process, to provide adequate and proper public notice of proposed agency rules and agency actions through publication of a state register, and to restate the law of judicial review of agency action.

Short Title

Sec. 2. This Act shall be known and may be cited as the Administrative Procedure and Texas Register Act.

Definitions

Sec. 3. As used in this Act:

(1) "Agency" means any state board, commission, department, or officer having statewide jurisdiction, other than an agency wholly financed by federal funds, the legislature, the courts, the Industrial Accident Board, and institutions of higher education, that makes rules or determines contested cases.

(2) "Contested case" means a proceeding, including but not restricted to ratemaking and licensing, in which the legal rights, duties, or privileges of a party are to be determined by an agency after an opportunity for adjudicative hearing.

(3) "License" includes the whole or part of any agency permit, certificate, approval, registration, or similar form of permission required by law.

(4) "Licensing" includes the agency process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

(5) "Party" means each person or agency named or admitted as a party.

(6) "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

(7) "Rule" means any agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of an agency. The term includes the amendment or repeal of a prior rule but does not include statements concerning only the internal management or organization of any agency and not affecting private rights or procedures.

(8) "Register" means the Texas Register established by this Act.

Public Information; Adoption of Rules; Availability of Rules
and Orders

Sec. 4. (a) In addition to other rulemaking requirements imposed by law, each agency shall:

(1) adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available;

(2) index and make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted, or used by the agency in the discharge of its functions; and

(3) index and make available for public inspection all final orders, decisions, and opinions.

(b) No agency rule, order, or decision made or issued on or after the effective date of this Act is valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been indexed and made available for public inspection as required by this Act. This provision is not applicable in favor of any person or party who has actual knowledge of the rule, order, or decision.

Procedure for Adoption of Rules

Sec. 5. (a) Prior to the adoption of any rule, an agency shall give at least 30 days' notice of its intended action. Notice of the proposed rule shall be filed with the secretary of state and published by the secretary of state in the Texas Register. The notice must include:

(1) a brief explanation of the proposed rule;

(2) the text of the proposed rule, except any portion omitted as provided in Section 6(c) of this Act, prepared in a manner to indicate the words to be added or deleted from the current text, if any;

(3) a statement of the statutory or other authority under which the rule is proposed to be promulgated;

(4) a fiscal note stating the fiscal implications of the proposed rule to the state and to the units of local government of the state, including the total probable cost of enforcing or administering the rule and the amount of revenue that will need to be raised, or will be lost or spent, as a consequence of the rule, each year for the first five years; or stating that the proposed rule has no fiscal implications for the state or for units of local government;

(5) a request for comments on the proposed rule from any interested person; and

(6) any other statement required by law.

(b) Each notice of a proposed rule becomes effective as notice when published in the register. The notice shall be mailed to all persons who have made timely written requests of the agency for advance notice of its rulemaking proceedings. However, fail-

ure to mail the notice does not invalidate any actions taken or rules adopted.

(c) Prior to the adoption of any rule, an agency shall afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. In the case of substantive rules, opportunity for public hearing must be granted if requested by at least 25 persons, by a governmental subdivision or agency, or by an association having at least 25 members. The agency shall consider fully all written and oral submissions concerning the proposed rule. On adoption of a rule, the agency, if requested to do so by an interested person either prior to adoption or within 30 days after adoption, shall issue a concise statement of the principal reasons for and against its adoption, incorporating in the statement its reasons for overruling the considerations urged against its adoption.

(d) If an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice and states in writing its reasons for that finding, it may proceed without prior notice or hearing or on any abbreviated notice and hearing that it finds practicable to adopt an emergency rule. The rule may be effective for a period of not longer than 120 days renewable once for a period not exceeding 60 days, but the adoption of an identical rule under Subsections (a) and (c) of this section is not precluded. An emergency rule adopted under the provisions of this subsection, and the agency's written reasons for the adoption, shall be filed in the office of the secretary of state for publication in the Texas Register.

(e) No rule hereafter adopted is valid unless adopted in substantial compliance with this section. A proceeding to contest any rule on the ground of noncompliance with the procedural requirements of this section must be commenced within two years after the effective date of the rule.

(f) An agency may use informal conferences and consultations as means of obtaining the viewpoints and advice of interested persons concerning contemplated rulemaking. Each agency also is authorized to appoint committees of experts or interested persons or representatives of the general public to advise it with respect to any contemplated rulemaking. The powers of these committees are advisory only.

(g) Each house of the legislature shall adopt rules establishing a process under which the presiding officer of each house shall refer each proposed agency rule to the appropriate standing committee for review prior to adoption of the rule. When an agency files notice of a proposed rule with the secretary of state pursuant to Subsection (a) of this section, it shall also deliver a copy of the notice to the lieutenant governor and the speaker. On the vote of a majority of its members, a standing committee may transmit to the agency a statement supporting or opposing adoption of a proposed rule.

Creation of Texas Register

Sec. 6. (a) The secretary of state shall compile, index, and publish a publication to be known as the Texas Register, which shall contain:

(1) notices of proposed rules issued after the effective date of this Act and filed in the office of the secretary of state as provided in Section 5 of this Act;

(2) the text of rules adopted after the effective date of this Act and filed in the office of the secretary of state;

(3) notices of open meetings issued after the effective date of this Act and filed in the office of the secretary of state as provided by law;

(4) executive orders issued by the governor after the effective date of this Act;

(5) summaries of requests made after the effective date of this Act for opinions of the attorney general, which shall be prepared by the attorney general and forwarded to the secretary of state;

(6) summaries of opinions of the attorney general issued after the effective date of this Act, which shall be prepared by the attorney general and forwarded to the secretary of state; and

(7) other information of general interest to the public of Texas, which may include, but is not limited to, federal legislation or regulations affecting the state or state agencies and state agency organizational and personnel changes.

(b) The secretary of state shall publish the register at regular intervals, but not less than 100 times each calendar year.

(c) The secretary of state may omit from the register any information the publication of which he deems cumbersome, expensive, or otherwise inexpedient, if the information is made available in printed or processed form by the adopting agency on application for it, and if the register contains a notice stating the general subject matter of the information and the manner in which a copy of it may be obtained.

(d) One copy of each issue of the register shall be made available free on request to each board, commission, and department having statewide jurisdiction, to the governor, to the lieutenant governor, to the attorney general, to each member of the legislature, to each county clerk in the state, and to the supreme court, court of criminal appeals, and each court of civil appeals.

(e) The secretary of state shall make copies of the register available to other persons on payment of reasonable fees to be fixed by the secretary of state.

Filing of Existing Documents

Sec. 7. Before March 1, 1976, each agency shall file in the office of the secretary of state two certified copies of each rule existing on the effective

date of this Act. Existing rules become effective immediately on filing with the secretary of state.

Filing Procedures

Sec. 8. (a) Each agency shall file a document for publication in the Texas Register by delivering to the office of the secretary of state during normal working hours two certified copies of the document to be filed. On receipt of a document required by this Act to be filed in the office of the secretary of state and published in the register, the secretary of state shall note the day and hour of filing on the certified copies. One certified copy of each filed document must be maintained in original form or on microfilm in a permanent register in the office of the secretary of state and, on filing, shall be made available immediately for public inspection during regular business hours.

(b) If there is a conflict, the official text of a rule is the text on file with the secretary of state, and not the text published in the register or on file with the issuing agency.

(c) The secretary of state may promulgate rules to insure the effective administration of this Act. The rules may include, but are not limited to, rules prescribing paper size and the format of documents required to be filed by this Act. The secretary of state may refuse to accept for filing and publication any document that does not substantially conform to the promulgated rules.

(d) The secretary of state may maintain on microfilm the files of agency rules and any other information required by this Act to be published in the register and, after microfilming, destroy the original copies of all information submitted for publication.

Tables of Contents; Certification; Liaison

Sec. 9. (a) Each issue of the register must contain a table of contents.

(b) A cumulative index to all information required by this Act to be published during the previous year shall be published at least once each year.

(c) Each document submitted to the secretary of state for filing or publication as provided in this Act must be certified by an official of the submitting agency authorized to certify documents of that agency.

(d) Each agency shall designate at least one individual to act as a liaison through whom all required documents may be submitted to the secretary of state for filing and publication.

Effect of Filing

Sec. 10. (a) Each rule hereafter adopted becomes effective 20 days after the filing of two certified copies in the office of the secretary of state, except that:

(1) if a later date is required by statute or specified in the rule, the later date is the effective date; and

(2) subject to applicable constitutional or statutory provisions, an emergency rule becomes effective immediately on filing with the secretary of state, or on a stated date less than 20 days thereafter, if the agency finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare; and

(3) if a federal statute or regulation requires that an agency implement a rule by a certain date, the rule is effective on the prescribed date.

(b) An agency finding, as described in Subsection (a)(2) of this section, and a brief statement of the reasons for it, shall be filed with the rule. The agency shall take appropriate measures to make emergency rules known to persons who may be affected by them.

(c) A rule adopted as provided in Subsection (a)(3) of this section shall be filed in the office of the secretary of state and published in the register.

Petition for Adoption of Rules

Sec. 11. Any interested person may petition an agency requesting the adoption of a rule. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition. Within 60 days after submission of a petition, the agency either shall deny the petition in writing, stating its reasons for the denial, or shall initiate rulemaking proceedings in accordance with Section 5 of this Act.

Declaratory Judgment on Validity or Applicability of Rules

Sec. 12. The validity or applicability of any rule, including an emergency rule adopted under Section 5(d) of this Act, may be determined in an action for declaratory judgment in a district court of Travis County, and not elsewhere, if it is alleged that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff. The agency must be made a party to the action. A declaratory judgment may be rendered whether the plaintiff has requested the agency to pass on the validity or applicability of the rule in question. However, no proceeding brought under this section may be used to delay or stay a hearing after notice of hearing has been given if a suspension, revocation, or cancellation of a license by an agency is at issue before the agency.

Contested Cases; Notice; Hearings; Records

Sec. 13. (a) In a contested case, all parties must be afforded an opportunity for hearing after reasonable notice of not less than 10 days.

(b) The notice must include:

(1) a statement of time, place, and nature of the hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) a reference to the particular sections of the statutes and rules involved; and

(4) a short and plain statement of the matters asserted.

(c) If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, on timely written application, a more definite and detailed statement must be furnished not less than three days prior to the date set for the hearing.

(d) Opportunity must be afforded all parties to respond and present evidence and argument on all issues involved.

(e) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

(f) The record in a contested case includes:

(1) all pleadings, motions, and intermediate rulings;

(2) evidence received or considered;

(3) a statement of matters officially noticed;

(4) questions and offers of proof, objections, and rulings of them;

(5) proposed findings and exceptions;

(6) any decision, opinion, or report by the officer presiding at the hearing; and

(7) all staff memoranda or data submitted to or considered by the hearing officer or members of the agency who are involved in making the decision.

(g) Proceedings, or any part of them, must be transcribed on written request of any party. The agency may pay the cost of the transcript or assess the cost to one or more parties. This Act does not limit an agency to a stenographic record of proceedings.

(h) Findings of fact must be based exclusively on the evidence and on matters officially noticed.

Interpreters for Deaf Parties and Witnesses

Sec. 13A. (a) If a party or subpoenaed witness in a contested case is deaf, the agency shall provide an interpreter whose qualifications are approved by the State Commission for the Deaf to interpret the proceedings for that person.

(b) In this section, "deaf person" means a person who has a hearing impairment, whether or not the person also has a speech impairment, that inhibits the person's comprehension of the proceedings or communication with others.

Rules of Evidence, Official Notice

Sec. 14. (a) In contested cases, irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in nonjury civil cases in the district courts of this state shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Agencies shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, if a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

(b) In connection with any contested case held under the provisions of this Act, an agency may swear witnesses and take their testimony under oath.

(c) On its own motion or on the written request of any party to a contested case pending before it, on a showing of good cause, and on deposit of sums that will reasonably insure payment of the amounts estimated to accrue under Subsections (1)(1) and (2) of this section, an agency shall issue a subpoena addressed to the sheriff or any constable to require the attendance of witnesses and the production of books, records, papers, or other objects as may be necessary and proper for the purposes of the proceedings.

(d) On its own motion or on the written request of any party to a contested case pending before it, on a showing of good cause, and on deposit of sums that will reasonably insure payment of the amounts estimated to accrue under Subsections (1)(1) and (2) of this section, an agency shall issue a commission, addressed to the several officers authorized by statute to take depositions, to require that the deposition of a witness be taken, which commission shall authorize the issuance of any subpoenas necessary to require that the witness appear and produce, at the time the deposition is taken, books, records, papers, or other objects as may be necessary and proper for the purposes of the proceeding. The deposition of a member of an agency board may not be taken after a date has been set for hearing.

(e) The place of taking the depositions shall be in the county of the witness' residence, or where the witness is employed or regularly transacts business in person. The commission shall authorize and require the officer or officers to whom it is addressed, or either of them, to examine the witness before him on the date and at the place named in the commission and to take answers under oath to questions which may be propounded to the witness by the parties to the proceeding, the agency, or the attor-

neys for the parties or the agency. The commission shall require the witness to remain in attendance from day to day until the deposition is begun and completed.

(f) The witness shall be carefully examined, the testimony shall be reduced to writing or typewriting by the officer taking the deposition, or by some person under the officer's personal supervision, or by the deponent in the officer's presence, and by no other person, and shall, after it has been reduced to writing or typewriting, be subscribed by the deponent.

(g) The officer taking the oral deposition may not sustain objections to any of the testimony taken, or exclude any of it, and any of the parties or attorneys engaged in taking testimony have their objections reserved for the action of the agency before which the matter is pending. The administrator or other officer conducting the hearing is not confined to objections made at the taking of the testimony.

(h) When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and read to or by the witness, unless the examination and reading are waived by the witness and by the parties in writing. However, if the witness is a party to the contested case pending before the agency with an attorney of record, the deposition officer shall notify the attorney of record in writing by registered mail or certified mail that the deposition is ready for examination and reading at the office of the deposition officer, and if the witness does not appear and examine, read, and sign the deposition within 20 days after the mailing of the notice, the deposition shall be returned as provided in this Act for unsigned depositions. In any event, the witness must sign the deposition at least three days prior to the hearing, or it shall be returned as provided in this Act for unsigned depositions. Any changes in form or substance which the witness desires to make shall be entered on the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties present at the taking of the deposition by stipulation waive the signing or the witness is ill, cannot be found, or refuses to sign. If the deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the waiver, illness, or absence of the witness or the fact of the refusal to sign, together with the reason, if any, given for failure to sign. The deposition may then be used as fully as though signed.

(i) A deposition may be returned to the agency before which the contested case is pending either by mail, or by a party interested in taking the deposition, or by any other person. If returned by mail, the agency shall endorse on the deposition that it was received from the post office and shall cause the

agency employee so receiving the deposition to sign it. If not sent by mail, the person delivering it to the agency shall make affidavit before the agency that he received it from the hands of the officer before whom it was taken, that it has not been out of his possession since, and that it has undergone no alteration.

(j) A deposition, after being filed with the agency, may be opened by any employee of the agency at the request of either party or his counsel. The employee shall endorse on the deposition on what day and at whose request it was opened, signing the deposition, and it shall remain on file with the agency for the inspection of any party.

(k) Regardless of whether cross interrogatories have been propounded, any party is entitled to use the deposition in the contested case pending before the agency.

(l) A witness or deponent who is not a party and who is subpoenaed or otherwise compelled to attend any hearing or proceeding to give a deposition or to produce books, records, papers, or other objects that may be necessary and proper for the purposes of the proceeding under the authority of this section is entitled to receive:

(1) mileage of 10 cents a mile, or a greater amount as prescribed by agency rule, for going to, and returning from the place of the hearing or the place where the deposition is taken, if the place is more than 25 miles from the person's place of residence; and

(2) a fee of \$10 a day, or a greater amount as prescribed by agency rule, for each day or part of a day the person is necessarily present as a witness or deponent.

(m) Mileage and fees to which a witness is entitled under this section shall be paid by the party or agency at whose request the witness appears or the deposition is taken, on presentation of proper vouchers sworn by the witness and approved by the agency.

(n) In the case of failure of a person to comply with a subpoena or commission issued under the authority of this Act, the agency issuing the subpoena or commission, acting through the attorney general, or the party requesting the subpoena or commission, may bring suit to enforce the subpoena or commission in a district court in Travis County. The court, if it determines that good cause exists for the issuance of the subpoena or commission, shall order compliance with the requirements of the subpoena or commission. Failure to obey the order of the court may be punished by the court as contempt.

(o) In contested cases, documentary evidence may be received in the form of copies or excerpts if the original is not readily available. On request, parties shall be given an opportunity to compare the copy with the original.

(p) In contested cases, a party may conduct cross-examinations required for a full and true disclosure of the facts.

(q) In connection with any hearing held under the provisions of this Act, official notice may be taken of all facts judicially cognizable. In addition, notice may be taken of generally recognized facts within the area of the agency's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material officially noticed, including any staff memoranda or data, and they must be afforded an opportunity to contest the material so noticed. The special skills or knowledge of the agency and its staff may be utilized in evaluating the evidence.

(r) In contested cases, all parties are entitled to the assistance of their counsel before administrative agencies. This right may be expressly waived.

Discovery, Entry on Property; Use of Reports and Statements

Sec. 14a. (a) Upon motion of any party showing good cause therefor and upon notice to all other parties, and subject to such limitations of the kind provided in Rule 186b of the Rules of Civil Procedure as the agency may impose, the agency in which an action is pending may order any party:

(1) to produce and permit the inspection and copying or photographing by or on behalf of the moving party any of the following which are in his possession, custody, or control: any designated documents, papers, books, accounts, letters, photographs, objects, or tangible things, not privileged, which constitute or contain, or are reasonably calculated to lead to the discovery of, evidence material to any matter involved in the action; and

(2) to permit entry upon designated land or other property in his possession or control for the purpose of inspecting, measuring, surveying, or photographing the property or any designated object or operation thereon which may be material to any matter involved in the action.

(b) The order shall specify the time, place, and manner of making the inspection, measurement, or survey and taking the copies and photographs and may prescribe such terms and conditions as are just.

(c) The identity and location of any potential party or witness may be obtained from any communication or other paper in the possession, custody, or control of a party, and any party may be required to produce and permit the inspection and copying of the reports, including factual observations and opinions, of an expert who will be called as a witness. Provided, that the rights herein granted shall not extend to other written statements of witnesses or other written communications passing between agents or representatives or the employees of any party to the suit or to other communications be-

tween any party and his agents, representatives, or other employees, where made subsequent to the occurrence or transaction upon which the suit is based, and made in connection with the prosecution, investigation, or defense of such claim or the circumstances out of which same has arisen.

(d) Any person, whether or not a party, shall be entitled to obtain, upon request, a copy of any statement he has previously made concerning the action or its subject matter and which is in the possession, custody, or control of any party. If the request is refused, the person may move for an agency order under this section. For the purpose of this paragraph, a statement previously made is (1) a written statement signed or otherwise adopted or approved by the person making it, or (2) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

Examination of Record by Agency

Sec. 15. If in a contested case a majority of the officials of the agency who are to render the final decision have not heard the case or read the record, the decision, if adverse to a party to the proceeding other than the agency itself, may not be made until a proposal for decision is served on the parties, and an opportunity is afforded to each party adversely affected to file exceptions and present briefs to the officials who are to render the decision. If any party files exceptions or presents briefs, an opportunity must be afforded to all other parties to file replies to the exceptions or briefs. The proposal for decision must contain a statement of the reasons for the proposed decision and of each finding of fact and conclusion of law necessary to the proposed decision, prepared by the person who conducted the hearing or by one who has read the record. The proposal for decision may be amended pursuant to exceptions, replies, or briefs submitted by the parties without again being served on the parties. The parties by written stipulation may waive compliance with this section.

Decisions and Orders

Sec. 16. (a) A final decision or order adverse to a party in a contested case must be in writing or stated in the record.

(b) A final decision must include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, must be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling on each proposed finding. Parties shall be notified either personally or by mail of any decision

or order. On written request, a copy of the decision or order shall be delivered or mailed to any party and to his attorney of record.

(c) A decision is final, in the absence of a timely motion for rehearing, on the expiration of the period for filing a motion for rehearing, and is final and appealable on the date of rendition of the order overruling the motion for rehearing, or on the date the motion is overruled by operation of law. If an agency board includes a member who (1) receives no salary for his work as a board member and who (2) resides outside Travis County, the board may rule on a motion for rehearing at a meeting or by mail, telephone, telegraph, or other suitable means of communication. If an agency finds that an imminent peril to the public health, safety, or welfare requires immediate effect of a final decision or order in a contested case, it shall recite the finding in the decision or order as well as the fact that the decision or order is final and effective on the date rendered, in which event the decision or order is final and appealable on the date rendered and no motion for rehearing is required as a prerequisite for appeal.

(d) The final decision or order must be rendered within 60 days after the date the hearing is finally closed. In a contested case heard by other than a majority of the officials of an agency, the agency may prescribe a longer period of time within which the final order or decision of the agency shall be issued. The extension, if so prescribed, shall be announced at the conclusion of the hearing.

(e) Except as provided in Subsection (c) of this section, a motion for rehearing is a prerequisite to an appeal. A motion for rehearing must be filed within 15 days after the date of rendition of a final decision or order. Replies to a motion for rehearing must be filed with the agency within 25 days after the date of rendition of the final decision or order, and agency action on the motion must be taken within 45 days after the date of rendition of the final decision or order. If agency action is not taken within the 45-day period, the motion for rehearing is overruled by operation of law 45 days after the date of rendition of the final decision or order. The agency may by written order extend the period of time for filing the motions and replies and taking agency action, except that an extension may not extend the period for agency action beyond 90 days after the date of rendition of the final decision or order. In the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, 90 days after the date of the final decision or order.

(f) The parties may by agreement with the approval of the agency provide for a modification of the times provided in this section.

Ex Parte Consultations

Sec. 17. Unless required for the disposition of ex parte matters authorized by law, members or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in a contested case may not communicate, directly or indirectly, in connection with any issue of fact or law with any agency, person, party, or their representatives, except on notice and opportunity for all parties to participate. An agency member may communicate ex parte with other members of the agency, and pursuant to the authority provided in Subsection (q) of Section 14, members or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in a contested case may communicate ex parte with employees of the agency who have not participated in any hearing in the case for the purpose of utilizing the special skills or knowledge of the agency and its staff in evaluating the evidence.

Licenses

Sec. 18. (a) When the grant, denial, or renewal of a license is required to be preceded by notice and opportunity for hearing, the provisions of this Act concerning contested cases apply.

(b) When a licensee has made timely and sufficient application for the renewal of a license or a new license for any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(c) No revocation, suspension, annulment, or withdrawal of any license is effective unless, prior to the institution of agency proceedings, the agency gave notice by personal service or by registered or certified mail to the licensee of facts or conduct alleged to warrant the intended action, and the licensee was given an opportunity to show compliance with all requirements of law for the retention of the license.

Judicial Review of Contested Cases

Sec. 19. (a) A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review under this Act. This section is cumulative of other means of redress provided by statute.

(b) Proceedings for review are instituted by filing a petition within 30 days after the decision complained of is final and appealable. Unless otherwise provided by statute:

(1) the petition is filed in a District Court of Travis County, Texas;

(2) a copy of the petition must be served on the agency and all parties of record in the proceedings before the agency; and

(3) the filing of the petition vacates an agency decision for which trial de novo is the manner of review authorized by law, but does not affect the enforcement of an agency decision for which another manner of review is authorized.

(c) If the manner of review authorized by law for the decision complained of is by trial de novo, the reviewing court shall try all issues of fact and law in the manner applicable to other civil suits in this state but may not admit in evidence the fact of prior agency action or the nature of that action (except to the limited extent necessary to show compliance with statutory provisions which vest jurisdiction in the court). Any party to a trial de novo review may have, on demand, a jury determination of all issues of fact on which such a determination could be had in other civil suits in this state.

(d) If the manner of review authorized by law for the decision complained of is other than by trial de novo:

(1) after service of the petition on the agency, and within the time permitted for filing an answer (or such additional time as may be allowed by the court), the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record;

(2) any party may apply to the court for leave to present additional evidence and the court, if it is satisfied that the additional evidence is material and that there were good reasons for the failure to present it in the proceeding before the agency, may order that the additional evidence be taken before the agency on conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file such evidence and any modifications, new findings, or decisions with the reviewing court;

(3) the review is conducted by the court sitting without a jury and is confined to the record, except that the court may receive evidence of procedural irregularities alleged to have occurred before the agency but which are not reflected in the record.

(e) The scope of judicial review of agency decisions is as provided by the law under which review is sought. Where the law authorizes appeal by trial de novo, the courts shall try the case in the manner applicable to other civil suits in this state and as

though there had been no intervening agency action or decision. Where the law authorizes review under the substantial evidence rule, or where the law does not define the scope of judicial review, the court may not substitute its judgment for that of the agency as to the weight of the evidence on questions committed to agency discretion but may affirm the decision of the agency in whole or in part and shall reverse or remand the case for further proceedings if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (1) in violation of constitutional or statutory provisions;
- (2) in excess of the statutory authority of the agency;
- (3) made upon unlawful procedure;
- (4) affected by other error of law;
- (5) not reasonably supported by substantial evidence in view of the reliable and probative evidence in the record as a whole; or
- (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Appeals

Sec. 20. Appeals from any final judgment of the district court may be taken by any party in the manner provided for in civil actions generally, but no appeal bond may be required of an agency.

Exceptions

Sec. 21. (a) This Act does not apply to suspensions of driver's licenses as authorized in Article IV, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes).

(b) Sections 12 through 20 of this Act do not apply to the granting, payment, denial, or withdrawal of financial or medical assistance or benefits under service programs of the State Department of Public Welfare.

(c) Sections 12 through 20 of this Act do not apply to the Texas Department of Mental Health and Mental Retardation in the allocation of grants-in-aid by the department to mental health and mental retardation services provided by community centers.

Text of subsec. (d) added by Acts 1977, 65th Leg., p. 1960, ch. 780, § 2

(d) This Act does not apply to matters related solely to the internal personnel rules and practices of an agency.

Text of subsec. (d) added by Acts 1977, 65th Leg., p. 2193, ch. 866, § 1

(d) Sections 12 through 20 of this Act do not apply to action by the Commissioner of Banking or

the State Banking Board with respect to the issuance of a state bank charter for a bank to assume the assets and liabilities of a state bank the commissioner deems to be in an unsafe condition as defined in Section 1, Article 1a, Chapter VIII, Texas Banking Code of 1943.¹

(e) Sections 12 through 20 of this Act do not apply to the Texas Board of Pardons and Paroles in the conducting of hearings or interviews relating to the grant, rescission, or revocation of parole or other form of administrative release.

(f) Sections 12 through 20 do not apply to hearings by the Texas Employment Commission to determine whether or not a claimant is entitled to unemployment compensation nor shall the remainder of this Act have applicability to other than matters of unemployment insurance maintained by the Texas Employment Commission. In regard to the applicability of Sections 1 through 11, regarding unemployment insurance matters, the agency is precluded from complying with Subdivision (3) of Subsection (a) and Subsection (b) of Section 4 as related to orders and decisions.

¹ Article 342-801a, § 1.

Repeal of Conflicting Laws

Sec. 22. Chapter 274, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 6252-13, Vernon's Texas Civil Statutes), and all other laws and parts of laws in conflict with this Act are repealed. This Act does not repeal any existing statutory provisions conferring investigatory authority on any agency, including any provision which grants an agency the power, in connection with investigatory authority, to take depositions, administer oaths or affirmations, examine witnesses, receive evidence, conduct hearings, or issue subpoenas or summons.

Effective Date

Sec. 23. This Act takes effect on January 1, 1976.

[Acts 1975, 64th Leg., p. 136, ch. 61, §§ 1 to 23, eff. Jan. 1, 1976. Amended by Acts 1977, 65th Leg., p. 103, ch. 48, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 136, ch. 65, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 855, ch. 321, §§ 1, 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1959, ch. 780, §§ 1, 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2193, ch. 866, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 399, ch. 186, § 6, eff. May 15, 1979; Acts 1979, 66th Leg., p. 1105, ch. 521, § 1, eff. Aug. 27, 1979.]

Art. 6252-13b. Administrative Code Act

Short Title

Sec. 1. This Act shall be known and may be cited as the Texas Administrative Code Act.

Definitions

Sec. 2. As used in this Act:

(1) "Agency" means any state board, commission, department, or officer having statewide jurisdiction, other than an agency wholly financed by federal funds, the legislature, the courts, the Industrial Accident Board, and institutions of higher education, that makes rules or determines contested cases.

(2) "Code" means the Texas Administrative Code established by this Act.

(3) "Rule" means any agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of an agency. The term includes the amendment or repeal of a prior rule but does not include statements concerning only the internal management or organization of any agency and not affecting private rights or procedures.

Compilation; Exclusions

Sec. 3. (a) The secretary of state shall compile, index, and cause to be published a Texas Administrative Code. Periodic supplementation of the code shall be made as often as necessary, but not less than once each year. The code shall contain all rules adopted by each agency pursuant to the Administrative Procedure and Texas Register Act,¹ but shall not contain emergency rules adopted pursuant to Section 10(a)(2) of that Act. The code shall also contain appropriate annotations to judicial decisions and opinions of the Attorney General of the State of Texas.

(b) The secretary of state may omit from the code all rules which are general in form but of such local or limited application as to make their inclusion therein impracticable, undesirable, or unnecessary. The secretary of state may also omit from the code any information the publication of which he deems cumbersome, expensive, or otherwise inexpedient, if the information is made available in printed or processed form by the adopting agency on application for it, and if the code contains a notice stating the general subject matter of the information and the manner in which a copy of it may be obtained. Any such exclusions from publication in the code shall not affect the validity or effectiveness of any rules omitted.

¹ Article 6252-13a.

Adoption by Agency

Sec. 4. The portion of the Texas Administrative Code applicable to an agency may be adopted by the agency as a code of rules, superceding all previous rules of such agency.

Rules

Sec. 5. The secretary of state may promulgate rules to ensure the effective administration of this Act. The rules may include, but are not limited to, rules establishing titles of the code and a system of classification of the subject matter of the code. [Acts 1977, 65th Leg., p. 1703, ch. 678, § 1, eff. Aug. 29, 1977.]

Art. 6252-16. Discrimination Against Persons Because of Race, Religion, Color, Sex or National Origin

[See Compact Edition, Volume 5 for text of 1 and 2]

Officers or Employees of Political Subdivisions; Discriminatory Employment Practices; Hearing Procedure

Sec. 2a. (a) A political subdivision of this state may establish a formal procedure by ordinance or other action of the governing body for processing a charge of a discriminatory act or practice prohibited by Section 1(a)(1) or (2) of this Act, against an officer or employee of the political subdivision. The political subdivision which adopts this formal procedure shall have authority to promulgate rules and regulations to effectuate the purpose of this Act.

(b) The procedure must include the following:

(1) Provision for an impartial hearing within a reasonable time after the receipt of a written charge;

(2) Appointment of an impartial hearing officer or board to investigate and determine the validity of the charge;

(3) Delegation of authority to the impartial hearing officer or board to take appropriate corrective action if a violation has occurred, including, but not limited to, reinstatement, hiring, or promotion of the aggrieved individual, with or without back pay, or any other equitable relief necessary to correct and rectify the violation; and

(4) Designation of an officer as the deferral officer to receive notice of alleged unlawful employment practices from the Equal Employment Opportunity Commission as provided for in Public Law 88-352, Title VII, Section 706(c); 78 Stat. 241 (42 U.S.C. 2000e-5).

(c) If a political subdivision establishes a formal procedure in compliance with this section, the deferral officer designated in the procedure shall become the appropriate local official for purposes of receiving the notice as set out in Section 4 of this Act.

[See Compact Edition, Volume 5 for text of 3 and 4]

[Amended by Acts 1975, 64th Leg., p. 366, ch. 157, § 1, eff. Sept. 1, 1975.]

Art. 6252-17. Prohibition on Governmental Bodies From Holding Meetings Which are Closed to the Public

[See Compact Edition, Volume 5 for text of 1 and 2]

Mandamus or Injunction to Prevent Closed Meetings

Sec. 3. Any interested person, including bona fide members of the news media, may commence an action either by mandamus or injunction for the purpose of stopping or preventing violations or threatened violations of this Act by members of a governing body.

Notice of Meetings

Sec. 3A. (a) Written notice of the date, hour, place, and subject of each meeting held by a governmental body shall be given before the meeting as prescribed by this section, and any action taken by a governmental body at a meeting on a subject which was not stated on the agenda in the notice posted for such meeting is voidable. The requirement for notice prescribed by this section does not apply to matters about which specific factual information or a recitation of existing policy is furnished in response to an inquiry made at such meeting, whether such inquiry is made by a member of the general public or by a member of the governmental body. Any deliberation, discussion, or decision with respect to the subject about which inquiry was made shall be limited to a proposal to place such subject on the agenda for a subsequent meeting of such governmental body for which notice has been provided in compliance with this Act.

[See Compact Edition, Volume 5 for text of 3A(b) to (g)]

(h) Notice of a meeting must be posted in a place readily accessible to the general public at all times for at least 72 hours preceding the scheduled time of the meeting, except that notice of a meeting of a state board, commission, department, or officer having statewide jurisdiction, other than the Industrial Accident Board or the governing board of an institution of higher education, must be posted by the Secretary of State for at least seven days preceding the day of the meeting. In case of emergency or urgent public necessity, which shall be expressed in the notice, it shall be sufficient if the notice is posted two hours before the meeting is convened. Provided further, that where a meeting has been called with notice thereof posted in accordance with this subsection, additional subjects may be added to the agenda for such meeting by posting a supplemental notice, in which the emergency or urgent public necessity requiring consideration of such additional subjects is expressed. In the event of an emergency meeting, or in the event any subject is added to the agenda in a supplemental notice posted for a meeting other

than an emergency meeting, it shall be sufficient if the notice or supplemental notice is posted two hours before the meeting is convened, and the presiding officer or the member calling such emergency meeting or posting supplemental notice to the agenda for any other meeting shall, if request therefor containing all pertinent information has previously been filed at the headquarters of the governmental body, give notice by telephone or telegraph to any news media requesting such notice and consenting to pay any and all expenses incurred by the governmental body in providing such special notice. The notice provisions for legislative committee meetings shall be as provided by the rules of the house and senate.

[See Compact Edition, Volume 5 for text of 4 and 5]

[Amended by Acts 1975, 64th Leg., p. 968, ch. 367, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1674, ch. 659, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1015, ch. 449, § 1, eff. Aug. 27, 1979.]

Art. 6252-17a. Access by Public to Information in Custody of Government Agencies and Bodies

[See Compact Edition, Volume 5 for text of 1 and 2]

Public Information

Sec. 3. (a) All information collected, assembled, or maintained by governmental bodies pursuant to law or ordinance or in connection with the transaction of official business is public information and available to the public during normal business hours of any governmental body, with the following exceptions only:

- (1) information deemed confidential by law, either Constitutional, statutory, or by judicial decision;
- (2) information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; provided, however, that all information in personnel files of an individual employee within a governmental body is to be made available to that individual employee or his designated representative as is public information under this Act;
- (3) information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection;
- (4) information which, if released, would give advantage to competitors or bidders;

(5) information pertaining to the location of real or personal property for public purposes prior to public announcement of the project, and information pertaining to appraisals or purchase price of real or personal property for public purposes prior to the formal award of contracts therefor;

(6) drafts and working papers involved in the preparation of proposed legislation;

(7) matters in which the duty of the Attorney General of Texas or an attorney of a political subdivision, to his client, pursuant to the Rules and Canons of Ethics of the State Bar of Texas¹ are prohibited from disclosure, or which by order of a court are prohibited from disclosure;

(8) records of law enforcement agencies that deal with the detection and investigation of crime and the internal records and notations of such law enforcement agencies which are maintained for internal use in matters relating to law enforcement;

(9) private correspondence and communications of an elected office holder relating to matters the disclosure of which would constitute an invasion of privacy;

(10) trade secrets and commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision;

(11) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than one in litigation with the agency;

(12) information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions, and/or securities, as that term is defined in the Texas Securities Act;²

(13) geological and geophysical information and data including maps concerning wells, except information filed in connection with an application or proceeding before any agency;

(14) student records at educational institutions funded wholly, or in part, by state revenue; but such records shall be made available upon request of educational institution personnel, the student involved, or that student's parent, legal guardian, or spouse;

(15) birth and death records maintained by the Bureau of Vital Statistics in the State of Texas;³

(16) the audit working papers of the State Auditor; and

(17) the home addresses and home telephone numbers of peace officers as defined by Article 2.12, Code of Criminal Procedure, 1965, as amended, or by Section 51.212, Texas Education Code.

¹ See Title 14, Appendix, foll. art. 320a-1.

² See art. 581-4, subsec. A.

³ See art. 4477, rule 34a et seq.

[See Compact Edition, Volume 5 for text of 3(b) to 9]

Distribution of Confidential Information Prohibited

Sec. 10. (a) Information deemed confidential under the terms of this Act shall not be distributed.

(b) A custodian of public records, or his agent, commits an offense if, with criminal negligence, he or his agent fails or refuses to give access to, or to permit or provide copying of, public records to any person upon request as provided in this Act.

(c) It is an affirmative defense to prosecution under Subsection (b) of this section that the custodian of public records reasonably believed that the public records sought were not required to be made available to the public and that he:

(1) acted in reasonable reliance upon a court order or a written interpretation of this Act contained in an opinion of a court of record or of the attorney general issued under Section 7 of this Act;

(2) requested a decision from the attorney general in accordance with Section 7 of this Act, and that such decision is pending; or

(3) within three working days of the receipt of a decision by the attorney general that the information is public, filed a cause of action seeking relief from compliance with such decision of the attorney general, and that such cause is pending.

(d) It is an affirmative defense to prosecution under Subsection (b) of this section that the defendant is the agent of a custodian of public records and that the agent reasonably relied on the written instruction of the custodian of public records not to disclose the public records requested.

(e) Any person who violates Section 10(a) or 10(b) of this Act shall be deemed guilty of a misdemeanor and upon conviction shall be punished by confinement in the county jail not to exceed six (6) months or fined in an amount not to exceed \$1,000, or by both such fine and confinement. A violation under this section constitutes official misconduct.

[See Compact Edition, Volume 5 for text of 11 to 13]

Interpretation of this Act

Sec. 14.

[See Compact Edition, Volume 5 for text of 14(a) to (d)]

(e) Nothing in this Act shall be construed to require the release of information contained in education records of any educational agency or institution except in conformity with the provisions of the Family Educational Rights and Privacy Act of 1974, as enacted by Section 513 of Public Law 93-380, codified as Title 20 U.S.C.A. Section 1232g, as amended.

[See Compact Edition, Volume 5 for text of 15]

[Amended by Acts 1975, 64th Leg., p. 809, ch. 314, § 1, eff. May 27, 1975; Acts 1979, 66th Leg., p. 807, ch. 366, § 1, eff. June 6, 1979; Acts 1979, 66th Leg., p. 906, ch. 414, § 1, eff. Aug. 27, 1979.]

Section 2 of the 1975 amendatory act, the emergency clause, provided, in part:

"The regulations promulgated by the Secretary of Health, Education and Welfare pursuant to the authority of the Family Educational Rights and Privacy Act of 1974 require, as a condition for federal funding, that educational institutions certify compliance with the provisions of such Act. Without the amendment contained in this bill the educational institutions of the State of Texas cannot make the required certification and will be unable to qualify for federal funds . . ."

Art. 6252-18a. Interpreters for Deaf Persons in Proceeding Before Political Subdivisions

(a) In any proceeding before a governing body of a political subdivision in which the legal rights, duties, or privileges of a party are to be determined by the governing body following an adjudicative hearing, the governing body shall supply a party who is deaf with an interpreter having qualifications approved by the State Commission for the Deaf.

(b) In this section:

(1) "Deaf person" means a person who has a hearing impairment, regardless of whether the person also has a speech impairment, that inhibits the person's comprehension of the proceedings or communication with others.

(2) "Political subdivision" means a county, city, town, village, school district, special purpose district, or other subdivision of state government that has jurisdiction that is limited to a geographical portion of the state.

[Acts 1979, 66th Leg., p. 399, ch. 186, § 8, eff. May 15, 1979.]

Art. 6252-19b. Liability of Political Subdivisions for Certain Acts or Omissions of Officers and Employees

Definition

Sec. 1. In this Act "employee" includes an elected official and any other officer or employee, a former officer or employee or their estates, of a county, city, town, special purpose district, or any other political subdivision of this state.

Persons and Conduct Covered: Limits on Liability

Sec. 2. (a) A county, city, town, special purpose district, or any other political subdivision of the state may pay actual damages, court costs, and attorney's fees adjudged against its employee, if damages are based on an act or omission by the employee in the course and scope of his or her employment for such political subdivision and if the damages arise out of a cause of action for negligence, except a wilful or wrongful act or omission or an act or omission constituting gross negligence or for official misconduct.

(b) This Act shall not be construed to waive, repeal, or modify any defense, immunity, or jurisdictional bar available to the political subdivision or its employees, nor shall this Act be construed to waive, repeal, or modify any provision of the Texas Tort Claims Act, as amended (Article 6252-19, Vernon's Texas Civil Statutes). The county or political subdivision is not liable under this Act to the extent that damages are recoverable under a contract of insurance or under a plan of self-insurance authorized by statute. Liability of the political subdivision under this Act is limited to \$100,000 to a single person and \$300,000 for a single occurrence, in the case of personal injury or death, and to \$10,000 for a single occurrence of injury of or damage to property.

Defense of Actions

Sec. 3. (a) The political subdivision may provide counsel to represent a defendant in a cause of action covered by this Act. The counsel provided may be the county attorney when the defendant is a county employee or if he is an employee of any other political subdivision an attorney regularly employed by such political subdivision unless there is a potential conflict of interest between the defendant and the county or other political subdivision, in which case the county or other political subdivision may hire private counsel to defend the suit.

(b) Counsel for the county or political subdivision may settle or compromise the portion of a lawsuit that may result in liability of the county or political subdivision under this Act.

(c) In a case defended under this Act, neither the defendant nor the political subdivision may be required to advance security for cost or give bond on appeal or on review by writ of error.

Sec. 4. [Amends § 1 of art. 2372h-7]

Construction Not to Modify Insurance Policies; Rules and Rates

Sec. 5. Section 2 of this Act shall not be construed to modify or change any policy of insurance providing coverage to an officer or employee of a political subdivision. The State Board of Insurance shall promulgate rules and set rates to implement Section 4 of this Act.

[Acts 1979, 66th Leg., p. 1830, ch. 744, §§ 1 to 3, 5, eff. June 13, 1979.]

Art. 6252-20a. Repealed by Acts 1979, 66th Leg., p. 456, ch. 211, § 2, eff. Sept. 1, 1979

The repealed article, relating to longevity pay for certain commissioned law-enforcement personnel, was derived from Acts 1975, 64th Leg., p. 1274, ch. 477.

See, now, art. 6813d.

Art. 6252-20b. Hazardous Duty Pay for Certain Commissioned Law Enforcement Personnel

All commissioned law enforcement personnel of the Department of Public Safety, all commissioned law enforcement personnel of the State Board of Control, all commissioned law enforcement personnel of the Texas Alcoholic Beverage Commission, all law enforcement officers commissioned by the Texas Parks and Wildlife Commission, all commissioned peace officers of state institutions of higher education, and all law enforcement personnel commissioned by the Texas Department of Corrections are entitled to hazardous duty pay of \$5 a month for each year of service in the respective agency, up to and including 30 years in service. This hazardous duty pay shall be in lieu of existing hazardous duty or longevity pay.

[Acts 1979, 66th Leg., p. 456, ch. 211, § 1, eff. Sept. 1, 1979.]

Art. 6252-26. State's Liability for and Defense of Claims Based on Certain Conduct of State Officers and Employees**Persons and Conduct Covered; Limits on Liability**

Sec. 1. (a) The State of Texas is liable for and shall pay actual damages, court costs, and attorney fees adjudged against officers or employees of any agency, institution, or department of the state; against a former officer or employee of an agency, institution, or department of the state who was an officer or employee when the act or omission on which the damages are based occurred; or against the estate of such a person where the damages are based on an act or omission by the person in the course and scope of his office or employment for the institution, department, or agency and:

(1) the damages arise out of a cause of action for negligence, except a willful or wrongful act or an act of gross negligence; or

(2) the damages arise out of a cause of action for deprivation of a right, privilege, or immunity secured by the constitution or laws of this state or the United States, except when the court in its judgment or the jury in its verdict finds that the officer or employee acted in bad faith.

(b) This Act shall not be construed as a waiver of any defense, immunity, or jurisdictional bar available to the state or its officers or employees. The state is not liable under this Act to the extent that damages are recoverable under a contract of insurance or under a plan of self-insurance authorized by statute. State liability under this Act is limited to \$100,000 to a single person and \$300,000 for a single occurrence, in the case of personal injury or death or the deprivation of a right, privilege, or immunity, and to \$10,000 for a single occurrence of injury or of damage to property.

Application of Act

Sec. 2. This Act applies to judgments in all cases filed on or after the effective date of this Act and to all judgments in cases pending or on appeal on the effective date of the Act.

Defense of Actions; Conflict of Interest; Security for Cost or Bond

Sec. 3. (a) The attorney general shall defend a present or former officer or employee or his estate in a cause of action covered by this Act. The state is not liable for the defense of an action or for the damages, court costs, or attorney fees unless either the attorney general has been served in the case and the state has been given an opportunity to defend the suit, or the officer or employee, former officer or employee, or estate against whom the action is brought has delivered to the attorney general all process served on him or it not later than 10 days after the service. The attorney general may settle or compromise the portion of a lawsuit that may result in liability of the state under this Act. It is not a conflict of interest for the attorney general to defend a person or estate under this Act and also to prosecute a legal action against that person or estate as may be required or authorized by law if different assistant attorneys general are assigned the responsibility for each action.

(b) In a case defended by the attorney general under this Act, neither the officer, employee, former officer or employee, estate, or attorney general may be required to advance security for cost or give bond on appeal or on review by writ of error.

Funds for Defense or Prosecution

Sec. 4. No funds other than those appropriated by the legislature from the General Revenue Fund to the attorney general may be used to conduct the defense or prosecution of any action that the attorney general is required to defend or prosecute under the provisions of this Act. The term "conduct of the defense of any action" as used in this section includes, but is not limited to, any steps in the investigation, preparation for trial, and participation in actual trial, including depositions or other discovery, and the preparation of any exhibits or other evidence.

Officer Defined

Sec. 5. A member of the commission, board, or other governing body of an agency, institution, or department is an officer of the agency, institution, or department for purposes of this Act.

[Acts 1975, 64th Leg., p. 799, ch. 309, §§ 1 to 3, eff. May 27, 1975. Amended by Acts 1977, 65th Leg., p. 730, ch. 273, § 1, eff. Aug. 29, 1977.]

Art. 6252-26a. Medical Malpractice Coverage for University of Texas and Texas A&M University Systems, Texas Tech University School of Medicine, and Texas College of Osteopathic Medicine

Purpose

Sec. 1. It is the purpose of this Act to promote the health and general welfare of the people of the State of Texas by authorizing the board of regents of The University of Texas System, the board of regents of The Texas A&M University System, the board of regents of Texas Tech University School of Medicine, and the board of regents of North Texas State University to provide, as additional compensation and to ensure a proper learning environment, medical malpractice coverage for its medical staff and students as defined in this Act by purchasing insurance or establishing as self-insurance a Medical Professional Liability Fund from which medical malpractice claims and the costs of defending and administering those claims may be satisfied, and such purposes are hereby declared to be in the public interest.

Definitions

Sec. 2. In this Act:

Text of subsection as amended by Acts 1979, 66th Leg., p. 115, ch. 73, § 2

(1) "Medical staff or students" means medical doctors, doctors of osteopathy, dentists, and podiatrists employed full time by The University of Texas System, The Texas A&M University System, the Texas Tech University School of Medicine, or the Texas College of Osteopathic Medicine; and interns, residents, fellows, medical or dental students, and students of osteopathy participating in a patient-care program in The University of Texas System, The Texas A&M University System, the Texas Tech University School of Medicine, or the Texas College of Osteopathic Medicine.

Text of subsection as amended by Acts 1979, 66th Leg., p. 545, ch. 259, § 1

(1) "Medical staff or students" means medical doctors, doctors of osteopathy, dentists, and podiatrists employed by The University of Texas System, The Texas A&M University System, the Texas Tech University Medical School, or the Texas College of Osteopathic Medicine, either full time or who, although employed less than full time, devote their total professional service to such employment; and interns, residents, fellows, and medical or dental students participating in a patient-care program in The University of Texas System or The Texas A&M University System.

(2) "Medical malpractice claim" means a cause of action for treatment, lack of treatment, or

other claimed departure from accepted standards of care which proximately results in injury to or death of the patient, whether the patient's claim or cause of action or the executor's claim or cause of action under Article 5525, Revised Civil Statutes of Texas, 1925, as amended, sounds in tort or contract.

(3) "Board" means the board of regents of The University of Texas System, the board of regents of The Texas A&M University System, the board of regents of Texas Tech University, or the board of regents of North Texas State University.

(4) "Fund" means the Medical Professional Liability Fund as established in Section 3 of this Act.

Medical Professional Liability Fund

Sec. 3. (a) Each board is authorized to establish a separate self-insurance fund to pay any damages, adjudged in a court of competent jurisdiction, or a settlement of any medical malpractice claim against a member of the medical staff or students arising from the exercise of his employment, duties, or training with The University of Texas System, The Texas A&M University System, the Texas Tech University School of Medicine, or the Texas College of Osteopathic Medicine.

(b) The boards are authorized to pay from the funds all expenses incurred in the investigation, settlement, defense, or payment of claims described above on behalf of the medical staff or students.

(c) On the establishment of each fund, transfers to the fund shall be made in an amount and at such intervals as determined by the board. Each board is authorized to receive and accept any gifts or donations specified for the purposes of this Act and to deposit such gifts or donations into the fund. Each board may invest money deposited in the fund, and any income received shall be retained in the fund. Such money shall be deposited in any of the approved depository banks of The University of Texas System, The Texas A&M University System, the Texas Tech University School of Medicine, or the Texas College of Osteopathic Medicine. All expenditures from the funds shall be paid pursuant to approval by the boards.

Rules

Sec. 4. Each board is authorized to adopt such rules for the establishment and administration of the fund and the negotiation, settlement, and payment of claims as may be necessary in the furtherance of this Act. Each board is authorized to establish by rule reasonable limits on the amount of claims to be paid from the fund or to be provided in purchased insurance.

Purchase of Insurance

Sec. 5. Each board is authorized to purchase medical malpractice insurance from an insurance company authorized to do business in the State of Texas as it deems necessary to carry out the purpose of this Act.

Legal Counsel

Sec. 6. Each board is authorized to employ private legal counsel to represent the medical staff and students covered by this Act pursuant to the rules of the board.

Limitation on Appropriated Funds

Sec. 7. No funds appropriated by the legislature to either system, to the Texas Tech University School of Medicine or to the Texas College of Osteopathic Medicine from the General Revenue Fund

may be used to establish or maintain the fund, to purchase insurance, or to employ private legal counsel.

Exemption from Insurance Code; Report

Sec. 8. The establishment and administration of each fund under the authority of this Act and the rules of the boards shall not constitute the business of insurance as defined and regulated in the Insurance Code, as amended; provided, however, the boards of regents shall annually report to the State Board of Insurance information appropriate for carrying out the functions of the State Board of Insurance.

[Acts 1977, 65th Leg., p. 23, ch. 9, eff. March 10, 1977. Amended by Acts 1979, 66th Leg., p. 115, ch. 73, §§ 1 to 3, eff. Apr. 26, 1979; Acts 1979, 66th Leg., p. 545, ch. 259, § 1, eff. Aug. 27, 1979.]

TITLE 112

RAILROADS

CHAPTER ELEVEN. RAILROAD COMMISSION OF TEXAS

Article

6445a. Application of Sunset Act.

Art. 6445a. Application of Sunset Act

The Railroad Commission of Texas is subject to the Texas Sunset Act¹; and unless continued in existence as provided by that Act the commission is abolished effective September 1, 1983.

¹Article 5429k.

[Added by Acts 1977, 65th Leg., p. 1840, ch. 735, § 2.060, eff. Aug. 29, 1977.]

CHAPTER THIRTEEN. MISCELLANEOUS RAILROADS

Article

6550(a). Repealed.

Art. 6550(a). Repealed by Acts 1977, 65th Leg., p. 1149, ch. 435, § 1, eff. Aug. 29, 1977

The repealed article, relating to the Texas State Railroad and the Board of Managers thereof, was derived from Acts 1953, 53rd Leg., p. 79, ch. 58, as amended by Acts 1977, 65th Leg., p. 1832, ch. 735, § 2.005.

Sections 2 to 6 of the 1977 repealing act provided:

"Sec. 2. The legislature hereby grants, sells, and conveys and by this Act does grant, sell, and convey to the city of Palestine all of the interest of the State of Texas in the right-of-way and trackage of the Texas State Railroad from Mile Post 0.0 at Palestine, extending eastwardly to Mile Post 3.69, in consideration of the benefit to the public welfare and the agreement of the city of Palestine to develop the property for industrial purposes, with the income from the property to be paid to the Parks and Wildlife Department for the benefit of the Palestine terminal of the Texas State Railroad Park.

"Sec. 3. On or before June 1 of each year, the city of Palestine shall furnish a report to the comptroller of public accounts showing the financial condition of the property for the preceding calendar year and shall transmit all income after expenses to the State Treasury to be deposited in a special fund for use by the Parks and Wildlife Department for the benefit of the Palestine terminal of the Texas State Railroad Park.

"Sec. 4. If the city of Palestine shall fail or cease to develop for industrial purposes the property conveyed by this Act, with the income after expenses paid to the Parks and Wildlife Department as provided in Section 3 of this Act, all right, title, and interest granted and conveyed by this Act shall, without further action by any of the parties, revert to the State of Texas, unless such reversion is waived by the legislature during the biennium following the happening of the conditions of reversion.

"Sec. 5. It is the duty of the present Board of Managers of the Texas State Railroad to transfer and deliver possession of the Texas State Railroad right-of-way and trackage from Mile Post 0.0 at Palestine, extending eastwardly to Mile Post 3.69, to the governing body of the city of Palestine on the effective date of this Act, together with all equipment, supplies, books, records, documents, and property of any kind belonging to the railroad.

"Sec. 6. A copy of this Act, duly certified by the Secretary of State, may be filed of record by the county clerk in the deed records of Anderson County."

TITLE 113A

REAL ESTATE DEALERS

Article
6573b. Residential Service Company Act.

Art. 6573a. The Real Estate License Act

Short Title; License Required; Responsibility for Acts and Conduct; Compensation and Commissions

Sec. 1. (a) This Act shall be known and may be cited as "The Real Estate License Act."

(b) It is unlawful for a person to act in the capacity of, engage in the business of, or advertise or hold himself out as engaging in or conducting the business of a real estate broker or a real estate salesman within this state without first obtaining a real estate license from the Texas Real Estate Commission. It is unlawful for a person licensed as a real estate salesman to act or attempt to act as a real estate agent unless he is, at such time, associated with a licensed Texas real estate broker and acting for the licensed real estate broker.

(c) Each real estate broker licensed pursuant to this Act is responsible to the commission, members of the public, and his clients for all acts and conduct performed under this Act by himself or by a real estate salesman associated with or acting for the broker.

(d) No real estate salesman shall accept compensation for real estate sales and transactions from any person other than the broker under whom he is at the time licensed.

(e) No real estate salesman shall pay a commission to any person except through the broker under whom he is at the time licensed.

Definitions

Sec. 2. As used in this Act:

(1) "Real estate" means a leasehold, as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold, and whether the real estate is situated in this state or elsewhere.

(2) "Real estate broker" means a person who, for another person and for a fee, commission, or other valuable consideration, or with the intention or in the expectation or on the promise of receiving or collecting a fee, commission, or other valuable consideration from another person:

(A) sells, exchanges, purchases, rents, or leases real estate;

(B) offers to sell, exchange, purchase, rent, or lease real estate;

(C) negotiates or attempts to negotiate the listing, sale, exchange, purchase, rental, or leasing of real estate;

(D) lists or offers or attempts or agrees to list real estate for sale, rental, lease, exchange, or trade;

(E) appraises or offers or attempts or agrees to appraise real estate;

(F) auctions, or offers or attempts or agrees to auction, real estate;

(G) buys or sells or offers to buy or sell, or otherwise deals in options on real estate;

(H) aids, attempts, or offers to aid in locating or obtaining for purchase, rent, or lease any real estate;

(I) procures or assists in the procuring of prospects for the purpose of effecting the sale, exchange, lease, or rental of real estate; or

(J) procures or assists in the procuring of properties for the purpose of effecting the sale, exchange, lease, or rental of real estate.

(3) "Broker" also includes a person employed by or on behalf of the owner or owners of lots or other parcels of real estate, at a salary, fee, commission, or any other valuable consideration, to sell the real estate or any part thereof, in lots or parcels or other disposition thereof. It also includes a person who engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract whereby he undertakes primarily to promote the sale of real estate either through its listing in a publication issued primarily for such purpose, or for referral of information concerning the real estate to brokers, or both.

(4) "Real estate salesman" means a person associated with a Texas licensed real estate broker for the purposes of performing acts or transactions comprehended by the definition of "real estate broker" as defined in this Act.

(5) "Person" means an individual, a partnership, or a corporation, foreign or domestic.

(6) "Commission" means the Texas Real Estate Commission.

(7) If the sense requires it, words in the present tense include the future tense; in the masculine

gender, include the feminine or neuter gender; in the singular number, include the plural number; in the plural number, include the singular number; the word "and" may be read "or"; and the word "or" may be read "and."

Exemptions

Sec. 3. The provisions of this Act shall not apply to any of the following persons and transactions, and each and all of the following persons and transactions are hereby exempted from the provisions of this Act, to wit:

- (a) an attorney at law licensed in this state or in any other state;
- (b) an attorney in fact under a duly executed power of attorney authorizing the consummation of a real estate transaction;
- (c) a public official in the conduct of his official duties;
- (d) a person acting officially as a receiver, trustee, administrator, executor, or guardian;
- (e) a person acting under a court order or under the authority of a will or a written trust instrument;
- (f) a salesperson employed by an owner in the sale of structures and land on which said structures are situated, provided such structures are erected by the owner in the due course of his business;
- (g) an on-site manager of an apartment complex;
- (h) transactions involving the sale, lease, or transfer of any mineral or mining interest in real property;
- (i) an owner or his employees in renting or leasing his own real estate whether improved or unimproved;
- (j) transactions involving the sale, lease, or transfer of cemetery lots.

Acts Constituting Broker or Salesman

Sec. 4. A person who, directly or indirectly for another, with the intention or on the promise of receiving any valuable consideration, offers, attempts, or agrees to perform, or performs, a single act defined in Subdivisions 2 and 3, Section 2 of this Act, whether as a part of a transaction, or as an entire transaction, is deemed to be acting as a real estate broker or salesman within the meaning of this Act. The commission of a single such act by a person required to be licensed under this Act and not so licensed shall constitute a violation of this Act.

Real Estate Commission; Disposition of Fees; Research Center; Application of Sunset Act

Sec. 5. (a) The administration of the provisions of this Act is vested in a commission, to be known as the "Texas Real Estate Commission," consisting of

nine members to be appointed by the governor with the advice and consent of two-thirds of the senate present. The commissioners hold office for staggered terms of six years with the terms of three members expiring every two years. Each member holds office until his successor is appointed and has qualified. Within 15 days after his appointment, each member shall qualify by taking the constitutional oath of office and furnishing a bond payable to the Governor of Texas in the penal sum of \$10,000, conditional on the faithful performance of his duties as prescribed by law. A vacancy for any cause shall be filled by the governor for the unexpired term. Notwithstanding any other provisions in this subsection, the six members of the commission in office on September 1, 1979, shall continue in office until the 5th day of October of the years in which their respective terms expire, or until their successors are appointed and have qualified. The terms of office of the appointees who fill the offices of incumbent members whose terms expire October 5, 1979, 1981, and 1983, expire on January 31, 1985, 1987, and 1989, respectively. Each succeeding term of office expires on January 31 of odd-numbered years. For the three public members initially appointed under this Act, the governor shall designate one member for a term expiring January 31, 1981, one member for a term expiring January 31, 1983, and one member for a term expiring January 31, 1985. At a regular meeting in February of each year, the commission shall elect from its own membership a chairman, vice-chairman, and secretary. Each member of the commission shall be present for at least one-half of the regularly scheduled meetings held each year by the commission. The failure of a member to meet this requirement automatically removes the member from the commission and creates a vacancy on the commission. A quorum of the commission consists of five members.

(b) All members, officers, employees, and agents of the commission are subject to the code of ethics and standards of conduct imposed by Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes).

(c) Appointments to the commission shall be made without regard to the race, creed, sex, religion, or national origin of the appointees. Each member of the commission shall be a citizen of Texas and a qualified voter. Six members shall have been engaged in the real estate brokerage business as licensed real estate brokers as their major occupations for at least five years next preceding their appointments. Three members must be representatives of the general public who are not licensed under this Act and who do not have, other than as consumers, a financial interest in the practice of a real estate broker or real estate salesman. It is grounds for removal from the commission if:

(1) a broker-member of the commission ceases to be a licensed real estate broker;

(2) a public member of the commission or a person related to the member within the second degree by consanguinity or within the second degree by affinity acquires a real estate license or a financial interest in the practice of real estate; or

(3) a member of the commission or a person related to the member within the second degree by consanguinity or within the second degree by affinity becomes an employee or paid consultant of a real estate trade association or an officer of a statewide real estate trade association elected by the entire voting membership of the statewide association.

(d) Each member of the commission shall receive as compensation for each day actually spent on his official duties the sum of \$50 and his actual and necessary expenses incurred in the performance of his official duties.

(e) The commission shall have the authority and power to make and enforce all rules and regulations necessary for the performance of its duties, to establish standards of conduct and ethics for its licensees in keeping with the purposes and intent of this Act or to insure compliance with the provisions of this Act. If the appropriate standing committees of both houses of the legislature acting under Subsection (g), Section 5, Administrative Procedure and Texas Register Act, as added (Article 6252-13a, Vernon's Texas Civil Statutes), transmit to the commission statements opposing adoption of a rule under that section, the rule may not take effect, or if the rule has already taken effect, the rule is repealed effective on the date the commission receives the committees' statements. In addition to any other action, proceeding, or remedy authorized by law, the commission shall have the right to institute an action in its own name to enjoin any violation of any provision of this Act or any rule or regulation of the commission and in order for the commission to sustain such action it shall not be necessary to allege or prove, either than an adequate remedy at law does not exist, or that substantial or irreparable damage would result from the continued violation thereof. Either party to such action may appeal to the appellate court having jurisdiction of said cause. The commission shall not be required to give any appeal bond in any action or proceeding to enforce the provisions of this Act.

(f) The commission is empowered to select and name an administrator, who shall also act as executive secretary, and to select and employ such other subordinate officers and employees as are necessary to administer this Act. The salaries of the administrator and the officers and employees shall be fixed by the commission not to exceed such amounts as are fixed by the applicable general appropriations bill.

The commission may designate a subordinate officer as assistant administrator who shall be authorized to act for the administrator in his absence. A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9c, Vernon's Texas Civil Statutes), may not act as the general counsel to the commission or serve as a member of the commission.

(g) When in this Act a power, right, or duty is conferred on the commission, the power, right, or duty shall be exercised by the administrator or by the assistant administrator, unless the commission directs otherwise by an order entered in the minutes of a commission meeting; and in such case, the power, right, or duty shall rest in or on the commission. Service of process on the administrator or assistant administrator shall be service of process on the commission. Reports, notices, applications, or instruments of any kind required to be filed with the commission shall be considered filed with the commission if filed with the administrator or assistant administrator. A decision, order, or act of the commission referred to in this Act, other than an order of the commission relative to the administrator or his powers, rights, or duties, means and includes an order, decision, or act of the administrator or of the assistant administrator when duly acting for the administrator. Where the commission is authorized in this Act to delegate authority or to designate agents, the administrator, or the assistant administrator when duly acting for the administrator, shall have the right and the power to delegate authority and designate agents, unless the commission shall enter its order in the minutes of a commission meeting directing otherwise. The administrator, or the assistant administrator when duly acting for the administrator, shall act as manager, secretary, and custodian of all records, unless the commission shall otherwise order, and each shall devote his entire time to his office.

(h) The commission shall adopt a seal of a design which it shall prescribe. Copies of all records and papers in the office of the commission, duly certified and authenticated by the seal of the commission, shall be received in evidence in all courts with like effect as the original.

(i) Except as provided in Subsection (j) of this section, all money derived from fees, assessments, or charges under this Act, shall be paid by the commission into the State Treasury for safekeeping, and shall be placed by the State Treasurer in a separate fund to be available for the use of the commission in the administration of this Act on requisition by the commission. A necessary amount of the money so paid into the State Treasury is hereby specifically appropriated to the commission for the purpose of paying the salaries and expenses necessary and prop-

er for the administration of this Act, including equipment and maintenance of supplies for the offices or quarters occupied by the commission, and necessary travel expenses for the commission or persons authorized to act for it when performing duties under this Act. At the end of the state fiscal year, any unused portion of the funds in the special account, except such funds as may be appropriated to administer this Act pending receipt of additional revenues available for that purpose, shall be paid into the General Revenue Fund. The comptroller shall, on requisition of the commission, draw warrants from time to time on the State Treasurer for the amount specified in the requisition, not exceeding, however, the amount in the fund at the time of making a requisition. However, all money expended in the administration of this Act shall be specified and determined by itemized appropriation in the general departmental appropriation bill for the Texas Real Estate Commission, and not otherwise.

(j) Fifteen dollars received by the commission for each annual certification of real estate broker licensure status and \$7.50 received by the commission for each annual certification of real estate salesman licensure status shall be transmitted to Texas A&M University for deposit in a separate banking account. The money in the separate account shall be expended for the support and maintenance of the Texas Real Estate Research Center and for carrying out the purposes, objectives, and duties of the center.

(k) The Texas Real Estate Commission is subject to the Texas Sunset Act¹; and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1991.

(l) The commission is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

¹ Article 5429k.

Licenses; Qualification

Sec. 6. (a) A person desiring to act as a real estate broker in this state shall file an application for a license with the commission on a form prescribed by the commission. A broker desiring to engage a person to participate in real estate brokerage activity shall join the person in filing an application for a salesman license on a form prescribed by the commission.

(b) To be eligible for a license, an individual must be a citizen of the United States or a lawfully admitted alien, be at least 18 years of age, and be a legal resident of Texas for at least 60 days immediately preceding the filing of an application, and must satisfy the commission as to his honesty, trust-

worthiness, integrity, and competency. However, the competency of the individual, for the purpose of qualifying for the granting of licensure privileges, shall be judged solely on the basis of the examination referred to in Section 7 of this Act.

(c) To be eligible for a license, a corporation must designate one of its officers to act for it. The designated person must be a citizen of the United States or a lawfully admitted alien, be at least 18 years of age, and be a resident of Texas for at least 60 days immediately preceding the filing of an application, and must be qualified to be licensed individually as a real estate broker. However, the competency of the person shall be judged solely on the basis of the examination referred to in Section 7 of this Act.

Moral Character Checks

Sec. 6A. (a) If, at any time before a person applies for a license under this Act, the person requests the commission to determine whether his moral character complies with the commission's moral character requirements for licensing under this Act and the person pays a \$10 fee for the moral character determination, the commission shall make its determination of the person's moral character.

(b) Not later than the 30th day after the day on which the commission makes its determination, the commission shall give the person notice of the determination.

(c) If the person later applies for a license under this Act, the commission may conduct a supplemental moral character check of the person. The supplemental check may cover only the time since the day on which the person requested the original moral character determination.

Examinations, Educational Requirements; Evidence of Qualification

Sec. 7. (a) Competency as referred to in Section 6 of this Act shall be established by an examination prepared by or contracted for by the commission. The examination shall be given at such times and at such places within the state as the commission shall prescribe. The examination shall be of scope sufficient in the judgment of the commission to determine that a person is competent to act as a real estate broker or salesman in a manner to protect the interest of the public. The examination for a salesman license shall be less exacting and less stringent than the examination for a broker license. The commission shall furnish each applicant with study material and references on which his examination shall be based. When an applicant for real estate licensure fails a qualifying examination, he may apply for reexamination by filing a request therefor together with the proper fee. The examination requirement shall be satisfied within one year from the date the application for a license is filed.

Courses of study required for licensure shall include but not be limited to the following: arithmetical calculations as used in real estate transactions; rudimentary principles of conveyancing; the general purposes and effect of deeds, deeds of trust, mortgages, land contracts of sales, leases, liens, and listing contracts; elementary principles of land economics and appraisals; fundamentals of obligations between principal and agent; principles of real estate practice and canons of ethics pertaining thereto; and the provisions of this Act and rules and regulations of the commission.

(b) The commission shall waive the examination of an applicant for broker licensure who has, within one year previous to the filing of his application, been licensed in this state as a broker, and shall waive the examination of an applicant for salesman licensure who has, within one year previous to the filing of his application, been licensed in this state as either a broker or salesman.

(c) From and after the effective date of this Act, each applicant for broker licensure shall furnish the commission satisfactory evidence that he has had not less than two years active experience in this state as a licensed real estate salesman practitioner during the 36-month period immediately preceding the filing of the application; and, in addition, prior to January 1, 1977, shall furnish the commission satisfactory evidence that he has successfully completed 180 classroom hours in real estate courses or related courses accepted by the commission. On or after January 1, 1977, an applicant for real estate broker licensure shall submit evidence, satisfactory to the commission, of successful completion at an accredited college or university of 12 semester hours of real estate or related courses accepted by the commission, or of a course of study accepted by the commission as being equivalent to the courses offered by accredited colleges and universities. On or after January 1, 1979, the number of required semester hours shall be increased to 15; on or after January 1, 1981, the number of required semester hours shall be increased to 36; and on or after January 1, 1983, the number of required semester hours shall be increased to 48. On or after January 1, 1985, an applicant for a real estate broker license shall submit evidence, satisfactory to the commission, that he has successfully completed 60 semester hours in real estate or related courses accepted by the commission from an accredited college or university, or that he has completed a course of study accepted by the commission as being equivalent to the courses offered by accredited colleges and universities. The requirement of not less than two years experience as a Texas real estate licensee during the 36-month period immediately preceding the filing of the application for broker licensure shall not apply to applications submitted on or after January 1, 1985. These

qualifications for broker licensure shall not be required of an applicant who, at the time of making the application, is duly licensed as a real estate broker by any other state in the United States if that state's requirements for licensure are comparable to those of Texas.

(d) From and after the effective date of this Act, as a prerequisite for applying for salesman licensure prior to January 1, 1977, each applicant shall furnish the commission satisfactory evidence that he has completed 30 classroom hours in a basic real estate fundamentals course or related course accepted by the commission. As a condition for the second annual certification of salesman licensure privileges, the licensee shall furnish the commission satisfactory evidence that he has successfully completed an additional 30 classroom hours of real estate courses or related courses accepted by the commission, and as a condition for the third annual certification of salesman licensure privileges, the licensee shall furnish the commission satisfactory evidence that he has successfully completed an additional 30 classroom hours of real estate courses or related courses accepted by the commission. On or after January 1, 1977, an applicant for real estate salesman licensure shall submit evidence, satisfactory to the commission, of successful completion at an accredited college or university of six semester hours of real estate courses or related courses accepted by the commission, or of a course of study accepted by the commission as being equivalent to the courses offered by accredited colleges and universities. On or after January 1, 1979, the number of required semester hours shall be increased to 12; on or after January 1, 1981, the number of required semester hours shall be increased to 21; and on or after January 1, 1983, the number of required semester hours shall be increased to 36.

(e) On or after January 1, 1985, the commission shall accept applications for broker licensure only, and each license issued on or after January 1, 1985, shall be designated as a license to practice real estate.

(f) Insofar as is necessary for the administration of this Act, the commission is authorized to inspect and accredit educational programs or courses of study in real estate and to establish standards of accreditation for such programs conducted in the State of Texas, other than accredited colleges and universities. Schools, other than accredited colleges and universities, which are authorized to offer real estate educational courses pursuant to provisions of this section shall be required to maintain a corporate surety bond in the sum of \$10,000 payable to the commission, for the benefit of a party who may suffer damages resulting from failure of a commission approved school or course to fulfill obligations attendant to the approval.

(g) A person who is licensed as a salesman on the effective date of this Act is not subject to the educational requirements or prerequisites of this Act as a condition for holding salesman licensure privileges. A person who is licensed as a broker on the effective date of this Act is not subject to the educational requirements or prerequisites of this Act as a condition for holding broker licensure privileges. A person who is licensed as a real estate salesman on the effective date of this Act may submit an application for broker licensure during the 24-month period immediately following such date if he furnishes evidence satisfactory to the commission that he meets the prerequisites for applying for broker licensure in force and effect on the day prior to the effective date of this Act.

(h) Notwithstanding any other provision of this Act, from and after the effective date of this Act each applicant for broker licensure shall furnish the commission with satisfactory evidence:

(1) that he has satisfied the requirements of Subsection (c) of this section;

(2) that he has satisfied the requirements for broker licensure effective on or after January 1, 1985, as provided by Subsection (c) of this section;

(3) that he is a licensed real estate broker in another state, that he has had not less than two years' active experience in the other state as a licensed real estate salesman or broker during the 36-month period immediately preceding the filing of the application, and that he has satisfied the educational requirements for broker licensure as provided by Subsection (c) of this section; or

(4) that he has, within one year previous to the filing of his application, been licensed in this state as a broker.

(i) Notwithstanding any other provision of this Act, the commission shall waive the requirements of Subsection (d) of Section 7 of this Act for an applicant for salesman licensure who has, within one year previous to the filing of his application, been licensed in this state as a broker or salesman. However, with respect to an applicant for salesman licensure who was licensed as a salesman within one year previous to the filing of the application but whose original licensure privileges were issued under the provisions that second and third annual certification of the licensure privileges would be conditioned upon furnishing satisfactory evidence of successful completion of additional education, the commission shall require the applicant to furnish satisfactory evidence of successful completion of any additional education that would have been required if the licensure privileges had been maintained without interruption during the previous year.

(j) Not later than the 30th day after the day on which a person completes an examination adminis-

tered by the commission, the commission shall send to the person his or her examination results. If requested in writing by a person who fails the examination, the commission shall send to the person not later than the 30th day after the day on which the request is received by the commission an analysis of the person's performance on the examination.

(k) All applicants for licensure must complete at least three classroom hours of coursework on federal, state, and local laws governing housing discrimination, housing credit discrimination, and community reinvestment or at least three semester hours of coursework on constitutional law.

Real Estate Recovery Fund

Sec. 8. Part 1. (a) The commission shall establish a real estate recovery fund which shall be set apart and maintained by the commission as provided in this section. The fund shall be used in the manner provided in this section for reimbursing aggrieved persons who suffer monetary damages by reason of certain acts committed by a duly licensed real estate broker or salesman, or by an unlicensed employee or agent of a broker or salesman, provided the broker or salesman was licensed by the State of Texas at the time the act was committed, provided the act was performed in the scope of activity which constitutes a broker or salesman as defined by this Act, and provided recovery is ordered by a court of competent jurisdiction against the broker or salesman. The use of the fund as provided in Part 1 of this section is limited to an act that is either:

(1) a violation of Section 15(3) and (4) of this Act, or

(2) conduct which constitutes fraud, misrepresentation, deceit, false pretenses, or trickery.

(b) On the effective date of this Act, the commission shall collect from each real estate broker and salesman licensed by this state a fee of \$10 which shall be deposited in the real estate recovery fund. The commission shall suspend a license issued under the provisions of this Act for failure to pay this fee. After the effective date of this Act, when a person makes application for an original license pursuant to this Act he shall pay, in addition to his original license application fee, a fee of \$10 which shall be deposited in the real estate recovery fund. If the commission does not issue the license, this fee shall be returned to the applicant.

Part 2. If on December 31 of any year the balance remaining in the real estate recovery fund is less than \$300,000, each real estate broker and each real estate salesman, on recertification of his license during the following calendar year, shall pay, in addition to his license recertification fee, a fee of \$10, which shall be deposited in the real estate recovery fund, or a pro rata share of the amount

necessary to bring the fund to \$1 million, whichever is less.

Part 3. (a) No action for a judgment which subsequently results in an order for collection from the real estate recovery fund shall be started later than two years from the accrual of the cause of action. When an aggrieved person commences action for a judgment which may result in collection from the real estate recovery fund, the real estate broker or real estate salesman shall notify the commission in writing to this effect at the time of the commencement of the action.

(b) When an aggrieved person recovers a valid judgment in a court of competent jurisdiction against a real estate broker, or real estate salesman, on the grounds described in Part 1(a) of this section that occurred on or after the effective date of this Act, the aggrieved person may, after final judgment has been entered, execution returned nulla bona, and a judgment lien perfected, file a verified claim in the court in which the judgment was entered and, on 20 days' written notice to the commission, may apply to the court for an order directing payment out of the real estate recovery fund of the amount unpaid on the judgment, subject to the limitations stated in Part 8 of this section.

(c) The court shall proceed on the application forthwith. On the hearing on the application, the aggrieved person is required to show that:

(1) the judgment is based on facts allowing recovery under Part 1(a) of this section;

(2) he is not a spouse of the debtor, or the personal representative of the spouse;

(3) he has obtained a judgment as set out in Part 3(b) of this section, stating the amount of the judgment and the amount owing on the judgment at the date of the application;

(4) the judgment debtor lacks sufficient attachable assets to satisfy the judgment; and

(5) the amount that may be realized from the sale of real or personal property or other assets liable to be sold or applied in satisfaction of the judgment and the balance remaining due on the judgment after application of the amount that may be realized.

(d) The court shall make an order directed to the commission requiring payment from the real estate recovery fund of whatever sum it finds to be payable on the claim, pursuant to and in accordance with the limitations contained in this section, if the court is satisfied, on the hearing, of the truth of all matters required to be shown by the aggrieved person by Part 3(c) of this section and that the aggrieved person has satisfied all of the requirements of Parts 3(b) and (c) of this section.

(e) If the commission pays from the real estate recovery fund any amount toward satisfaction of a judgment against a licensed real estate broker or real estate salesman, the license of the broker or salesman shall be automatically revoked on the issuance of a court order authorizing payment from the real estate recovery fund. No broker or salesman is eligible to receive a new license until he has repaid in full, plus interest at the current legal rate, the amount paid from the real estate recovery fund on his account. A discharge in bankruptcy shall not relieve a person from the penalties and disabilities provided in this Act.

Part 4. The sums received by the real estate commission for deposit in the real estate recovery fund shall be held by the commission in trust for carrying out the purposes of the real estate recovery fund. These funds may be invested and reinvested in the same manner as funds of the Texas State Employees Retirement System, and the interest from these investments shall be deposited to the credit of the real estate recovery fund, provided, however, that no investments shall be made which will impair the necessary liquidity required to satisfy judgment payments awarded pursuant to this section.

Part 5. When the real estate commission receives notice of entry of a final judgment and a hearing is scheduled under Part 3(d) of this section, the commission may notify the Attorney General of Texas of its desire to enter an appearance, file a response, appear at the court hearing, defend the action, or take whatever other action it deems appropriate on behalf of, and in the name of, the defendant, and take recourse through any appropriate method of review on behalf of, and in the name of, the defendant. In taking such action the real estate commission and attorney general shall act only to protect the fund from spurious or unjust claims.

Part 6. When, on the order of the court, the commission has paid from the real estate recovery fund any sum to the judgment creditor, the commission shall be subrogated to all of the rights of the judgment creditor to the extent of the amount paid. The judgment creditor shall assign all his right, title, and interest in the judgment up to the amount paid by the commission which amount shall have priority for repayment in the event of any subsequent recovery on the judgment. Any amount and interest recovered by the commission on the judgment shall be deposited to the fund.

Part 7. The failure of an aggrieved person to comply with the provisions of this section relating to the real estate recovery fund shall constitute a waiver of any rights under this section.

Part 8. (a) Notwithstanding any other provision, payments from the real estate recovery fund are

subject to the conditions and limitations in Subsections (b) through (d) of this part.

(b) Payments may be made only pursuant to an order of a court of competent jurisdiction, as provided in Part 3, and in the manner prescribed by this section.

(c) Payments for claims, including attorneys' fees, interest, and court costs, arising out of the same transaction shall be limited in the aggregate to \$20,000 regardless of the number of claimants.

(d) Payments for claims based on judgments against any one licensed real estate broker or salesman may not exceed in the aggregate \$50,000, until the fund has been reimbursed by the licensee for all amounts paid.

Part 9. Nothing contained in this section shall limit the authority of the commission to take disciplinary action against a licensee for a violation of this Act or the rules and regulations of the commission; nor shall the repayment in full of all obligations to the real estate recovery fund by a licensee nullify or modify the effect of any other disciplinary proceeding brought pursuant to this Act.

Part 10. Any person receiving payment out of the real estate recovery fund pursuant to Section 8 of this Act shall be entitled to receive reasonable attorney fees as determined by the court, subject to the limitations stated in Part 8 of this section.

**Issuance of License; Annual Certification Fees;
Expiration Dates**

Sec. 9. (a) When an applicant has satisfactorily met all requirements and conditions of this Act, a license shall be issued which may remain in force and effect so long as the holder of the license remains in compliance with the obligations of this Act, which include payment of the annual certification fee as provided in Section 11 of this Act. Annual certification fees shall be paid in September, October, and November of each calendar year. Each salesman license issued shall be delivered or mailed to the broker with whom the salesman is associated and shall be kept under his custody and control.

(b) An applicant is not permitted to engage in the real estate business either as a broker or salesman until a license evidencing his authority to engage in the real estate business has been received.

(c) The commission by rule may adopt a system under which licenses expire on various dates during the year. Dates for payment of the annual certification fee shall be adjusted accordingly. For the year in which the certification date is changed, annual certification fees payable shall be prorated on a monthly basis so each licensee shall pay only that portion of the license fee which is allocable to the number of months during which the license is valid.

On certification of the license on the new certification date, the total annual certification fee is payable.

Refusal to Issue License; Review

Sec. 10. If the commission declines or fails to license an applicant, it shall immediately give written notice of the refusal to the applicant. Before the applicant may appeal to a district court as provided in Section 18 of this Act, he must file within 10 days after the receipt of the notice an appeal from the ruling, requesting a time and place for a hearing before the commission. The commission shall set a time and place for the hearing within 30 days from the receipt of the appeal, giving 10 days' notice of the hearing to the applicant. The time of the hearing may be continued from time to time with the consent of the applicant. Following the hearing, the commission shall enter an order which is, in its opinion, appropriate in the matter concerned.

If an applicant fails to request a hearing as provided in this section, the commission's ruling shall become final and not subject to review by the courts.

Fees

Sec. 11. The commission shall charge and collect the following fees:

(1) a fee not to exceed \$40 for the filing of an original application for real estate broker licensure;

(2) a fee not to exceed \$40 for annual certification of real estate broker licensure status;

(3) a fee not to exceed \$20 for the filing of an original application for salesman licensure;

(4) a fee not to exceed \$20 for annual certification of real estate salesman licensure status;

(5) a fee not to exceed \$10 for taking a license examination;

(6) a fee not to exceed \$10 for filing a request for a license for each additional office or place of business;

(7) a fee not to exceed \$10 for filing a request for a license for a change of place of business or change of sponsoring broker;

(8) a fee not to exceed \$10 for filing a request to replace a license lost or destroyed;

(9) a fee not to exceed \$400 for filing an application for approval of a real estate course pursuant to the provisions of Subsection (f) of Section 7 of this Act; and

(10) a fee not to exceed \$200 per annum for and in each year of operation of a real estate course, established pursuant to the provisions of Subsection (f) of Section 7 of this Act.

Maintenance and Location of Offices; Display of License

Sec. 12. (a) Each resident broker shall maintain a fixed office within this state. The address of the office shall be designated on the broker's license. Within 10 days after a move from a previously designated address, the broker shall submit applications for new licenses for himself and each salesman associated with him, designating the new location of his office, together with the required fee, or fees, whereupon the commission shall issue a license, or licenses, reflecting the new location, provided the new location complies with the terms of this section.

(b) If a broker maintains more than one place of business within this state, he shall apply for, pay the required fee for, and obtain an additional license to be known as a branch office license for each additional office he maintains.

(c) The license or licenses of the broker shall at all times be prominently displayed in the licensee's place or places of business.

(d) Each broker shall also prominently display in his place or in one of his places of business the license of each real estate salesman associated with him.

Inactive Licenses

Sec. 13. (a) When the association of a salesman with his sponsoring broker is terminated, the broker shall immediately return the salesman license to the commission. The salesman license then becomes inactive.

(b) The salesman license may be activated if, within the calendar year, a request, accompanied by the required fee, is filed with the commission by a licensed broker advising that he assumes sponsorship of the salesman.

Unlawful Employment or Compensation; Nonresident License

Sec. 14. (a) It is unlawful for a licensed broker to employ or compensate directly or indirectly a person for performing an act enumerated in the definition of real estate broker in Section 2 of this Act if the person is not a licensed broker or licensed salesman in this state or an attorney at law licensed in this state or in any other state. However, a licensed broker may pay a commission to a licensed broker of another state if the foreign broker does not conduct in this state any of the negotiations for which the fee, compensation, or commission is paid.

(b) A resident broker of another state who furnishes the evidence required in Subsection (h) of Section 7 of this Act may apply for a license as a broker in this state. A nonresident licensee need not maintain a place of business in this state. The commission may in its discretion refuse to issue a broker license to an applicant who is not a resident of this state for the same reasons that it may refuse to license a resident of this state.

(c) Each nonresident applicant shall file an irrevocable consent that legal actions may be commenced against him in the proper court of any county of this state in which a cause of action may arise, or in which the plaintiff may reside, by service of process or pleading authorized by the laws of this state, or by serving the administrator or assistant administrator of the commission. The consent shall stipulate that the service of process or pleading shall be valid and binding in all courts as if personal service had been made on the nonresident broker in this state. The consent shall be duly acknowledged, and if made by a corporation, shall be authenticated by its seal. A service of process or pleading served on the commission shall be by duplicate copies, one of which shall be filed in the office of the commission and the other forwarded by registered mail to the last known principal address which the commission has for the nonresident broker against whom the process or pleading is directed. No default in an action may be taken except on certification by the commission that a copy of the process or pleading was mailed to the defendant as provided in this section, and no default judgment may be taken in an action or proceeding until 20 days after the day of mailing of the process or pleading to the defendant.

Notwithstanding any other provision of this subsection, a nonresident of this state who resides in a city whose boundaries are contiguous at any point to the boundaries of a city of this state, and who has been an actual bona fide resident of that city for at least 60 days immediately preceding the filing of his application, is eligible to be licensed as a real estate broker or salesman under this Act in the same manner as a resident of this state. If he is licensed in this manner, he shall at all times maintain a place of business either in the city in which he resides or in the city in this state which is contiguous to the city in which he resides, and he may not maintain a place of business at another location in this state unless he also complies with the requirements of Section 14(b) of this Act. The place of business must satisfy the requirements of Subsection (a) of Section 12 of this Act, but the place of business shall be deemed a definite place of business in this state within the meaning of Subsection (a) of Section 12.

Investigations; Suspension or Revocation of License; Civil or Criminal Liability

Sec. 15. The commission may, on its own motion, and shall, on the verified complaint in writing of any person, provided the complaint, or the complaint together with evidence, documentary or otherwise, presented in connection with the complaint, provides reasonable cause, investigate the actions and records of a real estate broker or real estate salesman. The commission may suspend or revoke a license issued under the provisions of this Act at any time when it has been determined that:

(1)(A) the licensee has entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony, in which fraud is an essential element, and the time for appeal has elapsed or the judgment or conviction has been affirmed on appeal, irrespective of an order granting probation following such conviction, suspending the imposition of sentence; or

(B) a final money judgment has been rendered against the licensee resulting from contractual obligations of the licensee incurred in the pursuit of his business, and such judgment remains unsatisfied for a period of more than six months after becoming final; or

(2) the licensee has procured, or attempted to procure, a real estate license, for himself or a salesman, by fraud, misrepresentation or deceit, or by making a material misstatement of fact in an application for a real estate license; or

(3) the licensee, when selling, trading, or renting real property in his own name, engaged in misrepresentation or dishonest or fraudulent action; or

(4) the licensee, while performing an act constituting a broker or salesman, as defined by this Act, has been guilty of:

(A) making a material misrepresentation, or failing to disclose to a potential purchaser any latent structural defect or any other defect known to the broker or salesman. Latent structural defects and other defects do not refer to trivial or insignificant defects but refer to those defects that would be a significant factor to a reasonable and prudent purchaser in making a decision to purchase; or

(B) making a false promise of a character likely to influence, persuade, or induce any person to enter into a contract or agreement when the licensee could not or did not intend to keep such promise; or

(C) pursuing a continued and flagrant course of misrepresentation or making of false promises through agents, salesmen, advertising, or otherwise; or

(D) failing to make clear, to all parties to a transaction, which party he is acting for, or receiving compensation from more than one party except with the full knowledge and consent of all parties; or

(E) failing within a reasonable time properly to account for or remit money coming into his possession which belongs to others, or commingling money belonging to others with his own funds; or

(F) paying a commission or fees to or dividing a commission or fees with anyone not licensed as a real estate broker or salesman in this state or

in any other state, or not an attorney at law licensed in this state or any other state, for compensation for services as a real estate agent; or

(G) failing to specify in a listing contract a definite termination date which is not subject to prior notice; or

(H) accepting, receiving, or charging an undisclosed commission, rebate, or direct profit on expenditures made for a principal; or

(I) soliciting, selling, or offering for sale real property under a scheme or program that constitutes a lottery or deceptive practice; or

(J) acting in the dual capacity of broker and undisclosed principal in a transaction; or

(K) guaranteeing, authorizing, or permitting a person to guarantee that future profits will result from a resale of real property; or

(L) placing a sign on real property offering it for sale, lease, or rent without the written consent of the owner or his authorized agent; or

(M) inducing or attempting to induce a party to a contract of sale or lease to break the contract for the purpose of substituting in lieu thereof a new contract; or

(N) negotiating or attempting to negotiate the sale, exchange, lease, or rental of real property with an owner or lessor, knowing that the owner or lessor had a written outstanding contract, granting exclusive agency in connection with the property to another real estate broker; or

(O) offering real property for sale or for lease without the knowledge and consent of the owner or his authorized agent, or on terms other than those authorized by the owner or his authorized agent; or

(P) publishing, or causing to be published, an advertisement including, but not limited to, advertising by newspaper, radio, television, or display which is misleading, or which is likely to deceive the public, or which in any manner tends to create a misleading impression, or which fails to identify the person causing the advertisement to be published as a licensed real estate broker or agent; or

(Q) having knowingly withheld from or inserted in a statement of account or invoice, a statement that made it inaccurate in a material particular; or

(R) publishing or circulating an unjustified or unwarranted threat of legal proceedings, or other action; or

(S) establishing an association, by employment or otherwise, with an unlicensed person who is expected or required to act as a real

estate licensee, or aiding or abetting or conspiring with a person to circumvent the requirements of this Act; or

(T) failing or refusing on demand to furnish copies of a document pertaining to a transaction dealing with real estate to a person whose signature is affixed to the document; or

(U) failing to advise a purchaser in writing before the closing of a transaction that the purchaser should either have the abstract covering the real estate which is the subject of the contract examined by an attorney of the purchaser's own selection, or be furnished with or obtain a policy of title insurance; or

(V) conduct which constitutes dishonest dealings, bad faith, or untrustworthiness; or

(W) acting negligently or incompetently in performing an act for which a person is required to hold a real estate license; or

(X) disregarding or violating a provision of this Act; or

(Y) failing within a reasonable time to deposit money received as escrow agent in a real estate transaction, either in trust with a title company authorized to do business in this state, or in a custodial, trust, or escrow account maintained for that purpose in a banking institution authorized to do business in this state; or

(Z) disbursing money deposited in a custodial, trust, or escrow account, as provided in Subsection (Y) before the transaction concerned has been consummated or finally otherwise terminated; or

(AA) failing or refusing on demand to produce a document, book, or record in his possession concerning a real estate transaction conducted by him for inspection by the Real Estate Commission or its authorized personnel or representative; or

(BB) failing within a reasonable time to provide information requested by the commission as a result of a formal or informal complaint to the commission which would indicate a violation of this Act; or

(CC) failing without just cause to surrender to the rightful owner, on demand, a document or instrument coming into his possession; or

(DD) discriminating against an owner, potential purchaser, lessor, or potential lessee on the basis of race, color, religion, sex, national origin, or ancestry. Prohibited discrimination shall include but not be limited to directing prospective home buyers or lessees interested in equivalent properties to different areas according to the race, color, religion, sex, national origin, or ancestry of the potential owner or lessee.

The provisions of this section do not relieve a person from civil liability or from criminal prosecution under this Act or under the laws of this state.

Issuance of License After Revocation Prohibited for One Year

Sec. 15A. If the commission revokes a person's license issued under this Act, the commission may not issue another license to the person for one year after the revocation.

Unauthorized Practice of Law

Sec. 16. A license granted under the provisions of this Act shall be suspended or revoked by the commission on proof that the licensee, not being licensed and authorized to practice law in this state, for a consideration, reward, pecuniary benefit, present or anticipated, direct or indirect, or in connection with or as a part of his employment, agency, or fiduciary relationship as a licensee, drew a deed, note, deed of trust, will, or other written instrument that may transfer or anyway affect the title to or an interest in land, or advised or counseled a person as to the validity or legal sufficiency of an instrument or as to the validity of title to real estate.

Hearings

Sec. 17. (a) Before a license is suspended or revoked, the licensee is entitled to a public hearing. The commission shall prescribe the time and place of the hearing. However, the hearing shall be held, if the licensee so desires, within the county where the licensee has his principal place of business, or if the licensee is a nonresident, the hearing may be called for and held in any county within this state. The notice calling the hearing shall recite the allegations against the licensee and the notice may be served personally or by mailing it by certified mail to the licensee's last known business address, as reflected by the commission's records, at least 10 days prior to the date set for the hearing. In the hearing, all witnesses shall be duly sworn and stenographic notes of the proceedings shall be taken and filed as a part of the records in the case. A party to the proceeding desiring it shall be furnished with a copy of the stenographic notes on the payment to the commission of a fee of \$1.50 per page plus applicable sales tax and postage. After a hearing, the commission shall enter an order based on its findings of fact adduced from the evidence presented.

(b) The commission may issue subpoenas for the attendance of witnesses and the production of records or documents. The process issued by the commission may extend to all parts of the state, and the process may be served by any person designated by the commission. The person serving the process shall receive compensation to be allowed by the commission, not to exceed the fee prescribed by law for similar services. A witness subpoenaed who

appears in a proceeding before the commission shall receive the same fees and mileage allowances as allowed by law, and the fees and allowances shall be taxed as part of the cost of the proceedings.

(c) If, in a proceeding before the commission, a witness fails or refuses to attend on subpoena issued by the commission, or refuses to testify, or refuses to produce a record or document, the production of which is called for by the subpoena, the attendance of the witness and the giving of his testimony and the production of the documents and records shall be enforced by a court of competent jurisdiction of this state in the same manner as the attendance, testimony of witnesses, and production of records are enforced in civil cases in the courts of this state.

(d) If a hearing relating to the denial, suspension, or revocation of a license under this Act is conducted by the administrator or assistant administrator, the applicant for the license or the licensee who is adversely affected by the decision of the administrator or assistant administrator is entitled to request a rehearing by the commission itself on making a timely motion for the rehearing.

Judicial Review

Sec. 18. (a) A person aggrieved by a ruling, order, or decision of the commission has the right to appeal to a district court in the county where the hearing was held within 30 days from the service of notice of the action of the commission.

(b) The appeal having been properly filed, the court may request of the commission, and the commission on receiving the request shall within 30 days prepare and transmit to the court, a certified copy of its entire record in the matter in which the appeal has been taken. The appeal shall be tried in accordance with Texas Rules of Civil Procedure.

(c) In the event an appeal is taken by a licensee or applicant, the appeal does not act as a supersedeas unless the court so directs, and the court shall dispose of the appeal and enter its decision promptly.

(d) If an aggrieved person fails to perfect an appeal as provided in this section, the commission's ruling becomes final.

Contents of Listing Contract Forms

Sec. 18A. (a) Any listing contract form adopted by the commission relating to the contractual obligations between a seller of real estate and a real estate broker or salesman acting as an agent for the seller shall include a section that informs the parties to the contract that real estate commissions are negotiable.

(b) When appropriate to the form, it shall include a section explaining the availability of Texas coastal natural hazards information important to coastal residents.

Information Given to Complainants and Subjects of Complaints

Sec. 18B. (a) If a person files a complaint with the commission relating to a real estate broker or salesman, the commission shall furnish to the person an explanation of the remedies that are available to the person under this Act and information about appropriate state or local agencies or officials with which the person may file a complaint. The commission shall furnish the same explanation and information to the person against whom the complaint is filed.

(b) The commission shall keep an information file about each complaint filed with the commission.

(c) If a written complaint is filed with the commission relating to a real estate broker or salesman, the commission, at least as frequently as quarterly and until the complaint is finally resolved, shall inform the complainant and the person against whom the complaint is filed of the status of the complaint.

Penalties; Injunctions

Sec. 19. (a) A person acting as a real estate broker or real estate salesman without first obtaining a license is guilty of a misdemeanor and on conviction shall be punishable by a fine of not less than \$100 nor more than \$500, or by imprisonment in the county jail for a term not to exceed one year, or both; and if a corporation, shall be punishable by a fine of not less than \$1,000 nor more than \$2,000. A person, on conviction of a second or subsequent offense, shall be punishable by a fine of not less than \$500 nor more than \$1,000, or by imprisonment for a term not to exceed two years, or both; and if a corporation, shall be punishable by a fine of not less than \$2,000 nor more than \$5,000.

(b) In case a person received money, or the equivalent thereof, as a fee, commission, compensation, or profit by or in consequence of a violation of Subsection (a) of this section, he shall, in addition, be liable to a penalty of not less than the amount of the sum of money so received and not more than three times the sum so received, as may be determined by the court, which penalty may be recovered in a court of competent jurisdiction by an aggrieved person.

(c) When in the judgment of the commission a person has engaged, or is about to engage, in an act or practice which constitutes or will constitute a violation of a provision of this Act, the county attorney or district attorney in the county in which the violation has occurred or is about to occur, or in the county of the defendant's residence, or the attorney general may maintain an action in the name of the State of Texas in the district court of such county to abate and temporarily and permanently enjoin the acts and practices and to enforce compliance with this Act. The plaintiff in an action under this

subsection is not required to give a bond, and court costs may not be adjudged against the plaintiff.

Actions for Compensation or Commission; Abstracts or Title Insurance

Sec. 20. (a) A person may not bring or maintain an action for the collection of compensation for the performance in this state of an act set forth in Section 2 of this Act without alleging and proving that the person performing the brokerage services was a duly licensed real estate broker or salesman at the time the alleged services were commenced, or was a duly licensed attorney at law in this state or in any other state.

(b) An action may not be brought in a court in this state for the recovery of a commission for the sale or purchase of real estate unless the promise or agreement on which the action is brought, or some memorandum thereof, is in writing and signed by the party to be charged or signed by a person lawfully authorized by him to sign it.

(c) When an offer to purchase real estate in this state is signed, the real estate broker or salesman shall advise the purchaser or purchasers, in writing, that the purchaser or purchasers should have the abstract covering the real estate which is the subject of the contract examined by an attorney of the purchaser's own selection, or that the purchaser or purchasers should be furnished with or obtain a policy of title insurance. Failure to advise the purchaser as provided in this subsection precludes the payment of or recovery of any commission agreed to be paid on the sale.

[Amended by Acts 1975, 64th Leg., p. 533, ch. 216, § 1, eff. May 19, 1975; Acts 1977, 65th Leg., p. 1833, ch. 735, § 2.009, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 871, ch. 396, § 1, eff. Sept. 1, 1979; Acts 1979, 66th Leg., p. 1203, ch. 585, §§ 1 to 13, eff. Sept. 1, 1979.]

Art. 6573b. Residential Service Company Act

Text as added by Acts 1979, 66th Leg., p. 1812, ch. 739, § 1

Short Title

Sec. 1. This Act constitutes and shall be known as the Residential Service Company Act.

Statutory Construction in Relationship to Other Laws

Sec. 2. (a) Except as otherwise provided in this Act, provisions of the insurance laws of this state shall not be applicable to any service company granted a license under this Act. This provision shall not apply to an insurance company licensed and regulated pursuant to the insurance laws of this state.

(b) Nothing in this Act shall apply to "home warranty insurance" as defined in Section 2, Article 5.53-A of the Insurance Code.

(c) The provisions of this Act shall not be applicable to any person who sells, offers for sale or issues any service or maintenance contract or agreement which provides for the maintenance, repair, service, replacement, operation, or performance of any product or part thereof manufactured or sold by such seller, offeror, or issuer, and no such person, its employees or agents shall be required to be licensed or regulated under this Act.

(d) Notwithstanding any other exemptions or provisions contained in this Act, this Act may not be construed to exempt any other warranties or service contracts other than residential service contracts defined herein from the provisions of the Insurance Code.

Delegation of Authority

Sec. 3. When in this Act a power, right, or duty is conferred on the Texas Real Estate Commission, the commission may direct such power, right, or duty to be exercised by the administrator or the assistant administrator of the commission.

Definitions

Sec. 4. (a) "Residential service contract" means any contract or agreement whereby, for a fee, a person undertakes, for a specified period of time, to maintain, repair, or replace all or any part of the structural components, the appliances, or the electrical, plumbing, heating, cooling, or air-conditioning systems of residential property; provided, however, the term does not mean nor include any service or maintenance contract or agreement sold, offered for sale, or issued by any manufacturer or merchant in which such contract or agreement the manufacturer or merchant undertakes, for a fee and for a specified period of time, to service, maintain, repair, or replace any product or part thereof, including but not limited to the structural components, the appliances, or the electrical, plumbing, heating, cooling, or air-conditioning systems of residential property, manufactured or sold by such manufacturer or merchant, or installed by such merchant in any building or residence.

(b) "Service company" means any person who issues and performs, or arranges to perform, services pursuant to a residential service contract.

(c) "Licensed service company" means a service company which is licensed by the Texas Real Estate Commission as provided herein.

(d) "Person" means any individual, partnership, corporation, association, or other organization.

(e) "Commission" means the Texas Real Estate Commission.

(f) "Holder" or "contract holder" means any person entitled to receive services from a service company pursuant to a residential service contract.

Powers of the Commission

Sec. 5. The commission shall administer this Act and, to that end, may adopt, promulgate, and enforce rules and regulations necessary to effectuate the intent and provisions of this Act.

License Required

Sec. 6. (a) No person shall issue, or undertake or arrange to perform services pursuant to residential service contracts unless such person is a licensed service company or its authorized representative.

(b) No person shall sell, offer to sell, arrange or solicit the sale of, or receive applications for, residential service contracts, unless (a) such person is an employee of a licensed service company or is duly licensed as a real estate salesman, real estate broker, mobile home dealer, or insurance agent in this state, and (b) such residential service contracts are issued by a licensed service company.

(c) Notwithstanding any law of this state to the contrary, any person may apply to the commission for and obtain a license to offer residential service contracts in compliance with this Act. A foreign corporation may qualify under this Act, subject to its registration to do business in this state as a foreign corporation under the Texas Business Corporation Act and compliance with all provisions of this Act and other applicable Texas statutes.

(d) Within 90 days of the effective date of this Act, every service company doing business in this state shall submit an application for a license. The commission shall either approve or deny the application within six months. The applicant may continue to operate until its application is denied. In the event that an application is denied, the applicant shall henceforth be treated as a service company whose license has been revoked.

Application for License

Sec. 7. (a) Each application for a license shall be on a form prescribed by rule of the commission and shall be verified by the applicant, an officer, or other authorized representative of the applicant, and shall set forth or be accompanied by the following:

(1) a copy of the basic organizational document, if any, of the applicant, such as the articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents and all amendments thereto;

(2) a copy of the bylaws, rules, and regulations, or similar document, if any, regulating the conduct of the internal affairs of the applicant;

(3) a list of the names, addresses, and official positions of the persons who are to be responsible for the conduct of the affairs of the applicant, including all members of the board of directors, board of trustees, executive committee, or other

governing body or committee, the principal officer in the case of a corporation, and the partners or members in the case of a partnership or association;

(4) a copy of the residential service contract made or to be made between the applicant and any other person;

(5) a statement generally describing the residential service contract, its coverage or plan;

(6) a financial statement prepared by an independent certified public accountant within six months prior to submission of application showing the applicant's assets, liabilities, and sources of financial support. The commission may direct that additional or more recent financial information is required for proper administration of this Act;

(7) a description of the proposed method of marketing the contracts and a statement as to the sources of working capital, as well as any other sources of funding;

(8) a power of attorney duly executed by such applicant, if not domiciled in this state, appointing the administrator of the commission and his successors in office, or a duly authorized deputy, as the true and lawful attorney of such applicant in and for the state upon whom all lawful processes in any legal action or proceedings against the applicant or its agents on a cause of action arising in this state may be served;

(9) a license application fee not to exceed \$3,500 as determined by the commission; and

(10) such other information as the commission may require to make the determinations required by this Act.

(b) A service company shall file notice with the commission prior to any modification of the operations or documents described in Subsection (a) of this section.

(c) As soon as reasonably possible after the application has been submitted, the commission shall in writing approve or disapprove same. An application shall be considered approved unless disapproved within 30 days; provided that the commission may by official order postpone the action for such further time, not exceeding 30 days, as may be considered necessary for proper consideration.

Issuance of License

Sec. 8. (a) Upon receipt of an application in approved form as provided in Section 7, the commission shall determine whether the applicant, with respect to the services to be provided, has demonstrated the potential ability to assure that such services will be provided in a timely and responsible manner.

(b) The commission shall, after notice and hearing, issue or deny a license to any person filing an

application pursuant to Section 7 of this Act within 75 days of the receipt of same.

(c) Issuance of the license shall be granted if the commission determines:

(1) that the applicant has demonstrated the potential ability to assure that the services will be provided in a timely and responsible manner;

(2) that the person responsible for the conduct of the affairs of the applicant is competent, trustworthy, and possesses a good reputation;

(3) that the applicant may reasonably be expected to meet its obligations pursuant to its residential service contract. In making this determination, the commission shall consider:

(i) the financial soundness of the applicant;

(ii) any agreement between applicant and any other party which provides for the provision of the services required in the residential service contract; and

(iii) any other matters which the commission deems relevant; and

(4) that the applicant has complied with or will comply with each of the provisions of this Act.

(d) If the commission determines that a license shall not be granted, the commission shall notify the applicant that it is deficient, and shall specify in writing in what respects it is deficient.

(e) A license shall continue in force as long as the person to whom it is issued meets the requirements of this Act or until suspended or revoked by the commission or terminated at the request of the licensee.

Protection Against Insolvency

Sec. 9. (a) A residential service company shall maintain a funded reserve for its liability to furnish repairs and replacement services under its issued and outstanding contracts. Such reserve shall be calculated according to sound actuarial principles. Such reserve shall not be required to be greater than 40 percent of annualized contract fees received in this state, less any amounts theretofore paid on account of such liability.

(b) For purposes of this article, such reserve shall not include contract fees on home service contracts to the extent that provision is made for reinsurance in an admitted insurer and/or a surplus line insurer and/or a surplus line bonding company or residential service company of the outstanding risk on such contracts; provided however that the issuer of such reinsurance has submitted to the commission for its approval evidence, by certified audit and other pertinent information it may require, of its ability to cover its contractual obligations.

(c) Each service company shall furnish a surety bond in the amount of \$100,000 as a guarantee that

the obligation of the service company to the persons contracting for its services shall be performed.

Annual Report

Sec. 10. (a) Each service company shall annually, on or before the 1st day of April, file a report, verified by at least two principal officers, with the commission covering the preceding calendar year.

(b) Such report shall be on forms prescribed by the commission and shall include:

(1) a financial statement of the service company, including its balance sheet and receipts and disbursements for the preceding year, certified by an independent public accountant;

(2) any material changes in the information submitted pursuant to Section 7;

(3) the number of residential service contracts entered into during the year, the number of holders of contracts as of the end of the year, and the number of contracts terminating during the year; and

(4) such other information relating to the performance and solvency of the service company as is necessary to enable the commission to carry out its duties under this Act and such information shall be, to the extent legally permissible, confidential in nature and solely for the use of the commission.

Prohibited Practices

Sec. 11. (a) No service company may cause or permit the use of advertising which is untrue or misleading, solicitation which is untrue or misleading, or any form of evidence of coverage which is deceptive.

(b) No service company, unless licensed as an insurer, may use in its name, contracts, or literature, any of the words "insurance," "casualty," "surety," "mutual," or any other words descriptive of the insurance, casualty, or surety business or deceptively similar to the name or description of any insurance or surety corporation, or any other service company doing business in this state.

(c) Only those persons who comply with the provisions of this Act and are issued a license by the commission as provided herein may use the phrase "residential service company" in the course of operation.

(d) No provisions of this Act shall be construed to exempt a residential service company from liability for the actions of its agents or representatives relevant to the conduct of that company's business as provided by the common law or statutory law of this state.

(e) No seller or his agent shall make purchase of a residential service contract a condition of sale, and

seller or his agent shall furnish buyer a statement that shall clearly and conspicuously state that purchase is optional and buyer may purchase similar coverage through other residential service companies or insurance companies authorized to transact business in Texas.

(f) No residential service company or its agent shall without the written consent of the homeowner, lessor, or renter knowingly charge a homeowner, lessor, or renter for duplication of coverage or duties required by state or federal law, including coverage under Section 14 of the Texas Mobile Home Standards Act (Article 5221f, Vernon's Texas Civil Statutes), a warranty expressly issued by a manufacturer or seller of a product, or any implied warranty enforceable against lessor, seller, or manufacturer of a product.

Rebates or Commissions

Sec. 12. No service company shall pay to any person which is acting as the agent, representative, attorney, or employee of the owner or prospective owner of residential property with respect to which a residential service contract is issued or is to be issued, any commission or any other consideration, either directly or indirectly, as an inducement or compensation for the issuance, purchase, or acquisition of a residential service contract, provided, however, that a service company may make reasonable payment for the sale, advertising, inspection, or processing of residential service contracts.

Examinations

Sec. 13. (a) The commission may make an examination of the affairs of any service company as it is deemed necessary.

(b) Every service company shall make its books and records relating to its operation available for such examinations and in every way facilitate the examinations.

(c) For the purpose of examinations, the commission may administer oaths to and examine the officers and agents of the service company.

Hazardous Financial Condition

Sec. 14. (a) Whenever the financial condition of a service company indicates a condition such that the continued operation of the service company might be hazardous to its service contract holders, creditors, or the general public, then the commission may, after notice of hearing, order the service company to take such action as may be reasonably necessary to rectify the existing condition, including but not necessarily limited to one or more of the following steps:

(1) to reduce the total amount of present and potential liability for benefits by reinsurance, and/or by obtaining an appropriate bond from an admitted carrier or a surplus line carrier;

(2) to reduce the volume of new business being accepted;

(3) to reduce expenses by specified methods;

(4) to suspend or limit the writing of new business for a period of time; or

(5) to increase the service company's net worth by contribution.

(b) The commission is authorized, by rules and regulations, to fix uniform standards and criteria for early warning that the continued operation of any service company might be hazardous to its service contract holders, creditors, or the general public, and to fix standards for evaluating the financial condition of any service company which standards shall be consistent with the purposes expressed in Subsection (a) of this section.

Evidence of Coverage and Charges

Sec. 15. (a)(1) Every service contract holder residing in this state is entitled to evidence of coverage under a service contract. The service company shall issue the evidence of coverage.

(2) No evidence of coverage, or amendment thereto, shall be issued or delivered to any person in this state until a copy of the form of evidence of coverage or amendment thereto, has been filed with the commission not less than 30 days in advance of its issuance or use.

(3) An evidence of coverage shall contain:

(A) no provisions or statements which are unjust, unfair, inequitable, misleading, deceptive, which encourage misrepresentation, or which are untrue, misleading, or deceptive; and

(B) a clear and complete statement, if a contract, or a reasonably complete facsimile, if a certificate, of:

(i) the services or benefits to which the holder is entitled;

(ii) any limitation on the services, kinds of services, or benefits to be provided, including any deductible or co-payment feature;

(iii) where and in what manner information is available as to how services may be obtained;

(iv) the period during which the coverage will remain in effect;

(v) the service company's agreement that services will be performed upon telephonic request therefor to the service company, without any requirement that claim forms or applications be filed prior to the rendition of service;

(vi) the service company's agreement that the services contracted for will be initiated under normal circumstances by the service company within 48 hours after request is made therefor by the holder of the contract; and

(vii) the service fee, if any, to be charged for a service call.

(b) No schedule of charges for holder coverage for services or amendments thereto may be used in conjunction with any service contract until a copy of such schedule or amendments thereto has been filed with the commission not less than 60 days in advance of its implementation. The commission shall determine that such schedule of charges bears a reasonable relationship to the amount, term, and conditions of the contract within 60 days of filing, and may reject any schedule which does not bear such reasonable relationship.

(c) The commission shall approve any evidence of coverage if the requirements of this section are met. If the commission disapproves such filing, it shall notify the filer. In the notice, the commission shall specify in detail the reason for the disapproval. A hearing shall be granted within 30 days after a request in writing by the person filing. If the commission does not approve any evidence of coverage within 30 days after the filing thereof, it shall be deemed approved.

(d) The commission may require the submission of relevant information it deems necessary in determining whether to approve or disapprove any evidence of coverage.

Nonwaiver of Remedies

Sec. 16. (a) A contract holder does not waive under a residential service contract any remedy that the holder may have under any other law against any other person.

(b) It shall be a deceptive trade practice actionable under Chapter 17, Subchapter E, Business & Commerce Code, as amended,¹ and a violation of this Act for any person to sell, or offer to sell, a residential service contract which does not contain the following statement in at least 10-point bold type above or adjacent to the signature of the purchaser, to wit:

NOTICE: YOU THE BUYER HAVE OTHER RIGHTS AND REMEDIES UNDER THE TEXAS DECEPTIVE TRADE PRACTICES—CONSUMER PROTECTION ACT WHICH ARE IN ADDITION TO ANY REMEDY WHICH MAY BE AVAILABLE UNDER THIS CONTRACT.

FOR MORE INFORMATION CONCERNING YOUR RIGHTS, CONTACT THE CONSUMER PROTECTION DIVISION OF THE ATTORNEY GENERAL'S OFFICE, YOUR LOCAL DISTRICT OR COUNTY ATTORNEY OR THE ATTORNEY OF YOUR CHOICE.

¹ Business and Commerce Code, § 17.41 et seq.

Cancellation

Sec. 17. Any residential service contract shall be noncancellable by the service company during the initial term for which it was issued, except for:

(1) nonpayment of any service contract fees or charges due from the holder under the terms of the residential service contract;

(2) fraud or misrepresentation by the holder of facts material to the issuance of such contract; or

(3) contracts providing coverage prior to the time that an interest in the residential property to which it attaches is sold, upon the contingency that such sale does not occur.

Suspension or Revocation of License

Sec. 18. (a) The commission may suspend or revoke any license issued to a service company under this Act if the commission finds any of the following conditions exist:

(1) the service company is operating in contravention of its basic organization documents or in a manner which is contrary to that described in and reasonably inferred from any information submitted under Section 7 of this Act, unless amendments to such submissions have been filed with and approved by the commission;

(2) the service company issues evidence of coverage or uses a schedule of charges which does not comply with the requirements of Section 15 of this Act;

(3) the service company is no longer financially responsible and may be reasonably expected to be unable to meet its obligations to service contract holders;

(4) the service company has failed to comply with the provisions of Section 9 of this Act;

(5) the service company, or any person on its behalf, has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive, or unfair manner;

(6) the continued operation of the service company would be hazardous to its contract holders;

(7) the service company has otherwise failed to comply substantially with this Act, and any rule or regulation thereunder.

(b) When the license of a service company is revoked, such service company shall proceed, immediately following the effective date of the order of revocation, to wind up its affairs, and shall conduct no further business except as may be essential to the orderly conclusion of the affairs of such organization. It shall engage in no further advertising or solicitation whatsoever. The commission may, by written order, permit such further operation of the service company as it may find to be in the best interests of the service contract holders, to the end that the holders will be afforded the greatest practical opportunity to obtain the services contracted for.

Receivership

Sec. 19. When, in the opinion of the commission, the continued operation of a service company would be hazardous either to the service contract holders or to the people of the state, the commission may request a district court in Travis County, Texas, to appoint a receiver. Upon adequate notice and hearing, if the court determines that a receiver should be appointed in order to protect the rights of the service contract holders or the public, the court shall issue an order appointing a receiver. Said order must clearly state whether the receiver will have general power to manage and operate the service company's business or have power to manage only the service company's finances.

Appeals

Sec. 20. Any person adversely affected by any rule, ruling, or decision of the commission may file a petition setting forth the particular objection to such rule, ruling, or decision, or either or all of them, in a district court of Travis County, Texas, and not elsewhere, against the Texas Real Estate Commission as a defendant. Said action shall have precedence over all other causes on the docket of a different nature. Said appeal shall be filed within 20 days after the commission has entered an order. The decision of the commission shall not be enjoined or stayed except on application to such district court after notice to the Texas Real Estate Commission. The proceedings on appeal shall be under the substantial evidence rule. Either party to said action may appeal to the appellate court having jurisdiction of said cause and said appeal shall at once be returnable to said appellate court having jurisdiction of said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. The commission shall not be required to give any appeal bond in any cause arising hereunder.

Penalty

Sec. 21. A person or persons who wilfully violate this Act or the rules promulgated pursuant to this Act or who knowingly makes a false statement with respect to a report or a statement required by this Act is guilty of a Class B misdemeanor. Any service company doing business in violation of this Act shall forfeit \$100 for every day it continues to write new business while in violation of this Act.

Injunctions

Sec. 22. When it appears to the commission that a service company is violating or has violated this Act or any rule or regulation issued pursuant to this Act, the commission may bring suit in a district court of Travis County, Texas, to enjoin the viola-

tion and for such other relief as the court may deem appropriate.

Civil Penalty

Sec. 23. Any violation of this Act is a deceptive trade practice and is actionable by any person for \$1,000 as a civil penalty, or actual damages sustained, whichever is greater. Any plaintiff who shows a violation of this Act shall recover court costs and attorney's fees that are reasonable in relation to the amount of work expended. Such violation is also actionable by any consumer as a deceptive trade practice pursuant to Chapter 17, Subchapter E, Business & Commerce Code, as amended.

Fees

Sec. 24. Every person subject to this chapter shall pay the commission the following fees:

- (a) for filing a copy of its original application for license or amendment thereto not to exceed \$3,500;
- (b) for filing each annual report pursuant to Section 10 of this Act, not to exceed \$3,500;
- (c) the expense of any examinations conducted pursuant to this Act; and
- (d) for every other filing required by this Act, not to exceed \$500.

Exemptions

Sec. 25. The provisions of this Act shall not apply to any of the following persons and transactions, and each and all of the following persons and transactions are hereby exempted from the provisions of this Act, to wit:

- (a) performance guarantees given by either the builder of a home or the manufacturer or seller of an appliance or other system or component;
- (b) any residential service contract executed on or before the effective date of this Act;
- (c) any service contract, guarantee, or warranty intending to guarantee or warrant the repairs or service of a home appliance, system, or component, provided such service contract, guarantee, or warranty is issued by a person who has sold, serviced, repaired, or provided replacement of such appliance, system, or component at the time of, or prior to the issuance of such contract, guarantee, or warranty; and provided further that the person issuing the service contract, guarantee, or warranty does not engage in the business of a service company;
- (d) any person engaging in the business of structural pest control in compliance with the Tex-

as Structural Pest Control Act, as amended (Article 135b-6, Vernon's Texas Civil Statutes, 1925);

(e) any service or maintenance contract or agreement, or warranty, which provides for, warrants, or guarantees, the maintenance, repair, service, replacement, or operation or performance, of any product or part thereof, including but not limited to a structural component, the appliances, or the electrical, plumbing, heating, cooling or air-conditioning systems in or of a building or residence, provided such service or maintenance contract or agreement, or warranty is sold, offered for sale, or issued by the manufacturer or mer-

chant who manufactured or sold such product or part thereof.

[Acts 1979, 66th Leg., p. 1812, ch. 739, § 1, eff. Aug. 27, 1979.]

For text as enacted by Acts 1963, 58th Leg., p. 850, ch. 325, § 6, see art. 6573b, Compact Edition, Volume 5

Sections 2 and 3 of the 1979 Act provided:

"Sec. 2. If any section, subsection, paragraph, sentence, clause, phrase, or word in this Act, or application thereof to any person or circumstance for any reason is held invalid, such holdings shall not affect the validity of the remaining portions of this Act, and the legislature hereby declares it would have passed such remaining portions of this Act despite such invalidity of any part thereof.

"Sec. 3. All laws or parts of laws in conflict or inconsistent herewith are hereby repealed to the extent of such conflict or inconsistency only."

TITLE 114

RECORDS

1. RECORDS

Article

6574c. Microfilming and Retention of Public Records by Incorporated Cities.

1. RECORDS

Art. 6574b. Photographic Duplication of Public Records; Disposition of Original Records

Repeal

Acts 1975, 64th Leg., p. 367, ch. 158, classified as art. 6574c, relating to microfilming and retention of public records by incorporated cities, provided in section 4 that this article is repealed, to the extent of any conflict, including but not limited to art. 6574c.

Art. 6574c. Microfilming and Retention of Public Records by Incorporated Cities

Ordinance for Microfilm Process

Sec. 1. Any incorporated city in this state may adopt an ordinance providing for a microphotograph or microfilm process which accurately and permanently copies, reproduces, or originates public records on film, if the ordinance contains:

(a) a provision specifying the types of records for recording on microfilm;

(b) a provision requiring indices to microfilm records;

(c) a provision requiring microfilm to meet requirements of the United States of America Standards Institute for archival quality, density, resolution, and definition, except that microfilm intended only for short-term use, as determined by the governing body;

(d) a provision requiring a person or persons to check and certify that each microfilm record is a true and correct duplication of the original public record; and

(e) a provision which guarantees the public free access to information in microphotographs or microfilms to which they are entitled under law.

Microfilm Records as Original Record; Certified Copy

Sec. 2. A microfilm record of an incorporated city is an original record and will be accepted by any court or administrative agency of this state, if the microfilm record is made in compliance with an ordinance authorized by this Act. When issued and certified by a record keeper of an incorporated city, a copy on paper or film of the microfilm record will be accepted as a certified copy of an original record by any court or administrative agency of this state.

Destruction of Original Records; Notice; Transfer to State Library

Sec. 3. Original public records which are microfilmed in compliance with an ordinance authorized by this Act may be destroyed as directed by the governing body with the advice and consent of the city attorney or attorney officially performing the duties of city attorney, unless otherwise required by federal law or state law other than this article. Any original public record, the subject matter of which is in litigation, may not be destroyed until such litigation is final. Original public records which are not microfilmed in compliance with an ordinance authorized by this Act or are determined worthless by the governing body of an incorporated city may be destroyed as directed by the governing body. Notice of proposed destruction or disposition of original public records shall first be given to the State Librarian or State Archivist, and if such records are, in his opinion, needed for the State Library, the records shall be transferred thereto.

Repealer

Sec. 4. Chapter 58, Acts of the 50th Legislature, Regular Session, 1947, as amended (Article 6574b, Vernon's Texas Civil Statutes), is repealed, to the extent of any conflict, including but not limited to this Act.

Severability

Sec. 5. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared severable.

[Acts 1975, 64th Leg., p. 367, ch. 158, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 315, ch. 145, §§ 1, 2, eff. Aug. 27, 1979.]

TITLE 115

REGISTRATION

CHAPTER THREE. EFFECT OF RECORDING

Art. 6626. What May Be Recorded

The following instruments of writing which shall have been acknowledged or proved according to law, are authorized to be recorded, viz.: all deeds, mortgages, conveyances, deeds of trust, bonds for title, covenants, defeasances or other instruments of writing concerning any lands or tenements, or goods and chattels, or moveable property of any description; provided, however, that in cases of subdivision or re-subdivision of real property no map or plat of any such subdivision or re-subdivision shall be filed or recorded unless and until the same has been authorized by the Commissioners Court of the county in which the real estate is situated by order duly entered in the minutes of said Court, except in cases of the partition or other subdivision through a court of record; provided that where the real estate is situated within the corporate limits or within five miles of the corporate limits of any incorporated city or town, the governing body thereof or the city planning commission, as the case may be, as provided in Article 974a, Vernon's Texas Civil Statutes, shall perform the duties hereinabove imposed upon the Commissioners Court. Nothing in this Article shall require the acknowledgement of the party or parties to, nor prohibit the recording of, financing statements or security agreements filed as financing statements or continuation statements filed for record pursuant to the Business & Commerce Code. [Amended by Acts 1975, 64th Leg., p. 940, ch. 353, § 13, eff. June 19, 1975.]

Art. 6626a. Subdivision Plats; Recording; Counties of Less Than 190,000 Population; Powers of Commissioners Court

[See Compact Edition, Volume 5 for text of 1 and 2]

Sec. 3. The Commissioners Courts of any such counties may, by an order duly adopted and entered upon the minutes of the Court, after a notice published in a newspaper of general circulation in the county, be specifically authorized to make the following requirements:

(a) To provide for right of way on main artery streets or roads within such subdivision of a width of not less than fifty (50) feet nor more than one hundred (100) feet.

(b) To provide for right of way on all other streets or roads in such subdivision of not less than forty (40) feet nor more than fifty (50) feet.

(c) To provide that the street cut on main arteries within the right of way be not less than thirty (30) feet nor more than forty-five (45) feet.

(d) To provide for the street cut on all other streets or roads within such subdivision within the right of way to be not less than twenty-five (25) feet nor more than thirty-five (35) feet.

(e) To promulgate reasonable specifications to be followed in the construction of any such roads or streets within such subdivision, considering the amount and kind of travel over said streets.

(f) To promulgate reasonable specifications to provide adequate drainage in accordance with standard engineering practices for all roads or streets in said subdivision or addition.

(g) To require the owner or owners of any such tract of land, which may be so subdivided, to give a good and sufficient bond for the proper construction of such roads or streets affected, with such sureties as may be approved by the Court; and in the event a surety bond by a corporate surety is required, such bond shall be executed by a surety company authorized to do business in the State of Texas. Such bond shall be made payable to the County Judge or his successors in office, of the county wherein such subdivision lies, and conditioned that the owner or owners of any such tract of land to be subdivided will construct any roads or streets within such subdivision in accordance with the specifications promulgated by the Commissioners Court of such county. The bond shall be in such an amount as may be determined by the Commissioners Court not to exceed the estimated cost of constructing such roads or streets.

[See Compact Edition, Volume 5 for text of 4]

[Amended by Acts 1979, 66th Leg., p. 809, ch. 367, § 1, eff. Aug. 27, 1979.]

Art. 6627. When Sales, etc., to be Void Unless Registered

All bargains, sales and other conveyances whatever, of any land, tenements and hereditaments, whether they may be made for passing any estate of freehold of inheritance or for a term of years; and deeds of settlement upon marriage, whether land,

money or other personal thing; and all deeds of trust and mortgages shall be void as to all creditors and subsequent purchasers for a valuable consideration without notice, unless they shall be acknowledged or proved and filed with the clerk, to be recorded as required by law; but the same as between the parties and their heirs, and as to all subsequent purchasers, with notice thereof or without valuable consideration, shall be valid and binding; provided, however, that the rights, duties, obligations, and priorities of debtors, secured parties and their heirs, successors, and assigns, and the rights and priorities of creditors and subsequent purchasers with respect to the goods or other collateral described in the financing statements or security agreements filed as financing statements or continuation statements filed for record pursuant to the Business & Commerce Code, shall be governed by that code. [Amended by Acts 1975, 64th Leg., p. 940, ch. 353, § 14, eff. June 19, 1975.]

Art. 6630. Deeds, etc., Recorded

All deeds, conveyances, mortgages, deeds of trust, bonds for title, financing statements, security agreements filed as financing statements, continuation statements, covenants, defeasances, or other instruments of writing relating to real estate, which are authorized to be recorded, shall be recorded in the county where such real estate, or a part thereof, is situated; provided, that where such instruments grant security interests by a utility, as such term is defined in Section 35.01 of the Business & Commerce Code, they shall be filed in the place and manner

described in Section 35.02 of the Business & Commerce Code.

All such instruments, when relating to real estate situated in an unorganized county, shall be recorded in the county to which such unorganized county is attached for judicial purposes, in a well bound book, or books, to be kept for that purpose, separately from the records of the county to which it is attached and from other unorganized counties; and the clerk or other officer having the custody of such books, when such unorganized county shall be organized, or has been detached therefrom and attached to another county for judicial purposes, shall deliver such book or books, without charge, to the proper officer of such newly organized county, or of the county to which it is attached for judicial purposes when demanded by him; and, where such records have been heretofore kept in separate books, they shall also be delivered in like manner as above, and in each case the same shall become archives of the county to which it is so delivered. When such records have not heretofore been kept separately, upon the organization or attachment of such unorganized county to another organized county, a certified transcript from the records of such instruments so recorded shall be obtained by such new clerk or officer; and when so made the same shall in like manner become archives of such newly organized county, or county to which such unorganized county may be attached, as the case may be.

[Amended by Acts 1975, 64th Leg., p. 940, ch. 353, § 15, eff. June 19, 1975.]

TITLE 116

ROADS, BRIDGES, AND FERRIES

CHAPTER ONE. STATE HIGHWAYS

1. STATE DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION

Article

6663b. Mass Transportation.

6663c. Administration and Funding of Mass Transportation.

1. STATE DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION

6673f. Mowing, Baling, Shredding, or Hoeing Rights-of-Way.

2. REGULATION OF VEHICLES

6675a-5e.1. Disabled Persons; Special License Devices; Fee; Parking Privileges.

6675-5e.2. Congressional Medal of Honor Recipients; Registration, Special License Plates, and Parking Privileges.

6675-5e.2. Former Prisoners of War; Registration and Special License Plates.

6675a-5f. Refund of Overcharges on Registration.

1. STATE DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION

Change of Names

The names of the State Highway Department and the State Highway Commission were changed to the State Department of Highways and Public Transportation and the State Highway and Public Transportation Commission, respectively, by Acts 1975, 64th Leg., p. 2063, ch. 678, § 3, amending art. 6663.

Art. 6663. Department

(a) The name of the State Highway Department is changed to the State Department of Highways and Public Transportation. The name of the State Highway Commission is changed to the State Highway and Public Transportation Commission. The name of the State Highway Engineer is changed to the State Engineer-Director for Highways and Public Transportation. Any reference in law to the State Highway Department or Texas Highway Department shall be construed as meaning the State Department of Highways and Public Transportation. A reference in law to the State Highway Commission shall be construed as meaning the State Highway and Public Transportation Commission. A reference in law to the State Highway Engineer shall be construed as meaning the State Engineer-Director for Highways and Public Transportation.

(b) The administrative control of the State Department of Highways and Public Transportation,

hereinafter called the Department, shall be vested in the State Highway and Public Transportation Commission, hereinafter called the Commission, and the State Engineer-Director for Highways and Public Transportation. Said Department shall have its office at Austin where all its records shall be kept.

(c) The State Department of Highways and Public Transportation is subject to the Texas Sunset Act¹; and unless continued in existence as provided by that Act the department is abolished effective September 1, 1987.

[Amended by Acts 1975, 64th Leg., p. 2063, ch. 678, § 3, eff. June 20, 1975; Acts 1977, 65th Leg., p. 1852, ch. 735, § 2.147, eff. Aug. 29, 1977.]

¹ Article 5429k.

Art. 6663a. Photographic or Microphotographic Records; Authority of Highway Department and Public Safety Department to Make; Destruction of Original Records

Sec. 1. The State Department of Highways and Public Transportation is hereby authorized to photograph, microphotograph, or film all records of any kind or character pertaining to departmental operations; and the Texas Department of Public Safety is hereby authorized to photograph, microphotograph, or film all records in connection with the issuance of operators' licenses, chauffeurs' licenses, and commercial operators' licenses and all records of the various divisions of the Texas Department of Public Safety, with the exception that no original fingerprint card or any evidence submitted in connection with a criminal case or any confession or statement made by the defendant in a criminal case shall be photographed or filmed for the purpose of disposing of the original records, and that whenever the State Department of Highways and Public Transportation or the Texas Department of Public Safety shall have photographed, microphotographed or filmed such records and whenever such photographs or microphotographs or films shall be placed in conveniently accessible files and provisions made for preserving, examining and using the same, the State Department of Highways and Public Transportation or the Texas Department of Public Safety may cause the original records from which the photographs, microphotographs or films have been made to be disposed of or destroyed; provided, however, that all deeds conveying land or interests in land to the State of Texas for highway purposes shall be retained and

deposited in the offices of the State Department of Highways and Public Transportation at Austin, Texas. This authorization includes the creation of original records in micrographic form on media such as computer output microfilm.

[See Compact Edition, Volume 5 for text of 2]

Sec. 2a. The State Engineer-Director of the State Department of Highways and Public Transportation, and the Director of the Texas Department of Public Safety, or their duly authorized representatives are hereby authorized to certify to the authenticity of any photograph or microphotograph herein authorized and shall make such charges therefor as may be authorized by law. Such certified records shall be furnished to any person who is entitled to receive the same under the law.

[See Compact Edition, Volume 5 for text of 3]

[Amended by Acts 1979, 66th Leg., p. 1828, ch. 742, §§ 1, 2, eff. Aug. 27, 1979.]

Section 3 of the 1979 amendatory act provided:
 "All laws and parts of laws in conflict herewith are hereby repealed to the extent of such conflict only."

Art. 6663b. Mass Transportation

Sec. 1. (a) The State Department of Highways and Public Transportation:

- (1) may purchase, construct, lease, and contract for public transportation systems in the state;
- (2) shall encourage, foster, and assist in the development of public and mass transportation, both intracity and intercity, in this state;
- (3) shall encourage the establishment of rapid transit and other transportation media;
- (4) shall develop and maintain a comprehensive master plan for public and mass transportation development in this state;
- (5) shall assist any political subdivision of the state in procuring aid offered by the federal government for the purpose of establishing or maintaining public and mass transportation systems;
- (6) shall conduct hearings and make investigations it considers necessary to determine the location, type of construction, and cost to the state or its political subdivisions of public mass transportation systems owned, operated, or directly financed in whole or in part by the state;
- (7) may enter into any contracts necessary to exercise any functions under this Act;
- (8) may apply for and receive gifts and grants from governmental and private sources to be used in carrying out its function under this Act;
- (9) may represent the state in public and mass transportation matters before federal and state agencies;

(10) may recommend necessary legislation to advance the interests of the state in public and mass transportation;

(11) may not issue certification of convenience and necessity;

(12) may utilize the expertise of recognized authorities and consultants in the private sector, both for the planning and design of public and mass transportation systems.

(b) In the exercise of the power of eminent domain under the provisions of this Act which relate to public and mass transportation, the department shall be prohibited from any action which would unduly interfere with interstate commerce or which would establish any right to operate any vehicle on railroad tracks used to transport freight or other property.

Sec. 2. On the effective date of this Act, all programs, contracts, assets, and personnel of the Texas Mass Transportation Commission are transferred to the State Department of Highways and Public Transportation. The comptroller of public accounts and the State Board of Control shall assist in the orderly implementation of this transfer.

[Acts 1975, 64th Leg., p. 2062, ch. 678, §§ 1, 2, eff. June 20, 1975.]

Sections 3 and 4 of the 1975 Act amended arts. 6663 and 6669; § 5 thereof repealed art. 4413(34) creating the Mass Transportation Commission.

Art. 6663c. Administration and Funding of Mass Transportation

Findings and Purpose

Sec. 1. (a) The legislature finds that:

- (1) transportation is the lifeblood of an urbanized society, and the health and welfare of that society depend on the provision of efficient, economical, and convenient transportation within and between urban areas;
 - (2) public transportation is an essential component of the state's transportation system;
 - (3) energy consumption and economic growth are vitally influenced by the availability of public transportation;
 - (4) providing public transportation has become so financially burdensome that private industry can no longer provide service in many areas in the state and that the continuation of this essential service on a private or proprietary basis is threatened; and
 - (5) providing public transportation is a public, governmental responsibility and a matter of direct concern to state government and to all the citizens of the state.
- (b) The purposes of this Act are to provide:
- (1) improved public transportation for the state through local governments acting as agents and instrumentalities of the state;

(2) state assistance to local governments and their instrumentalities in financing public transportation systems to be operated by local governments as determined by local needs; and

(3) coordinated direction by a single state agency of both highway development and public transportation improvement.

Definitions

Sec. 2. In this Act:

(1) "Capital improvement" means the acquisition, construction, reconstruction, or improvement of facilities, equipment, or land for use by operation, lease, or otherwise in public transportation service in urbanized areas, and all expenses incidental to the acquisition, construction, reconstruction, or improvement including designing, engineering, supervising, inspecting, surveying, mapping, relocation assistance, acquisition of rights-of-way, and replacement of housing sites.

(2) "Commission" means the State Highway and Public Transportation Commission.

(3) "Department" means the State Department of Highways and Public Transportation.

(4) "Federally funded project" means a public transportation project proposed for funding under this Act which is being funded in part under the provisions of the Urban Mass Transportation Act of 1964, as amended,¹ the Federal-Aid Highway Act of 1973, as amended,² or other federal program for funding public transportation.

(5) "Local share requirement" means the amount of funds which are required and are eligible to match federally funded projects for the improvement of public transportation in this state.

(6) "Public transportation" means transportation by bus, rail, watercraft, or other means which provides general or specialized service to the public on a regular or continuing basis.

(7) "Urbanized area" means an area so designated by the United States Bureau of the Census or by general state law.

Formula Program

Sec. 3. (a) The commission shall administer the formula program and allocate 60 percent of the funds in the public transportation fund to that program.

(b) Only an urbanized area with a population in excess of 200,000 according to the last preceding federal census is eligible for participation in the formula program. A municipality, regional authority, or other local governmental entity designated as a recipient of federal funds by the governor with the concurrence of the Secretary of the United States Department of Transportation is a designated recipient of funds under the formula program.

(c) The funds allocated to the formula program shall be apportioned annually on the basis of a formula under which the designated recipients of an eligible urbanized area are entitled to receive an amount equal to the sum of:

(1) one-half of the total amount apportioned to the formula program for the year multiplied by the ratio by which the population of the eligible urbanized area bears to the total population of all eligible urbanized areas that are eligible for the formula program; and

(2) one-half of the total amount apportioned to the formula program for the year multiplied by the ratio by which the number of inhabitants per square mile of the eligible urbanized area bears to the combined number of inhabitants per square mile of all eligible urbanized areas.

(d) Designated recipients may only use formula program funds to provide 65 percent of the local share requirement of federally funded projects for capital improvements.

(e) Within 30 days after an application for funds under the formula program is received, if there are unallocated formula funds for the applicant, the commission shall certify to the federal government that the state share of the local share requirement is available. The application must contain a certification by the designated recipient that:

(1) funds are available to provide 35 percent of the local share requirement of federally assisted programs; and

(2) the proposed public transportation project is consistent with ongoing, continuing, cooperative, and comprehensive regional transportation planning being carried out in accordance with the provisions of the Urban Mass Transportation Act of 1964, as amended, and the Federal-Aid Highway Act of 1973, as amended.

(f) If the commission has previously certified that the state share is available for a project, the commission shall direct that payment of the state share be made to the designated recipient within 30 days after federal approval of a proposed transportation project proposal.

(g) Funds allocated by the department for use in the formula program which are unencumbered and unexpended one year after the close of the fiscal year for which the funds were originally allocated shall be transferred at that time by the commission for use in the discretionary program.

Discretionary Program

Sec. 4. (a) The commission shall allocate 40 percent of the funds annually credited to the public transportation fund to the discretionary program, which shall be administered by the commission.

(b) Except as provided in Subsection (e) of this section, only rural and urban areas of the state other than urbanized areas eligible for participation in the formula program are eligible for participation in the discretionary program. Any local government having the power to operate or maintain a public transportation system may be a designated recipient of funds from the discretionary program.

(c) Designated recipients under the discretionary program may use discretionary program funds only to provide 65 percent of the local share requirement of federally funded projects for capital improvements, except that if a designated recipient certifies that federal funds are unavailable for a proposed project and the commission finds that the project is vitally important to the development of public transportation in this state, the commission may supply 50 percent of the total cost of that public transportation project to the designated recipient.

(d) In considering any project under this section, the commission shall take into consideration the need for fast, safe, efficient, and economical public transportation.

(e) Designated recipients in urbanized areas eligible for participation in the formula program and any local government having the power to operate or maintain a public transportation system within an urbanized area are also eligible to apply for and receive funds allocated by the commission for use in the discretionary program which are unexpended and unencumbered 180 days after the close of the fiscal year for which the funds were originally allocated and all unexpended and unencumbered funds transferred from the formula program to the discretionary program. The commission shall make grants out of the discretionary fund to designated recipients under the provisions of this section.

Public Transportation Fund

Sec. 5. The Public Transportation Fund is established as a special fund in the State Treasury. The Public Transportation Fund may only be used by the State Department of Highways and Public Transportation in carrying out the responsibilities and duties of the commission and the department for public transportation purposes as established under this state law. Grants of money to the state from public and private sources for public transportation shall be deposited in the Public Transportation Fund. On the effective date of this Act, the comptroller of public accounts shall transfer the sum of \$1,000,000 from the General Revenue Fund to the Public Transportation Fund. There is hereby appropriated from the Public Transportation Fund the sum of \$1,000,000 for use by the department for the period from the effective date of this Act through August 31, 1975, and thereafter. On September 1, 1975, and on September 1, 1976, the comptroller of public accounts shall transfer the sum of \$15,000,000 each

year from the General Revenue Fund to the Public Transportation Fund. There is hereby appropriated from the Public Transportation Fund the sum of \$15,000,000 for each year of the biennium beginning September 1, 1975, for use by the department for public transportation in the state.

[Acts 1975, 64th Leg., p. 2064, ch. 679, eff. June 20, 1975. Amended by Acts 1979, 66th Leg., p. 1034, ch. 464, § 1, eff. Aug. 27, 1979.]

¹ 49 U.S.C.A. § 1601 et seq.
² 23 U.S.C.A. § 101 et seq.

Art. 6669. Engineer-Director

The Commission shall elect a State Engineer-Director for Highways and Public Transportation who shall be a Registered Professional Engineer in the State of Texas experienced and skilled in highway construction and maintenance and in public and mass transportation planning or development. He shall hold his position until removed by the Commission. He shall first execute a bond payable to the state in such sum as the Commission may deem necessary, to be approved by the Commission, and conditioned upon the faithful performance of his duties. He shall act with the Commission in an advisory capacity, without vote, and shall quarterly, annually and biennially submit to it detailed reports of the progress of public road construction, public and mass transportation development, and statement of expenditures. He shall be allowed all actual traveling and other expenses therefor, under the direction of the Department, while absent from Austin in the performance of duty under the direction of the Commission.

[Amended by Acts 1975, 64th Leg., p. 2063, ch. 678, § 4, eff. June 20, 1975; Acts 1979, 66th Leg., p. 795, ch. 356, § 1, eff. Aug. 27, 1979.]

Art. 6673e-1. Acquisition of Rights of Way in Cooperation with Local Officials; Payments to Counties and Cities

In the acquisition of all rights of way authorized and requested by the Texas Highway Department,¹ in cooperation with local officials, for all highways designated by the State Highway Commission² as United States or State Highways, the Texas Highway Department is authorized and directed to pay to the counties and cities not less than ninety percent (90%) of the value as determined by the Texas Highway Department of such requested right of way or the net cost thereof, whichever is the lesser amount; provided, that if condemnation is necessary, the participation by the Texas Highway Department shall be based on the final judgment, conditioned that such Department has been notified in writing prior to the filing of such suit and prompt notice is also given as to all action taken therein. Such Department shall have the right to become a party at any time for all purposes, including the right of appeal at any stage of the proceedings.

The various counties and cities are hereby authorized and directed to acquire such right of way for such highways as are requested and authorized by the Texas Highway Department, as provided by existing laws, and in the event condemnation is necessary, the procedure shall be the same as that set out in Title 52, Articles 3264 to 3271, inclusive, Revised Civil Statutes of Texas, and amendments thereto.

Upon delivery to the Texas Highway Department of acceptable instruments conveying to the State the requested right of way, the Texas Highway Department shall prepare and transmit to the Comptroller of Public Accounts vouchers covering the reimbursement to such county or city for the Department's share of the cost of providing such right of way, and the Comptroller of Public Accounts is hereby authorized and directed to issue warrants on the appropriate account covering the State's obligations as evidenced by such vouchers.

The Texas Highway Department is authorized and directed to acquire by purchase, gift or condemnation all right of way necessary for the National System of Interstate and Defense Highways.

[Amended by Acts 1977, 65th Leg., p. 1474, ch. 598, § 1, eff. Sept. 1, 1977.]

¹ Name changed to State Department of Highways and Public Transportation; see art. 6663.

² Name changed to State Highway and Public Transportation Commission; see art. 6663.

Section 2 of the 1977 amendatory act provided for an effective date of September 1, 1977.

Art. 6673f. Mowing, Baling, Shredding, or Hoeing Rights-of-Way

Sec. 1. A district engineer of the State Department of Highways and Public Transportation may grant permission to a person, at his request, to mow, bale, shred, or hoe the right-of-way of any designated portion of a highway that is in the state highway system and is within the district supervised by the engineer.

Sec. 2. If a person requesting permission to mow, bale, shred, or hoe a highway right-of-way is not an owner of land adjacent to the right-of-way that is the subject of the request, the district engineer, before granting permission, must provide a person owning land adjacent to the right-of-way the option of mowing, baling, shredding, or hoeing the right-of-way. A district engineer may deny any request authorized by this Act.

Sec. 3. A person granted permission to mow, bale, shred, or hoe a highway right-of-way under this Act may not receive compensation for the mowing, baling, shredding, or hoeing but is entitled to use or dispose of the hay or other materials produced by the mowing, baling, shredding, or hoeing.

Sec. 4. The state, the State Department of Highways and Public Transportation, and the district

engineer are not liable for any personal injuries, property damage, or death resulting from the performance of services or agreements as provided in this Act.

[Acts 1977, 65th Leg., p. 1519, ch. 613, §§ 1 to 4, eff. Aug. 29, 1977.]

1A. CONSTRUCTION AND MAINTENANCE

Art. 6674e. Appropriations from Highway Fund

All moneys now or hereafter deposited in the State Treasury to credit of the "State Highway Fund", including all Federal aid moneys deposited to the credit of said fund under the terms of the Federal Highway Act¹ and all county aid moneys deposited to the credit of said fund under the terms of this Act shall be subject to appropriation for the specific purpose of the improvement of said system of State Highways by the State Department of Highways and Public Transportation. However, direct appropriations in an amount not to exceed \$30 million each fiscal year shall be made from the State Highway Fund to the Department of Public Safety for policing the State Highway System and for the administration of laws prescribed by the Legislature pertaining to the supervision of traffic and safety on public roads. There shall be subtracted from the \$30 million maximum which may be appropriated to the Department of Public Safety the amount of appropriations for each fiscal year from the State Highway Fund to the State Employee's Retirement System to provide for the state's share of retirement contributions, social security taxes, and state paid health insurance for employees and officers of the Department of Public Safety.

[Amended by Acts 1977, 65th Leg., p. 112, ch. 55, § 1, eff. April 12, 1977.]

¹ See 23 U.S.C.A. § 101 et seq.

Art. 6674h. Competitive Bids

All contracts proposed to be made by the State Department of Highways and Public Transportation for the improvement of any highway constituting a part of the State Highway System or for materials to be used in the construction or maintenance thereof shall be submitted to competitive bids. Notice of the time when and place where such contracts will be let and bids opened shall be published in some newspaper published in the county where the improvement is to be done once a week for at least two weeks prior to the time set for the letting said contract and in two other newspapers that the department may designate. Provided, however, that on contracts involving less than One Hundred Thousand (\$100,000.00) Dollars such advertising may be limited to two successive issues of any newspaper published in the county in which the work is to be done, and if there is no newspaper in the county in which the work is to be done then said advertising

shall be for publication in some newspaper in some county nearest the county seat of the county in which the work is to be done. Provided further, that any person, firm or corporation may make application to have the name of said applicant placed upon a mailing list to receive notices of lettings of any contracts provided for herein; and notices of said lettings shall be mailed by the State Highway and Public Transportation Commission to all persons, firms or corporations on said mailing list. The Commission shall have the right to require all applicants to deposit with the commission a sum of not exceeding Twenty-five (\$25.00) Dollars per year to cover costs of mailing notices.

[Amended by Acts 1979, 66th Leg., p. 608, ch. 285, § 1, eff. Aug. 27, 1979.]

Art. 6674i. Opening and Rejecting Bids

The State Department of Highways and Public Transportation shall have the right to reject any and all such bids. All such bids shall be sealed, and filed with the State Engineer-Director for Highways and Public Transportation at Austin, Texas, and shall be opened at a public hearing of the State Highway and Public Transportation Commission. All bidders may attend and all bids shall be opened in their presence. Copies of all such bids shall be filed with the county in which the work is to be performed. Provided however, on contracts involving less than One Hundred Thousand (\$100,000.00) Dollars bids may in the discretion of the Commission be received at a public hearing by the District Engineer at the District Headquarters. All bids so received by the District Engineer shall be tabulated and forwarded to the Commission, and the Commission shall have the right to accept or reject same, and if accepted, award the contract to the lowest bidder. It shall be the duty of the Commission to prescribe rules and regulations on all bidders on bids received by District Engineers, but the rules and regulations required by the Commission for bids received at Austin by said Commission shall not apply to bidders submitting bids to District Engineers.

[Amended by Acts 1979, 66th Leg., p. 608, ch. 285, § 1, eff. Aug. 27, 1979.]

Art. 6674m. Partial Payments

Said contracts may provide for partial payments to an amount not exceeding ninety-five per cent (95%) of the value of the work done. Five per cent (5%) of the contract price shall be retained until the entire work has been completed and accepted. Provided, that at the request of the contractor and with the approval of the State Highway Department and the State Treasurer the five per cent (5%) retained amount may be deposited under the terms of a trust agreement with a state or national bank domiciled in Texas as selected by the contractor. Said bank, acting as escrow agent and by instructions from the

contractor, may reinvest the retained amount in certificates of deposit issued by state or national banks domiciled in Texas, bank time deposits, or other similar investments prescribed by the trust agreement. Interest earned on said funds shall be paid to the contractor unless otherwise specified under the terms of said trust agreement. The escrow agent shall be responsible for all investments and funds as a result of the deposits of the retained amounts until released from such responsibility as instructed by the provisions of said trust agreement. The State Highway Department shall provide a trust agreement that will protect the interests of the State of Texas. All expenses incident to the deposit and all charges made by the escrow agent for custody of the securities and forwarding of interest thereon shall be paid solely by the contractor. No such expense or charge shall apply to either the contract or the State of Texas.

[Amended by Acts 1975, 64th Leg., p. 404, ch. 180, § 1, eff. Sept. 1, 1975.]

Section 2 of the 1975 amendatory act provided: "If any provision of this Act or the application thereof to any body or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

Art. 6674q-7. County and Road District Highway Fund; Distribution; Board of County and District Road Indebtedness Continued; Powers and Duties; Lateral Road Account

[See Compact Edition, Volume 5 for text of (a) and (b)]

Application of Sunset Act

(b-1) The Board of County and District Road Indebtedness is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1979.

¹ Article 5429k.

[See Compact Edition, Volume 1 for text of (c) to (r)]

[Amended by Acts 1977, 65th Leg., p. 1835, ch. 735, § 2.021, eff. Aug. 29, 1977.]

Art. 6674v. Turnpike Projects

[See Compact Edition, Volume 5 for text of 1 and 2]

Texas Turnpike Authority

Sec. 3. There is hereby created an authority to be known as the "Texas Turnpike Authority," hereinafter sometimes referred to as the "Authority." By and in its name the Authority may sue and be sued, and plead and be impleaded. The Authority is hereby constituted an agency of the State of Texas, and the exercise by the Authority of the powers conferred by this Act in the construction, operation, and maintenance of turnpike projects shall be

deemed and held to be an essential governmental function of the State.

The Board of Directors of the Authority (hereinafter in this Act sometimes called the "Board") shall be composed of directors, who shall occupy, respectively, places on the Board to be designated as Places 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12. The Directors who will occupy Places 2, 3, 5, 6, 8, 9, 10, 11, and 12 shall be appointed by the Governor, by and with the advice and consent of the Senate. Appointed Directors shall serve staggered terms of six (6) years with the terms of one-third of the members expiring on February 15 of each odd-numbered year. Each Director appointed to fill Places 2, 3, 5, 6, 8, 9, 10, 11, and 12 shall have been a resident of the State and of the County from which he shall have been appointed for a period of at least one (1) year prior to his appointment.

Appointments to the Authority shall be made without regard to the race, creed, sex, religion, or national origin of the appointees.

The members of the Texas State Highway Commission¹ at the time this Act becomes effective are hereby made Directors of said Authority, and if for any reason said Texas State Highway Commission at such time because of vacancies is composed of less than three (3) members, then the person or persons appointed to fill such vacancies are hereby made Directors of said Authority. The Highway Commissioners and their successors in office shall respectively and successively occupy Places 1, 4, and 7 on such Board. Each member of the Texas State Highway Commission shall serve ex officio as a member of the Board of Directors of such Authority. All Directors shall serve until their successors have been duly appointed and qualified, and vacancies in unexpired terms shall be promptly filled by the Governor.

All members of the Board of Directors shall be eligible for reappointment. All directors shall have equal status and all Directors shall have a vote. Each member of the Board before entering upon his duties shall take an oath as provided by Section 1 of Article XVI of the Constitution of the State of Texas.

The Board shall elect one of the Directors as chairman and another as vice chairman, and shall elect a secretary and treasurer who need not be a member of the Board. Seven members of the Board shall constitute a quorum and the vote of a majority shall be necessary for any action taken by the Board. No vacancy in the membership of the Board shall impair the right of a quorum to exercise all the rights and perform all the duties of the Board.

Before the issuance of any turnpike revenue bonds under the provisions of this Act, each Director shall execute a surety bond in the penal sum of Twenty-

five Thousand Dollars (\$25,000) and the secretary and treasurer shall execute a surety bond in the penal sum of Fifty Thousand Dollars (\$50,000), each surety bond to be conditioned upon the faithful performance of the duties of his office, to be executed by a surety company authorized to transact business in the State of Texas as surety and to be approved by the Governor and filed in the office of the Secretary of State. The expense of such bonds shall be paid by the Authority.

Each appointed Director may be removed by the Governor for misfeasance, malfeasance or willful neglect of duty, but only after reasonable notice and public hearing unless the notice and public hearing are in writing expressly waived. Failure of an appointed member to attend at least one-half of the regularly scheduled meetings held each year automatically removes such member and creates a vacancy on the Board.

The members of the Authority shall not be entitled to any additional compensation for their services, but each member shall be reimbursed for his actual expenses necessarily incurred in the performance of his duties. All expenses incurred in carrying out the provisions of this Act shall be payable solely from funds provided under the authority of this Act and no liability or obligation shall be incurred by the Authority hereunder beyond the extent to which moneys shall have been provided under the authority of this Act.

The Legislature imposes on any Director, who may be a member of the State Highway Commission the extra duties required hereunder.

¹ Name changed to State Highway and Public Transportation Commission; see art. 6663.

Application of Sunset Act

Sec. 3a. The Texas Turnpike Authority is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the authority is abolished, and this Act expires effective September 1, 1991.

¹ Article 5429k.

[See Compact Edition, Volume 5 for text of 4 to 12a]

Texas Turnpike Authority Feasibility Study Fund

Sec. 12b. Any funds of the Dallas-Fort Worth Turnpike remaining on December 31, 1977, or on such earlier date as the tolls may be lifted in the authority's discretion, after provision for transition expenses, debts, and obligations pursuant to Section 17a of this Act shall be deposited by the authority in a fund which shall be entitled "Texas Turnpike Authority Feasibility Study Fund." No more than One Million Dollars shall be so deposited on such date. The amount deposited shall be reduced by the cost of feasibility studies, if any, requested by the authority and approved by the State Highway and

Public Transportation Commission between April 4, 1977, and the date of such deposit. Such fund shall be a revolving fund held in trust by a banking institution chosen by the authority separate and apart from the funds of any project. No funds from any other existing, presently constructed project shall be added to this fund. Such fund shall be used for the purpose of paying the expenses of studying the cost and feasibility and any other expenses relating to the preparation and issuance of turnpike revenue bonds for the construction of any turnpike project; the study of which thereafter shall be authorized by the Texas Turnpike Authority, subject to the prior approval of the State Highway and Public Transportation Commission. The funds expended from this fund on behalf of any such new project shall be regarded as a part of the cost of such new project, and said fund shall be reimbursed out of the proceeds of turnpike revenue bonds issued for the construction of any such additional project. After this Act is signed by the governor, all money reimbursable from the sale of bonds of projects whose studies and other expenses have been advanced from funds of the Dallas-Fort Worth Turnpike shall be reimbursed to this fund for use as a part hereof. For the same purposes the authority may borrow money and issue promissory notes or other interest-bearing evidences of indebtedness payable out of this fund, pledging or hypothecating thereto any sums therein or to be placed therein.

In addition to the above, any municipality or group of municipalities, any county or group of counties, or any combination of municipalities and counties, or any private group or combination of individuals within the state may pay all or part of the expenses of studying the cost and feasibility and any other expenses relating to the preparation and issuance of turnpike revenue bonds for the construction of a turnpike project. The funds expended on behalf of any new project shall be regarded as part of the cost of such new project and, with the consent of the Texas Turnpike Authority, shall be reimbursable to the party paying the expenses out of the proceeds of turnpike revenue bonds issued for the construction of such new project.

[See Compact Edition, Volume 5 for text of 13 to 16]

Public Hearings

Sec. 16a. (a) Before the authority finally approves an engineering design for a project, the authority or a designated representative of the authority shall hold at least one public hearing in the general locality in which the project is to be located. Persons interested in the project shall be given an opportunity at the public hearing to testify about the project and to inspect the plans and designs prepared for the project.

(b) Not less than 15 days nor more than 21 days before the public hearing, the authority shall furnish a written notice of the public hearing to the governing body of each county, city, or town in which any part of the project is to be located and shall publish the notice in the general locality in which the project is to be located in a manner likely to inform the general public of the public hearing.

(c) At least seven days before the public hearing, the authority shall file with the governing bodies the plans and designs prepared for the project.

[See Compact Edition, Volume 5 for text of 17]

Toll Free Status of Dallas-Fort Worth Turnpike; Transition Plan

Sec. 17a. This section shall apply only to the Dallas-Fort Worth Turnpike, constructed pursuant to this Act and presently existing in Dallas and Tarrant Counties, and to no other project now or hereafter existing and shall supersede any provisions of this Act in conflict herewith. The Dallas-Fort Worth Turnpike shall become toll free, at 12:00 p. m. on December 31, 1977, or on such earlier date as the tolls may be lifted in the authority's discretion. The authority shall, with the approval of the State Highway and Public Transportation Commission, effectuate a plan for an orderly transition of the Dallas-Fort Worth Turnpike to the State Department of Highways and Public Transportation on the date when tolls are lifted. In no event shall the transition plan operate to extend the cutoff time for the collection of tolls set out above. The transition plan shall provide a reasonable time within which said plan shall be consummated and shall include retention by the authority of toll collection and accounting equipment, toll booths and other equipment, furnishings, and supplies usable by the authority in the operation of other projects, the provision of funds for unemployment compensation and other payments required by state law in the termination of employment of state employees, the payment of debts and other contractual obligations of the authority payable from funds of the Dallas-Fort Worth Turnpike, including but not limited to the payment to the City of Fort Worth and Tarrant County of their proportionate interests in the balance remaining in the Special Trust Fund created to hold money paid by said city and county for free use of the Dallas-Fort Worth Turnpike from Oakland Boulevard to the Fort Worth terminus and such other requisites to the transition as may be appropriate. Money for the payment of such transition expenses, debts, and obligations shall be set aside and retained by the authority for such purposes in a trust fund with a banking institution chosen by the authority to be used for such purposes and the payment of expenses appurtenant thereto.

[See Compact Edition, Volume 5 for text of 18 to 20]

Miscellaneous

Sec. 21. Each Turnpike Project when constructed and opened to traffic shall be maintained and kept in good condition and repair by the Authority. Each such project shall also be policed and operated by such force of police, toll-takers and other operating employees as the Authority may in its discretion employ. Within its discretion the Authority may make arrangements with the Department of Public Safety for the services of police officers of that Agency.

All private property damaged or destroyed in carrying out the powers granted by this Act shall be restored or repaired and placed in its original condition as nearly as practicable or adequate compensation made therefor out of funds provided under the authority of this Act.

All counties, cities, villages and other political subdivisions and all public agencies and commissions of the State of Texas, notwithstanding any contrary provision of law, are hereby authorized and empowered to lease, lend, grant or convey to the Authority at its request, upon such terms and conditions as the proper authorities of such counties, cities, villages, other political subdivisions or public agencies and commissions of the State may deem reasonable and fair and without the necessity for any advertisement, order of court or other action or formality, other than the regular and formal action of the authorities concerned, any real property which may be necessary or appropriate to the effectuation of the authorized purposes of the Authority, including highways and other real property already devoted to public use.

An action by the Authority may be evidenced in any legal manner, including a resolution adopted by its Board of Directors.

If the Authority employs a general counsel, the counsel shall be prohibited from lobbying for the Authority, and no member of the Authority shall engage in activities requiring registration as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9c Vernon's Texas Civil Statutes).

Any member, agent or employee of the Authority who contracts with the Authority or is interested, either directly or indirectly, in any contract with the Authority or in the sale of any property, either real or personal, to the Authority, shall be punished by a fine of not more than One Thousand Dollars (\$1,000).

Any person who uses any turnpike project and fails or refuses to pay the toll provided therefor, shall be punished by a fine of not more than One

Hundred Dollars (\$100) and in addition thereto the Authority shall have a lien upon the vehicle driven by such person for the amount of such toll and may take and retain possession thereof, until the amount of such toll and all charges in connection therewith shall have been paid.

The Authority shall cause an audit of its books and accounts to be made at least once in each year by certified public accountants and the cost thereof may be treated as a part of the cost of construction or of operation of the Turnpike Project.

Travel Expenses

Sec. 21a. (a) Employees of the authority are entitled to a per diem and transportation allowance for travel on official business. The rates of reimbursement are as provided in the travel provisions of the General Appropriations Act.

(b) The secretary, treasurer, the project manager of a project, and the executive head of the authority are entitled to reimbursement for actual and necessary expenses incurred for travel on official business, except that reimbursement for transportation expenses is at the rates provided in the travel provisions of the General Appropriations Act.

Reports

Sec. 21b. (a) The authority shall file with the governor, the Legislative Reference Library, and the Legislative Budget Board certified copies of the minutes of the authority's meetings. The authority similarly shall file copies of any corrections or changes of the minutes. The authority shall file the copies as soon as possible after the minutes, changes, or corrections are approved by the authority.

(b) On or before March 1 of each year, the authority shall file with the governor's budget and planning office, or its successor, and the Legislative Budget Board an itemized budget covering the current calendar year.

(c) On or before March 31 of each year, the authority shall file with the governor, the legislature, and the Legislative Budget Board a report about the authority's activities during the preceding calendar year. The report shall include information about each project, including a complete operating and financial statement covering each project, and shall include an itemized statement about the professional or consulting fees paid by the authority, including the name of each individual or business entity who received the fees and a description of the purposes for which the fees were paid.

Consultants

Sec. 21c. The authority is subject to Chapter 454, Acts of the 65th Legislature, Regular Session, 1977 (Article 6252-11c, Vernon's Texas Civil Statutes), relating to the use of consultants.

Secs. 24 to 26. [Omitted].

Project Pooling Within the Same County

Sec. 27. Notwithstanding any conflicting provisions in this Act and superseding the same where in conflict with this section, the authority is hereby authorized and empowered, but only as to projects located wholly within the same county and subject to all the provisions of this section:

(a) To determine after a public hearing, subject to prior approval by the State Highway and Public Transportation Commission and a resolution approving the same duly passed by the county commissioners court of the county where the projects are located, that any two or more projects now or hereafter constructed or determined to be constructed by the authority in the same county shall be pooled and designated as a "pooled project." Any existing project or projects may be pooled in whole or in part with any new project or projects or parts thereof. Upon designation such "pooled project" shall become a "project" or "turnpike project" as defined in Section 4(c) of this Act and as used in other sections of this Act. No project may be pooled more than once. Consistent with the trust indenture regarding securing bonds of that project, the resolution of the county commissioners court shall set a date certain when each of the projects being authorized to be pooled shall become toll free.

(b) Subject to the terms of this Act and subject to the terms of any trust agreement securing the payment of any turnpike revenue bonds, the authority is authorized to provide by resolution from time to time for the issuance of turnpike revenue bonds of the authority for the purpose of paying all or any part of the cost of any pooled project or the cost of any part of such pooled project and to pledge revenues of such pooled project or any part thereof.

(c) Subject to the terms of any trust agreement securing the payment of any turnpike revenue bonds, the authority is authorized to issue by resolution turnpike revenue refunding bonds of the authority for the purpose of refunding any bonds then outstanding, issued on account of any pooled project or any part of any pooled project issued under the provisions of this Act, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds and, if deemed advisable by the authority, for the additional purpose of constructing improvements, extensions, and enlargements to the pooled project or to any part of any pooled project in connection with which or in connection with any part of which bonds to be refunded shall have been issued. Revenues of all or any part of such pooled project may be pledged to the payment of such refunding and improvement bonds. Such improvements, extensions, or

enlargements are not restricted to and need not be constructed on any particular part of a pooled project in connection with which bonds to be refunded may have been issued but may be constructed in whole or in part on other parts of the pooled project not covered by the bonds to be refunded. The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties, and obligations of the authority in respect of the same shall be governed by the provisions of this Act insofar as the same may be applicable. Within the discretion of the authority, the refunding bonds may be issued in exchange for outstanding bonds or may be sold and the proceeds used for the purpose of redeeming outstanding bonds.

Whether bonds be refunded or not, the authority may, subject to the terms of any trust agreement securing the payment of any turnpike revenue bonds, issue from time to time by resolution, bonds, of parity or otherwise, for the purpose of paying the cost of all or any part of any pooled project or for the purpose of constructing improvements, extensions, or enlargements to all or any part of any pooled project and to pledge revenues of all or any part of such pooled project to the payment thereof. [Amended by Acts 1977, 65th Leg., p. 195, ch. 97, §§ 1 to 3, eff. May 3, 1977; Acts 1977, 65th Leg., p. 1832, ch. 735, § 2.001, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1193, ch. 581, §§ 1 to 4, eff. Sept. 1, 1979.]

Art. 6674v-1. Highway Beautification Act

[See Compact Edition, Volume 5 for text of 1]

Definitions

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

(A) "Commission" means the Texas Highway Commission.

(B) "Interstate System" means that portion of the national system of interstate and defense highways located within this State which now or hereafter may be designated officially by the Commission and approved pursuant to Title 23, United States Code.

(C) "Primary System" means that portion of connected main highways located within this State which now or hereafter may be designated officially by the Commission and approved pursuant to Title 23, United States Code.

(D) "Outdoor Advertising" or "Sign" includes any outdoor sign, display, light, device, figure, painting, drawing, message, plaque, poster, billboard, or other thing which is designed, intended, or used to advertise or inform, if any part of the advertising or information contents is visible from any place on the main traveled way of the interstate or primary systems.

(E) "Junk" means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste, or junked, dismantled, or wrecked automobiles or parts thereof, or iron, steel and other old or scrap ferrous or nonferrous material.

(F) "Automobile Graveyard" means any establishment or place of business which is maintained, used or operated for storing, keeping, buying or selling wrecked, scrapped, ruined or dismantled motor vehicles or motor vehicle parts.

(G) "Junkyard" means any establishment or place of business maintained, used or operated for storing, keeping, buying or selling junk, for processing scrap metal, or for the maintenance or operation of an automobile graveyard, including garbage dumps and sanitary fills.

(H) "Person" means any person, firm or corporation.

(I) "Urbanized Area" means an area defined by the Commission in cooperation with local officials, subject to the approval of the Secretary of the United States Department of Transportation, which as a minimum includes an urbanized area as defined by the United States Bureau of the Census or that part of a multistate urbanized area located in this State.

(J) "Urban Area" means an urbanized area or an area defined by the Commission in cooperation with local officials, subject to the approval of the Secretary of the United States Department of Transportation, which as a minimum includes an urban place as designated by the United States Bureau of the Census having a population of 5,000 or more and not located within an urbanized area. [See Compact Edition, Volume 5 for text of 3]

Control of Outdoor Advertising

Sec. 4. (A) No outdoor advertising may be erected or maintained within 660 feet of the nearest edge of the right-of-way and visible from the main traveled way of the interstate or primary systems, or that is outside an urban area if located more than 660 feet from the nearest edge of the right-of-way and is visible and erected for the purpose of its message being seen from the main traveled way of the interstate or primary systems, except:

(1) Directional and other official signs authorized by law, including signs pertaining to natural wonders and scenic and historic attractions;

(2) Signs advertising the sale or lease of the property upon which they are located;

(3) Signs advertising activities conducted on the property upon which they are located;

(4) Signs located within 660 feet of the nearest edge of the right-of-way in areas in which the land use is designated industrial or commercial under authority of law, such areas to be deter-

mined from actual land uses and defined by regulations established by the Commission;

(5) Signs located within 660 feet of the nearest edge of the right-of-way in areas in which the land use is not designated industrial or commercial under authority of law but in which the land use is consistent with areas designated industrial or commercial, such areas to be determined from actual land uses and defined by regulations established by the Commission;

(6) Signs located on property within the prescribed limits which have as their purpose the protection of life and property; and

(7) Signs erected on or before October 22, 1965, which the Commission with the approval of the Secretary of the United States Department of Transportation determines to be landmark signs of such historic or artistic significance that preservation would be consistent with the purposes of this section.

[See Compact Edition, Volume 5 for text of 4(B) to (E)]

Licenses

Sec. 5. (A) A person who has not obtained a license under this Act may not erect or maintain a sign:

(1) within 660 feet of the interstate or primary systems, if the sign is visible from the main traveled way; or

(2) outside an urban area if the sign is located more than 660 feet from the nearest edge of the right-of-way and is visible and erected for the purpose of its message being seen from the main traveled way of the interstate or primary systems.

[See Compact Edition, Volume 5 for text of 5(B) to (D)]

Permits

Sec. 6. (A) Before a person with a license may erect or maintain a sign covered by Subsection (A), Section 5 of this Act, he must have a permit for each sign.

[See Compact Edition, Volume 5 for text of 6(B) to 15]

[Amended by Acts 1975, 64th Leg., p. 1106, ch. 417, §§ 1 to 4, eff. Sept. 1, 1975.]

1B. MODERNIZATION OF HIGHWAY FACILITIES; CONTROLLED ACCESS HIGHWAYS

Art. 6674w-3. Acquisition of Property

In addition to other powers conferred by law, the following are added, to wit:

1. Powers of Purchase and Condemnation for Highway Purposes. (a) Any land in fee simple or

any lesser estate or interest therein; any property rights of any kind or character including, but not limited to, rights of ingress and egress and reservation rights in land which restrict or prohibit the adding of new, or addition to or modification of existing improvements on such land, or subdividing the same; and any timber, earth, stone, gravel, or other material which the State Highway and Public Transportation Commission may in its judgment determine to be necessary or convenient to any State Highway to be constructed, reconstructed, maintained, widened, straightened or lengthened including, but not limited to, any land, property rights or materials deemed by the Commission necessary or convenient for the purpose of protecting any State Highway; draining any State Highway; diverting streams or rivers or any other watercourse from the right of way of any State Highway; storing materials and equipment used in the construction and maintenance of State Highways; constructing and operating warehouses and other buildings and facilities used in connection with the construction, maintenance, and operation of State Highways; laying out, construction, and maintenance of roadside parks; laying out, construction, and maintenance of vehicular parking lots that will contribute to maximum utilization of State Highways with the least possible congestion; and any other purpose related to the laying out, construction, improvement, maintenance, beautification, preservation and operation of State Highways, may be purchased by the State Highway and Public Transportation Commission in the name of the State of Texas, on such terms and conditions and in such manner as the Commission may deem proper.

(b) Any land or any estate or interest therein; any property rights of any kind or character including, but not limited to, rights of ingress and egress, and reservation rights in land which restrict or prohibit for any period of time not to exceed seven (7) years the adding of new, or addition to or modification of existing improvements on such land, or subdividing or resubdividing same; and any timber, earth, stone, gravel, or other material which the State Highway and Public Transportation Commission may in its judgment determine to be necessary or convenient to any State Highway to be constructed, reconstructed, maintained, widened, straightened or lengthened including, but not limited to, any land, property rights or materials deemed by the Commission necessary or convenient for the purpose of protecting any State Highway; draining any State Highway; diverting streams or rivers or any other watercourse from the right of way of any State Highway; laying out, construction, and maintenance of roadside parks; laying out, construction, and maintenance of vehicular parking

lots that will contribute to maximum utilization of State Highways with the least possible congestion; and any other purpose related to the laying out, construction, improvement, maintenance, and operation of State Highways, may be acquired by the exercise of the power of Eminent Domain by the State Department of Highways and Public Transportation in the name of the State of Texas in the manner hereinafter provided.

The purchase or power of Eminent Domain being hereby authorized is granted regardless of the location of any such land, property rights, or materials to be acquired, whether within or without the confines of any incorporated city, town or village, whether same are incorporated under general or special laws, including Home Rule Cities.

In the prosecution of any condemnation suit brought by the State Highway and Public Transportation Commission in the name of the State of Texas for the acquisition of property pursuant to the powers granted in this Act, the Attorney General, at the request of the Commission, or, at the Attorney General's direction, the applicable County or District Attorney or Criminal District Attorney, shall bring and prosecute the suit in the name of the State of Texas and the venue of any such suit shall be in the county in which the property or a part thereof is situated.

In the exercise of the powers of Eminent Domain herein conferred, the State Department of Highways and Public Transportation shall be subject to the laws and procedures prescribed by Title 52, Articles 3264 to 3271, inclusive, Revised Civil Statutes of Texas, 1925, as said Articles or said Title have been or may be from time to time amended, and shall be entitled to condemn the fee or such lesser estate or interest as it may specify in any statement or petition in any condemnation proceeding filed by it pursuant to such powers; provided however, that any statement or petition in condemnation brought by the Department pursuant hereto shall exclude from the estate sought to be condemned all the oil, gas and sulphur which can be removed from beneath the land condemned without any right whatever remaining to the owners of such oil, gas and sulphur of ingress or egress to or from the surface of the land condemned for the purpose of exploring, developing, drilling or mining of the same; and further provided, that none of the powers granted herein shall be a grant to the State Highway and Public Transportation Commission for the purpose of condemning property which is used and dedicated for cemetery purposes pursuant to Articles 912a-10 et seq., Vernon's Revised Civil Statutes of Texas.

2. State and Other Public Lands. The governing body of every county, city, town, village, political subdivision or public agency is hereby autho-

rized without any form of advertisement to make conveyance of title or rights and easements, owned by any such body, to any property needed by the State Highway and Public Transportation Commission to effect its purposes in connection with the construction or operation of the State Highway System.

Whether purchased or condemned by the Commission, the lands, property rights and materials which are purchased or condemned may also include those belonging to the public, whether under the jurisdiction of the State or any department or agency thereof, county, city, town, village, including Home Rule Cities, or other entity or subdivision thereof.

The State of Texas hereby consents to the use of all lands owned by it, including lands lying underwater, which are deemed by the Commission to be necessary for the construction or operation of any State Highway; provided, however, that nothing herein shall be construed as depriving the School Land Board of authority to execute leases in the manner authorized by law for the development of oil, gas and other minerals on State-owned lands adjoining any such State Highway, or in tidewater limits, and to this end such leases may provide for directional drilling from such adjoining land and tidewater area. The Commission shall advise, and make arrangements with, the State Department or agency having jurisdiction over such lands to accomplish such necessary purposes. Any such State Department or agency is hereby directed to cooperate with the State Department of Highways and Public Transportation in this connection, and as to any such department or agency not expressly authorized to act through some designated representatives, express authority is hereby granted to such department or agency to do whatever acts are necessary hereunder by and through the Chairman of its Board, Department Head, or Executive Director, whether appointed or elected, whichever may be appropriate.

If the land, property rights, or material to be acquired by the State Department of Highways and Public Transportation are of such a nature that its acquisition under the provisions of this Act will deprive any such department or agency of the State of a thing of value to such department or agency in the exercise of its lawful functions, then adequate compensation therefor shall be made, based upon vouchers drawn for this purpose payable to the furnishing department or agency. Payments received by the furnishing department or agency shall be credited to that department's or agency's current appropriation items or accounts from which the expenditures of that character were originally made, or if no such items or

accounts from which the expenditures of that character were originally made, or if no such item or account exists, then to an account of such department or agency determined to be appropriate thereto by the Comptroller of Public Accounts.

In the event, but only in the event, the State Department of Highways and Public Transportation and such other department or agency are unable to agree upon adequate compensation, then the State Board of Control shall determine the fair, equitable and realistic compensation to be paid.

[Amended by Acts 1979, 66th Leg., p. 105, ch. 66, § 1, eff. Aug. 27, 1979.]

2. REGULATION OF VEHICLES

Art. 6675a-1. Definitions of Terms

The following words and terms, as used herein, have the meaning respectively ascribed to them in this Section, as follows:

[See *Compact Edition, Volume 5 for text of (a) to (q)*]

(r) "Implements of husbandry" shall mean farm implements, machinery and tools as used in tilling the soil, including self-propelled machinery specifically designed or especially adapted for applying plant food materials or agricultural chemicals and not designed or adapted for the sole purpose of transporting the materials or chemicals, but shall not include any passenger car or truck.

[See *Compact Edition, Volume 5 for text of (s) and (t)*]

[Amended by Acts 1977, 65th Leg., p. 252, ch. 119, § 1, eff. May 4, 1977.]

Art. 6675a-2. Registration

[See *Compact Edition, Volume 5 for text of (a) and (b)*]

(c) Owners of farm trailers and farm semitrailers with a gross weight exceeding four thousand (4,000) pounds but not exceeding twenty thousand (20,000) pounds and used solely to transport their own seasonally harvested agricultural products and livestock from the place of production to the place of process, market or storage thereof, or farm supplies from the place of loading to the farm, and owners of machinery used solely for the purpose of drilling water wells or construction machinery (not designed for the transportation of persons or property on the public highways), may operate or move such vehicles temporarily upon the highways without the payment of the regular registration fees as prescribed by law, provided the owners of such farm trailers and semitrailers and machinery secure for a fee of five dollars (\$5) for each year or portion thereof a distinguishing license plate from the State Highway De-

partment through the County Tax Collector upon forms prescribed and furnished by the department. Such vehicles shall be exempt from the inspection requirements of Sections 140 and 141 of the Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes).

[See Compact Edition, Volume 5 for text of (c-1) to (h)]

[Amended by Acts 1979, 66th Leg., p. 520, ch. 243, § 1, eff. May 17, 1979.]

Art. 6675a-3. Application for Registration

[See Compact Edition, Volume 5 for text of (a) and (b)]

(c) Owners of motor vehicles, trailers and semi-trailers which are the property of and used exclusively in the service of the United States Government, the State of Texas, or any county, city or school district thereof, shall apply annually to the Department as provided in Section 3-aa of this Act¹ to register all such vehicles, but shall not be required to pay the registration fees herein prescribed, provided that affidavit is made at the time of registration by a person who has the proper authority that such vehicles are the property of and used exclusively in the service of the United States Government, the State of Texas, or a county, city or school district thereof, as the case may be. Owners of vehicles designed and used exclusively for fire fighting shall apply to the Department as provided in Section 3-aa of this Act to register all such vehicles, but shall not be required to pay the registration fees herein prescribed, provided that affidavit is made at the time of registration by a person who has the proper authority that such vehicles are used exclusively for fire fighting; and provided further, that such person shall supply the Department with a reasonable description of the vehicle and the fire fighting equipment mounted thereon. A vehicle owned by a volunteer fire department and used exclusively in the conduct of business of the department shall be registered without the payment of an annual registration fee, if the application for registration is accompanied by an affidavit, stating that the vehicle is owned by, and used exclusively in the conduct of business of, the department and signed by a person with authority to act for the department, and if the application is approved as provided in Section 3-aa of this Act. An owner of a land vehicle used exclusively in county marine law enforcement activities, which may include rescue operations, shall apply to the Department as provided in Section 3-aa of this Act to register the vehicle but is exempt from paying a registration fee. The owner shall include with the application for registration an affidavit that is signed by a person with authority to act for a county sheriff's department and that states that the vehicle is used exclusively in marine law enforcement activi-

ties under the direction of the department. An exempted vehicle may be privately owned and operated by a volunteer if it is used only for marine law enforcement activities.

[See Compact Edition, Volume 5 for text of (d) to (f)]

[Amended by Acts 1977, 65th Leg., p. 1416, ch. 574, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1049, ch. 479, § 1, eff. Aug. 27, 1979.]

¹ Article 6675a-3aa.

Art. 6675a-3e. Operation of Motor Vehicles without License Number Plates

[See Compact Edition, Volume 5 for text of 1 to 4]

Violation a Misdemeanor; Dealers; Purchase of Plates in February and March or Month Preceding Expiration Date

Sec. 5. Any person who operates a passenger car or a commercial motor vehicle upon the public highways of this State at any time without having displayed thereon, and attached thereto, two (2) license number plates, one (1) plate at the front and one (1) at the rear, which have been duly and lawfully assigned for said vehicle for the current registration period or have been validated by the attachment of a symbol, tab, or other device for the current registration period, shall be guilty of a misdemeanor; this shall not apply to dealers operating vehicles under present provisions of the law, and provided, however, license number plates may be purchased during the months of February and March and beginning February first, or if this date falls on Sunday they may be purchased February second, for registration and when purchased may be used from and after date of purchase preceding and during the registration period for which they are issued upon the motor vehicle for which they are issued. Beginning April 1, 1978, license plates may be purchased during the month preceding the date on which the registration expires.

Road-tractors, Motorcycles, Trailers, etc.

Sec. 6. Any person who operates a road-tractor, motorcycle, trailer or semi-trailer upon the public highways of this State at any time without having attached thereto and displayed on the rear thereof, a license number plate duly and lawfully assigned therefor for the current period or validated by the attachment of a symbol, tab, or other device showing that the vehicle is currently registered, shall be guilty of a misdemeanor.

Nothing herein contained shall be construed as changing or repealing any law with reference to any requirement to pay or not to pay a license or registration fee or the amount thereof not expressly enumerated in Sections 1, 2 and 3 hereof.¹

¹ Articles 6675a-3, 6675a-4, 6675a-3d.

Operation with Old License Plates

Sec. 7. Any person operating any motor vehicle, trailer or semi-trailer upon the highways of this State with a license plate or plates for any preceding period which have not been validated by the attachment of a symbol, tab, or other device for the current registration period, shall be deemed guilty of a misdemeanor.

[Amended by Acts 1975, 64th Leg., p. 1919, ch. 621, § 3, eff. Jan. 1, 1978.]

Art. 6675a-4. Registration Dates

(a) By January 1, 1978, the Department shall establish a year-round system for registering vehicles. The system shall be designed so as to distribute the work load as uniformly as practicable within the various offices of the county tax assessor-collectors, as well as the Department, on a year-round basis. In implementing a year-round registration system, the Department may establish separate and distinct registration years for any vehicles or classifications of vehicles. Each registration year so designated shall begin on the first day of a calendar month and expire on the last day of the last calendar month in a registration period. Registration periods may be designated to include less than twelve (12) consecutive calendar months and registration fees shall be computed at a rate of one-twelfth of the appropriate annual registration fee per month in each registration period. The Department shall not establish a registration year of more than twelve (12) months except that registration fees for designated periods of more than twelve (12) months may be paid at the option of the owner. Each application for registration filed more than one month subsequent to the expiration date of the previous year's registration shall be accompanied by an affidavit that the vehicle has not been operated upon the streets or highways of this state at any time subsequent to the expiration of the previous year's registration. The Department may promulgate reasonable rules and regulations to carry out the orderly implementation and administration of the year-round registration system.

(b) Notwithstanding the provisions of Subsection (a) of this section or any other section of this Act, the registration or license of any vehicle shall not be issued for or reduced to a fee less than \$5.00, regardless of the month of the registration period in which application is filed.

[Amended by Acts 1975, 64th Leg., p. 1919, ch. 621, § 1, eff. Jan. 1, 1978.]

Section 2 of the 1975 amendatory act amended art. 6675a-13(a); § 3 amended secs. 5, 6 and 7 of art. 6675a-3e; § 4 thereof provided:

"This Act is effective on January 1, 1978."

Art. 6675a-5e. Disabled Veterans and Their Transporters; Special License Plates; Fee Exemptions; Regulations

(a) A veteran of the armed forces of the United States who, as a result of military service, has suffered at least a 60% service-connected disability, and who receives compensation from the federal government because of such disability, is entitled to register, for his own personal use, one passenger car or light commercial vehicle having a manufacturer's rated carrying capacity of one (1) ton or less, without payment of the prescribed annual registration fee.

[See Compact Edition, Volume 5 for text of (b) and (c)]

(d) Application for the specially designed license plates provided for in this Section shall be made on forms prescribed and furnished by the Department and must be submitted to the Department by October 1st preceding the registration year for which requested. The registration year for these license plates is from April 1st through March 31st of the following year. Each application shall be accompanied by a fee of three dollars (\$3.00) and such evidence as the Department may require as proof of the applicant's eligibility to receive the registration fee exemption. The exemption continues until the license plates are cancelled under Subsection (f) of this Section.

[See Compact Edition, Volume 5 for text of (e) to (i)]

[Amended by Acts 1979, 66th Leg., p. 102, ch. 62, §§ 1, 2, eff. Aug. 27, 1979.]

Art. 6675a-5e.1. Disabled Persons; Special License Devices; Fee; Parking Privileges

Provision for License Plate Devices

Sec. 1. The State Highway Department shall provide for the issuance of specially designed symbols, tabs, or other devices to be attached to the license plates of motor vehicles regularly operated by or for the transportation of permanently disabled persons. Such devices shall be of a design prescribed by the department and shall have the word "Disabled" printed thereon. They shall be issued in addition to regular license plates in years in which license plates are issued or as the legal registration insignia in years in which license plates are not issued.

"Permanently Disabled" Defined; Application

Sec. 2. A person is "permanently disabled" if he has lost, or lost the use of, both legs or is so severely disabled as to be unable to ambulate without the aid of a wheelchair or other mechanical device. Owners

of motor vehicles regularly operated by or for the transportation of such persons may make application to the department through the county tax collector of the county in which they reside for the special symbol, tab, or other device on a form prescribed and furnished by the department. The first such application must be accompanied by acceptable medical proof that the operator or regularly transported passenger is currently and permanently disabled.

Submission of Application; Fee

Sec. 3. Such applications shall be submitted to the county tax collector of the vehicle owner's resident county and shall be accompanied by the annual registration fee prescribed by law for the particular vehicle being registered plus \$1. The county tax collector shall forward the \$1 fee to the State Highway Department for deposit in the State Highway Fund to defray the cost of providing the specially designed symbols, tabs, or other devices.

Limit on Devices

Sec. 4. Only one such set of devices shall be issued for a passenger vehicle operated by or for the transportation of a permanently disabled person for noncommercial use.

Furnishing of Devices

Sec. 5. The State Highway Department shall furnish the special devices to the appropriate county tax assessor-collector.

Parking Privileges

Sec. 6. (a) Any vehicle upon which such special devices are displayed, when being operated by or for the transportation of a permanently disabled person, shall be allowed to park for unlimited periods in any parking space or parking area designated specifically for the physically handicapped.

(b) The owner of a vehicle on which the special devices are displayed is exempt from the payment of fees or penalties imposed by a governmental authority for parking at a meter or in a space with a limitation on the length of time for parking, unless the vehicle was not parked at the time by or for the transportation of a permanently disabled person. This exemption does not apply to fees or penalties imposed by a branch of the United States government. This section does not permit parking a vehicle at a place or time that parking is prohibited.

Disposition of Devices Upon Disposal of Vehicle

Sec. 7. Except as provided by Section 9(d) of this Act, if the owner of a vehicle bearing such special devices disposes of the vehicle during the registration year, he shall turn the devices in to the county tax assessor-collector. If the owner registers another vehicle under this Act at the time he returns the

devices, the assessor-collector shall issue replacement devices for the fee prescribed by law.

Registration Year

Sec. 8. Devices with the "Disabled" designation provided for by this Act shall be issued for the registration year beginning April 1, 1976, and thereafter.

Registration under Other Act

Sec. 9. (a) A person who is eligible to register a motor vehicle under both this Act and Section 5e, Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929, as amended (Article 6675a-5e, Vernon's Texas Civil Statutes), may register a vehicle under either or both Acts.

(b) If a person has registered a motor vehicle under Section 5e, Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929, as amended (Article 6675a-5e, Vernon's Texas Civil Statutes), and then applies for registration of the vehicle under this Act, the county tax collector, after the person pays the application fee of \$1 required by Section 3 of this Act, shall issue the special devices but may not issue a set of license plates. The person shall attach the devices to the plates issued under Section 5e.

(c) If a person has registered a motor vehicle under this Act and then applies for registration of the vehicle under Section 5e, the person shall return to the Department the license plates and devices issued under this Act. After the person pays the registration fee required by Section 5e, the Department shall issue license plates as provided by that section and also shall issue without charge a set of devices provided for by this Act.

(d) If the owner of a vehicle registered under both this Act and Section 5e disposes of the vehicle during the registration year provided by either Act, the person shall return to the Department the license plates and devices. At that time the person may register another vehicle under both Acts and, after paying the replacement fee required by this Act and the issuance fee required by Section 5e, receive from the Department another set of license plates and devices.

Penalty

Sec. 10. A person not disabled or not transporting a disabled person who parks a vehicle with such special device in any parking space or parking area designated specifically for the physically handicapped shall be guilty of a Class C misdemeanor. [Acts 1975, 64th Leg., p. 906, ch. 338, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 1415, ch. 573, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 375, ch. 170, §§ 1, 2, eff. Aug. 27, 1979.]

6675a-5e.2. Congressional Medal of Honor Recipients; Registration, Special License Plates, and Parking Privileges

Text as added by Acts 1979, 66th Leg., p. 323, ch. 150, § 1

(a) A recipient of the Congressional Medal of Honor is entitled to register under this section, for the person's own use, one passenger car or light commercial vehicle having a manufacturer's rated carrying capacity of one ton or less, without payment of any annual registration fee or service charge.

(b) The department shall design and provide for the issuance of special license plates for recipients of the Congressional Medal of Honor. The license plate number will be assigned by the department.

(c) A person may apply to the department at any time for registration under this section on a form prescribed by the department. The department shall require an applicant to submit proof of eligibility to register under this section. Registration under this section is valid for one year.

(d) If license plates issued under this section are lost, stolen, or mutilated, the owner of the vehicle for which the plates were issued may obtain replacement plates from the department without charge. If the owner of a vehicle registered under this section disposes of the vehicle during the registration year, the person shall return the special license plates to the department. At that time the person may register another passenger car or light commercial motor vehicle under this section without charge.

(e) A person who has registered a vehicle and received license plates under this section may renew the registration of the vehicle without charge through application to the county tax collector in the county of the person's residence for an annual registration sticker.

(f) A person operating a vehicle bearing license plates issued under this section has the same parking privileges as a person operating a vehicle bearing plates issued under Section 5e of this Act¹ for disabled veterans.

[Added by Acts 1979, 66th Leg., p. 323, ch. 150, § 1, eff. Aug. 27, 1979.]

¹ Article 6675-5e.

For text as added by Acts 1979, 66th Leg., p. 1040, ch. 470, § 1, see art. 6675-5e.2, post

Art. 6675a-5e.2. Former Prisoners of War; Registration and Special License Plates

Text as added by Acts 1979, 66th Leg., p. 1040, ch. 470, § 1

(a) Any person, other than a person discharged from the armed forces under conditions less than honorable, who was captured and incarcerated by an enemy of the United States during a period of

conflict with the United States, is entitled to register under this Section, for the person's own use, one (1) passenger car or light commercial vehicle having a manufacturer's rated carrying capacity of one (1) ton or less, without payment of any annual registration fee or service charge.

(b) The Department shall design and provide for the issuance of special license plates for persons entitled to register under this Section. The license plates shall be designed to indicate that the recipient is a former prisoner of war.

(c) A person may apply to the Department at any time for registration under this Section on a form prescribed by the Department. The Department shall require an applicant to submit proof of eligibility to register under this Section. Registration under this Section is valid for one (1) year.

(d) If license plates issued under this Section are lost, stolen, or mutilated, the owner of the vehicle for which the plates were issued may obtain replacement plates from the Department without charge. If the owner of a vehicle registered under this Section disposes of the vehicle during the registration year, the person shall return the special license plates to the Department. At that time the person may register another passenger car or light commercial motor vehicle under this Section without charge.

(e) A person who has registered a vehicle and received license plates under this Section may renew the registration of the vehicle without charge through application to the County Tax Collector in the county of the person's residence for an annual registration sticker.

[Added by Acts 1979, 66th Leg., p. 1040, ch. 470, § 1, eff. Aug. 27, 1979.]

For text as added by Acts 1979, 66th Leg., p. 323, ch. 150, § 1, see art. 6675-5e.2, ante.

Art. 6675a-5f. Refund of Overcharges on Registration Fees

If the owner of a motor vehicle that is required to be registered pays an annual registration fee in excess of the statutory amount, he shall be entitled to a refund of the overcharge from the county tax collector who collected the excessive fee. The refund shall be paid from the fund in which the county's share of registration fees is deposited. A refund of the overcharge shall be made on presentation of satisfactory evidence of the overcharge to the county tax collector who collected the excessive fee. The owner of a motor vehicle who pays an excessive registration fee shall make his claim for a refund of the overcharge within five (5) years of the date that the excessive registration fee was paid.

[Added by Acts 1975, 64th Leg., p. 369, ch. 160, § 1, eff. Sept. 1, 1975.]

Art. 6675a-8c. Diesel Motors, Certain Vehicles Propelled by; Fee; License Receipts to Show Type of Motor

It is expressly provided that the license fees for all motor vehicles, other than a passenger car and other than a truck that has a manufacturer's rated carrying capacity of two (2) tons or less, using or being propelled by diesel motors or engines shall be the fees provided in other sections of this Act, plus an additional eleven percent (11%); provided, however, that such additional percentage shall not apply to the fee for the combined gross weight of vehicles registered in combination. When motor vehicles other than a passenger car or a truck described by this section are propelled by diesel fuel, such fact shall be indicated on the license receipts issued for such vehicles by the county tax collectors.

[Amended by Acts 1979, 66th Leg., p. 709, ch. 308, § 1, eff. Sept. 1, 1979.]

Art. 6675a-12a. Duplicate License Receipt

The owner of a vehicle, the license receipt for which has been lost or destroyed, may obtain a duplicate thereof from the State Department of Highways and Public Transportation or the County Collector who issued the original receipt by paying a fee of One Dollar (\$1.00) for said duplicate. The fees derived from the issuance of duplicate license receipts are to be retained by the office issuing same as a fee of office.

[Amended by Acts 1977, 65th Leg., p. 2082, ch. 832, § 1, eff. Aug. 29, 1977.]

Art. 6675a-13. Plate or Plates or Other Devices for Attachment to Vehicles

(a) The Department shall issue to applicants for a motor vehicle registration, on payment of the required fee, a plate or plates, symbols, tabs, or other devices which when attached to a vehicle as prescribed by the Department are the legal registration insignia for the period issued.

[See Compact Edition, Volume 5 for text of (b) to (g)]

[Amended by Acts 1975, 64th Leg., p. 1919, ch. 621, § 2, eff. Jan. 1, 1975.]

Art. 6675a-13½. Designs and Specifications or Reflectorized Plates, Symbols and Tabs

(a) The State Highway Department shall prepare the designs and specifications for the single plate or plates of metal or other material, symbols, tabs, or other devices selected by the State Highway Commission to be used as the legal registration insignia with the requirement, however, that all license plates shall be made with a reflective material so as to be a reflectorized safety license plate. The reflectorized material shall be of such a nature as to

provide effective and dependable brightness in the promotion of highway safety during the service period of the license plate issued. The State Highway Department shall design the license plates to include a design at least one-half inch wide that represents in silhouette the shape of the State of Texas and that appears, in lieu of a star, between letters and numerals.

(a-1) [Expired]

[See Compact Edition, Volume 5 for text of (b) and (c)]

[Amended by Acts 1975, 64th Leg., p. 444, ch. 188, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1371, ch. 525, § 1, eff. Sept. 1, 1975.]

Section 2 of Acts 1975, 64th Leg., ch. 188, provided: "The design change required by this Act applies to license plates manufactured after this Act takes effect."

Art. 6675a-13a. Replacement Number Plates

The owner of a registered motor vehicle may obtain from the Department through the County Tax Collector replacement number plates for such vehicle by filing with said collector an affidavit showing that said number plate or plates have been lost, stolen or mutilated, and by paying a fee of five dollars for each set of plates issued. The County Tax Assessor-Collector shall retain as commission one-half (½) of this fee collected for replacement number plates and the other one-half (½) of such fee shall be reported to and remitted to the State Department of Highways and Public Transportation on Monday of each week as other registration fees are now required to be reported and remitted. In case one or more plates are left in possession of such owner same shall be returned to the Tax Collector when making this affidavit. Said affidavit shall state that such plate or plates have been lost, stolen or mutilated and will not be used on any vehicle owned or operated by the person making this affidavit. No Tax Collector shall issue replacement plates without requiring compliance with the provisions of this Section.

[Amended by Acts 1979, 66th Leg., p. 91, ch. 55, § 1, eff. April 19, 1979.]

Art. 6686. Dealer's and Manufacturer's License Plates and Tags

(a) Dealer's and Manufacturer's License Plates for Unregistered Motor Vehicles, Motorcycles, House Trailers, Trailers, and Semitrailers.

(1) Dealer's License. Any dealer in motor vehicles, motorcycles, house trailers, trailers, or semitrailers doing business in this State may, instead of registering each vehicle he operates or permits to be operated for any reason upon the streets or public highways, apply for and secure a general distinguishing number and master dealer's license plate which may be attached to any such vehicle he owns and operates or permits to be operated

unregistered. Each dealer holding a current distinguishing number and master dealer's license plate may apply for and be issued additional or supplemental metal dealer's plates, as hereinafter provided, which may be attached to any vehicle which he owns and operates or permits to be operated unregistered in the same manner as a vehicle operated on the master dealer's license plate. A dealer within the meaning of this Act means any person, firm, or corporation regularly and actively engaged in the business of buying, selling, or exchanging motor vehicles, motorcycles, house trailers, trailers, or semitrailers at an established and permanent place of business; provided, however, that at each such place of business a sign in letters at least six (6) inches in height must be conspicuously displayed showing the name of the dealership under which such dealer is doing business, and that each such place of business must have a furnished office and, except for dealers who are licensed by the Texas Motor Vehicle Commission pursuant to the Texas Motor Vehicle Commission Code¹ and dealers who sell vehicles to or exchange vehicles with no person other than another dealer licensed under this Act, sufficient space to display five (5) vehicles of the type customarily bought, sold, or exchanged by such dealer.

[See Compact Edition, Volume 5 for text of (a)(2)]

(3) Buyer's Temporary Cardboard Tags. Each dealer holding a current distinguishing number may issue temporary cardboard tags, which may be used by a buyer to operate an unregistered vehicle he purchased from said dealer for a period of twenty (20) days from the date of purchase; provided, however, that a dealer may issue only one (1) buyer's tag to a purchaser for each unregistered vehicle said dealer sells. The specifications, color, and form of such buyer's cardboard tag shall be prescribed by the Department; provided, however, that each dealer shall be responsible for the safekeeping and distribution of all cardboard tags obtained by him; and furthermore, each dealer is responsible for showing in ink on each buyer's cardboard tag he issues the actual date of sale of each unregistered vehicle together with other information asked for thereon.

(4) Dealer's Temporary Cardboard Tags. Each dealer holding a current distinguishing number may issue temporary cardboard tags, which may only be used by such dealer or his employees for the following purposes:

(a) to demonstrate or cause to be demonstrated his unregistered vehicles to prospective buyers only for the purpose of sale; provided, however, that no provision of this Act shall be construed to prohibit a dealer from permitting a prospective buyer to operate such vehicles in the course of demonstration.

(b) to convey or cause to be conveyed his unregistered vehicles from the dealer's place of business in one part of the State to his place of business in another part of the State, or from his place of business to a place to be repaired, reconditioned, or serviced, or from the point in this State where such vehicles are unloaded to his place of business, including the moving of such vehicles from the State line to his place of business, or to convey such vehicles from one dealer's place of business to another dealer's place of business or from the point of purchase of such vehicles by the dealer to the dealer's place of business, or for the purpose of road testing, and such vehicles displaying such tags while being so conveyed shall be exempt from the mechanical inspection requirements of Sections 140 and 141 of the Uniform Act Regulating Traffic on Highways.²

Such tags shall not be used to operate vehicles for the personal use of a dealer or his employees. Whenever a dealer sells an unregistered vehicle to a retail purchaser, it shall be such dealer's responsibility to display the Buyer's Temporary Cardboard Tag thereon pursuant to Subsection (3) of this Act. The specifications, form, and color of such dealer's cardboard tags shall be prescribed by the Department.

(5) Cancellation of License. It shall be the duty of the Department to cancel the dealer's or manufacturer's license issued to a person, firm or corporation when such license was obtained by submitting false or misleading information; and the Department is hereby authorized to cancel dealer's licenses whenever a person, firm, or corporation fails, upon demand, to furnish within thirty (30) days to the Department satisfactory and reasonable evidence of being regularly and actively engaged in the business of buying, selling, or exchanging new or used motor vehicles, motorcycles, house trailers, trailers, or semitrailers at either wholesale or retail; and, it is also provided that the Department may cancel dealer's or manufacturer's licenses issued under this Act for the violation of any provisions of this Act or for the misuse or for allowing the misuse of any cardboard tag authorized under this Act; and, furthermore, the Department is hereby authorized to cancel such licenses whenever a dealer refuses to show on such tags the date of sale or any other reasonable information required to be shown thereon by the Department; provided, however, that nothing in this Act shall be construed to prohibit new entries into the business of buying, selling, exchanging, or manufacturing such vehicles; and provided further that any dealer or manufacturer whose license was cancelled under the terms of this Act shall, within ten (10) days, surrender to a representative of the Department any and all license

plates, cardboard tags, license stickers, and receipts issued pursuant to this Act. If any dealer or manufacturer shall fail to surrender to the Department the license plates, the cardboard tags, license stickers, and receipts as provided herein, the Department shall forthwith direct any peace officer to secure possession thereof and to return same to the Department. Whenever a dealer's or manufacturer's license is cancelled under the provisions of this Act, all benefits and privileges afforded to Texas licensed dealers or manufacturers under the Certificate of Title Act (Article 6687-1, Vernon's Texas Civil Statutes), are automatically cancelled, also.

(6) Limited Use of Dealer's Plates and Tags. The use of dealer's license or dealer's temporary cardboard tags is prohibited on service or work vehicles or on commercial vehicles carrying a load; provided, however, that a boat trailer carrying a boat will not be considered to be a commercial vehicle carrying a load, and a dealer complying with the provisions of this Act may affix to the rear of a boat trailer he owns or to the rear of a boat trailer he sells such dealer's distinguishing number or cardboard tags pursuant to the provisions of Subsections (1), (3) and (4) of this section; and, further provided, that the term "commercial vehicle carrying a load" shall not be construed to prohibit the operation or conveyance of unregistered vehicles by licensed dealers (or buyers therefrom) utilizing the full mount method, the saddle mount method, the tow bar method, or any combination thereof, pursuant to Subsections (3) and (4) of this section.

(7) Fees and Forms. Each applicant for a dealer's or manufacturer's general distinguishing number and master dealer's license plate shall pay to the Department an annual fee of One Hundred Dollars (\$100) for the number and master dealer's plate and Ten Dollars (\$10) for each additional or supplemental metal dealer's plate desired, and all such fees shall be deposited in the State Highway Fund. Applications for a dealer's or manufacturer's license plate, and for renewals thereof, shall be made in writing on forms prescribed and furnished by the Department, and such applications shall require any pertinent information, including sufficient information for the Department to determine that the applicant is actively and regularly engaged in the sale of motor vehicles, motorcycles, house trailers, trailers, or semitrailers as a dealer, to insure proper enforcement and administration; and, furthermore, each such application shall contain a statement to the effect that the applying dealer agrees to permit the Department to examine during working hours the ownership papers for each vehicle, registered or unregistered, in the possession of said dealer or under his control. All facts stated in an application shall be

sworn to before an officer authorized to administer oaths and no dealer's or manufacturer's distinguishing number shall be issued until this Act is complied with. All such applications for dealer's or manufacturer's licenses, accompanied by the prescribed fee, should be made to the Department by January 15 of each year and the license plates for those applications meeting the provisions of this Act will be mailed to the applicants during the succeeding months of February and March. Each dealer's and manufacturer's license shall expire at the expiration of the "Motor Vehicle Registration Year."

[See Compact Edition, Volume 5 for text of (a)(8) to (f)]

[Amended by Acts 1975, 64th Leg., p. 57, ch. 33, § 1, eff. April 3, 1975.]

¹ Article 4413(36).

² Article 6701d, §§ 140, 141.

Art. 6687b. Driver's, Chauffeur's, and Commercial Operator's Licenses; Accident Reports

[See Compact Edition, Volume 5 for text of 1]

ARTICLE II—ISSUANCE OF LICENSES, EXPIRATION, AND RENEWAL

[See Compact Edition, Volume 5 for text of 2 to 4]

Special Restrictions on Drivers of School Buses and Public or Common Carrier Motor Vehicles; Temporary Taxicab Permits in Home-rule Cities Over 800,000

Sec. 5.

[See Compact Edition, Volume 5 for text of 5(a)]

(b) No person who is under the age of twenty-one (21) years shall drive any motor vehicle except a taxicab while in use as a public or common carrier of persons, nor until he has been licensed as a chauffeur. No person who is under the age of nineteen (19) years shall drive a taxicab while in use as a public or common carrier of persons, nor until he has been licensed as a chauffeur. However, the governing body of a home-rule city having a population of more than 800,000, according to the last preceding federal census, may authorize by ordinance the issuance of temporary taxicab permits to persons who are qualified by age to drive a taxicab and who hold a valid Texas operator's license. A temporary taxicab permit must be issued for a definite period of time not to exceed 10 days and may not be issued to the same individual more than once every 90 days. The holder of a valid temporary taxicab permit may operate a taxicab while it is in use as a public or common carrier of persons. Temporary taxicab permits may be issued only in connection with special events in the city being attended by out-of-city visitors resulting in demand for transportation be-

yond the capabilities of established transportation facilities and may not be issued for the purpose of providing transportation in lieu of transportation services suspended or lapsed as the result of a dispute between employees and their employer. Proof of liability insurance coverage in an amount equal to that required by locally franchised taxicab companies shall be required before a temporary taxicab permit may be issued.

[See Compact Edition, Volume 5 for text of 5A and 5B]

Application for License

Sec. 6.

[See Compact Edition, Volume 5 for text of 6(a)]

(b) Every said original application shall state the applicant's full name, place and date of birth, such information to be verified by presentation of a certified copy of the applicant's birth certificate or other documentary evidence deemed satisfactory by the Department. Such application shall also include the thumbprints, or if for any reason thumbprints cannot be taken, the index fingerprints of the applicant, and shall state the sex and residence address of the applicant, and briefly describe the applicant, and shall state whether the applicant has theretofore been licensed as an operator, commercial operator, or chauffeur, and, if so, when and by what state or country, and whether any such license has ever been suspended or revoked or whether an application has ever been refused, and, if so, the date of and reason for such suspension, revocation, or refusal, and whether the applicant, if less than twenty-five (25) years of age, has completed a driver education course approved by the Department, and such other information as the Department may require to determine the applicant's identity, competency and eligibility. Information about the medical history of an applicant supplied to the Department or a Medical Advisory Board is for the confidential use of the Department or the Board and may not be divulged to any person or used as evidence in a legal proceeding except a proceeding under Section 22 or Section 31 of this Act.

[See Compact Edition, Volume 5 for text of 7 to 11A]

Anatomical Gifts; Execution on Reverse Side of Driver's License

Sec. 11B. (a) A gift of any needed parts of the body may be made by executing a statement of gift printed on the reverse side of the donor's operator's, commercial operator's, or chauffeur's license. A signed and witnessed statement of gift thereon shall be deemed to comply with the Texas Anatomical Gift Act (Article 4590-2, Vernon's Texas Civil Statutes). The gift is invalid on expiration, cancellation, revocation, or suspension of the operator's, commercial operator's, or chauffeur's license. To be valid,

the statement must be executed each time the operator's, commercial operator's, or chauffeur's license is replaced, reinstated, or renewed.

(b) The Department shall print a statement certifying the willingness to make an anatomical gift on the reverse side of each operator's, commercial operator's, and chauffeur's license.

Allergy Designation on Reverse Side of License

Sec. 11C. The Department shall print a statement on the reverse side of each operator's, commercial operator's, and chauffeur's license as follows:

Allergic Reaction to Drugs: _____

Restricted Licenses

Sec. 12.

[See Compact Edition, Volume 5 for text of 12(a) to (d)]

(e)

Text of (1) effective January 1, 1981

(1) The Department may issue a special restricted operator's license to any person between the ages of fifteen (15) and eighteen (18) years to operate only a motorcycle, motor scooter or motorized bicycle, with less than one hundred twenty-five (125) cc piston displacement; provided such person has completed and passed a motorcycle operator training course approved by the Department. This motorcycle operator training course will be made available. This motorcycle operator training course will be an exception to the driver training course, regarding the age limit, as applied in Section 7(a), Article 6687b, Vernon's Texas Civil Statutes. Upon reaching the age of sixteen and having completed the above course, the 125cc restriction shall be removed without completing any further motorcycle courses. This special restricted license shall be issued on application to the Department in accordance with Section 7 of Article 6687b, Vernon's Texas Civil Statutes; shall be subject to the requirements of Section 10 of Article 6687b, Vernon's Texas Civil Statutes, and to other provisions of this Act in the same manner as operator's licenses; and shall be in the form prescribed by the Department. A motor-assisted bicycle operator's license is required for operators of motor-assisted bicycles. A person must be at least fifteen (15) years old to be issued a motor-assisted bicycle operator's license. The Department shall examine applicants for that type of license by administering to them a written examination concerning traffic laws applicable to the operation of motor-assisted bicycles. No test involving the operation of the vehicle is required. The fee for the license is Seven Dollars (\$7). All applicable provisions of this Act governing restricted operator's licenses for the operation of motorcycles only also

apply to motor-assisted bicycle operator's licenses, including provisions relating to the application, issuance, duration, suspension, and cancellation of those licenses.

For text of (1) effective until January 1, 1981, see Compact Edition, Volume 5

[See Compact Edition, Volume 5 for text of 12(e)(2) to 14A]

Person Identification Certificates: Handicap or Health Condition; Fee

Sec. 14B. (a) The department may issue to persons who have a physical handicap or health condition that may cause unconsciousness, incoherence, or inability to communicate a specially notated personal identification certificate that indicates the particular handicap or health condition by word, symbol, or code.

(b) Original applications and applications for renewal of identification certificates shall require information and be submitted on a form promulgated by the department.

(c) The department shall levy and collect a fee of \$5 for preparation and issuance of the certificate.

(d) Fees collected for these certificates shall be deposited in the Operator's and Chauffeur's License Fund and are hereby appropriated to defray the cost incurred in issuing these certificates. Any collections in excess of cost shall be deposited in the State Treasury in the General Revenue Fund.

Disposition of Fees

Sec. 15. (a) All fees and charges required by this Act and collected by an officer or agent of the Department shall be remitted without deduction to the Department in Austin, Texas.

(b) All monies received for operators, commercial operators and chauffeurs license fees shall be deposited in the State Treasury in a fund to be known as the Operator's and Chauffeur's License Fund.

(c) Fees and charges deposited in the Operator's and Chauffeur's License Fund under the provisions of this Act may, upon appropriation by the Legislature, be used by the Texas Department of Public Safety for the payment of salaries, purchase of equipment and supplies, maintenance, and any and all other necessary expenses incident to the operation of the Department of Public Safety in carrying out the duties as are by law required of such Department. Any remaining balance in the Operator's and Chauffeur's License Fund on September 1st of each and every year shall remain in such Fund and shall be available for appropriation by the Legislature for the maintenance and support of the Texas Department of Public Safety as set forth hereinabove.

[See Compact Edition, Volume 5 for text of 16 to 19]

Notice of Change of Address or Name

Sec. 20. Whenever any person after applying for or receiving an operator's, commercial operator's or chauffeur's license shall move from the address named in such application or in the license issued to him or when the name of the licensee is changed by marriage or otherwise, such person shall within thirty (30) days thereafter notify the Department in writing of his old and new addresses or of such former and new names, of the number of any license then held by him, and such person shall apply for a duplicate license as set out in Section 14.

Records to be Kept by the Department

Sec. 21.

[See Compact Edition, Volume 5 for text of 21(a)]

(b) Except as specifically provided by this subsection, the Department shall also file all accident reports and abstracts of court records of convictions received by it under the laws of this State and in connection therewith maintain convenient records or make suitable notations in order that an individual record of each licensee showing the convictions of such licensee and the traffic accidents in which he has been involved shall be readily ascertainable and available for the consideration of the Department upon any application for the renewal of a driver's license and at other suitable times. The individual record of a licensee who is employed as a peace officer or a fire fighter shall not include information relating to a traffic accident if the accident occurred during an emergency while the peace officer or fire fighter was driving a law enforcement vehicle or fire department vehicle in pursuit of his or her duties as a peace officer or fire fighter. Before licensing or renewing any license, the Department shall examine the applicant's record for information concerning conviction of traffic violations and involvement in traffic accidents. The Department shall not issue or renew a license when, in its opinion, the applicant's record indicates that issuance or renewal of his license would be inimical to the public safety.

[See Compact Edition, Volume 5 for text of 21(c) to (e)]

(f) The Department is authorized to provide information pertaining to an individual's date of birth, current license status, most recent address, completion of an approved driver education course, the fact of (but not the reason for) completion of a driving safety course, and a listing of reported traffic law violations, and motor vehicle accidents, by date and location, as listed on the records of the Department upon written request and the payment of a Three Dollar (\$3.00) fee by a person showing a legitimate

need for such information, provided, however, that if requests for such information be prepared in quantities of one hundred (100) or more from a single person at any one time and upon data processing request forms acceptable to the Department, such information may be provided upon payment of a One Dollar (\$1.00) fee for each individual request.

[See Compact Edition, Volume 5 for text of 21(g) to 21A]

ARTICLE IV—CANCELLATION, SUSPENSION, AND REVOCATION OF LICENSES

Authority of Department to Suspend or Revoke a License

Sec. 22. (a) When under Section 10 of this Act the Director believes the licensee to be incapable of safely operating a motor vehicle, the Director may notify said licensee of such fact and summons him to appear for hearing as provided hereinafter. Such hearing shall be had not less than ten (10) days after notification to the licensee or operator under any of the provisions of this section, and upon charges in writing, a copy of which shall be given to said operator or licensee not less than ten (10) days before said hearing, except as otherwise provided by this subsection. For the purpose of hearing such cases, jurisdiction is vested in the mayor of the city, or judge of the police court, or a Justice of the Peace in the county where the operator or licensee resides. Such officer may receive a fee for hearing such cases if such a fee is approved and set by the County Commissioners Court which has jurisdiction over the residence of the operator or licensee and such fee shall not exceed Five Dollars (\$5.00) per case and shall be paid from the General Revenue Fund of the County. Any fees, not to exceed Five Dollars (\$5.00) per case, which the County Commissioners Court may determine to be owed to such officer for past hearings, or any fees, not to exceed Five Dollars (\$5.00) per case, previously paid such officer for hearing said cases, is hereby authorized. Such court may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relative books and papers. It shall be the duty of the court to set the matter for hearing upon ten (10) days' written notice to the Department. Upon such hearing, the issues to be determined are whether the license shall be suspended or whether the license shall be revoked, and, in the event of a suspension, the length of time of the suspension, which shall not exceed one (1) year. The officer who presides at such hearing shall report the finding to the Department which shall have authority to suspend the license for the length of time reported; provided, however, that in the event of such affirmative finding, the licensee may appeal to the county court of the county wherein the hearing was held, said appeal

to be tried de novo. Notice by registered mail to the address shown on the license of the licensee shall constitute service for the purpose of this section. If the hearing is to determine whether a licensee is an habitual violator of the traffic law, and if the registered letter is returned to the Department because the Department has not been notified of the licensee's correct address or because the licensee has refused to accept the registered letter, the Director may give the licensee notice of a pending hearing by publishing notice in a newspaper of general circulation in the County of the licensee's residence, as listed in Department records, at least thirty (30) days before the hearing. The Director shall specify in the notice the place, time, and date of the hearing and shall state in the notice that the Department is entitled to suspend for a period of not more than one (1) year the license of a licensee who is found to be an habitual violator of the traffic law.

[See Compact Edition, Volume 5 for text of 22(b) to 23]

Occupational License to Meet Essential Need; Hearing; Restrictions; Financial Responsibility; Violations

Sec. 23A. (a) Any person whose license has been suspended for causes other than physical or mental disability or impairment may file with the judge of the county court or district court having jurisdiction within the county of his residence, or with the judge of the county court or district court having jurisdiction within the county where an offense occurred for which his license was suspended, a verified petition setting forth in detail an essential need for operating a motor vehicle in the performance of his occupation or trade. The hearing on the petition may be ex parte in nature. The judge hearing the petition shall enter an order either finding that no essential need exists for the operation of a motor vehicle in the performance of the occupation or trade of the petitioner or enter an order finding an essential need for operating a motor vehicle in the performance of the occupation or trade of the petitioner. In the event the judge enters the order finding an essential need as set out herein, he shall also, as part of such finding, determine the actual need of the petitioner in operating a motor vehicle in his occupation or trade and shall restrict the use of the motor vehicle to the petitioner's actual occupation or trade and the right to drive to and from the place of employment of the petitioner, and shall require the petitioner to give proof of a valid policy of automobile liability insurance in accordance with the provisions of the Texas Safety Responsibility Law, Article 6701h, Vernon's Annotated Texas Statutes. Such restrictions shall be definite as to hours of the day, days of the week, type of occupation and areas or routes of travel to be permitted, except that the petitioner shall not be allowed to operate a motor vehicle more than ten (10) hours in any twenty-four (24) consecu-

tive hours. On a proper showing of necessity, however, the court may waive the 10-hour restriction. Unless further extended at the discretion of the court, orders entered by such court shall extend for a period of twelve (12) months or less from the date of the original suspension. A certified copy of the petition and the court order setting out the judge's finding and the restrictions shall be forwarded to the Department.

[See Compact Edition, Volume 5 for text of 23A(b) to 24A]

Court to Report Convictions; Restricted Licenses for Convicted Persons

Sec. 25. (a) Whenever any person is convicted of any offense for which this Act makes automatic the suspension of the operator's, commercial operator's, or chauffeur's license of such person, the court in which such conviction is had shall require the surrender to it of all operators', commercial operators', and chauffeurs' licenses then held by the person so convicted and the clerk of said court shall thereupon forward the same together with a record of such conviction. The court may enter an order restricting the operation of a motor vehicle to the person's occupation or to participation in an alcoholic or drug treatment, rehabilitation, or educational program, provided the person gives proof of a valid policy of automobile liability insurance in accordance with the provisions of the Texas Motor Vehicle Safety-Responsibility Act, as amended (Article 6701h, Vernon's Texas Civil Statutes). The order shall state restrictions as to hours of the day, days of the week, type of occupation or program, and areas or routes of travel to be permitted, except that the person convicted may not be allowed to operate a motor vehicle more than ten (10) hours in any consecutive twenty-four (24) hours, providing, on proper showing of necessity, the court may waive the ten (10) hour restriction. The order shall be effective for a period to be determined by the judge and may be extended at the discretion of the judge, provided that if the order is granted for longer than a twelve (12) month period, the person convicted must give proof to the Department of Public Safety of a valid policy of automobile liability insurance in accordance with the provisions of the Texas Motor Vehicle Safety-Responsibility Act (Article 6701h, Vernon's Texas Civil Statutes). But in no event may the order remain in effect beyond the period for which the convicted person's license has been suspended. A certified copy of the order shall be given to the person convicted and shall be forwarded to the Department together with the person's licenses and the record of his conviction. Upon receipt of the order, the Department shall issue a license showing upon its face the restrictions and expiration date set out in the order. The person convicted may use the order of the court as a restricted license for a period of

fourteen (14) days following the date of the order. Any person who violates the restrictions of the order of the court or on the license issued under this section is guilty of a misdemeanor and upon conviction shall be punished in the same manner as one convicted of driving a motor vehicle while license is suspended, and the license and order shall be automatically cancelled.

[See Compact Edition, Volume 5 for text of 25(b) to 29]

Cancellation of License for Medical Reasons

Sec. 30. It shall be unlawful for any person to act as an operator, commercial operator, or chauffeur who is addicted to the use of alcohol or narcotic drugs, or who has been adjudged mentally incompetent and has not been restored to competency by judicial decree or released from a hospital for the mentally incompetent upon a certificate of the superintendent that such person is competent. Any finding by any court of competent jurisdiction that any person holding an operator's license, commercial operator's license, or chauffeur's license is mentally incompetent or addicted to the use of alcohol or narcotics shall carry with it a revocation of such operator's, commercial operator's, or chauffeur's license. It shall be the duty of the clerk of any court in which such findings are made, to certify same to the Department within ten (10) days.

[See Compact Edition, Volume 5 for text of 30A and 31]

Violation of License Provision

Sec. 32. (a) Except as provided in Subsection (b) of this section, it is unlawful for any person to commit any of the following acts:

1. To display or cause or permit to be displayed or to have in possession any operator's, commercial operator's, or chauffeur's license knowing the same to be fictitious or to have been cancelled, revoked, suspended, or altered;
2. To lend or knowingly permit the use of, by one not entitled thereto, any operator's, commercial operator's, or chauffeur's license issued to the person so lending or permitting the use thereof;
3. To display or to represent as one's own, any operator's, commercial operator's, or chauffeur's license not issued to the person so displaying same;
4. To fail or refuse to surrender to the Department on demand any operator's, commercial operator's, or chauffeur's license which has been suspended, cancelled, or revoked as provided by law;
5. To apply for or have in one's possession more than one operator's, commercial operator's, or chauffeur's license that is currently valid; or

6. To use a false or fictitious name or give a false or fictitious address in any application for an operator's, commercial operator's, or chauffeur's license, or any renewal or duplicate thereof, or knowingly to make a false statement or knowingly to conceal a material fact or otherwise commit a fraud in any such application.

(b) After written approval by the Director, the Department may issue to a law enforcement officer an alias driver's license to be used in supervised activities involving criminal investigations. Possession or use for the purposes described in this subsection of a driver's license issued as provided in this subsection by the officer to whom the license was issued is not a violation of this section, unless the Department has suspended, cancelled, or revoked the license. Application for a license for the purposes described in this subsection is not a violation of this section.

[See Compact Edition, Volume 5 for text of 33 to 36]

Employing Unlicensed Chauffeur or Commercial Operator

Sec. 37. Before employing a person as a chauffeur or commercial operator of a motor vehicle, an employer shall request from the Department of Public Safety a list of convictions for traffic violations contained in their files on the potential employee and a verification that the potential employee has a valid license. No person shall employ as a chauffeur or commercial operator of a motor vehicle any person not then licensed as provided in this Act.

[See Compact Edition, Volume 5 for text of 38 to 46]

[Amended by Acts 1975, 64th Leg., p. 219, ch. 80, § 1, eff. April 30, 1975; Acts 1975, 64th Leg., p. 267, ch. 113, § 1, eff. April 30, 1975; Acts 1975, 64th Leg., p. 378, ch. 167, § 1, eff. Jan. 1, 1975; Acts 1975, 64th Leg., p. 905, ch. 337, § 1, eff. June 19, 1975; Acts 1977, 65th Leg., p. 32, ch. 15, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 157, ch. 78, §§ 1, 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1400, ch. 564, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1521, ch. 615, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1526, ch. 619, §§ 1, 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1893, ch. 754, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 57, ch. 35, § 1, eff. April 11, 1979; Acts 1979, 66th Leg., p. 907, ch. 415, § 1, eff. June 6, 1979; Acts 1979, 66th Leg., p. 1048, ch. 478, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1110, ch. 526, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1360, ch. 610, § 2, eff. June 13, 1979; Acts 1979, 66th Leg., p. 1394, ch. 620, § 1, eff. Jan. 1, 1981; Acts 1979, 66th Leg., p. 2023, ch. 794, § 1, eff. June 13, 1979.]

Section 2 of Acts 1979, 66th Leg., p. 58, ch. 35, provided:

"The legislature intends, in enacting this legislation that epilepsy be treated as are other disabilities and diseases under the authority of Subdivision 8, Section 4, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes), in determining eligibility for an operator's, commercial operator's, or chauffeur's license, and as other disabilities and diseases are treated under the authority of Section 22 of that Act, as amended, in determining grounds for suspension or revocation of a license."

Art. 6687-1. Certificate of Title Act

[See Compact Edition, Volume 5 for text of 1 and 1a]

"Motor Vehicle" Defined

Sec. 2. The term "motor vehicle" means every kind of motor driven or propelled vehicle now or hereafter required to be registered or licensed under the laws of this state, including trailers, house trailers, and semitrailers, and shall also include motorcycles, whether required to be registered or not, except motorcycles designed and used exclusively on golf courses. "Motor vehicle" does not include a motor-assisted bicycle as defined in the Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes).¹

¹ See art. 6701d, § 21(m).

[See Compact Edition, Volume 5 for text of 2a to 2c]

"Motorcycle" Defined

Sec. 2d. The term "motorcycle" means every motor vehicle designed to propel itself on not more than three wheels in contact with the ground.

[See Compact Edition, Volume 5 for text of 3 to 29]

Vehicles Brought into State; Sale of Vehicles; Liens or Encumbrances

Sec. 30. (a) Before any motor vehicle which was last registered and titled, or registered in some other state or country may be registered and titled in Texas, the applicant shall furnish to the designated agent a certificate as required under Section 142A, Uniform Act Regulating Traffic on Highways, as added (Article 6701d, Vernon's Texas Civil Statutes). No designated agent shall accept any application for registration and a certificate of title until the provisions of this Section have been complied with.

[See Compact Edition, Volume 5 for text of 30(b) to 34]

Transfer by Operation of Law; New Certificate

Sec. 35. When the ownership of a motor vehicle registered or licensed within this State is transferred by operation of law, as upon inheritance, devise or bequest, bankruptcy, receivership, judicial sale, or any other involuntary divestiture of ownership, the Department shall issue a new certificate of title upon being provided with a certified copy of the order appointing a temporary administrator or of the probate proceedings, or letters testamentary or of administration, if any (if no administration is necessary, then upon affidavit showing such fact and all of the heirs at law and specification by the heirs as to in whose name the certificate shall issue), or order, or bill of sale from the officer making the judicial sale. If the security interest or other lien is foreclosed in accordance with law by nonjudicial

means, the affidavit of the secured party or other mortgagee of the fact of the nonjudicial foreclosure in accordance with law is sufficient to authorize the Department to issue a new certificate of title in the name of the purchaser at the foreclosure sale. If the foreclosure is of a constitutional or statutory lien, the affidavit of the mortgagee of the fact of the creation of the lien and of the divestiture of title by reason thereof in accordance with law and proof of notice as required by Article 5504a, Revised Civil Statutes of Texas, 1925, are sufficient to authorize the Department to issue a new certificate of title in the name of the purchaser. If an agreement providing for right of survivorship is signed by the husband and wife, upon the death of either spouse the Department shall issue a new certificate of title to the surviving spouse upon being provided with a copy of the death certificate of the deceased spouse.

[See Compact Edition, Volume 5 for text of 36 to 56]

Fees; Collection and Disposition

Sec. 57. Each applicant for a Certificate of Title or reissuance thereof shall pay to the designated agent (County Tax Assessor-Collector) the sum of Three Dollars (\$3), of which the first One Dollar and Fifty Cents (\$1.50) shall be accounted for by the County Tax Assessor-Collector and disposed of in the method hereinafter provided; and the remaining One Dollar and Fifty Cents (\$1.50) shall be forwarded to the State Department of Highways and Public Transportation for deposit in the State Highway Fund, together with the application for a Certificate of Title, within twenty-four hours after the same has been received by the County Tax Assessor-Collector, from which fees the Department shall be entitled and shall use sufficient money to pay all expenses necessary to efficiently administer and perform the duties set forth herein.

The County Tax Assessor-Collector shall turn One Dollar and Fifty Cents (\$1.50) from each fee over to the County Treasurer for deposit in the Officers' Salary Fund.

[See Compact Edition, Volume 5 for text of 58 to 65]

[Amended by Acts 1975, 64th Leg., p. 1370, ch. 524, §§ 1, 2, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 2083, ch. 833, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 716, ch. 312, § 1, eff. June 6, 1979; Acts 1979, 66th Leg., p. 1060, ch. 490, § 3, eff. Aug. 27, 1979.]

Art. 6687-2. Automobile Salvage Dealers

(a) In this article:

(1) "Automobile salvage dealer" means an individual, corporation, association, partnership, organization, or other entity engaged in the business of obtaining abandoned, wrecked, or junked motor

vehicles or motor vehicle parts for scrap disposal, resale, repairing, rebuilding, demolition, or other form of salvage.

(2) "Major component part" means the front end assembly or tail section of an automobile, the cab of a truck (light or heavy), the bed of a one ton or lighter truck, or a vehicle part that contains or should contain a federal safety sticker, motor number, serial number, manufacturer's permanent vehicle identification number, or a derivative of a vehicle identification number.

(3) "Front-end assembly" means the hood, right and left front fender, grill, bumper, radiator, and radiator support, if two or more such parts are assembled together as one unit.

(4) "Tail section" means the roof, floor pan, right and left rear quarter panel, deck lid, and rear bumper, if two or more of such parts are assembled together as one unit.

(5) "Federal safety sticker" means a sticker, label, or tag required by 15 U.S.C. Section 1403 or rules adopted under that section.

(b) An automobile salvage dealer, upon receipt of a motor vehicle described in Subsection (a) of this article, shall immediately remove any unexpired license plates from the motor vehicle and place them in a secure, locked place. An inventory list of such plates showing the license number and the make and motor number of the motor vehicle from which such plates were removed shall be maintained on forms to be furnished by the State Highway Department.¹ Upon demand the license plates and inventory lists shall be surrendered to the State Highway Department for cancellation. It is further provided that all Certificates of Title covering such motor vehicles obtained for scrap disposal, resale of parts or any other form of salvage shall, upon demand, be surrendered to the State Highway Department for cancellation. It shall thereafter be the duty of the State Highway Department to furnish a signed receipt for the surrendered license plates and Certificates of Title.

(c) An automobile salvage dealer shall keep an accurate and legible inventory of each major component part purchased by or delivered to him, as follows:

- (1) date of purchase or delivery;
- (2) name, age, address, sex, and driver's license number of the seller;
- (3) the license number of the motor vehicle used to deliver the major component part;
- (4) a complete description of the item purchased;
- (5) the vehicle identification number of the motor vehicle from which a major component part was removed.

(d) In lieu of the requirements contained in Subsection (c) of this article, an automobile salvage dealer may record the name of the dismantler and the Texas Certificate of Inventory number.

(e) An automobile salvage dealer shall keep all records required to be kept by this article for one year after the date of sale or disposal of the item, and he shall allow an inspection of the records by a peace officer at any reasonable time. A peace officer may inspect the inventory on the premises of the automobile salvage dealer at any reasonable time in order to verify, check, or audit the records. An automobile salvage dealer shall allow and shall not interfere with a full and complete inspection by a peace officer of the inventory, premises, and records of the dealer.

(f) A peace officer may seize, hold, and dispose of according to the Code of Criminal Procedure a motor vehicle or part thereof which has been stolen or which has been altered so as to remove, change, mutilate, or obliterate a permanent vehicle identification number, derivative number, motor number, serial number, or federal safety sticker.

(g) A person who fails to comply with any provision of this article or violates a provision of this article commits a Class A misdemeanor.

[Amended by Acts 1977, 65th Leg., p. 1142, ch. 432, § 1, eff. June 15, 1977; Acts 1979, 66th Leg., p. 1508, ch. 651, §§ 1 to 3, eff. June 13, 1979.]

¹ Name changed to State Department of Highways and Public Transportation; see art. 6663.

Art. 6687-6. Secondhand Vehicle Transfers

The current year registration license receipt and the properly assigned Certificate of Title or other evidence of title required to be delivered to the transferee of a used or secondhand vehicle under the terms of Article 6687-5, Revised Civil Statutes of Texas, 1925, as amended, shall be filed by the transferee within twenty (20) working days of the date of transfer with the County Tax Assessor-Collector of the county in which the transferee resides as an application for transfer of title as required under the Certificate of Title Act, as amended (Article 6687-1, Vernon's Texas Civil Statutes), and as an application for transfer of license and in addition to the fees required under the Certificate of Title Act, as amended (Article 6687-1, Vernon's Texas Civil Statutes), for the transfer of title there shall be paid a transfer fee of fifty cents (50¢) for the transfer of registration; provided that if said transferee does not file said applications within twenty (20) working days a penalty or fee of Five Dollars (\$5) shall be paid upon the filing of such application and such penalty shall be collected for each vehicle upon application filed by the transferee. The Tax Assessor-Collector and his bondsmen shall be liable for the penalty herein provided in the event such penalty is not collected. For his services under this Act the

County Tax Assessor-Collector shall retain as commission one-half (½) of fees collected for transfer of registration and one-half (½) of any penalties collected for delinquent filing of applications and the other one-half (½) such fees and penalties shall be reported to and remitted to the State Department of Highways and Public Transportation on Monday of each week as other registration fees are now required to be reported and remitted. Upon receipt of an application for transfer of Certificate of Title and registration the application for transfer of title shall be handled by the Tax Assessor-Collector as provided under the Certificate of Title Act, as amended (Article 6687-1, Vernon's Texas Civil Statutes), and in addition the Department shall issue or cause to be issued a transfer of registration receipt on the application for transfer of registration. The Department may promulgate such reasonable rules and regulations and prescribe such forms as it shall deem necessary to carry out the orderly operation of this Act. It is expressly provided that upon the transfer of any vehicle from one person to another in the State of Texas, all papers or documents relating to or supporting transfer of registration and/or Certificate of Title shall be executed in full and dated as of the date of such transfer, and any person who shall transfer a vehicle and execute such papers or documents as provided for herein wholly or partly in blank leaving out any information that is required to be furnished, shall be guilty of a misdemeanor and shall be fined in any sum not less than Fifty Dollars (\$50) and not exceeding Two Hundred Dollars (\$200). It is further provided that any transferee who accepts transfer papers as herein provided executed wholly or partly in blank or any person who alters, changes, or mutilates such transfer papers, or whoever violates any provision of this Section for which no specific penalty is provided shall be guilty of a misdemeanor and shall be fined in any sum not less than Fifty Dollars (\$50) nor exceeding Two Hundred Dollars (\$200). In this Article, the term "working day" means any day except Saturday, Sunday, or a holiday on which county offices are closed.

[Amended by Acts 1979, 66th Leg., p. 720, ch. 316, § 1, eff. June 6, 1979.]

Section 2 of the 1979 amendatory act provided:

"The time limit for filing a transfer of title and registration for a used or secondhand vehicle transferred before the effective date of this Act is covered by the law in effect when the transfer occurred. The former law is continued in effect for the enforcement of that time limit and the prosecution of violations."

Art. 6687-9. Abandoned Motor Vehicle Act

[See Compact Edition, Volume 5 for text of 1]

Auction of Abandoned Motor Vehicles

Sec. 2. As used in this Article:

(1) "Police department" means the Texas Department of Public Safety, the police department of any city, town, or municipality, acting under the general police power authority as vested in

such department by its respective governing body, or the sheriff or a constable of any county.

[See *Compact Edition, Volume 5 for text of 2(2) to 2(4)*]

(5) "Junked vehicle" means any motor vehicle as defined in Section 1 of Article 6701d-11, Vernon's Texas Civil Statutes, as amended, which:

(a) is inoperative and which does not have lawfully affixed thereto both an unexpired license plate or plates and a valid motor vehicle safety inspection certificate and which is wrecked; dismantled; partially dismantled; or discarded; or

(b) remains inoperative for a continuous period of more than 120 days.

[See *Compact Edition, Volume 5 for text of 2(6) to 9*]

City or County Procedures for Abating Nuisance

Sec. 10. Any city, town, or county within this State may adopt procedures for the abatement and removal of junked vehicles or parts thereof, as public nuisances, from private property, public property or public rights-of-way; provided, however, that any such procedures shall contain:

(a) A provision requiring not less than a ten (10) day notice, stating the nature of the public nuisance on private property and that it must be removed and abated within ten (10) days and further that a request for a hearing must be made before expiration of said ten (10) day period, such notice to be mailed, by certified or registered mail with a 5-day return requested, to the owner or the occupant of the private premises whereupon such public nuisance exists. If the notice is returned undelivered by the United States Post Office, official action to abate said nuisance shall be continued to a date not less than ten (10) days from the date of such return.

(b) A provision requiring not less than a ten (10) day notice, stating the nature of the public nuisance on public property or on a public right-of-way and that it must be removed and abated within ten (10) days and further that a request for a hearing must be made before expiration of said ten (10) day period, such notice to be mailed, by certified or registered mail with a 5-day return requested, to the owner or the occupant of the public premises or to the owner or the occupant of the premises adjacent to the public right-of-way whereupon such public nuisance exists. If the notice is returned undelivered by the United States Post Office, official action to abate said nuisance shall be continued to a date not less than ten (10) days from the date of such return.

(c) A provision that after a vehicle has been removed it shall not be reconstructed or made operable.

(d) A provision requiring a public hearing prior to the removal of the vehicle or part thereof as a public nuisance, to be held before the governing body of the city, town, or county or any other board, commission, or official of the city, town, or county as designated by the governing body, when such a hearing is requested by the owner or occupant of the public or private premises or by the owner or occupant of the premises adjacent to the public right-of-way on which said vehicle is located, within ten (10) days after service of notice to abate the nuisance. Any resolution or order requiring the removal of a vehicle or part thereof shall include a description of the vehicle, and the correct identification number and license number of the vehicle, if available at the site.

(e) A provision requiring notice to be given to the Texas Highway Department within five days after the date of removal identifying the vehicle or part thereof. Said Department shall forthwith cancel the certificate of title to such vehicle pursuant to Article 1436-1, Vernon's Texas Penal Code, as amended.¹

(f) A provision that such procedure shall not apply to (1) a vehicle or part thereof which is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property, (2) a vehicle or part thereof which is stored or parked in a lawful manner on private property in connection with the business of a licensed vehicle dealer or a junkyard or (3) unlicensed, operable or inoperable antique and special interest vehicles stored by a collector on his property, provided that the vehicles and the outdoor storage areas are maintained in such a manner that they do not constitute a health hazard and are screened from ordinary public view by means of a fence, rapidly growing trees, shrubbery, or other appropriate means.

(g) A provision for administration of the procedures by regularly salaried, full-time employees of the city, town, or county except that the removal of vehicles or parts thereof from property may be by any other duly authorized person.

(h) A provision for the filing of a complaint in an appropriate court for the violation of maintaining a public nuisance, if the nuisance is not removed and abated, and a hearing is not requested, within the ten (10) day period provided in Subsections (a) and (b). If a person is found guilty of maintaining a public nuisance as defined in Section 9 of this Act, the person shall be punished by a fine not to exceed two hundred dollars (\$200) and the court shall order removal and abatement of the nuisance.

¹ Transferred; see, now, art. 6687-1.

[See Compact Edition, Volume 5 for text of 11 to 13]

[Amended by Acts 1977, 65th Leg., p. 1127, ch. 422, §§ 1, 2, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1054, ch. 485, § 1, eff. Aug. 27, 1979.]

Art. 6701c-1. Commercial Vehicles or Truck-Tractors; Operation by Other Than Owner

[See Compact Edition, Volume 5 for text of 1 and 2]

Subsequent Lease, Memorandum or Agreement Covering Same Vehicle

Sec. 3. When any such lease, memorandum, or agreement, as required by Section 2 of this Act, shall have been filed with the Department covering the operation of any commercial motor vehicle or truck-tractor, no further such lease, memorandum, or agreement covering the operation of the same commercial motor vehicle or truck-tractor may be accepted by the Department for filing, except a lease between regulated carriers subject to the jurisdiction of the Railroad Commission of Texas or the Interstate Commerce Commission under which lawful dual registration of equipment has been specifically approved, until the existing lease, memorandum, or agreement shall have expired in accordance with its own terms or there shall have been filed with the Department a full release thereof. However, if no definite expiration date is included in the document, it is deemed to expire five (5) years after its effective date or five (5) years after the date filed, whichever is later.

Contents of Lease, Memorandum or Agreement; Information Confidential

Sec. 4. Such lease, memorandum, or agreement as required by Section 2 of this Act shall contain or provide, but shall not be limited to, the name and address of the registered owner of such commercial motor vehicle or truck-tractor, the name and address of the person other than the owner under whose supervision, direction, and control the vehicle will be operated, the actual consideration, the term, the commodity or commodities to be transported under such lease, memorandum, or agreement and a full description of the commercial motor vehicle or vehicles or truck-tractors covered thereby, and except as to leases between regulated carriers subject to the jurisdiction of the Railroad Commission of Texas or the Interstate Commerce Commission, that the operation of such vehicle shall be under the full and complete control and supervision of the person other than the registered owner, that the person other than the registered owner shall provide for each vehicle during the term of such lease, memorandum or agreement proof of financial responsibility as defined in the Texas Motor Vehicle Safety-Responsibility Act, as amended (Article 6701h, Vernon's Tex-

as Civil Statutes), and shall state that such commercial motor vehicle or vehicles or truck-tractors are not the subject of any other such lease, memorandum, or agreement which shall have been filed with the Department of Public Safety in accordance with Section 2 of this Act and which is still in effect, unless the lease, memorandum, or agreement is otherwise required by law.

All information contained in any lease, memorandum, or agreement filed with the Department as required by Section 2 of this Act shall, with the exception of the name and address of the registered owner, the name and address of the person other than the owner, under whose supervision, direction and control the same is being operated, and a full description of the commercial motor vehicle or truck-tractor covered thereby, shall be for the confidential use of the Department; except, however, that the Department of Public Safety may make such information available to the law enforcement officers of the Interstate Commerce Commission, and may further use such information in any judicial proceeding brought in the name of the State of Texas.

[See Compact Edition, Volume 5 for text of 5 to 9]

[Amended by Acts 1977, 65th Leg., p. 143, ch. 69, § 1, eff. Aug. 29, 1977.]

Art. 6701c-3. Protective Headgear for Motorcycle Operators and Passengers

[See Compact Edition, Volume 5 for text of 1]

Necessity of Protective Headgear for Persons under Age 18

Sec. 2. No person under 18 years of age may operate a motorcycle on a public street or highway of this state unless he wears protective headgear which has been approved by the Department of Public Safety, nor may any person carry a passenger under 18 years of age on a motorcycle on a public street or highway of this state unless the passenger wears protective headgear which has been approved by the Department of Public Safety, nor may any person under 18 years of age ride as a passenger on a motorcycle on a public street or highway of this state unless he wears protective headgear which has been approved by the Department of Public Safety.

[See Compact Edition, Volume 5 for text of 3 to 7]

[Amended by Acts 1977, 65th Leg., p. 332, ch. 162, § 1, eff. Aug. 29, 1977.]

CHAPTER ONE A. TRAFFIC REGULATIONS

Article

6701d-11a. Registration and Width Requirements of Vehicles Transporting Fertilizer.

6701d-12a. Weight and Size of Vehicles Transporting Milk.

6701g-1. Removal of Unauthorized Vehicles Parked in Fire Lanes.

6701g-2. Removal of Unauthorized Vehicles from Parking Facilities or Public Highways.

Art. 6701d. Uniform Act Regulating Traffic on Highways

ARTICLE I—WORDS AND PHRASES DEFINED

[See Compact Edition, Volume 5 for text of 1]

SUBDIVISION I—VEHICLES AND EQUIPMENT DEFINED

Vehicles

Sec. 2.

[See Compact Edition, Volume 5 for text of 2(a) to (c)]

(d) "Authorized Emergency Vehicle" means vehicles of the fire department (fire patrol), police vehicles, public and private ambulances for which permits have been issued by the State Board of Health, emergency vehicles of municipal departments or public service corporations as are designated or authorized by the governing body of an incorporated city, private vehicles operated by volunteer firemen or certified Emergency Medical Services volunteers while answering a fire alarm or responding to a medical emergency, and vehicles operated by blood banks or tissue banks, accredited or approved under the laws of this state or the United States, while making emergency deliveries of blood, drugs or medicines, or organs.

[See Compact Edition, Volume 5 for text of 2(e) to 8]

SUBDIVISION II—GOVERNMENTAL AGENCIES, PERSONS, OWNERS, ETC., DEFINED

Director, Department, State, Urban District, Metropolitan Area

Sec. 9.

[See Compact Edition, Volume 5 for text of 9(a) to (d)]

(e) "Metropolitan area" means an area which contains at least one city with a population of one hundred thousand (100,000) or more, according to the latest federal census, and includes the adjacent incorporated cities and unincorporated urban districts.

[See Compact Edition, Volume 5 for text of 10 to 12]

SUBDIVISION III—HIGHWAYS, RESTRICTED DISTRICTS, ZONES, ETC., DEFINED

Highways, Roads, Streets, Sidewalks, Freeways and Ramps

Sec. 13.

[See Compact Edition, Volume 5 for text of 13(a) to (h)]

(i) "Freeway" means a divided, controlled access highway for through traffic.

(j) "Freeway main lane" means a traffic lane to which access is controlled, permitting uninterrupted flow of through traffic.

(k) "Ramp" means an interconnecting roadway of a traffic interchange, or any connection between highways at different levels or between parallel highways, on which vehicles may enter or leave a designated roadway.

[See Compact Edition, Volume 5 for text of 14 to 17]

Public Beach

Sec. 17A. "Public beach" shall mean any beach bordering on the Gulf of Mexico which extends inland from the line of mean low tide to the natural line of vegetation bordering on the seaward shore of the Gulf of Mexico, or such larger contiguous area to which the public has acquired a right of use or easement to or over by prescription, dedication, or estoppel, or has retained a right by virtue of continuous right in the public since time immemorial as recognized by law or custom.

[See Compact Edition, Volume 5 for text of 18 to 20]

SUBDIVISION IV—MISCELLANEOUS DEFINITIONS

[See Compact Edition, Volume 5 for text of 20A to 20H]

Normally and Safely Driven

Sec. 20I. "Normally and safely driven" means the vehicle does not require towing and can be operated under its own power in its customary manner, without further damage or hazard to the vehicle, other traffic, or the roadway.

[See Compact Edition, Volume 5 for text of 21 to 28]

Speed Limit Applicability on Private Roads

Sec. 28A. (a) The owners of a majority of the parcels of real property abutting a private road that is outside the limits of an incorporated city or town and that runs through or in any part of a subdivision for which a plat has been filed in the deed records of a county and which has four hundred (400) or more residents may submit to the State Highway and Public Transportation Commission a petition for the purpose of having the speed restrictions of this Act extended to the portion of the road that is within the subdivision.

(b) After receiving a petition and verifying the property ownership of the signers of the petition, if the commission finds that it would be in the interests of the residents of the area and the public generally, the commission shall issue an order making the speed restrictions of this Act applicable to the portion of the private road that is the subject of the petition.

(c) If the commission rejects a petition submitted under this section, the commission shall hold a public hearing in the county in which the portion of the private road that is the subject of the petition is located, on the question of the advisability of including the private road within the scope of the speed restrictions of this Act. The commission shall cause notice of the public hearing to be published at least ten (10) days before the date of the hearing in a newspaper of general circulation in the county in which the hearing is scheduled.

(d) At the hearing, if the commission finds that it would be in the interests of the residents of the area and the public generally, the commission shall issue an order making the speed restrictions of this Act applicable to the portion of the private road that is the subject of the petition.

(e) If the commission issues an order extending the speed restrictions of this Act to a private road, the private road becomes a public highway for purposes of setting and enforcing speed restrictions under this Act. After issuance of an order under this section, the commission shall cause signs stating speed limits to be posted on property abutting the private road, with the consent of the owners of the property on which the signs are placed.

[See Compact Edition, Volume 5 for text of 29 to 39]

Accident Involving Damage to Vehicle

Sec. 39. The driver of any vehicle involved in an accident resulting only in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible without obstructing traffic more than is necessary but shall forthwith return to and in every event shall remain at the scene of such accident until he has fulfilled the requirements of Section 40. However, when an accident occurs on a main lane, ramp, shoulder, median, or adjacent area of a freeway in a metropolitan area and each vehicle involved can be normally and safely driven, each driver shall move his vehicle as soon as possible off the freeway main lanes, ramps, shoulders, medians, and adjacent areas to a designated accident investigation site, if available, a location on the frontage road, the nearest suitable cross street, or other suitable location to complete the requirements of Section 40, so as to minimize interference with the freeway traffic. Any person failing to stop or to comply with said requirements under such circumstances shall be guilty of a misdemeanor.

Duty to Give Information and Render Aid

Sec. 40. The driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall give his name, address, and the registration number of the vehicle he is driving and

the name of his motor vehicle liability insurer, and shall upon request and if available exhibit his operator's, commercial operator's, or chauffeur's license to the person struck or the driver or occupant of or person attending any vehicle colliding with and shall render to any person injured in such accident reasonable assistance, including the carrying, or the making of arrangements for the carrying, of such person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that such treatment is necessary or if such carrying is requested by the injured person.

[See Compact Edition, Volume 5 for text of 41 and 42]

Immediate Reports of Accidents

Sec. 43. The driver of a vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle to the extent that it cannot be normally and safely driven shall immediately by the quickest means of communication give notice of such accident to the local police department if such accident occurs within a municipality, otherwise to the office of the county sheriff or the nearest office of the Texas Highway Patrol.

Investigation of Accidents

Sec. 43A. A peace officer notified of a motor vehicle accident resulting in injury to or death of any person or damage to the property of any one person to an apparent extent of Two Hundred and Fifty Dollars (\$250) or more may investigate the accident and file any justifiable charges relating thereto without regard to whether the accident occurred on a public street or highway or other public property, on a road owned and controlled by any water control and improvement district, whether or not a fee is charged for the use of the road, or on private property commonly used by the public such as supermarket or shopping center parking lots, parking areas provided by business establishments for the convenience of their customers, clients, or patrons, parking lots owned and operated by the State or any other parking area owned and operated for the convenience of, and commonly used by, the public. It is specifically provided, however, that this Section shall not apply to accidents occurring on privately owned residential parking areas or on privately owned parking lots where a fee is charged for the privilege of parking or storing a motor vehicle.

Written Reports of Accident

Sec. 44. (a) The driver of a vehicle involved in an accident resulting in injury to or death of any person, or damage to the property of any one person, including himself, to an apparent extent of at least Two Hundred Fifty Dollars (\$250), shall within ten (10) days after such accident forward a written report of such accident to the Department. Any

person who shall fail to make such a report shall be guilty of a misdemeanor and upon conviction shall be punished as provided in Section 143. The venue for the prosecution of such offense shall be in the county where the accident occurred.

[See Compact Edition, Volume 5 for text of 44(b) and (c)]

Accident Report Forms

Sec. 45. (a) The department shall prepare and upon request supply to police departments, coroners, sheriffs, garages, and other suitable agencies or individuals, forms for accident reports required hereunder, appropriate with respect to the persons required to make such reports and the purposes to be served. The written reports to be made by person involved in accidents and by investigating officers shall call for sufficiently detailed information to disclose with reference to a traffic accident the cause, conditions then existing, and the persons and vehicle involved. Also, the forms for the written reports shall include a means for designating and identifying peace officers and fire fighters who during an emergency are involved in accidents while driving law enforcement vehicles or fire department vehicles in pursuit of their duties. The forms shall also contain a statement by the peace officers and fire fighters describing the nature of the emergency.

[See Compact Edition, Volume 5 for text of 45(b) to 49]

Persons Under the Influence of Drugs

Sec. 50. (a) A person may not intentionally or knowingly operate a motor vehicle in a public place intended for the use of motor vehicles if the person is under the influence of a controlled substance or drug to a degree that renders the person incapable of safely operating a motor vehicle.

(b) A person who operates a motor vehicle in violation of Subsection (a) of this section commits an offense. The fact that any person charged with a violation of this section is or has been entitled to use the controlled substance or drug under the laws of this State is not a defense against any charge of violating this section.

(c) In this section:

(1) "Controlled substance" has the meaning assigned by Section 1.02(5), Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes).

(2) "Drug" has the meaning assigned by Section 1.02(14), Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes).

(3) "Public place" has the meaning assigned by Section 1.07(29), Penal Code.

(d) An offense under this section is a Class A misdemeanor, unless the actor has been convicted previously under this section, in which case it is a felony of the third degree.

Sec. 50A. Repealed by Acts 1975, 64th Leg., p. 918, ch. 342, § 16, eff. Sept. 1, 1975.

[See Compact Edition, Volume 5 for text of 51 to 70]

ARTICLE VIII—RIGHT-OF-WAY

Vehicles Approaching or Entering Intersection

Sec. 71.

[See Compact Edition, Volume 5 for text of 71(a) to (c)]

(d) Except as provided in Subsection (d-1) of this section, the driver of a vehicle approaching the intersection of a different street or roadway, not otherwise regulated herein, or controlled by traffic control signs or signals, shall stop, yield and grant the privilege of immediate use of such intersection to any other vehicle which has entered the intersection from such driver's right or is approaching such intersection from such driver's right in such proximity thereto as to constitute a hazard and after so stopping may only proceed thereafter when such driver may safely enter such intersection without interference or collision with traffic using such different street or roadway.

(d-1) The driver of a vehicle approaching the intersection of a through street or roadway from a street or roadway which terminates at the intersection, not otherwise regulated in this section or controlled by traffic control signs or signals, shall stop, yield, and grant the privilege of immediate use of the intersection to another vehicle which has entered the intersection from the through street or roadway or is approaching the intersection on the through street or roadway in such proximity as to constitute a hazard and after stopping may only proceed when the driver may safely enter the intersection without interference or collision with the traffic using the through street or roadway.

(e) A driver obligated to stop and yield the right-of-way in accord with Sections (a), (b), (c), (d), and (d-1) of Section 71, who is involved in a collision or interference with other traffic at such intersection is presumed not to have yielded the right-of-way as required by this Act.

[See Compact Edition, Volume 5 for text of 72 and 73]

Vehicle Entering or Leaving Controlled Access Highway

Sec. 73A. The driver of a vehicle proceeding on an access or feeder road of a controlled access highway shall yield the right-of-way to a vehicle enter-

ing or about to enter the road from the highway or leaving or about to leave the road to enter the highway.

[See Compact Edition, Volume 5 for text of 74 to 139F]

ARTICLE XV—INSPECTION OF VEHICLES

Compulsory Inspection

Sec. 140. (a) Every owner of a motor vehicle, trailer, semitrailer, pole trailer, or mobile home, registered in this state and operated on the highways of this state, shall have the tires, brake system (including power brake unit), lighting equipment, horns and warning devices, mirrors, windshield wipers, front seat belts in vehicles where seat belt anchorages were part of the manufacturer's original equipment on the vehicle, steering system (including power steering), wheel assembly, safety guards or flaps if required by Section 139A of this Act, exhaust system, and exhaust emission system inspected at state-appointed inspection stations or by State Inspectors as hereinafter provided. Provisions relating to the inspection of trailers, semitrailers, pole trailers, or mobile homes shall not apply when the gross weight of such vehicles and the load carried thereon is four thousand (4,000) pounds or less. Only the mechanism and equipment designated in this section may be inspected, and the owner shall not be required to have any other equipment or part of his motor vehicle inspected as a prerequisite for the issuance of an inspection certificate.

(b) If such inspection discloses the necessity for adjustments, corrections, or repairs, the vehicle shall be adjusted, corrected, or repaired before a certificate is issued as hereinafter provided. The owner may have such adjustments, corrections, or repairs made by such qualified person or persons as he may choose, subject to reinspection as hereinafter provided.

[See Compact Edition, Volume 5 for text of 140(c) and (d)]

(e) After the fifth (5th) day following the expiration of the period designated for the inspection, no person shall operate on the highways of this State any motor vehicle registered in this State unless a valid certificate of inspection is displayed thereon as required by this Section. It is a defense to a prosecution under this Section that a valid inspection permit for the vehicle is in effect at the time of the arrest. Any peace officer of the Department of Public Safety, or any sheriff or deputy sheriff, or any City policeman who shall exhibit his badge or other signs of authority, may stop any vehicle not displaying this inspection certificate as required by the Department and require the owner or operator to produce an official inspection certificate for the Vehicle being operated.

(f) All motor-assisted bicycles shall be subject to annual inspection in the same manner as are motorcycles, except (1) the fee for inspection shall be Two Dollars (\$2.00), One Dollar (\$1.00) of which shall be paid to the Department to be placed in the Motor Vehicle Inspection Fund and used for the purposes prescribed by law, and (2) the only items of equipment required to be inspected are the brakes, headlamps, and reflectors, which are required to comply with the standards prescribed in Section 184 of this Act. The Department shall promulgate rules and regulations relating to the inspection of motor-assisted bicycles and the issuance and display of inspection certificates with respect to those vehicles.

(g) Any person operating a vehicle on the highways of this State, other than a vehicle licensed in another State and being temporarily and legally operated under a valid reciprocity agreement, in violation of the provisions of this Act or without displaying a valid inspection certificate or having equipment which does not comply with the provisions of Article XIV of this Act is guilty of a misdemeanor and on conviction shall be punished as provided in Section 143 of this Act.

[See Compact Edition, Volume 5 for text of 140(h)]

State Appointed Inspection Stations

Sec. 141. (a) The Department may establish state-appointed inspection stations to carry out the provisions of this Section. Such stations may be located anywhere in the state, and should any be established or appointed, there shall be at least one (1) for each county. The Department is authorized to furnish instructions to, and to supervise official inspection stations and mechanics for inspection of motor vehicles, trailers, semitrailers, pole trailers, and mobile homes for the proper and safe performance of the required items of inspection. The certification of persons to inspect vehicles shall be in accordance with the rules and regulations promulgated by the Department. Every person desiring to operate as an official inspection station shall file an application for a certificate of appointment with the Department.

The application shall be made upon a form prescribed and furnished by the Department, and shall set forth the name of the applicant, the name under which the applicant transacts or intends to transact business, the location of his place of business within the state, and such other information as the Department may require. If the applicant has or intends to have more than one place of business within the state, a separate application shall be made for each place of business.

If the applicant is an association, the application shall set forth the names and the addresses of the persons constituting the association, and if a corpo-

ration, the names and addresses of the principal officers thereof, and any other information prescribed by the Department for purposes of identification. The application shall be signed and verified by oath or affirmation by the owner, if a natural person; in the case of a corporation, by an executive officer thereof or some person specifically authorized by the corporation to sign the application, to which shall be attached written evidence of his authority.

Only such locations which fulfill the Department's requirements and whose owners or proprietors comply with the Department regulations shall qualify and be appointed and issued a certificate. Upon approval of an application, the Department shall issue to the owner a certificate of appointment as an official inspection station for the place of business within the state set forth in the application.

Certificates of appointment shall not be assignable, and shall be valid for the owners in whose names issued and for the transaction of business at the place designated therein, and shall at all times be conspicuously displayed at the place for which issued.

An applicant for appointment as an inspector shall submit with his first application a certificate fee of Five Dollars (\$5). An individual's first appointment as an inspector is effective until August 31 of the year following the date of appointment. Thereafter, appointments as inspectors shall be made for one-year periods, and the certificate fee for each year shall be Five Dollars (\$5).

Upon being advised that an application will be approved, an applicant for an appointment as an inspection station shall pay a fee of Thirty Dollars (\$30) which shall constitute the certificate fee until August 31st of the odd-numbered year following the date of appointment. Thereafter, appointments of stations shall be made for two-year periods and the certificate fee for each such period shall be Thirty Dollars (\$30). All certificate fees shall be placed in a fund in the State Treasury to be known as the Motor Vehicle Inspection Fund and shall be used by the Department in the administration of this Act.

(b) Any owner of an official inspection station who by himself, agent, servant, or employee, violates any provision of Section 140, 141, or 142 of this Act, or requires the repair of any mechanism or equipment other than that set forth in the uniform standards of safety items to be inspected as established, shall upon conviction, be punished by a fine not exceeding Two Hundred Dollars (\$200).

(c) The fee for compulsory inspection to be made under this Section shall be Five Dollars (\$5.00). One Dollar and Seventy-Five Cents (\$1.75) of each fee shall be paid to the Department and shall be placed in the Motor Vehicle Inspection Fund for the purpose of paying the expense of the administration of this law

and the payment of supplemental retirement benefits as provided by law. The Department may require each official inspection station to make an advance payment of One Dollar and Seventy-Five Cents (\$1.75) for each inspection certificate furnished to it, and the money so received shall be placed in the Motor Vehicle Inspection Fund, and no further payment to the Department shall be required upon issuance of the certificate. If such advance payment has been made, the Department shall refund to the inspection station the amount of One Dollar and Seventy-Five Cents (\$1.75) for each unissued certificate which the inspection station returns to the Department in accordance with rules and regulations promulgated by the Department.

If an inspection disclosed the necessity for adjustments, corrections, or repairs, such vehicle shall be reinspected once within seven (7) days free of charge at the same inspection station after the adjustments, corrections, or repairs have been made. Any such vehicle under the terms of this Act, if involved in an accident subsequent to the required inspection, which accident affects the safe operation of any item of inspection, shall return to an inspection station after adequate repairs are made. The subsequent inspection shall be as if the vehicle had not been inspected before. The inspection fee shall be charged for reinspection.

(d) No certificate of inspection shall be issued by any inspector or inspection station until the vehicle has been inspected and found to be in proper and safe condition and to comply with the uniform standards of safety, inspection rules and regulations, and laws of this state. No person shall make, issue, or knowingly use an imitation or counterfeit of an official inspection certificate. No certificate of inspection may be issued by any inspector or inspection station for a motor vehicle equipped with a carburetion device permitting the use of liquefied gas alone or interchangeably with other fuels, unless a currently valid liquefied gas tax decal issued by the comptroller of public accounts is affixed to the lower right-hand corner of the front windshield of the vehicle on the passenger side.

No person shall display or cause or permit to be displayed any inspection certificate knowing the same to be fictitious or issued for another vehicle or issued without the required inspection having been made. No person may transfer an inspection certificate from one windshield or location to another windshield or location.

No person shall perform an inspection or issue an inspection certificate without such person first having been certified to do so by the Department.

No person shall drive or move on any highway any motor vehicle, trailer, semitrailer, pole trailer, mobile home, or combination thereof unless the equipment

upon any and every said vehicle is in good working order and adjustment as required in this Act and said vehicle is in such safe mechanical condition as not to endanger the driver or other occupant or any person or property.

(e) The Department may appoint as official inspection stations, for the limited purpose of inspecting vehicles owned by political subdivisions and agencies of the state, vehicle maintenance facilities owned and operated by the political subdivisions or agencies. The political subdivisions and agencies may not be required to pay the vehicle-inspection fee provided for in Subsection (c) of this section, but shall pay to the Department an advance payment of One Dollar (\$1.00) for each inspection certificate issued to it. The funds received by the Department shall be placed in the Motor Vehicle Inspection Fund for the purpose of paying the expense of the administration of this Act. Inspection stations appointed under this subsection must satisfy all requirements set forth in Sections 140, 141, and 142 of this Act except the provisions relating to the fee contained in Subsection (a) of this section. No officer, employee, or inspector of any political subdivision or agency shall place or cause to be placed any inspection certificate received from the Department under the provisions of this subsection on any vehicle other than a vehicle owned by the political subdivision or agency.

(f) The Director may deny an application for a license or revoke or suspend an outstanding certificate of any inspection station or the certificate of any person to inspect vehicles, in addition to action taken under Subsection (g) of this section, for any of the following reasons:

- (1) issuing a certificate without required adjustments, corrections, or repairs having been made when an inspection disclosed the necessity for those adjustments, corrections, or repairs;
- (2) refusing to allow the owner of the vehicle to have required corrections or adjustments made by any qualified person he may choose;
- (3) issuing an inspection certificate without having made an inspection of the vehicle;
- (4) knowingly or wilfully issuing an inspection certificate for a vehicle without the required items of inspection or with items which were not at the time of issuance in good condition and in conformity with the laws of this state or in compliance with rules of the Commission;
- (5) failure to charge the required fee for inspection;
- (6) charging more than the required inspection fee;
- (7) issuing an inspection certificate without being certified to do so by the Department;

(8) proof of unfitness of applicant or licensee under standards set out in this Act or in Commission rules;

(9) material misrepresentation in any application or any other information filed under this Act or Commission rules;

(10) wilful failure to comply with this Act or any rule promulgated by the Commission under the provisions of this Act;

(11) failure to maintain the qualifications for a license; or

(12) any act or omission by the licensee, his agent, servant, employee, or person acting in a representative capacity for the licensee which act or omission would be cause to deny, revoke, or suspend a license to an individual licensee.

When there is cause to deny an application for a certificate of any inspection station or the certificate of any person to inspect vehicles or revoke or suspend the outstanding certificate, the Director shall, in less than thirty (30) days before refusal, suspension, or revocation action is taken, notify the person, in writing, in person, or by certified mail at the last address supplied to the Department by the person, of the impending refusal, suspension, or revocation, the reasons for taking that action, and of his right to an administrative hearing for the purpose of determining whether or not the evidence is sufficient to warrant the refusal, suspension, or revocation action proposed to be taken by the Director. If, within twenty (20) days after the personal notice of the notice is sent or notice has been deposited in the United States mail, the person has not made a written request to the Director for this administrative hearing, the Director, without a hearing, may suspend or revoke or refuse to issue any certificate. On receipt by the Director of a written request of the person within the twenty-day (20-day) period, an opportunity for an administrative hearing shall be afforded as early as is practicable. In no case shall the hearing be held less than ten (10) days after written notification, including a copy of the charges, is given the person by personal service or by certified mail sent to the last address supplied to the Department by the applicant or certificate holder. The administrative hearing in these cases shall be before the Director or his designee. The Director or his designee shall conduct the administrative hearing and may administer oaths and issue subpoenas for the attendance of witnesses and the production of relevant books, papers, or documents. On the basis of the evidence submitted at the hearing, the Director acting for himself or upon the recommendation of his designee may refuse the application or suspend or revoke the certificate.

Any person dissatisfied with the action of the Director, without filing a motion for rehearing, may appeal the action of the Director by filing a petition

within thirty (30) days after the action is taken in a district court in the county where the person resides or in a district court of Travis County, and the court is vested with jurisdiction, and it shall be the duty of the court to set the matter for hearing upon ten (10) days written notice to the Director and the attorney representing the Director. The court in which the petition of appeal is filed shall determine whether any action of the Director shall be suspended pending hearing and enter its order accordingly, which shall be operative when served upon the Director, and the Director shall provide the attorney representing the Director with a copy of the petition and order. The Director shall be represented in these appeals by the district or county attorney of the county, or the attorney general, or any of their assistants.

(g) No person who performs an inspection at a state-appointed inspection station may fraudulently represent to an applicant that a mechanism or item of equipment required to be inspected must be repaired, adjusted, or replaced before the vehicle will pass inspection when that is not the case. The Department may cancel or suspend the certificate of appointment of any state-appointed inspection station or the certificate of the person performing the inspection if it finds, after notice and hearing, that a violation of this Section occurred at the inspection station.

Safety Standards and Inspection Certificates

Sec. 142. (a) The Public Safety Commission shall establish uniform standards of safety whenever applicable with respect to items to be inspected as provided by Section 140 of this Act and shall list those items to be inspected in conformity with these standards established as provided by law. The list of items to be inspected and uniform standards of safety shall be posted in every official inspection station. Every vehicle inspected shall conform in all respects to the uniform standards of safety and the list of items to be inspected established pursuant to this Section.

(b) The Department shall furnish serially numbered certificates of inspection to inspection stations. Each certificate, when issued, shall bear such information as required by the Department for the type of vehicle that was inspected. The certificate shall be invalid after the end of the twelfth month in which the vehicle was last inspected, approved, and the certificate of inspection issued. A certificate of inspection and approval for any vehicle shall be attached to or produced for such vehicle as the Department shall require. The Department shall require that certificates for motorcycles be attached to the rear of the vehicle near the license plate. A record and report as prescribed by the Department shall be made of every inspection and every certifi-

cate so issued. No unused certificates of inspection representing a prior inspection period shall be issued after the beginning of the next ensuing period.

(c) The Department may adopt rules necessary for the administration and enforcement of Article XV of this Act.

Inspection Before Certificate of Title Registration

Sec. 142A. (a) Before a vehicle may be registered and titled under Subsection (a), Section 30, Certificate of Title Act, as amended (Article 6687-1, Vernon's Texas Civil Statutes), the owner must have the vehicle inspected as required under Section 140 of this Act and must have the state-appointed inspection station record the permanent identification number of the vehicle on the certificate of inspection.

(b) An inspection station may not issue a certificate required under Subsection (a) of this section unless the vehicle satisfies the requirements for certification under Article XV of this Act.

(c) The inspection station shall charge a fee of \$5 for the inspection and certificate issued under this section and shall pay \$1 of each fee to the department for payment into the Motor Vehicle Inspection Fund for use in paying expenses of administering this section. The fee for an inspection required by this section is in lieu of the fee provided for by Subsection (c) of Section 141 of this Act.

(d) The department shall furnish forms for the certificates to official inspection stations and may require that an inspection station make an advance payment of \$1 for each inspection certificate furnished it. The department shall pay the money received from an advance payment into the Motor Vehicle Inspection Fund and may not require an additional payment to the department when the certificate is issued. The department shall refund to the inspection station the amount of \$1 for each unissued certificate which the inspection station returns to the department and for which advance payment has been made.

ARTICLE XVI—PENALTIES AND DISPOSITION OF FINES AND FORFEITURES

[See Compact Edition, Volume 5 for text of 143]

Dismissal of Certain Misdemeanor Charges Upon Completing Driving Safety Course

Sec. 143A. (a) When a person is charged with a misdemeanor offense under this Act, other than a violation of Section 50 or 51, committed while operating a motor vehicle, the court:

(1) in its discretion may defer proceedings and allow the person 90 days to present evidence that, subsequent to the alleged act, the person has successfully completed a defensive driver's course

approved by the Texas Department of Public Safety or other driving safety course approved by the court; or

(2) shall defer proceedings and allow the person 90 days to present written evidence that, subsequent to the alleged act, the person has successfully completed a driving safety course approved by the court, if:

(A) the person presents to the court an oral request or written motion to take a course;

(B) the person has a valid Texas driver's license or permit; and

(C) the person's driving record as maintained by the Texas Department of Public Safety does not indicate successful completion of a driving safety course under this subdivision within the two years immediately preceding the date of the alleged offense.

(b) When the person complies with the provisions of Subsection (a) of this section and the evidence presented is accepted by the court, the court shall dismiss the charge.

When a charge is dismissed under this section, the charge may not be part of the person's driving record or used for any purpose, but the court shall report the fact that a person has successfully completed a driving safety course and the date of completion to the Texas Department of Public Safety for inclusion in the person's driving record. The court shall note in its report whether the course was taken under the procedure provided by Subdivision (2) of Subsection (a) of this section for the purpose of providing information necessary to determine eligibility to take a subsequent course under that subdivision.

Disposition of Fines and Forfeitures

Sec. 144. (a) Fines collected for violation of any highway law as set forth in this Act shall be used by the municipality or the counties in which the same are assessed and to which the same are payable in the construction and maintenance of roads, bridges, and culverts therein, and for the enforcement of the traffic laws regulating the use of the public highways by motor vehicles and motorcycles and to help defray the expense of county traffic officers.

(b) When a person is convicted in a municipal court of the offense of operating a vehicle on an interstate highway, as that term is defined in Subsection 144(c), at a speed greater than is reasonable and prudent under the circumstances, the municipal court shall remit to the state treasurer any portion of the fine assessed and collected which exceeds two dollars (\$2) times the number of miles per hour by which the offender exceeded the posted speed limit as such excess speed is determined by a speed-measuring device as defined in Subsection 144(d). The number of miles per hour by which an offender exceeds the posted speed limit is determined by subtracting the posted prima facie speed limit from the number of miles per hour the offender is alleged to have driven at the time of the offense according to the summons or promise to appear. The state treasurer shall deposit funds received under this Section in the General Revenue Fund.

(c) Definition: "Interstate highway" as used herein is a portion of the national system of interstate and defense highways located within this state which now or hereafter may be designated officially by the Texas Highway Commission and approved pursuant to Title 23, United States Code.¹

(d) Definition: "Speed-measuring device" as used herein is any "Doppler shift speed meter" or other "radar" device whether operating under a pulse principle or a continuous-wave principle, photo-traffic camera, or any other electronic device used to detect and measure speed.

¹ 23 U.S.C.A. § 101 et seq.

[See Compact Edition, Volume 5 for text of 145 to 165]

ARTICLE XIX—SPEED RESTRICTIONS [1963 ENACTMENT]

Maximum Speeds of Vehicles

Sec. 166.

[See Compact Edition, Volume 5 for text of (a) to (c)]

(d) A person may not operate a motor vehicle on a beach at a speed greater than 25 miles per hour during the daytime or greater than 20 miles per hour during the nighttime.

Authority of State Highway Commission to Alter Maximum Speed Limits

Sec. 167.

[See Compact Edition, Volume 5 for text of 167(a) to (c)]

(d) The State Highway and Public Transportation Commission shall hold upon request a public hearing at least once each calendar year to consider maximum prima facie speed limits on highways in the State Highway System that are near public or private institutions of elementary or secondary education.

[See Compact Edition, Volume 5 for text of 168]

Authority of County Commissioners Court and Governing Bodies of Incorporated Cities, Towns and Villages to Alter Maximum Prima Facie Speed Limits

Sec. 169.

[See Compact Edition, Volume 5 for text of 169(a) and (b)]

(c) An incorporated city, town, or village with respect to any highway, street, or part of a highway or street, including those marked as a route of a highway of the State Highway System, within its corporate limits, shall have the same authority to alter maximum prima facie speed limits upon the basis of an engineering and traffic investigation as that delegated to the State Highway Commission with respect to any officially designated or marked highway, road, or street of the State Highway System, when the highway, street, or part of a highway or street, including those marked as a route of a highway of the State Highway System, is under repair, construction, or maintenance, which limits, when appropriate signs giving notice of the limits are erected, shall be effective at that highway, street, or part of a highway or street, including those marked as a route of a highway of the State Highway System at all times or during hours of daylight or darkness, or at other times as may be determined; provided that under no circumstances may any governing body have the authority to modify or alter the basic rule established in Subsection (a) of Section 166, nor to establish a speed limit higher than sixty (60) miles per hour, and that any order of the State Highway Commission declaring a speed limit upon any part of a designated or marked route of the State Highway System made pursuant to Section 167 or Section 169B shall supersede any conflicting designated speed established under the provisions of this section.

[Text of subsec. (d) added by Acts 1977, 65th Leg., p. 916, ch. 344, § 2]

(d) The governing body of an incorporated city, town, or village in which a public or private institution of elementary or secondary education is located shall hold upon request a public hearing at least once each calendar year to consider maximum prima facie speed limits on streets and highways, including highways in the State Highway System, near the institution. If a county road outside the State Highway System is located within 500 feet of a public or private institution of elementary or secondary education that is not within the limits of an incorporated city, town, or village, the county commissioners court shall hold upon request a public hearing at least once each calendar year to consider the maximum prima facie speed limit on the road near the institution. A municipal governing body or commissioners court may hold upon request one public hearing for all public and private institutions of elementary or secondary education within its jurisdiction.

[Text of subsec. (d) added by Acts 1977, 65th Leg., p. 2120, ch. 846, § 1]

(d) The commanding officer of a United States military reservation, with respect to any highway, street, or part of a highway or street, including one marked as a route of a highway of the State Highway System, within the limits of the military reservation, has the same authority by order to alter maximum prima facie speed limits on the basis of an engineering and traffic investigation as that delegated to the State Highway and Public Transportation Commission with respect to any officially designated or marked highway, road, or street of the State Highway System. However, a commanding officer may not modify or alter the basic rule established in Subsection (a) of Section 166 of this Act, as amended, nor may he establish a speed limit higher than sixty (60) miles an hour. An order of the State Highway and Public Transportation Commission declaring a speed limit on any part of a designated or marked route of the State Highway System made pursuant to Section 167 or Section 169B of this Act, as amended, supersedes any conflicting order of a commanding officer.

(e) The chairman of the State Highway and Public Transportation Commission and the chairman of the State Board of Education shall provide assistance and information relevant to consideration of speed limits to commissioners courts, municipal governing bodies, and other interested persons.

Special Speed Limitations

Sec. 169A.

[See Compact Edition, Volume 5 for text of 169A(a) to (d)]

(e) No person may operate on a public highway at a speed greater than thirty (30) miles per hour any self-propelled machinery specifically designed or especially adapted for applying plant food materials or agricultural chemicals and not designed or adapted for the sole purpose of transporting the materials or chemicals, unless the machinery is registered under Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929, as amended (Article 6675a-1 et seq., Vernon's Texas Civil Statutes).

Temporary Speed Limits

Sec. 169B.

[See Compact Edition, Volume 5 for text of 169B(a) to (i)]

(j) This section expires when the national maximum speed limit of 55 miles per hour as provided in Section 154, Chapter 1, Title 23, United States Code,¹ is repealed.

¹ 23 U.S.C.A. § 154.

[See Compact Edition, Volume 5 for text of 170 and 171]

Exceptions to Speed Law

Sec. 172. The provisions of this Article regulating speeds of vehicles shall not apply to authorized emergency vehicles responding to calls, nor to police patrols, nor to physicians and/or ambulances responding to emergency calls, provided that incorporated cities and towns may by ordinance regulate the speed of ambulances, emergency medical services vehicles, and authorized emergency vehicles operated by blood banks or tissue banks.

[See Compact Edition, Volume 5 for text of 173 to 177]

ARTICLE XXI—OPERATION OF BICYCLES AND PLAY VEHICLES

[See Compact Edition, Volume 5 for text of 178]

Traffic Laws Apply to Persons Riding Bicycles; Competitive Racing

Sec. 179. Every person riding a bicycle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this Act, except as to special regulations in this Article and except as to those provisions of this Act which by their nature can have no application.

However, organized, competitive bicycle races may be held on public roads, provided that the sponsoring organization shall have obtained the approval of the appropriate local law enforcement agencies. The sponsoring organization and the local law enforcement agency may establish by agreement special regulations regarding the movement of bicycles during such races, or in training for races, including, but not limited to, permission to ride abreast and other regulations to facilitate the safe conduct of such races or training for races. "Bicycle" as used herein means a nonmotorized vehicle propelled by human power.

[See Compact Edition, Volume 5 for text of 180 and 181]

Riding on Roadways and Bicycle Paths

Sec. 182.

[See Compact Edition, Volume 5 for text of (a) and (b)]

(c) Repealed by Acts 1979, 66th Leg., p. 868, ch. 393, § 1, eff. June 6, 1979.

[See Compact Edition, Volume 5 for text of 183 to 188]

[Amended by Acts 1975, 64th Leg., p. 52, ch. 28, § 1, eff. March 27, 1975; Acts 1975, 64th Leg., p. 485, ch. 208, § 2,

eff. Jan. 1, 1976; Acts 1975, 64th Leg., p. 651, ch. 271, §§ 1 to 3, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1091, ch. 411, § 1, eff. June 19, 1975; Acts 1975, 64th Leg., p. 1291, ch. 483, § 1, eff. June 19, 1975; Acts 1975, 64th Leg., p. 2106, ch. 686, § 1, eff. June 20, 1975; Acts 1975, 64th Leg., p. 2406, ch. 738, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 253, ch. 119, § 2, eff. May 4, 1977; Acts 1977, 65th Leg., p. 267, ch. 128, §§ 1, 2, eff. May 11, 1977; Acts 1977, 65th Leg., p. 916, ch. 344, §§ 1, 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2011, ch. 804, §§ 1 to 3, eff. Sept. 1, 1977; Acts 1977, 65th Leg., p. 2029, ch. 810, §§ 1 to 8, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2088, ch. 836, §§ 1, 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2120, ch. 846, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 533, ch. 249, § 11, eff. Sept. 1, 1979; Acts 1979, 66th Leg., p. 662, ch. 291, § 2, eff. Jan. 1, 1980; Acts 1979, 66th Leg., p. 716, ch. 312, § 2, eff. June 6, 1979; Acts 1979, 66th Leg., p. 1048, ch. 478, § 2, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1156, ch. 559, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1359, ch. 610, § 1, eff. June 13, 1979; Acts 1979, 66th Leg., p. 1608, ch. 682, §§ 1, 2, eff. Sept. 1, 1979; Acts 1979, 66th Leg., p. 1798, ch. 731, § 1, eff. June 13, 1979; Acts 1979, 66th Leg., p. 1964, ch. 776, § 1, eff. Sept. 1, 1979.]

Section 2 of Acts 1979, 66th Leg., p. 1156, ch. 559, provided:

"The Department of Highways and Public Transportation shall erect appropriate signs near the entrances and exits of controlled access highways to advise motorists of the requirements of this Act."

Section 2 of Acts 1979, 66th Leg., p. 1964, ch. 776, provided:

"This Act takes effect September 1, 1979, and applies only to offenses committed on or after that date. Offenses committed under Section 50, Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes), before the effective date of this Act are subject to prosecution under that section as it existed when the offense occurred, and that law is continued in effect for that purpose. For the purpose of this Act, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date."

Art. 6701d-4. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4), eff. Sept. 1, 1975

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing this article, enacts the Parks and Wildlife Code.

Art. 6701d-11. Regulating Operating of Vehicles on Highways

[See Compact Edition, Volume 5 for text of 1 and 2]

Width, Length and Height

Sec. 3. (a) No vehicle shall exceed a total outside width, including any load thereon, of ninety-six (96) inches, except that the width of a farm tractor shall not exceed nine (9) feet, excepting further that the limitations as to size of vehicle stated in this Section shall not apply to implements of husbandry, machinery used solely for the purpose of drilling water wells regardless of whether it is a unit in itself or is a unit mounted on a conventional vehicle or chassis, and highway building and maintenance machinery temporarily propelled or moved upon the public highways, excepting further, that the limitations as to size of vehicles stated in this Section shall not apply to vehicles on which implements of husbandry are being carried or moved provided such vehicles are being moved by the owner thereof or his agent

or employee for the purpose of carrying on agricultural operations, and provided further that such implements are being moved or carried a distance of not more than fifty (50) miles, and excepting further, that the width of a motor bus or trolley bus operated exclusively within the limits of an incorporated city or town in this State and suburbs contiguous thereto and the county in which said incorporated city is located shall not exceed one hundred and two (102) inches. However, a vehicle used to carry cylindrically shaped bales of hay may exceed ninety-six (96) inches in width but its width may not exceed one hundred and twenty (120) inches.

No vehicle, other than vehicles herein exempted from these provisions, which has a total outside width, including any load thereon, in excess of the applicable width herein stated shall be permitted to operate on the public highways except under a special permit issued for such movement as prescribed in Section 2 of this Act or in Chapter 41, General Laws of the Forty-first Legislature, Second Called Session, 1929, as amended (Article 6701a of Vernon's Texas Civil Statutes) or except as authorized in some other Statute permitting or regulating such movement.

[See Compact Edition, Volume 5 for text of 3(b) to 3a]

Vehicles Transporting Seed Cotton Modules

Sec. 3B. (a) Except as provided by Subsection (d) of this section, a single motor vehicle used exclusively to transport seed cotton modules may exceed the limitation on width provided for a single vehicle by Subsection (a) of Section 3 of this Act but may not exceed a width of one hundred and eight (108) inches.

(b) Except as provided by Subsection (d) of this section, a single motor vehicle used exclusively to transport seed cotton modules may exceed the limitation on length provided for a single vehicle by Subsection (c) of Section 3 of this Act but may not exceed a length of forty-eight (48) feet.

(c) Except as provided by Subsection (d) of this section, a vehicle or combination of vehicles used exclusively to transport seed cotton modules may exceed the limitations on weight provided by Section 5 of this Act, but the load on any one axle may not exceed twenty thousand (20,000) pounds, the tandem axle load may not exceed thirty-eight thousand (38,000) pounds without van-type cover; thirty-nine thousand, four hundred (39,400) pounds with van-type cover, and the overall gross weight of the vehicle or vehicles may not exceed fifty-nine thousand, four hundred (59,400) pounds.

(d) A vehicle may not be operated on the national system of interstate and defense highways if it

exceeds the maximum size or weight authorized by 23 U.S.C. Section 127.

(e) The owner of a vehicle covered by this section having a tandem axle weight greater than thirty-four thousand (34,000) pounds is liable to and shall compensate the state, county, or city for all damages to a highway, street, road, or bridge caused by the weight of the tandem axle load.

[See Compact Edition, Volume 5 for text of 4]

Weight of Load

Sec. 5. Except as otherwise provided by law, no commercial motor vehicle, truck-tractor, trailer or semitrailer, nor combination of such vehicles, shall be operated over, on, or upon the public highways outside the limits of an incorporated city or town, having a weight in excess of one or more of the following limitations:

(1) No such vehicle nor combination of vehicles shall have a greater weight than twenty thousand (20,000) pounds carried on any one axle, including all enforcement tolerances; or with a tandem axle weight in excess of thirty-four thousand (34,000) pounds, including all enforcement tolerances; or with an overall gross weight on a group of two or more consecutive axles produced by application of the following formula:

$$W=500 \left(\frac{LN}{N-1} + 12N + 36 \right)$$

where W = overall gross weight on any group of two or more consecutive axles to the nearest 500 pounds, L = distance in feet between the extreme of any group of two or more consecutive axles, and N = number of axles in group under consideration, except that two consecutive sets of tandem axles may carry a gross load of 34,000 pounds each providing the overall distance between the first and last axles of such consecutive sets of tandem axles is thirty-six (36) feet or more; provided, that such overall gross weight may not exceed eighty thousand (80,000) pounds, including all enforcement tolerances.

(2) No such vehicle nor combination of vehicles shall have a greater weight than six hundred (600) pounds per inch width of tire upon any wheel concentrated upon the surface of the highway and using high-pressure tires, and a greater weight than six hundred and fifty (650) pounds per inch width of tire upon any wheel concentrated upon the surface of the highway and using low-pressure tires, and no wheel shall carry a load in excess of eight thousand (8,000) pounds on high-pressure tires and ten thousand (10,000) pounds on low-

pressure tires, nor any axle a load in excess of sixteen thousand (16,000) pounds on high-pressure tires, and twenty thousand (20,000) pounds on low-pressure tires.

(3) Nothing in this section shall be construed as permitting size or weight limits on the national system of interstate and defense highways in this state in excess of those permitted under 23 U.S.C. Section 127. If the federal government prescribes or adopts vehicle size or weight limits greater than those now prescribed by 23 U.S.C. Section 127 for the national system of interstate and defense highways, the increased limits shall become effective on the national system of interstate and defense highways in this state.

(4) Nothing in this section shall be construed to deny the operation of any vehicle or combination of vehicles that could be lawfully operated upon the highways and roads of this state on December 16, 1974.

(5) In this section, an axle load is defined as the total load transmitted to the road by all wheels whose centers may be included between two (2) parallel transverse vertical planes forty (40) inches apart, extending across the full width of the vehicle. Tandem axle group is defined as two (2) or more axles spaced forty (40) inches or more apart from center to center having at least one (1) common point of weight suspension.

Weighing Loaded Vehicles by Inspectors

Sec. 6. Subd. 1. Any License and Weight inspector of the Department of Public Safety, any highway patrolman or any sheriff or his duly authorized deputy, having reason to believe that the gross weight or axle load of a loaded motor vehicle is unlawful, is authorized to weigh the same by means of portable or stationary scales furnished or approved by the Department of Public Safety, or cause the same to be weighed by any public weigher, and to require that such vehicle be driven to the nearest available scales for the purpose of weighing. In the event the gross weight of such vehicle be found to exceed the maximum gross weight authorized by law, plus a tolerance allowance of five per cent (5%) of the gross weight authorized by law, such license and weight inspector, highway patrolman, sheriff or his duly authorized deputy, shall demand and require the operator or owner of such motor vehicle to unload such portion of the load as may be necessary to decrease the gross weight of such vehicle to the maximum authorized by law plus such tolerance allowance, except as otherwise provided.¹ Such operator or owner shall forthwith unload such vehicle to the extent necessary to reduce the gross weight thereof to such lawful maximum and such vehicle may not be operated further over the public highways or roads of the State of Texas until the gross weight of such vehicle has been reduced to a weight

not in excess of the maximum limit plus such tolerance allowance. In the event the axle load of any such vehicle be found to exceed the maximum authorized by law, plus a tolerance allowance of five per cent (5%) of the axle load authorized by law, such officer shall demand and require the operator or owner thereof to rearrange his cargo, if possible, to bring such vehicle and load within the maximum axle load authorized by law, and if this cannot be done by rearrangement of said cargo, then such portion of the load as may be necessary to decrease the axle load to the maximum authorized by law plus such tolerance allowance shall be unloaded before such vehicle may be operated further over the public highways or roads of the State of Texas. Provided, however, that if such load consists of livestock, then such operator shall be permitted to proceed to destination without being unloaded provided destination be within the State of Texas.

It is further provided that in the event the gross weight of the vehicle exceeds the registered gross weight, the License and Weight Inspector, State Highway Patrolman or Sheriff or his duly authorized Deputy shall require the operator or owner thereof to apply to the nearest available County Tax Assessor-Collector for additional registration in an amount that will cause his gross registration to be equal to the gross weight of the vehicle, provided such total registration shall not exceed gross weight allowed for such vehicle, before such operator or owner may proceed. Provided, however, that if such load consists of livestock or perishable merchandise then such operator or owner shall be permitted to proceed with his vehicle to the nearest practical point in the direction of his destination where his load may be protected from damage or destruction in the event he is required to secure additional registration before being allowed to proceed. It shall be conclusively presumed and deemed prima facie evidence that where an operator or owner is apprehended and found to be carrying a greater gross load than that for which he is licensed or registered, he has been carrying similar loads from the date of purchase of his current license plates and will therefore be required to pay for the additional registration from the date of purchase of such license. Provided further that when an operator or owner is required to purchase additional registration in a county other than the county in which the owner resides, the Tax Assessor-Collector of such county shall remit the fees collected for such additional registration to the State Highway Department to be deposited in the State Highway Fund. It shall be the duty of the State Highway Department, and the necessary funds are hereby appropriated, to remit the counties' portion of such fees collected to the county of the residence of the owner; and it is provided further that the provisions of this Section

will in no way conflict with Article 6675a, Section 2, of the Revised Civil Statutes.

It is further provided that all forms and accounting procedure necessary to carry out the provisions of this Section shall be prescribed by the State Highway Department.

[See Compact Edition, Volume 5 for text of 6, 2 to 5]

Subd. 6. Notwithstanding Subdivision 1 of Section 6 of this Article, neither the operator nor the owner of a motor vehicle loaded with timber or pulp wood or agricultural products in their natural state being transported from the place of production to the place of market or first processing shall be required to unload any portion of his load.

¹ See subd. 6 of this section.

[See Compact Edition, Volume 5 for text of 7 to 16a-3]

[Amended by Acts 1975, 64th Leg., p. 34, ch. 18, § 1, eff. March 18, 1975; Acts 1977, 65th Leg., p. 43, ch. 28, § 1, eff. March 24, 1977; Acts 1977, 65th Leg., p. 807, ch. 300, §§ 1, 2, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 169, ch. 93, § 1, eff. May 2, 1979; Acts 1979, 66th Leg., p. 520, ch. 243, § 2, eff. May 17, 1979.]

Section 2 of the 1975 amendatory act provided:

"This amendatory Act does not affect Section 5 1/2 or 6, Chapter 42, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929, as amended (Article 6701d-11, Vernon's Texas Civil Statutes); Section 1, Chapter 293, Acts of the 53rd Legislature, Regular Session, 1953, as amended (Article 6701d-12, Vernon's Texas Civil Statutes); or any state law authorizing the issuance of special permits for weights in excess of those provided by this amendatory Act."

Art. 6701d-11a. Registration and Width Requirement of Vehicles Transporting Fertilizer

Sec. 1. In this Act, "fertilizer" includes agricultural limestone.

Sec. 2. The annual license fee for the registration of motor vehicles designed or modified exclusively to transport fertilizer to the field and spread it, and used only for that purpose, is \$50.

Sec. 3. The width requirements in Subsection (a), Section 3, Chapter 42, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929, as amended (Article 6701d-11, Vernon's Texas Civil Statutes), do not apply to a vehicle registered under Section 2 of this Act which has a width of 136 inches or less at its widest point.

[Acts 1977, 65th Leg., p. 373, ch. 184, §§ 1 to 3, eff. Aug. 29, 1977.]

Art. 6701d-12. Weight of Vehicles Transporting Ready-Mixed Concrete

Sec. 1. Vehicles used exclusively to transport ready-mixed concrete, which is hereby defined as a perishable product, may be operated upon the public highways of this state with a tandem axle load not to exceed 44,000 pounds, a single axle load not to exceed 20,000 pounds and a gross load not to exceed 64,000 pounds, provided that where the vehicle is to

be operated with a tandem axle load in excess of 34,000 pounds, the owner of such vehicle shall first file with the State Department of Highways and Public Transportation a surety bond in the principal sum as fixed by the department, which sum shall not be set at a greater amount than \$15,000 for each vehicle; said bond to be conditioned that the owner of such vehicle will pay to the State of Texas, within the limit of such bond, all damages done to the highways by reason of the operation of such vehicle with a tandem axle load in excess of 34,000 pounds; such bond shall be subject to the approval of the State Department of Highways and Public Transportation.

Sec. 2. When any county, city, or town determines public highways under their jurisdiction are found insufficient to carry the maximum gross vehicle axle loads authorized in Section 1 of this Act, the governing body of such county, city, or town is hereby authorized to prescribe, by order or ordinance, reasonable rules and regulations governing the operation of vehicles to transport ready-mixed concrete over public highways maintained by such county, city, or town. Such rules and regulations may include, but need not be limited to, weight limitations on vehicles with a tandem axle load which exceeds 36,000 pounds, a single axle load which exceeds 12,000 pounds, and a gross load which exceeds 48,000 pounds.

Sec. 3. The governing body of any county, city, or town may require the owner of any ready-mixed concrete vehicle to file a surety bond in a sum not to exceed \$15,000, and conditioned that the owner of such vehicle will pay to such county, city, or town all damages done to the highways by reason of the operation of such vehicle with a tandem axle load in excess of 34,000 pounds.

Sec. 4. This Act does not authorize the operation on the national system of interstate and defense highways in this state of vehicles of a size or weight greater than authorized in Title 23, United States Code, Section 127, as amended. If the United States government authorizes the operation on the national system of interstate and defense highways of vehicles of a size or weight greater than those authorized on January 1, 1977, the new limits automatically shall be in effect on the national system of interstate and defense highways in this state.

[Amended by Acts 1977, 65th Leg., p. 944, ch. 354, § 1, eff. Aug. 29, 1977.]

Acts 1975, 64th Leg., p. 34, ch. 18, which by § 1 amended § 5 of art. 6701d-11, in § 2 provided, in part: "This amendatory Act does not affect * * * Section 1, Chapter 293, Acts of the 53rd Legislature, Regular Session, 1953, as amended (Article 6701d-12, Vernon's Texas Civil Statutes); or any state law authorizing the issuance of special permits for weights in excess of those provided by this amendatory Act."

Art. 6701d-12a. Weight and Size of Vehicles Transporting Milk

Sec. 1. A vehicle used exclusively to transport milk may be operated on the public highways of this state if the distance between the front wheel of the forward tandem axle and the rear wheel of the rear tandem axle, measured longitudinally, is at least 28 feet, and the maximum load carried on any group of axles does not exceed 68,000 pounds.

Sec. 2. Nothing in this Act shall be construed as permitting size or weight limits on the national system of interstate and defense highways in this state in excess of those permitted under Title 23, U.S.C., Section 127, as amended. If the federal government prescribes or adopts vehicle size or weight limits greater than those now prescribed by Title 23, U.S.C., Section 127, as amended, for the national system of interstate and defense highways, the increased limits shall become effective on the national system of interstate and defense highways in this state.

[Acts 1977, 65th Leg., p. 1496, ch. 608, §§ 1, 2, eff. Aug. 29, 1977.]

6701d-21. Repealed by Acts 1979, 66th Leg., p. 1609, ch. 682, § 5, eff. Sept. 1, 1979

Section 6 of the 1979 repealing act provided:

"An offense committed under the law repealed by this Act is covered by that law as it existed on the date of the offense, and the repealed law is continued in effect for the prosecution of the offense."

Art. 6701e. Repealed by Acts 1979, 66th Leg., p. 2429, ch. 842, art. 1, § 2(1), eff. Sept. 1, 1979

Acts 1979, 66th Leg., ch. 842, repealing this article, enacts the Human Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Human Resources Code.

Art. 6701g-1. Removal of Unauthorized Vehicles Parked in Fire Lanes

Sec. 1. The owner of premises at or upon which a governmental body requires the designation and maintenance of a fire lane, or the agent of the owner, may have any motor vehicle that is parked in the fire lane, except an authorized emergency vehicle, removed and stored at the expense of the owner or operator of the vehicle, if the fire lane is required by a governmental body having authority to require fire lanes and is conspicuously designated as a fire lane in compliance with requirements of the governmental body.

Sec. 2. The owner of the premises, or his agent, who has a vehicle removed and stored as provided in Section 1 of this Act is not liable for damages incurred by the owner or operator of the vehicle as a result of removal or storage if the vehicle is removed by a vehicle wrecker service insured against liability for property damage incurred in towing vehicles and is stored by a storage company insured against lia-

bility for property damage incurred in the storage of vehicles.

[Acts 1977, 65th Leg., p. 1243, ch. 480, §§ 1, 2, eff. Aug. 29, 1977.]

Art. 6701g-2. Removal of Unauthorized Vehicles from Parking Facilities or Public Highways**Definitions**

Sec. 1. In this Act:

(a) "Parking facility" means any public or private property used, in whole or in part, for restricted and/or paid parking of vehicles. "Parking facility" includes but is not limited to commercial parking lots, parking garages, and parking areas serving or adjacent to businesses, churches, schools, homes, and apartment complexes. "Parking facility" also includes a restricted portion or portions of an otherwise unrestricted parking facility.

(b) "Parking facility owner" means any operator or owner (including any lessee, employee, or agent thereof) of a parking facility.

(c) "Public highway" means any public street, alley, road, right-of-way, or other public way.

(d) "Towing company" means any individual, corporation, partnership, or association engaged in the business of towing vehicles on a public highway for compensation or with the expectation of compensation for the towing, storage, or repair of vehicles. The term "towing company" includes the owner, operator, employee, or agent of a towing company, but does not include cities, counties, or other political subdivisions of the state.

(e) "Vehicle" means every kind of device, upon, or by which any person or property is or may be transported or drawn on a public highway, except devices moved by human power or used exclusively on stationary rails or tracks.

(f) "Unauthorized vehicle" means any vehicle parked, stored, or situated in or on a parking facility without the consent of the parking facility owner.

Removal by Parking Facility Owner

Sec. 2. (a) A parking facility owner may, without the consent of the owner or operator of an unauthorized vehicle, cause such vehicle to be removed and stored at the expense of the owner or operator of the vehicle, if any of the following occurs:

(i) a sign or signs, specifying those persons who may park in the parking facility and prohibiting all others, are placed so that they are readable day or night from all entrances to the parking facility (but signs need not be illuminated);

(ii) the owner or operator of the unauthorized vehicle has actually received notice from the parking facility owner that the vehicle will be towed away if it is not removed; or

(iii) the unauthorized vehicle is obstructing an entrance, exit, fire lane, or aisle of the parking facility.

(b) Otherwise, a parking facility owner may not have an unauthorized vehicle removed except under the direction of a peace officer or the owner or operator of such vehicle.

(c) A parking facility owner who causes the removal of an unauthorized vehicle in compliance with the provisions of this section shall not be liable for damages arising out of the removal or storage of such vehicle, if the same is removed by an insured towing company.

Removal by Towing Company

Sec. 3. (a) A towing company may, without the consent of the owner or operator of an unauthorized vehicle, remove and store such vehicle at the expense of the owner or operator of the vehicle, if any of the following occurs:

(i) a sign or signs, specifying those persons who may park in the parking facility and prohibiting all others, are placed so that they are readable day or night from all entrances to the parking facility (but signs need not be illuminated);

(ii) the towing company has received written verification from the parking facility owner that the owner or operator of the unauthorized vehicle has been actually notified by the parking facility owner that the vehicle will be towed away if it is not removed; or

(iii) the unauthorized vehicle is obstructing an entrance, exit, fire lane, or aisle of the parking facility.

(b) Otherwise, a towing company may not remove an unauthorized vehicle except under the direction of a peace officer or the owner or operator of such vehicle.

Removal from Public Highway by Towing Company

Sec. 4. A towing company may not remove a vehicle from a public highway except under the direction of a peace officer or the owner or operator of such vehicle.

Pecuniary Interest in Towing Company by Parking Facility Owner

Sec. 5. A parking facility owner may not accept anything of value, directly or indirectly, from a towing company in connection with the removal of a vehicle from a parking facility. A parking facility owner may not have a pecuniary interest, directly or indirectly, in a towing company which removes unauthorized vehicles for compensation from a parking

facility in which the parking facility owner has an interest.

Pecuniary Interest in Parking Facility by Towing Company

Sec. 6. A towing company may not give anything of value, directly or indirectly, to a parking facility owner in connection with the removal of a vehicle from a parking facility. A towing company may not have a pecuniary interest, directly or indirectly, in a parking facility from which the towing company removes unauthorized vehicles for compensation.

Violation of Act; Damages; Attorney's Fees

Sec. 7. (a) Any towing company or parking facility owner who violates this Act shall be liable to the owner or operator of the vehicle for damages arising out of the removal or storage of such vehicle and/or any towing or storage fees assessed in connection with the removal or storage of such vehicle. Negligence on the part of the parking facility owner or towing company need not be proven in order to recover under this Act.

(b) In any suit brought under this Act, the prevailing party shall recover reasonable attorney's fees from the nonprevailing party.

Penalty; Injunction

Sec. 8. Any violation of this Act is a Class B misdemeanor. Any violation of the provisions of this Act may be enjoined pursuant to the provisions of the Deceptive Trade Practices-Consumer Protection Act.¹

¹ Business and Commerce Code, § 17.41 et seq.

[Acts 1977, 65th Leg., p. 2085, ch. 835, §§ 1 to 8, eff. Aug. 29, 1977.]

Art. 6701h. Safety Responsibility Law

[See Compact Edition, Volume 5 for text of 1 to 3]

ARTICLE III—SECURITY FOLLOWING ACCIDENT

[See Compact Edition, Volume 5 for text of 4 and 4A]

Security; Determination of Amount; Suspension of License and Registrations; Notice; Exceptions

Sec. 5. (a) If twenty (20) days after the receipt of a report of a motor vehicle accident within this State which has resulted in bodily injury or death, or damage to the property of any one person of at least Two Hundred Fifty Dollars (\$250), the Department does not have on file evidence satisfactory to it that the person who would otherwise be required to file security under Subsection (b) of this section has been released from liability, or has been finally adjudicated not to be liable, or has executed a duly acknowledged written agreement providing for the payment

of an agreed amount in installments with respect to all claims for injuries or damages resulting from the accident, and the Department finds that there is a reasonable probability of a judgment being rendered against the person as a result of the accident, the Department shall determine the amount of security which shall be sufficient in its judgment, and in no event less than Two Hundred Fifty Dollars (\$250) to satisfy any judgment or judgments for damages resulting from such accident as may be recovered against each operator or owner.

(b) The Department shall, subject to the provisions of Subsection (c) of this section, suspend the license and all registrations of each operator and owner of a motor vehicle in any manner involved in such accident, if there is found to be a reasonable probability of a judgment being rendered against that person as a result of the accident, and if such operator or owner is a nonresident the privilege of operating a motor vehicle within this State, and the privilege of the use within this State of any motor vehicle owned by him unless such operator, owner or operator and owner shall deposit security in the sum so determined by the Department or by a person presiding at a hearing and in no event less than Two Hundred Fifty Dollars (\$250), and unless such operator and owner shall give proof of financial responsibility.

Before suspension of a license, registration, or privilege, the Department must find that there is a reasonable probability of a judgment being rendered against the person as a result of the accident and the amount of security that must be deposited. For this purpose it may consider the report of the investigating officer, the accident reports of all parties involved, and any affidavits of persons having knowledge of the facts. Notice of the determination by the Department shall be served personally on the person or mailed by certified mail, return receipt requested, to the affected person's last known address, as shown by the records of the Department. The notice shall specify that the license to operate a motor vehicle and the registration, or nonresident's operating privilege, will be suspended unless the person, within twenty (20) days after personal service or the mailing of the notice, establishes that the provisions of this section are not applicable to him and that he has previously furnished such information to the Department or that there is no reasonable probability of a judgment being rendered against him as a result of the accident. The notice shall recite that the person to whom it is addressed is entitled to a hearing as provided in this Act if a written request for a hearing is delivered or mailed to the Department within twenty (20) days after personal service or the mailing of the notice. The person's license to operate the vehicle and his registration or nonresident's operating privilege may not

be suspended pending the outcome of the hearing and any appeal.

If a hearing is requested, the Department shall summon the person requesting the hearing to appear for the hearing as provided in this subsection. The hearing shall be held not less than ten (10) days after notice is given to the person requesting the hearing and written charges shall be made and a copy given to the person requesting the hearing at the time he is given the hearing notice. Jurisdiction for the hearing is vested in the judge of a police court, or a justice of the peace in the county and precinct in which the person requesting the hearing resides. The hearing officer may receive a fee for hearing these cases if the fee is approved by the commissioners court of the county of jurisdiction, but the fee may not be more than Five Dollars (\$5) a case and shall be paid from the general revenue fund of the county. The hearing officer may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relative books and papers. It shall be the duty of the court to set the matter for hearing upon ten (10) days written notice to the Department. Such proceeding shall have precedence over all other matters of a different nature, and shall be tried before the judge within fifteen (15) days from the filing thereof, and neither party shall be entitled to a jury. At the hearing, the issues to be determined are whether there is a reasonable probability of a judgment being rendered against the person requesting the hearing as a result of the accident and, if so, the amount of security that will be sufficient to satisfy any judgment or judgments for damages resulting from the accident, but in no event less than Two Hundred Fifty Dollars (\$250), that may be recovered from the person requesting the hearing. The officer who presides at the hearing shall report the findings in the case to the Department. Notice as required by this paragraph shall be served personally on the person or mailed by certified mail, return receipt requested, to the person's last known address, as shown by the records of the Department.

If, after a hearing, the determination is that there is a reasonable probability of a judgment being rendered against the person as a result of the accident, the person may appeal the findings to the county court of the county in which the hearing was held and the appeal shall be de novo.

If a written request for a hearing is not delivered or mailed to the Department within twenty (20) days after personal service or the mailing of notice and the person has not established within that time that the provisions of this section do not apply to him or if within twenty (20) days after a hearing and exhaustion of the appeal procedure, if an appeal is made in which the decision is against the person requesting the hearing, security and proof of finan-

cial responsibility are not deposited with the Department, the Department shall suspend the person's license to operate a motor vehicle, the vehicle registration, or nonresident's operating privilege until the person complies with the provisions of this Act.

Notice of such suspension shall be sent by the Department to such operator and owner not less than ten (10) days prior to the effective date of such suspension and shall state the amount required as security and the necessity for proof of financial responsibility. Where erroneous information is given the Department with respect to the matters set forth in subdivisions 2, 3, and 4 of Subsection (c) of this Section, it shall take appropriate action as hereinbefore provided, within sixty (60) days after receipt by it or correct information with respect to said matters.

The determination by the Department or by a person presiding at a hearing of the question of whether there is a reasonable probability of a judgment being rendered against a person as a result of an accident may not be introduced in evidence in any civil suit for damages arising from the accident.

(c) This section shall not apply under the conditions stated in Section 6 nor:

1. To a motor vehicle operator or owner against whom the Department or a person presiding at a hearing finds there is not a reasonable probability of a judgment being rendered as a result of the accident;

2. To such operator or owner if such owner had in effect at the time of such accident a motor vehicle liability policy with respect to the motor vehicle involved in such accident;

3. To such operator, if not the owner of such motor vehicle, if there was in effect at the time of such accident a motor vehicle liability policy or bond with respect to his operation of motor vehicles not owned by him;

4. To any person employed by the government of the United States, when such person is acting within the scope or office of his employment;

5. To such operator or owner if the liability of such operator or owner for damages resulting from such accident is, in the judgment of the Department, covered by any other form of liability insurance policy or bond; nor

6. To any person qualifying as a self-insurer under Section 34 of this Act, or to any person operating a motor vehicle for such self-insurer.

No such policy or bond shall be effective under this section or under Section 7 unless issued by an insurance company or surety company authorized to write motor vehicle liability insurance in this State, except that if such motor vehicle was not registered in this State, or was a motor vehicle

which was registered elsewhere than in this State at the effective date of the policy, or the most recent renewal thereof, such policy or bond shall not be effective under this section unless the insurance company or surety company if not authorized to do business in this State shall execute a power of attorney authorizing the Department to accept service on its behalf of notice or process in any action upon such policy or bond arising out of such accident; providing, however, every such policy or bond is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of not less than Ten Thousand Dollars (\$10,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, to a limit of not less than Twenty Thousand Dollars (\$20,000) because of bodily injury to or death of two (2) or more persons in any one accident, and, if the accident has resulted in injury to or destruction of property, to a limit of not less than Five Thousand Dollars (\$5,000) because of injury to or destruction of property of others in any one accident. The policy or bond may exclude coverage of the first Two Hundred Fifty Dollars (\$250) of liability for bodily injury to or death of any one person in any one accident, and, subject to that exclusion for one person, may exclude coverage for the first Five Hundred Dollars (\$500) of liability for the bodily injury to or death of two (2) or more persons in any one accident and may exclude coverage for the first Two Hundred Fifty Dollars (\$250) of liability for the injury to or destruction of property of others in any one accident.

7. Wherever the word "bond" appears in this section or this Act, it shall mean a bond filed with and approved by the Department of Public Safety. [See Compact Edition, Volume 5 for text of 6 to 43]

[Amended by Acts 1975, 64th Leg., p. 931, ch. 347, § 1, eff. June 19, 1975.]

Art. 6701i. Brake Fluids; Marketing Regulated; Penalties

Definitions

Sec. 1. In this Act:

(1) "Brake fluid" means the liquid medium through which force is transmitted in the hydraulic brake system of any motor vehicle operated upon the highways of this state.

(2) "Package" means the immediate container in which the brake fluid is packed for sale but does not include a carton or wrapping containing several packages, nor a tank car or truck.

(3) "Packer" means a person who fills with brake fluid a package that is subsequently distributed for sale in this state.

(4) "Person" means an individual, corporation, or association.

(5) "Sell" means to convey, give, barter, trade, exchange, keep for sale, offer for sale, expose for sale, advertise for sale, deliver for or after sale, or distribute.

(6) "Labeling" means written, printed, or graphic representations in any form printed on or affixed to a package.

(7) "Department" means the Department of Public Safety.

Purpose

Sec. 1A. The legislature of the State of Texas, mindful of the importance of braking systems in motor vehicles, determines that it is necessary in the interest of the safety of the motoring public to establish brake fluid standards and provide for the proper enforcement of the standards. It is the purpose of this Act to insure to the motoring public at the time of purchase of brake fluid that the fluid meets the necessary minimum standards established under this Act.

Prohibition

Sec. 2. (a) A person who knowingly, intentionally, or recklessly manufactures, packs, sells, or adds to the hydraulic brake system of a motor vehicle in this state, any brake fluid (1) which is misbranded, (2) which is not currently registered under this Act, or (3) which is adulterated, commits an offense.

(b) An offense under this section is a Class B misdemeanor.

Misbranding and Adulteration

Sec. 3. (a) A brake fluid is misbranded:

(1) if its labeling is false or misleading in any particular; or

(2) if the package in which it is packed for sale does not bear a label or imprint containing in clear and legible type:

(A) the name and address of the manufacturer, packer, or seller;

(B) the words "brake fluid" and a designation of the contents as described by rule of the department; and

(C) an accurate statement of the net contents in terms of liquid measure.

(b) A brake fluid is adulterated:

(1) if the formula for or proportions of its contents have been changed since it was most recently registered; or

(2) if its quality or characteristics do not meet the standards and specifications for brake fluid established by the department.

Rules

Sec. 4. The Department of Public Safety shall from time to time adopt rules relating to the enforcement of this Act and establishing as minimum standards and specifications for brake fluids and packages for brake fluid the standards adopted from time to time by the United States Department of Transportation.

Registration

Sec. 5. (a) Any manufacturer, packer, or distributor, or their agents or representatives, desiring to market any brake fluid in the State of Texas that is not currently registered under this Act shall first furnish to the department such sample of the fluid as it may require for testing purposes and present in writing to the department an application for registration of the brake fluid for marketing in Texas.

(b) An application must be accompanied by a report of an independent testing laboratory approved by the department. The report must contain an analysis of the contents of the brake fluid submitted to the laboratory, showing that the quality of the laboratory sample meets the standards and specifications for brake fluid established by departmental rule. The applicant shall sign a sworn statement attached to the report, certifying that the formula for and proportions of the contents of the sample of brake fluid submitted to the independent testing laboratory are the same as the formula and proportions of the sample submitted to the department and the formula and proportions of the brake fluid being manufactured or packaged for sale.

(c) The department shall cause such tests to be made as may be necessary to determine whether or not a sample of brake fluid conforms to the standards and specifications adopted under this Act and may submit any sample to the University of Texas for official testing for the department.

(d) After the department has caused such tests to be made of a sample of brake fluid submitted for registration as the department finds necessary, the department, if the sample meets the standards and specifications adopted under this Act, shall issue the applicant a certificate of registration authorizing manufacture, packing, and sale in the state of the brake fluid for which the sample is a representative during the time specified on the certificate.

(e) After such testing as the department finds necessary, if the department finds that a sample of brake fluid does not meet the standards and specifications established by rule, the department shall deny registration of the brake fluid and notify the applicant by registered or certified mail of its decision. The notice shall specify the reasons for denying registration.

(f) Within 30 days after receipt of a notice of a denial of registration, an applicant may request the

department to hold a hearing on the department's decision.

(g) After providing notice and an opportunity for a hearing, the department may revoke registration and cancel a certificate of registration for brake fluid if the department finds that:

(1) any portion of the brake fluid is misbranded or adulterated; or

(2) the registrant has failed since registration to comply with a requirement of this Act or a rule issued under the authority of this Act.

(h) An appeal from a decision of the department after a hearing under Subsection (f) or (g) of this section is by trial de novo.

Enforcement

Sec. 6. (a) If brake fluid is manufactured, packed, or sold in violation of Section 2 of this Act, the department may issue and enforce a written or printed stop-sale order prohibiting the further manufacture, packing, or sale of brake fluid of the same brand name on the premises where the violation occurred. The department shall terminate a stop-sale order after remedy of the violation or after voluntary destruction or other disposal, under the supervision of the department, of the fluid that is the subject of the violation. The owner or custodian of brake fluid to which a stop-sale order applies may appeal the stop-sale order to a district court in the county in which the brake fluid is located. Appeal is by trial de novo.

(b) The department may apply to a magistrate in a county in which brake fluid manufactured, packed, or sold in violation of Section 2 of this Act is located for a search warrant to inspect the premises where the violation occurred or is occurring and to seize misbranded, unregistered, or adulterated brake fluid. Brake fluid seized under warrant issued under this subsection is subject to disposition in the manner provided for disposition of brake fluid seized as provided by Subsection (d) of this section.

(c) The department may institute an action in a district court in the county in which a violation of Section 2 of this Act has occurred or is occurring, to enjoin further violations of this Act. A bond may not be required for issuance of an injunction under this subsection.

(d) Any misbranded, unregistered, or adulterated brake fluid sold within this state may be proceeded against in any county or district court in any county of the state where it may be found, by the county or district attorney for the county, and seized for confiscation by process of libel for condemnation. If, following seizure, the article is condemned it shall, after entry of decree, be disposed of by destruction or sale as the court may direct, and the proceeds, if such article is sold, less legal costs, shall be paid to

the State Treasury. The article shall not be sold contrary to the provisions of this Act and upon payment of costs and execution and delivery of a good and sufficient bond, to be approved by the court, conditioned that the article shall not be disposed of unlawfully, the court may direct that the article be delivered to the owner thereof for relabeling or reprocessing as the case may be.

(e) The department may enter, during reasonable hours, any premises where brake fluid is manufactured, packed, or sold, for the purpose of enforcing this Act. The department may inspect, sample, analyze, and test any brake fluid found on the premises. Before the department requests entrance to premises where brake fluid is manufactured, packed, or sold or if the department is refused entrance to the premises, the department may request a magistrate in the county in which the premises are located to issue a search warrant to inspect the area. The magistrate shall issue the warrant without prior notice to the owner or custodian of the premises if the department shows specific evidence of a violation of a requirement of this Act or a rule adopted under the authority of this Act or shows that the department has complied with reasonable administrative standards for conducting inspections under this Act. The department shall adopt rules prescribing reasonable administrative standards for conducting inspections under this Act.

(f) The methods of enforcement provided by this section are cumulative, and the use of one method does not preclude the use of any other method provided by this section.

(g) The department shall cooperate with the National Highway Traffic Safety Administration of the United States Department of Transportation in enforcing this Act and the provisions of the National Traffic and Motor Vehicle Traffic Safety Act, 15 U.S.C. Section 1391 et seq., relating to motor vehicle safety standards.

[Amended by Acts 1979, 66th Leg., p. 2013, ch. 790, §§ 1, 2, eff. Sept. 1, 1979.]

Sections 3 and 4 of the 1979 amendatory act provided:

"Sec. 3. In enacting this legislation, the legislature intends that if the registration provisions of this Act are held invalid by a court of competent jurisdiction, the provisions of this Act relating to the enforcement of brake fluid standards established by the United States Department of Transportation shall be given effect if at all possible.

"Sec. 4. This Act takes effect on September 1, 1979. Chapter 224, Acts of the 55th Legislature, Regular Session, 1957 (Article 6701i, Vernon's Texas Civil Statutes), is continued in effect as it existed on August 31, 1979, for the prosecution of offenses committed before the effective date of this Act."

Art. 6701k. Vehicle Equipment Safety Commission

[See Compact Edition, Volume 5 for text of 1]

Application of Sunset Act

Sec. 1a. The office of Vehicle Equipment Safety Compact Commissioner for Texas is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the office is abolished, and this Act expires effective September 1, 1979.

[See Compact Edition, Volume 5 for text of 2 and 3]

[Acts 1977, 65th Leg., p. 1833, ch. 735, § 2.011, eff. Aug. 29, 1977.]

¹ Article 5429k.

Art. 6701I-1. Intoxicated Driver; Penalty

Any person who drives or operates an automobile or any other motor vehicle upon any public road or highway in this State, on a beach as defined in the Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes), or upon any street or alley within the limits of an incorporated city, town or village, while such person is intoxicated or under the influence of intoxicating liquor, shall be guilty of a misdemeanor and upon conviction shall be punished by confinement in the county jail for not less than three (3) days nor more than two (2) years, and by a fine of not less than Fifty (\$50.00) Dollars nor more than Five Hundred (\$500.00) Dollars. Provided, however, that the presiding judge in such cases at his discretion may commute said jail sentence to a probation period of not less than six (6) months.

[Amended by Acts 1979, 66th Leg., p. 1609, ch. 682, § 3, eff. Sept. 1, 1979.]

Art. 6701I-2. Subsequent Offense of Driving While Intoxicated

Any person who has been convicted of the misdemeanor offense of driving or operating an automobile or other motor vehicle upon any public road or highway in this state, on a beach as defined in the Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes), or upon any street or alley within an incorporated city, town or village, while intoxicated or under the influence of intoxicating liquor, and who shall thereafter drive or operate an automobile or other motor vehicle upon any public road or highway in this state, on a beach as defined in the Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes), or upon any street or alley within the limits of an incorporated city, town or village, while such person is intoxicated or under the influence of intoxicating liquor, shall for each and every subsequent such violation be guilty of a felony; and upon conviction shall be punished by a fine of not less than One Hundred (\$100.00) Dollars nor more than Five Thousand (\$5,000.00) Dollars or confinement in the county jail not less than ten (10) days nor more than two (2) years, or by both such fine and imprisonment, or by confinement in the state penitentiary not to exceed five (5) years.

[Amended by Acts 1979, 66th Leg., p. 1609, ch. 682, § 4, eff. Sept. 1, 1979.]

Art. 6701I-4. Driving by Certain Minors While Intoxicated; Traffic Violations

Sec. 1. Any minor who has passed his or her 14th birthday but has not reached his or her 17th birthday, and who drives or operates an automobile or any other motor vehicle on any public road or highway in this state or upon any street or alley within the limits of any city, town or village, or upon any beach as defined in Chapter 430, Acts of the 51st Legislature, Regular Session, 1949 (Article 6701d-21, Vernon's Texas Civil Statutes), in such way as to violate any traffic law of this state, shall be guilty of a misdemeanor and shall be punished by a fine of not more than One Hundred Dollars (\$100.00). As used in this section, the term "any traffic law of this state" shall include the following statutes, as heretofore or hereafter amended:

Chapter 42, General Laws, Acts of the 41st Legislature, Second Called Session, 1929 (Article 6701d-11, Vernon's Texas Civil Statutes); Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes); and Chapter 430, Acts of the 51st Legislature, Regular Session, 1949 (Article 6701d-21, Vernon's Texas Civil Statutes).

[Amended by Acts 1979, 66th Leg., p. 1022, ch. 454, § 1, eff. Aug. 27, 1979.]

CHAPTER FIVE. BRIDGES AND FERRIES

Art. 6795b-1. Causeways, Bridges, Tunnels, Turnpikes, or Highways Authorized in Gulf Coast Counties of 50,000 or More

Construction and Operation Authorized; Cost and Expenses

Sec. 1. Any county in the State of Texas which borders on the Gulf of Mexico or any bay or inlet opening thereto and which has a population of fifty thousand (50,000) or more, according to the last Federal Census preceding the authorization of bonds hereunder, acting through its Commissioners Court, is hereby authorized and empowered to construct, acquire, improve, operate and maintain a causeway, bridge, tunnel, turnpike, highway, or any combination of such facilities, including all necessary overpasses, underpasses, interchanges, entrance plazas, toll houses, service stations, approaches, fixtures, accessories, equipment, and administration, storage, and other necessary buildings, together with all property rights, easements, and interests acquired in connection therewith (all of which are hereinafter referred to as "the project") from one (1) point in said county to another, or from one (1) point in said county to a point in another county (regardless of the population of such other county), and to issue its tax bonds, revenue bonds, or combination tax and revenue bonds, to pay the cost of such construction, acquisition, or improvement. Among other things,

the cost of the project may include the following: the cost of construction; the cost of all property, real, personal, and mixed, and all appurtenances, easements, contracts, franchises, pavements, and properties of every nature, used or useful in connection with the construction, acquisition, improvement, operation, and maintenance of the project; the payment of the cost of condemning any such property, including both the payment of the award and the payment of the court costs and attorneys fees; the payment of all legal, fiscal, and engineering expenses incurred in connection with the acquisition and construction of the project and the making of preliminary surveys and investigations and the authorization and issuance of the bonds; and the payment of interest on the bonds and operating expenses on the project prior to and during the period occupied by the construction of the project and for one (1) year thereafter. If the Commissioners Court shall consider it desirable to acquire, through purchase or lease, existing ferry properties for the purpose of operating such properties during the period of construction, over the route to be traversed by the project, such properties may be so acquired and the cost thereof paid from the proceeds of the bonds. Any preliminary expenses paid from county funds shall be repaid to such funds from the proceeds of the bonds when available, and all engineering and fiscal contracts and agreements for such projects heretofore entered into are hereby validated and confirmed. Where any causeway, bridge, tunnel, turnpike, highway, or combination thereof constructed or acquired and financed hereunder extends from a point in the county issuing the bonds to a point in another county, it may be so constructed or acquired only after there shall have been adopted by the Commissioners Court of the county not issuing the bonds, a resolution approving and consenting to such construction or acquisition, and the Commissioners Court of any such county is hereby authorized to adopt such resolution. So long as and to the extent that the project, or part thereof, has not been designated as part of the State Highway System and is not considered a Turnpike Project, as defined in Chapter 410, Acts of the Fifty-Third Legislature, 1953, as amended,¹ that part of the project (which has not been so designated and is not so considered) in each county shall be considered a part of the county road system of such county, and all laws relating to the maintenance and operation of county roads are hereby made applicable to any project constructed or acquired hereunder in so far as they do not conflict with the provisions hereof; and each county into which the project extends may acquire necessary lands or right of ways or other property by purchase, condemnation or otherwise, under the General Laws of Texas, and the county issuing the bonds shall have such powers with respect to necessary lands or right of ways or other property in each

county into which the project extends; provided that provision for the payment of the purchase price, award, or other costs may be upon such terms as may be agreed upon by the Commissioners Courts of the county issuing the bonds and the other county, and the proceeds of the bonds issued hereunder may be used for such purposes; and provided, further, that no election shall be necessary to authorize the issuance of any bonds issued hereunder payable solely from revenues, but in case no election is held, notice of intention to issue such bonds shall be given as provided in Sections 2 and 3 of the Bond and Warrant Law of 1931, as amended,² and the authority to issue such bonds shall be subject to the right of referendum provided in Section 4 of said Law. Bonds authorized to be issued under this law shall be sold in such manner, either at public or private sale, and for such price as the Commissioners Court of the county issuing the bonds may determine to be for the best interests of the county.

¹ Article 6674v.

² Article 2368a.

Bonds; Charge Only on Revenues of Project; Approval and Registration; Alternative Methods

Sec. 2. No bonds authorized pursuant to Subsection (a) of this section shall ever be a debt of the county issuing them, but shall be solely a charge upon the revenues of the project and shall never be reckoned in determining the powers of the county to issue any bonds, payable in whole or in part from taxes, for any purpose authorized by law. Each such bond payable solely from the revenues of a project shall contain this clause: "The holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation." All bonds issued hereunder may be presented to the Attorney General for his approval in the same manner and with like effect as is provided for the approval of tax bonds issued by counties. In such case the bonds shall be registered by the State Comptroller as in the case of other county bonds. But notwithstanding any limitations in this Act or in the law which it amends, any county proceeding hereunder after this amendatory Act becomes effective may issue bonds for such purpose secured by any one of the following methods:

(a) Solely by the pledge of revenues as prescribed hereinabove in this Section and elsewhere in Chapter 304, Acts of the Regular Session of the Fiftieth Legislature, as amended;¹ or

(b) A pledge of and payable from either an ad valorem tax levied under Article 8, Section 9 of the Constitution, or an unlimited ad valorem tax authorized under Article 3, Section 52 of the Constitution and laws enacted pursuant thereto; or

(c) A designated part of the bonds to be secured solely by a pledge of revenues as provided under sub-section (a) and a designated part of the bonds

to be secured by pledges of such ad valorem tax as provided under sub-section (b) of this Section; or

(d) A combination of the methods prescribed under sub-sections (a) and (b) wherein all of the bonds are to be supported and secured by such ad valorem tax with the duty imposed on the County to collect tolls for use of the facilities so long as any of the bonds are outstanding so that in the manner to be prescribed in the bond resolution or the trust indenture the amount of the tax to be collected from time to time may be reduced or abated to the extent that the revenues from the operation of the facilities are sufficient to meet the requirements for operation and maintenance and to provide funds for the bonds as prescribed in the indenture.

But no such bonds wholly or partially supported by an ad valorem tax shall be issued unless and until they shall have been authorized at an election at which the question of their issuance shall have been submitted.

¹ This article.

Pooled Projects

Sec. 2a. Any two or more projects constructed by a county proceeding hereunder may, upon the adoption of a resolution approving the same, duly passed by the Commissioners Court, be pooled and designated as a "pooled project." Any existing project or projects may be pooled in whole or in part with any new project or projects thereof. After being so designated, such "pooled project" shall become a "project" as used in Chapter 304, Acts of the Regular Session of the Fiftieth Legislature, 1947, as amended. No project may be pooled more than once. Consistent with the resolution or order providing for the issuance of the bonds or the trust indenture securing the same, the resolution of the Commissioners Court shall set a date certain when each of the projects being authorized to be pooled shall be available for the free use of the public. Subject to the terms of any such bond resolution or trust indenture, any county proceeding hereunder is authorized to issue from time to time bonds of the county as hereinbefore authorized, including bonds which are payable either in whole or in part from the revenues of a pooled project, for the purpose of (i) paying all or any part of the cost of such pooled project or the cost of any part of such pooled project, (ii) paying the costs of constructing improvements, extensions, or enlargements to all or any part of any pooled project, or (iii) refunding any bonds then outstanding issued on account of any pooled project or any part of any pooled project, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and, if deemed advisable by the Commissioners Court, paying the costs of constructing improvements, extensions, and enlarge-

ments to the pooled project or to any part of any pooled project in connection with which or in connection with any part of which bonds to be refunded shall have been issued. Revenues of all or any part of such pooled project may be pledged to the payment of such bonds. Improvements, extensions, or enlargements to be paid from refunding bonds issued hereunder are not restricted to and need not be constructed on any particular part of a pooled project in connection with which bonds to be refunded may have been issued but may be constructed in whole or in part on other parts of the pooled project not covered by the bonds to be refunded. Within the discretion of the issuing county, refunding bonds issued hereunder may be issued in exchange for outstanding bonds or may be sold and the proceeds used for the purpose of redeeming outstanding bonds. Any county having previously designated a "pooled project" may from time to time, subject to the terms of any bond resolution or trust indenture, add to, delete from, or otherwise amend the extent or component parts of any pooled project, which pooled project as so amended shall be and become a project as used in Chapter 304, Acts of the Regular Session of the Fiftieth Legislature, Regular Session, 1947, as amended.

[See Compact Edition, Volume 5 for text of 3]

Contract or Agreement for Project Construction, Acquisition, etc.; Project Feasibility Studies and Surveys

Sec. 3a. Notwithstanding anything contained herein to the contrary, any county proceeding hereunder may contract or agree with any other county, city, village, town, special district, or any other legally constituted political subdivision or agency of the State of Texas, or any combination of these, to construct, acquire, improve, operate, and maintain a project. Any such contract or agreement may provide for joint ownership of the project or for title to the project to be in any one of the contracting parties. In addition, any contracting county proceeding hereunder may issue its bonds, as authorized herein, for the purpose of paying all or any part of the cost of a project which said county is obligated to pay under any such contract or agreement. Any contract or agreement entered into under this section may contain any terms and extend for any period of time to which the parties can agree, and may provide that it will continue in effect until bonds specified in it and refunding bonds issued in lieu of those bonds are paid. If any such contract or agreement so provides, payments made thereunder shall be operating and maintenance expenses of the project, and the revenues derived from operation of such project may be pledged to such payment.

If on the effective date of this amendment any agency of the State of Texas has expended funds in the amount of \$75,000 or more for the purpose of

conducting studies and surveys or making other investigations for the purpose of determining the feasibility and practicability of constructing a toll project, a county proceeding hereunder may not, without the consent of such state agency, assume sole responsibility for the construction, acquisition, improvement, operation, and maintenance of the project and thereby exclusively preempt the state agency from constructing such project; provided, however, that the foregoing restriction set forth in this sentence shall not apply to any county proceeding hereunder if such county has given the state agency written notice by certified mail of its intention to proceed with construction, acquisition, improvement, operation, and maintenance of the project and the state agency has failed or refused for any reason within six months from the date of such notice to issue its bonds in the amount required to pay the cost of the project.

Bonds; Tolls; Trust Indenture

Sec. 4. The bonds issued hereunder may be authorized by resolution at one time or from time to time. If such bonds are payable in whole or in part from the revenues to be derived from the operation of the project, it shall be the mandatory duty of the county, which duty may be executed by an operating board appointed pursuant to Section 5b hereof, to impose such tolls and charges for use of the project as will be fully sufficient, when taken with any other funds or revenues available for such purposes, to pay the maintenance and operating expenses which are charged against the revenues of the project, to pay the principal of and premium, if any, and interest on the bonds when due, to establish such reserve therefor as may be provided, and to establish an adequate fund for depreciation and replacement. As to such bonds which are payable either in whole or in part from the revenues to be derived from the operation of a project, the operating and maintenance expenses of the project which shall be charged against the revenues of the project shall include only such items as are set forth and defined in the proceedings authorizing the issuance of such bonds. The Commissioners Court shall have full discretion in fixing the details of the bonds authorized to be issued hereunder and in determining the manner of sale thereof, provided that the bonds, whether term, serial, or combination thereof, shall mature not more than forty (40) years from their date. The bonds may contain such mandatory or optional redemption provisions and may mature in such manner and at such prices as may be determined by the Commissioners Court prior to the issuance of the bonds. All bonds issued hereunder shall and are hereby declared to have all of the qualifications and incidents of negotiable instruments under the Negotiable Instruments Law of Texas. Provision may be made for registration of

such bonds as to principal or interest or both. The proceeds of the bonds shall be used solely to pay the cost of the project as above defined, and shall be disbursed under such restrictions as may be provided in the bond resolution or trust indenture hereinafter mentioned, and there shall be and is hereby created and granted a lien upon such moneys until so applied in favor of the holders of the bonds or any trustee provided for in respect of such bonds. Unless otherwise provided in such resolution or indenture, if the proceeds of the bonds prove insufficient to pay the cost of the project, additional bonds may be issued to the amount of the deficit and shall be deemed to be of the same issue and entitled to payment from the same fund without preference or priority of the bonds first issued. Any surplus remaining from bond proceeds after the cost of the project has been paid in full shall be used in paying interest on and retiring bonds unless otherwise provided in the bond resolution or trust indenture. Prior to the issuance of definitive bonds, interim bonds, with or without coupons, exchangeable for definitive bonds may be issued. Such bonds may be authorized and issued without any proceedings or the happening of any conditions or things or the publication of any proceedings or notices other than those specifically specified and required by this Act, and may be authorized and issued without regard to the requirements, restrictions, or procedural provisions contained in any other law. The resolution authorizing the bonds may provide that such bonds shall contain a recital that they are issued pursuant to this Act and such recital shall be conclusive evidence of their validity and the regularity of their issuance.

If so provided by the Commissioners Court, the bonds may be secured by a trust indenture by and between the county and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside of the State of Texas. Such trust indenture may pledge or assign tolls and revenues but shall not convey or mortgage the project itself or any part thereof. Either the resolution providing for the issuance of the bonds or such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the county in relation to the acquisition of properties and the construction, maintenance, operation, repair, and insurance of the project, and the custody, safeguarding, and application of all moneys. It shall be lawful for any bank or trust company in this State to act as depository of the proceeds of the bonds or revenues derived from the operation of the project and to furnish such indemnity bonds or to pledge such securities as may be required by the county. Such bond resolution or indenture may set forth the rights

and remedies of the bondholders and of the trustee and may restrict the individual rights of action of the bondholders. In addition to the foregoing, such bond resolution or trust indenture may contain such other provisions as the Commissioners Court may deem reasonable and proper for the security of the bondholders including, but without limitation, covenants prescribing all happenings or occurrences which constitute events of default and the terms and conditions upon which any or all of the bonds shall become or may be declared to be due before maturity and as to the rights, liabilities, powers and duties arising upon the breach by the county of any of its duties or obligations.

[See Compact Edition, Volume 5 for text of 5 and 5a]

Operating Board

Sec. 5b. Any county proceeding hereunder, upon a determination by the Commissioners Court thereof that a project could be developed, constructed, operated, and managed better and more efficiently by an operating board, may provide for the appointment of such an operating board. An operating board so appointed shall have and may exercise, subject to such limitations and restrictions as may be prescribed by the Commissioners Court, the same power and authority, including the power of eminent domain, as may be exercised by the Commissioners Court in regard to the development, construction, operation, and management of a project; provided, however, that an operating board appointed hereunder shall not have the power to tax or to borrow money. Without limiting the generality of the foregoing, such an operating board shall have the power and authority, subject to the restrictions and limitations prescribed by the Commissioners Court, to design the project, to acquire necessary lands or rights-of-way or other property for the project by purchase, condemnation, or otherwise, to establish and revise from time to time the rates and tolls charged for use of said project, to establish and prescribe the methods, systems, procedures, and policies for the operation, maintenance, and use of the project, and to employ consultants, attorneys, engineers, financial advisors, agents, and other employees or contractors in connection with the development, construction, operation, and management of the project.

[See Compact Edition, Volume 5 for text of 6 to 8]

Bonds for Payment of Outstanding Toll Bridge Revenue Bonds

Sec. 8a. When any county has heretofore issued or may hereafter issue bonds under authority of Chapter 304, Acts of the Regular Session of the Fiftieth Legislature, 1947, as amended payable from the revenues derived from tolls collected for the use of a project and which bonds are also payable from

an unlimited tax authorized under Article III, Section 52, of the Constitution, and laws enacted pursuant thereto, such county acting through its Commissioners Court may, after being duly authorized in the manner provided by Article III, Section 52, of the Constitution, and laws enacted pursuant thereto, authorize, issue, and sell its bonds and use the proceeds therefrom in an amount sufficient to call, redeem, and pay off its outstanding tax and revenue bonds pursuant to the terms of said bonds, and thereby remove the pledge of the revenues from such facility and the covenants in connection with said bonds and the operation of said project, and make such project available for the free use of the public.

[See Compact Edition, Volume 5 for text of 9]

[Amended by Acts 1977, 65th Leg., p. 2160, ch. 861, §§ 1 to 7, eff. Aug. 29, 1977.]

Section 8 of the 1977 amendatory act provided:

"If any word, phrase, clause, sentence, or part of this Act shall be held by any court of competent jurisdiction to be invalid or unconstitutional, it shall not affect any other word, phrase, clause, sentence, or part of this Act, and such remaining portions shall remain in full force and effect."

Art. 6795c. Toll Bridges in Counties Bordering River Between Texas and Mexico

[See Compact Edition, Volume 5 for text of 1 and 2]

Tolls, Fees and Charges; Power of County to Collect; Purpose of Tolls

Sec. 3. Any such county thus acquiring any such toll bridge or bridges or constructing a new toll bridge shall have power, through its Commissioners Court as expressed by appropriate resolution or order thereof, to fix and to enforce and collect tolls, fees and charges for the use thereof, and for the passage or transportation of persons or property, passengers, vehicles, freight and commodities, over and across such toll bridge or bridges. Such tolls, fees and charges shall be fixed from time to time by the Commissioners Court of such county and collected under its direction in accordance with the provisions and requirements of any permits or franchises granted or extended by any governmental authority in respect of or applicable thereto; and, subject to the provisions and requirements of such permits or franchises, such tolls, fees and charges shall be just and reasonable and non-discriminatory, as determined by the Commissioners Court of such county, and, subject to the provisions and requirements of any such permits and franchises, shall be sufficient to at least produce revenues adequate:

(a) To pay all expenses necessary for the maintenance and operation of such toll bridge or bridges, and to comply with the requirements and make all payments necessary under the provisions of any such permits and franchises therefor;

(b) To pay the interest on and the principal of all bonds and/or warrants issued under this Act, when and as the same shall become due and payable;

(c) To pay all sinking fund and/or reserve fund payments agreed to be made in respect of any such bonds and/or warrants, and, payable out of such revenues, when and as the same shall become due and payable; and

(d) To fulfill the terms of any agreements made with the holders of such bonds and/or warrants and/or with any person in their behalf;

(e) To recover a reasonable rate of return on invested capital;

(f) Out of the revenues which may be received in excess of those required for the purposes specified in (a), (b), (c), (d), and (e) above, the Commissioners Court of any such county may in its discretion use such excess revenues for any or all of the following:

(1) to establish a reasonable depreciation and emergency fund;

(2) to retire by purchase and cancellation or redemption any outstanding bonds or outstanding warrants issued under the authority of this Act and amendments thereto;

(3) to provide needed budgetary support to local government for legitimate public purposes and for the general welfare;

(4) to apply the same to accomplish the purposes of this Act and amendments thereto;

(g) It is the intention of this Act that the tolls, fees and charges herein provided for shall be those necessary to fulfill all obligations imposed by this Act and amendments thereto, and shall be sufficient to produce revenues to comply with the above subparagraphs (a), (b), (c), (d), (e), and (f). Nothing herein shall be construed as depriving the State of Texas or the United States of America, or other appropriate agencies having jurisdiction, of its power to regulate and control tolls and charges to be collected for such purposes, provided that the State of Texas does hereby pledge to and agree with the purchasers and successive holders of the bonds and/or warrants issued hereunder that the State will not limit or alter the power hereby vested in any such county and the Commissioners Court thereof to establish and collect such tolls and charges as will produce revenues sufficient to pay the items specified in subparagraphs (a), (b), (c), (d), (e), and (f) of this Section 3 of this Act, or exercise its powers in any way which may impair the rights or remedies of the holders of the bonds and/or warrants, or of any person acting in their behalf until the bonds and/or warrants, together with interest thereon and with interest on unpaid installments of interest and all costs and expenses

in connection with any acts or proceedings by or on behalf of the bondholders and/or warrant holders and all other obligations of any such county in connection with such bonds and/or warrants are fully met and discharged.

(h) This section shall apply to international toll bridges now in existence and owned by a county or that may be acquired or controlled by a county in the future.

Operating Board

Sec. 3a. Any such county acquiring any such toll bridge or bridges, upon a determination by the Commissioners Court thereof that the same could be better and more efficiently operated by an operating board, may provide by either the resolution or order providing for the issuance of bonds or the trust indenture securing same that such toll bridge or bridges will be operated by an operating board to be appointed as provided in such resolution, order, or trust indenture and with such powers, except the power of eminent domain and the power to borrow money, as may be granted by such resolution, order, or trust indenture.

[See Compact Edition, Volume 5 for text of 4 to 22]

[Amended by Acts 1975, 64th Leg., p. 1922, ch. 624, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 367, ch. 180, § 2, eff. Aug. 29, 1977.]

CHAPTER SIX. PARTICULAR COUNTIES, LAW RELATING TO

Article

6812f. Road Improvements and Assessments by Galveston County Commissioners Court.

Art. 6812f. Road Improvements and Assessments by Galveston County Commissioners Court

Improvements Authorized

Sec. 1. The Commissioners Court of Galveston County may cause to be improved any county road in the county, whether by filling, grading, raising, paving, or repairing in a permanent manner, or by constructing, reconstructing, repairing, or realigning curbs, gutters, and sidewalks, or by constructing drains and culverts.

Constitutional Basis

Sec. 2. This Act is a local law relating to the maintenance of public roads authorized by Article VIII, Section 9, of the Texas Constitution.

Assessments Against Property Owners; Liens

Sec. 3. (a) The commissioners court by order may assess all or any part of the cost of constructing, reconstructing, repairing, or realigning curbs,

gutters, and sidewalks, and not more than nine-tenths of the cost of any other improvements authorized by this Act, against property abutting on the portion of the county road to be improved, and against the owners of that property. The commissioners court may provide the time, terms, and conditions of payment and default of the assessments, and may prescribe the rate of interest on them, which may not exceed eight percent a year.

(b) Any assessment against abutting property is a first and prior lien on the property from the date improvements are ordered, and is a personal liability and charge against the owner or owners of the property, whether named or not. Nothing in this Act empowers the commissioners court to fix a lien against any interest in property that is exempt at the time the improvements are ordered, but the owner or owners of the property are personally liable for any assessment in connection with the property.

Front Foot Rule

Sec. 4. The part of the cost of improvements on each portion of the county road ordered improved which is assessed against abutting property and owners of the property shall be apportioned among the parcels of abutting property and the owners thereof in accordance with the front foot plan or rule, except that if the application of this rule would, in the judgment of the commissioners court, in particular cases, result in injustice or inequity, the commissioners court may apportion and assess the costs against abutting property owners in a manner that the commissioners court determines is just and equitable, so as to produce a substantial equality of benefits received and burdens imposed. Provided, however, it is expressly found and determined that railroad rights-of-way will not benefit from such improvements and may not be assessed therefor.

Certificates

Sec. 5. (a) The commissioners court may order the issuance of assignable certificates in evidence of assessments levied, declaring the lien on the property and the liability of the true owner or owners of the property, and may fix the terms and conditions of the certificates. Any certificate that recites substantially that the proceedings referred to in it have occurred in compliance with law and that all prerequisites to the fixing of the assessment lien against the property described in the certificate and the personal liability of the owner or owners of the property have been performed, is prima facie evidence of all matters recited in the certificate, and no further proof of the matters is required.

(b) In any suit on an assessment or reassessment in evidence of which a certificate may be issued in accordance with the provisions of this Act, it is

sufficient to allege the substance of the recitals in the certificate and that the recitals are in fact true. Further allegations as to the proceedings relating to the assessment or reassessment are not necessary.

(c) The assessments are collectable with interest, expense of collections, and reasonable attorney's fee, if any are incurred, and are a first and prior lien on the property assessed, superior to all other liens and claims except county, school district, and city ad valorem taxes, and are a personal liability and charge against owners of the property assessed.

Joint Assessments

Sec. 6. Assessments against several parcels of property may be made in one assessment when owned by the same person, firm, corporation, or estate, and property owned jointly may be assessed jointly.

Estimate

Sec. 7. No assessment is valid unless the commissioners court makes or causes to be made an estimate of the cost of the improvement or improvements to be constructed, and the estimate is included in any published or mailed notice of the public hearing required by this Act.

Public Hearing and Notice

Sec. 8. (a) No assessment may be made against any abutting property or its owners until after notice and opportunity for hearing has been provided in accordance with this Act, and no assessment may be made against any abutting property or owners of it in excess of the special benefits to the property and owners resulting from the enhanced value of the property by means of the improvement, as may be determined at the hearing.

(b) Notice shall be by advertisement inserted at least three times in a newspaper of general circulation in the county, the first publication to be made at least 21 days before the date of the hearing. Additional written notice of the hearing shall be given by depositing in the United States mail, at least 14 days before the date of the hearing, postage prepaid, in an envelope addressed to the owners of the respective properties abutting the county road to be improved, as the names of the owners are shown on the then current rendered or unrendered tax rolls of the county, at the addresses listed there. To be sufficient and binding on any person owning or claiming the abutting property, or any interest in it, the mailed notice must describe in general terms the nature of the improvements for which assessments are to be levied, the county road or portion of it to be improved, the estimated cost per front foot proposed to be assessed against the property and the owner or owners of the property, the estimated total cost of the improvement or improvements, and the time and place of the hearing. The notice to be

mailed may be a copy of the public notice, which must contain all of the information required for a mailed notice to be sufficient and binding. If the owner is listed on the county tax rolls as "unknown," no notice is required to be mailed. If the owner is shown on the county tax roll as an estate, the mailed notice may be addressed to the estate.

(c) The commissioners court shall hold the hearing. Any person owning abutting property or any interest in it may be heard at the hearing on any matter relating to the improvement or assessment, including the amount of the proposed assessment or assessments, the lien and liability created by it, the special benefits to the abutting property and owners of the property by the improvements for which assessments are to be levied, and the accuracy, sufficiency, regularity, and validity of the proceedings and contract in connection with the improvements and proposed assessments.

(d) The commissioners court may correct any errors, inaccuracies, irregularities, and invalidities, and may supply any deficiencies, and may determine the amount of assessments and all other matters necessary, and may levy the assessments before, during, or after the construction of the improvements, except no part of any assessment may be made to mature prior to acceptance by the county of the improvements for which the assessment is levied.

Appeal

Sec. 9. Any person owning or claiming any interest in any property assessed under the provisions of this Act, who desires to contest any assessment because of the amount of it or any inaccuracy, irregularity, invalidity, or insufficiency of the proceedings or contract with reference to it, or with reference to the improvements, or because of any matter or thing not in the discretion of the commissioners court, may appeal to a district court in the county within 15 days after the time the assessment is levied. Any person who fails to institute suit within this time shall be held to have waived every matter that might have been heard at the hearing before the commissioners court, and shall be barred and estopped from contesting or questioning the assessment or any matter relating to it, and the only

defense to any assessment in a suit to enforce it is that the notice of hearing was not mailed or delivered as required by this Act, was not published, or did not contain the information required by this Act, or that the assessments exceeded the amount of the estimate. No words or acts of any officer or employee of the county, or any member of the commissioners court, shall in any way affect the force and effect of the provisions of this Act.

Changes in Proceedings

Sec. 10. The commissioners court may provide for any changes in plans, methods, or contracts for improvements, but any change substantially affecting the nature or quality of any improvements may be made only after it is determined by a four-fifths vote of the commissioners court that it is not practical to proceed with the improvement as previously provided, and following any such vote, the commissioners court may make the substantial change only after first obtaining the consent of the person, firm, or corporation with which the commissioners court has contracted for construction of the improvements, and after obtaining a new estimate for the cost of the improvements and holding a new hearing, together with the issuance of proper notice as required by this Act. The commissioners court may at any time abandon any improvement with the consent of the person, firm, or corporation constructing the improvements, and shall by order cancel any assessments levied for abandoned improvements.

Correction

Sec. 11. If any assessment is for any reason held or determined to be invalid or unenforceable, the commissioners court may supply any deficiency in proceedings and correct any mistake or irregularity relating to the assessment, and may at any time make and levy reassessments after notice and hearing as nearly as possible in the manner provided by this Act for the original improvements. Recitals in certificates issued in evidence of reassessments shall have the same force as provided for recitals relating to original assessments.

[Acts 1975, 64th Leg., p. 1396, ch. 540, §§ 1 to 11, eff. June 19, 1975.]

TITLE 117

SALARIES

Article

- 6813c. Travel Expense Reimbursements and Group Insurance Premiums for State Officers and Employees.
6813d. Longevity Pay for State Employees.
6819a-44a. Additional Compensation for Judges of the 23rd and 130th Judicial Districts.
6819a-45. Additional Compensation for Judges of the 103rd, 107th, 138th and 197th Judicial Districts.
6819a-46. Additional Compensation for Judges of the 24th and 135th Judicial Districts.
6819a-47. Additional Compensation for Judges of the 51st and 119th Judicial Districts.
6819a-48. Additional Compensation of District Court Judges in Montgomery County.

Art. 6813c. Travel Expense Reimbursements and Group Insurance Premiums for State Officers and Employees

Travel expense reimbursements and the state's participation in group insurance premiums for all state officers and employees shall be in such sums or amounts as may be provided for by the legislature in the General Appropriations Act.

[Amended by Acts 1977, 65th Leg., p. 846, ch. 317, § 1, eff. May 30, 1977.]

Art. 6813d. Longevity Pay for State Employees

Except as provided by Chapter 477, Acts of the 64th Legislature, Regular Session, 1975 (Article 6252-20a, Vernon's Texas Civil Statutes),¹ each state employee covered by the Position Classification Act of 1961, each line item or exempt state employee, each regular full-time hourly employee of the state, and each regular full-time nonacademic employee of a state institution of higher education is entitled to longevity pay of a maximum of \$4 per month for each year of service as an employee of the state up to and including 25 years of service. Such longevity pay is to commence at the end of the fifth year and to be increased at the end of each five years thereafter.

[Acts 1979, 66th Leg., p. 1770, ch. 718, § 1, eff. Sept. 1, 1979.]

¹ Repealed.

Art. 6819a-12. Salary of District Judge in 106th Judicial District

In the 106th Judicial District, the district judge may receive annually, payable in monthly installments, a salary to be fixed by the Commissioners Court of each county, to be paid by said county out of the general fund thereof, as compensation for all administrative services rendered by said judge, in addition to all salaries paid to said judge by the

State of Texas out of state revenues. The salary herein authorized to be paid shall be a reasonable sum for performing such duties, not to exceed the sum of \$8,000 per annum.

[Amended by Acts 1979, 66th Leg., p. 1668, ch. 696, § 1, eff. Aug. 27, 1979.]

Art. 6819a-12a. Salary of District Court Judge in 109th Judicial District

In the 109th Judicial District, the District Judge may receive annually, payable in monthly installments, a salary to be fixed by the Commissioners Court of each county, to be paid by said county out of the General Fund thereof, as compensation for all judicial and administrative services now rendered by said Judge, and any additional judicial or administrative services hereafter to be assigned to said Judge, in addition to all salaries paid or hereafter to be paid to said Judge by the State of Texas, out of state revenues; provided, however, that the salary herein authorized to be paid by any County Commissioners Court to any Judge shall not exceed the sum of \$5,000 per annum.

[Amended by Acts 1979, 66th Leg., p. 794, ch. 355, § 1, eff. June 6, 1979.]

Art. 6819a-14. Additional Compensation of District Court Judge of 70th Judicial District

Sec. 1. In addition to the compensation provided by law and paid by the State, the Commissioners Court of Ector County is authorized to pay each of the judges of the 70th, 161st, and 244th Judicial Districts for services rendered to Ector County and for performing administrative duties, a reasonable sum not to exceed Ten Thousand Dollars (\$10,000) per annum.

Sec. 2. The compensation provided for in Section 1 shall be in addition to all other compensation paid or authorized to be paid to each of the judges of the district courts having jurisdiction in Ector County. [Amended by Acts 1979, 66th Leg., p. 201, ch. 110, § 1, eff. Aug. 27, 1979.]

Art. 6819a-15. Additional Compensation of District Court Judges in El Paso County

Sec. 1. For all services rendered to the county and for performing administrative services, the judges of the district courts having jurisdiction in El Paso County shall receive, in addition to the salary

paid to them by the state and in lieu of all the compensation now paid or authorized to be paid by the county to the district judges, the sum of \$9,000 per annum, subject to the provisions of Section 2 of this Act, to be paid in equal monthly installments out of the general fund or officers salary fund of the county. The commissioners court shall make proper budget provisions for the payment thereof. A district judge of the state who may be assigned to sit for the judge of a district court in El Paso County under the provisions of Chapter 156, Acts of the 40th Legislature, Regular Session, 1927, as amended (Article 200a, Vernon's Texas Civil Statutes), may, while so serving, receive in addition to his necessary expenses, additional compensation from county funds in an amount not to exceed the difference between the pay of the visiting judge from all sources and the pay received from all sources by district judges in El Paso County, such amount to be paid by the county on approval of the presiding judge of the administrative judicial district.

Sec. 2. The combined yearly salary rate from state and county sources of the judges of the district courts in El Paso County may not exceed an amount which is \$1,000 less than the combined yearly salary rate from state and county sources received by the judges of the court of civil appeals in whose district El Paso County is located.

Sec. 3. The provisions of this Act do not affect the salary and compensation authorized to be paid to the County Judge of El Paso County as a member of the El Paso County Juvenile Board and do not affect the existence or the functions of the juvenile board.

Sec. 4. This Act is cumulative of existing laws and any laws in conflict are repealed to the extent of conflict only.

[Amended by Acts 1975, 64th Leg., p. 346, ch. 147, § 1, eff. May 8, 1975; Acts 1979, 66th Leg., p. 1419, ch. 627, § 1, eff. Aug. 27, 1979.]

Arts. 6819a-16, 6819a-17. Repealed by Acts 1975, 64th Leg., p. 346, ch. 147, § 2, eff. May 8, 1975

See, now, art. 6819a-15.

Art. 6819a-20. Additional Compensation of District Court Judge of 16th Judicial District

Sec. 1. In addition to the compensation provided by law and paid by the State, the Commissioners Court of Denton County is hereby authorized to pay the District Judge of the 16th Judicial District for services rendered to Denton County and for administrative duties, a reasonable sum not less than Two Thousand Four Hundred Dollars (\$2,400) per annum; and in addition to the compensation provided by law and paid by the State, the Commissioners Court of Cooke County is hereby authorized to pay the said

District Judge of the 16th Judicial District for services rendered to Cooke County and for administrative duties, a reasonable sum not less than One Thousand Two Hundred Dollars (\$1,200) per annum.

Sec. 2. The compensation provided for in Section 1 shall be in addition to all other compensation paid or authorized to be paid the District Judge of the 16th Judicial District.

[Amended by Acts 1979, 66th Leg., p. 1061, ch. 491, § 1, eff. Aug. 27, 1979.]

Art. 6819a-28. Additional Compensation of District Court Judges of 10th, 56th, 122nd and 212th Judicial Districts

In addition to the compensation paid by the State of Texas to District Judges, the Commissioners Court of Galveston County may pay to the District Judges of the 10th Judicial District, the 56th Judicial District, the 122nd Judicial District, and the 212th Judicial District, respectively, for services rendered to Galveston County for performing administrative duties, a sum of not less than Ten Thousand Dollars (\$10,000) nor more than Fifteen Thousand Dollars (\$15,000) annually to each of the Judges of said District Courts. This amount shall be paid in equal monthly installments out of the General Fund or Officers Salary Fund of Galveston County. The Commissioners Court of Galveston County may make proper budget provisions for the payment of the sums authorized in this Act.

[Amended by Acts 1975, 64th Leg., p. 256, ch. 105, § 1, eff. Sept. 1, 1975.]

Art. 6819a-31. Additional Compensation of District Court Judge of 121st Judicial District

In addition to compensation provided by law and paid by the State, each of the Commissioners Courts of Cochran, Hockley, Terry, and Yoakum Counties may pay the District Judge of the 121st Judicial District \$1,200 per annum in equal monthly installments for services rendered in performing administrative duties in the district.

[Amended by Acts 1977, 65th Leg., p. 1438, ch. 583, § 1, eff. June 15, 1977.]

Art. 6819a-35. Additional Compensation of District Court Judges of 85th and 13th Judicial Districts

Sec. 1. In addition to the compensation provided by law and paid by the state, the Commissioners Court of Brazos County shall pay the district judge of the 85th Judicial District not less than Four Thousand Dollars (\$4,000) per annum for performing administrative duties in Brazos County.

[See Compact Edition, Volume 5 for text of 2]
[Amended by Acts 1979, 66th Leg., p. 69, ch. 43, § 1, eff. April 11, 1979.]

Art. 6819a-39. Additional Compensation for District Court Judges of 58th, 60th, 136th, 172nd Judicial Districts and Criminal District Court of Jefferson County

Sec. 1. In addition to the compensation paid by the State of Texas to the District Judges, the Commissioners Court of Jefferson County may pay District Judges of the 58th Judicial District, the 60th Judicial District, the 136th Judicial District, the 172nd Judicial District, and the Criminal District Court of Jefferson County, respectively, for services rendered to Jefferson County and for performing administrative duties, an annual sum of not more than Fifteen Thousand Dollars (\$15,000) to each of said Judges, to be paid in equal monthly installments out of the General Fund or Officers Salary Fund of Jefferson County. Such compensation shall be for all judicial and administrative services now rendered by such Judges, and any additional judicial and administrative services hereafter to be assigned to them, and in addition to all salaries paid or hereafter to be paid to them by the State of Texas out of state revenues.

Sec. 2. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(14), eff. Sept. 1, 1977.

[See Compact Edition, Volume 5 for text of 3]

[Amended by Acts 1975, 64th Leg., p. 1395, ch. 539, § 1, eff. Sept. 1, 1975.]

Art. 6819a-44a. Additional Compensation for Judges of the 23rd and 130th Judicial Districts

Sec. 1. In addition to the compensation paid by the state, each of the judges of the 23rd Judicial District and the 130th Judicial District may receive from the counties, as compensation for the judicial and administrative services performed by them, a salary in an amount to make the combined yearly salary rate of the district judge from state and county sources \$1,000 less than the combined yearly salary rate from state and county sources received by the associate justices of the First Supreme Judicial District.

Sec. 2. Each salary provided in this Act may be paid by the counties composing the judicial district in accordance with the proportion that the population of each county bears to the total population of the judicial district, as shown by the last preceding federal census, and may be paid in equal monthly installments out of the general fund or any other fund available for that purpose, as determined by the commissioners court of each county.

[Acts 1977, 65th Leg., p. 1639, ch. 643, §§ 1, 2, eff. June 15, 1977.]

Art. 6819a-45. Additional Compensation for Judges of the 103rd, 107th, 138th and 197th Judicial Districts

Sec. 1. The Commissioners Court of Cameron County may supplement the compensation of the judges of the 103rd, 107th, 138th, and 197th Judicial Districts in an amount not to exceed \$8,000 a year.

Sec. 2. The compensation provided for in Section 1 of this Act shall be in addition to all other compensation now paid or authorized to be paid the district judges of the 103rd, 107th, 138th, and 197th Judicial Districts by the state or the county.

[Acts 1975, 64th Leg., p. 114, ch. 51, §§ 1, 2, eff. April 18, 1975.]

Art. 6819a-46. Additional Compensation for Judges of the 24th and 135th Judicial Districts

Sec. 1. For services rendered to the counties and for performing administrative services, the District Judges of the 24th Judicial District and the 135th Judicial District may receive from each of the counties in the respective judicial districts, in addition to the salary paid to them by the state and any other compensation authorized to be paid to them by the counties, a reasonable sum to be set by the commissioners court, subject to the provisions of Section 2 of this Act, to be paid in equal monthly installments out of the general fund or officers salary fund of the respective counties. The commissioners courts shall make proper budget provisions for the payment thereof.

Sec. 2. The combined yearly salary from state and county sources of the District Judges of the 24th Judicial District and the 135th Judicial District may not exceed an amount which is \$1,000 less than the combined yearly salary rate from state and county sources received by the judges of the court of civil appeals in whose district the aforementioned judicial districts are located.

[Acts 1977, 65th Leg., p. 312, ch. 146, §§ 1, 2, eff. Aug. 29, 1977.]

Art. 6819a-47. Additional Compensation for Judges of the 51st and 119th Judicial Districts

Sec. 1. In addition to the compensation provided by law and paid by the state, the commissioners court of each county in either the 51st Judicial District or the 119th Judicial District may pay each district judge having jurisdiction in the county, for services rendered to the county and for performing administrative duties, an annual salary not to exceed that county's proportionate share of \$8,000, determined by the proportion that its population bears to the total population of the judicial district as shown by the last preceding federal census.

Sec. 2. The compensation provided for in Section 1 of this Act shall be in addition to all other compensation paid or authorized to be paid the district judges in each county in either the 51st or the 119th Judicial District.

[Acts 1977, 65th Leg., p. 1819, ch. 728, §§ 1, 2, eff. June 15, 1977.]

Art. 6819a-48. Additional Compensation of District Court Judges in Montgomery County

Sec. 1. In addition to the compensation provided by law and paid by the State of Texas, and any other compensation authorized to be paid by any county, the Commissioners Court of Montgomery County may pay to the judges of the district courts having jurisdiction in Montgomery County, for services rendered to Montgomery County and for performing administrative duties, a sum to be set by the commissioners court, subject to the provisions of Section 2 of this Act, and to be paid in equal monthly installments out of the general fund or officers salary fund of the county. The commissioners court shall make proper budget provisions for the payment of the compensation authorized by this Act.

Sec. 2. The combined yearly salary from state and county sources of the judges of the district courts having jurisdiction in Montgomery County may not exceed an amount which is \$1,000 less than the combined yearly salary rate from state and county sources received by the associate justices of the court of civil appeals in whose district the district courts of Montgomery County are located. [Acts 1979, 66th Leg., p. 1026, ch. 458, §§ 1, 2, eff. June 7, 1979.]

Art. 6823a. Travel Regulations Act of 1959

[See Compact Edition, Volume 5 for text of 1]

Application of Act

Sec. 2. The provisions of this Act shall apply to all officers, heads of state agencies, state employees, and prospective state employees incurring expenses when requested to visit a state agency, department, or institution of higher education for the purpose of being interviewed and evaluated for employment. Heads of state agencies shall mean elected state officials, excluding members of the Legislature who shall receive travel reimbursement as provided by the Constitution, appointed state officials, appointed state officials whose appointment is subject to Senate confirmation, directors of legislative interim committees or boards, heads of state hospitals and special schools, and heads of state institutions of higher education.

Basis of Reimbursement or Advance; Per Diem and Transportation Allowance; Rate and Computation; Revolving Petty Cash Fund

Sec. 3.a A reimbursement or advance from funds appropriated by the Legislature for traveling and other necessary expenses incurred by the various officials, heads of state agencies, and employees of the state in the active discharge of their duties shall be on the basis of either a per diem or actual expenses as specifically fixed and appropriated by the Legislature in General Appropriation Acts. A per diem allowance shall mean a flat daily rate payment in lieu of actual expenses incurred for meals and lodging and as such shall be legally construed as additional compensation for official travel purposes only.

[See Compact Edition, Volume 5 for text of 3b]

c. All agencies, boards, commissions, departments, and institutions are authorized to establish a revolving petty cash fund out of funds in the State Treasury or local funds in accordance with Section 6, Subsection g of this Article. The sole purpose of the petty cash fund shall be to advance projected travel expense. This fund shall be reimbursed by warrants drawn and approved by the Comptroller of Public Accounts out of funds in the State Treasury or checks drawn against funds held outside the treasury.

[See Compact Edition, Volume 5 for text of 4]

Advanced Approval of Governor; Travel Outside United States

Sec. 5. Any travel connected with official business of the state for which reimbursement for travel expenses incurred is claimed or for which an advance for travel expenses to be incurred is sought, with the exception of travel to, in, and from the several states, United States possessions, Mexico, and Canada, must have the advance written approval of the Governor. Blanket authority by the Governor may be given to the International Trade Development Division personnel of the Texas Industrial Commission and to the Department of Public Safety to law enforcement personnel.

Rules and Regulations; Standard Expense Account Forms; Reimbursement or Advance Payment for Travel by Private Conveyance; Overpayment

Sec. 6.

[See Compact Edition, Volume 5 for text of 6a]

b. Standard expense account forms shall be used by all state agencies in preparing the expense accounts for traveling state employees. Such forms shall contain information stating

- (1) the point of origin and the town, place or point of destination of each trip and the reimbursable mileage travelled, or projected, between each point, town, or place. This provision shall also apply to intra-city mileage;

(2) the actual period of time the employee is away, or plans to be away, from his designated headquarters entitling him to travel expenses; and

(3) a brief statement which clearly shows the purpose of the trip and the character of official business performed or to be performed.

c. In determining transportation reimbursement or advance payment for travel by private conveyance, the Comptroller shall determine the mileage by shortest highway distance between point of origin and the destination via intermediate points at which official state business is conducted and other necessary mileage at points where official state business is conducted. In determining the amounts of reimbursement or advance payment for transportation by personal car within the State, the Comptroller shall compute all distances according to the shortest route between points. In determining the amount of reimbursement or advance payment for transportation by personal car within this state, the Comptroller shall adopt a mileage guide including a chart of distances showing the shortest route between points, and which shall include all Farm-to-Market roads and shall be reissued annually.

[See Compact Edition, Volume 5 for text of 6d]

e. When two, three, or four officials or employees of the same state agency with the same itinerary on the same dates are required to travel on the same official state business for which travel reimbursement for mileage in a personal car is claimed, or for which an advance payment is sought, a payment will be claimed and allowed for only one of the employees except as provided hereafter. To the extent of mileage claimed, the Comptroller shall consider such travel claims as multiple claims and may pay only one such claim. If more than four employees attend such meeting or conference in more than one car, full mileage shall be allowed for one car for each four employees and for any fraction in excess of a multiple of four employees. If, in any instance, it is not feasible for these officials or employees to travel in the same car, then prior official approval from the head of the state department or agency shall be obtained and shall be considered as authorization and the basis for reimbursement, or advance payment, for travel for each person authorized to use his personal car in such travel.

[See Compact Edition, Volume 5 for text of 6f]

g. The Comptroller shall, by promulgation of appropriate rules and regulations, establish a procedure by which a state officer or employee may receive in advance the projected travel expense to be incurred in a particular exercise of official duties. The Comptroller shall require a final accounting after the actual travel expense has been determined to provide for reimbursement and adjustment, as necessary, to equalize the allowance and the actual expense incurred.

Double Travel Expense Payments; Compensation by Non-state Agency

Sec. 7. Double travel expense payments to state officials or employees are prohibited. When an employee engages in travel for which he is to be compensated by a non-state agency, he shall not receive any reimbursement, and may not seek an advance payment, for such travel from authorized amounts in the General Appropriation Acts.

Local Transportation Allowance; Limits

Sec. 8. An employee whose duties customarily require travel within his designated headquarters may be authorized a local transportation allowance for this travel. Such allowance, however, may not exceed the transportation allowance for use of a privately owned automobile as set by the Legislature in the General Appropriations Acts, except that an employee with a physical handicap which precludes his personal operation of a privately owned automobile may, without regard to the standard otherwise set in the General Appropriations Acts, be authorized a reasonable transportation allowance not to exceed the amount to which such handicapped employee would be entitled for similar travel occurring outside of his designated headquarters.

[See Compact Edition, Volume 5 for text of 9]

Public Conveyances; Courtesy Cards

Sec. 10. The provisions of this Act shall not preclude reimbursement of claims, or requests for advance payments, by officials or employees for use of public conveyances. Transportation is authorized by courtesy cards for air, rail and bus lines.

[See Compact Edition, Volume 5 for text of 11]

[Amended by Acts 1975, 64th Leg., p. 1090, ch. 410, § 1, eff. June 19, 1975; Acts 1975, 64th Leg., p. 1387, ch. 535, §§ 1 to 5, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1289, ch. 507, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1316, ch. 521, § 1, eff. Aug. 29, 1977.]

TITLE 119

SEQUESTRATION

Art. 6840. Grounds for Issuance and Dissolution

Sec. 1. (a) Judges of the district and county courts and justices of the peace shall, at the commencement or during the progress of any civil suit, before final judgment, have power to issue writs of sequestration, returnable to their respective courts, in the cases and upon the grounds provided for in Subsections (b) through (e) of this section.

(b) When a person sues for the title or possession of any personal property or fixtures of any type or kind or sues for the foreclosure or enforcement of a mortgage or lien or security interest upon personal property or fixtures of any type or kind, a writ of sequestration may be issued if a reasonable conclusion may be drawn that there is immediate danger that the defendant or party in possession thereof will conceal, dispose of, ill-treat, waste, or destroy such property, or remove the same out of the limits of the county during the pendency of the suit.

(c) When a person sues for the title or possession of real property or sues for the foreclosure or enforcement of a mortgage or of a lien on real property, a writ of sequestration may be issued if a reasonable conclusion may be drawn that there is immediate danger that the defendant or party in possession thereof will make use of his possession to injure or ill-treat such property or waste or convert to his own use the timber, rents, fruits, or revenue thereof.

(d) A writ of sequestration may be issued when any person sues for the title or possession of any property from which he has been ejected by force or violence.

(e) A writ of sequestration may be issued when any person sues to try the title to any real property, or to remove cloud upon the title to such real property, or to foreclose a lien upon any such real property, or for a partition of real property, and makes oath that the defendant or either of them, in the event there be more than one defendant, is a nonresident of this state.

Sec. 2. The application for the issuance of the writ shall be made under oath and shall set forth specific facts stating the nature of the plaintiff's claim, the amount in controversy, if any, and the facts justifying the issuance.

Sec. 3. (a) When a writ of sequestration has been issued as provided in this article and the rules of civil procedure, the defendant may seek a dissolution of the writ by written motion filed with the court.

(b) A hearing on the motion to dissolve the writ shall be held and the issue determined not later than 10 days after the motion to dissolve is filed, unless the parties agree to an extension of time. At the hearing, the writ shall be dissolved unless the party who secured the issuance of the writ proves the specific facts alleged and the grounds relied upon for its issuance.

(c) If the writ is dissolved, the action shall proceed as if no writ had been issued except that an action for damages for wrongfully securing the issuance of the writ must be brought as a compulsory counterclaim. In addition to all other elements of damages, the party moving to dissolve the writ may recover his reasonable attorney's fees incurred in the dissolution of the writ.

(d) If the writ is dissolved and the personal property sought to be subjected to the writ is consumer goods, as that term is defined in the Texas Business and Commerce Code, the defendant or the party in possession shall be entitled to damages which shall be reasonable attorney's fees and the greatest of One Hundred Dollars (\$100.00), the finance charge contracted for, or actual damages. No damages may be awarded for the failure of the plaintiff to prove by a preponderance of the evidence the specific facts alleged and such failure is a result of a bona fide error. For a bona fide error to be available as a defense, the plaintiff must prove the use of reasonable procedures to avoid such error.

(e) A motion to dissolve the writ is cumulative of the right of replevy, and the filing of the motion to dissolve shall stay any further proceedings under the writ until a hearing is had, and the issue is determined.

Sec. 4. Requisites of Writ of Sequestration. There shall be prominently displayed on the face of the writ, in 10-point type and in a manner calculated to advise a reasonably attentive person of its contents, the following:

"YOU HAVE A RIGHT TO REGAIN POSSESSION OF THE PROPERTY BY FILING A 'REPLEVY' BOND.

"YOU HAVE A RIGHT TO SEEK TO REGAIN POSSESSION OF THE PROPERTY BY FILING WITH THE COURT A MOTION TO DISSOLVE THIS WRIT."

[Amended by Acts 1975, 64th Leg., p. 1246, ch. 470, § 1, eff. Sept. 1, 1975.]

TITLE 120

SHERIFFS AND CONSTABLES

2. CONSTABLES

Art. 6879. Repealed by Acts 1977, 65th Leg., p. 1266, ch. 488, § 2, eff. Aug. 29, 1977

See, now, art. 6879a.

Art. 6879a. Appointment of Deputies

Sec. 1. The duly elected Constable in each Justice Precinct may appoint Deputies in accordance

with the provisions of Section 2 of this Act, and each and every instance said Deputy Constables shall qualify as required of Deputy Sheriffs.

[See Compact Edition, Volume 5 for text of 2 and 3]

[Amended by Acts 1977, 65th Leg., p. 1266, ch. 488, § 1, eff. Aug. 29, 1977.]

TITLE 120A

STATE AND NATIONAL DEFENSE

CIVIL DEFENSE

Article

6889-6. [Repealed].

6889-7. Disaster Act of 1975.

CIVIL DEFENSE

Art. 6889-5. Interstate Civil Defense and Disaster Compact

[See Compact Edition, Volume 5 for text of 1]

Sec. 1a. The office of Interstate Civil Defense and Disaster Compact Administrator for Texas is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the office is abolished, and this Act expires effective September 1, 1987.

[See Compact Edition, Volume 5 for text of 2]

[Amended by Acts 1977, 65th Leg., p. 1851, ch. 735, § 2.139, eff. Aug. 29, 1977.]

¹ Article 5429k.

Art. 6889-6. Repealed by Acts 1975, 64th Leg., p. 731, ch. 289, § 19, eff. May 22, 1975

See, now, art. 6889-7.

Art. 6889-7. Disaster Act of 1975

Short Title

Sec. 1. This Act may be cited as the Texas Disaster Act of 1975.

Purposes

Sec. 2. The purposes of this Act are to

(1) reduce vulnerability of people and communities of this state to damage, injury, and loss of life and property resulting from natural or man-made catastrophes, riots, or hostile military or paramilitary action;

(2) prepare for prompt and efficient rescue, care, and treatment of persons victimized or threatened by disaster;

(3) provide a setting conducive to the rapid and orderly restoration and rehabilitation of persons and property affected by disasters;

(4) clarify and strengthen the roles of the governor, state agencies, and local governments in prevention of, preparation for, response to, and recovery from disasters;

(5) authorize and provide for cooperation in disaster prevention, preparedness, response, and recovery;

(6) authorize and provide for coordination of activities relating to disaster prevention, preparedness, response, and recovery by agencies and officers of this state, and similar state-local, interstate, federal-state, and foreign activities in which the state and its political subdivisions may participate;

(7) provide a disaster management system embodying all aspects of predisaster preparedness and postdisaster response; and

(8) assist in prevention of disasters caused or aggravated by inadequate planning for and regulation of public and private facilities and land use.

Limitations

Sec. 3. Nothing in this Act may be construed to

(1) interfere with the course or conduct of a labor dispute, except that actions otherwise authorized by this Act or other laws may be taken when necessary to forestall or mitigate imminent or existing danger to public health or safety;

(2) interfere with dissemination of news or comment on public affairs, but any communications facility or organization, including radio and television stations, wire services, and newspapers, may be required to transmit or print public service messages furnishing information or instructions in connection with a disaster emergency;

(3) affect the jurisdiction or responsibilities of police forces, fire fighting forces, units of the armed forces of the United States, or of any of their personnel when on active duty, but state, local, and interjurisdictional disaster emergency plans shall place reliance on the forces available for performance of functions related to disaster emergencies; or

(4) limit, modify, or abridge the authority of the governor to proclaim martial law or exercise any other powers vested in him under the constitution or laws of this state independent of or in conjunction with any provisions of this Act.

Definitions

Sec. 4. In this Act

(1) "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including fire, flood, earthquake, wind, storm, wave action, oil spill or

other water contamination, volcanic activity, epidemic, air contamination, blight, drought, infestation, explosion, riot, hostile military or paramilitary action, or other public calamity requiring emergency action.

(2) "Political subdivision" means a county or incorporated city.

(3) "Organized volunteer groups" means organizations such as the American National Red Cross, the Salvation Army, Civil Air Patrol, Radio Amateur Civil Emergency Services, and other similar organizations recognized by federal or state statute, regulation, or memorandum.

(4) "Temporary housing" means temporary housing as defined in the Federal Disaster Relief Act of 1974 (PL 93-288, 88 Stat. 143).¹

(5) "Interjurisdictional agency" means a county government and the government of the city which is the county seat, the governments of a group of municipalities within a single county, or the government of a single county and the governments of all or any number of municipalities in that county.

¹ 42 U.S.C.A. §§ 5121 et seq., 5174.

The Governor and Disaster Emergencies

Sec. 5. (a) The governor is responsible for meeting the dangers to the state and people presented by disasters.

(b) Under this Act, the governor may issue executive orders, proclamations, and regulations and amend or rescind them. Executive orders, proclamations, and regulations have the force and effect of law.

(c) The governor may establish by executive order a Disaster Emergency Services Council to advise and assist him in all matters relating to disaster preparedness, emergency services, and disaster recovery. The Disaster Emergency Services Council is composed of the heads of state agencies, boards, and commissions and representatives of organized volunteer groups.

(d) A disaster emergency may be declared by executive order or proclamation of the governor if he finds a disaster has occurred or that the occurrence or the threat of disaster is imminent. The state of disaster emergency continues until the governor finds that the threat or danger has passed or the disaster has been dealt with to the extent that emergency conditions no longer exist and terminates the state of disaster emergency by executive order, but no state of disaster emergency may continue for longer than 30 days unless renewed by the governor. The legislature by law may terminate a state of disaster emergency at any time. On termination by the legislature, the governor shall issue an executive order ending the state of disaster emergency. All

executive orders or proclamations issued under this subsection shall indicate the nature of the disaster, the area threatened, and the conditions which have brought it about or which make possible termination of the state of disaster emergency. An executive order or proclamation shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and, unless the circumstances attendant on the disaster prevent or impede, promptly filed with the State Division of Disaster Emergency Services, the secretary of state, and the county clerk or city secretary in the area or areas to which it applies.

(e) An executive order or proclamation setting forth a state of disaster emergency activates the disaster response and recovery aspects of the state, local, and interjurisdictional disaster emergency plans applicable to the political subdivision or area in question and is authority for the deployment and use of any forces to which the plan or plans apply and for use or distribution of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to this Act or any other provision of law relating to disaster emergencies.

(f) During the continuance of any state of disaster emergency and the pursuant recovery period, the governor is commander-in-chief of state agencies, boards, and commissions having emergency responsibilities. To the greatest extent practicable, the governor shall delegate or assign command authority by prior arrangement embodied in appropriate executive orders or plans, but nothing in this Act restricts his authority to do so by orders issued at the time of the disaster emergency.

(g) In addition to any other powers conferred on the governor by law, he may

(1) suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders, rules, or regulations of any state agency if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency;

(2) utilize all available resources of the state government and of each political subdivision of the state which are reasonably necessary to cope with the disaster emergency;

(3) temporarily reassign direction, personnel, or functions of state executive departments and agencies or their units for the purpose of performing or facilitating emergency services;

(4) subject to any applicable requirements for compensation under Section 13 of this Act, commandeer or utilize any private property if he finds this necessary to cope with the disaster emergency;

(5) recommend the evacuation of all or part of the population from any stricken or threatened area in the state if he deems this action necessary for the preservation of life or other disaster mitigation, response, or recovery;

(6) prescribe routes, modes of transportation, and destinations in connection with evacuation;

(7) control ingress and egress to and from a disaster area and the movement of persons and the occupancy of premises in the area;

(8) suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles;

(9) enter into purchase, lease, or other arrangements with an agency of the United States for temporary housing units to be occupied by disaster victims and to make units available to any political subdivision of the state;

(10) assist any political subdivision which is the locus of temporary housing for disaster victims to acquire sites necessary for temporary housing and to do all things required to prepare the site to receive and utilize temporary housing units by advancing or lending funds available to the governor from any appropriation made by the legislature or from any other source; "passing through" funds made available by any agency, public or private; or becoming a copartner with the political subdivision for the execution and performance of any temporary housing for disaster victims project;

(11) under such regulations as he shall prescribe, temporarily suspend or modify for not to exceed 60 days any public health, safety, zoning, transportation within or across the state, or other requirement of law or regulation within this state when by proclamation he deems the suspension or modification essential to provide temporary housing for disaster victims;

(12) on his determination that a local government of the state has or will suffer a substantial loss of tax and other revenues from a major disaster and has demonstrated a need for financial assistance to perform its governmental functions, apply to the federal government on behalf of the local government for a loan, receive and disburse the proceeds of any approved loan to any applicant local government, determine the amount needed by any applicant local government to restore or resume its governmental functions, certify that to the federal government provided that no application amount may exceed 25 percent of the annual operating budget of the applicant for the fiscal year in which the major disaster occurs, and recommend to the federal government, based on his review, the cancellation of all or any part of repayment when in the first three full fiscal-year periods following the major disaster the revenues

of the local government are insufficient to meet its operating expenses, including additional disaster-related expenses of a municipal operation character;

(13) through the use of state departments or agencies or the use of any of the state's instrumentalities, clear or remove from publicly or privately owned land or water, debris and wreckage that may threaten public health or safety or public or private property in any disaster emergency declared by the governor or major disaster as declared by the President of the United States;

(14) accept funds from the federal government and utilize the funds to make grants to any local government for the purpose of removing debris or wreckage from publicly or privately owned land or water;

(15) on his determination that financial assistance is essential to meet disaster-related necessary expenses or serious needs of individuals or families adversely affected by a major disaster which cannot be otherwise adequately met from other means of assistance, accept a grant by the federal government to fund financial assistance, subject to terms and conditions as may be imposed on the grant, and enter into an agreement with the federal government or any officer or agency of the United States pledging the state to participate in funding not more than 25 percent of the financial assistance authorized in this subsection;

(16) make financial grants to meet disaster-related necessary expenses or serious needs of individuals or families adversely affected by a major disaster which cannot otherwise adequately be met from other means of assistance, which shall not exceed an aggregate amount in excess of that established by federal statute to an individual or family in any single major disaster declared by the President of the United States; and

(17) make rules and regulations as are necessary for carrying out the purposes of this Act, including standards of eligibility for persons applying for benefits, procedures for applying and administration, methods of investigation, filing, and approving applications, and formation of local or statewide boards to pass on applications and procedures for appeals.

(h) The governor may designate the Texas Department of Public Welfare or other state agency to carry out the functions of providing financial aid to individuals or families qualified for disaster relief. The governor may allocate funds appropriated under this Act to implement the purposes of this Act.

(i) Nothing in this Act may be construed to limit the governor's authority to apply for, administer, or expend any grant, gift, or payment in aid of disaster prevention, preparedness, response, or recovery.

(j) No debris or wreckage from public or private property may be removed until the affected local government, corporation, organization, or individual presents an unconditional authorization for removal to the governor. No debris or wreckage may be removed from private property until the state is indemnified against any claim arising from removal. Whenever the governor provides for clearance of debris or wreckage under the provisions of this Act, state employees or other individuals acting by authority of the governor may enter on private land or water to perform tasks necessary to the removal or clearance operation. Except in cases of willful misconduct, gross negligence, or bad faith, a state employee or agent performing his duties while complying with orders of the governor issued under the provisions of this Act shall not be liable for the death of or injury to persons or damage to property.

(k) Any political subdivision of this state is expressly authorized to acquire, temporarily or permanently, by purchase, lease, or otherwise, sites required for installation of temporary housing units for disaster victims and to enter into whatever arrangements (including purchase of temporary housing units and payment of transportation charges) which are necessary to prepare or equip the sites to utilize the housing units.

State Division of Disaster Emergency Services

Sec. 6. (a) A Division of Disaster Emergency Services is established in the office of the governor. The division shall have a director appointed by and shall serve at the pleasure of the governor. The division shall have coordinating and planning officers and other professional, technical, secretarial, and clerical employees necessary for the performance of its functions.

(b) The Division of Disaster Emergency Services shall prepare and maintain a comprehensive state disaster plan and keep it current. The plan may include

- (1) provisions for prevention and minimization of injury and damage caused by disaster;
- (2) provisions for prompt and effective response to disaster;
- (3) provisions for emergency relief;
- (4) identification of areas particularly vulnerable to disasters;
- (5) recommendations for zoning, building, and other land-use controls, safety measures for securing mobile homes or other nonpermanent or semi-permanent structures, and other preventive and preparedness measures designed to eliminate or reduce disasters or their impact;
- (6) provisions for assistance to local officials in designing local emergency action plans;

(7) authorization and procedures for the erection or other construction of temporary works designed to protect against or mitigate danger, damage, or loss from flood, conflagration, or other disaster;

(8) preparation and distribution to the appropriate state and local officials of state catalogs of federal, state, and private assistance programs;

(9) organization of manpower and channels of assistance;

(10) coordination of federal, state, and local disaster activities;

(11) coordination of the state disaster plan with the disaster plans of the federal government; and

(12) other necessary matters relating to disasters.

(c) The Division of Disaster Emergency Services shall take an integral part in the development and revision of local and interjurisdictional disaster plans prepared under Section 8 of this Act. To this end it shall employ or otherwise secure the services of professional and technical personnel capable of providing expert assistance to political subdivisions, their disaster agencies, and interjurisdictional planning and disaster agencies. These personnel shall consult with subdivisions and agencies on a regularly scheduled basis and shall make field reviews of the areas, circumstances, and conditions to which particular local and interjurisdictional disaster plans are intended to apply and may suggest revisions.

(d) In preparing and revising the state disaster plan, the Division of Disaster Emergency Services shall seek the advice and assistance of local government, business, labor, industry, agriculture, civic, and volunteer organizations and community leaders. In advising local and interjurisdictional agencies, the Division of Disaster Emergency Services shall encourage them also to seek advice from the sources.

(e) The state disaster plan or any part of it may be incorporated in regulations of the Division of Disaster Emergency Services or executive orders which have the force and effect of law.

(f) The Division of Disaster Emergency Services shall

(1) determine requirements of the state and its political subdivisions for food, clothing, and other necessities in event of an emergency;

(2) procure and pre-position supplies, medicines, materials, and equipment;

(3) promulgate standards and requirements for local and interjurisdictional disaster plans;

(4) periodically review local and interjurisdictional disaster plans;

(5) provide for mobile support units;

(6) establish and operate or assist political subdivisions, their disaster agencies, and interjurisdic-

tional disaster agencies to establish and operate training programs and programs of public information;

(7) make surveys of public and private industries, resources, and facilities in the state which are necessary to carry out the purposes of this Act;

(8) plan and make arrangements for the availability and use of any private facilities, services, and property and provide for payment for use under terms and conditions agreed on if the facilities are used and payment is necessary;

(9) establish a register of persons with types of training and skills important in emergency prevention, preparedness, response, and recovery;

(10) establish a register of mobile and construction equipment and temporary housing available for use in a disaster emergency;

(11) prepare, for issuance by the governor, executive orders and regulations necessary or appropriate in coping with disasters;

(12) cooperate with the federal government and any public or private agency or entity in achieving any purpose of this Act and in implementing programs for disaster prevention, preparation, response, and recovery; and

(13) do other things necessary, incidental, or appropriate for the implementation of this Act.

Financing

Sec. 7. (a) It is the intent of the legislature and declared to be the policy of the state that funds to meet disaster emergencies always be available.

(b) The Disaster Emergency Funding Board, which is composed of the governor, the lieutenant governor, the chairman of the State Board of Insurance, the commissioner of the State Department of Public Welfare, and the director of the Division of Disaster Emergency Services, is established.

(c) A disaster contingency fund is established which shall receive money appropriated by the legislature.

(d) It is the legislative intent that the first recourse shall be to funds regularly appropriated to state and local agencies. If the governor finds that the demands placed on these funds in coping with a particular disaster are unreasonably great, he may with the concurrence of the Disaster Emergency Funding Board make funds available from the Disaster Contingency Fund.

(e) Whenever the federal government or any other public or private agency or individual offers to the state or through the state to any political subdivision of the state, services, equipment, supplies, materials, or funds as gifts, grants, or loans for purposes of emergency services or disaster recovery,

the governor, if required by the donor, and the political subdivision through its executive officer or governing body may accept the offer in behalf of the state or its political subdivision. The governor or his designated agent is authorized to determine when a public calamity or disaster has occurred. Where any gift, grant, or loan is accepted by the state, the governor or on his designation the State Disaster Emergency Services Council or the State Coordinator of Disaster Emergency Services may dispense the gift, grant, or loan directly to accomplish the purpose for which it was made or allocate and transfer to any political subdivision of this state, services, equipment, supplies, materials, or funds in the amount he or his designated agent may determine. All these funds received by the state shall be placed in a special fund or funds and shall be disbursed by warrants issued by the comptroller of public accounts on order of the governor or his designated agent, who may be named by him either in a written agreement accepting the funds or in a written authorization filed with the secretary of state. Where the funds are to be used for the purchase of equipment, supplies, or commodities of any kind, it is not necessary that bids be obtained or that the purchases be approved by any other agency. On receipt of an order for disbursement, the comptroller shall issue a warrant without delay. Political subdivisions are authorized to accept and utilize all services, equipment, supplies, materials, and funds to the full extent authorized by the agreement under which they are received by the state or by the political subdivision.

Local and Interjurisdictional Disaster Agencies and Services

Sec. 8. (a) Each political subdivision within this state is within the jurisdiction of and served by the Division of Disaster Emergency Services and by a local or interjurisdictional agency responsible for disaster preparedness and coordination of response.

(b) Each county shall maintain a disaster agency or participate in a local or interjurisdictional disaster agency which, except as otherwise provided under this Act, has jurisdiction over and serves the entire county or interjurisdictional area.

(c) The governor shall determine which municipal corporations need disaster agencies of their own and shall recommend that they be established and maintained. He shall make his determinations on the basis of the municipality's disaster vulnerability and capability of response related to population size and concentration. The disaster agency of a county shall cooperate with the disaster agencies of municipalities situated within its borders but shall not have jurisdiction in a municipality having its own disaster agency. The Division of Disaster Emergency Services shall publish and keep current a list of municipalities required to have disaster agencies under this

subsection. Nothing in this subsection may be construed as limiting the constitutional and statutory powers of local governments.

(d) The governor may recommend that a political subdivision establish and maintain a disaster agency jointly with one or more contiguous political subdivisions if he finds that the establishment and maintenance of any agency or participation in it is made necessary by circumstances or conditions that make it unusually difficult to provide disaster prevention, preparedness, response, or recovery services under other provisions of this Act.

(e) Each political subdivision which does not have a disaster agency and has not made arrangements to secure or participate in the services of an agency shall have a liaison officer designated to facilitate the cooperation and protection of that subdivision in the work of disaster prevention, preparedness, response, and recovery.

(f) The mayor, county judge, or other principal executive officer of each political subdivision in the state shall notify the Division of Disaster Emergency Services of the manner in which the political subdivision is providing or securing disaster planning and emergency services, identify the person who heads the agency from which the service is obtained, and furnish additional pertinent information that the division requires.

(g) Each local and interjurisdictional agency shall prepare and keep current a local or interjurisdictional disaster emergency plan for its area.

(h) The local or interjurisdictional disaster agency shall prepare in written form and distribute to all appropriate officials a clear and complete statement of the emergency responsibilities of all local agencies and officials and of the disaster channels of assistance.

(i) A political subdivision may make appropriations for disaster emergency services as provided by law for making appropriations for ordinary expenses of the political subdivisions and may enter into agreements for the purpose of organizing disaster emergency service divisions, provide for a mutual method of financing the organization of units on a basis satisfactory to the political subdivisions, and render aid to other subdivisions under mutual aid agreements provided that the functioning of said units shall be coordinated by the State Disaster Emergency Services Council. For the payment of the cost of any equipment, construction, acquisition, or any improvements for carrying out the provisions of this Act, counties and incorporated cities and towns may issue time warrants. These time warrants shall be issued in accordance with the provisions of Chapter 163, General Laws, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Article 2368a, Vernon's Texas Civil Statutes). Time warrants shall not be issued for financing perma-

nent construction or improvements for disaster emergency services purposes except on the right of a referendum vote as provided in Section 4, Chapter 163, General Laws, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Article 2368a, Vernon's Texas Civil Statutes).

**Establishment of Interjurisdictional Disaster Planning
and Service Areas**

Sec. 9. (a) If the governor finds that two or more adjoining counties would be better served by an interjurisdictional arrangement than by maintaining separate disaster agencies and services, he may delineate by executive order or regulation an interjurisdictional area adequate to plan for, prevent, or respond to disaster in that area and direct steps to be taken as necessary, including the creation of an interjurisdictional relationship, a joint disaster emergency plan, mutual aid, or an area organization for emergency planning and services. A finding of the governor pursuant to this subsection shall be based on one or more factors related to the difficulty of maintaining an efficient and effective disaster prevention, preparedness, response, and recovery system on a unijurisdictional basis, such as

- (1) small or sparse population;
- (2) limitations on public financial resources severe enough to make maintenance of a separate disaster agency and services unreasonably burdensome;
- (3) unusual vulnerability to disaster as evidenced by a past history of disasters, topographical features, drainage characteristics, disaster potential, and presence of disaster-prone facilities or operations;
- (4) the interrelated character of the counties in a multicounty area; or
- (5) other relevant conditions or circumstances.

(b) If the governor finds that a vulnerable area lies only partly within this state and includes territory in another state or states or territory in a foreign jurisdiction and that it would be desirable to establish an interstate or international relationship, mutual aid, or an area organization for disaster, he shall take steps to that end as desirable. If this action is taken with jurisdictions that have enacted the Interstate Civil Defense and Disaster Compact (Article 6889-5, Vernon's Texas Civil Statutes), any resulting agreement or agreements may be considered supplemental agreements pursuant to Article 6 of that compact.

(c) If the other jurisdiction with which the governor proposes to cooperate pursuant to Subsection (b) of this section has not enacted that compact, he may negotiate special agreements with the jurisdiction. Any agreement, if sufficient authority for its making does not otherwise exist, becomes effective only after its text has been communicated to the legisla-

ture and provided that neither house of the legislature has disapproved it by adjournment of the next ensuing session competent to consider it or within 30 days of its submission, whichever is longer.

Intergovernmental Arrangements

Sec. 10. (a) This state has enacted into law and enters into the Interstate Civil Defense and Disaster Compact (Article 6889-5, Vernon's Texas Civil Statutes) with all states, as defined in that Act, bordering this state which have enacted or may enact the compact in the form substantially contained in Chapter 312, Acts of the 52nd Legislature, 1951 (Article 6889-5, Vernon's Texas Civil Statutes).

(b) The governor may enter into the compact with any state which does not border this state if he finds that joint action with that state is desirable in meeting common intergovernmental problems of emergency disaster planning, prevention, response, and recovery.

(c) Nothing in Subsections (a) and (b) of this section may be construed to limit previous or future entry into the Interstate Civil Defense and Disaster Compact of this state with other states.

(d) If any person holds a license, certificate, or other permit issued by any state or political subdivision of any state evidencing the meeting of qualifications for professional, mechanical, or other skills, the person may render aid involving the skill in this state to meet an emergency or disaster, and this state shall give due consideration to the license, certificate, or other permit.

Local Disaster Emergencies

Sec. 11. (a) A local disaster emergency may be declared only by the governing body of a political subdivision. It may not be continued or renewed for a period in excess of seven days except by or with the consent of the governing body of the political subdivision. Any order or proclamation declaring, continuing, or terminating a local disaster emergency shall be given prompt and general publicity and shall be filed promptly with the city secretary or county clerk as applicable.

(b) The effect of a declaration of a local disaster emergency is to activate the response and recovery aspects of any and all applicable local or interjurisdictional disaster emergency plans and to authorize the furnishing of aid and assistance under the declaration.

(c) No interjurisdictional agency or its official may declare a local disaster emergency unless expressly authorized to do so by the agreement pursuant to which the agency functions. However, an interjurisdictional disaster agency shall provide aid and services in accordance with the agreement pursuant to which it functions.

Disaster Prevention

Sec. 12. (a) In addition to disaster prevention measures as included in the state, local, and interjurisdictional disaster plans, the governor shall consider on a continuing basis steps that could be taken to prevent or reduce the harmful consequences of disasters. At his direction and pursuant to any other authority and competence they have, state agencies including but not limited to those charged with responsibilities in connection with floodplain management, stream encroachment and flow regulation, weather modification, fire prevention and control, air quality, public works, land use and land-use planning, and construction standards shall make studies of disaster-prevention-related matters. The governor from time to time shall make recommendations to the legislature, local governments, and other appropriate public and private entities as may facilitate measures for prevention or reduction of the harmful consequences of disasters.

(b) The Water Development Board and other state agencies in conjunction with the Division of Disaster Emergency Services shall keep land uses and construction of structures and other facilities under continuing study and identify areas which are particularly susceptible to severe land shifting, subsidence, flood, or other catastrophic occurrence. The studies undertaken under this subsection shall concentrate on means of reducing or avoiding the dangers caused by this occurrence or its consequences.

(c) If the Division of Disaster Emergency Services believes on the basis of the studies or other competent evidence that an area is susceptible to a disaster of catastrophic proportions without adequate warning, that existing building standards and land-use controls in that area are inadequate and could add substantially to the magnitude of the disaster, and that changes in zoning regulations, other land-use regulations, or building requirements are essential in order to further the purposes of this section, it shall specify the essential changes to the governor. If the governor on review of the recommendations finds after public hearing that the changes are essential, he shall make appropriate recommendations to the agencies or local governments with jurisdiction over the area and subject matter. If no action or insufficient action pursuant to his recommendations is taken within the time specified by the governor, he shall so inform the legislature and request legislative action appropriate to mitigate the impact of disaster.

(d) The governor, at the same time that he makes his recommendations pursuant to Subsection (c) of this section, may suspend the standard or control which he finds to be inadequate to protect the public safety and by regulation place a new standard or control in effect. The new standard or control shall remain in effect until rejected by concurrent resolution of both houses of the legislature or amended by

the governor. During the time it is in effect, the standard or control contained in the governor's regulation shall be administered and given effect by all relevant regulatory agencies of the state and local governments to which it applies. The governor's action is subject to judicial review but is not subject to temporary stay pending litigation.

Compensation

Sec. 13. (a) Each person in this state shall conduct himself and keep and manage his affairs and property in ways that will reasonably assist and will not unreasonably detract from the ability of the state and the public successfully to meet disaster emergencies. This obligation includes appropriate personal service and use or restriction on the use of property in time of disaster emergency. This Act neither increases nor decreases these obligations but recognizes their existence under the constitution and statutes of this state and the common law. Compensation for services or for the taking or use of property shall be only to the extent that obligations recognized in this Act are exceeded in a particular case and then only to the extent that the claimant may not be deemed to have volunteered his services or property without compensation.

(b) No personal services may be compensated by the state or any subdivision or agency of the state except pursuant to statute or ordinance.

(c) Compensation for property shall be made only if the property was commandeered or otherwise used in coping with a disaster emergency and its use or destruction was ordered by the governor or a member of the disaster emergency forces of this state.

(d) Any person claiming compensation for the use, damage, loss, or destruction of property under this Act shall file a claim for compensation with the Division of Disaster Emergency Services in the form and manner the Division of Disaster Emergency Services provides.

(e) Unless the amount of compensation on account of property damaged, lost, or destroyed is agreed between the claimant and the Division of Disaster Emergency Services, the amount of compensation shall be calculated in the same manner as compensation due for taking of property pursuant to the condemnation laws of this state.

(f) Nothing in this section applies to or authorizes compensation for the destruction or damaging of standing timber or other property in order to provide a firebreak or to the release of water or the breach of impoundments in order to reduce pressure or other danger from actual or threatened flood, or contravention of Article I, Section 17, of the Texas Constitution, or statutes pertaining to that section.

Communications

Sec. 14. The Division of Disaster Emergency Services shall ascertain in cooperation with the Criminal Justice Council or its successor agency what means exist for rapid and efficient communication in times of disaster emergencies. The division shall consider the desirability of supplementing these communication resources or of integrating them into a comprehensive state or state-federal telecommunication or other communication system or network. In studying the character and feasibility of any system or its several parts, the division shall evaluate the possibility of their multipurpose use for general state and local governmental purposes. The division shall make recommendations to the governor as appropriate.

Mutual Aid

Sec. 15. (a) Political subdivisions not participating in interjurisdictional arrangements pursuant to this Act nevertheless shall be encouraged and assisted by the Division of Disaster Emergency Services to conclude suitable arrangements for furnishing mutual aid in coping with disasters. The arrangements shall include provision of aid by persons and units in public employ.

(b) In reviewing local disaster plans, the governor or his agent shall consider whether they obtain adequate provisions for the rendering and receipt of mutual aid.

(c) It is a sufficient reason for the governor or his agent to require an interjurisdictional agreement or arrangement pursuant to Section 9 of this Act that the area involved and political subdivisions in it have available equipment, supplies, and forces necessary to provide mutual aid on a regional basis and that the political subdivisions have not already made adequate provision for mutual aid, but in requiring the making of an interjurisdictional arrangement to accomplish the purpose of this section, the governor need not require establishment and maintenance of an interjurisdictional agency or arrangement for any other disaster purposes.

Weather Modification

Sec. 16. The Division of Disaster Emergency Services shall keep continuously apprised of weather conditions which present danger of precipitation or other climatic activities severe enough to constitute a disaster. If the division determines that precipitation that may result from weather modification operations, either by itself or in conjunction with other precipitation or climatic conditions or activity, would create or contribute to the severity of a disaster, it shall request in the name of the governor that the officer or agency empowered to issue permits for weather modification operations suspend the is-

suance of the permits. On the governor's request, no permits may be issued until the division informs the officer or agency that the danger has passed.

Insurance Coverage

Sec. 17. Property damage insurance covering state facilities may be purchased by agencies of the state when necessary to qualify for federal disaster assistance funds. If sufficient funds are not available for the required insurance, then the agency may petition the Disaster Emergency Funding Board to purchase the insurance in the agency's behalf. The board may expend money from the Disaster Contingency Fund to purchase the required insurance.

Severability

Sec. 18. If any provision of this Act or the application thereof is held invalid, such invalidity shall not affect other provisions or applications of the Act, and to this end the provisions of this Act are held to be severable. All plans, regulations, and executive orders and proclamations not in conflict herewith are continued in full force and effect.

Repealer

Sec. 19. The Texas Disaster Act of 1973 (Article 6889-6, Vernon's Texas Civil Statutes) is repealed. [Acts 1975, 64th Leg., p. 731, ch. 289, eff. May 22, 1975. Amended by Acts 1977, 65th Leg., p. 1164, ch. 443, § 1, eff. June 15, 1977.]

TITLE 121

STOCK LAWS

CHAPTER THREE. SLAUGHTER AND SHIPMENT

Article

6910b. Payment for Livestock Purchased for Slaughter.

Art. 6908e. Slaughterers to Keep Record of Live- stock Purchased or Slaughtered

Sec. 1. When used in this Act:

[See Compact Edition, Volume 5 for text of
1(a) and (b)]

(c) The term "livestock" means cattle, horses,
hogs, sheep, and goats.

[See Compact Edition, Volume 5 for text of 2
to 5]

[Amended by Acts 1977, 65th Leg., p. 1649, ch. 646, § 1, eff.
June 15, 1977.]

Art. 6910b. Payment for Livestock Purchased for Slaughter

Definitions

Sec. 1. As used in this Act, unless the context
clearly requires otherwise, the following words and
phrases shall have the meaning ascribed to them in
this section:

(a) "Livestock" means cattle, sheep, goats, or
hogs.

(b) "Meat Processor" means a person, corpora-
tion, association, or other legal entity engaged in
the business of slaughtering cattle, sheep, goats,
or hogs, and processing or packaging them for sale
as meat.

Method and Time of Payment

Sec. 2. A meat processor who purchases livestock
from a seller, or any person, corporation, association,
or other legal entity who purchases livestock from a
seller for slaughter, shall make payment by cash or
check for the purchase price of the livestock and
actually deliver the cash or check to the seller or his
representative at the location where the purchaser
takes physical possession of the livestock on the day
the transfer of possession occurs or shall wire trans-
fer of funds on the business day within which the
possession of said livestock is transferred; provided
that if the transfer of possession is accomplished
after normal banking hours, said payment shall be
made in the manner herein provided not later than

the close of the first business day following said
transfer of possession. In the case of "grade and
yield" selling, the purchaser shall make payment by
wire transfer of funds not later than the close of the
first business day following determination of "grade
and yield." Provided, however, that an alternate
method of payment may be made by an agreement
in writing between the owner of the livestock and
the purchaser thereof, or their respective representa-
tives with express authority; that such agreement
must state that it may be cancelled at any time by
either party, from and after which cancellation, pay-
ment as herein provided shall be required. No such
agreement shall alter any other provision of this or
any other section of this Act.

Further, all instruments issued in payment here-
under shall be drawn on banks which are so located
as not to artificially delay collection of funds
through mail or otherwise cause a lapse of undue
time in the clearance process.

Penalty for Noncompliance

Sec. 3. In all cases where a purchaser who pur-
chases livestock for slaughter from a seller shall fail
to make payment for such livestock as herein provid-
ed or shall artificially delay collection of funds for
the payment of such livestock, such purchaser shall
be liable to pay the owner of such livestock, in
addition to the price of the livestock, twelve percent
(12%) damages on the amount of such price, together
with interest on the purchase price of the livestock
at the highest legal rate from and after the transfer
of possession until payment is made as herein pro-
vided, together with a reasonable attorneys' fee for
the prosecution of collection of such payment.

Lien to Secure Sales Price

Sec. 4. Any person, partnership, firm, corpora-
tion, or other organization who sells livestock for
slaughter shall have a lien on such animal, its car-
cass, all products therefrom, and proceeds thereof to
secure all or a part of its sales price.

Attachment and Perfection of Lien

Sec. 5. The lien provided herein shall be deemed
to have attached and to be perfected upon delivery
of the livestock to the purchaser without further
action, and such lien shall continue in the livestock,
its carcass, all products therefrom, and proceeds
thereof without regard to possession thereof by the

party entitled to such lien without further perfection.

Lien on Commingled Livestock, Carcasses or Products

Sec. 6. If the livestock or its carcass or products therefrom are so commingled with other livestock, carcasses, or products therefrom so that the identity thereof is lost, then the lien herein granted shall extend to the same effect as if same had been perfected originally in all such animals, carcasses, and products with which it has become commingled; provided, however, that all liens so extended under this section to such commingled livestock, carcasses, and products shall be on a parity with one another, and provided further that with respect to such commingled carcasses or products upon which a lien or liens have been so extended under this section, no such lien shall be enforceable as against any purchaser without actual knowledge thereof purchasing one or more of such carcasses or products in the ordinary course of trade or business from the party having commingled such carcasses or products, nor against any subsequent transferee from such purchaser, but in the event of such sale, such lien shall instead extend to the proceeds of such sale.

Priority of Lien

Sec. 7. The lien provided for in this article shall have priority over any other lien or perfected security interest in the livestock, its carcass, all products therefrom, and proceeds thereof not granted hereunder.

Severability

Sec. 8. If any provision of this Act or the application thereof to any person or circumstance shall be held to be invalid or unconstitutional, the remainder of the Act, and the application of such provision to other persons or circumstances shall not be affected thereby.

[Acts 1975, 64th Leg., p. 660, ch. 276, eff. Sept. 1, 1975.]

CHAPTER FOUR. ESTRAYS

Article
6927a. Estray Act.

Arts. 6911 to 6927. Repealed by Acts 1975, 64th Leg., p. 1933, ch. 630, § 12, eff. June 19, 1975

See, now, art. 6927a.

Art. 6927a. Estray Act

Short Title

Sec. 1. This Act may be cited as the Estray Act.

Purpose

Sec. 2. The purpose of this Act is to provide for a method to dispose finally of an estray.

Definitions

Sec. 3. In this Act:

(1) "Affidavit of ownership of estray" means a document containing at least the following information:

- (A) the name and address of the owner;
- (B) the date the owner discovered that the animal was an estray;
- (C) the property from which the animal strayed; and
- (D) a description of the animal including its breed, its color, sex, age, size, all markings of any kind and any other identifying characteristics.

(2) "Affidavit of receipt of estray" means a document containing at least the following information:

- (A) the name and address of person receiving estray;
- (B) date of receipt of estray;
- (C) method of claim to estray (previous owner, purchaser at sale);
- (D) if purchased at sale, amount of gross purchase price;
- (E) estray handling fees paid; and
- (F) net proceeds of sale.

(3) "Estray" means any stray horse, stallion, mare, gelding, filly, colt, mule, hinny, jack, jennet, hog, sheep, goat, or any species of cattle.

(4) "Estray book" means a book located in the office of the county clerk of each county in which information on estrays is filed.

(5) "Estray handling fees" means expenses for the impounding, holding, seeking the owner of, or selling an estray incurred by a person or by a sheriff, his designee, or the county.

(6) "Notice of estray" means a document containing at least the following information:

- (A) the name and address of the person who notified the sheriff of the estray;
- (B) the location of the estray when found;
- (C) the location of the estray until disposition; and
- (D) a description of the animal including its breed, if known, its color, sex, age, size, all markings of any kind, and any other identifying characteristics.

(7) "Public auction" means an auction that is licensed by the United States Department of Agriculture.

Finding an Estray

Sec. 4. (a) A person who discovers an estray on his property shall report the presence of the estray to the sheriff of the county in which the estray is

found. The report shall be made as soon as reasonably possible. The sheriff or his designee shall impound the animal and hold it for disposition as provided by this Act.

(b) A person who discovers an estray on public property shall report the presence of the animal to the sheriff of the county in which the estray is found. The report shall be given as soon as reasonably possible. The sheriff or his designee shall impound the animal and hold it for disposition as provided by this Act.

(c) After impounding an estray, the sheriff or his designee shall prepare a notice of estray and file the notice in the estray book.

Advertisement

Sec. 5. When an estray has been impounded, the sheriff or his designee shall make a diligent search of the register of recorded brands in the county for the owner of the estray. If the search does not reveal the owner, the sheriff or his designee shall advertise the impoundment of the estray in a newspaper of general circulation in the county at least twice during the next 15 days and post a notice of the impoundment of the estray on the public notice board of the courthouse.

Recovery by Owner

Sec. 6. The owner of an estray may recover possession of the estray at any time before the estray is sold under the terms of this Act if:

- (1) the owner has provided the sheriff or his designee with an affidavit of ownership of estray;
- (2) the sheriff or his designee has approved the affidavit;
- (3) the approved affidavit has been filed in the estray book;
- (4) the owner has paid all estray handling fees to those entitled to receive them;
- (5) the owner has executed an affidavit of receipt of estray and delivered it to the sheriff; and
- (6) the sheriff has filed the affidavit of receipt of estray in the estray book.

Sale of Estray

Sec. 7. (a) If the ownership of an animal is not determined within 14 days following the final advertisement required by this Act, title to the animal rests in the county. The sheriff or his designee shall cause the estray to be sold at a public auction. Title to the animal shall be deemed vested in the sheriff or his designee for purposes of passing good title, free and clear of all claims, to the purchaser at the sale.

(b) The purchaser of an estray at public auction may take possession of the animal upon payment therefor.

(c) The sheriff shall receive the proceeds from the sale of the animal and do the following:

- (1) pay all estray handling fees to those entitled to receive them;
- (2) execute a report of sale of impounded stock; and
- (3) cause the report of sale of impounded stock to be filed in the estray book.

(d) The net proceeds remaining from the sale of an estray after estray handling fees have been paid shall be delivered by the sheriff to the county treasury. These net proceeds shall be placed in the jury fund of the county for the uses made of that fund, subject to claim by the original owner of the estray as provided herein.

Use of Estray

Sec. 8. During the period of time an estray is held by one who impounded the estray, the animal may not be used by that person for any purpose.

Injury or Death to Estray

Sec. 9. A person who has impounded an estray is liable for any abuse or negligent injury of the animal. If the animal dies or escapes while held by the person who impounded it, the person shall report the death or escape to the sheriff or his designee under oath. The report shall be filed in the estray book.

Recovery by Owner of Proceeds Delivered to County Treasurer

Sec. 10. Within 12 months after the sale of an estray under the provisions of this Act, the original owner of the estray may recover the proceeds of the sale of the animal that were delivered by the sheriff to the county treasurer if:

- (1) the owner has provided the sheriff with an affidavit of ownership of estrays;
- (2) the sheriff has approved the affidavit; and
- (3) the approved affidavit has been filed in the estray book.

Escheat of Sale Proceeds

Sec. 11. After the expiration of 12 months from the sale of an estray as provided by this Act, the sale proceeds shall escheat to the state.

Repealer

Sec. 12. Chapter 4, Title 121, Revised Civil Statutes of Texas, 1925, is repealed.
[Acts 1975, 64th Leg., p. 1930, ch. 630, eff. June 19, 1975.]

CHAPTER EIGHT. ANIMAL HEALTH COMMISSION

Article

7009c. Application of Sunset Act.

7014f-1a. Compensation to Owners of Cattle Exposed to Bovine Brucellosis.

7014h-1. Pullorum Disease and Fowl Typhoid Control.

Art. 7009c. Application of Sunset Act

The Texas Animal Health Commission is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished effective September 1, 1987.

[Added by Acts 1977, 65th Leg., p. 1849, ch. 735, § 2.120, eff. Aug. 29, 1977.]

¹ Article 3429k.

Art. 7014f-1. Eradicating Diseases Among Livestock and Domestic Fowls**Duties of Animal Health Commission**

Sec. 1. It shall be the duty of the Texas Animal Health Commission provided in Article 7009 Revised Civil Statutes of 1925 to protect all cattle, horses, mules, asses, sheep, goats, hogs, and other live stock, and all domestic animals and domestic fowls of this State from infection, contagion or exposure to the infectious, contagious and communicable diseases enumerated in this Section, to-wit: Tuberculosis, anthrax, glanders, infectious abortion, hemorrhagic septicemia, hog cholera, malta fever, foot and mouth disease, rabies and other similar and dissimilar contagious and infectious diseases of live stock recognized by the veterinary profession as infectious or contagious; also Bacillary White Diarrhea among fowls. Said Commission may at its discretion whenever it is deemed necessary or advisable also to engage in the eradication and control of any disease of any kind or character that affects animals, live stock, fowls, or canines regardless of whether said diseases are infectious, contagious or communicable and may establish necessary quarantines for said purpose. It shall be the duty of the Commission to establish quarantines against other States, territories and foreign countries and portions thereof whenever said Commission ascertains or is informed that any of said diseases exist therein, and to establish quarantines within the State of Texas on cattle, horses, mules, asses, sheep, goats, hogs and other live stock, domestic animals and domestic fowls, also counties, districts, areas, premises, lands, pastures, lots, ranches, farms, fields, ranges, thoroughfares, buildings, barns, stables, stock yards pens and other places whenever said Commission ascertains that any of said diseases or the agency of transmission thereof exist in any of said places or among any of said live stock, domestic animals or domestic fowls, or that any of said places, live stock, domestic animals or domestic fowls are exposed to any of said diseases or to the germs or agency of transmission of any of said diseases. Said Commission shall adopt rules and regulations to be proclaimed by the Governor of the State of Texas for the purpose of carrying out and enforcing the provisions of this Act. The said Commission is hereby authorized to control the sale and distribution of veterinary biologics. No provision of this Act shall relate to tick eradication;

nor shall any provision hereof relate to scabies except those provisions in which scabies is expressly mentioned. When reference is made in any Section of this Act to infectious, contagious and communicable diseases, the same shall not be construed as having reference to scabies, unless said Section specifically states that scabies is included. It is hereby specifically provided that scabies eradication and tick eradication shall be conducted only by Inspectors of the Commission appointed and recognized by said Commission for said purposes, and all permits and certificates for certifying that cattle or sheep are free of scabies infection and exposure shall be issued only by Inspectors appointed for said purpose, and permits and certificates for certifying that live stock are free of ticks and exposure shall be issued only by Inspectors appointed for said purpose. Provisions of this with reference to issuing search warrants shall also apply to scabies inspectors for the purpose of dipping sheep or cattle under any law for eradicating scabies. Where cattle are quarantined on account of being tubercular reactors prosecutions for violations thereof shall be only under the penal clause for violating quarantines on tubercular reactors and no other penal clause of this Act shall apply. Wherever the word "person" is used in this Act the same shall also include firm and corporations.

[See Compact Edition, Volume 5 for text of 1a to 28]

[Amended by Acts 1979, 66th Leg., p. 1854, ch. 752, § 9, eff. Jan. 1, 1980.]

Art. 7014f-1a. Compensation to Owners of Cattle Exposed to Bovine Brucellosis

Sec. 1. In order to aid the Texas Animal Health Commission in its program to control and eventually eradicate bovine brucellosis in this state, as provided in Chapter 52, Acts of the 41st Legislature, 1st Called Session, 1929, as amended (Article 7014f-1, Vernon's Texas Civil Statutes), the Texas Animal Health Commission may pay the owner of any cattle which are exposed to bovine brucellosis an amount of not more than \$40 per head in problem herds and extreme hardship cases as determined by the Texas Animal Health Commission.

Sec. 2. The Texas Animal Health Commission may promulgate regulations to implement this Act, including regulations determining eligibility for compensation as provided in this Act. The commission shall determine in each case the amount to be paid for each head of cattle exposed to bovine brucellosis, within the limit prescribed in this Act and within the amount of funds appropriated for this purpose by the legislature. However, no funds so appropriated shall be used for any purpose other than direct payment to owners of exposed cattle. [Acts 1975, 64th Leg., p. 1886, ch. 598, eff. June 19, 1975.]

Art. 7014g-1. Tick Eradication Law**Duties of Animal Health Commission**

Sec. 1. It shall be the duty of the Texas Animal Health Commission to eradicate all ticks capable of carrying fever (Babesia) in the State of Texas and to protect all lands, territory, premises, cattle, horses, mules, jacks and jennets in the State of Texas from said tick and exposure thereto, under the provisions of this Act. Said Commission shall adopt necessary rules and regulations for carrying out the provisions of this Act. One of the members of said Commission shall be Chairman thereof, and he is hereby authorized to perform any and all acts which may be performed by said Commission.

Definitions

Sec. 2. The word "Tick" as used in this Act shall be construed to mean any tick capable of carrying fever (Babesia). The "Free Area" is hereby defined as being composed of those counties and parts of counties in Texas which the Texas Animal Health Commission may designate as the Free Area; the "Tick Eradication Area" is composed of those counties and parts of counties designated for tick eradication by the Commission; the "Inactive Quarantined Area" is composed of those counties and parts of counties which are designated as such by the Commission under provisions of this Act. The Texas Animal Health Commission shall promulgate rules defining and classifying "exposed animals" and "exposed premises." Whenever a tick is found upon any cattle, horses, mules, jacks, and jennets, every head of such live stock in said herd or which are located in the same pasture, pen, lot or in the same enclosure or upon the same range or that shall thereafter be located therein or thereupon, shall be classed as tick infested and said pasture, pen, lot, enclosure or open range in which and upon which they were located shall be classed as tick infested. Said classification to continue until changed by said Commission under the provisions of this Act. No premises, place or live stock shall be considered as free from exposure in the Tick Eradication Area unless the Commission has officially classed the same as free from exposure and filed in the office of the supervising inspector of the county wherein the same are located a copy of the order of said Commission making said classification, or unless the said supervising inspector under authority of said commission has made said classification in writing and filed the same in the office of said supervising inspector in said county. In this Act, "dip," "dipped," and "dipping" refer to submerging livestock in a vat, spraying livestock, or any other sanitary treatment of livestock as may be determined by the Commission.

Inactive Quarantined Area; Designation for Tick Eradication

Sec. 3. It shall be unlawful, after the taking effect of this Act, for any cattle, horses, mules, jacks, or jennets to be moved or permitted to move from or within the Inactive Quarantine Area except in accordance with the rules of the Texas Animal Health Commission. The Commission is hereby authorized to designate for tick eradication any county or part of a county that may have ticks therein without an election being held for said purpose, or said Commission may designate any part of any of said counties for said purpose. Whenever the Commission designates any county or part of a county for tick eradication, the designation shall become and be in effect on and after date prescribed in it. A brief notice of the designation shall either be published in a newspaper in the county wherein tick eradication is to be conducted or posted at the court house door thereof. If only a part of a county is designated for tick eradication, said notice may be published in any newspaper in any part of said county, or posted at the court house door, whether or not said court house is located in said part of county. Said notice shall be either published or posted at least ten full days before the date the designation is to become effective. In the event the same is not published or posted ten full days before the effective date prescribed, or in the event said prescribed date has already passed, then the designation shall become effective upon the expiration of ten full days from the date of said publishing or posting. The expense of the publishing or posting of such notices shall be paid by the county in which the designation is effective. The Commission is hereby authorized to transfer counties and parts of counties from any area to another area whenever the same is deemed advisable or necessary and to establish necessary quarantines on lands, premises and live stock.

Designation for Tick Eradication to Declare Quarantine; Operation and Effect

Sec. 4. Whenever any county, part of county, district or territory is designated for tick eradication by the Texas Animal Health Commission, the designation shall contain a provision quarantining said county, part of county, district or territory, and the effect of such quarantine shall be to quarantine said county, part of county, district or territory and all lands, pastures, pens, lots, premises, and all cattle, horses, mules, jacks and jennets of each individual owner, lessee, renter, tenant and occupant in the designated county, part of county, district or territory without specifically designating said land, pasture, pen, lot and premises, and after said quarantine becomes effective it shall be unlawful for any cattle, horses, mules, jacks or jennets located therein or which may thereafter be located therein during the existence of said quarantine, to be moved or permitted to move from the land, pastures, pen, lot or premises of an owner, lessee, renter, tenant or

occupant, whether enclosed or not, onto or into or through any other land owned or leased or rented, tenanted or occupied or controlled by any other person, firm or corporation or onto any open range, public street, public road or any thoroughfare, without a permit or certificate from an authorized inspector of the Commission. It shall be unlawful for any owner or caretaker of cattle, horses, mules, jacks or jennets located in said quarantined territory to move or permit or allow the movement of said live stock without said permit or certificate from any pasture, pen, lot, or other enclosure of which he is the owner, lessee, renter, tenant or occupant, or from any open range or street, road or thoroughfare or from land which he does not own or control into any other pasture, pen, lot, enclosure or other land of which he is the owner or caretaker, or of which he is in control, if said live stock are subject to dipping under the provisions of this Act, and the pen, lot pasture, enclosure or land into which he moves or allows or permits said movement is classed in the records of the supervising inspector of said county as free of ticks or has been released from quarantine by said Commission or if said live stock are subject to dipping but are not being dipped under the provisions of this Act in the conduct of regular systematic tick eradication by said Commission, and are so moved or allowed or permitted to so move into a pasture, pen, lot, enclosure or other land owned or controlled by said owner or caretaker of said live stock where tick eradication is being conducted, under the provisions of this Act, or into a pasture or other enclosure owned or controlled by said owner or caretaker of said live stock, which said pasture or enclosure is vacated for the purpose of tick eradication by vacation methods under the direction of said Commission. Owners and caretakers are hereby permitted to move and allow the movement of cattle, horses, mules, jacks and jennets to and from dipping vats for the purpose of dipping said live stock on any regular dipping date at said vat to which they are to be moved, or on any other dipping date designated by the inspector in charge of said dipping vat, provided they are moved in accordance with the rules and regulations of the Commission. If they are moved otherwise than as prescribed in said rules and regulations the same will constitute a violation of the quarantine. The term "other land" means land which is separated from the land from which the movement is made by a fence or other dividing line or by land of another person, firm or corporation.

[See Compact Edition, Volume 5 for text of 5 to 7]

Commission to Prescribe Dipping Materials

Sec. 8. (a) The Texas Animal Health Commission shall prescribe in its rules and regulations the dipping materials to be used in the dipping of cattle,

horses, mules, jacks and jennets, under the provisions of this Act, and the same shall be recognized official dipping materials for the dipping of such livestock, under the provisions of this Act, and no other dipping materials shall be used for such purposes.

(b) In the trial of any case in connection with the dipping or failure to dip livestock under any provision of this Act, it shall be presumed that the dipping vat in question contained a sufficient amount of said dipping solution for dipping said livestock and that said dipping solution had been properly tested, or that said dipping solution could have and would have been put into said vat and tested if the owner or caretaker had brought his livestock to said dipping vat for the purpose of dipping; and it shall not be necessary for the state to allege and prove in any criminal prosecution for failure to dip livestock under any provision of this Act, that said vat contained said dipping solution. If it becomes necessary in any court proceeding to prove the test of said dipping solution, it shall only be necessary to prove that the dipping material used was one of the official dipping materials prescribed in the rules and regulations of the Texas Animal Health Commission, and that the inspector tested said dipping solution in accordance with the rules and regulations of the Texas Animal Health Commission.

[See Compact Edition, Volume 5 for text of 9]

Dipping Material Furnished by State or State or Federal Agencies; Directions for Dipping

Sec. 10. The official dipping material prescribed in the rules and regulations of the Texas Animal Health Commission shall be furnished by the State, State agencies, or agencies of the United States government. The said Commission and its Chairman are hereby authorized to direct owners, part owners and caretakers of live stock which are subject to dipping under the provisions of this Act, to dip said live stock in said official dipping material. Said direction to be in writing and signed either by said Commission or said Chairman, which signature may be written or stamped thereon, under authority of either the Commission or its Chairman, and the same shall be dated and shall direct said person, firm or corporation to dip said live stock under the supervision of an inspector of said Commission at a designated dipping vat, and stating the dates on which said live stock are to be dipped, and the said direction may contain as many dipping dates as, in the discretion of said Commission, may be necessary for eradicating said infection or exposure from said live stock and the premises upon which they are located. Said direction shall further direct said person, firm or corporation to dip all other cattle, horses, mules, jacks and jennets of which he at any time may be

the owner, part owner or caretaker, which may at any time be located upon the premises described in said written dipping direction, during the period of time covered by said written dipping direction. Said dipping direction shall further state that unless said person dips said live stock on the dipping dates therein prescribed the same will be done at said person, firm or corporation's expense, under the provisions of this Act authorizing peace officers to deputize helpers and dip said live stock under the supervision of an inspector. All cattle, horses, mules, jacks and jennets located in the Tick Eradication Area or in the Free Area shall be subject to dipping under the provision of this Act if they are infested with any tick, as the term "infested" is defined in this Act, or if they are exposed or have been exposed to said tick at any time within nine months next preceding the date of the issuance of said dipping direction. When such live stock have been in or upon any pasture, pen, lot, enclosure, land or other place and it should be ascertained by said Commission either before or after said live stock are moved therefrom that said land, pasture, pen, place or enclosure is tick infested or exposed, the said Commission shall class said live stock as exposed and said Commission is authorized to direct the dipping of said live stock which have moved therefrom, unless said Commission definitely ascertains that said infection and exposure occurred after said live stock moved therefrom and that they did not become infested or exposed while thereon or therein. Provided that where a dipping direction is issued before the expiration of nine months, as provided herein, additional dipping directions may be issued at any time thereafter if said live stock and the said premises are not freed of all ticks and exposure thereto before the expiration of the dates prescribed in said first dipping directions. The dipping directions provided in this Act shall be delivered to said person at least twelve days before the first dipping date prescribed therein and shall direct said person, firm or corporation to dip said live stock at intervals of every fourteen days, allowing thirteen full days to intervene between dipping days, and no part of any dipping day shall be included as a part of the said thirteen days interval. Provided further that the Commission may, at its discretion, direct the dipping of live stock with a longer interval than said thirteen days between dipping days. Provided that the date of delivery of said dipping direction and the date of first dipping prescribed therein shall not be included as a part of said twelve days notice, but there shall be at least twelve full days exclusive of said date of delivery and said first dipping date; and provided further that in the event said twelve days do not intervene between said date of delivery and said first dipping date or if said first dipping date or other dipping dates contained in said dipping direction have passed at the time of the delivery of

said written dipping direction, it shall be the duty of said owner, part owner, or caretaker to begin dipping on the first dipping date after the expiration of said twelve full days, and to thereafter dip said live stock on all succeeding dipping dates prescribed in said written dipping direction. It shall not be necessary for written dipping directions to describe the premises or land by field notes or metes and bounds or other measures, but it will be sufficient if the same contains such reasonable description as will inform the person, firm or corporation to whom the same are directed what premises or land are covered thereby.

Compliance With Dipping Directions

Sec. 11. Whenever the Texas Animal Health Commission or its Chairman shall issue dipping directions in writing to any owner, part owner or caretaker of any cattle, horses, mules, jacks or jennets which are located in the Tick Eradication Area or in the Free Area, and which said live stock are infested with any tick or are exposed to said tick or have been exposed to said tick at any time during the nine months next preceding the date of the issuance of the said written dipping directions and said written dipping directions are served upon said owner, part owner or caretaker, as provided in this Act, shall be the duty of said owner, part owner or caretaker to dip said live stock as directed in said written dipping direction and also in addition thereto it shall be the duty of said owner, part owner, or caretaker to dip all other cattle, horses, mules, jacks, and jennets of which he may at any time be owner, part owner, or caretaker which may be located upon the premises referred to in said written dipping direction during any of the period of time covered by said written dipping direction. All of said dippings to be administered as directed in said written dipping direction. Any owner, part owner, or caretaker of any cattle, horses, mules, jacks or jennets who fails or refuses, after the expiration of the twelve days period of notice provided in this Act, to dip said livestock as prescribed in said dipping directions, on any date prescribed therein during the hours prescribed therein under the supervision of an inspector of the Commission in an official dipping solution prescribed in the rules and regulations of the Commission under the provisions of this Act, in the dipping vat designated in said written dipping direction shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than Twenty-five Dollars nor more than Two Hundred Dollars. The terms "caretaker," "exposed," and "infested" shall be construed as elsewhere defined or explained in this Act.

[See Compact Edition, Volume 5 for text of 12 to 14]

Dipping by Peace Officers on Refusal of Owner to Dip; Lien for Securing Payment of Costs

Sec. 15. Upon the failure of any owner, part owner or caretaker to dip any live stock on any date,

as directed in writing by the Texas Animal Health Commission under the provisions of this Act, at any time and place required of said owner or caretaker in any written dipping direction issued by the Commission and served upon him, or where such owner, part owner or caretaker, prior to any dipping date specified in said dipping direction, states that he does not intend to dip his said live stock, it shall be the duty of the inspector in charge of tick eradication in said county to notify the sheriff or any constable in said county of said fact, and it shall thereupon be the duty of said officer to depute a sufficient number of helpers to be designated by the supervising inspector in charge of said county to go upon the premises where said live stock are located and gather said live stock and dip them under the supervision of an inspector of the Commission, in accordance with said written direction, and to continue dipping them on all the succeeding dipping dates therein prescribed, unless and until said owner, part owner or caretaker begins and continues said dipping according to said direction. A lien is hereby given said peace officers upon all such live stock as may be dipped under these provisions for the purpose of securing the payment of all costs of handling the animals, and also for the payment of an additional sum to cover expenses of holding, feeding and watering said live stock during the time said officers held them in their possession, and said officers are authorized to retain in their possession and sell at public sale to the highest bidder, at any time at the courthouse door of said county within sixty days after said dipping, a sufficient number of said live stock for paying the total sum for live stock dipped and said expense of holding, feeding and watering said live stock, by posting a written notice at the courthouse door at least five days in advance of said sale. The residue, if any, to be paid to owner of said live stock or paid to the County Treasurer, subject to the order of the owner. Each date on which said live stock are dipped under the provisions of this Section shall authorize the collection of said total sum for said expenses.

[See Compact Edition, Volume 5 for text of 16 and 17]

Suit for Permanent or Temporary Relief to Compel Compliance with Dipping Directions; Hearing

Sec. 18. The Texas Animal Health Commission or any resident or residents of any county or part of county in which tick eradication is being conducted may bring suit for permanent or temporary relief to compel owners, part owners or caretakers to dip their cattle, horses, mules, jacks and jennets under the provisions of this Act after said owner, part owner or caretaker has failed or refused to dip them or is threatening or has threatened to refuse or fail to dip them, and the court may, in term time or vacation upon notice to defendant, hear and deter-

mine same and if the court finds that said owner, part owner or caretaker has been served with a written dipping direction from the Commission to dip said live stock and that said live stock are subject to dipping, and that the material allegations in plaintiff's petition are true, the court shall enter its order commanding said owner or caretaker to dip said live stock, designating the time and place of said dippings, as specified in the written dipping direction of the Commission, and upon failure of said person to dip said live stock at any time or place so ordered in accordance with said written dipping direction or in accordance with said order of said court, he shall be held liable for contempt of court and punished accordingly, and the court shall order the sheriff or a deputy sheriff to depute a sufficient number of helpers to dip said live stock in accordance with the court's order, and the expense of said dipping and employment of said sheriff or deputies and helpers shall be taxed as cost against the defendant in said suit, and lien is hereby provided in favor of sheriffs and their deputies and helpers on all such live stock dipped in accordance with said court order, for the purpose of securing the payment of said expenses and costs. After the dipping of live stock under said court order, the sheriff or deputy shall file a sworn statement with the Clerk of the District Court showing the number and description of the said live stock dipped, and the court shall order a foreclosure of the lien upon said live stock or upon such number of head as may be necessary for the payment of said expenses and costs, which live stock shall be sold as under execution. The said sworn statement may be filed after each dipping and said foreclosure made after each respective dipping, or the said sheriff or deputy may wait until a number of dippings have been administered and file a sworn statement covering each dipping and secure a foreclosure on all of them in the aggregate. The said right to file said written sworn statement and secure foreclosure of said lien shall exist for a period of twelve months after each dipping. The residue, if any, after the payment of said expenses and costs, shall be paid to the Clerk of the Court in which said suit is pending, subject to the order of the owner of said live stock. In any court proceeding under this Act, for the foreclosure of any lien authorized by this Act, the residue, if any, after the payment of said expenses and costs, shall likewise be paid to the Clerk of the Court, subject to the order of the owner of said live stock.

Dipping by Officers of Animals Running at Large Without Known Owner; Lien to Defray Expenses

Sec. 19. Whenever any inspector ascertains that there are any cattle, horses, mules, jacks or jennets in any county or part of county in which tick eradication is being conducted, under the provisions of this Act, running at large or upon the open range, for which he can locate no owner or caretaker, said

inspector shall call upon the sheriff or any constable in said county to deputize helpers and to seize said live stock and dip them under supervision of an inspector of the Texas Animal Health Commission and make such other disposition of said live stock as may be necessary for the purpose of tick eradication, including impounding them at such place as may be designated by said inspector, and the said officer is hereby given a lien on said live stock to defray the expenses of said gathering, dipping and impounding, feeding, watering and caring for said live stock, and to pay such helpers as may be necessary in carrying out the provisions of this Act.

[See Compact Edition, Volume 5 for text of 20]

Transportation of Animals From Quarantined Areas; Penalties

Sec. 21. Any person, firm or corporation or transportation company who shall ship or drive or drift or lead or haul or truck or otherwise move any cattle, horses, mules, jacks, or jennets from any premises, pasture, pen, lot, yard, stock yard, farm, ranch, land or enclosure, or from any county or part of county or territory which is under quarantine by virtue of this Act or by any order of the Texas Animal Health Commission because of tick infestation or exposure as provided for in this Act, in violation of said quarantine, without a written permit or certificate of an inspector of the Commission or an inspector of the Animal and Plant Health Inspection Service, United States Department of Agriculture, or who shall so move into the State of Texas from any state, nation, territory or area under quarantine for tick infestation or exposure by the said Commission, or by the United States Animal and Plant Health Inspection Service or by the Live Stock Sanitary authorities of the state or nation or territory from which they are moved, without a certificate from an inspector of said United States Animal and Plant Health Inspection Service, or that having such permit or certificate from an inspector of said Commission shall ship or drive or drift or lead or haul or truck or otherwise move said live stock from said quarantined premises, pasture, pen, lot, yard, stock yard, farm, ranch, land or enclosure, territory, county or part of county to any other place than the place designated by said inspector in said written certificates or permit shall be fined not less than \$100 per head nor more than \$500 per head for each head of such live stock so shipped or drifted or driven or hauled or led or otherwise moved in violation of said quarantine. Any owner, part owner or caretaker of such live stock who shall permit or allow such live stock to drift or to be drifted, shipped, led, hauled or otherwise moved in violation hereof without said permit or certificate shall be deemed guilty of violating this provision the same as if he had personally drifted or driven or shipped or led or

hauled or trucked or otherwise moved said live stock. Any person in charge of any movement of live stock upon which said certificate or permit is required, or who is in charge of the vehicle, truck, boat or other conveyance which hauls said live stock, who fails to have in his possession said certificate or permit from point of origin to destination, or to exhibit to an inspector of said Commission, when demanded, a certificate or permit from an inspector, as provided herein, or any railroad company, express company or other transportation company that fails to attach and keep attached said permit or certificate to the shipping papers accompanying said movement from point of origin to destination, or to exhibit to an inspector of said Commission, when demanded, a certificate or permit from an inspector, as provided herein, shall be punished as herein provided for violating the quarantine. Railroads and other transportation companies shall also be deemed as having violated this provision, subject to said penalty for each head of cattle, horses, mules, jacks or jennets which they permit to enter any stock pens under their control in the Tick Eradication Area without a written certificate or permit from an inspector of the Commission or of the Animal and Plant Health Inspection Service, United States Department of Agriculture.

Disinfecting of Means of Conveyance After Shipment; Penalty

Sec. 22. It shall be the duty of all railroad and transportation companies and persons operating other means of conveyance to clean and disinfect all cars or other means of conveyance into which any cattle, horses, mules, jacks or jennets have been loaded after the removal of said live stock, unless said live stock are clean and tick-free and are not and have not been subjected to exposure to any tick. The Texas Animal Health Commission shall promulgate rules concerning the cleaning and disinfecting of all means of conveyance. Any railroad or transportation company or person operating another means of conveyance that shall fail or refuse to clean and disinfect cars or other means of conveyance in accordance with the rules of the Commission shall be fined not less than Fifty Dollars nor more than One Hundred Dollars for each car or other means of conveyance which they shall fail or refuse to clean and disinfect. Each day upon which said failure or refusal shall occur shall constitute a separate offense.

[See Compact Edition, Volume 5 for text of 23 to 26]

Rules and Regulations

Sec. 27. The Texas Animal Health Commission is hereby directed to adopt rules and regulations providing the conditions and manner and method of handling and moving live stock into, within and

from the Tick Eradication Area and local premises and territory therein and the movement and handling of live stock into, within, and from quarantined premises and territory in the Free Area and the handling and movement of live stock into the released part of the Free Area from other areas and into, within, and from the Inactive Quarantine Area. Certificates and permits shall be issued by inspectors only as provided in said rules and regulations showing said live stock to be free of ticks; and when destined to the Free Area or other counties in the Tick Eradication Area or to premises or territory in the same county, which premises or territory are classed by the supervising inspector of the county in his official records as being free from ticks and exposure, said live stock shall also be certified to as being free from exposure and shall move to said destination without exposure. The Texas Animal Health Commission may adopt rules and regulations for tests, immunizations, treatment, certification, or marking or branding of any livestock moving into this state from other states or foreign countries.

[See Compact Edition, Volume 5 for text of 28]

Injunction Suit

Sec. 29. The Texas Animal Health Commission or any resident of this State may bring injunction suit to compel the compliance with any provision of this Act or restrain any threatened violation of same; and any resident of any county in this State may bring Mandamus proceedings against the County Commissioners Court of said county to compel a compliance with any duty of Commissioners' Courts prescribed in this Act. Said injunctions and Mandamus proceedings may be heard in vacation or term time, and if heard in vacation the same may be as fully disposed of and all issues determined in vacation the same as in term time. Notice of said hearing to the opposite party may be given under the direction of the Court, if in the opinion of the Court the ends of Justice require such a notice.

[See Compact Edition, Volume 5 for text of 30 and 31]

Restrictions on Removal of Materials from Quarantined Areas

Sec. 32. The Texas Animal Health Commission may establish necessary quarantines and restrictions on the movement of hay, hides, carcasses, or any other commodity capable of carrying ticks from quarantined areas and premises and restrict the use of sand for bedding stock conveyances except from known tick-free sand pits and regulating the removal and handling of all refuse matter from quarantined stock yards, stock pens and other quarantined places and regulating the handling or removal of dead or injured live stock in transit. Any person, firm or corporation who shall move any commodity

in violation thereof or who shall use any sand for bedding any conveyance in violation hereof or who shall remove or handle any refuse matter from any quarantined stock yards, stock pens or other quarantined place, or who shall remove from any conveyance or other place or handle any dead or injured live stock in violation of said quarantine or restrictions shall be fined not less than Fifty Dollars nor more than Two Hundred Dollars.

Written Instruments Issued by Commission as Evidence; Identification in Complaint or Indictment Without Setting Out Copies

Sec. 33. Copies of written instruments issued by the Texas Animal Health Commission or its Chairman shall be admissible as evidence in any court of this State when said copies are certified by the Chairman of said Commission. In prosecutions for violating any provisions of this Act, it shall not be necessary for the State to include in complaints or informations or indictments verbatim copies of any written instruments or proclamations, but it shall only be necessary to allege the issuance thereof with necessary allegation of dates to identify same. In the trial of any case, civil or criminal, in which any of the aforesaid written instruments or proclamations are to be introduced in evidence, it shall not be necessary to file the same with the papers of the cause, nor to give notice to the opposite party. All quarantines established by this Act or by the Commission under the provisions of this Act may be released by the said Commission in writing whenever the same is deemed necessary or advisable.

[See Compact Edition, Volume 5 for text of 34 to 37]

Cooperative Agreements Authorized

Sec. 37a. The Texas Animal Health Commission may enter into cooperative agreements with other state agencies or with agencies of the federal government in order to carry out the purposes of this Act.

[Amended by Acts 1977, 65th Leg., p. 1664, ch. 658, §§ 1 to 17, eff. Aug. 29, 1977.]

Section 18 of the 1977 amendatory act provided:

"All quarantines, Free Areas, Inactive Quarantine Areas, and Tick Eradication Areas established by the Texas Animal Health Commission or by proclamation of the governor and in effect on the effective date of this Act shall continue in full force and effect."

Art. 7014k-1. Pullorum Disease and Fowl Typhoid Control

Definitions

Sec. 1. In this Act:

- (1) "Commission" means the Texas Animal Health Commission.
- (2) "Experiment station" means the Texas Agricultural Experiment Station.

(3) "Poultry" means chickens, turkeys, game birds of all ages, and other domestic fowl.

(4) "Hatchery" means any enterprise that operates equipment for the hatching of eggs.

(5) "Flock" means poultry and their eggs.

Control and Eradication Program

Sec. 2. The experiment station shall promulgate and administer a program to control and eradicate pullorum disease and fowl typhoid, with standards at least as stringent as those specified in the National Poultry Improvement Plan (9 C.F.R. Part 445, 7 U.S.C. Section 429).

Administration of Program; Search Warrant for Inspection of Premises

Sec. 3. (a) In administering the program, the experiment station may:

(1) require the registration of all hatcheries and hatchery supply flocks;

(2) examine, test, monitor, and collect samples from any flock, whether a hatchery supply flock or not, if the flock is suspected of being infected or a potential source of infection;

(3) examine, test, monitor, and collect samples from any hatchery supply flock;

(4) enter premises where flocks are kept or eggs are hatched as necessary to carry out the administration of this Act; and

(5) promulgate rules necessary to the control and eradication of pullorum disease and fowl typhoid.

(b) If a person conducting an inspection of premises under Subdivision (4) of Subsection (a) of this section desires to be accompanied by a peace officer, he may apply to any magistrate in the county where the property is located for the issuance of a search warrant. In applying for the warrant, he shall describe the premises or place to be entered and shall by oath or affirmation give evidence of probable cause to believe that entry is necessary for the control or eradication of pullorum disease or fowl typhoid. The application for the warrant and the warrant itself need only describe the property or premises in terms sufficient to enable the owner or caretaker to know what property is referred to in the documents. The warrant entitles the person to whom it is issued to be accompanied by a peace officer and by assistants. The issuing magistrate may not charge court costs or other fees for the issuance of this warrant.

Quarantine

Sec. 4. (a) If the experiment station determines that any part of a flock is infected, it shall certify that information to the commission, and the commission shall verify the infection and immediately quarantine part or all of the flock. The commission shall give notice of the quarantine in the same manner as provided by law for the quarantine of other livestock and fowl. The commission shall also order a cessation in the sale, movement, or exhibition of any quarantined poultry or eggs and may seek an injunction to enforce any order concerning infected flocks.

(b) A quarantined flock shall be disposed of in a manner prescribed by the commission. If disposal involves movement to a state or federally inspected poultry processing establishment, the commission shall issue a certificate to accompany the flock. When the flock is disposed of and other measures necessary to the control and eradication of pullorum disease and fowl typhoid are taken, the commission shall remove the quarantine.

(c) The owner of a quarantined flock is entitled to a retesting of his flock before its disposal.

Public Exhibitions

Sec. 5. All poultry entered in public exhibition shall originate from flocks or hatcheries free of pullorum disease and fowl typhoid or have a negative pullorum-typhoid test within 90 days before exhibition. Chickens or turkeys entered in public exhibition shall be accompanied by a certificate of purchase from the hatchery.

Assistance of Flock Owner

Sec. 6. The owner of a flock shall assist the experiment station and the commission in handling the poultry and shall pen and present them on request.

Fee

Sec. 7. Neither the experiment station nor the commission may charge a fee for any testing or laboratory examination provided for under this Act.

Penalty

Sec. 8. Any person who refuses to comply with an order of the commission or experiment station concerning infected flocks or who refuses to admit a person with a search warrant obtained as provided in Section 2 of this Act is guilty of a Class C misdemeanor. Each day of refusal constitutes a separate offense.

[Acts 1977, 65th Leg., p. 364, ch. 179, §§ 1 to 8, eff. Aug. 29, 1977.]

TITLE 123

TIMBER

Repeal

This Title 123 was repealed by art. I, § 2(a)(3), of Acts 1977, 65th Leg., p. 2689, ch. 871, enacting the Natural Resources Code, effective September 1, 1977.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Arts. 7360 to 7363b. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, § 2, eff. Sept. 1, 1977

Former arts. 7361a, 7362a, 7363.1, and 7363b, derived from Acts 1879, p. 81, were transferred from Vernon's Ann.P.C. (1925) arts. 1385 to 1388, respectively, by authority of § 5 of Acts 1973, 63rd Leg., p. 995, ch. 399.

TITLE 125A

TRUSTS AND TRUSTEES

PENSION TRUSTS

Article

7425a-3. Authority of Fiduciaries and Custodians Regarding Certain Securities.

7425d-1. Death Benefits Under Employees' Trusts.

IN GENERAL

Art. 7425a-3. Authority of Fiduciaries and Custodians Regarding Certain Securities

Sec. 1. In this Act:

(1) "Fiduciary" has the meaning given it in Section 1, Chapter 1002, Acts of the 62nd Legislature, Regular Session, 1971 (Article 7425a-2, Vernon's Texas Civil Statutes), and includes a state or national bank acting in a fiduciary capacity.

(2) "Clearing corporation" has the meaning given it in Section 8.102, Business and Commerce Code, as amended.

Sec. 2. In the absence of contrary or limiting provisions in the court order or decree appointing a fiduciary, or in a subsequent order or decree, or in the will, deed, or other instrument appointing a fiduciary, any fiduciary holding securities in its fiduciary capacity, and any bank, trust company, or private banker holding securities as a custodian for a fiduciary or as a managing agent or custodian, is authorized if a member of the Federal Reserve System to deposit, or arrange for the deposit if not a member of the Federal Reserve System, with the Federal Reserve Bank of Dallas, of any securities the principal and interest of which the United States or any department, agency, or instrumentality of the United States has agreed to pay or has guaranteed payment. A bank, trust company, or private banker so depositing securities with the Federal Reserve Bank of Dallas shall be subject to such rules with respect to making and maintenance of the deposit as, in the case of state chartered or private banking institutions, the Finance Commission of Texas, and, in the case of national banking associations, the Comptroller of the Currency, may from time to time issue. The records of the fiduciary, bank, trust company, or private banker shall at all times show the ownership of securities held in such an account. The Federal Reserve Bank of Dallas may apply book entry procedures to the securities in such an account, whereby the ownership of and other interests in the securities may be transferred by entries on the books of the Federal Reserve Bank of Dallas without phys-

ical delivery of the securities. A bank, trust company, or private banker acting as custodian for a fiduciary, on demand by the fiduciary, shall certify in writing to the fiduciary the securities so deposited by the bank, trust company, or private banker with the Federal Reserve Bank. Any fiduciary or any bank, trust company, or private banker acting as fiduciary, custodian, custodian for a fiduciary, or managing agent, on demand by any party to its accounting or on demand by the attorney for the party, shall certify in writing to the party the securities so deposited by the bank, trust company, or private banker with the Federal Reserve Bank.

Sec. 3. (a) In the absence of contrary or limiting provisions in the court order or decree appointing a fiduciary, or in a subsequent order or decree, or in the will, deed, or other instrument appointing a fiduciary, any fiduciary holding securities in its fiduciary capacity, and any bank, trust company, or private banker holding securities as custodian, custodian for a fiduciary, or managing agent is authorized to deposit or arrange for the deposit, either in this state or elsewhere, of such securities in a clearing corporation, irrespective of whether the clearing corporation is domiciled, located, has any office or place of business, or is licensed or authorized to do business in this state. When the securities are so deposited, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of the clearing corporation with any other securities deposited in the clearing corporation by any person, regardless of the ownership of the securities, and certificates of small denomination may be merged into one or more certificates of larger denomination. The records of the fiduciary and the records of the bank, trust company, or private banker acting as a custodian for a fiduciary, managing agent, or custodian shall at all times show the name of the party for whose account the securities are so deposited. Ownership of, and other interests in, the securities may be transferred by entries on the books of the clearing corporation without physical delivery of certificates representing the securities. A bank, trust company, or private banker so depositing securities pursuant to this Act shall be subject to such rules as, in the case of state chartered or private banking institutions, the Finance Commission of Texas, and, in the case of national banking associations, the Comptroller of the Currency, may from time to time issue. A bank,

trust company, or private banker acting as custodian for a fiduciary, on demand by the fiduciary, shall certify in writing to the fiduciary the securities so deposited by the bank, trust company, or private banker in the clearing corporation for the account of the fiduciary. Any fiduciary or any bank, trust company, or private banker acting as fiduciary, custodian for a fiduciary, custodian, or managing agent, on demand by any party to its accounting or on demand by the attorney for the party, shall certify in writing to the party the securities deposited by the fiduciary, bank, trust company, or private banker with the clearing corporation.

(b) As between the fiduciary and the beneficial owner of securities deposited by the fiduciary in a clearing corporation, the fiduciary is liable for any loss occasioned by the acts or omissions of the clearing corporation, but nothing in this Act affects the liabilities as between the fiduciary and the clearing corporation.

Sec. 4. (a) This Act applies to any fiduciary holding securities in its fiduciary capacity and to any bank, trust company, or private banker holding securities as fiduciary, custodian for a fiduciary, custodian, or managing agent, acting on the effective date of this Act or thereafter, regardless of the date of the agreement, instrument, or court order by which it is appointed and regardless of whether or not the fiduciary, custodian for a fiduciary, managing agent, or custodian owns capital stock of the clearing corporation.

(b) This Act does not apply to securities held by any fiduciary, bank, trust company, or private banker on behalf of any domestic insurance company, unless the prior express approval of the State Board of Insurance is obtained. The State Board of Insurance may grant that approval generally to all domestic insurance companies or specifically to individual domestic insurance companies on a case-by-case basis.

[Acts 1977, 65th Leg., p. 852, ch. 320, §§ 1 to 4, eff. May 30, 1977.]

TEXAS TRUST ACT

Art. 7425b-19. Contracts of Trustee

Whenever a trustee shall make a contract which is within his powers as trustee, or a predecessor trustee shall have made such a contract, and a cause of action arises thereon:

A. The party in whose favor the cause of action has accrued may sue the trustee in his representative capacity, and any judgment rendered in such action in favor of the plaintiff shall be collectible by execution out of the trust property. In such an action the plaintiff need not prove that

the trustee could have secured reimbursement from the trust fund if he had paid the plaintiff's claim.

B. No judgment shall be rendered in favor of the plaintiff in such action unless he proves that within thirty (30) days after the beginning of such action, or within such other time as the court may fix, and more than thirty (30) days prior to obtaining the judgment, he notified each of the beneficiaries known to the trustee who then had a present or contingent interest, or in the case of a charitable trust the Attorney General of Texas and any corporation which is a beneficiary or agency in the performance of such charitable trust, of the existence and nature of the action. Such notice shall be given by mailing copies thereof by registered mail addressed to the parties to be notified at their last known addresses. The trustee shall furnish the plaintiff a list of the beneficiaries or persons having an interest in the trust estate, and their addresses, if their whereabouts are known to the trustee, within ten (10) days after written demand therefor, and notification of the persons on such list shall constitute compliance with the duty placed on the plaintiff by this section.

Any beneficiary, or in the case of charitable trusts the Attorney General of Texas, and any corporation which is a beneficiary or agency in the performance of such charitable trust, may intervene in such action and contest the right of the plaintiff to recover. If any beneficiary is a minor or has been adjudged incompetent, the court shall appoint a guardian ad litem, whose duty it shall be to defend such action.

C. The plaintiff may also hold the trustee who made the contract personally liable on such contract, if the contract does not exclude such personal liability. The addition of the word "trustee" or the words "as trustee" after the signature of a trustee to a contract shall be deemed prima facie evidence of an intent to exclude the trustee from personal liability.

D. Notwithstanding anything to the contrary in this Act, if a decedent was a partner in a general partnership and the articles of partnership provide that, on the death of a partner, his or her trustee shall be entitled to the place of a deceased partner in the firm, a trustee so contracting to come into the partnership shall, to the extent allowed by law, be liable to third persons only to the extent of the deceased partner's capital in the partnership and his or her trust funds held by the trustee. Likewise, any other trustee contracting to enter into a general partnership in its capacity as trustee shall, to the extent allowed by law, have its liability limited to the trust assets contributed to the partnership and the other assets of that trust under the control and management of the

contracting trustee. This subdivision does not exonerate a trustee from liability for his or her negligence.

[Amended by Acts 1979, 66th Leg., p. 71, ch. 46, § 2, eff. April 11, 1979.]

Art. 7425b-25. Powers, Duties, and Responsibilities of Trustees

In the absence of contrary or limiting provisions in the instrument creating the trust, or a subsequent order or decree of a court of competent jurisdiction, the trustee of an express trust is authorized.

A. To exchange, re-exchange, sub-divide, develop, improve, dedicate to public use, make or vacate public plats, adjust boundaries, and/or partition real property, and to adjust differences in valuation by giving or receiving money or money's worth. Easements may be dedicated to public use without consideration if deemed by the trustee to be for the best interest of the trust.

B. To grant options and to sell real or personal property at public auction or at private sale for cash, or upon credit secured by lien upon the property sold or upon such property or a part thereof and/or other property.

C. To grant or take leases of real property for any term of years, and of all rights and privileges above or below the surface of real property for any term or terms, including exploration for and removal of oil, gas, and other minerals, with or without options of purchase, and with or without covenants as to erection of buildings, or as to renewals thereof, through the term of the lease or renewals thereof, or of such options extending beyond the term of the trust.

D. To raze existing walls or buildings and/or erect new party walls or buildings alone or jointly with the owners of any adjacent property. To make ordinary repairs and in addition thereto such extraordinary alterations, changes, and additions in buildings or other structures which are necessary to make the property productive or more productive. To effect and keep in force, fire, rent, title, liability, casualty, or other insurance of any nature, in any form and in any amount.

E. To compromise, contest, arbitrate, or settle any and all claims of or against the trust estate or the trustee as such. To abandon property deemed by the trustee burdensome or valueless.

F. To pay calls, assessments, and any other sums chargeable or accruing against, or on account of shares of stock or other securities in the hands of the trustee where such payment may be legally enforceable against the trustee or any property of the trust, or where the trustee deems payment expedient and for the best interests of the trust. To sell or exercise stock subscription or conversion rights, participate in the foreclosures,

reorganizations, consolidations, mergers, liquidations, pooling agreements and voting trusts; to assent to corporate sales, leases, and encumbrances, and in general, except as limited by the particular will, indenture, trust agreement, or other trust instrument, have and exercise all powers of an absolute owner in respect of such securities. In the exercise of the foregoing powers the trustee shall be authorized, where he deems such course expedient, to deposit stocks, bonds, or other securities with any protective or other committee formed by or at the instance of persons holding similar securities, under such terms and conditions respecting the deposit thereof as the trustee may approve. Any stock or other securities obtained by conversion, reorganization, consolidation, merger, liquidation, or the exercise of subscription rights shall be free, unless the trust instrument provides otherwise, from any restrictions on sale or otherwise contained in the trust instrument relative to the securities originally held.

G. Generally to execute and deliver any deed or other instrument and to do all things in relation to such trust necessary, desirable, or advisable for carrying out any of the above powers or those considered incident to the purposes of such trust. In addition to the other rights, powers, and authority granted to and conferred upon the trustee of an express trust by this, The Texas Trust Act, the trustee may sell, exchange, transfer, assign, convey, mortgage, or otherwise encumber, lease, contract for the joint exploration and development of the trust property, with other properties, and otherwise contract with reference to oil, gas, or other minerals or natural resources, and mineral rights and mineral royalties, which may be or become a part of the trust estate, upon such terms and conditions, and for such royalties, rents, benefits, and consideration as the trustee may deem to be to the best interest of the trust estate.

H. (1) Employ attorneys, accountants, agents, and brokers reasonably necessary in the administration of the trust estate.

(2) Permit real estate held in trust to be occupied by a surviving spouse or minor child of the trustor and, where reasonably necessary for the maintenance of the surviving wife or minor child, to invest trust funds in real property to be used for a home by any such beneficiary, and, in the trustee's discretion, to pay funeral expenses of any beneficiary actually receiving benefits from the trust estate at the time of his or her death.

I. The following rules of administration shall be applicable to all express trusts but such rules

shall not be exclusive of those otherwise imposed by law, unless the latter be contrary to these rules:

1. Where a trustee is authorized to sell or dispose of land, such authority shall include the right to sell or dispose of a part thereof, whether the division is horizontal, vertical, or made in any other way, or of undivided interests therein.

2. Where a trustee is authorized by the trust instrument creating the trust or by law to pay, expend, or otherwise apply capital money subject to the trust for any purpose or in any manner, he shall have and shall be deemed always to have had the power to raise the money so required by selling, converting, calling in, or mortgaging or otherwise encumbering all or any part of the trust property for the time being in possession.

3. A trustee shall have a lien, and may reimburse himself with interest, for, or pay or discharge out of the trust property, either principal or income or both, all advances made for the convenience, benefit or protection of the trust or its property, and all expenses, losses, and liabilities, not resulting from the negligence of the trustee, incurred in or about the execution or protection of the trust or because of his holding or ownership of any property subject thereto.

4. When the happening of any event, including marriage, divorce, attainment of a certain age, performance of educational requirements, death, or any other event, determines or affects the distribution of income or principal of trust estates, the trustees shall not be liable for mistakes of fact made prior to the actual knowledge or written notice of such fact.

J. The powers, duties, and responsibilities stated in this Act shall not be deemed to exclude other implied powers, duties, or responsibilities not inconsistent herewith.

K. Pay all taxes and assessments levied or assessed against the trust estate or the trustee by governmental taxing or assessing agencies.

L. Unless the instrument creating the trust provides to the contrary, the trustee of any trust created after the effective date of this amendment shall be required to give bond payable to all persons interested in the trust as their interest may appear, conditioned for the faithful performance of the duties as trustee, to be in such amount and with such surety or sureties as the District Court shall, by order entered in a proceeding brought for such purpose, direct and approve. If the proceeding be brought by the person named as trustee, citation in respect thereof shall not be necessary, but the proceeding may be upon ex parte verified petition showing the nature and probable value of the trust estate, and the District Court may, in

term time or vacation, hear the application and enter such order in respect thereof as the court shall deem proper. If the proceeding be brought by some other person interested in the estate, citation shall issue, as required by law, to the trustee, unless such citation be expressly waived in writing. Any bond made pursuant to the provisions of this Subsection L shall be subject to increase, decrease, or the substitution or addition of another surety or other sureties upon order of the District Court in an action brought by any person interested in the trust estate, as in Section 24¹ hereof provided. Any bond made pursuant to the terms of this Subsection shall be deposited with the Clerk of the District Court in which the order shall have been entered, and suit may be maintained on a certified copy thereof, provided that any recovery thereon shall, upon appropriate proof by the surety or sureties, reduce their liability on such bond pro tanto. Failure to comply with the provisions of this paragraph shall not render void or voidable, or otherwise affect, any act or transaction of the trustee with any third person.

Provided, however, that this Subsection shall not apply to corporate trustees which are authorized by law to act as trustee of any trust affected by this Act.

¹ Article 7425b-24.

M. In the event that any property which is or may become a part of the assets of a trust is situated in a state or states other than the State of Texas, or in a foreign country, the Texas trustee is empowered to name an individual or corporate trustee qualified to act in any such state or foreign country in connection with the property situated therein as ancillary trustee of such property and require such security as may be designated by the Texas trustee. The ancillary trustee so appointed shall have all rights, powers, discretions, responsibilities and duties as are delegated to it by the Texas trustee, within the limits of the authority possessed by the Texas trustee, but shall exercise and discharge same subject to such limitations or directions of the Texas trustee as shall be specified in the instrument evidencing the appointment. The ancillary trustee shall be answerable to the Texas trustee for all monies, assets or other property entrusted to it or received by it in connection with the administration of the trust. The Texas trustee may remove such ancillary trustee and may or may not appoint a successor at any time or from time to time as to any or all of the assets. Provided, however, that if the ancillary trustee is to be appointed in any jurisdiction that requires any kind of procedure or judicial order for the appointment of such an ancillary trustee or to authorize it to act, the Texas trustee and the ancillary trustee must conform to all such requirements.

N. Whenever an instrument containing a trust reserves unto the trustor, or vests in an advisory or investment committee, or in any other person or persons (including a co-trustee), to the exclusion of the trustee or to the exclusion of one or more of several trustees, authority to direct the making or retention of investments, or of any investment, or the performance of any other act in the management and administration of the trust, the excluded trustee or co-trustee shall not be liable as trustee or co-trustee for any loss resulting from the making or retention of any investment pursuant to such authorized direction, or from the doing of any act in the management and administration of the trust in accordance with such authorized direction. This Subsection shall not be applicable if the terms of the trust instrument contain contrary provisions with respect to the liability of the excluded trustee or co-trustee.

[Amended by Acts 1979, 66th Leg., p. 74, ch. 48, § 1, eff. April 11, 1979.]

UNIFORM COMMON TRUST FUND ACT

Art. 7425b-48. Uniform Common Trust Fund Act

Sec. 1. Establishment of common trust funds.

(a) Any bank or trust company qualified to act as fiduciary in this State may establish common trust funds for the purpose of furnishing investments to itself as fiduciary, including itself as custodian under the Uniform Gifts to Minors Act, as amended (Article 5923-101, Vernon's Texas Civil Statutes), or to itself and others, as cofiduciaries; and may, as such fiduciary or cofiduciary, invest funds which it lawfully holds for investment in interests in such common trust funds, if such investment is not prohibited by the instrument, judgment, decree, or order creating such fiduciary relationship, and if, in the case of cofiduciaries, the bank or trust company procures the consent of its cofiduciaries to such investment. Any bank or trust company which is a member of an affiliated group, as defined in Section 1504 of the Internal Revenue Code of 1954, as amended (26 U.S.C. Section 1504), with a bank or trust company maintaining common trust funds may participate in one or more of those funds as though they were maintained by the participating bank or trust company.

(b) A common trust fund includes a fund qualified for exemption from federal income taxation as a common trust fund and maintained exclusively for eligible fiduciary accounts and also includes a fund consisting solely of assets of retirement, pension, profit sharing, stock-bonus, and other employees' trusts that are exempt from federal income taxation.

[See Compact Edition, Volume 5 for text of 2 to 6]

[Amended by Acts 1977, 65th Leg., p. 627, ch. 232, § 3, eff. Aug. 29, 1977.]

PENSION TRUSTS

Art. 7425d-1. Death Benefits Under Employees' Trusts

Definitions

Sec. 1. When used in this Act, unless the context otherwise requires:

(a) "Death benefits" means benefits of any kind, including, but not limited to, proceeds of life-insurance policies of which a trustee of an employees' trust is beneficiary and other payments, in cash or property, pursuant to an employees' trust (or contract purchased by such a trust) or pursuant to a retirement-annuity contract, payable on account of an employee's death to or for the benefit of his beneficiary.

(b) "Employees' trust" means a trust forming a part of a stock-bonus, pension, or profit-sharing plan described in Section 401 of the Internal Revenue Code of 1954,¹ and pension trusts described in Article 7425d, Title 125A, Vernon's Texas Civil Statutes.

(c) "Retirement-Annuity Contract" means an annuity contract described in Section 403 of the Internal Revenue Code of 1954.²

(d) "Employee" means any person who is covered by the plan of which an employees' trust is made a part, any person whose interest in such trust has not been distributed in full, and any person covered by a plan of which a retirement-annuity contract is a part.

(e) "Internal Revenue Code of 1954" means such code and all references in this Act to specific sections of such code include corresponding provisions of any subsequent federal tax laws.

(f) The definitions of "trust" and "trustee" contained in the Texas Trust Act³ shall apply to such terms as used in this Act, provided that "trust" shall include any trust, regardless of when created.

¹ 26 U.S.C.A. (I.R.C.1954) § 401.

² 26 U.S.C.A. (I.R.C.1954) § 403.

³ See arts. 7425b-2; 7425b-4, § C.

Payments to Trustee Under Declaration of Trust or Written Instrument

Sec. 2. Death benefits may be made payable to a trustee of a trust, the terms of which are evidenced by a written instrument or declaration of trust in existence on the date of the death of the employee, if such trustee is designated as beneficiary in accordance with the terms of the plan of which the employees' trust is a part or in accordance with the

terms of the retirement-annuity contract. Such death benefits shall be held, administered, and disposed of by such trustee in accordance with the terms of the trust as they appear in writing on the date of the death of the employee. The validity of the trust agreement or declaration of trust shall not be affected even though the trust has no corpus other than the right of the trustee to receive such death benefits as beneficiary, even though the employee has reserved the right to designate another beneficiary of the death benefits, and even though such trust agreement or declaration of trust is subject to amendment, modification, revocation, or termination.

Payments to Trustee Under Will

Sec. 3. Death benefits may be made payable to a trustee named, or to be named, as trustee of a trust created by a will of the employee, if such trustee is designated as beneficiary in accordance with the terms of the plan of which the employees' trust is a part or in accordance with the terms of the retirement-annuity contract, whether or not such will has been executed at the time of such designation. Upon probate of such will the death benefits shall be payable to such trustee to be held, administered, and disposed of in accordance with the terms of the trust created by such will as they exist on the date of death of the employee. Death benefits may be made payable to a trustee named as trustee of a trust created by a will of any person other than the employee if such will has been probated at the death of the employee and the death benefits shall be payable to such trustee to be held, administered, and disposed of in accordance with the terms of the trust created by such will.

Payment Where No Trustee Makes Claim

Sec. 4. In the event no trustee makes claim to the death benefits within a period of one year after the date of death of the employee or if satisfactory evidence is furnished to a trustee or other fiduciary of the employees' trust or other obligor within such one-year period that there is or will be no trustee to receive the death benefits, payment of such death benefits shall be made as required or permitted by such employee's beneficiary designation, the plan of which the employees' trust is a part, or the retirement-annuity contract, and failing such other designation or provision in such plan or contract, such death benefits shall be paid to the personal representative of the deceased employee as a part of such deceased employee's estate.

Exemption from Taxes and Debts

Sec. 5. Unless the trust agreement, declaration of trust, or will provides otherwise, death benefits payable to a trustee as provided in Sections 2, 3, and 4 of this Act (i) shall not be deemed part of the deceased employee's estate, (ii) shall not be subject

to any obligation to pay debts of the deceased employee or his estate or other charges enforceable against such estate, and (iii) shall not be subject to any obligation to pay any taxes enforceable against the deceased employee's estate to any greater extent than if such death benefits were payable, free of trust, to beneficiaries other than the executor or administrator of the estate of the deceased employee.

Commingling of Assets

Sec. 6. Death benefits paid to a trustee in accordance with Sections 2, 3, or 4 of this Act may be commingled with any other assets accepted by such trustee either before or after receipt of such death benefits, and held in trust.

Application of This Act

Sec. 7. Nothing in this Act shall affect the validity of any beneficiary designation heretofore made by an employee, in accordance with the terms of the plan of which the employees' trust is a part or in accordance with the terms of the retirement-annuity contract, naming a trustee of a trust under a trust agreement, declaration of trust, or under a will as beneficiary of death benefits.

Declaratory of Common Law; Liberal Construction

Sec. 8. This Act shall, insofar as possible, be deemed declaratory of the common law of the State of Texas and shall be liberally construed so as to effectuate the intent that death benefits received by a trustee of a trust under a trust agreement, declaration of trust, or will are not subject to the obligations of the employee or of his estate unless such trust expressly provides otherwise. Neither a reference in any will to any death benefits nor the naming of the trustee of a trust created by a will shall cause such death benefits to be included in the property administered as a part of the testator's estate or require inclusion of such death benefits in any inventory filed with the county court.
[Acts 1975, 64th Leg., p. 60, ch. 34, eff. April 3, 1975.]

CHARITABLE TRUSTS

Art. 7425e. Amendment of Charitable Trusts

[See Compact Edition, Volume 5 for text of 1]

Election to Avoid Amendment by Law

Sec. 2. (a) The trustee of any trust described in Section 1 of this Act (with the consent of the trustor, if then living and competent to give consent) may, without judicial proceedings, amend such trust to expressly exclude the application of Section 1 of this Act by executing a written amendment to the trust and filing a duplicate original of such amendment with the Attorney General of Texas, and upon filing

of such amendment, Section 1 of this Act shall not apply to such trust.

(b) The powers given under Subdivision (2), Paragraph H, Section 25, Texas Trust Act,¹ shall not apply to a charitable remainder unitrust, annuity trust, or pooled income fund, whether presently in existence or hereafter created, that is intended to qualify for a federal tax deduction under Section 664

of the Internal Revenue Code of 1954² or any successor section thereto.

[See Compact Edition, Volume 5 for text of 3 to 5]

[Amended by Acts 1979, 66th Leg., p. 77, ch. 48, § 2, eff. April 11, 1979.]

¹ Article 7425b-25, par. H, subd. (2).
² 26 U.S.C.A. § 664.

TITLE 127

VETERINARY MEDICINE AND SURGERY

Article

7465c. Responsibility of Veterinarian Toward Animals in His Care.

Art. 7465a. Veterinary Licensing Act

[See Compact Edition, Volume 5 for text of 1 to 4]

State Board of Veterinary Medical Examiners

Sec. 5.

[See Compact Edition, Volume 5 for text of 5(a) to (f)]

(g) The State Board of Veterinary Medical Examiners is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1981.

¹ Article 5429k.

[See Compact Edition, Volume 5 for text of 6 to 18]

Fees

Sec. 19. Applicants for examinations shall pay to the Board a fee of not less than Twenty-five Dollars (\$25) nor more than One Hundred Dollars (\$100), and an applicant for license under the reciprocal provisions of this Act shall pay to the Board a fee of not less than One Hundred Dollars (\$100) nor more than Two Hundred Dollars (\$200) at the time of application to the Board for such license. Licensees shall pay to the Board for annual renewal of licenses, a fee of not less than Ten Dollars (\$10), nor more than Sixty Dollars (\$60), as determined by the Board, based upon the needs of the Board, and a licensee whose license has been lost or destroyed shall be issued a duplicate license after application and upon payment of a fee of not less than Twenty Dollars (\$20) nor more than Forty Dollars (\$40). The amount of all fees provided for in this section shall be determined by the Board within the ranges specified in this section.

Veterinary Fund

Sec. 20. All fees collected by the Board under this Act shall be placed in the State Treasury every thirty (30) days, as collected, to the credit of a special fund to be known as the "Veterinary Fund," and all expenditures from this fund shall be on order of the Board, on warrants issued by the State Com-

troller for the purposes and in the amounts fixed by the Legislature in appropriation bills. On August 31st of each year, all money in excess of One Hundred Thousand Dollars (\$100,000) remaining in said "Veterinary Fund" shall revert to the General Revenue Fund of the State Treasury.

[See Compact Edition, Volume 5 for text of 21]

[Amended by Acts 1977, 65th Leg., p. 1699, ch. 675, § 1, eff. June 15, 1977; Acts 1977, 65th Leg., p. 1839, ch. 785, § 2.048, eff. Aug. 29, 1977.]

Art. 7465c. Responsibility of Veterinarian Toward Animals in His Care

Sec. 1. (a) Unless otherwise provided by contract between a veterinarian and his client, a veterinarian may dispose of any animal abandoned in his care if he gives notice of his intention to do so by certified mail sent to the last known address of the client. The veterinarian must allow the client 12 days from the mailing of the certified mail in which to retrieve the animal.

(b) Contact of the veterinarian by the client by mail, telephone, or personal communication does not extend the obligation of the veterinarian to treat, board, or care for an animal unless both the client and the veterinarian agree. If no agreement is made to extend the care for the animal, the animal is considered abandoned after 12 days from the date the veterinarian notifies the client that the animal must be removed from the veterinarian's care.

(c) The giving of notice by a veterinarian as prescribed in Subsection (a) of this section does not relieve the client of his liability for payment for treatment, board, or care furnished.

Sec. 2. A veterinarian who, on his own initiative or at the request of a person other than the owner, renders emergency treatment to an ill or injured animal is not liable to the owner for damages to the animal except in cases of gross negligence. If the veterinarian performs euthanasia on the animal, it is presumed that it was a humane act necessary to relieve pain and suffering.

[Acts 1977, 65th Leg., p. 1700, ch. 676, §§ 1, 2, eff. Aug. 29, 1977.]

TITLE 130

WORKERS' COMPENSATION AND CRIME VICTIMS COMPENSATION

PART 1

Article

8306b. "Workmen's Compensation" Changed to "Worker's Compensation".

PART 2

8307d. Nonsuit in Appeals from Industrial Accident Board Award.

PART 4

8309g-1. Texas Tech University Employees.

8309i. Payment of Judgments Against State or Department, Division, or Political Subdivision Thereof.

PART 5

8309-1. Crime Victims Compensation Act.

PART 1

Art. 8306. Damages and Compensation for Personal Injuries

[See Compact Edition, Volume 5 for text of 1 and 2]

Nonresidents; Employment of Labor; Service of Process on Chairman of Industrial Accident Board

Sec. 2a. The acceptance by a nonresident of this State of the rights, privileges and benefits extended by law to such persons of employing labor within the State of Texas shall be deemed equivalent to an appointment by such nonresident of the Chairman of the Industrial Accident Board of this State, or his successor in office, to be his true and lawful attorney and agent upon whom may be served all lawful process in any civil action or proceeding now pending or hereafter instituted against said nonresident growing out of any accident resulting in the injury or death of any employee of said nonresident, occurring in the course of employment of the employee in this State, or occurring in the course of employment of the employee in a foreign jurisdiction when the employee is a Texas resident recruited in this State, when the action or proceeding is brought by the employee, his heirs or legal representative. Service of process under this Section shall be in the same manner and method as that prescribed in Chapter 125, Acts of the Forty-first Legislature, Regular Session, 1929, as last amended by Chapter 502, Acts of the Fifty-sixth Legislature, Regular Session, 1959 (compiled as Article 2039a of Vernon's Texas Civil Statutes), which relates to citation of nonresident motor vehicle operators by serving the Chairman of the State Highway Commission.

[See Compact Edition, Volume 5 for text of 3 to 6]

Medical Services

Sec. 7. The employee shall have the sole right to select or choose the persons or facilities to furnish medical aid, chiropractic services, hospital services, and nursing and the association shall be obligated for same or, alternatively, at the employee's option, the association shall furnish such medical aid, hospital services, nursing, chiropractic services, and medicines as may reasonably be required at the time of the injury and at any time thereafter to cure and relieve from the effects naturally resulting from the injury. Such treatment shall include treatments necessary to physical rehabilitation, including proper fitting and training in the use of prosthetic appliances, for such period as the nature of the injury may require or as necessary to reasonably restore the employee to his normal level of physical capacity or as necessary to give reasonable relief from pain, but shall not include any other phase of vocational rehabilitation. The obligation of the association to be responsible for hospital services as herein provided shall not be held to include any obligation on the part of the association to pay for medical, nursing or surgical services not ordinarily provided by hospitals as a part of their services.

Upon receipt thereof, the Board shall promptly analyze each notice of injury incurred by an injured employee covered under this law. If the Board concludes that vocational rehabilitation is indicated in any such case, it immediately shall take the necessary steps to inform the injured employee of the services and facilities available to him under the Texas Rehabilitation Commission and the Board immediately shall notify said Commission of such case. In each such case recommendation of services and facilities shall be made after consultation by the Board with the physician or chiropractor furnishing medical aid or chiropractic services as required by this Section, who shall retain general supervision of treatment of the injured employee and, should the employee request it, the Board shall consult with a physician or chiropractor specially trained in such treatment. The Board shall co-operate with said Texas Rehabilitation Commission with reference to the work of said Commission in providing said services and facilities to injured employees covered under the provisions of this law.

Provided that any physician or chiropractor rendering medical or chiropractic care to any injured worker shall render an initial report as soon as practical identifying the injured worker and stating the nature and extent of the injury and thereafter shall render subsequent reports reasonably necessary to keep the status of the claimant's condition known.

Hospitals shall, upon request of either the injured worker, his attorney, or the association, furnish records pertaining to treatment or hospitalization for which compensation is being sought. All reports and records requested hereunder shall be made to the association and the injured worker or his attorney. The failure of the physician or chiropractor to make such reports or of the hospital to furnish requested records shall relieve the association and the injured worker from any obligation to pay for the services rendered by the physician, chiropractor, or hospital. All charges for the furnishing of reports and records hereunder shall be subject to regulation by the Board in accordance with Section 7b hereof, provided however, such charges shall in no event be less than the fair and reasonable charge for the furnishing of said reports and records.

In the event that the association shall contend before the Board that charges for medical aid, hospital services, chiropractic services, nursing services, or medicines are not fair and reasonable, the Board's award shall make an express finding of the amounts which are fair and reasonable charges for the aid or services rendered or the medicines provided. If the amount found is less than those charges submitted by the provider of the aid, services, or medicines, then said provider shall be entitled to appeal the Board's determination as if it were a party to the action. In any subsequent appeal from the award of the Board, if the person or facility providing medical aid, hospital services, chiropractic services, nursing services, or medicines recovers an amount equal to or in excess of the charges submitted to the Board, such person or facility shall be entitled to recover from the association an additional amount equal to 12 percent of the amount unpaid and reasonable attorney's fees. If the amount so recovered is less than the charges submitted to the Board, the association shall be entitled to recover its reasonable attorney's fees from the person or facility providing the medical aid, hospital services, chiropractic services, nursing services, or medicines.

[See Compact Edition, Volume 5 for text of 7a to 7d]

Artificial Appliances

Sec. 7-e. (a) In all cases where liability for compensation exists for an injury sustained by an employee in the course of his employment where artificial appliances of any kind would materially and beneficially improve the future usefulness and occu-

pational opportunities of such injured employee, the association shall furnish such employee with the artificial appliance or appliances needed by him for such occupational opportunities and shall continue to furnish the needed artificial appliance or appliances until a satisfactory fit is obtained in the judgment of the attending physician or physicians. The association shall also be liable for replacing or repairing any artificial appliances so furnished, when needed as determined by the physician or physicians, unless the need for such repair or replacement is due to lack of proper care by the employee. The cost of such artificial appliances so furnished to any such employee shall be in keeping with the salary or wages received by such employee.

(b) In the event the association shall fail or refuse to furnish or provide such artificial appliances, such employee shall make application to the Board for such artificial appliances. On receipt of such application the Board shall order a medical examination of the employee and obtain such other evidence as in their opinion they may deem necessary, after which the Board shall determine whether or not the artificial appliances would materially and beneficially improve the future usefulness and occupational opportunities of the injured employee and in the event they find that such improvement would exist, then the Board shall order the association to furnish the artificial appliances.

[See Compact Edition, Volume 5 for text of 8]

Persons to Whom Death Benefits Payable; Exemptions; Distributions; Payments

Sec. 8a. The compensation provided for in the foregoing section of this law shall be for the sole and exclusive benefit of the surviving husband who has not, for good cause and for a period of three years prior thereto, abandoned his wife at the time of the injury, and of the wife who has not, at the time of the injury without good cause and for a period of three years prior thereto, abandoned her husband, and of the minor children, parents and stepmother, without regard to the question of dependency, dependent grandparents, dependent children, dependent grandchildren and dependent brothers and sisters of the deceased employee; and the amount recovered thereunder shall not be liable for the debts of the deceased nor the debts of the beneficiary or beneficiaries and shall be distributed among the beneficiaries as may be entitled to the same as hereinbefore provided, according to the laws of descent and distribution of this State; provided, the right in such beneficiary or beneficiaries to recover compensation for death be determined by the facts that exist at the date of the death of the deceased and that said right be a complete, absolute and vested one. Any parent who, during a substantial period of the minority of the deceased worker, shall

have abandoned the worker shall be deemed to have waived any entitlement to benefits, and such parent's benefits shall be paid as if the parent had predeceased the deceased worker. The burden of proof shall be upon any beneficiary seeking to disqualify the parent on the grounds of abandonment or failure to support. Such compensation shall not pass to the estate of the deceased to be administered upon, but shall be paid directly to said beneficiaries when the same are capable of taking, under the laws of this State, or to their guardian in case of lunacy, infancy or other disqualifying cause; except payments may be made directly to the person having custody of the person of such beneficiary, who shall be entitled to receive and receipt for such payments unless or until the association is notified that a guardian has been appointed, in which event payment shall thereafter be made to such guardian. The compensation provided for in this law shall be paid weekly to the beneficiaries herein specified, subject to the provisions of this law.

Funeral Expenses

Sec. 9. If the deceased employee leaves no legal beneficiaries, the association shall pay all expenses incident to his last sickness as a result of the injury, and in addition a funeral benefit not to exceed One Thousand, Two Hundred and Fifty Dollars (\$1,250).

If the deceased employee leaves a legal beneficiary or beneficiaries, and is buried at the expense of the beneficiary or beneficiaries, or is buried at the expense of his employer or any other person, the expense of such burial, not to exceed One Thousand, Two Hundred and Fifty Dollars (\$1,250), shall be payable without discount for present payment to the person or persons at whose expense the burial occurred, subject to the approval of the Board; and such burial expense, regardless of to whom it is paid, shall be in addition to the compensation due the beneficiary or beneficiaries of such deceased employee.

[See Compact Edition, Volume 5 for text of 10 to 12b]

Subsequent Injury; Second Injury Fund

Sec. 12c. If an employee who has suffered a previous injury shall suffer a subsequent injury which results in a condition of incapacity to which both injuries or their effects have contributed, the association shall be liable because of such injury only for the compensation to which the subsequent injury would have entitled the injured employee had there been no previous injury; provided that there shall be created a fund known as the "Second Injury Fund," hereinafter described, from which an employee who has suffered a subsequent injury shall be compensated for the combined incapacities resulting from both injuries. Provided further, however, that notice of

injury to the employer and filing of a claim with the Industrial Accident Board as required by law shall also be deemed and considered notice to and filing of a claim against the "Second Injury Fund".

Permanent and Total Incapacity Through Loss of or Loss of Use of, Another Member or Organ

Sec. 12c-1. If an employee who has previously lost, or lost the use of, one hand, one arm, one foot, one leg, or one eye, becomes permanently and totally incapacitated through the loss or loss of use of another member or organ, the association shall be liable only for the compensation payable for such second injury; provided, however, that in addition to such compensation and after the combination of the payments therefor, the employee shall be paid the remainder of the compensation that would be due for the total permanent incapacity out of the special fund known as "Second Injury Fund," hereinafter defined.

Second Injury Fund; How Created; Presumptions

Sec. 12c-2. The special fund known as the "Second Injury Fund" shall be created in the following manner:

(a) In every case of the death of an employee under this act where there is no person entitled to compensation surviving said employee, the association shall pay to the Industrial Accident Board the full death benefits, but not to exceed 360 weeks of compensation, as provided in Section 8, of Article 8306, Revised Civil Statutes of Texas, 1925, as amended, to be deposited with the Treasurer of the State for the benefit of said Fund and the Board shall direct the distribution thereof.

(b) When the total amount of such payments into the Fund, together with the accumulated interest thereon, equals or exceeds Seven Hundred Fifty Thousand Dollars (\$750,000) in excess of liabilities, whether vested or contingent, known to the Board, no further payment shall be required to be paid to said Fund; but whenever thereafter the amount of such Fund shall be reduced below Three Hundred Thousand Dollars (\$300,000) in excess of liabilities, whether vested or contingent, known to the Board, by reason of payments from such Fund, the payments to such Fund shall be resumed forthwith, and shall continue until such Fund again amounts to Seven Hundred Fifty Thousand Dollars (\$750,000) including accumulated interest thereon, in excess of liabilities, whether vested or contingent, known to the Board.

(c) Unless a claim for fatal benefits is filed with the Board by a beneficiary or beneficiaries within eight (8) months following the date of death of the employee, it shall be presumed for purposes of this section only that no person entitled to compensation under Section 8a of this article survived the deceased employee; provided, however, that the

presumption created hereby shall not apply against minor beneficiaries or to beneficiaries of unsound mind for whom no guardian has been appointed.

(d) If the Board enters an initial award ordering payments to the Fund hereunder and it is determined by a subsequent final award of the Board or judgment of a court of competent jurisdiction that a beneficiary under Section 8a of the article is entitled to fatal benefits, the Board shall order reimbursement from the Fund to the association of the amounts paid by it to the Fund in good faith by reason of the initial award of the Board.

[See Compact Edition, Volume 5 for text of 12d to 18]

Injuries Sustained Outside State; Venue

Sec. 19. If an employee, who has been hired or, if a Texas resident, recruited in this State, sustain injury in the course of his employment he shall be entitled to compensation according to the Law of this State even though such injury was received outside of the State, and that such employee, though injured out of the State of Texas, shall be entitled to the same rights and remedies as if injured within the State of Texas, except that in such cases of injury outside of Texas, the suit of either the injured employee or his beneficiaries, or of the Association, to set aside an award of the Industrial Accident Board of Texas, or to enforce it, as mentioned in Article 8307, Sections 5-5a, shall be brought either

a. In the county of Texas where the contract of hiring was made or where the employee was recruited; or

b. In the county of Texas where such employee or his beneficiaries or any of them reside when the suit is brought, or

c. In the county where the employee or the employer resided when the contract of hiring was made or when the employee was recruited, as the one filing such suit may elect.

Providing that such injury shall have occurred within one year from the date such injured employee leaves this State; and provided, further, that no recovery can be had by the injured employee hereunder in the event he has elected to pursue his remedy and recovers in the state where such injury occurred.

[See Compact Edition, Volume 5 for text of 20 to 27]

Subscriber's Filing Fee

Sec. 28. In addition to all other taxes now being paid, each stock company, mutual company, reciprocal, or inter-insurance exchange or Lloyds Association writing Workmen's Compensation insurance in this state, shall pay annually into the General Revenue Fund in the State Treasury an amount equal to forty-five one-hundredths ($\frac{45}{100}$) of one percent (1%) of gross premiums collected by such company or

association during the preceding year under workmen's compensation policies written by such companies or associations covering risks in this state according to the reports made to the Board of Insurance Commissioners as required by law. Said amount shall be collected at the same time and in the same manner as provided by law for the collection of taxes on gross premiums of such workmen's compensation insurance carriers. All self-insurers under any of the Workmen's Compensation Acts of the State of Texas shall report to the State Board of Insurance the total amount of their medical and indemnity costs for the previous year and pay a like amount of tax as provided above on said total amount of medical and indemnity costs. Failure to make any report required by this Section shall be punishable by fine not to exceed One Thousand (\$1000) Dollars and the failure to pay any tax within thirty (30) days after same is due under this Section shall be punishable by a penalty of ten percent (10%) of the amount, and shall be recovered by the Attorney General in a suit brought by him in the name of the State of Texas and such penalties when collected shall be deposited in the General Revenue Fund in the State Treasury.

Maximum and Minimum Weekly Benefits

Sec. 29.

[See Compact Edition, Volume 1 for text of 29(a) and (b)]

(c) If the annual average of the manufacturing production workers average weekly wage in Texas exceeds by Ten Dollars (\$10) the average weekly wage for those workers in 1974 as determined by the Texas Employment Commission and published in its report, "The Average Weekly Wage," the maximum weekly benefit shall be increased by Seven Dollars (\$7) and the minimum weekly benefit shall be increased by One Dollar (\$1) above the amounts specified in Subsection (b) of this section beginning with the commencement of the state fiscal year following the publication of the report. Thereafter, each cumulative Ten Dollar (\$10) increase in the average weekly wage for manufacturing production workers in Texas as annually determined and reported by the Texas Employment Commission shall cumulatively increase the maximum weekly benefit by an additional Seven Dollars (\$7) and the minimum weekly benefit by an additional One Dollar (\$1) beginning with the commencement of the state fiscal year following the publication of the report.

[Amended by Acts 1977, 65th Leg., p. 594, ch. 210, § 1, eff. Sept. 1, 1977; Acts 1977, 65th Leg., p. 756, ch. 284, § 1, eff. May 27, 1977; Acts 1977, 65th Leg., p. 1124, ch. 420, § 1, eff. June 15, 1977; Acts 1977, 65th Leg., p. 1221, ch. 470, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1861, ch. 738, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2004, ch. 801, §§ 1, 2, 4, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 521, ch. 244, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 730, ch. 323, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1096, ch. 513, § 1, eff. June 11, 1979; Acts 1979, 66th Leg., p. 1457, ch. 639, § 1, eff. June 13, 1979.]

Art. 8306b. "Workmen's Compensation" Changed to "Workers' Compensation"

Sec. 1. The term "workmen's compensation" shall hereafter be known as "workers' compensation," and references to "workmen's compensation" in the statutes of this state shall be changed to "workers' compensation" when sections of those laws are being amended for any purpose.

Sec. 2. Forms and printed materials used by any state agency which incorporate the term "workmen's compensation" shall be modified to substitute the term "workers' compensation" after the present supply of forms and materials is exhausted. State agencies, including the State Board of Insurance and the Industrial Accident Board, may promulgate reasonable rules and regulations necessary to carry out the intent of this Act.

[Acts 1977, 65th Leg., p. 154, ch. 77, §§ 1, 2, eff. Aug. 29, 1977.]

PART 2**Art. 8307. Industrial Accident Board**

[See Compact Edition, Volume 5 for text of 1]

Application of Sunset Act

Sec. 1a. The Industrial Accident Board is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished, and this article expires effective September 1, 1983.

¹ Article 5429k.

[See Compact Edition, Volume 5 for text of 2 to 4a]

Application of Administrative Procedure and Texas Register Act

Sec. 4b. Sections 1 through 12 of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) apply to the Industrial Accident Board. However, Section 4(a)(3) and Sections 13 through 20 of the Administrative Procedure and Texas Register Act do not apply, and Section 4(b) of that Act shall not apply to orders and decisions of the Industrial Accident Board.

Determination of Questions; Suit to Set Aside Final Ruling and Decision; Revocation of Association's License

Sec. 5. All questions arising under this law, if not settled by agreement of the parties interested therein and within the provisions of this law, shall, except as otherwise provided, be determined by the Board. Any interested party who is not willing and does not consent to abide by the final ruling and decision of said Board shall, within twenty (20) days after the rendition of said final ruling and decision by said Board, file with said Board notice that he will not abide by said final ruling and decision. And he shall within twenty (20) days after giving such

notice bring suit in the county where the injury occurred, or in the county where the employee resided at the time the injury occurred (or, if such employee is deceased, then in the county where the employee resided at the time of his death), to set aside said final ruling and decision, and said Board shall proceed no further toward the adjustment of such claim, other than hereinafter provided. In all cases of occupational diseases, for the purpose of determining venue when an appeal is effected to set aside the final ruling and decision of the Board, suit shall be brought in a court of competent jurisdiction in the said county in which the employee was last exposed to the disease alleged, prior to the manifestation of the disease, or death therefrom, or in the county in which the adverse party resides, or has a permanent place or business, or by agreement of the parties in a court of competent jurisdiction in any county in this state. Whenever such suit is brought, the rights and liability of the parties thereto shall be determined by the provisions of this law, and the suit of the injured employee or person suing on account of the death of such employee shall be against the Association, if the employer of such injured or deceased employee at the time of such injury or death was a subscriber as defined in this law. If the final order of the Board is against the Association, then the Association and not the employer shall bring suit to set aside said final ruling and decision of the Board, if it so desires, and the court shall in either event determine the issues in such cause, instead of the Board, upon trial de novo, and the burden of proof shall be upon the party claiming compensation. The Industrial Accident Board shall furnish any interested party in said claim pending in court, upon request, free of charge, with a certified copy of the notice of the employer becoming a subscriber, filed with the Board, and the same when properly certified to shall be admissible in evidence in any court in this state upon trial of such claim therein pending, and shall be prima facie proof of all facts stated in such notice in the trial of said cause unless same is denied under oath by the opposing party therein. In case of recovery, the same shall not exceed the maximum compensation allowed under the provisions of this law. If any party to such final ruling and decision of the Board, after having given notice as above provided, fails within said twenty (20) days to institute and prosecute a suit to set the same aside, then said final ruling and decision shall be binding upon all parties thereto; and, if the same is against the Association, it shall at once comply with such final ruling and decision; and failing to do so, the Board shall certify the fact to the Commissioner of Insurance, and such certificate shall be sufficient cause to justify said Commissioner to revoke or forfeit the license or permit of such Association to do business in Texas.

Notwithstanding any other provision of this law, as amended, no award of the Board, and no judgment of the court, having jurisdiction of a claim against the association for the cost or expense of items of medical aid, hospital services, nursing, chiropractic services, medicines or prosthetic appliances furnished to an employee under circumstances creating a liability therefor on the part of the association under the provisions of this law, shall include in such award or judgment any cost or expense of any such items not actually furnished to and received by the employee prior to the date of said award or judgment. The first such final award or judgment rendered on such claim shall be res judicata of the liability of the association for all such cost or expense which could have been claimed up to the date of said award or judgment and of the issue that the injury of said employee is subject to the provisions of this law with respect to such items, but shall not be res judicata of the obligation of the association to furnish or pay for any such items after the date of said award or judgment. After the first such final award or judgment, the Board shall have continuing jurisdiction in the same case to render successive awards to determine the liability of the association for the cost or expense of any such items actually furnished to and received by said employee not more than six (6) months prior to the date of each such successive award, until the association shall have fully discharged its obligation under this law to furnish all such medical aid, hospital services, nursing, chiropractic services, medicines or prosthetic appliances to which said employee may be entitled; provided, each such successive award of the Board shall be subject to a suit to set aside said award by a court of competent jurisdiction, in the same manner as provided in the case of other awards under this law.

[See Compact Edition, Volume 5 for text of 5a]

Record of Injuries; Reports

Sec. 7. Every subscriber shall hereafter keep a record of all injuries, fatal or otherwise, sustained by his employees in the course of their employment. After the occurrence of an accident resulting in an injury to an employee, causing his absence from work for more than one (1) day, or after the employee notifies the employer of a definite manifestation of an occupational disease, a written report thereof shall be made within eight (8) days following said absence from work and notice thereof to the employer or notice of manifestation of an occupational disease to the Board on blanks to be procured from the Board for that purpose. Upon the termination of the incapacity of the injured employee, or if such incapacity extends beyond a period of sixty (60) days, the subscriber shall make a supplemental report upon blanks to be procured for that purpose. The said report shall contain the name and nature of

the business of the employer, the location of the establishment, the name, age, sex and occupation of the injured employee, and the character of work in which he was engaged at the time of the injury, and shall state the date and hour of receiving such injury or of the definite manifestation of the occupational disease, and the nature and cause of the injury, and such other information as the Board may require. Any employer wilfully failing or refusing to make any such report within the time herein provided, or wilfully failing or refusing to give said Board any information demanded by said Board relating to any injury to any employee, which information is in the possession of or can be ascertained by the employer by the use of reasonable diligence, shall be liable for and shall pay to the State of Texas a penalty of not more than One Thousand (\$1,000.00) Dollars for each and every offense, the same to be recovered in a suit to be instituted and prosecuted in Travis County by the Attorney General or by the district or county attorney, under his direction, in a District Court thereof.

[See Compact Edition, Volume 5 for text of 7a to 9]

Confidentiality of Records; Fraudulent Claims or Claimants

Sec. 9a. (a) Information in a worker's claim file is confidential and may not be disclosed except as provided in this section.

(b) If there is a workers' compensation claim for the named claimant open or pending before the Industrial Accident Board or on appeal to a court of competent jurisdiction from the Board or which is the subject matter of a subsequent suit where the carrier is subrogated to the rights of the named claimant at the time a record search or request for information is presented to the Board, the information shall be furnished as provided in this section. The first, middle, and last name of the claimant, age and social security number, and, if possible, dates of injury and the names of prior employers must be given in the request for information by the requesting party. The Board will furnish the requested information or a record check only to the following:

- (1) the claimant;
- (2) the attorney for the claimant;
- (3) the carrier;
- (4) the employer at the time of the current injury;
- (5) third-party litigants; or
- (6) the State Board of Insurance.

A third-party litigant in a suit arising out of an occurrence with respect to which a workers' compensation claim was filed is entitled to the information without regard to whether or not the compensation claim is still pending.

(c) All information of the Industrial Accident Board concerning any person who has been finally adjudicated to be a fraudulent claimant as provided in this section is not confidential and shall be furnished to any person requesting the information, notwithstanding any other provision of this law.

(d) The Board shall release to any employer with whom a person has made application for employment within the 14 days prior to the request the date of injury and nature of injury to that person if that person has had three or more general injury claims filed in the preceding five years in which weekly compensation payments have been made. The request for information shall give the name, address, and social security number of the person about whom information is sought. The Board shall release this information only if the employer has written authorization from the person about whom information is sought. The Board shall release the information by telephone, but the employer must file the written authorization with the Board within 10 days after the information is released. If the employer requests information about three or more persons at the same time, the Board may refuse to release the information except on written request from the employer and receipt of the written authorization from each person about whom the information is sought. An employer who receives the information but fails to file the authorization within the required period is guilty of a misdemeanor and on conviction shall be fined not more than \$1,000. Failure to file each authorization is a separate offense.

(e)(1) The attorney general shall promptly investigate any allegation of fraud on the part of an employer, employee, attorney, person or facility furnishing medical services authorized by Section 7 of Article 8306, Revised Civil Statutes of Texas, 1925, or insurance company or its representative relating to any claim. In order to carry out the requirements of this section, the attorney general is vested with complete power to investigate and prosecute any and all allegations of fraudulent claim practices which may be submitted to the Board or which may be uncovered through the attorney general's own efforts. The attorney general shall cooperate with professional grievance committees, law enforcement officials, the Industrial Accident Board, and other state agencies in the investigation and prosecution of fraudulent practices. It shall be the responsibility of the attorney general to prosecute those cases in which he finds the reasonable probability that acts of fraud exist before all hearings of the Board or on appeal from the determination of such hearings.

(2) In those cases in which a claimant makes a fifth claim for compensation within any five-year period, the Board shall automatically notify the attorney general who shall investigate to determine if the probability of fraud exists in connection with the current claim or any of the prior claims.

(3) If the attorney general finds that a reasonable probability of fraud exists, the attorney general shall request a hearing and the Board shall set the matter for hearing. On the setting of this matter, the Board shall promptly notify the person under investigation, as well as the other parties involved in the case, in writing of the allegation against him and of his rights to attend and offer evidence at the hearing. This notice must be mailed by certified mail to the last known address of the person, must state the time and place for the hearing, which shall be within 45 days after determination by the attorney general that the probability of fraudulent acts exists and must notify the person of his right to counsel and his right of access to the complete Board files relating to the claim or claims under investigation. This notice shall be forwarded to the person, return receipt requested, acknowledging receipt at least 30 days before the hearing. Any investigation initiated under this section shall be concluded within 60 days unless by a unanimous vote of the Board the time is extended, which in no event may be more than an additional 60 days.

(f) In addition to the powers granted under Section 4 of this article, as amended, the Board or any member thereof has the power to compel the attendance of witnesses, take evidence, and require the production of any records in conjunction with this hearing. The person under investigation has the same power to compel the attendance of witnesses and the production of records and documents.

(g) After this hearing, the Board shall reduce its findings to writing and provide the person under investigation, as well as the other parties involved in the case, with a copy. If the Board determines that the claimant has been fraudulent in any or all of his claims for compensation, the Board shall then classify that claimant as a fraudulent claimant, which designation is final unless appealed by the claimant as provided in this section. If the Board determines that any other person except an employer under investigation has been fraudulent in connection with a claim for compensation, the Board may exercise its authority under Section 4 of this article, as amended, or report its findings to the appropriate professional grievance committee, law enforcement officials, or other state agencies for prosecution, or both. An employer who has been adjudicated to be fraudulent shall be subject to the provisions of Chapter 115, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8307c, Vernon's Texas Civil Statutes), as if he had discriminated against an employee for filing a claim. Actions taken by the Board in accordance with this procedure may be appealed by the aggrieved person by trial de novo to a district court of competent jurisdiction in the county of his residence, whose final judgment shall be determinative of his classification as a fraudulent claimant. Appeal shall be in accordance with Section 5 of this article, as amended.

(h) Pending an investigation and hearing or appeal of allegations of fraud under this section, the Board may not approve a compromise settlement agreement or make a final award in connection with the worker's claims then pending before the Board.

(i) If any worker shall be finally adjudicated to be a fraudulent claimant, the Board may terminate any compensation which the fraudulent claimant is currently drawing and require repayment to the association of any amounts so drawn.

(j) If any worker is finally adjudicated to be a fraudulent claimant, that fact shall automatically be furnished to any employer, any insurance carrier, or any attorney for the claimant as regards all claims then pending before the Board and as regards all future claims which that claimant may thereafter file with the Industrial Accident Board; otherwise, the Board shall process the claim as generally provided under the workers' compensation law.

(k) Nothing in the preceding sections shall diminish the power of the Industrial Accident Board on its own initiative to investigate or punish fraudulent acts.

(l) This section does not give authority to withhold information from committees of the legislature to use for legislative purposes.

(m) Any information pertaining to a worker's compensation file which is confidential by virtue of any of the terms of this Act shall retain such confidentiality when released to any investigative, legislative, or law enforcement agency including the attorney general, district attorneys, grand juries, or legislative committees. Any individual who shall publish, disclose, or distribute any such confidential information which is possessed by any investigative, legislative, or law enforcement agency to any other individual, corporation, or association not entitled to have received such information directly from the Industrial Accident Board under the provisions of this law commits an offense, and any person, corporation, or association who receives any such confidential information when such person was not entitled to have received the same from the Industrial Accident Board under the provisions of this law commits an offense. An offense under this subsection is a Class A misdemeanor. Any district court of Travis County shall have jurisdiction to enjoin possession and the use by any individual, corporation, or association of any information made confidential by this Act when such possession or use is not authorized by this Act. This subsection does not prohibit an employer from releasing information about a former employee to another employer with whom the employee has made application for employment, provided such information was lawfully acquired by the employer releasing the same.

(n) Nothing herein prohibits any person from receiving from the Industrial Accident Board all infor-

mation contained in any record or file of the Industrial Accident Board begun after September 1, 1971, in statistical form and in a manner so as not to disclose the name or identity of any person, except as provided in this section.

Hearings; Investigations; Appearance of Claimants; Pre-hearing Conferences and Officers; Rules and Regulations

Sec. 10. (a) Said Board or any member thereof may hold hearings or take testimony or make investigations at any point within this state, reporting the result thereof, if the same is made by one member, to the Board. The Board shall also employ and use the assistance of a sufficient number of pre-hearing officers for the purpose of adjusting and settling claims for compensation; provided, however, that pre-hearing officers shall not be empowered to take testimony.

Notwithstanding any provision of this Act, no claimant shall be required to appear before the Board or Board Member within a distance greater than one hundred (100) miles from the courthouse of the county of the claimant's residence or within a greater distance than one hundred (100) miles of the courthouse of the county where the injury occurred.

(b) The Board shall examine and review all controverted claims and shall schedule and hold pre-hearing conferences on such claims as the Board may designate. It shall have the power to direct the parties, their attorneys, or authorized agents of the parties to appear before the Board, any member thereof or a pre-hearing officer for pre-hearing conferences to attempt to adjust and settle the claim amicably and to take such other action other than taking of testimony that may aid in the disposition of the claim. Provided, however, that no matter occurring during, or fact developed in, a pre-hearing conference shall be deemed as admissions or evidence or impeachment against the association, employee or the subscriber in any other proceedings except before the Board.

Provided further that pre-hearing officers shall prepare a report to the Board Members on cases not settled at pre-hearing conference, stating the pre-hearing officer's recommendations for the award, and the basis therefor, with copies of said recommendations furnished to all interested parties and the association shall furnish a copy of the recommendation to the subscriber.

The Board shall provide a reasonable time to all interested parties in each case for filing a formal statement of respective positions, both factual and legal, as well as reply to pre-hearing officer's recommendations, all of which evidence shall be duly considered by the Board Members in making said final award. Unrepresented claimants are exempted from the provision requiring formal statement of respective positions.

The Association and counsel for claimant shall be required to admit, deny, or qualify each point in the pre-hearing officer's recommendations.

The Board shall promulgate procedural rules and regulations not inconsistent with this law to govern such pre-hearing conferences and provided further, such rules and regulations shall not affect nor change any substantive portion of this law.

[See Compact Edition, Volume 5 for text of 11 to 12]

Settlement of Suits to Set Aside Awards

Sec. 12a. On the application of either party to a suit to set aside the award of the board, the court may approve a settlement agreement presented at any time before the jury has returned in the trial of the suit. In approving the settlement agreement, the court may either conduct a hearing on the agreement or approve it without a hearing if the claimant submits a sworn affidavit acknowledging his agreement to settle the cause of action and evidencing his full understanding of all the provisions of the settlement agreement.

[See Compact Edition, Volume 5 for text of 13 and 14]

[Amended by Acts 1975, 64th Leg., p. 1131, ch. 430, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 770, ch. 292, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1113, ch. 412, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1686, ch. 667, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1840, ch. 735, § 2.056, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2005, ch. 801, §§ 3, 5, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 710, ch. 309, § 1, eff. Aug. 27, 1979.]

Art. 8307a. Suit to Set Aside Decision of Industrial Accident Board; Transfer to County Where Injury Occurred

Any interested party who is not willing and does not consent to abide by the final ruling and decision of the Industrial Accident Board shall, in the manner and within the time provided by Section 5 of Article 8307, Revised Civil Statutes of 1925, file notice with said Board, and bring suit in the county where the injury occurred, or in the county where the employee resided at the time the injury occurred or, if such employee is deceased, then in the county where the employee resided at the time of his death to set aside said final ruling and decision; however, in the event such suit is brought in any county other than the county where the injury occurred, or in the county of the employee's residence at the time of injury or death, the Court in which same is filed shall, upon ascertaining that it does not have jurisdiction to render judgment upon the merits, transfer the case to a proper Court in the county where the injury occurred or in the county where the employee resided at the time of injury or at the time of death. Provided, however, that notice of said transfer shall

be given to the parties and said suit when filed in the court to which the transfer is made, shall be considered for all purposes, the same as if originally filed in said court.

[Amended by Acts 1979, 66th Leg., p. 203, ch. 112, § 1, eff. May 9, 1979.]

Art. 8307d. Nonsuit in Appeals from Industrial Accident Board Award

At any time before the jury has retired in the trial of a workmen's compensation case on appeal from an award of the Industrial Accident Board, the plaintiff may take a nonsuit after notice to the other parties to the suit and a hearing held by which time all parties must perfect their cause of action, but he shall not thereby prejudice the right of an adverse party to be heard on his claim for affirmative relief. When the case is tried by the judge of a district or county court, such nonsuit, after notice and hearing, may be taken at any time before the decision is announced.

[Acts 1975, 64th Leg., p. 952, ch. 358, § 1, eff. June 19, 1976.]

PART 3

Art. 8308. Employers' Insurance Association

[See Compact Edition, Volume 5 for text of 1 to 18]

Information to be Furnished when Employer Becomes Subscriber; Failure to Comply; Notice; Penalty

Sec. 18a. Whenever any employer of labor in this State becomes a subscriber to this law, he or the insurance company shall immediately notify the Board of such fact, stating in such notice his name, place of business, and the name of the insurance company carrying his insurance, and the effective date of the policy. No further notice shall be required except as provided in Section 20a hereof. Such subscriber's notice shall be acknowledged by the insurance company. Any employer or association willfully failing or refusing to make any such report shall be liable for and shall pay to the State of Texas a penalty of not more than one thousand dollars for each offense. The Executive Director of the Board shall notify the Board of any willful failure or refusal to comply with this Section and after notice and hearing, the Board shall make a finding and if said finding is against the employer or association assess a penalty not to exceed one thousand dollars. The employer or association may appeal the Board's ruling de novo as provided in Section 5, Article 8307, Revised Civil Statutes of Texas, 1925, as amended. The Board's ruling if adverse to the employer or association and not appealed as provided above shall be enforced as provided in Section 5a, Article 8307, Revised Civil Statutes of Texas, 1925, as amended.

[See Compact Edition, Volume 5 for text of 19 and 20]

Notice of Cancellation or Nonrenewal

Sec. 20a. If the association cancels a policy or does not renew it on its anniversary date, the association shall send notice of the cancellation or nonrenewal to the subscriber by certified mail at least 10 days prior to the effective date of cancellation or nonrenewal and to the board by certified mail or in person on or before the date of cancellation or nonrenewal. Failure of the association to give the notice as required by this section shall extend the policy until the required notice is given to the subscriber and to the Industrial Accident Board.

[See Compact Edition, Volume 5 for text of 21 to 23]

[Amended by Acts 1977, 65th Leg., p. 889, ch. 333, § 1, eff. Sept. 1, 1977; Acts 1977, 65th Leg., p. 1861, ch. 738, § 2, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1299, ch. 601, §§ 1, 2, eff. June 13, 1979.]

PART 4

Art. 8309. Definitions and General Provisions

[See Compact Edition, Volume 5 for text of 1]

Individuals Covered by Subscriber

Sec. 1a. (a) Notwithstanding any other provision of this law, a subscriber may cover in its insurance contract a partner, a sole proprietor, or a corporate executive officer, except an officer of a state educational institution. The insurance contract shall specifically include the partner, sole proprietor, or corporate executive officer; and the elected coverage shall continue while the policy is in effect and while the named individual is endorsed thereon by a subscriber.

(b) Notwithstanding any other provision of this law, a subscriber may cover in its insurance contract a real estate salesman who is compensated solely by commissions. The insurance contract shall specifically include the salesman; and the elected coverage shall continue while the policy is in effect and while the named salesman is endorsed thereon by the subscriber.

[See Compact Edition, Volume 5 for text of 1b]

Insurance Companies May Insure

Sec. 2. Any insurance company, which term shall include mutual and reciprocal companies, lawfully transacting a liability or accident business in this State, shall have the same right to insure the liability and pay the compensation provided for in Part I of this law,¹ and when such company issues a policy conditioned to pay such compensation, the holder of such policy shall be regarded as a subscriber so far as applicable under this law, and when such company insures such payment of compensation it shall be subject to the provisions of Parts I, II and IV² and

of Sections 10, 17, 18a, 20a, and 21 of Part III of this law.³ Such company may have and exercise all of the rights and powers conferred by this law on the association created hereby, but such rights and powers shall not be exercised by a mutual or reciprocal organization unless such organization has at least fifty (50) subscribers who have not less than two thousand (2,000) employees. Nothing contained in this or any other law shall require an insurance company or the association to issue a policy to any applicant applying for coverage under this law, except as provided in Article 5.76 of the Insurance Code of Texas.

¹ Article 8306.
² Articles 8306, 8307, and this article.
³ Article 8308, §§ 10, 17, 18a, 20a, and 21.

[See Compact Edition, Volume 5 for text of 3 to 5]

Additional Interpretation

Sec. 6. As used in this Act and in Articles 8309g and 8309h, Revised Civil Statutes of Texas, 1925, as amended; Chapter 229, Acts of the 50th Legislature, Regular Session, 1947, as amended (Article 8309b, Vernon's Texas Civil Statutes); Chapter 310, Acts of the 52nd Legislature, Regular Session, 1951, as amended (Article 8309d, Vernon's Texas Civil Statutes); Chapter 252, Acts of the 55th Legislature, Regular Session, 1957 (Article 8309f, Vernon's Texas Civil Statutes), and other applicable provisions of the workmen's compensation laws of this state as now or hereafter enacted or amended, wherein the terms medical aid, medical treatment, medical services, surgical treatment, surgical services, medical costs, physician, or other words of import for the limited purpose of this Act and only in this Act shall be construed to include services performed by a doctor of podiatric medicine, acting within the scope of his or her license, except in Section 13 of Chapter 310, Acts of the 52nd Legislature, Regular Session, 1951, as amended (Article 8309d, Vernon's Texas Civil Statutes); Sections 13 and 14 of Chapter 252, Acts of the 55th Legislature, Regular Session, 1957 (Article 8309f, Vernon's Texas Civil Statutes); and Sections 13 and 14 of Article 8307, Revised Civil Statutes of Texas, 1925, as amended, provided, further, nothing herein shall be construed to alter, modify, or amend the definition of the practice of medicine or who may be permitted by law to practice medicine in this state, or to allow any person not licensed by the Texas State Board of Medical Examiners to use any title, letter, syllable, word, or words that would tend to lead the public to believe such person was a physician or surgeon authorized to practice medicine as defined in Article 4510, Revised Civil Statutes of Texas, 1925, as now or hereafter amended.

[Amended by Acts 1975, 64th Leg., p. 100, ch. 42, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 79, ch. 37, § 1, eff. March 30, 1977; Acts 1979, 66th Leg., p. 1215, ch. 587, § 1, eff. June 13, 1979.]

Section 2 of the 1977 Act provided:
 "All laws or parts of laws in conflict with this Act are repealed to the extent of such conflict."

Art. 8309b. Texas A&M University Employees

[See Compact Edition, Volume 5 for text of 1 to 12]

Rules and Regulations; Physicians or Chiropractors for Examinations; Reports of Examinations

Sec. 13. The institution is authorized to promulgate and publish such rules and regulations and to prescribe and furnish such forms as may be necessary to the effective administration of this Act, and the institution shall have authority to make and enforce such rules for the prevention of accidents and injuries as may be deemed necessary. The institution may obtain and record, on a form and in a manner prescribed by the institution, the medical history of a person to be employed in the service of the institution. The institution may designate a convenient number of regularly licensed practicing physicians, surgeons and chiropractors for the purpose of making physical examinations of persons to be employed in the service of the institution to determine who may be physically fit to be classified as "workman" as that term is defined in subsection 2 of Section 2 of this Act, and said physicians, surgeons and chiropractors so designated and so conducting such examinations shall make and file with the institution a complete transcript of said examination in writing and sworn to upon a form to be furnished by the institution. The institution, in a form and manner prescribed by the institution, shall preserve as a part of the permanent records of the institution all reports of all such examinations and medical histories so filed with it.

Requiring Physical Examination for Certification as Workman

Sec. 14. The institution may require that no person be certified as a workman in the institution under the terms and provisions of this Act until he has submitted himself for a physical examination as provided in Section 13 herein and has been certified by the examining physician, surgeon, or chiropractor, to be physically fit to perform the duties and services to which he is to be assigned.

Certification as Workman of Person having Preexisting Disqualifying Physical Condition; Waiver of Insurance Coverage

Sec. 15. In the discretion of the institution, any person who indicates a preexisting disqualifying physical condition in a medical history provided under Section 13, or any person found to have a preexisting disqualifying medical condition in a physical examination as provided in Section 14 may be certified as a workman on the condition that such person shall execute in writing, prior to his employment, a waiver of coverage under the provisions of this Act for the preexisting disqualifying physical condition. Such waiver shall be valid and binding on the workman so executing it and, in the event of injury or death of the workman suffered in the

course of his employment and attributable to the condition for which coverage was waived, no compensation or death benefits shall be paid to him or his beneficiaries.

[See Compact Edition, Volume 5 for text of 16 to 22]

[Amended by Acts 1977, 65th Leg., p. 1491, ch. 605, §§ 1 to 3, eff. Aug. 29, 1977.]

Art. 8309f. Repealed by Acts 1977, 65th Leg., p. 266, ch. 127, § 2, eff. Sept. 1, 1977

See, now, art. 8309g-1.

Art. 8309g. Workmen's Compensation Insurance for Employees of Political Subdivisions

Definitions

Sec. 1. In this article:

(1) "Employee" means a person in the service of the state pursuant to election, appointment, or an express contract of hire, oral or written. The term includes a person who is paid from state funds but whose duties require they work and frequently receive supervision in a political subdivision of the state.

(2) The word "employee" shall not include:

(A) Persons performing personal services for the State of Texas as independent contractors or volunteers.

(B) Members of the state military forces as defined in Section 1, Article 5765, Revised Civil Statutes of Texas, 1925.

(C) Persons who are at the time of injury performing services for the federal government and who are covered by some form of federal workers' compensation, including those working under Comprehensive Employment and Training Act of 1973 programs;¹ prisoners or inmates of a prison or correctional institution; clients or patients of any state institution or agency.

(D) Persons employed by the State Department of Highways and Public Transportation that are covered under Chapter 502, Acts of the 45th Legislature, Regular Session, 1937, as amended (Article 6674s, Vernon's Texas Civil Statutes).

(E) Persons employed by The University of Texas that are covered by Chapter 310, Acts of the 52nd Legislature, 1951, as amended (Article 8309d, Revised Civil Statutes of Texas).

(F) Persons employed by The Texas A&M University System that are covered by Chapter 229, Acts of the 50th Legislature, 1947, as

amended (Article 8309b, Vernon's Texas Civil Statutes).

(3) "Legal beneficiaries," "average weekly wages," and "injury sustained in the course of employment" have the meaning assigned to them in Section 1, Article 8309, Revised Civil Statutes of Texas, 1925, as amended.

(4) "Board" means the Industrial Accident Board.

(5) "Division" means the State Employees Division of the Attorney General's Office.

(6) "Director" means the director of the State Employees Division.

¹ 29 U.S.C.A. § 801 et seq.

[See Compact Edition, Volume 5 for text of 2]

State Employees Division; Director

Sec. 3. The Attorney General shall establish a state employees division within his office to administer this article. He shall appoint a director to act as the chief executive and administrative officer of the division, and shall provide him with office space and sufficient personnel to administer this article. The director shall administer this article with money appropriated by the Legislature. The director, with the approval of the Attorney General, may contract with a company authorized to do business in this state for any or all of the administrative services required by this article. Such contract shall be awarded on the basis of competitive bidding by qualified companies.

[See Compact Edition, Volume 5 for text of 4 and 5]

Rules for Accident Prevention

Sec. 6. The director shall make and enforce reasonable rules for the prevention of accidents and injuries. He shall hold hearings on all proposed rules under this section and afford reasonable opportunity for officers of the departments, boards, commissions, and agencies of the state to testify. The director's responsibility includes reporting to the legislature any agency that fails to meet their obligation regarding the prevention of accidents and injuries to state employees.

[See Compact Edition, Volume 5 for text of 7 to 11]

Effect of Sick Leave and Emergency Leave

Sec. 12. (a) An employee may elect to utilize accrued sick leave before receiving weekly payments of compensation. If the employee elects to utilize sick leave, the employee is not entitled to weekly payments of compensation under this article until he has exhausted his accrued sick leave.

(b) If in accordance with the General Appropriations Act the administrative head or heads of an agency or institution authorize payment for emergency leave to an employee receiving workers' compensation benefits, the payments may not exceed an amount equal to the difference between the basic monthly wage of the employee and the amount of benefits received and may not extend beyond six months from the date on which compensation payments begin. In authorizing these payments for emergency leave, the administrative head or heads of the agency or institution must review the merits of each case individually. If payment for emergency leave is authorized, the agency or institution shall attach a statement of the reasons for the authorization to its duplicate payroll voucher for the first payroll period affected by the leave.

(c) The director has authority under Section 5 of this article to provide rules for the administration of this section.

[See Compact Edition, Volume 5 for text of 13 to 16]

[Amended by Acts 1975, 64th Leg., p. 1042, ch. 405, §§ 1, 2, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1144, ch. 433, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1213, ch. 586, §§ 1 to 3, eff. Aug. 27, 1979.]

Section 3 of the 1975 Act provided:

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

Art. 8309g-1. Texas Tech University Employees

Eligible employees of Texas Tech University, Pan Tech Farm, Texas Tech University School of Medicine at Lubbock, and other agencies under the direction and control of the board of regents of Texas Tech University are entitled to participate in the workmen's compensation program for state employees provided in Article 8309g, Revised Civil Statutes of Texas, 1925, as amended.

[Acts 1977, 65th Leg., p. 266, ch. 127, § 1, eff. Sept. 1, 1977.]

Section 2 of the 1977 Act repealed art. 8309f; § 3 thereof provided: "This Act takes effect on September 1, 1977."

Art. 8309h. Workmen's Compensation Insurance for Employees of Political Subdivisions

Definitions

Sec. 1.

[See Compact Edition, Volume 3 for text of 1(1)]

(2) "Employee" means every person in the service of a political subdivision who has been appointed in accordance with the provisions of the article. No person in the service of a political subdivision who is paid on a piecework basis or on a basis other than by the hour, day, week, month, or year shall be considered an employee and entitled to compensation under the terms of the provi-

sions of this article. A political subdivision may cover an elected official as an employee by a majority vote of the members of the governing body of the political subdivision. Members of a self-insurance fund created hereunder may provide coverage for themselves as well as their staff by a majority vote of such members of the fund. No class of persons who are paid as the result of jury service or an appointment to serve in the conduct of elections may be considered employees under this article unless declared to be employees by a majority vote of the members of the governing body of a political subdivision.

[See Compact Edition, Volume 5 for text of 1(3) and 2]

Adoption of General Workmen's Compensation Laws

Sec. 3. (a) The following laws as amended or as they may hereafter be amended are adopted except to the extent that they are inconsistent with this article:

(1) Sections 1, 3, 3a, 3b, 4, 5, 6, 7, 7a, 7b, 7c, 7d, 7e, 8, 8a, 8b, 9, 10, 11, 11a, 12, 12a, 12b, 12c, 12c-1, 12c-2, 12d, 12e, 12f, 12g, 12h, 12i, 13, 14, 15, 15a, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, and 29 of Article 8306, Revised Civil Statutes of Texas, 1925, as amended;

(2) Section 1, Chapter 248, General Laws, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Article 8306a, Vernon's Texas Civil Statutes);

(3) Sections 4a, 5, 5a, 6a, 7, 7a, 7b, 11, 12, 13, and 14 of Article 8307, Revised Civil Statutes of Texas, 1925, as amended;

(4) Article 8307b, Revised Civil Statutes of Texas, 1925, as added by Section 2, Chapter 261, Acts of the 45th Legislature, Regular Session, 1937;

(5) Sections 18 and 18a, Article 8308, Revised Civil Statutes of Texas, 1925, as amended;

(6) Sections 1, 1b, 4, and 5, Article 8309, Revised Civil Statutes of Texas, 1925, as amended; and

(7) Section 7, Chapter 178, Acts of the 53rd Legislature, Regular Session, 1953 (Article 8309a, Vernon's Texas Civil Statutes).

[See Compact Edition, Volume 5 for text of 3(b)]

Establishment of Joint Fund

Sec. 4. A joint fund, as herein provided for, may be established by the concurrence of any two or more political subdivisions. The fund may be operated under the rules, regulations, and bylaws as established by the political subdivisions which desire to participate therein. Each political subdivision shall be and is hereby empowered to pay into said fund its proportionate part as due and to contract for the fund, by and through its directors, to make the payments due hereunder to the employees of the

contracting political subdivision. The joint insurance fund herein provided for shall not be considered insurance for the purpose of any other statute of this state and shall not be subject to the regulations of the State Board of Insurance.

Purpose

Sec. 5. (a) It is the purpose of this article that the compensation herein provided for shall be paid from week to week and as it accrues and directly to the person entitled thereto, unless the liability is redeemed as in such cases provided elsewhere herein. Provided further, however, that any and all sums for incapacity received in accordance with Chapter 325, Acts of the 50th Legislature, 1947, as amended (Article 1269m, Vernon's Texas Civil Statutes), and any other statutes now in force and effect that provide for payment for incapacity to work because of injury on the job that is also covered by this Act are hereby offset as against the benefits provided under this Act to the extent applicable. Provided that when an employee's wage is offset as prescribed above, both the employer and the employee shall pay into the pension fund on the amount of money by which his wage was offset and provided further that under no circumstances shall an employee's pension benefit be reduced as a result of his injuries or any compensation received under the provision of this Act, unless such reduction is a result of a pension revision passed by majority vote of the affected members of a pension system.

(b) When benefits are offset as in Subsection (a) of Section 5 of this Act, the employer shall not withhold the offset portion of the employees wages until such time as the benefits from this Act are received.

[See Compact Edition, Volume 4 for text of 6 to 8]

CETA Employees

Sec. 9. Notwithstanding any other provision of this law or any applicable workers' compensation law, an employee hired in accordance with the federal Comprehensive Employment and Training Act of 1973¹ shall be considered an employee of the federal Comprehensive Employment and Training Act prime sponsor, or its contractor or subcontractor, whichever assumes responsibility for disbursement of wages directly to the employee, and the "borrowed servant doctrine" shall not apply.

[Amended by Acts 1975, 64th Leg., p. 787, ch. 302, § 1, eff. May 27, 1975; Acts 1975, 64th Leg., p. 1040, ch. 403, § 1, eff. June 19, 1975; Acts 1975, 64th Leg., p. 1041, ch. 404, § 1, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1081, ch. 395, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1883, ch. 749, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1542, ch. 664, § 1, eff. Aug. 27, 1979.]

¹ 29 U.S.C.A. § 801 et seq.

Art. 8309i. Payment of Judgments Against State or Department, Division, or Political Subdivision Thereof

In all cases where the State of Texas or any department, division, or political subdivision of the state fails or refuses to comply within 30 days with a judgment against that entity under Articles 8309g and 8309h, Revised Civil Statutes of Texas, 1925, as amended; Chapter 229, Acts of the 50th Legislature, Regular Session, 1947, as amended (Article 8309b, Vernon's Texas Civil Statutes); Chapter 310, Acts of the 52nd Legislature, Regular Session, 1951, as amended (Article 8309d, Vernon's Texas Civil Statutes); Chapter 252, Acts of the 55th Legislature, Regular Session, 1957 (Article 8309f,¹ Vernon's Texas Civil Statutes); or Chapter 502, Acts of the 45th Legislature, Regular Session, 1937, as amended (Article 6674s, Vernon's Texas Civil Statutes), and the workmen's compensation claimant secures mandamus that the entity comply with the judgment, the claimant is also entitled to receive an award of:

(1) the sum of 12 percent of the amount of compensation recovered in the judgment, as a penalty; and

(2) a reasonable attorney's fee for the prosecution of the mandamus action.

[Acts 1977, 65th Leg., p. 761, ch. 289, § 1, eff. Aug. 29, 1977.]

¹ Repealed; see, now, art. 8309g-1.

PART 5

Art. 8309-1. Crime Victims Compensation Act

Short Title

Sec. 1. This Act may be cited as the Crime Victims Compensation Act.

Declaration of Purpose

Sec. 2. The legislature recognizes that many innocent persons suffer personal injury or death as a result of criminal acts. Crime victims and persons who intervene in crimes on behalf of peace officers may suffer disabilities, incur financial burdens, or become dependent on public assistance. The legislature finds and determines that there is a need for indemnification of victims of crime and citizens who suffer personal injury or death in the prevention of crime or the apprehension of criminals.

Definitions

Sec. 3. In this Act:

(1) "Board" means the Industrial Accident Board.

(2) "Claimant" means a victim or an authorized person acting on behalf of any victim.

(3) "Collateral source" means a source of benefits or advantages for pecuniary loss awardable

other than under this Act which the victim has received, or which is readily available to him or her from:

(A) the offender under an order of restitution to the claimant imposed by a court as a condition of probation;

(B) the United States or a federal agency, a state or any of its political subdivisions, or an instrumentality of two or more states, unless the law providing for the benefits or advantages makes them in excess of or secondary to benefits under this Act;

(C) Social Security, Medicare and Medicaid;

(D) state-required temporary nonoccupational disability insurance;

(E) workers' compensation;

(F) wage continuation programs of any employer;

(G) proceeds of a contract of insurance payable to the victim for loss which he or she sustained because of the criminally injurious conduct; or

(H) a contract providing prepaid hospital and other health care services, or benefits for disability.

(4) "Criminally injurious conduct" means conduct that:

(A) occurs or is attempted in this state;

(B) poses a substantial threat of personal injury or death;

(C) is punishable by fine, imprisonment, or death, or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state; and

(D) is not conduct arising out of the ownership, maintenance, or use of a motor vehicle, aircraft, or water vehicle except when intended to cause personal injury or death in violation of Section 38, Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes), or Article 6701/-1 or 6701 1-2, Revised Civil Statutes of Texas, 1925, as amended.

(5) "Dependent" means:

(A) a surviving spouse;

(B) a person who is a dependent of a deceased victim or intervenor within the meaning of Section 152, Internal Revenue Code of 1954, as amended (26 U.S.C. Section 152); or

(C) a posthumous child of the deceased intervenor or victim.

(6) "Financial stress" means financial hardship experienced by a claimant as a result of pecuniary loss from criminally injurious conduct giving rise

to a claim under this Act. A claimant suffers financial stress only if he or she cannot maintain his or her customary level of health, safety, and education for himself or herself and his or her dependents without undue financial hardship. In making its finding, the board shall consider all relevant factors, including:

- (A) the number of the claimant's dependents;
 - (B) the usual living expenses of the claimant and his or her family;
 - (C) the special needs of the claimant and his or her dependents;
 - (D) the claimant's income and potential earning capacity; and
 - (E) the claimant's resources.
- (7) "Pecuniary loss" means the amount of expense reasonably and necessarily incurred:
- (A) regarding personal injury for:
 - (i) medical, hospital, nursing, or psychiatric care or counseling, and physical therapy;
 - (ii) actual loss of past earnings and anticipated loss of future earnings because of a disability resulting from the personal injury at a rate not to exceed \$150 per week; and
 - (iii) care of minor children enabling a victim or his or her spouse, but not both of them, to continue gainful employment at a rate not to exceed \$30 per child per week up to a maximum of \$75 per week for any number of children; and
 - (B) as a consequence of death for:
 - (i) funeral and burial expenses;
 - (ii) loss of support to a dependent or dependents not otherwise compensated for as a pecuniary loss for personal injury, for as long as the dependence would have existed had the victim survived, at a rate of not more than a total of \$150 per week for all dependents; and
 - (iii) care of minor children enabling the surviving spouse of a victim to engage in lawful employment, where that expense is not otherwise compensated for as a pecuniary loss for personal injury, at a rate not to exceed \$30 per week per child, up to a maximum of \$75 per week for any number of children.
 - (C) pecuniary loss does not include loss attributable to pain and suffering.
- (8) "Intervenor" means a person who goes to the aid of another and is killed or injured in the good faith effort to prevent criminally injurious conduct, to apprehend a person reasonably suspected of having engaged in such conduct, or to aid a police officer. Intervenor does not include a peace officer, fireman, lifeguard, or person whose employment includes the duty to protect the pub-

lic safety acting within the course and scope of his or her employment.

(9) "Victim" means:

- (A) a person who is a Texas resident at the time of the crime and who suffers personal injury or death as a result of criminally injurious conduct;
- (B) an intervenor;
- (C) a dependent of a deceased victim; and
- (D) in the event of a death, a person who legally assumes the obligation or who voluntarily pays the medical or burial expenses incurred as a direct result of the crime.

(10) "Crime of violence" means any offense defined in the Penal Code that results in personal injury to a resident of this state. No act involving the operation of a motor vehicle, aircraft, or water vehicle that results in injury or death constitutes a crime of violence for the purposes of this Act, except that a crime of violence includes injury or death intentionally inflicted through the use of a motor vehicle, aircraft, or water vehicle, or injury or death sustained in an accident caused by a driver in violation of Section 38, Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes), or Article 6701f-1 or 6701f-2, Revised Civil Statutes of Texas, 1925, as amended.

Application

Sec. 4. (a) An applicant shall apply in writing in a form that conforms substantially to that prescribed by the board.

(b) No claimant may file an application unless the victim reports the crime to the appropriate state or local public safety or law enforcement agency within 72 hours after the crime is committed or within a longer period that is justified by extraordinary circumstances as determined by the board.

(c) A claimant may file an application within 180 days after the date of the crime, except that the board may extend the time for filing for good cause shown by the claimant.

(d) The application shall be verified and shall contain the following:

- (1) a description of the date, nature, and circumstances of the criminally injurious conduct;
- (2) a complete financial statement, including the cost of medical care or burial expenses and the loss of wages or support the claimant has incurred or will incur and the extent to which the claimant has been indemnified for these expenses from any collateral source;
- (3) when appropriate, a statement indicating the extent of any disability resulting from the injury incurred;

(4) an authorization permitting the attorney general to verify the contents of the application; and

(5) other information as the board may require.

Review, Verification, Hearing

Sec. 5. (a) The board shall appoint a clerk to review all applications for assistance made by claimants under Section 4 of this Act in order to ensure that they are complete. If an application is not complete, the clerk shall return it to the claimant with a brief statement of the additional information required. Within 30 days after receiving the returned application, the claimant may either supply the additional information or appeal the action to the board, which shall review the application to determine whether or not it is complete.

(b) Immediately on receipt of the application, the board shall send a copy of the application and all pertinent documents to the attorney general. The attorney general may investigate the application, appear in hearings on the application, and present evidence supporting or opposing approval of the application.

(c) The board shall appoint one of its members to determine whether a hearing is necessary. If the member determines that a hearing is not necessary, he or she may approve the application in accordance with the provisions of Section 6 of this Act. If the member determines that a hearing is necessary or if the attorney general or the claimant requests a hearing, the board shall then consider the application at a hearing at a time and place of its choosing. The board shall notify all interested persons, including the attorney general, not less than 10 days prior to the date of the hearing.

(d) At the hearing the board shall:

(1) review the application for assistance and the report prepared by the attorney general and any other evidence obtained as a result of his or her investigation; and

(2) receive other evidence that the board finds necessary or desirable to evaluate the application properly.

(e) Incident to its review, verification, and hearing duties under this Act, the board shall have the following powers:

(1) to request from prosecuting attorneys and law enforcement officers investigations and data to enable the board to determine whether and the extent to which a claimant qualifies for an award;

(2) the powers given to the board under Section 4, Article 8307, Revised Civil Statutes of Texas, 1925, as amended (Article 8307, Vernon's Texas Civil Statutes), except as modified by this Act; and

(3) if the mental, physical, or emotional condition of a victim is material to a claim, to order the victim to submit to a mental or physical examination by a physician or psychologist and to order an autopsy of a deceased victim. The order may be made for good cause shown upon notice to the person to be examined and to all persons who have appeared. The order shall specify the time, place, manner, conditions, and scope of the examination or autopsy and the person by whom it is to be made and shall require that person to file with the board a detailed written report of the examination or autopsy. The report shall set out his or her findings, including results of all tests made, diagnoses, prognoses, and other conclusions and reports of earlier examinations of the same conditions. The physician or psychologist shall be compensated from funds appropriated for the administration of this Act.

(f) On request of the person examined, the board shall furnish him or her a copy of the report. If the victim is deceased, the board on request shall furnish the claimant a copy of the report.

Approval or Rejection of Claim

Sec. 6. (a) The board shall award compensation for pecuniary loss arising from criminally injurious conduct if satisfied by a preponderance of the evidence that the requirements set forth in this Act have been met.

(b) The board shall establish that as a direct result of criminally injurious conduct the victim suffered physical injury or death that resulted in a pecuniary loss which the victim is unable to recoup without suffering financial stress and for which he or she is not compensated from any collateral source.

(c) The board shall deny the application if:

(1) the criminally injurious conduct is not reported or the application is not made in the manner specified in Section 4 of this Act;

(2) the victim or person whose injury or death gives rise to the application knowingly and willingly participated in the criminally injurious conduct;

(3) the claimant will not suffer financial stress as a result of the pecuniary loss arising out of criminally injurious conduct; or

(4) the victim resided in the same household as the offender or his or her accomplice.

(d) The board may deny or reduce an award otherwise payable:

(1) if the victim has not substantially cooperated with appropriate law enforcement agencies;

(2) if the behavior of the victim at the time of the act or omission giving rise to the claim was such that he or she bears a share of the responsibility for the act or omission; or

(3) to the extent that pecuniary loss is recouped from other persons, including collateral sources.

Types of Assistance; Awards

Sec. 7. (a) If an application for compensation is approved under Section 6 of this Act, the board shall determine what type of state assistance will best aid the claimant. The board may take any or all of the following actions:

(1) authorize cash payment or payments to or on behalf of the claimant for pecuniary loss as defined in Subdivision (7), Section 3 of this Act;

(2) refer the claimant to a state agency for vocational or other rehabilitative services; and

(3) provide counseling services for victims or contract with private entities to provide these services.

(b) Awards payable to a victim and all other claimants sustaining pecuniary loss because of injury or death of that victim may not exceed \$50,000 in the aggregate.

(c) The board may provide for the payment of an award in a lump sum or in installments. The part of an award equal to the amount of pecuniary loss accrued to the date of the award shall be paid in a lump sum. An award for allowable expense that would accrue after the award is made may not be paid in a lump sum. Except as provided in Subsection (d) of this section, the part of an award that may not be paid in a lump sum shall be paid in installments.

(d) At the instance of the claimant, the board may compute future pecuniary loss to a lump sum but only upon a finding by the board that:

(1) the award in a lump sum will promote the interests of the claimant; or

(2) the present value of all future pecuniary loss does not exceed \$1,000.

(e) An award for future pecuniary loss payable in installments may be made only for a period as to which the board can reasonably determine future pecuniary loss.

(f) An award is not subject to execution, attachment, garnishment, or other process, except that an award is not exempt from a claim of a creditor to the extent that he or she provided products, services, or accommodations, the costs of which are included in the award.

(g) An assignment or agreement to assign a right to reparations for loss accruing in the future is unenforceable except:

(1) an assignment of a right to reparations for work loss to secure payment of alimony, maintenance, or child support; or

(2) an assignment of a right to reparations to the extent that the benefits are for the cost of

products, services, or accommodations necessitated by the injury or death on which the claim is based and are provided or to be provided by the assignee.

Emergency Award

Sec. 8. If prior to taking action on an application it appears likely that a final award will be made and that the claimant will suffer undue hardship if immediate economic relief is not had, the board or board member may make an emergency award in an amount not to exceed \$1,500. The amount paid shall be deducted from the final award or repaid by and recoverable from the claimant to the extent that it exceeds the final award.

Reconsideration; Judicial Review

Sec. 9. (a) The board on its own motion or on request of the claimant may reconsider a decision making or denying an award or determining its amount. The board shall reconsider at least annually every award being paid in installments. An order on reconsideration of an award shall not require refund of amounts previously paid unless the award was obtained by fraud.

(b) The right of reconsideration does not affect the finality of a board decision for the purpose of judicial review.

(c) Within 20 days after the rendition of a final ruling and decision by the board, the claimant or the attorney general may file with the board notice of dissatisfaction with the final ruling and decision. The dissatisfied party shall within 20 days after giving the notice bring suit in the district court having jurisdiction in the county where the injury or death occurred or the county where the victim resided at the time the death or injury occurred, and the board shall provide for the suspension of payments to a claimant and may not reconsider an award during the pendency of an appeal of the ruling and decision on that claim. The court shall determine the issues in the cause by trial de novo, and the burden of proof is on the claimant. In computing the 20 days for filing a notice of dissatisfaction or the 20 days to bring suit, if the last day is a legal holiday or Sunday, the last day shall not be counted, and the time shall be extended to include the next business day.

Rules and Regulations; Notice of Provisions of Act

Sec. 10. (a) The board shall promulgate and adopt rules consistent with this Act governing its administration, including rules relating to the method of filing claims and the proof of entitlement to compensation. Sections 1 through 12 of the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), except Subdivision (3) of Subsection (a) and Subsection (b) of Section 4, apply to the board.

Sections 13 through 20 of that Act do not apply to the board or its orders and decisions.

(b) The board may appoint hearing officers to conduct hearings or prehearing conferences under this Act when hearings or prehearing conferences are necessary to determine eligibility for compensation.

(c) When hearings or prehearing conferences are conducted, they shall be open to the public unless in a particular case the hearing officer or board determines that the hearing or prehearing conference or a part of it should be held in private because a criminal suspect has not been apprehended or because it is in the interest of the claimant.

(d) The board may suspend the proceedings pending disposition of a criminal prosecution that has been commenced or is imminent, but may make an emergency award under Section 8 of this Act.

(e) Every hospital licensed under the laws of this state shall display prominently in its emergency room posters giving notification of the existence and general provisions of this Act. The board shall set standards for the location of the display and shall provide posters, application forms, and general information regarding this Act to each hospital and physician licensed to practice in the State of Texas.

(f) Every local law enforcement agency shall inform victims of criminally injurious conduct of the provisions of this Act and provide application forms to victims who desire to seek assistance. The board shall provide application forms and all other documents that local law enforcement agencies may require to comply with this section. The attorney general shall set standards to be followed by local law enforcement agencies for this purpose and may require them to file with him or her a description of the procedures adopted by each agency to comply.

Subrogation; Notice of Private Action

Sec. 11. (a) If compensation is awarded, the state is subrogated to all the claimant's rights to receive or recover benefits for pecuniary loss to the extent compensation is awarded from a source which is or if readily available to the claimant would be a collateral source.

(b) Before a claimant may bring an action to recover damages related to criminally injurious conduct for which compensation is claimed or awarded, the claimant must give the board prior written notice of the proposed action. After receiving the notice, the board shall promptly:

(1) join in the action as a party plaintiff to recover reparations awarded;

(2) require the claimant to bring the action in his or her individual name as a trustee in behalf of the state to recover reparations awarded; or

(3) reserve its rights and do neither in the proposed action.

(c) If, as requested by the board under Subsection (b) of this section, the claimant brings the action as trustee and recovers compensation awarded by the board, he or she may deduct from the reparations recovered in behalf of the state the reasonable expenses of the suit, including attorney's fees, expended in pursuing the recovery for the state. The claimant shall justify this deduction in writing to the board on a form provided by the board.

Attorney's Fees

Sec. 12. As part of an order, the board shall determine and award reasonable attorney's fees, commensurate with services rendered, to be paid by the state to the attorney representing the claimant. Additional attorney's fees may be awarded by a court in the event of review. Attorney's fees may be denied on a finding that the claim or appeal is frivolous. Awards of attorney's fees shall be in addition to awards of compensation. It is unlawful for an attorney to contract for or receive any larger sum than the amount allowed. Attorney's fees may not be paid to an attorney of a claimant unless an award is made to the claimant.

Annual Report

Sec. 13. The board shall prepare and transmit annually to the governor and the legislature a report of its activities, including a statistical summary of claims and awards made and denied. The report shall be based on the state fiscal year and shall be filed not more than 30 days after the end of each fiscal year.

Fund

Sec. 14. (a) The Compensation to Victims of Crime Fund is created in the State Treasury to be used by the board for the payment of compensation to claimants under this Act and other expenses in administering this Act. The board shall make no payments which exceed the amount of money in the fund. No general revenues may be used for payments under this Act.

(b) A person shall pay \$15 as a court cost, in addition to other court costs, on conviction of any felony and shall pay \$10 as a court cost, in addition to other court costs, on conviction of a misdemeanor punishable by imprisonment or by a fine of more than \$200.

(c) Court costs under this section are collected in the same manner as other fines or costs.

(d) The officer collecting the costs in a municipal court case shall keep separate records of the funds collected as costs under this section and shall deposit the funds in the municipal treasury. The officer collecting the costs in a justice, county, or district

court case shall keep separate records of the funds collected as costs under this section and shall deposit the funds in the county treasury.

(e) The custodian of a municipal or county treasury shall keep records of the amount of funds on deposit collected under this section and shall remit to the comptroller of public accounts before the 10th day of each month the funds collected under this section during the preceding month. The city and the county may retain five percent of the funds collected under this section as a collection fee.

(f) The comptroller of public accounts shall deposit the funds received by him or her under this section in the Compensation to Victims of Crime Fund.

(g) If application is made and an award granted for which no funds or insufficient funds are available, the board shall establish a waiting list of qualified claimants, with payment to be made when funds become available.

Effective Date

Sec. 15. Sections 1 through 13 of this Act take effect January 1, 1980. The board may not award reparations for economic loss arising from criminally injurious conduct that occurred before that date. Sections 14 and 15 of this Act take effect September 1, 1979.

Escrow Account

Sec. 16. Every firm, person, corporation, association, or other legal entity contracting with a person or the representative or assignee of any person,

accused or convicted of crime in this state, with respect to the reenactment of the crime in a movie, book, magazine article, tape recording, phonograph record, radio or television presentation, live entertainment, or from the expression of the accused or convicted person's thoughts, feelings, opinions, or emotions regarding the crime shall submit a copy of the contract to the board and pay to the board any money that would otherwise by terms of the contract be owing to the accused or convicted person or his representatives. The board shall deposit the money in an escrow account.

Funds Available to Victim

Sec. 17. Money placed in an escrow account is available to satisfy a judgment against the accused or convicted person in favor of a victim of the crime if the court in which the judgment is taken finds that the judgment is for damages incurred by the victim caused by the commission of the crime.

Maintenance of Escrow Account

Sec. 18. The board shall pay money in an escrow account to the accused person if he is acquitted of the crime. The board shall pay the money in the account to the accused or convicted person if five years elapse from the date when the account was established and the money has not been ordered paid to a victim in satisfaction of a judgment.

[Acts 1979, 66th Leg., p. 402, ch. 189, §§ 1 to 13, eff. Jan. 1, 1980; §§ 14, 15, eff. Sept. 1, 1979; §§ 16 to 18, eff. Aug. 27, 1979.]

TITLE 132

OCCUPATIONAL AND BUSINESS REGULATION

Chapter	Article
6. Auctioneers	8700
7. Irrigators	8751
8 to 19. Reserved	

CHAPTER ONE. BARBERS

Art. 8401. Repealed by Acts 1979, 66th Leg., p. 1368, ch. 613, § 8, eff. Sept. 1, 1979

Art. 8402. Registering Name and Location; Jurisdiction of State Board of Barber Examiners and Cosmetology Commission

(a) Every person, firm, or corporation owning, operating or managing a barber shop shall register his full name and the location of said shop with the State Board of Barber Examiners. Each owner, operator or manager of a barber shop that is first opened for business hereafter shall within three days after the opening of such shop submit an application to the barber board for a barber shop permit.

(b) In order that the public may fix responsibility for services, acts, or treatments performed by persons licensed by the State Board of Barber Examiners vis-a-vis those performed by persons licensed by the Texas Cosmetology Commission, to promote the efficient and orderly administration of laws regulating barbers and the practice of barbering and the laws regulating cosmetologists and the practice of cosmetology and to avoid confusion of the public as well as avoiding conflicts of jurisdiction between such board and commission which might impede effective administration or enforcement of the laws under their respective jurisdictions, from and after January 31, 1980:

(1) a person licensed by the barber board may practice barbering only at a location for which the board has issued a barber shop permit, barber school or college permit, or any other permit. If the State Board of Barber Examiners and the Texas Cosmetology Commission license the same facility, the board may not adopt rules restricting or prohibiting the practice by a Class A barber in the facility; and

(2) a person licensed by the cosmetology commission may practice cosmetology only at a location for which the commission has issued a beauty shop license, private beauty culture school license,

or any other license. If the State Board of Barber Examiners and the Texas Cosmetology Commission license the same facility, the commission may not adopt rules restricting or prohibiting the practice by a cosmetologist in the facility.

(c) If the State Board of Barber Examiners and the Texas Cosmetology Commission license the same facility, the agencies may not adopt rules requiring:

(1) that the work areas of barbers and cosmetologists practicing in the facility be separated;

(2) that the waiting areas for customers of the barbers and cosmetologists practicing in the facility be separated;

(3) that the facility have separate restrooms for the barbers or cosmetologists practicing in the facility or for the customers of the barbers and cosmetologists; or

(4) that the barbers and cosmetologists practicing in the facility or the customers of the barbers and cosmetologists be treated separately from each other in any similar manner.

(d) There shall at all times be prominently displayed in each shop and salon regulated under this Act, a sign in letters no smaller than one inch in height, the contents of which shall contain the name, mailing address, and telephone number of the regulatory board having jurisdiction over those individuals licensed under this Act and which shall contain a statement informing consumers that complaints against licensees can be directed to the regulatory board.

[Amended by Acts 1975, 64th Leg., p. 2144, ch. 691, § 27, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1363, ch. 613, § 1, eff. Sept. 1, 1979.]

Art. 8407a. Texas Barber Law

[See Compact Edition, Volume 5 for text of 1]

Unlicensed Practice Prohibited

Sec. 2. From and after the effective date of this Act, unless duly licensed and registered in accordance with all laws of this state regulating the practice of barbering, no person shall:

(a) practice, continue to practice, offer, or attempt to practice barbering or any part thereof;

(b) directly or indirectly, employ, use, cause to be used, or make use of any of the following terms or any combinations, variations, or abbreviations thereof, as a professional, business, or commercial

identification, title, name, representation, claim, asset, or means of advantage or benefit: "barber," "barbering," "barber school," "barber college," "barber shop," "barber salon";

(c) directly or indirectly, employ, use, cause to be used, or make use of any letter, abbreviation, word, symbol, slogan, sign, or any combination or variation thereof, which in any manner whatsoever tends or is likely to create any impression with the public or any member thereof that any person is qualified or authorized to practice barbering or own or manage any barber shop, barber school or college.

Barber Shop Permit; Application; Fees; Display; Transfer; Renewal; Supervision; Recovery Operation

Sec. 3. (a) No person may own, operate, or manage a barber shop without a barber shop permit issued by the board.

(b) Any firm, corporation or person who opens a new barber shop shall within three days submit an application in writing to the board for a temporary barber shop permit together with an inspection fee of \$25. The applicant must place in his application the permanent address of his shop including a legal description of the premises to be licensed and such other information as shall be required by the board.

(c) The board shall issue a barber shop permit to an applicant who holds a valid class A barber license and whose shop meets the minimum health standards for barber shops as promulgated by the State Department of Public Health and all rules and regulations of the board.

(d) A barber shop permit must be displayed in a conspicuous place in the barber shop for which the permit is issued.

(e) Permits are not transferable to another person. If the ownership of a barber shop is transferred to another person, the shop may continue in operation if the new owner applies for and obtains a new permit within 30 days after the transfer of ownership.

(f) To continue operating a barber shop, a person must renew the permit issued to his shop by paying a renewal fee of \$25. All permits expire on July 1 of odd-numbered years.

(g) No person may operate a barber shop unless the shop is at all times under the sole and exclusive supervision and management of a registered Class A barber, and no person is practicing on the premises by authority of any license, permit or certificate issued by the Texas Cosmetology Commission.

(h) A person operating under a permit who wishes to move his operation to another location approved by the board may do so by notifying the Board of Barber Examiners ten days before he makes the move.

Definitions

Sec. 4. In this Act, unless the context otherwise requires:

(a) "barber" shall mean any person who performs, offers, or attempts to perform any act of barbering, professes to do barbering or to be engaged in the practice thereof, or who directly or indirectly or in any manner whatsoever advertises or holds himself out as a barber or as authorized to practice barbering;

(b) "barbering," "practicing barbering," or the "practice of barbering" shall mean the performing or doing, or offering or attempting to do or perform, any, all or any combination of the following acts, services, works, treatments, or undertakings:

(1) arranging, beautifying, coloring, processing, shaving, styling, or trimming the mustache or beard by any means or method;

(2) arranging, beautifying, bleaching, cleansing, coloring, curling, dressing, dyeing, processing, shampooing, shaping, singeing, straightening, styling, tinting, waving, or otherwise treating the hair as primary services, treatments, or undertakings by any means or method, including any bobbing, clipping, cutting, or trimming of the hair as a necessary incident preparatory or ancillary to such primary services;

(3) cutting the hair as a primary service, treatment, or undertaking and not as a necessary incident preparatory or ancillary to those primary services enumerated in Section 4(b)(2), or primarily engaging in the occupation of cutting hair or practicing primarily as a haircutter by cutting hair as a separate and independent service, treatment, or undertaking for which haircut a charge is made, as such, separate and apart from any other service, treatment, or undertaking, directly or indirectly, or in any manner whatsoever;

(4) cleansing, stimulating, or massaging the scalp, face, neck, arms, shoulders, or that part of the body above the shoulders, by means of the hands, devices, apparatuses, or appliances, with or without the use of cosmetic preparations, antiseptics, tonics, lotions, or creams;

(5) beautifying the face, neck, arms, shoulders, or that part of the body above the shoulders, by the use of cosmetic preparations, antiseptics, tonics, lotions, powders, oils, clays, creams, or appliances;

(6) cutting, trimming, polishing, tinting, coloring, cleansing, or manicuring the nails of any person or attaching false nails;

(7) massaging, cleansing, treating, or beautifying the hands of any person;

(8) administering facial treatments;

(9) hair weaving;

(10) shampooing or conditioning hair;

(11) servicing a wig, toupee, or artificial hair-piece on a human head or on a block, subsequent to the initial retail sale by any of the acts, services, works, treatments, or undertakings enumerated in Section 4(b)(2) of this Act;

(12) advertising or holding out to the public by any manner whatsoever that any person is a barber or authorized to practice barbering;

(13) advertising or holding out to the public by any manner whatsoever that any location or place of business is a barber shop, barber school, barber college, or barber salon;

(14) receiving any fee, salary, compensation, or financial benefit, or the promise of any fee, salary, compensation, or financial benefit, for performing, doing, offering, or attempting to perform or do any act, work, service, or thing, which is any part of the practice of barbering as herein defined;

(c) "barber shop" or "barber salon" shall mean any place where barbering is practiced, offered, or attempted to be practiced except when such place is duly licensed as a barber school or college;

(d) "board" shall mean the State Board of Barber Examiners as established and provided for in the Texas Barber Law;

(e) "certificate" shall mean a certificate of registration issued by the board in accordance with the provisions of this Act;

(f) "license" shall mean any license issued by the board in accordance with the provisions of this Act;

(g) "manager" shall mean any person who controls or directs the business affairs of a barber shop or directs the work of a person employed in a barber shop or both;

(h) "permit" shall mean any permit issued by the board in accordance with the provisions of this Act;

(i) "person" shall mean any individual, association, firm, corporation, partnership, or other legal entity.

(j) In addition to the foregoing definitions, the board shall have authority to define by rule any words or terms necessary in the administration or enforcement of this Act.

Registered Assistant Barber Classification Terminated and Considered Class A Registered Barber

Sec. 5. The classification of "registered assistant barber" is hereby terminated. Any person holding a valid certificate as a registered assistant barber, as of the effective date of this Act, shall for all purposes of this Act be considered as a Class A registered barber and on the next renewal of any certifi-

cate as a registered assistant barber the board shall issue such assistant barber a certificate as a Class A registered barber on payment of the applicable renewal fee.

Exemptions

Sec. 6. The following persons shall be exempt from the provisions of this Act, provided such persons are not represented, advertised, or held out to the public, directly or indirectly, or in any manner whatsoever, as barbers, journeymen barbers, barber technicians or under any name, title, or designation indicating such person is authorized to practice by authority of any license or permit issued by the board:

(a) physicians, osteopaths, and registered nurses licensed and regulated by the State of Texas;

(b) commissioned or authorized medical or surgical officers of the United States Army, Navy, or Marine Hospital Service;

(c) persons licensed or practicing by authority of the Texas Cosmetology Commission under the provisions of Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), so long as such persons practice within the scope of the license or permit duly issued by the Texas Cosmetology Commission.

Qualifications of Applicant for Registration

Sec. 7. The following shall be considered as minimum evidence satisfactory to the board that an applicant is qualified for registration as a Class A registered barber:

(a) being at least 16-½ years of age;

(b) successfully passing a written and practical examination demonstrating to the satisfaction of the board the applicant's fitness and competence to practice the art and science of barbering.

Forms for Applications

Sec. 8. All applications for any certificate, license, or permit issued by the board shall be on forms prescribed and furnished by the board, shall contain statements made under oath showing the applicant's education and other information required by the board.

Permit to Operate Barber School or College

Sec. 9. (a) Any person desiring to conduct or operate a barber school or college in this state shall first obtain a permit from the board after demonstrating that said school or college has first met the requirements of this section. Said permit shall be prominently displayed at all times at such school or college. No such school or college shall be approved unless such school or college requires as a prerequisite to graduation a course of instruction of not less

than 1,500 hours as determined by the board, to be completed within a period of not less than nine months, for a Class A certificate, and at least 800 hours of such course of instruction shall be in the actual practice of cutting hair as a primary service in accordance with the definition set forth in Section 4(b)(3) of this Act. No certificate or permit shall be issued as provided for herein to an applicant to be a student in such a school or college unless said applicant has completed at least a seventh grade education and such other requirements as shall be specified by the board. Provided, however, that any person licensed as a Class A registered barber or registered assistant barber as of the effective date of this Act shall be considered qualified to perform any acts or services within the scope of the definition of barbering and shall be entitled to any or all licenses, certificates, or permits which the board is authorized to issue on payment of the required fees but without meeting further educational or experience requirements.

(b) Such schools or colleges shall instruct students in the theory and practice of such subjects as may be necessary and beneficial in the practice of barbering, including the following: scientific fundamentals of barbering; hygienic bacteriology, histology of the hair, skin, muscles, and nerves; structure of the head, neck and face; elementary chemistry relating to sterilization and antiseptics; common disorders of the skin and hair; massaging muscles of the scalp, face, and neck; hair-cutting; shaving, shampooing, and bleaching and dyeing of the hair; manicuring, administering facial treatments, hair weaving, servicing wigs, or any other skills, techniques, services, treatments, or undertakings within the definition of the practice of barbering provided for in this Act.

[See Compact Edition, Volume 5 for text of 9(c) to (e)]

(f) No barber school or college which issues "Class A" certificates shall be approved by the Board unless it is under the direct supervision and control of a barber who holds a current registered "Class A" certificate to practice barbering under the Texas Barber Law, and who can show evidence of at least five (5) years experience as a practicing barber. Each school shall have at least one (1) teacher who has a teacher's certificate issued by the Board upon examination and who is capable and qualified to teach the curriculum outlined herein to the students of such school. All such teachers are required to obtain a teacher's certificate from the Board and, in addition to requirements set forth by the Board, must meet the following requirements:

(1) Demonstrate their ability to teach the said curriculum outlined herein through a written and practical test to be given by the Board.

(2) Hold a current certificate as a registered "Class A" barber under this law.

(3) Demonstrate to the Board that such applicant is qualified to teach and instruct, to be determined at the discretion of the Board, and show evidence that the applicant has had at least six (6) months experience as a teacher in an approved school or college in Texas or in another state approved by the Board, or have completed a six-month postgraduate course as a teacher in an approved barber school or college in Texas.

Applicants desiring an examination for a teacher's certificate shall make an application to the Board and accompany same with an examination fee of \$35. A new application and fee must be presented for each examination taken by the applicant and fees paid are not refundable. A teacher's certificate shall be issued upon satisfactory completion of the examination and payment of a certificate fee of \$35 if the applicant fulfills the requirements during the period from November 1 of an odd-numbered year and extending through October 31 of the following even-numbered year or \$17.50 if the applicant fulfills the requirements during the period from November 1 of an even-numbered year and extending through October 31 of the following odd-numbered year. Teacher's certificates shall be renewed biennially on or before November 1st of odd-numbered years upon the payment of a renewal fee of \$35. [See Compact Edition, Volume 5 for text of 9(g)]

(h) No barber school or college shall be issued a permit to operate under the provisions of this Section until it has first furnished the following evidence to the Board:

(1) A detailed drawing and chart of the proposed physical layout of such school, showing the departments, floor space, equipment, lights and outlets.

(2) Photographs of the proposed site for such school including the interior and exterior of the building, rooms and departments.

(3) A detailed copy of the training program.

(4) A copy of the school catalog and promotional literature.

(5) A copy of the building lease or proposed building lease where the building is not owned by the school or college.

(6) A sworn statement showing the true ownership of the school or college.

(7) A permit fee of \$500.

No such school or college shall be operated and no students shall be solicited or enrolled by it until the Board shall determine that the school has been set up and established in accordance with this Section and the proposal submitted to the Board and approved by it prior to the issuance of a permit. Any such school or college must obtain renewal of its certificate by September 1st each year by the payment of an annual renewal fee of \$150.

[See Compact Edition, Volume 5 for text of 9(i) to (m)]

(n) Repealed by Acts 1975, 64th Leg., p. 2136, ch. 691, § 10, eff. Sept. 1, 1975.

Application for Examination; Examination Results; Reciprocity

Sec. 10. Each applicant for an examination shall

[See Compact Edition, Volume 5 for text of 10(a) to (c)]

(d) Not later than the 30th day after the day on which a person completes an examination administered by the Board, the Board shall send to the person his examination results. If requested in writing by a person who fails the examination, the Board shall send to the person not later than the 30th day after the day on which the request is received by the Board an analysis of the person's performance on the examination.

(e) On a reciprocal basis with other states or countries, the Board may issue, without examination, a certificate, license, or permit to an applicant who has a corresponding certificate, license, or permit issued by another state or country having standards for the certificate, license, or permit that are at least substantially equivalent to those of this state and who pays the fee prescribed by this Act.

Conduct of Examinations

Sec. 11. (a) The Board shall conduct examination of applicants for certificates of registration to practice as Class A registered barbers and of applicants to enter barber schools to determine their educational fitness, not less than four times each year, at such times and places as the Board may determine and designate. The examination of applicants for certificates of registration as Class A registered barbers shall include both a practical demonstration and a written and oral test, and shall embrace the subjects usually taught in schools of barbering approved by the Board.

(b) No examination shall be held at a barber school, college, or shop owned, managed, or operated by a member of the State Board of Barber Examiners.

Certificates to Successful Applicants

Sec. 12. Whenever the provisions of this Act have been complied with, the Board shall issue to any applicant a certificate of registration as a Class A registered barber, where such applicant shall have passed a satisfactory examination making an average grade of not less than seventy-five per cent, and who shall possess the other qualifications required by this Act.

Permit to Practice as Journeyman Barber

Sec. 13. Any person who is at least sixteen and one-half years of age, and who has a diploma showing graduation from a seven-grade grammar school, or its equivalent as determined by an examination conducted by the Board, and either

(a) Has a license or certificate of registration as a practicing barber from another State or country, which has substantially the same requirements for licensing or registering barbers as required by this Act, or

(b) Who can prove by personal affidavit that he has practiced as a barber in another State for at least two years immediately prior to making application in this State, and who possesses the qualifications required by this Act, shall, upon payment of the required fee, be issued a permit to practice as a journeyman barber only until he is called by the Board of Barber Examiners to determine his fitness to receive a certificate of registration to practice barbering. Should such applicant fail to pass the required examination he shall be allowed to practice as a journeyman barber until he is called by the Board for the next term of examination. Should he fail at the examination he must cease to practice barbering in this State.

Assistant Barbers; Barbers' Technicians

Sec. 14. (a) Any assistant barber who is at least sixteen and one-half years of age and who has a diploma showing graduation from a seventh grade grammar school, or an equivalent education as determined by an examination conducted by the Board, and who has a certificate of registration as an assistant barber in a State or country which has substantially the same requirements for registration as an assistant barber as is provided for by this Act, shall upon payment of the required fee be issued a permit to work as an assistant barber until called by the Board of Examiners for examination to determine his fitness to receive a certificate of registration as an assistant barber. Should such person be able to pass the required examination, he will be issued a certificate of registration as a registered assistant barber, and that the time spent in such other State or country as an assistant barber shall be credited upon the period of assistant barber required by this Act as a qualification to take the examination to determine his fitness to receive a certificate of registration as a registered barber.

(b) Any person who has spent at least 30 working days at a licensed barber school or college as a barber's technician including the study of shampooing, shampoos, manipulations, making appointments, preparing patrons, sterilizing tools, and the study of sterilization and the barber laws may be licensed to practice as a barber's technician. Any licensed barber's technician may assist the barber in shampooing

and sterilizing in a barber shop and shall work under the personal supervision of a registered Class A barber.

Manicurist License

Sec. 15. (a) A person holding a manicurist license issued by the board may perform for compensation only the practice of barbering defined in Section 4(b)(6) and Section 4(b)(7) of this Act.

(b) An applicant for a manicurist license must be at least 16 years of age, have completed the seventh grade or its equivalent, and have completed 150 hours instruction in manicuring.

(c) The application shall be made on a form prescribed by the board and a \$5 manicurist administration fee must accompany the application. The application and fee shall be filed at least 10 days prior to the date set for the examination.

(d) The applicant is entitled to a manicurist license if such applicant possesses the qualifications enumerated in Section 15(b), satisfactorily completes the examination, pays a \$15 license fee, and has not committed an act which constitutes grounds for denial of a license under this Act.

Wig Specialist License

Sec. 16. (a) A person holding a wig specialist license issued by the board may perform for compensation only the practice of barbering defined in Section 4(b)(11) of this Act.

(b) An applicant for a wig specialist license must be at least 16 years of age, have completed the seventh grade or its equivalent, and have completed 300 hours of instruction in the care and treatment of wigs.

(c) The application shall be made on a form prescribed by the commission and a \$5 administration fee must accompany the application. The application and fee must be filed at least 10 days prior to the date set for the examination.

(d) The applicant is entitled to a wig specialist license if he possesses the qualifications enumerated in Subsection (b) of this section, satisfactorily completes the examination, pays a \$15 license fee, and has not committed an act which constitutes grounds for revocation of a license under this Act.

(e) Any person who at the time this Act takes effect holds a cosmetology license or manicurist license issued by the cosmetology commission may make application for and upon paying the fee be granted a manicurist license by the barber board without examination.

Wig Instructor License

Sec. 17. (a) A person holding a wig instructor license issued by the board may perform for compensation the practice of barbering as defined in Section

4(b)(11) of this Act and may instruct a person in such practice.

(b) An applicant for a wig instructor license must have a valid wig specialist license and have completed 200 hours of instruction in advanced wig courses and methods of teaching.

(c) The application shall be made on a form prescribed by the board and a \$5 administration fee must accompany the application. The application and fee must be filed at least 10 days prior to the date set for the examination.

(d) The applicant is entitled to a wig instructor license if he possesses the qualifications enumerated in Subsection (b) of this section, satisfactorily completes the examination, pays a \$35 license fee, and has not committed any act constituting grounds for revocation of a license under this Act.

Wig Salon License

Sec. 18. (a) A person holding a wig salon license issued by the board may maintain an establishment in which only the practice of barbering as defined in Section 4(b)(11) of this Act is performed for compensation.

(b) An applicant for a wig salon license shall submit an application on a form prescribed by the board. The application shall contain proof of the particular requisites for a wig salon as established by the board and shall be verified by the applicant.

(c) The applicant is entitled to a wig salon license if the application shows compliance with the rules and regulations of the board, a \$25 license fee is paid, and such applicant has not committed an act which constitutes grounds for revocation of a license under this Act.

Wig School License

Sec. 18.1. (a) A person holding a wig school license issued by the board may maintain an establishment in which only the practice of barbering as defined in Section 4(b)(11) of this Act is taught for compensation.

(b) An applicant for a wig school license shall submit an application on a form prescribed by the board. The application shall contain proof of the particular requisites for a wig school as established by the board and shall be verified by the applicant.

(c) The applicant is entitled to a wig school license if the application shows compliance with the rules and regulations of the board, a \$100 license fee is paid, and applicant has not committed an act which constitutes grounds for revocation of a license under this Act.

[See Compact Edition, Volume 5 for text of 19]

Renewal of Certificates; Restoration of Expired Certificates; Fees

Sec. 20. (a) Every registered Class A barber and barber technician who continues in active practice or service shall renew his certificate of registration on or before November 1, 1975, and biennially on or before November 1 of odd-numbered years thereafter. The Board of Barber Examiners shall issue the renewal certificate upon payment of a biennial renewal fee of \$35. Every certificate of registration which has not been renewed prior to that date shall expire on November 1 of that year.

(b) A Class A registered barber, whose certificate of registration has expired, may, within 30 days thereafter, and not later, have his certificate of registration restored upon making a satisfactory showing to the Board, supported by his personal affidavit, which in the opinion of the Board, will excuse the applicant for having failed to renew his certificate within the time required by this Act.

(c) Any registered barber who retires from the practice of barbering for not more than five (5) years may renew his certificate of registration by making proper showing to the Board, supported by his personal affidavit, which, in the opinion of the Board, would justify the Board in issuing a certificate to such applicant as upon an original application upon payment of a fee of \$35 if the applicant applies during the period from November 1 of an odd-numbered year and extending through October 31 of the following even-numbered year or \$17.50 if the applicant applies during the period from November 1 of an even-numbered year and extending through October 31 of the following odd-numbered year.

(d) Any registered barber who retires from the practice of barbering for more than five (5) years may renew his certificate of registration by making application to the Board and by making proper showing to the Board, supported by his personal affidavit, and by paying an examination fee of \$35, passing a satisfactory examination conducted by the Board, and paying a license fee of \$25 if the applicant fulfills the requirements during the period from November 1 of an odd-numbered year and extending through October 31 of the following even-numbered year or \$12.50 if the applicant fulfills the requirements during the period from November 1 of an even-numbered year and extending through October 31 of the following odd-numbered year.

[See Compact Edition, Volume 5 for text of 20a and 20b]

Refusal, Suspension or Revocation of Certificates; Grounds

Sec. 21. The board shall either refuse to issue or to renew, or shall suspend or revoke any certificate of registration for any one of, or a combination of the following causes:

- (A) Gross malpractice;
- (B) Continued practice by a person knowingly having an infectious or contagious disease;
- (C) Advertising by means of knowingly making false or deceptive statements;
- (D) Advertising, practicing, or attempting to practice under another's trade name or another's name;
- (E) Habitual drunkenness or habitual addiction to the use of morphine, cocaine, or other habit-forming drugs;
- (F) The commission of any of the offenses described in Section 24 of this Act;
- (G) No certificate shall be issued or renewed, unless and until each applicant shall present a health certificate from a regular practicing medical doctor showing that the applicant is free from any kind of infectious or contagious diseases, tuberculosis, communicable diseases, and free from the use of any kind of morphine, cocaine, or other habit-forming drug, or a habitual drunkard and that said applicant shall make affidavit to said medical examiner that all of the said facts are true.

Violation or Noncompliance with Requirement, Hearing; Denial, Revocation or Refusal to Renew Certificate; Appeal

Sec. 22.

[See Compact Edition, Volume 5 for text of 22(a)]

(b) If, after due notice and hearing, the board denies, revokes, or refuses to renew any certificate, license, or permit, the holder thereof shall have the right to appeal from the order of the board. Any appeals filed hereunder shall be filed within 20 days from the date of the order of the board in a district court of the county where the person filing such appeal has his residence, or in any of the district courts of Travis County, Texas. In all appeals prosecuted in any of the courts of this state pursuant to the provisions of this Act, such trials shall be de novo as that term is used and understood in appeals from justice of the peace courts to county courts. When such an appeal is filed and the court thereby acquires jurisdiction, all administrative or executive action taken prior thereto shall be null and void and of no force and effect, and the rights of the parties thereto shall be determined by the court upon a trial of the matters in controversy under rules governing the trial of other civil suits in the same manner and to the same extent as though the matter had been committed to the courts in the first instance and there had been no intervening administrative or executive action or decision. Under no circumstances shall the substantial evidence rule as interpreted and applied by the courts of Texas in other cases ever be used or applied to appeals prosecuted under the provisions of this Act.

[See Compact Edition, Volume 5 for text of 23 to 25]

State Board of Barber Examiners: Appointment; Qualifications; Term; Removal; Vacancy

Sec. 26. (a) The State Board of Barber Examiners is hereby created and shall consist of six members appointed by the governor with the advice and consent of the senate. The board shall be composed of the following: two members shall be Class A barbers actually and actively engaged in the practice of barbering for at least five years prior to being appointed and while serving as members of the board and who are not holders of a barber shop permit issued by the board; one member shall be a barber shop owner holding a permit issued by the board and who is actively and actually engaged in the practice of barbering for at least five years prior to being appointed and while serving as a member of the board; one member shall be a person holding a permit from the board to conduct or operate a barber school or college; and two members shall be representatives of the general public who are not regulated under this Act and who do not have, other than as consumers, any financial interests in barbering. The terms of office shall be for six years with terms for two of the six board members expiring at the same time every two years. All members appointed by the governor to fill vacancies in the board caused by death, resignation, or removal shall serve during the unexpired term of such member's predecessor. Before entering upon the duties of office, each member of the board shall take the constitutional oath of office and file it with the secretary of state. Members of the board may be removed from office for cause in the manner provided by the statutes of this state for public officials who are not subject to impeachment. In case of death, resignation, or removal, the vacancy of the unexpired term shall be filled by the governor in the same manner as other appointments.

(b) A person holding office as a member of the State Board of Barber Examiners on the effective date of this Act continues to hold the office for the term for which the member was originally appointed.

(c) The governor shall appoint two public members to fill the offices of the two incumbent members whose terms expire on May 19, 1981. The governor shall appoint a barber shop owner and a barber school owner to fill the offices of the incumbent members whose terms expire on May 19, 1983. The governor shall appoint two Class A barbers to fill the offices of the two incumbent members whose terms expire on May 19, 1985.

(d) The terms of office for the appointees who fill the offices of incumbent members whose terms expire May 19, 1981, May 19, 1983, and May 19, 1985,

shall expire on January 31, 1987, January 31, 1989, and January 31, 1991, respectively.

(e) Appointments to the board shall be made without regard to the race, creed, sex, religion, or national origin of the appointees.

(f) Each member of the board shall be present for at least one-half of the regularly scheduled board meetings held each year. Failure of a board member to meet this requirement automatically removes the member from the board and creates a vacancy on the board.

Application of Sunset Act

Sec. 26a. The State Board of Barber Examiners is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1991.

¹ Article 5429k.

Officers of Board; Compensation of Members; Compensation and Bond of Secretary

Sec. 27. The State Board of Barber Examiners shall elect one of its members as president, and shall elect a secretary and such other employees, as may be necessary, to carry out the provisions of this Act and House Bill No. 104, Chapter 65, Acts of the Forty-first Legislature, First Called Session, as amended,¹ and provide for the compensation of such secretary and other employees. Said Board shall maintain its office in the State Office Building in the City of Austin, Texas, and shall adopt rules and regulations for the transaction of the business herein provided for, including a common seal for the authentication of its orders, certificates and records. The secretary shall keep a record of all proceedings of the Board and shall be the custodian of all such records and shall receive and receipt for all money collected by the Board. All money so received shall be immediately deposited with the State Treasurer, who shall credit same to a special fund to be known as "State Board of Barber Examiners Fund," which money shall be drawn from said special fund upon claims made therefor by the Board to the Comptroller; and if found correct, to be approved by him and vouchers issued therefor, and countersigned and paid by the State Treasurer, which special fund is hereby appropriated for the purpose of carrying out all the provisions of this Act. Annually at the close of business on August 31st of each year, a complete report of the business transaction by the Board showing all receipts and disbursements shall be made by the Board to the Governor of the State of Texas. The State Auditor shall audit the financial transactions of the Board at least once every two fiscal years.

The secretary shall give a surety bond, payable to the State of Texas in the sum of Five Thousand Dollars (\$5,000), conditioned for the faithful per-

performances of his duties as secretary, to be approved by the Board and filed with the State Comptroller. A majority of the Board in meetings duly assembled may perform and exercise all the duties and powers devolving upon the Board.

The compensation of the members of the Board shall be a per diem as set by the General Appropriations Act, and in addition to the per diem provided for herein, they shall be entitled to traveling expenses in accordance with the appropriate provisions of the General Appropriations Act. Each Board member shall make out, under oath, a complete itemized statement of the number of days engaged and the amount of his expenses when presenting same for payment.

¹ This article.

[See Compact Edition, Volume 5 for text of 27a]

Rules and Regulations; Violations

Sec. 28. (a) The State Board of Health shall make, establish and promulgate reasonable sanitary rules and regulations for the conduct of barber shops and barber schools. The State Board of Barber Examiners, by and through the Health Department of the State of Texas, shall have authority, and it is made its duty to enter upon the premises of all barber shops, barber schools or any place where any of its licensees are practicing or performing any service, act or treatment by authority of any license issued by the board and inspect same at any time during business hours. A copy of such sanitary rules and regulations adopted by the Board of Health shall be furnished to the Secretary of the State Board of Barber Examiners who shall in turn forward to each barber, barber school or licensee of the board a copy of such rules and regulations. A copy of the sanitary rules and regulations promulgated and adopted by the State Board of Health shall be posted in barber shops and barber schools in this State. Subject only to the authority of the State Board of Health to make and promulgate reasonable rules and regulations as to sanitation, the State Board of Barber Examiners shall have full authority and power to make and enforce all rules and regulations necessary for the performance of its duties, to establish standards of conduct and ethics for all persons licensed or practicing under the provisions of this Act, and to regulate the practice and teaching of barbering in all of its particulars in keeping with the purposes and intent of this Act or to insure strict compliance with and enforcement of this Act.

(b) If the appropriate standing committees of both houses of the legislature acting under Section 5(g), Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), transmit to the board statements opposing adoption of a rule under that section, the rule may not take effect or, if the rule has already

taken effect, the rule is repealed effective on the date the board receives the committees' statements.

(c) The violation by any licensee, permittee, or certificate holder of the board of any provisions of this Act or any rule, regulation, or order of the board shall be sufficient reason or ground to cancel, suspend, or revoke any license, certificate, permit, or authority issued under this Act. In addition to any other action, proceeding, or remedy authorized by law, the board shall have the authority to institute any action in its own name to enjoin any violation of any provision of this Act or rule or regulation of the board, and, in order for the board to sustain such action, it shall not be necessary to allege or prove, either that an adequate remedy at law does not exist, or that substantial or irreparable damage would result from the continued violation thereof. Either party to such action may appeal to the appellate court having jurisdiction of such cause. The board shall not be required to give any appeal bond in any cause arising under this Act. The attorney general shall represent the board in all actions and proceedings to enforce the provisions of this Act.

[See Compact Edition, Volume 5 for text of 29]

Information About Complaints

Sec. 29A. (a) The State Board of Barber Examiners shall keep an information file about each complaint filed with the board relating to licensees under this Act.

(b) If a written complaint is filed with the State Board of Barber Examiners relating to a licensee under this Act, the board, at least as frequently as quarterly, shall notify the complainant of the status of the complaint until the complaint is finally resolved.

Restrictions on Board Members and Employees

Sec. 29B. (a) An employee of the State Board of Barber Examiners whose duties include the administration of the board's functions under this Act may not:

(1) have, other than as a consumer, a financial interest in barbering;

(2) be an officer, employee, or paid consultant of a trade association in the barbering industry; or

(3) be related within the second degree by affinity or within the second degree by consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the barbering industry.

(b) A member of the State Board of Barber Examiners may not be:

(1) an officer, employee, or paid consultant of a trade association in the barbering industry;

(2) related within the second degree by affinity or within the second degree by consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the barbering industry.

(c) An employee who violates this section is subject to dismissal. A board member who violates this section is subject to removal.

Open Meetings Law and Administrative Procedure and Texas Register Act Applicable

Sec. 29C. The board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

Lobbying by General Counsel or Board Member Prohibited

Sec. 29D. A general counsel employed by the board or a member of the board may not lobby for the board and may not engage in conduct for which the person is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9c, Vernon's Texas Civil Statutes).

[See Compact Edition, Volume 5 for text of 30]

[Amended by Acts 1975, 64th Leg., p. 2132, ch. 691, §§ 1 to 26, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1834, ch. 735, § 2.016, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1364, ch. 613, §§ 2 to 7, eff. Sept. 1, 1979.]

Sections 48 and 49 of the 1975 amendatory act provided:

"Sec. 48. If any word, clause, sentence, or provision of this Act or the application thereof to any person or circumstance shall be held to be invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

"Sec. 49. All laws or parts of laws inconsistent or in conflict with this Act or any part thereof are hereby repealed."

CHAPTER TWO. COSMETOLOGY

Art. 8451a. Cosmetology Regulatory Act

Definitions

Sec. 1. As used in this Act:

(1) "Person" means any individual, association, firm, corporation, partnership, or organization.

(2) "Commission" means the Texas Cosmetology Commission.

(3) "Cosmetology" means the performing or doing, or offering or attempting to do or perform for compensation, any of the following acts, services, works, treatments, or undertakings:

(A) arranging, beautifying, bleaching, tinting, cleansing, coloring, dressing, dyeing, processing, shampooing, shaping, singeing, straightening, styling, waving, or otherwise treating the hair as primary services, treatments, or undertaking by any means or method, including any bobbing, clipping, cutting, or trimming of the hair as a

necessary incident preparatory or ancillary to such primary services; cutting the hair as a primary service, treatment, or undertaking and not as a necessary incident preparatory or ancillary to those primary services enumerated in this subdivision, or primarily engaging in the occupation of cutting hair or practicing primarily as a haircutter by cutting hair as a separate and independent service, treatment, or undertaking for which haircut a charge is made, separate and apart from any other service, treatment, or undertaking, directly or indirectly, or in any manner;

(B) cleansing, stimulating, or massaging the scalp, face, neck, or arms by means of the hands, devices, apparatus, or appliances, with or without the use of cosmetic preparations, antiseptics, tonics, lotions, or creams; beautifying the face, neck, or arms by use of cosmetic preparations, antiseptics, tonics, lotions, powders, oils, clays, creams, or appliances;

(C) removing superfluous hair from the body by the use of depilatories or mechanical tweezers;

(D) cutting, trimming, polishing, tinting, coloring, cleansing, or manicuring the nails of any person; or attaching false nails or massaging, cleansing, treating, or beautifying the hands or feet of any person;

(E) servicing a wig or artificial hairpiece either on a human head or on a block subsequent to the initial retail sale and servicing by any of the practices enumerated in Paragraph (A) of this subdivision;

(F) administering facial treatments;

(G) hair weaving; or

(H) shampooing and conditioning hair.

(4) "Public school" includes a public high school, public junior college, or any other nonprofit tax-exempt institution conducting a cosmetology program.

Texas Cosmetology Commission

Sec. 2. (a) The Texas Cosmetology Commission is created. The commission shall be composed of one member holding a valid beauty shop license who has no direct or indirect affiliation with or interest, financial or otherwise, in a private beauty culture school; one member holding a valid private beauty culture school license who has no direct or indirect affiliation with or interest, financial or otherwise, in a beauty shop; two members holding valid operator licenses who have no direct or indirect affiliation with or interest, financial or otherwise, in a private beauty culture school or beauty shop; and two members of the general public who are not licensees under this Act and who have no direct or indirect affiliation with or interest, financial or otherwise, in any facet of the beauty industry. The associate

commissioner for occupational education and technology of the Central Education Agency or his authorized representative shall as part of his duties serve as an ex officio member of the commission with voting privileges. Members shall be appointed without consideration of race, color, religion, sex, or national origin.

(b) To qualify as a member, a person must be a citizen of the United States and a resident of Texas at least 25 years of age, must be actively engaged in the area that the person represents for a period of five years immediately preceding appointment.

(c) The members of the commission shall be appointed by the governor with the advice and consent of the senate. Members of the commission hold office for staggered terms of six years, with two members' terms expiring on December 31 of each odd-numbered year. No person may serve more than two consecutive terms.

(d) Each appointee to the commission shall qualify by taking the constitutional oath of office within 15 days from the date of his appointment. On presentation of the oath, the secretary of state shall issue commissions to appointees as evidence of their authority to act as members of the commission.

(e) Each member of the commission shall be present for at least one-half of the regularly scheduled commission meetings held each year. Failure of a commission member to meet this requirement automatically removes the member from the commission and creates a vacancy on the commission.

(f) In the event of death, resignation, or removal of any member, the vacancy of the unexpired term shall be filled by the governor in the same manner as other appointments.

(g) The Texas Cosmetology Commission is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes). Unless continued in existence as provided by the Act, the commission is abolished and this Act expires effective September 1, 1991.

(h) The commission is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

Commission Organization and Meetings

Sec. 3. (a) The commission shall elect from its members for a term of two years a chairman and may appoint committees that it considers necessary to carry out its duties.

(b) The commission shall meet at least once each year. The commission may meet at other times at the call of the chairman or as provided by commission rule.

(c) The quorum for any meeting of the commission is four members. No action by the commission or its members has any effect unless a quorum is present.

Powers and Duties of the Commission

Sec. 4. (a) The commission may issue rules consistent with this Act after a public hearing in accordance with the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes). If the appropriate standing committees of both houses of the legislature acting under Section 5(g), Administrative Procedure and Texas Register Act, transmit to the commission statements opposing adoption of a rule under that section, the rule may not take effect or, if the rule has already taken effect, the rule is repealed effective on the date the commission receives the committees' statements.

(b) The commission shall prescribe the minimum curricula of the subjects and hours of each to be taught by beauty culture schools.

(c) The commission shall prescribe the method and content of the examinations administered under this Act. The examination shall include practical examinations as well as theory tests relating to the subject matter established as curricula by the commission.

(d) The commission shall establish sanitation rules designed to prevent the spread of infectious or contagious diseases.

Compensation

Sec. 5. (a) Members of the commission are entitled to receive \$25 a day and reimbursement for actual travel expenses incurred in performing the duties of their office. Per diem compensation may not exceed 30 days in any fiscal year for each member.

(b) The compensation of other employees of the commission is as set by the General Appropriations Act.

Executive Director; Staff

Sec. 6. (a) The commission may employ an executive director who is the executive head of the commission and performs its administrative duties.

(b) The executive director may employ staff members necessary for administering the functions of the commission. A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9c, Vernon's Texas Civil Statutes), may not act as the general counsel to the commission or serve as a member of the commission.

(c) The commission may employ directors at its discretion.

Conflict of Interest

Sec. 7. (a) An employee of the commission whose duties include the administration of the commission's functions under this Act may not:

(1) have, other than as a consumer, a financial interest in the cosmetology industry;

(2) be an officer, employee, or paid consultant of a trade association in the cosmetology industry; or

(3) be related within the second degree by affinity or within the second degree by consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the cosmetology industry.

(b) A member of the commission may not be:

(1) an officer, employee, or paid consultant of a trade association in the cosmetology industry; or

(2) related within the second degree by affinity or within the second degree by consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the cosmetology industry.

(c) An employee who violates this section is subject to dismissal. A member who violates this section is subject to removal.

Disposition of Funds

Sec. 8. (a) The executive director shall remit, on or before the 10th day of each month, to the state treasurer all fees collected under this Act during the preceding month for deposit in the General Revenue Fund.

(b) On August 31 of each year, the commission shall file with the comptroller its annual report in a form required by the comptroller.

(c) Funds for the administration of this Act are to be provided by the General Appropriations Act.

Prohibited Acts

Sec. 9. (a) A person may not perform or attempt to perform any practice of cosmetology without first obtaining a license or certificate to perform that practice.

(b) A person may not conduct or operate a beauty shop, beauty culture school, specialty shop, or any other place of business in which the practice of cosmetology is taught or practiced without first obtaining a license.

(c) A person may not instruct in the art of cosmetology unless he holds an instructor license from this state and the instruction is done in a private beauty culture school or public school cosmetology program.

Operator License

Sec. 10. (a) A person holding an operator license may perform any practice of cosmetology defined in Subdivision (3), Section 1, of this Act.

(b) An applicant for an operator license must be at least 16 years of age, have completed the seventh grade or its equivalent, and have completed 1,500 hours of instruction in a licensed beauty culture school or 1,000 hours of instruction in beauty culture courses and 500 hours of related high school courses prescribed by the commission in a public school vocational program.

(c) The application must be made on a form prescribed by the commission and must be filed at least 10 days before the date set for the examination.

(d) The applicant is entitled to an operator license if he possesses the qualifications enumerated in Subsection (b) of this section, satisfactorily completes the examination, pays a \$15 license fee, and has not committed an act that constitutes a ground for denial of a license.

Manicurist License

Sec. 11. (a) A person holding a manicurist license may perform only the practice of cosmetology defined in Paragraph (D), Subdivision (3), Section 1 of this Act.

(b) An applicant for a manicurist license must be at least 16 years of age, have completed the seventh grade or its equivalent, and have completed 150 hours of instruction in manicuring.

(c) The application must be made on a form prescribed by the commission and must be filed at least 10 days before the date set for the examination.

(d) The applicant is entitled to a manicurist license if he possesses the qualifications enumerated in Subsection (b) of this section, satisfactorily completes the examination, pays a \$10 license fee, and has not committed an act that constitutes a ground for denial of a license.

Instructor License

Sec. 12. (a) A person holding an instructor license may perform any practice of cosmetology and may instruct a person in any practice of cosmetology as defined by this Act.

(b) An applicant for an instructor license must be at least 18 years of age, have completed the 12th grade or its equivalent, have a valid operator license, and have completed a six-month course consisting of 750 hours of instruction in cosmetology courses and methods of teaching in a licensed beauty culture school or in a vocational training program of a publicly financed postsecondary institution or at least three years of verifiable experience as an operator under a license from the Texas Cosmetology Commission.

(c) The application must be on a form prescribed by the commission and must be filed at least 10 days before the date set for the examination.

(d) The applicant is entitled to an instructor license if he possesses qualifications enumerated in Subsection (b) of this section, satisfactorily completes the examination, pays a \$35 license fee, and has not committed an act that constitutes a ground for denial of a license.

Specialty Certificate

Sec. 13. (a) A person holding a specialty certificate may perform only the practice of cosmetology as defined in Paragraph (E), (F), (G), or (H) of Subdivision (3) of Section 1 of this Act.

(b) An applicant for a specialty certificate must be at least 16 years of age, have completed the seventh grade or its equivalent, and have the necessary requisites as determined by the commission in the particular specialty in which certification is sought.

(c) The application must be on a form prescribed by the commission and must be filed at least 10 days before the date set for examination.

(d) The applicant is entitled to a specialty certificate if he possesses the qualifications enumerated in Subsection (b) of this section, satisfactorily completes the examination, pays a \$15 certificate fee, and has not committed an act that constitutes a ground for denial of a certificate.

(e) Subsection (a) of this section does not apply to an individual who has an instructor license or operator license issued by the commission.

Grandfather Clause

Sec. 14. (a) On the effective date of this Act any person holding a specialty license issued by the commission may, before the expiration date of that license, receive an equivalent certificate by complying with the following guidelines:

(1) sending the renewal portion of the specialty license to the commission along with a valid health certificate; and

(2) paying a one time \$15 certification fee.

(b) On the effective date of this Act, any person holding a wig instructor or wig school license may continue to renew that license indefinitely by paying a \$35 or \$55 fee, respectively, every two years.

Temporary License

Sec. 15. (a) A person holding a temporary license may perform any practice of cosmetology for which he holds a valid license in another state or nation.

(b) A temporary license shall be issued on submission of an application form prescribed by the commission and payment of a \$25 temporary license fee if the applicant meets the requirements of Subsection (a) of this section.

(c) A temporary license expires on the 60th day after the date of issue and may not be renewed.

(d) A person is not required to hold a temporary license to engage in the practice of cosmetology for educational or demonstration purposes at seminars, trade shows, or conventions.

Duplicate License or Certificate

Sec. 16. A duplicate license or certificate shall be issued upon application on a form prescribed by the commission and on the payment of a \$5 fee.

Reciprocal Certificates or Licenses

Sec. 17. (a) Any person who holds a valid license or certificate from another state or nation that has substantially equivalent standards or work experience may apply for a license or certificate to perform the same practice in this state.

(b) The applicant shall submit an application on a form prescribed by the commission and pay a \$25 fee.

(c) A license or certificate granted under this section allows the holder to engage in the practice of cosmetology stated on the front of the license or certificate. The holder of this license or certificate is subject to the renewal procedures and fees provided in this Act for the practice of cosmetology for which he is licensed.

Student Permits

Sec. 18. (a) Any student enrolled in a school of cosmetology in this state shall be required to have a permit stating the student's name and the name of the school he is attending. The permit shall be displayed in a reasonable manner at the school.

(b) A student permit shall be issued on submission of an application form prescribed by the commission and payment of a \$10 fee which must accompany the application.

(c) The cost of the permit shall also include the examination and transcript fee and may not be refunded.

Beauty Shop License

Sec. 19. (a) A person holding a beauty shop license may maintain an establishment in which any practice of cosmetology is performed.

(b) An applicant for a beauty shop license must submit an application on a form prescribed by the commission. The application must contain proof of the particular requisites for a beauty shop as established by the commission and must be verified by the applicant.

(c) The applicant is entitled to a beauty shop license if the application shows compliance with the rules of the commission, a \$25 license fee is paid, and he has not committed an act that constitutes a ground for denial of a license.

(d) In order that the public may fix responsibility for services, acts, or treatments performed by persons licensed by the State Board of Barber Examiners vis-a-vis those performed by persons licensed by the Texas Cosmetology Commission, to promote the efficient and orderly administration of laws regulating barbers and the practice of barbering and the laws regulating cosmetologists and the practice of cosmetology, and to avoid confusion of the public as well as avoiding conflicts of jurisdiction between such board and commission which might impede effective administration or enforcement of the laws under their respective jurisdictions, from and after January 31, 1980:

(1) a person licensed by the barber board may practice barbering only at a location for which the board has issued a barber shop permit, barber school or college permit, or any other permit. If the State Board of Barber Examiners and the Texas Cosmetology Commission license the same facility, the board may not adopt rules restricting or prohibiting the practice by a Class A barber in the facility; and

(2) a person licensed by the cosmetology commission may practice cosmetology only at a location for which the commission has issued a beauty shop license, private beauty culture school license, or any other license. If the State Board of Barber Examiners and the Texas Cosmetology Commission license the same facility, the commission may not adopt rules restricting or prohibiting the practice by a cosmetologist in the facility.

(e) If the State Board of Barber Examiners and the Texas Cosmetology Commission license the same facility, the agencies may not adopt rules requiring:

(1) that the work areas of barbers and cosmetologists practicing in the facility be separated;

(2) that the waiting areas for customers of the barbers and cosmetologists practicing in the facility be separated;

(3) that the facility have separate restrooms for the barbers or cosmetologists practicing in the facility or for the customers of the barbers and cosmetologists; or

(4) that the barbers and cosmetologists practicing in the facility or the customers of the barbers and cosmetologists be treated separately from each other in any similar manner.

Specialty Shop License

Sec. 20. (a) A person holding a specialty shop license may maintain an establishment in which only the practice of cosmetology as defined in Paragraph (D), (E), (F), or (G) of Subdivision (3) of Section 1 of this Act is performed.

(b) An applicant for a specialty shop license must submit an application on a form prescribed by the

commission. The application must contain proof of the particular requisites for a specialty shop as established by the commission and must be verified by the applicant.

(c) The applicant is entitled to a specialty shop license if the application shows compliance with the rules and regulations of the commission, a \$25 license fee is paid, and he has not committed an act that constitutes a ground for denial of a license.

(d) Subsection (b) of this section does not apply to a shop operated under a beauty shop license issued by the commission.

Private Beauty Culture School License

Sec. 21. (a) A person holding a private beauty culture school license may maintain an establishment in which any practice of cosmetology is taught.

(b) An applicant for a private beauty culture school license must submit an application on a form prescribed by the commission. Each application must be verified by the applicant and must contain:

(1) a detailed floor plan of the school building divided into three separate areas, one for instruction in theory, one for practice work of senior students, and one for practice work of juniors; and

(2) a statement that the building is fireproof and of permanent type construction, contains a minimum of 3,500 square feet of floor space, with separate restrooms for male and female students, and contains or will contain before classes commence the equipment established by rule of the commission as sufficient to properly instruct a minimum of 50 students.

(c) Each applicant shall furnish a good and sufficient surety bond payable to the State of Texas in the amount of \$5,000. The bond must be conditioned to refund any unused portion of the tuition paid if the school closes or ceases operation before the courses of instruction have been completed.

(d) A student is entitled to a pro rata refund of tuition if the student becomes physically unable to complete the courses of instruction.

(e) Each application must be accompanied by payment of a \$250 license fee.

(f) The facilities of each applicant shall be inspected. The applicant is entitled to a private beauty culture school license if the inspection shows that this Act and the rules of the commission have been met and the applicant has not committed an act that constitutes a ground for denial of a license.

Private Beauty Culture Schools

Sec. 22. A private beauty culture school shall:

(1) maintain a sanitary establishment;

(2) maintain on its staff and on duty during business hours not less than two full-time instructors licensed under this Act, except that one instructor will be sufficient whenever the student enrollment drops below 15;

(3) maintain a daily record of attendance of students;

(4) establish regular class and instruction hours and grades, and hold examinations before issuing diplomas;

(5) require a school term of not less than nine months and not less than 1,500 hours instruction for a complete course in cosmetology;

(6) require a school term of not less than four weeks and not less than 150 hours instruction for a complete course in manicuring;

(7) require no student to work or be instructed or receive credit for more than eight hours of instruction in any one day or for more than six days in any one calendar week;

(8) maintain a copy of its curriculum in a conspicuous place and verify that this curriculum is being followed as to subject matter being taught; and

(9) submit to the executive director the name of each student within 10 days after enrollment in the school and notify the executive director of the withdrawal or graduation of a student within 10 days of the withdrawal or graduation.

Transfer of Hours of Instruction

Sec. 23. Any student of a private beauty culture school or a vocational cosmetology program in a public school may transfer completed hours of instruction to a private beauty culture school or vocational cosmetology program in a public school in this state. A transcript showing the number and courses of completed hours certified by the school in which the instruction was given must be submitted to the executive director. On evaluation and approval, the executive director shall certify in writing to the student and to the school to which the student desires a transfer that the stated hours and courses have been successfully completed and that the student is not required to repeat the instructions.

Student Work on Patrons

Sec. 24. (a) No school may receive compensation for work done by any student who has not completed 10 percent of the required number of hours for a license as provided by this Act.

(b) Each school shall maintain in a conspicuous place a list of the names and identifying pictures of the students who are enrolled in cosmetology courses.

(c) Any school violating this section is subject to revocation or suspension of its license.

Private Beauty Culture Schools and Beauty Shops

Sec. 25. Private beauty culture schools, beauty shops, or specialty shops may not be conducted in the same quarters or on the same premises unless they are separated by walls of permanent construction with no openings in them.

Employment of Licensees

Sec. 26. (a) A beauty culture school may not employ a person holding an operator, manicurist, or specialty certificate solely to perform the practices of cosmetology for which the person is licensed or employ a person holding an instructor license to perform any acts or practices of cosmetology.

(b) A licensee may not operate a beauty salon unless it is at all times under the direct supervision of a person holding an operator license or instructor license. A licensee or certificate holder may not operate a specialty shop unless it is at all times under the direct supervision of an operator, instructor, or specialty certificate holder.

(c) A person holding a beauty shop or specialty shop license may not employ a person as an operator or specialist who has not first obtained a license or certificate under this Act or who has not first obtained a license or certificate under the law regulating barbers.

Display of License

Sec. 27. Every holder of a license or certificate issued under this Act shall display the license or certificate in his place of business or employment.

Consumer Information

Sec. 28. There shall at all times be prominently displayed in each shop and salon regulated under this Act, a sign in letters no smaller than one inch in height, the contents of which shall contain the name, mailing address, and telephone number of the regulatory board having jurisdiction over those individuals licensed under this Act and which shall contain a statement informing consumers that complaints against licensees can be directed to the regulatory board.

Right of Access

Sec. 29. The commission, an inspector, or any duly authorized representative of the commission may enter the premises of any licensee at any time during normal business hours and in such manner as not to interfere with the conduct or operation of the business or school to determine whether or not the licensee is in compliance with this Act and the rules of the commission.

Examinations

Sec. 30. Examinations shall be conducted beginning the first of each month unless it is a legal holiday, in which case the examination shall begin on

the following day. The site of the examinations shall be announced at least six months prior to the administration date. Examinations may not be conducted in the schools of commission members. Not later than the 30th day after the day on which a person completes an examination administered by the commission, the commission shall send to the person his examination results. If requested in writing by a person who fails the examination, the commission shall send to the person not later than the 60th day after the day on which the request is received by the commission an analysis of the person's performance on the examination.

Health Certificate

Sec. 31. (a) Every applicant for an original or renewal operator, instructor license, reciprocal license, or specialty certificate must submit a certificate of health signed by a licensed physician, showing that the applicant is free from any contagious disease as determined by an examination that included a tuberculosis test.

(b) Any physician who signs a health certificate required by Subsection (a) of this section showing the applicant to be free from any contagious disease without having made the physical examination is guilty of a misdemeanor, and on conviction may be fined not less than \$50 or more than \$200.

Infections and Contagious Diseases

Sec. 32. (a) A person holding an operator, instructor, or specialty certificate may not perform any practice of cosmetology knowing that he is suffering from an infectious or contagious disease.

(b) A person holding a beauty or specialty shop license or a beauty culture school license may not employ any person to perform any practice or practices of cosmetology knowing that the licensee is suffering from an infectious or contagious disease.

Renewal of Licenses and Certificates

Sec. 33. (a) Except as provided by Subsection (d) of this section, all licenses and certificates issued under this Act, except temporary and private beauty culture school licenses, expire two years from the date of issue.

(b) Applications for renewal of a specialty certificate must be accompanied by a current health certificate.

(c) A renewal license shall be issued on payment of the renewal fee as established by this Act.

(d) All licenses and certificates issued by the commission may be prorated for the number of months the license or certificate will be valid.

(e) A license that has been expired for less than five years may be renewed. A renewal license shall be issued on submission of a completed application

form prescribed by the commission and payment of the renewal fee established by this Act for each year the license was expired, plus a \$5 delinquency fee.

(f) An applicant for renewal of a license that has been expired for more than five years shall be issued a license on submission of an application, payment of the examination fee, satisfactory completion of the examination, and payment of a \$25 reinstatement fee.

Renewal Fees

Sec. 34. Renewal fees under this Act are:

- | | |
|--------------------------------------|--------|
| (1) Operator license | \$ 15; |
| (2) Instructor license | \$ 35; |
| (3) Manicurist license | \$ 15; |
| (4) Private beauty school license | \$150 |
| per year; and | |
| (5) Beauty or specialty shop license | \$ 25. |

Violation

Sec. 35. (a) If an inspector discovers a violation of this Act or of a rule established by the commission, he shall give written notice of the violation on a form prescribed by the commission to the violator, and if the violation is not corrected in 10 days from the date of notice, the inspector shall file a complaint with the executive director.

(b) If a licensee commits three or more violations of a similar nature within any 12-month period, a suit for injunction and proceedings for suspension or revocation of the license shall be instituted.

Grounds for Denial, Suspension, or Revocation of a Permit

Sec. 36. A license or certificate may be denied, or after a hearing, suspended or revoked if the applicant or licensee has:

- (1) secured a license or certificate by fraud or deceit;
- (2) violated or conspired to violate this Act or a rule issued under this Act;
- (3) knowingly made false or misleading statements in any advertising of the licensee's services;
- (4) advertised, practiced, or attempted to practice under the name or trade name of another licensee under this Act; or
- (5) engaged in gross malpractice in practicing cosmetology.

Application of the Administrative Procedure and Texas Register Act

Sec. 37. (a) A person whose application for a license, certificate, or permit is denied is entitled to a hearing before the commission in accordance with the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), if the person submits to the commission a written request for a hearing.

(b) Proceedings for suspension or revocation of a license or certificate and appeals from these proceedings are governed by the Administrative Procedure and Texas Register Act, as amended.

Injunction

Sec. 38. The commission may sue in district court to enjoin or restrain a person from violating any section of this Act or the commission rules.

Exemptions

Sec. 39. The following are exempt from the provisions of this Act:

- (1) service in the case of emergency;
- (2) persons licensed in this state to practice medicine, surgery, dentistry, podiatry, osteopathy, chiropractic, or nurses;
- (3) a person engaged in the business of or receiving compensation for makeup applications only; and
- (4) a person who acts as a barber regulated by the law of this state if the person does not hold himself out as a cosmetologist.

Penalties

Sec. 40. (a) Any person who violates this Act, except Section 31 of this Act, is guilty of a misdemeanor, and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

(b) A licensee or certificate holder who violates this Act is guilty of a misdemeanor and on conviction is punishable under Subsection (a) of this section and is subject to the revocation or suspension of his license or certificate.

Complaints

Sec. 41. (a) The commission shall keep an information file about each complaint filed with the commission relating to a cosmetologist or cosmetology establishment.

(b) If a written complaint is filed with the commission relating to a cosmetologist or cosmetology establishment, the commission, at least as frequently as quarterly, shall notify the complainant of the status of the complaint until the complaint is finally resolved.

[Amended by Acts 1979, 66th Leg., p. 1340, ch. 606, § 1, eff. Sept. 1, 1979.]

Sections 2 and 3 of the 1979 amendatory act provided:

"Sec. 2. A person holding office as a member of the Texas Cosmetology Commission on the effective date of this Act continues to hold office for the term for which the member was originally appointed.

"Sec. 3. Any law, section, or provision relating to creation, powers, duties, or functions of the Texas Cosmetology Commission which is not hereby expressly reenacted is hereby repealed."

CHAPTER THREE. BOXING, SPARRING, WRESTLING, ETC.

Art. 8501-1. Boxing and Wrestling Act

Short Title

Sec. 1. This Act may be cited as the Texas Boxing and Wrestling Act.

Purpose

Sec. 2. It is the legislature's intent to improve the general welfare and safety of the citizens of this state. The legislature finds that the boxing and wrestling industry in this state should be regulated in order to protect the best interest of both contestants and the public, and it is the responsibility of the state to provide for the protection of the contestants and the public through the imposition of certain regulations on the boxing and wrestling industry and to impose a gross receipts tax upon the proceeds obtained from boxing and wrestling performances to finance said regulation. The legislature finds this to be the most economical and efficient means of dealing with this problem and serving the public interest. Accordingly, this Act shall be liberally construed and applied to promote its underlying policies and purposes.

Definitions

Sec. 3. Whenever used in this Act, unless the context otherwise requires, the following words and terms have the following meanings:

- (a) "Commissioner" means the commissioner of the Texas Department of Labor and Standards or his designated representative.
- (b) "Department" means the Texas Department of Labor and Standards.
- (c) "Person" includes an individual, association, partnership, or corporation.
- (d) "Professional boxer or wrestler" means a person to be licensed by the department who competes for a money prize, purse, or compensation in a boxing or wrestling contest, exhibition, or match held within the State of Texas.
- (e) "Exhibition" means a demonstration of boxing or wrestling skills.
- (f) "Boxing" as used in the Texas Boxing and Wrestling Act includes kickboxing, a form of boxing in which blows are delivered with any part of the arm below the shoulder, including the hand, and any part of the leg below the hip, including the foot.
- (g) "Judge" means a person to be licensed by the department who is at ringside during a boxing or wrestling match and who has the responsibility of scoring the performance of the participants in the match.

(h) "Referee" means a person to be licensed by the department who has the general supervision of a boxing and wrestling match or exhibition and is present inside of the ring during the match or exhibition.

(i) "Promoter" means a person to be licensed by the department who arranges, advertises, or conducts a boxing or wrestling contest, match, or exhibition.

Enforcement Responsibility

Sec. 4. The department shall have the sole jurisdiction and authority to enforce the provisions of this Act, and the commissioner shall investigate any allegations of activity which may violate the provisions of this Act.

(a) The commissioner is authorized to enter at reasonable times and without advance notice any place of business or establishment where said alleged illegal activity may occur.

(b) The commissioner is authorized to promulgate rules and regulations and hold administrative hearings in accordance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). The commissioner shall promulgate any and all reasonable rules and regulations which may be necessary for the purpose of enforcing the provisions of this Act. The commissioner is authorized to promulgate rules and regulations governing professional kickboxing contests or exhibitions, which shall be fought on the basis of the best efforts of the contestants. The commissioner shall have the power and authority to revoke or suspend the license or permit of any judge, boxer, wrestler, manager, referee, timekeeper, second, or promoter for violations of any rule or regulation promulgated pursuant to this Act or for the violation of any provision of this Act, and he may deny an application for a license when the applicant does not possess the requisite qualifications.

(c) The commissioner shall have the power and authority to hold a hearing regarding allegations that any person has violated or failed to comply with the provisions of this Act. In addition to the denial, revocation, or suspension of a license, the commissioner may order the forfeiture of the purse of any boxer, wrestler, or manager in an amount not to exceed \$1,000 for the violation of any rule or regulation promulgated pursuant to the Act or for the violation of any provision of this Act, and said money shall be deposited to the credit of the General Revenue Fund of the State of Texas.

(d) In the conduct of any administrative hearing held pursuant to this Act, the commissioner may administer oaths to witnesses, receive evidence, and issue subpoenas and subpoenas duces tecum to compel the attendance of witnesses and the production of papers and documents related to matters under

investigation. Administrative hearings shall be held in conformity with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

Judicial Review

Sec. 5. (a) Any party to the hearing aggrieved by the decision or order of the commissioner may secure judicial review thereof in the following manner:

(1) The petition must be filed in a district court of Travis County, Texas, within 30 days after the decision or order of the commissioner becomes final.

(2) The filing of a petition for review shall not itself stay the effect of the decision or order complained of, but the commissioner or the reviewing court may order a stay upon appropriate terms and if a stay is so granted no supersedeas bond shall be required.

(3) Service of process. The petition for review shall be served on the commissioner and upon all parties of record in any hearing before the commissioner in respect to the matter for which review is sought. After service of such petition upon the commissioner and within the time permitted for filing an answer or as soon thereafter as the record is made available to the commissioner, the commissioner shall certify to the district court in which such petition is filed the record of the proceedings to which the petition refers. The cost of preparing and certifying such record shall be paid to the commissioner by the petitioner and taxed as part of the cost in the case, to be paid as directed by the court upon final determination of said cause.

(4) The review of any decision or order of the commissioner shall be tried by the court without a jury in the same manner as civil actions generally, but no evidence shall be admissible which was not adduced at the hearing on the matter before the commissioner or officially noticed in record of such hearing.

(5) The burden of proof shall be on the plaintiff. The reviewing court may affirm the action complained of or remand the matter to the commissioner for further proceedings.

(6) Appeals from any final judgment may be taken by either party in the manner provided for in civil actions generally, but no appeal bond shall be required of the commissioner.

Penalties

Sec. 6. (a) A person who violates a provision of this Act or any rule or regulation of the department commits a Class A misdemeanor.

(b) Any person who violates any provision of this Act or the rules and regulations of the department may be assessed a civil penalty to be paid to the State of Texas in an amount not to exceed \$1,000 for each such violation as the court may deem proper.

(c) Whenever it appears that any person has violated or is threatening to violate any of the provisions of this Act or of the rules and regulations of the department, either the attorney general or the department may cause a civil suit to be instituted either for injunctive relief to restrain such person from continuing the violation or threat of violation or for assessment and recovery of the civil penalty or for both. Venue for such suit shall be in the district courts of Travis County, Texas.

Amateur Athletic Events

Sec. 7. (a) The promoting, conducting, or maintaining of boxing and wrestling matches, contests, or exhibitions when conducted by educational institutions, Texas National Guard Units, or amateur athletic organizations duly recognized by the commissioner shall be exempt from the licensing and bonding provisions of this Act provided that none of the participants in such contests or exhibitions receive a money remuneration, purse, or prize for their performance or services therein.

(b) None of the licensing and bonding provisions of this Act shall apply to or be enforced against:

(1) all nonprofit amateur athletic associations chartered under the laws of the State of Texas, including their affiliated membership clubs throughout the state which have been recognized by the commissioner;

(2) any contests, matches, or exhibitions between students of educational institutions which are conducted by a college, school, or university as part of the institution's athletic program;

(3) contests, matches, or exhibitions between members of any troop, battery, company, or units of the Texas National Guard.

(c) When an admission fee is charged by any person conducting or sponsoring an amateur boxing and wrestling contest, match, or exhibition, except those amateur events exempted in Section 7(b) herein, the gross receipts tax hereinafter provided in Section 11 of this Act shall apply and must be paid by the sponsoring person. In addition, amateur boxing or wrestling contests wherein an admission fee is charged shall be conducted under the following conditions:

(1) The commissioner must approve the contest, match, or exhibition at least seven days in advance of the event.

(2) All entries shall be filed with the amateur organization at least three days in advance of the event.

(3) The amateur organization shall determine the amateur standing of all contestants.

(4) The amateur contest, match, or exhibition shall be subject to the supervision of the commissioner, and all profits derived from such contests shall be used in the development of amateur athletics.

(5) Only referees and judges licensed by the commissioner may participate in amateur contests, matches, or exhibitions.

(6) All contestants shall be examined by a licensed physician within a reasonable time prior to the event, and a licensed physician shall be in attendance at the ringside during the entire event.

(7) All professional boxers and wrestlers licensed under this Act are prohibited from participating in any capacity during an amateur contest, match, or exhibition.

Promoters

Sec. 8. (a) No person shall act as a promoter of either boxing or wrestling until he has been licensed pursuant to this Act.

(b) The application for a promoter's license shall be made upon a form furnished by the commissioner and shall be accompanied by an annual license fee and the license or registration fee shall be \$20 for a Boxing Promoter's License and \$20 for a Wrestling Promoter's License in a city with a population not exceeding 10,000; \$50 in cities with a population of 10,001 to 25,000, inclusive; \$100 in cities with a population of 25,001 to 100,000, inclusive; \$200 in cities with a population of 100,001 to 250,000, inclusive; and \$300 in a city above 250,001 inhabitants. The application for a promoter's license shall be accompanied by a surety bond subject to the approval of the commissioner and conditioned for the payment of the tax hereby imposed. The commissioner shall fix the sum of the surety bond, but the sum may not be less than \$300.

(c) The surety bond shall be issued by a company authorized to do business in Texas and shall be in conformity with the Insurance Code.

(d) The surety bond shall be to the state for the use by the state or any political subdivision thereof who establishes liability against a promoter for damages, penalties, taxes, or expenses resulting from promotional activities conducted within the State of Texas.

(e) The bond shall be open to successive claims up to the amount of face value, and a new bond must be filed each year. The bonding company is required to provide written notification to the department at least 30 days prior to the cancellation of the bond.

Other Required Licenses

Sec. 9. (a) No person shall act as a professional boxer or wrestler, manager of a professional boxer or wrestler, referee, judge, second, timekeeper, or matchmaker until he has been licensed pursuant to this Act.

(b) The application for a license shall be made upon a form furnished by the commissioner and shall be accompanied by an annual license fee as follows:

(1) boxer	\$10
(2) wrestler	\$10
(3) manager	\$50
(4) matchmaker	\$50
(5) judge	\$15
(6) referee	\$15
(7) second	\$ 5
(8) timekeeper	\$ 5

(c) Revenue obtained from license fees shall be deposited to the credit of the General Revenue Fund.

License Qualifications

Sec. 10. (a) The commissioner is authorized to promulgate rules and regulations setting forth reasonable qualifications for applicants seeking licenses as a promoter, manager, matchmaker, professional boxer or wrestler, judge, referee, second, or timekeeper.

(b) The commissioner may after investigation and hearing deny an application for a license when the applicant has failed to meet the established qualifications or has violated any provision of this Act or any rule or regulation issued pursuant to this Act.

Gross Receipts Tax

Sec. 11. (a) Any person who conducts a boxing or wrestling match, contest, or exhibition wherein an admission fee is charged shall furnish to the department within 72 hours after the termination of the event a duly verified report on a form furnished by the department showing the number of tickets sold, prices charged, and amount of gross receipts obtained from the event. A cashier's check or money order made payable to the State of Texas in the amount of three percent of the total gross receipts of the event shall be attached to the verified report.

(b) Any person who charges an admission fee for exhibiting a simultaneous telecast of any live, spontaneous, or current boxing or wrestling match, contest, or exhibition on a closed circuit telecast must possess a promoter's license issued pursuant to this Act and must obtain a permit for each closed circuit telecast shown in Texas. The three percent gross receipts tax described in Section 11(a) herein is applicable to said telecast, and the promoter shall furnish to the department within 72 hours after the

event a duly verified report on a form furnished by the department showing the number of tickets sold, prices charged, and amount of gross receipts obtained from the event. A cashier's check or money order made payable to the State of Texas in the amount of three percent of the total gross receipts of the event shall be attached to the verified report.

(c) Revenue obtained by the department from the three percent gross receipts tax shall be deposited to the credit of the General Revenue Fund.

(d) The admissions tax provided in Chapter 21, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, shall not be applicable to said telecast.

Arrest and Conviction Records

Sec. 12. The Department of Public Safety shall upon request supply to the Texas Department of Labor and Standards any available arrest and conviction records of individuals applying for or holding any license under this Act.

[Amended by Acts 1977, 65th Leg., p. 815, ch. 305, § 1, eff. Aug. 29, 1977.]

Acts 1977, 65th Leg., p. 815, ch. 305, § 1, revised the Texas boxing and wrestling laws, Acts 1933, 43rd Leg., p. 843, ch. 241, classified as arts. 8501-1 to 8501-17c, by enacting the Texas Boxing and Wrestling Act.

Acts 1977, 65th Leg., p. 2136, ch. 853, § 1, amended former subsec. (a) of this article without reference to revision of the Texas Boxing and Wrestling Laws by Acts 1977, 65th Leg., p. 815, ch. 305, § 1.

Arts. 8501-2 to 8501-17c. Deleted

Acts 1977, 65th Leg., p. 815, ch. 305, § 1, revised the Texas boxing and wrestling laws, Acts 1933, 43rd Leg., p. 843, ch. 241, classified as arts. 8501-1 to 8501-17c, by enacting the Texas Boxing and Wrestling Act, art. 8501-1. See, now, art. 8501-1 and notes thereunder.

CHAPTER SIX. AUCTIONEERS

Art. 8700. Regulation of Auctioneers

Definitions

Sec. 1. For the purpose of this Act:

(1) "Auction" means the sale of any property by competitive bid.

(2) "Person" means an individual.

(3) "Property" means any property, tangible and intangible, real, personal, or mixed.

(4) "Auctioneer" means any person who, as a bid caller, with or without receiving or collecting a fee, commission, or other valuable consideration, sells or offers to sell property at auction.

(5) "Secured party" means a person holding a security interest.

(6) "Commissioner" means the Commissioner of the Texas Department of Labor and Standards.

(7) "Licensee" means any person holding a license under this Act.

(8) "Applicant" means any person applying for a license hereunder.

(9) "Associate auctioneer" means a person who, for compensation, is employed by and under the direct supervision of a licensed auctioneer to sell or offer to sell property at an auction.

Exempt Transactions

Sec. 2. The provisions of this Act shall not apply to the following transactions:

(1) a sale conducted by order of any United States court pursuant to Title II¹ of the United States Code relating to bankruptcy;

(2) a sale conducted by an employee of the United States or the State of Texas or its political subdivisions in the course and scope of his employment;

(3) a sale conducted by a charitable or nonprofit organization, if the auctioneer receives no compensation;

(4) a sale conducted by an individual of his own property if such individual is not engaged in the business of selling such property as an auctioneer on a recurring basis;

(5) a foreclosure sale of realty conducted personally by a trustee under a deed of trust;

(6) a foreclosure sale of personal property conducted personally by the mortgagee or other secured party or an employee or agent of such mortgagee or other secured party acting in the course and scope of his employment if the employee or agent is not engaged otherwise in the auction business and if all property for sale in the auction is subject to a security agreement;

(7) a sale conducted by sealed bid.

(8) An auction conducted in a course of study, approved by the commissioner, for auctioneers and conducted only for student training purposes;

(9) an auction conducted by a posted stockyard or market agency as defined by the Federal Packers and Stockyard Act, 1921, as amended (7 U.S.C. Section 181 et seq.);

(10) an auction of livestock conducted by a nonprofit livestock trade association chartered in this state, if the auction involves only the sale of the trade association's members' livestock; or

(11) an auction conducted by a charitable or nonprofit organization chartered in this state, if the auction involves only the property of the organization's members and the auction is part of a fair that is organized under state, county, or municipal authority.

License Requirements

Sec. 3. (a) Except as exempted under this Act, no person may act as an auctioneer or associate auctioneer in an auction held within this state unless he holds a license issued by the commissioner under this Act.

(b) A person is eligible for an auctioneer's license if he:

(1) is at least 18 years of age;

(2) is a citizen of the United States or a legal alien;

(3) either (i) passes a written or oral examination demonstrating his knowledge of the auction business and of the laws of this state pertaining to the auction business; or (ii) shows proof of his employment by a licensed auctioneer for a period of one year during which the applicant participated in at least five auctions.

(c) A person is eligible for an associate auctioneer's license if he:

(1) is a citizen of the United States or a legal alien; and

(2) is employed under the direct supervision of a licensed auctioneer.

(d) Each person applying for a license must apply to the commissioner on a form provided by the commissioner that establishes the applicant's eligibility for the license. The application must be accompanied by the required bond, the required license fee, and either the limited sales tax permit number issued by the comptroller of public accounts or proof of exemption from the limited sales tax permit requirement.

(e) The commissioner shall prepare license examinations for an auctioneer's license and study and reference materials on which the examinations are based. The examination for auctioneers must be designed to establish the applicant's general knowledge of the auction business, the principles of conducting an auction, and the laws of this state pertaining to auctioneers. The license examination must be offered at least four times a year at locations designated by the commissioner.

(f) A person who establishes his eligibility for an auctioneer's license may apply to the commissioner for a license examination. The application must be accompanied by an examination fee of \$25. On receipt of an examination application with the required fee, the commissioner shall furnish the applicant with study materials and references on which the examination will be based and a schedule specifying the dates and places the examination will be offered. The applicant may take the examination at any scheduled offering within 90 days after receipt of the study materials. If an applicant fails the qualifying examination, he may reapply to take the license examination again. However, if the applicant fails the examination twice within a one-year period, he must wait one year to reapply.

(g) If an application for an auctioneer's license from a nonresident of this state is accompanied by a certified copy of an auctioneer's license issued to the applicant by the county, state, or political subdivi-

sion of his residence and by proof that the county, state, or political subdivision in which the applicant is licensed has competency standards at least equivalent to those of this state, and if the county, state, or political subdivision extends similar recognition and courtesies to this state, the commissioner shall accept the license as proof of the applicant's professional competence and shall waive the examination and training requirements of Paragraph (3), Subsection (b) of this section. All other application requirements must be complied with by nonresidents, and in addition, a nonresident's application shall be accompanied by a written irrevocable consent of service of process. The consent must provide that actions growing out of any transaction subject to this Act may be commenced against the licensee in the proper court of any county of this state in which the cause of action may arise, or in which the plaintiff may reside, by a service of process upon the commissioner as the licensee's agent and stipulating and agreeing that such service of process shall be taken and held in all courts to be as valid and binding as if due service has been made upon the person according to the laws of this or any other state. The consent of service of process shall be in such form and supported by such additional information as the commissioner may by rule require.

(h) A license issued under this Act must be issued for one year, and it expires on the anniversary of issuance unless it is affected by actions resulting from a hearing conducted according to this Act or unless enjoined by actions of a court of competent jurisdiction. Any license issued under this Act may be renewed within 30 days after the expiration date on written request by the licensee and payment of the required license fee.

(i) A person licensed under this Act on the effective date of this amendment is entitled to be relicensed as an auctioneer under this Act without complying with the examination and training requirements of Paragraph (3) of Subsection (b) of this section.

Fees

Sec. 4. (a) The annual fee for each auctioneer's license issued by the commissioner is \$100. The annual fee for each associate auctioneer's license issued by the commissioner is \$50. The commissioner shall issue the license upon approval of application and receipt of payment of all license fees.

(b) All fees shall be paid to the state treasury and placed in the General Revenue Fund.

Bond

Sec. 5. (a) Each application for an auctioneer's license must be accompanied by a surety or cash performance bond in the principal amount of \$5,000 and shall be in conformity with the Insurance Code.

(b) The bond shall be payable to the state for the use and benefit of any damaged party and conditioned that the licensee will pay any judgment recovered by any consumer, the state, or any political subdivision thereof in any suit for damages, penalties, or expenses, including reasonable attorney's fees resulting from a cause of action involving the licensee's auctioneering activities. The bond shall be open to successive claims, but the aggregate amount may not exceed the penalty of the bond.

Preemption

Sec. 6. No municipality or other political subdivision of this state has authority, after the effective date of this amendment, to levy or collect any license tax or fee, as a regulatory or revenue measure, or to require the licensing in any manner of any auctioneer or associate auctioneer who is licensed and complies with all applicable provisions of this Act.

Denial, Suspension, or Revocation of License

Sec. 7. (a) The commissioner may deny, suspend, or revoke the license of any auctioneer for any of the following causes:

- (1) for obtaining a license through false or fraudulent representation;
- (2) for making any substantial misrepresentation in an application for an auctioneer's license;
- (3) for a continued and flagrant course of misrepresentation or for making false promises through agents, advertising, or otherwise;
- (4) for failing to account for or remit, within a reasonable time, any money belonging to others that comes into his possession and for commingling funds of others with his own or failing to keep such funds of others in an escrow or trustee account;
- (5) for conviction in a court of competent jurisdiction of this state or any other state of a criminal offense involving moral turpitude or a felony;
- (6) for violation of this act or any rule or regulation of the department; or
- (7) for any violation of the Business & Commerce Code in the conduct of an auction.

(b) Before denying an application for a license or before suspending or revoking any license, the commissioner shall in all cases set the matter for a hearing and shall, at least 30 days before the date set for the hearing, notify in writing the applicant or licensee of the charges made against him or of the question to be determined, including notice of when and where the hearing will be held.

(c) The applicant or licensee is entitled to an opportunity to be present and to be heard in person or by counsel and to an opportunity to offer evidence by oral testimony, by affidavit, or by deposition.

(d) Written notice may be served by delivery of the notice personally to the applicant or licensee or by mailing the notice by certified mail to the last known mailing address of the applicant or licensee. In the event the applicant or licensee is an associate auctioneer, the commissioner shall also notify the auctioneer employing him or in whose employ he is about to enter by mailing the notice by certified mail to the auctioneer's last known mailing address.

(e) The hearing must be conducted in a manner that will give to the applicant or licensee due process of law and that is consistent with the provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(f) If, after a hearing, the commissioner determines that a license should be denied, revoked, or suspended, the applicant or licensee has 30 days in which to appeal the commissioner's decision to the district court of Travis County or of the county in which the violation is alleged to have occurred.

Investigation of Complaint; Action

Sec. 8. The commissioner may, upon his own motion, and shall, on the written and verified complaint of any person aggrieved by the actions of an auctioneer in the conduct of an auction, investigate alleged violations of this Act by any licensed or unlicensed auctioneer or any applicant.

Rules and Regulations; Hearing of Testimony

Sec. 9. The commissioner may make reasonable rules and regulations relating to the form and manner of filing applications for licenses, the issuance, denial, suspension, and revocation of licenses, and the conduct of hearings consistent with the provisions of The Administrative Procedures Act. The commissioner or other person authorized by him may administer oaths and hear testimony in matters relating to the duties imposed on the commissioner.

Advertising an Auction

Sec. 10. Any auctioneer who advertises to hold or conduct an auction within this state shall indicate in such advertisement his name and license number.

Penalties

Sec. 11. (a) Whoever acts as an auctioneer as defined in this Act without first obtaining a license commits a Class B misdemeanor.

(b) Whoever violates any other provisions of this Act or any rule or regulation promulgated by the commissioner in the administration of this Act, for the violation of which no other penalty is provided, commits a Class C misdemeanor.

[Acts 1975, 64th Leg., p. 827, ch. 320, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 839, ch. 314, § 1, eff. May 30, 1977.]

Section 12 of the 1975 Act repealed Tax.-Gen. art. 19.01, § (1).

CHAPTER SEVEN. IRRIGATORS

Article
8751. Regulation of Irrigators.

Art. 8751. Regulation of Irrigators

Definitions

Sec. 1. In this Act:

- (1) "Person" means a natural person.
- (2) "Board" means the Texas Board of Irrigators.
- (3) "Executive director" means the executive director of the Texas Department of Water Resources.
- (4) "Executive secretary" means the executive secretary of the board.
- (5) "Commission" means the Texas Water Commission.
- (6) "Irrigation system" means an assembly of component parts permanently installed with and for the controlled distribution and conservation of water for the purpose of irrigating any type of landscape vegetation in any location or for the purpose of dust reduction or erosion control.
- (7) "Licensed irrigator" means a person licensed under this Act who maintains a regular place of business and who by himself or herself or through a person in his or her employ sells, designs, consults, installs, maintains, alters, repairs, or services an irrigation system or yard sprinkler system including connections in and to a private or public raw or potable water supply or water supply system.
- (8) "Licensed installer" means a person who performs the actual connection to private or public raw or potable water supply systems.

Exemptions

Sec. 2. This Act does not apply to:

- (1) any person licensed by the Texas State Board of Plumbing Examiners;
- (2) a registered professional engineer or architect or landscape architect if his or her acts are incidental to the pursuit of his or her profession;
- (3) irrigation or yard sprinkler work done by a property owner in a building or on premises owned or occupied by him or her as his or her home;
- (4) irrigation or yard sprinkler work done by a maintenance person incidental to and on premises owned by the business in which he or she is regularly employed or engaged and who does not engage in the occupation of licensed irrigator or in yard sprinkler construction or maintenance for the general public;
- (5) irrigation or yard sprinkler work done on the premises or equipment of a railroad by a

regular employee of the railroad who does not engage in the occupation of licensed irrigator or in yard sprinkler construction or maintenance for the general public;

(6) irrigation and yard sprinkler work done by a person who is regularly employed by a county, city, town, special district, or political subdivision of the state on public property;

(7) a temporary or portable water device such as a garden hose, hose sprinkler, soaker hose, or agricultural irrigation system;

(8) a portable or solid set or other type of commercial agricultural irrigation system; or

(9) irrigation or yard sprinkler work done by an agriculturist, agronomist, horticulturist, forester, gardener, contract gardener, garden or lawn caretaker, nurseryman, or grader or cultivator of land on land owned by himself or herself.

Texas Board of Irrigators

Sec. 3. (a) There is created a Texas Board of Irrigators composed of six members, each of whom shall be a citizen of the United States and a resident of this state.

(b) Each member of the board and his or her successor shall be appointed by the governor with the advice and consent of the senate. Two members shall be members of the public not licensed under this Act, and four members shall be licensed irrigators who have been actively engaged in the practice of irrigation of the type licensed under this Act for a period of at least five years. A person is not eligible for appointment to the board if the person has contributed more than \$1,000 on behalf of the political candidacy of the governor who makes the appointments under this Act. Appointments to the board shall be made without regard to the race, creed, sex, religion, or national origin of the appointees.

(c) Except for the initial appointees to the board, the members of the board hold office for terms of six years, with the terms of two members expiring on January 31 of each odd-numbered year. In making initial appointments, the governor shall designate two members to serve terms expiring January 31, 1981, two members to serve terms expiring January 31, 1983, and two members to serve terms expiring January 31, 1985.

(d) The board shall select one of its members as chairman. The chairman shall serve for the term provided by the rules of the board and may be removed for cause, but his or her removal does not disqualify him or her from continuing as a member of the board.

(e) Four members of the board constitute a quorum for transaction of business.

(f) The initial board shall hold its first meeting within 30 days after all members have qualified, and the board shall hold at least two regular meetings each year at a time and place designated by the chairman. The board may hold special meetings at times and places considered necessary by a majority of the members of the board.

(g) Each member shall receive as compensation for his or her services \$25 a day for each day he or she is actively engaged in official duties in addition to actual travel expenses.

(h) It is a ground for removal of a member from the board that the member does not attend at least one-half of the regularly scheduled meetings held by the board in a calendar year.

Conflict of Interest

Sec. 4. A member of the board may not be an officer, employee, or paid consultant of a trade association in the field of landscape irrigation. No board member may be related within the second degree by affinity or within the second degree by consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the irrigation industry.

Executive Secretary; Employees

Sec. 5. (a) The board may employ an executive secretary approved by the executive director to perform the duties and functions provided by this Act and as directed by the board.

(b) The executive director shall provide necessary personnel as available to assist the executive secretary and the board in performing their duties and functions under this Act.

(c) The commission shall hear all contested cases as defined in the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), arising under this Act. The board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

(d) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9c, Vernon's Texas Civil Statutes), may not act as the general counsel to the board.

Board Finances

Sec. 6. (a) Money paid to the board under this Act shall be deposited in the State Treasury in a special fund known as the Texas Board of Irrigators Fund.

(b) The Texas Board of Irrigators Fund shall be used to pay expenses under this Act.

(c) Before September 1 of each year, the board shall make a written report to the governor accounting for all receipts and disbursements under this Act.

(d) The state auditor shall audit the financial transactions of the board during each fiscal year.

Rules

Sec. 7. (a) The board shall adopt only those rules consistent with this Act to govern the conduct of its business and proceedings and shall adopt standards governing revocation of certificates of registration and connections to public or private water supplies by a licensed irrigator or a licensed installer.

(b) The board does not have authority to amend or enlarge by rule on any provision of this Act, to change the meaning of this Act by rule in any manner, to adopt a rule that is contrary to the underlying and fundamental purposes of this Act, or to make a rule that is unreasonable, arbitrary, capricious, illegal, or unnecessary.

(c) The board shall adopt no rules which would preclude advertising or competitive bidding.

(d) If the appropriate standing committee of either house of the legislature acting under Subsection (g), Section 5, Administrative Procedure and Texas Register Act, as added (Article 6252-13a, Vernon's Texas Civil Statutes), transmits to the board statements opposing adoption of a rule under that section, the rule may not take effect, or if the rule has already taken effect, the rule is repealed effective on the date the board receives the committee's statements.

Registration Requirement

Sec. 8. (a) No person may act as a licensed irrigator or licensed installer unless he or she has a valid certificate of registration under this Act.

(b) The board shall issue certificates of registration to persons of good moral character who have shown themselves fit, competent, and qualified to act as licensed irrigators or licensed installers by passing a uniform, reasonable examination which will include the principles of cross connections and safety devices to prevent contamination of potable water supplies.

(c) The board shall provide in its rules for the preparation, administration, and grading of examinations to acquire certificates of registration under this Act. The fee for taking the examination is \$50 for the irrigator certificate of registration and \$35 for the installer certificate of registration.

(d) A person holding a certificate of registration under this Act shall not be required to comply with any other licensing requirements of other state agencies to perform connections to private or public raw or potable water supply systems.

(e) Not later than the 30th day after the day on which a person completes an examination administered by the board, the board shall send to the person his or her examination results. If requested in writing by a person who fails the examination, the board shall send to the person not later than the 30th day after the day on which the request is received by the board an analysis of the person's performance on the examination.

Reciprocity

Sec. 9. (a) The board may certify for registration without examination an applicant who is registered as a licensed irrigator or licensed installer in another state or country that has requirements for registration that are at least substantially equivalent to the requirements of this state and that extends the same privilege of reciprocity to licensed irrigators or licensed installers registered in this state.

(b) The application for registration under this section shall be accompanied by a fee of not to exceed \$50 for a licensed irrigator or \$35 for a licensed installer as determined by the board.

Renewal

Sec. 10. (a) Certificates of registration expire on August 31 of each year.

(b) The board or the executive secretary shall notify every person registered under this Act of the date of expiration of his or her certificate and the amount of the fee that is required for renewal for one year. The notice shall be mailed at least two months in advance of the date of expiration of the certificate.

(c) A person may renew his or her certificate at any time during the months of July and August of each year by payment of the fee adopted by the board in an amount of not more than \$100 for a licensed irrigator or \$50 for a licensed installer.

(d) Failure of a registrant to renew his or her certificate by August 31 does not deprive the registrant of the right to renewal, but the fee paid for renewal of a certificate after the August 31 expiration date shall be increased 10 percent for each month or part of a month that renewal payment is delayed. If the registrant fails to renew within 90 days after the date of expiration of the registration certificate, the registrant must reapply for registration and must qualify under Section 8 of this Act to act as a licensed irrigator or licensed installer.

(e) Renewal certificates carry the same registration number as the original certificates.

(f) By rule, the board may adopt a system under which certificates of registration may expire on various dates during the year. Renewals may be made at any time during the two-month period before the designated expiration date, and renewal fees paid

after the expiration date shall be increased 10 percent for each month or part of a month that renewal payment is delayed. If a registrant fails to renew within 90 days after the expiration date of the registration, the registrant must reapply for registration and must qualify under Section 8 of this Act to act as a licensed irrigator or a licensed installer. For the year in which the expiration date is changed, registration fees payable on August 31 shall be prorated on a monthly basis so that each registrant will pay only that portion of the registration fee that is allocable to the number of months during which the registration is valid, and on renewal of the registration on the new expiration date, the total of the registration fee is payable.

Revocation

Sec. 11. (a) The commission may revoke a certificate of registration of any registrant whom it finds guilty of:

- (1) violations of this Act or rules adopted under this Act;
- (2) fraud or deceit in obtaining a certificate of registration; or
- (3) gross negligence, incompetency, or misconduct while acting as a licensed irrigator or licensed installer.

(b) The commission shall hear complaints under Subsection (a) of this section subject to standards adopted by the board in its rules.

(c) Any person may file a complaint with the board. The complaint shall be in writing, shall be notarized, and shall set forth the facts alleged. Three copies of the written allegations shall be filed with the executive director. One copy shall be sent by certified mail to the alleged violator.

(d) On receipt of written allegations, the board, if it considers the information sufficient to support further action, shall issue an order referring the complaint to the commission for setting a hearing.

(e) If the executive director determines through investigation that evidence exists of a violation, he may refer such evidence to the board or may proceed directly to the commission to request setting of a hearing.

(f) The commission may compel the attendance of a witness before it as in civil cases in the district court by issuance of a subpoena.

Penalty; Injunction

Sec. 12. (a) A person who represents himself or herself as a licensed irrigator or licensed installer in this state without being registered or exempted under this Act, who presents or attempts to use as his or her own the certificate of registration or the seal of another person who is a licensed irrigator or licensed installer, who gives false or forged evidence

of any kind to the board or to any member of the board in obtaining or assisting in obtaining for another a certificate of registration, or who violates a provision of this Act or a rule adopted under this Act shall be guilty of a Class C misdemeanor. Each day a violation of this subsection occurs constitutes a separate offense.

(b) The board or the executive director may request the attorney general to seek injunctive relief to prevent any of the acts of violation listed in Subsection (a) of this section.

Enforcement of Act

Sec. 13. The executive director with the assistance of the attorney general shall enforce this Act and the rules adopted by the board.

Local Rules and Regulations

Sec. 14. The regulatory authority of any city, town, county, special purpose district, or other political subdivision of the state may require licensed irrigators or licensed installers to comply with any reasonable inspection requirements or ordinances and regulations designed to protect the public water supply and pay any reasonable fees imposed by that local entity relating to work performed by licensed irrigators within its jurisdiction.

Certification of Certain Persons

Sec. 15. A person who holds a license as a landscape irrigator under Chapter 457, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 249c, Vernon's Texas Civil Statutes), on the effective date of this Act is entitled to be certified as a licensed irrigator without meeting the requirements of Section 8 of this Act; however, persons seeking to become licensed installers must comply with Section 8 of this Act.

Sunset Provision

Sec. 16. The board is subject to the Texas Sunset Act,¹ and unless continued in existence as provided by that Act, the board is abolished and this Act expires effective September 1, 1991.

¹ Article 5429k.

[Acts 1979, 66th Leg., p. 430, ch. 197, §§ 1 to 16, eff. Aug. 27, 1979.]

Sections 17 and 18 of the 1979 Act provided:

"Sec. 17. All laws or parts of laws in conflict with the provisions of this Act shall be and the same are hereby repealed; provided, however, that this Act shall only be construed as repealing or amending any laws affecting or regulating any other profession as necessary to allow a licensed irrigator or a licensed installer under this Act to connect an irrigation system to any public or private raw or potable water supply system.

"Sec. 18. If any article, section, subsection, sentence, clause, or phrase of this Act is for any purpose or reason held to be unconstitutional, such invalid portion shall not affect the validity of the remaining portions of this Act. The legislature hereby declares that it would have passed the valid portions of the Act irrespective of the fact that any one or more portions thereof be declared unconstitutional."

CHAPTER TWENTY. MISCELLANEOUS

Article

- 9001a. Tourist Trade Centers; Exemption from Saturday-Sunday Law.
 9009. Secondhand Metal Dealers; Records and Reports of Purchases and Sales of Copper, Brass and Bronze Materials.
 9018. Artists' Consignment Act.
 9019. Interception of Communications; Civil Remedies and Criminal Penalties.

Art. 9001a. Tourist Trade Centers; Exemption from Saturday-Sunday Law

Definitions

Sec. 1. As used in this Act:

(1) "Tourist trade center" shall mean a specific contiguous area of not more than one-fourth square miles. Merchants within such area shall primarily offer for sale goods that are generally of interest to tourists. Seventy-five percent of all real property within such area shall be publicly owned.

(2) "Tourist trade center merchant" shall mean a merchant who employs no more than 10 persons and who primarily offers for sale goods that are of general interest to tourists and sells more than 75 percent of these goods to tourists and whose gross sales of all products for the preceding one-week period are not more than \$10,000.

(3) "Saturday-Sunday Law" is Chapter 15, Acts of the 57th Legislature, 1st Called Session, 1961 (Article 9001, Vernon's Texas Civil Statutes).

Sec. 2. The governing body of an incorporated city or town, by ordinance, may designate two tourist trade centers within such city. A tourist trade center merchant, exclusively within a tourist trade center, shall be exempt from the provisions of the Saturday-Sunday Law.

Sec. 3. Any person may apply to any court of competent jurisdiction for and may obtain an injunction restraining anyone using the provision of this Act to claim an exemption from the Saturday-Sunday Law, when such person claiming the exemption is not a tourist trade center merchant within a tourist trade center. Such person bringing the action may recover reasonable attorney's fees, costs of court, and actual damages, if any.

Sec. 4. It is the intent of the legislature that this Act would not have been enacted if it in any way affects the constitutionality of the Saturday-Sunday Law and if any portion or provision of this Act is held or found to be unconstitutional, this Act shall be void and such shall not in any manner affect the Saturday-Sunday Law.

[Acts 1979, 66th Leg., p. 1142, ch. 548, §§ 1 to 4, eff. Aug. 27, 1979.]

Art. 9007. Sale of Merchandise Made by Convicts or Prisoners Prohibited; Exceptions

[See Compact Edition, Volume 5 for text of 1]

Sec. 1(a). The Texas Department of Corrections is hereby authorized to contract with other states, the federal government, foreign governments, or an agency of any of them for the manufacturing and selling of items produced by prison industries for the above mentioned governments. The Texas Department of Corrections is also authorized to contract with private schools and visually handicapped persons in the State of Texas for the purpose of manufacturing braille textbooks and other instructional aids for the education of blind or visually handicapped persons.

[See Compact Edition, Volume 5 for text of 2]

[Amended by Acts 1977, 65th Leg., p. 1420, ch. 577, § 1, eff. June 15, 1977; Acts 1977, 65th Leg., p. 1618, ch. 633, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 17, ch. 9, § 1, eff. March 7, 1979.]

Art. 9008. Repealed by Acts 1975, 64th Leg., p. 2305, ch. 719, art. I, § 1, eff. Jan. 1, 1976

Art. 9009. Secondhand Metal Dealers; Records and Reports of Purchases and Sales of Copper, Brass and Bronze Materials

[See Compact Edition, Volume 5 for text of 1]

Duty to Maintain Record; Exhibition; Form and Contents

Sec. 2. (a) Every secondhand metal dealer in this state shall keep a written record of all sales to and purchases from any individual of copper or brass material in excess of 50 pounds made in the course of his business. The record shall be exhibited on demand to any peace officer of this state or the United States. The record shall be in the English language in written form and shall include:

(1) the place and date of each sale to or purchase from an individual of copper or brass material in excess of 50 pounds made in the conduct of his business;

(2) the name and address of each individual from whom copper or brass material in excess of 50 pounds is purchased or obtained, and the license number of any motor vehicle used in transporting such copper or brass material to the secondhand metal dealer's place of business;

(3) a description of the article or articles of copper or brass material sold or purchased and the quantity thereof.

(b) Every secondhand metal dealer in this state shall keep a written record of all purchases from any individual of any bronze cemetery vase or receptacle, any bronze cemetery memorial, or any bronze statu-

ary made in the course of his business. The record shall be exhibited on demand to any peace officer of this state or the United States. The record shall be in the English language in written form and shall include:

(1) the place and date of each purchase from an individual of any bronze cemetery vase or receptacle, any bronze cemetery memorial, or any bronze statuary made in the course of his business;

(2) the name and address of each individual from whom any bronze cemetery vase or receptacle, any bronze cemetery memorial, or any bronze statuary is purchased or obtained, and the license number of any motor vehicle used in transporting the bronze pieces to the secondhand metal dealer's place of business;

(3) a description of the bronze cemetery vase or receptacle, bronze cemetery memorial, or bronze statuary purchased and the weight of it.

Preservation of Records

Sec. 3. Every secondhand metal dealer shall preserve the records required by Section 2 of this Act for a period of at least two years.

Reports; Mailing

Sec. 4. Every secondhand metal dealer shall, within seven days after the purchase or other acquisition of any material required to be recorded under Section 2 of this Act, mail to or file with the Department of Public Safety a report containing the information required to be recorded in Section 2 of this Act.

[See Compact Edition, Volume 5 for text of 5 and 6]

[Amended by Acts 1975, 64th Leg., p. 380, ch. 169, §§ 1 to 3, eff. Sept. 1, 1975.]

Art. 9014. Repealed by Acts 1979, 66th Leg., p. 417, ch. 191, § 2, eff. Sept. 1, 1979

See, now, Penal Code, § 31.11.

Art. 9015. Repealed by Acts 1977, 65th Leg., p. 2690, ch. 871, art. 1, § 2(a)(4), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Natural Resources Code.

Art. 9017. Repealed by Acts 1975, 64th Leg., p. 2305, ch. 719, art. II, § 1, eff. Jan. 1, 1976

Art. 9018. Artists' Consignment Act

Sec. 1. This Act may be cited as the Artists' Consignment Act.

Sec. 2. In this Act:

(1) "Art" means a painting, sculpture, drawing, work of graphic art, pottery, weaving, batik, macrame, quilt, or other commonly recognized art form.

(2) "Artist" means the creator of a work of art or, if he is deceased, his estate.

(3) "Art dealer" means a person engaged in the business of selling works of art.

(4) "Creditor" has the meaning given that term by Section 1.201, Business & Commerce Code.

(5) "Person" means an individual, partnership, corporation, or association.

Sec. 3. A work of art delivered to an art dealer for the purpose of exhibition or sale, and the proceeds from the sale of the work by the dealer, whether to the dealer on his own account or to a third person, are not subject to the claims, liens, or security interests of the creditors of the art dealer, notwithstanding any provision of the Business & Commerce Code.

[Acts 1977, 65th Leg., p. 1530, ch. 623, §§ 1 to 3, eff. Aug. 29, 1977.]

Art. 9019. Interception of Communications; Civil Remedies and Criminal Penalties

Sec. 1. In this Act:

(a) "Communication" means speech uttered by any person and any information including speech transmitted in whole or in part with the aid of wire or cable.

(b) "Interception" means the aural acquisition of the contents of any communication through the use of an electronic, mechanical, or other device without the consent of a party to the communication. Interception does not include the ordinary use of:

(1) a telephone or telegraph instrument, facility, or equipment;

(2) a hearing aid designed to correct subnormal hearing to not better than normal;

(3) a radio, television, or other wireless receiver; or

(4) a cable system that relays public wireless broadcasts from a common antenna to one or more receivers.

Sec. 2. (a) A party to a communication may bring a civil action in a court of competent jurisdiction against any person, including a corporation or association, who:

(1) intercepts, attempts to intercept, or employs or obtains the services of another person to intercept or attempt to intercept the communication;

(2) uses or divulges information that he knows, or reasonably should have known, was obtained by intercepting the communication; or

(3) in his capacity as a landlord, building operator, telephone company or other communication common carrier through its agents or employees aids or knowingly permits the actual or attempted interception.

(b) In a suit filed under this section, a person who establishes a cause of action is entitled to:

(1) an injunction prohibiting further interceptions, attempted interceptions, or divulgence or use of information obtained by interception;

(2) statutory damages of \$1,000;

(3) all actual damages in excess of \$1,000;

(4) Any punitive damages the court or jury may award; and

(5) reasonable attorney's fees and costs.

(c) It shall not be unlawful for an operator of a switchboard or an officer, employee, or agent of any telephone company or other communication common carrier, whose facilities are used in the transmission of a wire communication, to intercept, disclose, or use that communication in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his service or to the protection of the rights or property of the telephone company or other communication common carrier, provided that said communication common

carriers shall not utilize service observing or random monitoring except for mechanical or service quality control checks. In any civil action under this article, it shall be the burden of any defendant relying upon this defense to establish by a preponderance of the evidence that every such interception, disclosure, or use was a necessary incident to the rendition of service.

(d) It is further provided that no cause of action will arise under this section with respect to surveillance authorized under the provisions of Title 18, United States Code, Section 2516, as amended.

Sec. 3. A landlord, building operator, employee of a telephone company or other communication common carrier, or any other person who knowingly aids or permits the actual or attempted interception of communications, as defined in this Act, shall on first conviction be guilty of a Class A misdemeanor, and on second or subsequent conviction be guilty of a third-degree felony, except that no criminal liability shall arise under the provisions of this Act with respect to surveillance authorized under state or federal law.

[Acts 1977, 65th Leg., p. 1863, ch. 740, §§ 1 to 3, eff. June 16, 1977.]

TITLE 133

SAFETY

Art. 9205. Regulation and Offenses as to Fireworks

[See Compact Edition, Volume 5 for text of 1 to 3]

Counties Over 1,700,000

Sec. 3A. (a) In any county having a population of more than 1,700,000 persons according to the last preceding federal census, no person may sell or ignite the following:

(1) bottle rockets or sky rockets as defined in Subsection (2), Section 2 of this Act which do not meet the following specifications:

(A) total overall length of 15 inches or more including sticks and nose cones;

(B) casings containing propellant charge and pyrotechnic effects which are $2\frac{7}{8}$ inches or more in length and $\frac{1}{2}$ inch or more in diameter.

(b) A person who violates Subsection (a) of this section is guilty of a Class C misdemeanor.

[See Compact Edition, Volume 5 for text of 4]

License Fees

Sec. 5.

[See Compact Edition, Volume 5 for text of 5A to C]

D. An annual license fee of \$10 will be charged all retailers who possess and sell fireworks enumerated in Section 2, for which an annual retailer's license shall be issued effective until midnight of the

following 31st day of January. No person, firm or corporation shall offer fireworks for sale to individuals at retail before the 24th day of June and after the 4th day of July, or the 15th day of December of each year and after midnight of the 1st day of January of the following year.

[See Compact Edition, Volume 3 for text of 5E to G]

H. A license fee of \$17.50 for each public display shall be paid at the time of obtaining the permit, as hereafter provided, being payable to and in the manner provided in Section 5A.

[Amended by Acts 1977, 65th Leg., p. 559, ch. 195, § 1, eff. Sept. 1, 1977; Acts 1977, 65th Leg., p. 1246, ch. 482, § 1, eff. June 15, 1977.]

Art. 9206. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4)

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing this article, enacts the Parks and Wildlife Code.

Acts 1975, 64th Leg., p. 1286, ch. 481, amended subsecs. (3) and (9) and added subsecs. (14) to (16) of § 2a and § 5 of this article, without reference to repeal of this article by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4).

Acts 1977, 65th Leg., p. 1258, ch. 484, § 6(1), repealed the above provisions of this article, as amended by Acts 1975, 64th Leg., p. 1286, ch. 481, and, in § 1 thereof incorporated said 1975 amendments into the Parks and Wildlife Code by amending Parks & Wildlife Code, §§ 31.003(3) and (7), 31.036, and 31.042(b) and adding §§ 31.003(11) to (13) and 31.045 to 31.055.

Acts 1977, 65th Leg., p. 1973, ch. 788, which amended § 5(k) of this article, as amended by Acts 1975, 64th Leg., p. 1286, ch. 481, § 2, was repealed by § 6(7) of Acts 1977, 65th Leg., p. 1259, ch. 484. See, now, Parks & Wildlife Code, § 31.048.

Acts 1975, 64th Leg., p. 108, ch. 48, § 1 amended § 24 of this article by adding a new subsec. (g), without reference to repeal of this article. As so added, subsec. (g) reads:

"(g) A person who intentionally or knowingly violates or fails to comply with the provisions of Subsection (a), Section 21 of this Act is guilty of a misdemeanor and on conviction is punishable by confinement in jail for a term not to exceed one year, or by a fine not to exceed \$2,000, or by both."

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